

50th IAA SYMPOSIUM ON THE SEARCH FOR EXTRATERRESTRIAL INTELLIGENCE (SETI) –
The Next Steps (A4)
SETI 2: SETI and Society (2)

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USE OF FORCE AGAINST EXTRA-TERRESTRIAL LIFE

Abstract

Disclaimer: Research leading up to this paper has no nexus with the authors' role and work at the European Space Policy Institute (ESPI) and in no way reflects its positions or opinions.

Upcoming missions to Mars might join existing pieces of the puzzle in understanding formation of extra-terrestrial life but are clear in terms of their goals and limitations: finding traces of past life while avoiding designated Mars special regions. The prospect of finding life on celestial bodies is therefore not suggesting immediate legal scrutiny, nevertheless, as law should not only react but also provide foresight we are obliged to take a look at whether use of force against extra-terrestrial lifeforms can be justified under the existing legal and ethical framework.

In international law, use of force in any manner inconsistent with the purposes of the UN is only permitted subject to conditions necessary to maintain international peace. Since one of the main purposes of the UN is maintaining peace and security we can (a simili ad simile) conclude that maintenance of peace and security also applies to the Universe. Such interpretation is further confirmed by deductive reasoning through Article IV of the OST.

Nationally, use of force is also limited and scrutinized. In criminal law (e.g. the German Strafgesetzbuch) using force in self-defence (Notwehr) or due to a emergency (Rechtfertigender Notstand) are justifiable circumstances, meaning (a contrario) using force outside those circumstances is prohibited. Moreover, when force is used by authorities it is not absolute, e.g. the 1967 UK Criminal Law Act stipulates that "A person may use such force as is reasonable in the circumstances in the prevention of crime, or in ... assisting in the lawful arrest..".

Other living beings are often considered property not sentient persons. If we are to apply Haley's Interstellar Golden Rule: do unto others as they would have you do unto them, it becomes increasingly important to determine when we recognize extra-terrestrial lifeforms as sentient persons bearing rights. Moreover recent developments suggest natural objects can also have legal rights, the Whanganui river in New Zealand was recognized as a legal entity in 2017, granting it legal standing.

This paper will analyse the legality of using force against extra-terrestrial life and potential mechanisms of assigning legal rights to extra-terrestrial life. Even though doing so might not be of immediate urgency it might help us better understand our role in the Universe.