chapter 2

An Overview of the Space Regulatory Regime in China

1 An Introduction to the Chinese Legal System and Legislation

Since its establishment in 1949, China has travelled a bumpy road towards becoming a rule-of-law state. Only after the adoption of the ‘open door and reform’ policy, in 1978, did China make rapid progress in the legal field. It was on the morning of the March 10, 2011 that Wu Bangguo, Chairman of the National People’s Congress Standing Committee (NPCSC), formally announced that China had successfully set up the socialist legal system with Chinese characteristics.¹ Later, in October of the same year, the State Council released a White Paper detailing the concept of the ‘socialist system of laws with Chinese characteristics’ as follows: “this legal system, headed by the Constitution, with laws related to the Constitution, civil and commercial laws and several other branches as the mainstay, and consisting of laws, administrative regulations, local regulations and other tiers of legal provisions, ensures that there are laws to abide by in economic, political, cultural and social development, as well as in ecological civilisation building.”²

The above elaboration paints a picture of the legal framework in China. It is only within the aforementioned framework of a socialist legal system with Chinese characteristics that we have to find a place for space law. For around three decades after the first space launch, the United Nations played an important role in developing international treaties and the General Assembly Resolutions, which form the core of traditional space law.³ However, space law, “of course, does not consist solely of U.N.-made law.”⁴ Rapid development of

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space technologies and space activities led to the conclusion of various multilateral and bilateral agreements; national legislation has also stepped up to regulate national space activities. A distinct body of rules and principles has emerged to deal with legal issues arising from the exploration and use of outer space. As Von der Dunk summarized in his inaugural lecture, space law should be seen as “the collection of principles, norms, and rules relevant for at least one particular branch of space activity, regardless of which particular source they stem from.”

Space law is not yet a major branch of law in China, but with more and more space activities taking place, China has realized the increasingly important role of space law and has taken serious efforts to develop space laws. Generally, the above legal framework similarly applies to space law. Thus, it would be helpful to have some understandings of the Chinese legislation and legal system before moving to addressing the place that the specific field of space law will occupy in it.

The communist character of China may lead to misconceptions on issues such as the existence of private enterprises and their right to go before a court. Since the start of economic reform in 1978, China has introduced rules to encourage foreign investment and reform state-owned enterprises. Enterprises, both private and public, were granted greater autonomy in management and decision-making; economic reform also brought in greater varieties of economic actors. The legal status of all these economic actors was recognized in the Chinese Constitution.

The first amendment to the 1982 Constitution in 1988 made reference to the existence of a “private sector of the economy.” The concept of a ‘socialist market economy’ was introduced into the Constitution in its second amendment in 1993, replacing the concept of “planned economy on the basis of socialist public ownership.” The third amendment in 1999 went even further by stating that private economy and other non-public ownership sectors are important components of the socialist market economy and that the state protects the lawful rights and interests of private economy and other non-public ownership sectors. The Chinese government has since then gradually relaxed the widespread restrictions on private economy. Private enterprises can invest in many areas of economic activities, including space and high-tech sector.

5 Von der Dunk, “As Space Law Comes to Nebraska,” 506.
6 Amendment to Article 11 of the 1982 Constitution.
7 Amendment to Article 15 of the 1982 Constitution.
8 See Amendment to Article 11 of the 1982 Constitution.