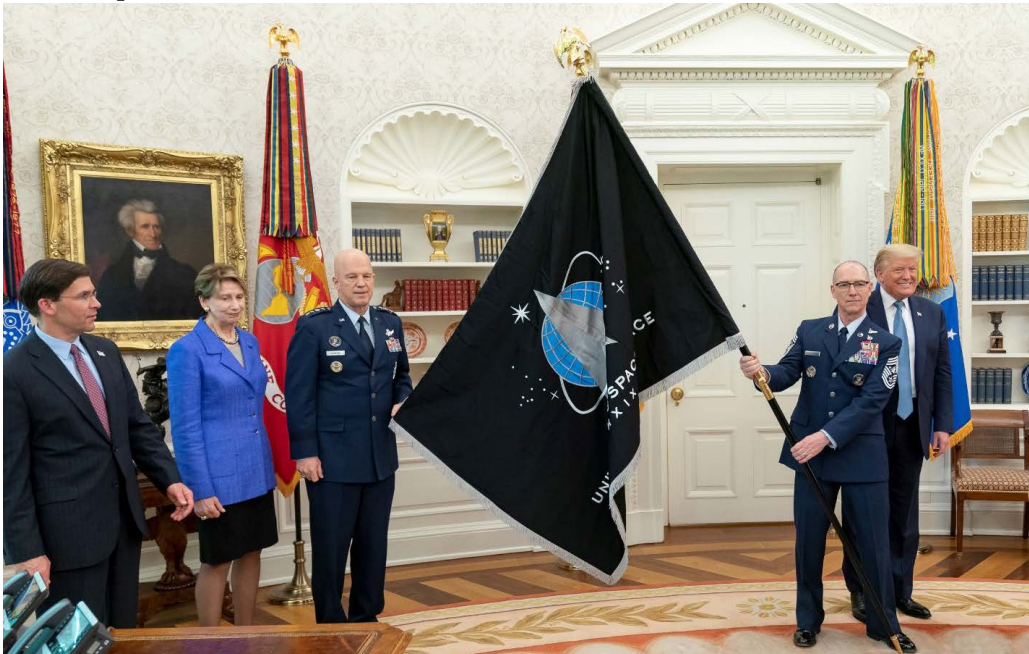


Space Legal Operations

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In 2019, an out-of-cycle mission area working group funded by A3 in Colorado was assigned to collect expertise to accomplish an important task. That task was to develop policies defining what the US Space Force (USSF) definition of *aggression in space* would be, and to establish procedures for how to respond to aggressive acts. The group's leadership gathered operators from a wide variety of backgrounds, not just from within the space operator career field but also from the Air Force pilot and unmanned aircraft communities, and the space policy community, to set reliable policies for a possible future conflict in space.¹ Noticeably missing from this group of experts was any representation from public affairs, or more shockingly, from legal. Whether the decision to not involve the legal office in this study was purposeful or not, it highlights a gap in the United States' strategic approach to outer space, which, if not addressed, will lead to losing conflicts in space before shots are even fired.



(US Space Force photo by Shealah Craighead)

Figure 1. Space Force flag in the Oval Office of the White House. US Space Force Chief of Staff Gen John W. “Jay” Raymond and Senior Enlisted Advisor CMSgt Roger Towberman present Pres. Donald J. Trump with the Space Force flag in the Oval Office of the White House, 15 May 2020.

The newly formed USSF must adequately address this oversight to be successful in its mission to secure the space domain. The purpose of this writing is to propose that the USSF create a new Space Force Specialty Code (SFSC): *Space Legal Operations*. To explain this proposal, (1) China's "three-front" war will be described to illustrate the need for such an operator; (2) the challenges and requirements of the space domain will be described that the proposed SFSC would address; and (3) the article will give some details on the structure of the proposed specialty.

China's Three-Front War

In the space domain, China is the most prevalent threat to US security.² Although China's available space technology still lags well behind that of the US, its current rapid development and the growing ambition of China to become "the world's leading space power in the next two decades" has many concerned over possible ramifications. China has expressed that it intends to be the leading world superpower, not just in technology as a whole, but in space, specifically.³ Among the specific targets that China has identified is (1) being the first nation to return to the moon since the 1960s Apollo program; (2) to be the first to begin extracting lunar resources for industrial use; and (3) to be the first to establish a permanent presence there. Its leaders believe all of these targets will be a part of the "national rejuvenation" of China.⁴

However, China has long since recognized that a purely technological approach to seizing world power is not in its favor. As China continues to gain steam in technological development, it has turned to what was labeled China's "Three Warfares" in a report sponsored by the Pentagon in 2014.⁵ These "Three Warfares" are psychological, media, and legal operations.⁶ *Psychological warfare* is defined as seeking to "influence and/or disrupt an opponent's decision-making capability, to create doubts, foment anti-leadership sentiments, to deceive opponents and to attempt to diminish the will to fight among opponents"; *media warfare* (or public opinion warfare) "aims to: preserve friendly morale; generate public support at home and abroad; weaken an enemy's will to fight and alter an enemy's situational assessment"; and finally *legal warfare* (often called "lawfare") "exploits the legal system to achieve political or commercial objectives." Dr. Stefan Halper includes several examples of the use of this strategy in his report explanations of the use of these three warfares in the South China Sea.⁷

Rather than openly attack nations in the South China Sea, China has stretched its definitions of the law by claiming sovereign control of the sea area, creating islands, and even just exerting economic and social pressures on states to recognize its claims to the maritime geography.⁸

Similar pressures have been used to claim continued ownership of Taiwan.⁹ One such fascinating example has been China's use of propaganda maps and periodicals to show Taiwan as being a part of mainland China, or to demand that public and private entities only use maps that show the same.¹⁰ With the growth rate of China, it makes sense for many international merchants to acquiesce to these seemingly small demands, but in so doing, they have permitted China to rely on these small acquiescences as historical proof of their claims to territory in international debates.¹¹

Regardless of the validity of the claims and efforts by China in this example, the fact that they are making such claims, and that those claims are being steadily recognized in the international community, should give pause to those who could come into conflict with China, especially in space. What is further disturbing, is China's tendency to use these tactics to achieve military ends without an equivalent US unit with which to counteract these efforts.

Legal Regime of the Space Domain

But why is this trend especially concerning in the space domain? The reason lies in the ambiguity that exists in the law regarding outer space and the way in which international law is established. In outer space, as in all forms of international law, the law consists of two major sources: treaties and custom. The current legal structure of space law has within it four major international treaties which have been widely accepted amongst nations: the Outer Space Treaty of 1967, the Rescue and Return Treaty, the Liability Convention, and the Registration Convention. While the latter three agreements provide more details on their respective topics, the Outer Space Treaty is considered the foundation or constitution of outer space law. The difficulty lies in the fact that a great amount of ambiguity exists in its language that normally would be clarified via state practice and precedent but remains undefined due to the technical and slow pace of space advancement.

Among these fundamental, undefined legal concepts are the definition of a weapon in space, a framework for defining many of the basic principles of the law of war in the space domain (Humanity, Proportionality, or Distinction among others), or even the allowable role of the military as a whole in space. Currently, the only glimpse of agreed upon law on any of these topics comes from the Outer Space Treaty, articles III, IV, and IX. Article III explicitly incorporates principles of international law into the legal framework of space; this, of course, includes Geneva conventions on the law of war. However, Article IV then immediately addresses the concern for peace in space by prohibiting the placement of weapons of mass destruction in orbit around the earth and by stating that the moon and other celestial bodies are to be used exclusively for peaceful purposes. Finally,

Article IX prohibits actions that could lead to harmful contamination of the earth or adverse changes to the space environment, as well as requires nations to consult with the international community if they were to plan to take actions that could result in harmful interference of the ability of other nations to use space.

The clear intent of all of these provisions is stated in the preamble of the Outer Space Treaty, that is, to recognize the “common interest of all mankind in . . . the exploration and use of outer space for peaceful purposes.” Some have argued that thus any military involvement in space is inappropriate, a stance which is convenient for US adversaries. And whereas this argument is not one that the majority of nations have adopted, it nevertheless is one that needs to be actively fought against before wars in space are lost before shots are even fired.

The Space Legal Operator

To accomplish this, the USSF needs individuals with the technical skills and legal training to understand the needs of the military mission in space and the ability to best accomplish those needs in the legal environment; a space legal operator. Exactly how a space legal operator would accomplish the mission is beyond the scope of this article, however, it will help to understand what the mission of such operators is not. A space legal operator would not be the same or fill the same role as a standard space operator, and it would not be the same or fill the role as a judge advocate general (JAG) officer.

To understand the intricacies of the space environment and the needs of the space mission, it will be important for these space legal operators to have much of the same technical training as standard space operators. This training should include understanding of the various space platforms used by the USSF as well as the basics of orbital mechanics. It may even be prudent to either ultimately make the space legal operator a shred-out of the standard space operator after a certain amount of time in the latter SFSC or require a tour of duty in a standard space operator station to allow for mission familiarity. After this familiarization and training, however, the mission of the space legal operator would be completely separate. Far from handling the controls and equipment in space, as described above, the space legal operator would have two primary functions: (1) to use strategic planning to best understand the most advantageous legal construct for accomplishing the military mission in space; and (2) to use international lawfare to support this strategic vision and frustrate the strategic goals of US adversaries.

The space legal operator would also be different from and apart from the current JAG structure. Though similar to that of the standard space operator, the space legal operator could utilize many of the resources that are currently offered by the USAF JAG. The JAG is and would remain a vital part of the war-planning

and execution processes in space. Unlike the JAG, however, it would not be the job of the space legal operator to review operational plans or advise space commanders on the legality of a given course of action. The JAG and the space legal operator would also contrast in their approach to the law. Where the JAG approach is largely passive, understanding and applying the law as synthesized from existing sources, cases and academia; it would be the job of the space legal operator to affect changes in and adherence to laws applied in space through advocating for the creation of laws, both in the US and with our international partners, as well as being active members of the space legal community.

Conclusion

By cultivating these skills, the USSF will be better prepared to train and equip its members with the tools necessary to fight the battles that will be had in the space domain. If the US remains inactive in this important endeavor, such a war has the potential to be lost before kinetic combat even enters the equation. By creating and training a specialized group of new space operators with the focused goal of fighting the legal and public wars that are already being waged by China and other nations, the USSF will protect the nation in this important newly recognized domain of war.

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