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Legal Regime for the Regulation of Commercial Space Activities in China

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1. Introduction

The launch of Sputnik 1 by the former Soviet Union in 1957 signified the start of the space age.[1] The following three decades were characterized by the competition between the former Soviet Union and the United States in outer space. While the former Soviet Union successfully sent the first man, Yuri Gagarin, to outer space in 1961, the United States was able to send the first human being, Neil Armstrong, to the Moon in 1969.[2] By setting foot on the Moon, Armstrong made the famous speech, "[T]hat's one small step for man, one giant leap for mankind."[3]

The launch of the first manmade satellite (DFH-1) in 1970 in China opened a new page for China's space history. China has since then made spectacular breakthroughs in the development of space technologies and activities.[4] The start of the 21st century witnessed even more ambitious developments in space activities in China. China became the third country around the world to send a manned satellite (with Mr. Yang Liwei on board) to outer space in 2003.[5] However, the development in the technological aspect does not directly lead to the development in the legal aspect in China. An examination of space law in China can present to us an unsatisfactory picture in the legal regulatory for space activities in China.[6]

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1 See generally Paul Dickson, *Sputnik: The Shock of the Century* (Reprinted edition, Walker & Company 2011).

2 See generally Walter A. McDougall, *The Heavens and the Earth: A Political History of the Space Age* (Johns Hopkins University Press 1997).

3 NASA Administrator, 'July 20, 1969: One Giant Leap For Mankind' (NASA, 14 July 2014) <https://www.nasa.gov/mission_pages/apollo/apollo11.html> accessed 11 July 2014.

4 Jun Zhang, *Contemporary China: Establishment of Space Cause (dangdai zhongguo de hangtian shiye)* (Present Day China Press & Hong Kong Motherland Press 2009); 'Record on the Launch of China's First Satellite DFH-1' (*People's Net* (renmin wang), 14 April 2010) <http://scitech.people.com.cn/GB/25509/55912/185601/186989/11367605.html> accessed 11 July 2015.

5 The State Council Information Office of the PRC, 'China's Space Activities in 2006' (Official Website of Chinese Government, 2006) <http://www.china.org.cn/english/features/book/183715.htm> accessed 11 July 2015.

6 Yun Zhao, 'National Space Legislation in Mainland China' (2007) 33(2) Journal of Space Law 427; Yun Zhao, *National Space Law in China: An Overview of the Current Situation and Outlook for the Future* (Studies in Space Law Vol10, Brill Nihhoff 2015) 39. See also Juqian Li, 'Progressing towards New National Space Law: Current Legal Status and Recent Developments in Chinese Space Law and Its relevance to Pacific Rime Space Law and Activities' (2009) 35 Journal of space Law 444.

Some studies have been done regarding the current legal regime in China. China has already in place administrative rules governing the licensing of space launching activities and the registration of space objects. China has also legal regime regarding export controls over space technologies and products due to their sensitive nature. However, we must also note the new developments in the last few years. Firstly, China has drafted administrative rules regarding space debris mitigation; secondly, China has taken a serious attitude towards national space legislation.[7]

This article first examines the background for national space legislation in the next part. It will then endeavour to give an overview of the current space policies and regulations in China in Part 3. It shall further analyse possible future development of national space law in China in Part 4. It concludes that we have reason to be optimistic regarding future development of national space legislation in China. The existence of a comprehensive national space law shall be beneficial to sustainable development of space activities in China.

2. Background for National Space Legislation

Since the launch of the first man-made space object, the international society was quick to respond to the development of legal regime for space activities. The United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS), together with its two subcommittees (the Science & Technology Subcommittee, and the Legal Subcommittee), were established within the United Nations to oversee the technological and legal aspects of space activities.

Under the aegis of the UNCOPUOS, five international treaties were enacted between 1967 and 1979. Specifically, these five treaties are: the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies (the Outer Space Treaty) in 1967,[8] the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (the Rescue Agreement) in 1968,[9] the Convention on International Liability for Damage Caused by Space Objects (the Liability Convention) in 1972,[10] the Convention on Registration of Objects Launched into Outer Space (the Registration Convention) in 1975,[11] and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (the Moon Agreement) in 1979.[12]

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7 Zhao, *National Space Law in China* (n 6) 38-42.
8 610 UNTS 205; TIAS 6347; 18 UST 2410; UKTS 1968 No. 10; Cmnd. 3198; ATS 1967 No. 24; 6 ILM 386 (1967).
9 672 UNTS 119; TIAS 6599; 19 UST 7570; UKTS 1969 No. 56; Cmnd. 3786; ATS 1986 No. 8; 7 ILM 151 (1968).
10 961 UNTS 187; TIAS 7762; 24 UST 2389; UKTS 1974 No. 16; Cmnd. 5068; ATS 1975 No. 5; 10 ILM 965 (1971).
11 1023 UNTS 15; TIAS 8480; 28 UST 695; UKTS 1978 No. 70; Cmnd. 6256; ATS 1986 No. 5; 14 ILM 43 (1975).
12 1363 UNTS 3; ATS 1986 No. 14; 18 ILM 1434 (1979).

However, these treaties, made during the cold-war period with states as the sole actors in space activities, were inadequate for the ongoing space commercialization and privatization process.[13] Many new legal issues are coming up, including the concerns over weapons race in space in post-cold war period, liabilities and compensation issues arising from collisions and space accidents.[14] Accordingly, some scholars have raised the possibility of making a new space convention to accommodate the new development in space activities.[15] However, the international legislation process appears extremely difficult in view of the increasing number of states involved in the space activities and the increasingly diversifying interests among those states.[16]

Under such circumstances, national space legislation appears to be a more realistic approach to fill in the gap of the space legal regime. National space legislation is one way to implement national space obligations under the international space treaties, providing details in the national laws to implement principles and guidelines of these treaties. In particular, national space legislation can provide rules to deal with legal issues arising from space commercialization and privatization, which is not well defined in the existing space treaties.[17]

The United States and Russia have rather advanced legislation, partly due to their wide range of space activities and well-established space commercialization. In the last few years, we also noted that some Asian countries have already enacted their national space laws, though much more remains to be done.[18] With most new spacefaring mainly coming from the Asia-Pacific region, we can expect that the new wave of national space legislation shall similarly come out from this region, thus taking the lead in future space legislation. Accordingly, the process of national space legislation is an indispensable and irreversible trend in the space field.

3. An Overview of Space Policies and Regulations in China

China set up the Fifth Research Institute under the Ministry of National Defense in 1956, which conducted research on missiles and rockets. This event can be seen as a

13 Harry R Marshall, 'Commercialization of Space: Incentives, Impediments and Alternatives' (1984) 12(2) Journal of space Law 163; Fred Kosmo, 'Commercialization of Space: A Regulatory Scheme that Promotes Commercial Ventures and International Responsibility' (1988) 61 Southern California Law Review 1055; Ty S. Twibell, 'Space Law: Legal Restraints on Commercialization and Development of Outer Space' 65(3) UMKC Law Review 589; Yun Zhao, 'International Space Authority: A Governance Model for a Space Commercialization Regime' (2004) 30(2) Journal of Space Law 277.

14 J. E. S. Fawcett, *Outer Space: New Challenges to Law and Policy* (Oxford University Press 1985)

15 David Tan, 'Towards a New Regime for the Protection of Outer Space as the Province of All Mankind' (2000) 25 Yale Journal of International Law 145.

16 Anthony Aust, *Modern Treaty Law and Practice* (3rd edn, Cambridge University Press 2013) 235-244-145.

17 See generally, Julian Hermida, Legal Basis for a National Space Legislation (Space Regulations Library, Kluwer Academic Publishers 2004); Ronald L. Spencer, 'International Space Law: A Basis for National Regulation' in Ram S. Jakhu (ed) National Regulation of Space Activities (Space Regulations Library, Springer 2010).

18 *Id*.

milestone event in the development of space activities in China.[19] Although the first successful launch of manmade satellite (DFH-1) was conducted in 1970, China has already constructed its first launch site twelve years earlier in 1958.[20] Since then, China has made spectacular development in its space activities. China is now the third country which can send human beings to outer space.[21]

In the meantime, China took a proactive attitude towards the participation in international space forums. China became the UNCOPUOS member in 1980. Three years later, China joined the Outer Space Treaty; in 1988, China joined the other three international space treaties (except for the Moon Agreement). China National Space Administration is the responsible entity regulating national space activities and participating in international space cooperation.[22] Since 2000, China has regularly released policy documents stating national policy regarding national space activities; so far three versions of White Paper on China's Space Activities were released in 2000, 2006 and 2011 respectively, elaborating China's stance towards space development and cooperation.[23]

The release of space policy cannot take the place of laws and regulations for space activities. To undertake the commitments under these international treaties, China enacted two administrative rules on licensing of space activities and the registration of space objects. China further adopted another set of administrative rules to respond to the international efforts in space debris mitigation. Meanwhile, China has also had its rules to deal with the issue of export controls over space-related products and technologies.[24]

3. 1. Registration of Space Objects

The Ministry of Foreign Affairs (MFA) and the Commission of Science, Technology and Industry for National Defense (COSTIND) jointly released administrative rules titled Administrative Measures on the Registration of Space Objects ("Registration Measures"), which deals with the registration of space objects to satisfy its commitment under the Registration Convention.

The definition of "launching State" in the Registration Measures is the same as that in the Registration Convention. However, the former document provides the Chinese version of the definition for the important term "space object". Generally

19 'The Historical Evolution of China Aerospace Science & Industry Corporation' (*China's Aerospace Science & Industry Corporation*) <http://www.casic.cn/n101/n469693/index.html> accessed 11 July 2015; 'The Historical Evolution of China Aerospace Science and Technology Corporation' (*China's Aerospace Science and Technology Corporation*) <http://www.spacechina.com/n25/n142/n152/n174/index.html> accessed 11 July 2015.

20 'The First Satellite Launch Site in China' (*Xinhua News*, 11 October 2003) <http://news.xinhuanet.com/photo/2003-10/11/content_1118795.htm> accessed 11 July 2015.

21 'China's Space Activities in 2006' (n 5).

22 Zhao, *National Space Law in China* (n 6) 42-46.

23 *Id*., at 11-15.

24 *Id*., at 38-42.

speaking, the Chinese definition offers a better answer to the scope of space objects than that in the Registration Convention.[25] It includes "an artificial satellite, crewed spacecraft, space probe, space station, launch vehicle and parts thereof, and other human-made objects launched into outer space."[26] From this definition, space objects need to satisfy two minimum requirements: "manmade" and "entry into space". The definition further excludes "sounding rocket and ballistic missile that temporary crosses space."[27] Internationally there is no consensus on the scope of space objects. Obviously China adopts a restrictive approach by excluding those that cross space temporarily. This may cast doubts over the nature of a suborbital flight which passes outer space only temporarily. It is thus not clear whether this definition applies to the Chinese space law in general or is only applicable when it comes to the registration of space objects.[28]

The Registration Measures acknowledges the obligation of registration of space objects at the domestic and international levels.[29] The COSTIND serves as the competent authority for the purpose of registration; in case of joint launching, the COSTIND and the MFA shall identify the state of registry. The National register shall be kept by the COSTIND.[30] There will be separate registers for space objects owned or launched by Hong Kong and Macau respectively.[31]

The registration shall be made at the national level within 60 days from the time when the space object enters the orbit; the MFA shall then register with the United Nations Secretary-General within 60 days of domestic registration.[32]

3. 2. Licensing Measures

The COSTIND released the Interim Measures on the Administration of Permits for Civil Space Launch Projects (Licensing Measures) in 2002. This document defines "civil space launch projects" as "the launch of such spacecraft as satellites from inside the territory of China into outer space for non-military purpose, and the launch of such spacecraft as satellites, etc. over which natural persons, legal persons, or other Chinese organizations have had property or have property launched into outer space from outside of the Chinese territory."[33]

A licensing system is adopted for the launch project. The COSTIND shall be

25 Art I (b) of the Registration Convention provides that "the term 'space object' includes component parts of a space object as well as its launch vehicle and parts thereof".
26 Registration Measures, Article 2.
27 *Id*.
28 Marietta Benko and Engelbert Plescher, *Space Law; Reconsidering the Definition/Delimitation Question and the Passage of Spacecraft through Foreign Airspace* (Eleven, 2013) 39-40.
29 Registration Measures (n 26), Article 4.
30 *Id*., Article 10.
31 *Id*., Article 10.
32 *Id*., Article 9.
33 Licensing Measures, Article 2.

responsible for examining, approving and supervising civil space launch projects. Application for space launch shall be submitted 9 months before the prearranged month for launch; the COSTIND shall examine the application within 30 days as of receipt of the application documents. Once issued, the license shall not be altered or transferred without application for modification, etc.[34]

The Licensing Measures provide detailed conditions for the license applicant, including the following four items: 1) the applicant shall maintain state secrets; 2) the project shall not endanger state security or damage state interests; 3) the applicant has necessary technical strength, economic strength and complete technical documents; 4) the applicant shall exercise due diligence, not causing irrevocable injury or damage to public health, security and property, etc.[35] The Licensing Measures also contain a provision regarding the obligation of arranging third party liability insurance.[36]

Six months before the prearranged month for launch, the licensee shall report the launch plan at a domestic launching site, or file an application 60 days before the prearranged launch for approval for the project to leave the factory at a foreign launching site.[37] The Licensing Measures also provide legal responsibilities in case of violation, which include an order to cease the illegal activity, imposition of administrative sanction and criminal liability.[38]

3. 3. Space Debris Mitigation

The incident of destroying a defunct weather satellite in 2007 by the Chinese government brought in serious criticisms from the international society. China reiterated its efforts in space debris mitigation on various forums. Such an effort culminated in the enactment of the Interim Measures on Space Debris Mitigation and Protective Management (Space Debris Mitigation Measures) in 2009 by the State Administration for Science, Technology and Industry for National Defense (SASTIND), the successor of the COSTIND. This document closely follows the Inter-Agency Space Debris Coordination Committee (IADC) Space Debris Mitigation Guidelines. It must be noted that, the IADC document is only a guideline that is not binding on the members. However, China turned these provisions into a domestic legal document, which clearly demonstrates China's firm determination in space debris mitigation.

The term "space debris" is defined in the same way as in the IADC Guidelines, namely that "space debris are all man-made objects including fragments and elements

34 *Id*., Articles 6-7.
35 See further *id*., Article 5.
36 *Id*., Article 19.
37 *Id*., Articles 20-21.
38 *Id*., Articles 24-26.

thereof, in Earth orbit or re-entering the atmosphere, that are non-functional."[39] This document also includes the same technical standards as those of the IADC Guidelines.[40]

The SASTIND is designated as the administrative authority in charge of space debris arising from civil spacecraft. It is endowed with the power to supervise the implementation of space debris mitigation and protective management measures.[41] The users shall regularly evaluate the risk of collision between spacecraft and space debris.[42] Emergency plans should be provided in case of disintegration, collision and/or re-entry of spacecraft.[43]

3. 4. Export Controls over Space-related Products and Technologies

Outer space shall be used only for peaceful purpose. China holds the firm position of non-proliferation in outer space, which aims at safeguarding and promoting international peace and security. It is important to strike a proper balance between non-proliferation and international cooperation for peaceful use of space-related products and technologies, including the nuclear, biological, chemical and aerospace products and technologies.

At the international level, China takes a proactive attitude toward the participation of international legal regime regarding controls over space-related products and technologies. China acceded to the Non-Proliferation of Nuclear Weapons Treaty (NPT) as early as March 1992 and supported in May 1995 the indefinite extension of the NPT.[44] China signed the Chemical Weapons Convention (CWC) in January 1993,[45] and ratified the CWC as well as joined the Organization for the Prohibition of Chemical Weapons (OPCW) as a founding member in April 1997.[46] China has further participated in the UN Register of Conventional Arms since 1993 and withdrew in 1997 due to the controversy over the American sales of arms to Taiwan. In October 1994, China indicated its support in the US-China joint statement for the negotiation and earliest possible achievement of a Fissile Material Cut-off Treaty (FMCT). Two years later, in September 1996, China signed the Comprehensive Test Ban Treaty (CTBT).[47] While not yet endorsing the International Atomic Energy Agency (IAEA) full-scope safeguards, China went along with the strengthened IAEA safeguards in

39 Space Debris Mitigation Measures, Article 2.
40 *Id*., Articles 6-7.
41 *Id*., Article 4.
42 *Id*., Article 9.
43 *Id*., Article 13.
44 'Status of the Treaty' (*UN office for Disarmament Affairs*) <http://disarmament.un.org/treaties/t/npt> accessed 11 July 2015.
45 'OPCW Member States' (Organization for the Prohibition of Chemical Weapons) <https://www.opcw.org/about-opcw/member-states/> accessed 11 July 2015.
46 *Id*. See also Anastasia A. Angelova, 'Compelling Compliance with International Regimes: China and the Missile Technology Control Regime' (2000) 38 Columbia Journal of Transnational Law 441.
47 'Status of Signature and Ratification' (*CTBTO*) <https://www.ctbto.org/the-treaty/status-of-signature-and-ratification/> accessed 11 July 2015.

1997. It is obvious from these actions that the Chinese government holds a consistent and firm position in the efforts of non-proliferation.[48]

At the national level, China has also formed a comprehensive legal framework for export controls over specialized nuclear equipment and technology, conventional weapons and technology, and missile system, components and technology. At the highest level, China enacted Foreign Trade Law in 1994, which was amended in 2004 after China's WTO membership. One Article, dividing goods into three categories: goods for free export, goods restricted for export, goods prohibited for export , is devoted to the issue of export control.[49] The Customs Law provides a legal basis for customs inspection and verification. Other relevant national laws include Administrative Punishment Law and the 2001 Amendment to the Criminal Law regarding illegal trafficking and transporting radioactive substances.[50]

More specific rules lie in the two important administrative regulations in 2002: the Regulations on Export Controls of Military Items (Military Regulations), and the Regulations on Export Controls of Missiles and Missile-related Items and Technologies (Missiles Regulations). A licensing regime is established for the export of the above two types of items and technologies. Only registered exporters can export the above items and technologies. Without registration, no exporters or individual agency is allowed to engage in the export of sensitive items or technologies.[51] The regulations provide pre-licensing checks and pre-shipment verifications to prevent possible proliferation of sensitive items and technologies at the international level. A control list of materials, equipment and technologies is produced and updated regularly.[52]

It is to be noted that China is not yet a member to the Missile Technology Control Regime (MTCR). However, China has expressed its interest in the MTCR members on various occasions.[53] The 2002 Missiles Regulations are one major sign showing the Chinese government's efforts in complying with the international regime on the control of missiles and missile technologies. This document follows strictly relevant rules of the MTCR; however, the concerns of the international community lie on the enforcement of the document by the Chinese government. Moreover, political consideration shall also take up an important role in determining the MTCR membership.

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48 Zhao, *National Space Law in China* (n 6) 162.
49 Foreign Trade Law, Article 16.
50 Zhao, *National Space Law in China* (n 6) 162-63.
51 Military Regulations, Article 13; Missiles Regulations, Article 4.
52 Military Regulations, Article 2; Missiles Regulations, Article 2.
53 'White Paper on China's Non-Proliferation Policy' (*Official website of the Chinese Government*), <http://www.china.org.cn/english/2003/Dec/81312.htm> accessed 11 July 2015.

4. Future Development of National Space Law in China

It is not correct to say that China does not have any space laws. From the discussions above, one may see that China has already had some rules dealing with specific aspects of space activities. However, all these rules are at a rather low level, namely at ministerial level. China has yet to make a national space law at the level of National People's Congress (NPC) and its Standing Committee (NPCSC). It must bear in mind that China has at least three layers of laws and regulations at the central level, besides the Constitution: national laws made by the NPC or NPCSC at the top, followed by administrative regulations made by the State Council, with administrative rules made by the ministries and commissions at the bottom.[54] At the moment, the Registration Measures, the Licensing Measures and the Space Debris Mitigation Measures are only administrative rules at the lowest level. As a major spacefaring nation around the world, China needs to step up in its space legislation to provide a more transparent and sustainable legal framework for space activities.

Consensus has been reached regarding the necessity of a national space law. It is time to seriously consider the way and principles for future space legislation. It is suggested that the following factors should be taken into consideration in future legislation. Firstly, national space law should be in compliance with China's international obligations under the space treaties. China, as a member to the four major space treaties, needs to put relevant rules into practice. National space legislation is the first step to demonstrate China's efforts in the implementation of international obligations.

Secondly, future space law should take the current situation in China into account. While fulfilling international obligation is important, we should also consider the special needs of Chinese space activities. The law should strike a good balance between treaty obligation and Chinese needs. This is not an insurmountable task as the general principles provided in the international space treaties allow for flexibility in their implementation in reality. This is also one major purpose for national space legislation. There is ample room for national implementation of the principles and rules defined in the international treaties.

Thirdly, national space law should take note of the trend of space commercialization and privatization. The existing space treaties, adopted before the age of space commercialization, fail to effectively regulate the ongoing space commercial activities. National space law should step in to fill in the gap. Space activities are no longer monopolized by states; the active involvement of private entities calls for appropriate rules to regulate relevant private space activities. With no treaties

54 Legislation Law of the PRC; see also Albert HY Chen, *An Introduction to the Legal System of the People's Republic of China* (4th edn, LexisNexis 2011) 123-50.

in place to deal with such new legal issues, national space law shall be in the best position to offer its guidance to promote the development and diversification of space activities.

Fourthly, national space law should include rules to deal with pressing issues, such as environmental protection and space sustainability. With more and more space activities taking place on a daily basis, environmental protection in outer space is becoming a serious issue for consideration. Space debris stands out as the major issue that has been discussed in various international forums. With no binding legal documents at the international level, states can act voluntarily to take measures in space debris mitigation. Relevant rules in national space law shall help to strengthen the legal regime for the efforts in mitigating space debris. Besides the risks raised by space debris, we also note the increasingly serious problem of harmful interference in space activities. Consequently, space sustainability hinges much on the self-restraint of states. With no international rules adopted for guiding appropriate space activities, national space law can offer effective rules for domestic entities and individuals in carrying out space activities.

From the discussions above, national space legislation is the only and best choice for space regulation at the current stage. On the one hand, national space law can offer detailed rules to implement the general rules and principles in the space treaties. On the other hand, national space law can provide specific rules to deal with the issues that are missing in the space treaties. China, as a major space faring nation, lags behind in space legislation. With rapid development of space technologies and space achievements, China needs to move to a new stage in the regulation of national space activities. The slogan "Rule of Law" has been widely advocated at the national level, the field of space activities shall not be an exception.[55]

The ongoing discussions and research activities on space legislation in China have already provided solid theoretical basis for a national space law at the NPC level. The progress so far, by including the space legislation at the agenda of the NPC, gives us sufficient confidence in having a national space law in the near future.[56]

5. Conclusion

The first few decades of the space age were monopolized by the two superpowers; however, in the last one or two decades we witnessed the development of space activities in more and more nations, including China, India, Japan, European Union

55 Katrin Blasek, 'Rule of Law in China' in *Rule of Law in China: A Comparative Approach* (Springer Brief in Law, Springer 2014) 13-17.

56 For further analysis on prospects for national space legislation in China, see Zhao, *National Space Law in China* (n 6) 228-54.

(or European Space Agency), Brazil, South Korea, Malaysia and Israel. Moreover, states are no more the only actors in the space field, more and more private and commercial activities are emerging. The five treaties enacted during 1960s and 1970s, focusing on state activities, are not adequate to deal with new legal issues arising from commercial activities. While new treaties could be one ideal way out for the regulation of these new activities, there are difficulties in view of the diversified interests among different nations. Accordingly, national space legislation would be the second-best, but the most realistic, approach to fill in the gap in the regulation of space activities.

As a major space-faring nation, China has noted the importance of national space legislation. As a member to the four space treaties, China has enacted two administrative rules to implement its international obligations. China has further made rules for the purpose of space debris mitigation. All these legislative activities pave the way for a comprehensive national space law in the near future. While no one can predict the timeframe for such a national law, one may be optimistic since national space legislation has been put in the legislation agenda of the National People's Congress. The existence of a national space legislation will promote further healthy and sustainable development of space activities in China in the long run.