

## The European Union Draft Code of Conduct – An Opportunity for Japanese-European Cooperation

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*In January 2007, the anti-satellite test (ASAT) conducted by China highlighted the issue of space security. In order to ensure the safety of current space activities and the space activities of the next generation not only with regard to ASAT but also with regard to space weapons, existing international law has to be complemented. The European Union (EU) has recently prepared a draft Code of Conduct for Outer Space Activities (EU CoC) which responds to the issue of space security. The actual prospect of the EU CoC is open and the EU will need to find allies to make it universally accepted. With Japan being one of the major space-faring nations, and also considered as one of the “key partners” according to the proposed document, this paper considers Japan’s potential contribution to the EU CoC. Sharing many of the EU’s goals and values in regard to outer space policies, the question to consider is how the Far East and Western nations could cooperate to assure the peaceful use of outer space.*

### Japanese Basic Law

Since the adoption of the Japanese Basic Space Law in May 2008, fundamental changes in Japanese space policy are occurring. The most notable change will occur in its military use. Until May 2008, the Japanese government had restricted the Japanese Self Defense Force (JSDF) from using outer space for military purposes. Article 2 of the Basic Law states that the “development and use of outer space shall be carried out in accordance with treaties on space development and use and other international commitments including the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, based on the pacifism of the Constitution of Japan”. In this context JSDF will now be able to use outer space for “non-aggressive” purposes.

Although Japan has joined the international standard in relation to the interpretation of Article 4 of the Outer Space Treaty, this does not mean that Japan can use JSDF, unless its purpose is not for aggressive uses. Article 9 of the Japanese Constitution states “aspiring sincerely at international peace based on justice and order, the Japanese people forever renounces war as a sovereign right of the

nation and the threat or use of force as means of settling international disputes.”

**Japan has joined the international standard in relation to the interpretation of Article 4 of the Outer Space Treaty with the adoption of the Basic Law. In this context Japan’s evolving policy can provide added value to the EU CoC.**

Even in the case of self-defence, the Japanese Constitution strictly restricts the military activities of JSDF and makes them maintain an exclusively defence-oriented policy. The exclusive defence-oriented policy permits the minimum necessary forces to defend the nation; therefore, it is not permitted to possess weapons such as ASAT. In addition, the Basic Law requires the appropriate consideration to the environment (Article 7) and also the contribution to ensuring peace and security of the international society and the security of Japan (Article 14).

### Japan’s Military Use of Outer Space

*Strategic Headquarters:* The Basic Space Law states that the Basic Space Plan shall be

established by the Strategic Headquarters on Space Exploitation<sup>1</sup>. As for the Basic Space Plan which is planned to be adopted in May 2009, the Expert Panel had presented the basic direction in five categories in its 3<sup>rd</sup> meeting. The five categories are as follows;

- (1) Realisation of affluence, secure and safe earth by utilising outer space
- (2) Strengthening the security by utilizing outer space
- (3) Promoting outer space diplomacy
- (4) Advancement of tactical industry for the 21<sup>st</sup> century
- (5) Investment in humankind's dream and in next generation.<sup>2</sup>

*Council on Security and Defence Capabilities:* The first meeting with regard to the Defense Plan was held by the Council on Security and Defence Capabilities on the 9<sup>th</sup> of January. One newspaper reported that the Defense Plan is due to be adopted by June 2009 and also that the Council plans are to discuss the defensive use of outer space<sup>3</sup>.

During the second meeting, it was stated by one of the members that "In order to consider the role of Japanese-U.S. cooperation, it is necessary to regard what the future U.S.- China relations will turn out to be or in the aspect of other countries stressing the importance of military technology in outer space and cyber space<sup>4</sup>". Further during the meeting, in the document submitted by the Ministry of Defense, the subject on the protection of satellites was highly stressed in their section of China's Military Trend<sup>5</sup>. The emphasis of a more secured BMD system could be seen in a figure showing the North Korean missile range<sup>6</sup>.

*Committee for the Space Exploitation Promotion:* The Committee for the Space

Exploitation Promotion was established in the Ministry of Defense for the purpose of assembling the Basic Outline of the Space Exploitation in response to the changes stipulated in the space policy by the Basic Law. The Basic Outline is considered to be reflected in the Defense Plan of 2009<sup>7</sup>.

**Three main forums in the Japanese government discussing military use of outer space are eager in using outer space as a security tool.**

The Basic Outline pointed out the importance of five issues to be considered for promotion:

- (1) Regarding the basic security policy of our country's "Defence-oriented policy", the establishment of information dominance is an essential subject.
- (2) Under the new security, in order to operate effective defence capability in various situations such as effective correspondence to new threats and diverse matters, the early detection of indications on various situations and the immediate communication and share of various information collected is necessary.
- (3) So that the JSDF can correspond immediately to new threats and diverse matters, not to mention serious aggression, the constant monitoring from the normal circumstances of territorial sea, air and surrounding airspace and the collecting and processing of necessary information in defence is crucial.
- (4) Regarding the facilitation of Joint U.S.-Japan coping behaviour and the consolidation of integrated operation, the communication of conclusive command and immediate information sharing is crucial.
- (5) In order to implement the integrated implementation of the activity, such as the deployed units overseas for international peace cooperation activities, the adequate exercise of information gathering in action area and information sharing among units is necessary.<sup>8</sup>

<sup>1</sup> Article 24 &25 of the Basic Space Law (2008)

<sup>2</sup> "In regard of Basic Direction of the Basic Space Plan" 27 Nov. 2008. 3<sup>rd</sup> Meeting of the Strategic Expert Panel on Space Exploitation. 26 Jan. 2008. 2-5.  
<<http://www.kantei.go.jp/jp/singi/utyuu/senmon/dai3/siryuu1.pdf>>

<sup>3</sup> "First meeting for the Readjustment of the Defence Plan" Asahi Shimbun. 25 Jan.2009  
<<http://www.asahi.com/politics/update/0109/TKY200901090288.html>>

<sup>4</sup> "Summary of Proceedings"26 Jan. 2009. 2<sup>nd</sup> Meeting of the Council on Security and Defence Capabilities. 30 Jan. 2009.3  
< <http://www.kantei.go.jp/jp/singi/ampobouei2/dai2/qijiyousi.pdf> >

<sup>5</sup> Ministry of Defense. "International Military Situation" 26 Jan. 2009. 2<sup>nd</sup> Meeting of the Council on Security and Defence Capabilities. 30 Jan. 2009.15  
< <http://www.kantei.go.jp/jp/singi/ampobouei2/dai2/siryuu2.pdf> >

<sup>6</sup> Ibid. 26.

<sup>7</sup> "Proceeding hereafter of the Committee for the Space Exploration" 11 Sept. 2008 1<sup>st</sup> Meeting of the Committee for the Space Exploration 26 Jan. 2008  
< <http://www.mod.go.jp/j/info/uchuukaihatsu/pdf/01/susumekata.pdf> >

<sup>8</sup> Committee for the Space Exploitation Promotion. "Basic Outline of the Space Exploitation" 15 Jan. 2009. Ministry of Defense. 24 Jan. 2009. 9-10.  
<<http://www.mod.go.jp/j/info/uchuukaihatsu/pdf/>>

The Basic Outline also mentions the future relations of Japan and U.S. as follows; “Especially the U.S. is widely preceding in this field. For this reason it is necessary to consult about the cooperative relation in the future U.S.-Japan relations based on hearings from the U.S. Department of Defense on its space exploitation policy and cooperation example with other countries<sup>9</sup>”

### The similarities in Japan’s position and the EU’s position in multilateral discussions

In the Geneva Conference on Disarmament (CD), Japan has constantly asserted the necessity of discussion about arms control in outer space, and continues to insist on it. In the plenary meeting of 2006, the Japanese delegated Ambassador Mine stated that “tackling this issue (of PAROS) with foresight is not only important but essential, and we must maintain a healthy environment for satellite operations.”<sup>10</sup>

The EU shares the same view with Japan. Speaking on behalf of the EU Austrian delegated Ambassador Petritsch on behalf of the EU has stated that, “The EU and its member States are conscious of the growing involvement of the international community in outer space activities for development and progress, and of the increasing dependence on outer space for their economic and industrial development as well as should be developed in a peaceful environment; an arms race in outer space should be prevented.”<sup>11</sup>

**Similarities in the Japanese and the EU approaches to the Ad hoc Committee on the Prevention of an Arms Race in Outer Space (PAROS) become visible in their positions in multilateral discussions.**

Japan's position within the CD became clearer after China had conducted its ASAT test. In the Plenary Meeting of February 2007, right after the incident had occurred Mr. Tarui stated that “Japan basically leads support to the idea of preventing an arms race in outer space. Moreover, we are actively working for the peaceful use of space. In relation to this, Japan has submitted reports to the United Nations Secretary-General in accordance with the

requirements set out in the United Nations General Assembly Resolution on confidence-building in outer space.

The same holds for the EU. In February 2007, a representative of Germany expressed the view on behalf of the EU in the Plenary Meeting of CD in regard to the Chinese ASAT test. He mentioned that “Any confidence-building measures could, among others, be based on the principle of non-interference with non-aggressive activities in space and drawing up a “code of conduct”...”<sup>12</sup> and asserted the necessity of building confidence among states. These positions of Japan and the EU can be seen continuously up to the latest CD sessions which were held in 2009<sup>13</sup>.

The Vienna United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) does not formally approach the problem of the prevention of an arms race of outer space or space security, but sometimes the topic is put on the table by delegates. For example, in the UNCOUOS meeting of 2008, three topics concerning the code of conduct were brought to attention. Both the EU and Japan have addressed the issue in the context of the UNCOUOS.

In the UNCOUOS Scientific and Technical Subcommittee (STSC) meeting of February 2009, the Czech Republic delegate stated, on behalf of the EU, that “the European Union considers that strengthening the security of activities in outer space is an important objective in the context of expanding space activities” and introduced the EU CoC, which could serve as a confidence-building measure in the near future.

An Expert on space related issues from the Permanent Mission of Japan to the UN in Vienna indicated in a public lecture entitled “The Peaceful Uses of Outer Space and Japan’s Contribution to the International Society”, that “Personally I believe that, regarding to the ever more active space exploitation, the activities which are currently not regulated by space law, would be

<sup>12</sup> UN Doc. CD/PV.1052.2007.4

<sup>13</sup> “Statements at Planetary Meetings 22 Jan. Ambassador Tarui”. United Nation Office at Geneva. 13 Feb. 2009. [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/C6B800F2F5ACA9DAC12575460039BAE3/\\$file/1119\\_Japan.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/C6B800F2F5ACA9DAC12575460039BAE3/$file/1119_Japan.pdf); “Statements at Planetary Meetings 12 Feb. Ambassador Pinter “United Nation Office at Geneva. 13 Feb. 2009. [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/EEA43906F2B69099C125755B003E11BA/\\$file/1123\\_EU\\_PA ROS.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/EEA43906F2B69099C125755B003E11BA/$file/1123_EU_PA ROS.pdf)

<sup>9</sup> [kihonhoushin.pdf](#)

<sup>9</sup> Italic by the author. *ibid.* 6-7.

<sup>10</sup> UN Doc. CD/PV.1026.2006.2

<sup>11</sup> UN Doc. CD/PV.1024.2006.8

adequately regulated by non binding frameworks based soft laws such as guidelines, and not by binding frameworks such as treaties. Japan, also in this direction, thinks it is important to consult on the issue by cooperating with other countries through multilateral discussions such as the UN.”<sup>14</sup>

**The EU CoC and a possible Japanese contribution**

The main objective of the EU CoC is to strengthen the safety, security and predictability of all space activities, inter alia by limiting or minimising harmful interference in space activities. It is made up of a preamble and twelve articles.

**Japan can contribute to main articles of the EU CoC taking into account its policy.**

Regarding the content of the EU CoC, there seem to be many aspects in which Japan can contribute to. The following table focuses on proposals of the EU CoC. The table makes clear the commonalities between the Japanese and the EU position and, therefore, the areas where Japan could contribute to the EU proposal. Regarding the fact that the Basic Outline emphasises the protection of satellites, it could be said that it is natural for Japan to take part in this framework and promote such the safety and security in outer space.

EU EU CoC articles in section II & III	Japan Current circumstance (decided policy and law by Feb. 2009)
<ul style="list-style-type: none"> <li>-establish and implement national policies and procedures to minimise the possibility of collisions between space objects</li> <li>-refrain from any intentional act which might bring about, the damage of outer space objects</li> <li>-take appropriate steps to minimise the risk of collision</li> </ul>	<ul style="list-style-type: none"> <li>-contribution to the global peace and welfare of all mankind (Article 1 Basic Law)</li> <li>-considering the measures of satellite protection in the aspect of cost-effectiveness (Basic Outline)</li> <li>-considering the possibility of protecting information from reconnaissance satellites by</li> </ul>

		generating artificial-fogs or smoke-screen (Basic Outline) -consider Space Situational Awareness (Basic Outline)
5. Measures on space debris control and mitigation	-refrain from intentional destruction of any on-orbit space object or other harmful activities	-considering appropriate measures to ensure international cooperation for the preservation of the space environment (Article 20 Basic Law)
6. Notification of outer space activities	-notify, in a timely manner, the outer space activities conducted	-considering the ways to interchange, interact and cooperate (Basic Outline)
7. Registration of space objects	-undertake to register space objects	-ratified the Registration Convention
8. Information on outer space activities	-resolve to share information on national space policies	-considering to advertence the discussion of prohibition on the arms race of outer space <sup>15</sup> in forums such as the UN (Basic Outline)
9. Consultation mechanism	-may request consultation with a view to achieving acceptable solutions regarding measures to be adopted in order to prevent inherent risk -may propose to create a mechanism to investigate proven incidents affecting space objects	-considering to actively conduct interchange and interact from the aspect of confidence-building (Basic Outline)

**Recommendations**

Japan and the EU can both gain advantages from cooperating in discussions regarding the EU Code. Also as a result, Japan will have to contribute to the EU CoC, in order to further its newly established space policies.

When the EU drafted its CoC, it was important

<sup>14</sup> 2 Feb. 2009. Public Lecture given by the Permanent Mission of Japan in the International Organizations in Vienna entitled “The Peaceful Uses of Outer Space and Japan’s Contribution to the International Society”.

<sup>15</sup> Although the discussions in the UN are dealing with “prevention of arms control of outer space” the original text of Basic Outline used the term “prohibition”. Committee for the Space Exploitation Promotion. op.cit.13.

for the EU to engage in discussions with the U.S., Russia and China, since the EU CoC can not function if these three countries are not engaged in the new framework. However, the EU needs to cooperate more by arranging bilateral talks with Japan. Now that the EU has presented the draft CoC, it should be more available to talk with other nations.

In the UNCOPUOS STSC meeting of February 2009, the Czech Republic delegate, speaking on behalf of the EU, stated that “While the Draft Code is not intended for negotiation at any existing international forums, the EU Presidency will continue to inform multilateral bodies, such as the UNCOPUOS, the CD, the European Space Agency (ESA) and others on progress with this initiative.” This statement could be interpreted as the EU taking on a passive stance in the matter. Japan has been showing interest in the EU CoC for the last few months, but no approach has been seen from the side of the EU.

After the April 2008 draft was concluded in the EU preparatory body CODUN, the Netherlands proposed an additional document for the continuing drafting process indicating the next steps addressed to “identifying modalities for promoting the document in the relevant international forums discussions with key partners.”<sup>16</sup> Although Japan has been selected as one of the key partners, bilateral talks have yet to take place.

**Effort must be paid by both Japan and the EU in order to cooperate.**

Since the full support of all the key partners is needed to ensure a safer and more secured space activity, it can be safe to say that the EU is looking forward to Japan's contribution in the near future<sup>17</sup>. Moreover, there are still concerns expressed in regard to Japan's close relations with the U.S., since Japan's position is dependant on the U.S.' reactions to the EU CoC. An example of this can be seen not only in the Basic Outline mentioned above, but also in the discussion regarding the issue of outlining Japan's Basic Space Plan and in proceedings of the documents submitted to the Council on Security and Defense Capabilities.

According to the discussion, although Japan would have no trouble in dealing with the EU CoC, it may need to move in step with the U.S.

Although the EU has introduced the EU CoC to the U.S. in the past, it was addressed to the Bush Administration and not to the recent Obama Administration. However, fortunately President Obama stated the necessity of codes of conduct concerning the space security during his former presidential campaign<sup>18</sup>. Also on his White House website, he uploaded his new 21st Century Defence Program, which once again mentions the necessity of codes of conduct<sup>19</sup>.

Moreover, a U.S. representative had made remarks to the CD in 1 April 2008 stating that, “United States still hopes to continue working with Russia and other major spacefaring nations in ways that could build on our ongoing work with our friends in Europe on concrete proposals for voluntary TCBMs that can gain wide acceptance.”<sup>20</sup> It can be pointed out that the U.S., as a government, has a high level of interest concerning the subject of safe and secure space activity.

Therefore the EU CoC and Japan's contribution to it has a possibility of a brighter future. Moreover, to strengthen the cooperation between Japan and the EU, what Japan could improve are the issues concerning space debris, SSA and Space Traffic Management. It is not an exaggeration to say that the Japanese government was not motivated to deal with the issues concerning these topics in the past. Its reluctance was perhaps further fuelled by the fact that these issues were not written in the JAXA Vision either<sup>21</sup>. Considering the fact that the other Japanese governmental agencies have not developed an official space policy and that Japan was using outer space mainly for research, the JAXA Vision could be regarded as a “provisory space policy”. While the Basic Law

<sup>16</sup> Rathgeber, Wolfgang. Remuss, Nina-Louisa. “Space Security- A formative Role and Principled Identity for Europe” ESPI REPORT 16. February 2009. Link: [http://www.espi.or.at/images/stories/dokumente/studies/esp\\_i%20report%2016.pdf](http://www.espi.or.at/images/stories/dokumente/studies/esp_i%20report%2016.pdf)

<sup>17</sup> STSC meeting 10 Feb. 2009. Interview with one of the delegation of the EU member states.

<sup>18</sup> “2008 Presidential Candidates' Responses to Seven Key National Security Questions” 16 Aug. 2007. Council for a Livable World. 28 Jan. 2009  
<[http://livableworld.org/assets/pdfs/2008\\_presidential\\_candidates\\_questionnaire\\_responses.pdf](http://livableworld.org/assets/pdfs/2008_presidential_candidates_questionnaire_responses.pdf)>

<sup>19</sup> “Build Defense Capabilities for the 21<sup>st</sup> Century” 21 Jan. 2009. The White House – President Barack Obama. 1 Feb. 2009 <<http://whitehouse.gov/agenda/defense/>>

<sup>20</sup> “Security in Space the next generation” 1 Apr. 2009 Remarks made by the U.S. representative Garold Larson in a conference organized by UNIDIR 17 Feb. 2009.  
< <http://geneva.usmission.gov/CD/updates/0401Larson.html> >; also available on  
< [http://www.unidir.ch/pdf/articles/pdf-art\\_2816.pdf](http://www.unidir.ch/pdf/articles/pdf-art_2816.pdf) >

<sup>21</sup> “JAXA Vision-JAXA 2025-” JAXA 5 Feb. 2009  
< [http://www.jaxa.jp/about/2025/pdf/jaxa\\_vision\\_e.pdf](http://www.jaxa.jp/about/2025/pdf/jaxa_vision_e.pdf)>

and other related discussions approach the issues regarding space debris, there have been no attempts to provide technical measures to handle potential problems. In addition, no matured discussions have taken place regarding Space Situational Awareness and Space Traffic Management, which can ensure space security and protect outer space activities.

The more Japan relies on using satellites for security purposes, the more it will affect Japan negatively if something happens to its satellites. These discussions in the government will not only prompt to safeguard and secure space activities for Japan, but also achieving the same for the other space-faring nations. Eventually the continuation of this discussion will lead to a stronger cooperation in the realisation of confidence-building initiated by the EU.



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