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THE LEGITIMACY OF THE U.S. SPACE FORCE UNDER THE OUTER SPACE TREATY.

Abstract

On December 20, 2019, President Trump officially signed the creation of the U.S. Space Force into law as part of the 2020 National Defense Authorization Act. The new military service is expected to retain the U.S. lead in the growing militarization of space. However, its creation received considerable criticism condemning it as a threat to the future of peaceful space exploration and contrary to international law. Indeed, the legality of the new military branch and its activities in space depends on whether it complies with the Outer Space Treaty of 1967. Specifically, Article IV of the Treaty, which delineates the allowed military activity in space. Like most regulatory instruments, Article IV of the Outer Space Treaty has been subject to language interpretations. Its applicability depends on the interpretation of ambiguous terms like "in orbit," "install," "station," and "peaceful purposes." This article applies two leading interpretations of Article IV —the literal reading and the contextual analysis— to evaluate the legality of the U.S. Space Force. While the literal reading severely restrains the scope of the U.S. Space Force's activity, the contextual analysis broadens it.

Because the threat to civilian life posed by the current arms race in space will be catastrophic, and the U.S., as the leading State in space, is the best equipped to prevent such disaster, this article argues that the contextual analysis should be applied to broaden the Space Force's activity. Consequently, the U.S. Space Force can legally expand its capabilities by appealing to the right to self-defense, which would derive from the contextual definition of the term "peaceful purposes." Part II introduces the U.S. Space Force, its mission, and its currently available space capabilities. Part III discusses the two leading language interpretations of Article IV of the Treaty. Part IV evaluates whether the U.S. Space Force's mission and current space capabilities are within the parameters of the Outer Space Treaty based on the literal reading and the contextual analysis of Article IV. Part V briefly concludes.