

MAY THE 'SPACE FORCE' BE WITH EUROPE...

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The proposal aired last summer by the current US President, Mr. Donald Trump, to establish and develop a 'Space Force' has raised a considerable amount of attention and worries in both the US and Europe. While this is perhaps understandable given the general geopolitical climate, we should realise that here, as so often, 'the proof of the pudding lies in the eating'. Whether his proposal should be welcomed as a positive development from a European perspective or rather an exacerbation of already-rising global political tensions, depends very much on what the Space Force will eventually turn out to be.

As it so happens, the legal aspects of this proposal provide excellent guidance on how Europe should assess this development. Given the existing legal agreements pertaining to space, there is all the more reason for Europe to continue to work to maintain the rule of international law as it pertains to the final frontier.

On one end of the spectrum, the proposal could amount to an internal reorganisation of the US armed forces. This would mean reshuffling resources and creating a separate branch outside of the US Air Force that has traditionally taken the US military's space efforts under its wings. Legally speaking, there is nothing wrong with that. Article IV of the seminal 1967 Outer Space Treaty (OST), the most important legal document in this respect, only bans military activities more or less comprehensively on celestial bodies.

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At the same time, the OST also prohibits any use of outer space that violates the UN Charter. Concretely, this means that states cannot use, or threaten to use, force against international peace and security or against the sovereignty of an individual nation. In terms of weapons of mass destruction, the 1963 Partial Test Ban Treaty bans any nuclear explosions in outer space, while the OST prohibits the orbiting or stationing of these assets outside of our atmosphere.

However, beyond the activities and nature of objects permitted in outer space, that is about as far as limitations to the military use of the area are concerned. After all, the other major space powers – in particular Russia, China, the United Kingdom and France – have military space assets of various shapes or fashions and use outer space for a multitude of military purposes.

Moving away from this extreme, as long as the US President's proposal seeks to actually enhance and strengthen American military activities and presence in outer space while remaining within the aforementioned treaties, this would be legally acceptable. A political judgement on the wisdom of such a development ultimately depends upon the extent to which it might be justified as a mere reaction to, in particular, any ongoing enhancement of Russian and Chinese military space capabilities, or conversely would risk triggering their pursuit of further advancements.

Despite the allowance for a space force as an extension of existing military bodies and the common use of space, progressing with this course of action may become both politically and legally, and even militarily speaking, more alarming and dubious if

the Space Force were to mean the deployment of military armed forces in outer space, which would run counter to the provision of OST Article IV that only allows the use of military personnel in space for scientific research and other peaceful purposes; a throwback to the early days of Space Race when almost all astronauts and cosmonauts were air force or navy pilots.

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Using space in this capacity, however, also makes little sense from a military vantage point. If one would wish to harm an enemy in outer space or with the use of outer space, there are much cheaper and easier ways than to actually send a 'space force' of soldiers out there – it would on the contrary create a much higher vulnerability.

The same would apply in case the establishment of the Space Force were to include the testing, orbiting or stationing of nuclear weapons in outer space, which is clearly both prohibited by current international space law as well as giving rise to great political concerns.

So indeed, ultimately the proof of the pudding is in the eating. While the US President may well be thinking about moving towards the most extreme end of the spectrum - nuclear-armed forces based in outer space - it should finally be pointed out that for such far-reaching plans he would need Congressional approval to secure the requisite budget. Anything going beyond an internal reorganisation would require a long and difficult dialogue to be successfully realised. The Democratic majority in the House of Representatives, at least for the time being, should give Europeans some confidence that this is not very likely to happen anytime soon.

However, the current situation should not give rise to complacency - let alone naivety - on the European side. It does point to the interest Europe has in promoting the application of international law to outer space and continuing to stress its importance and relevance. This must be done by working with relevant partners – including the US Congress – to bolster the present legal regime in a continuous and beneficial manner.

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