

INTERNATIONAL SECURITY IN SPACE: PRESIDENTIAL LEADERSHIP AND THE FUTURE OF OUTER SPACE

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This work juxtaposes the history and current state of America's involvement in militarizing outer space against the peaceful ideals that frame the Outer Space Treaty of 1967, which was dramatically shaped by the United States and the space race mentality of the Cold War. This work seeks to shed light on the actual objectives and intentions of American outer space policies, past and present. Attention is focused on the influence of the office of the president and the prevailing attitudes towards the weaponization of space that seemingly contradict the peaceful ideals set forth in the Outer Space Treaty of 1967. By analyzing the early years of American space exploration, a distinct pattern of American exceptionalism can be seen. This pattern, when viewed in light of more recent American space policies that have consistently chipped away at the international agreements concerning the weaponization of outer space, clearly predicts the eventual withdrawal of the United States from the Outer Space Treaty in favor of strategically unilateral defensive posturing.

The 1967 Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), was initiated by the United States in order to prevent the Soviets' early leading position in the space race from evolving into a distinct military advantage. Regardless of the peaceful ideals set forth in the Outer Space Treaty, the Cold War mindset that fostered

its creation was the compelling force behind the early space endeavors of the United States and perpetuated the notion of an arms race in outer space. This same mindset may be partly to blame for the “American exemptionalism” that has been the impetus for the slow, but steady, devolution of the Outer Space Treaty and the ideals that it espouses. American exemptionalism has been defined as the “ways in which the United States actually *exempts itself* from certain international law rules and agreements, even ones that it may have played a critical role in framing.”¹ Despite being the initiator of the Outer Space Treaty, the United States is now by far the world’s leading power in space-based weapons and defense systems. Analyses of the international political climates surrounding key U.S. benchmarks in space exploration will show how

early attempts to garner national pride have progressed to military posturing. The United States’ comprehensive weaponization of outer space and eventual withdrawal from the Outer Space Treaty can be predicted by examining more recent events and U.S. military policies.

Although outer space may seem like a unique arena for the conducting of international politics, it shares its defining features and governing principles with two earthly realms: Antarctica and the high seas. As the world’s lands were divided by the sovereign states of the Westphalian system, the high seas and the entirely unsettled Antarctic region remained outside of the territorial system that had taken form. It wasn’t until disputes over these areas began in the 20th century that the unique subset of modern international laws was established.^{2,3} The common aspect

shared by outer space, Antarctica and the world's oceans is a principle in modern law called the Common Heritage of Mankind.⁴ The main purpose of this principle, which is based on the five essential mandates that follow, is to ensure that regions shared by the world's population remain perpetually untarnished. The first element dictates that common areas are to remain free from appropriation. No entity, government, corporation or peoples can lay claim to ownership of these areas. Secondly, management of these areas is to be shared by all people. This requires that those making decisions in regards to these regions act as representatives of all mankind rather than of their respective nations. Exploitation of shared areas is not specifically forbidden, however; the third element requires that these resources benefit all mankind and not solely

the exploiting nation. The fourth element, which figures prominently in this paper, preserves these expanses exclusively for peaceful purposes. The installation of military bases and the conducting of weapons testing and other related activities are prohibited. Scientific research, according to the final element, is acceptable but the local ecologies are to remain undamaged. These five elements of the Common Heritage of Mankind principle ensure maximum benefit for the current generations, while preserving these benefits for all future generations as well.⁵ Although the Common Heritage of Mankind principle is espoused in the Outer Space Treaty, it seems that the intense competition of the Cold War overshadowed the peaceful and diplomatic intentions articulated therein. A closer look at the history of space exploration reveals possible ulterior

motives for establishing outer space initiatives under such a regime and also explains certain ambiguities contained within its doctrines.

FOUNDING FATHERS OF OUTERSPACE EXPLORATION

The foundation of the United States' space program was put into place under the leadership of President Dwight D. Eisenhower in the 1950s. Conventional wisdom of the time awarded great notoriety and influence to the first country to enter space.⁶ Eisenhower was determined to prevent communist regimes from gaining this advantage. He aimed to accomplish this while simultaneously renouncing the very idea of a "space race" between the U.S.S.R. and the United States, so as to lessen perceptions of aggression by the American military.⁷ In order to accomplish this dual task, he relied on the guise of civilian research projects

as cover stories for reconnaissance and the testing of rockets and satellites. Hiding his agenda's true nature would not only ease tensions, but it would also allow the United States to quietly set a precedent for "freedom of space" without drawing world attention to the accomplishment. The establishment of this precedent was one of the main initiatives set forth by Eisenhower's Technological Capabilities Panel (TCP), a group led by the president of the Massachusetts Institute of Technology.⁸ The TCP was put together to ascertain America's ability to counter Soviet attacks using the latest technologies. Determining the Soviets' military capabilities would require intelligence reconnaissance, but flying over the airspace of another country without permission violated international laws and was likely to be perceived as an act of aggression.⁹

However, up until that time, the term “airspace” had remained undefined, so Eisenhower’s team sought to establish the upper bounds of the Soviets’ airspace by launching a very small satellite that would orbit at a much higher altitude than any aircraft that was available at the time. This satellite was designed simply to set the precedent for international airspace that would allow a larger intelligence satellite to fly over the region in the future.¹⁰ Despite this initiative, the American military was not able to produce a satellite as quickly as Eisenhower had hoped, so an alternate plan was created. In January 1956, hundreds of balloons equipped with photographic equipment were set to drift high over the Soviet Union as part of a scientific study of clouds. The balloons were rigged to sink to a much lower altitude at night so as not to provoke the

Soviets into rapidly devising a high-altitude weapons system that could interrupt future American reconnaissance programs. Shortly after the launch, however, the Soviets held a press conference, displaying dozens of American spy balloons that had been shot down at night, and lambasted the supposedly peaceful program as a violation of their sovereignty.¹¹

Despite this embarrassing setback, the plans for another reconnaissance mission were nearing completion. The U-2 spy plane, which was being portrayed as yet another civilian weather program, would fly over the Soviet Union a few months later at nearly 70,000 feet, taking pictures of the landscape in search of military installations. It was quickly detected by the Soviets, but no objections of airspace violation were raised. Rather than reveal their inability to

shoot down an object at that high an altitude, the Soviets remained silent and allowed the “civilian weather program” to continue without acknowledging the situation.¹² This acquiescence was a promising sign for the future of *Vanguard*, America’s first satellite program. Because the U-2 civilian cover story was effective, despite the Soviets’ awareness of the espionage, the National Security Council declared that the *Vanguard* program should also be framed as a civilian project.¹³ This time it was the International Geophysical Year (IGY), modeled after two previous periods of concerted international research of the Earth’s polar regions, dubbed Polar Years, that would serve as the cover story for gathering intelligence using America’s first satellite.¹⁴ Despite the implied consent that would be given to the passage of international scientific satellites

during the IGY, a legal adviser to the Department of State at the time stated, “The United States Government has not recognized any top or upper limit to its sovereignty.”¹⁵ In fact, he continued, the United States “has plainly asserted its complete and exclusive sovereignty over the airspace above its territory,” and did not forfeit any portion of its sovereignty “in the higher regions of space.”¹⁶ In addition, it was made clear to several Congressional committees that foreign satellites flying above American territory would not constitute precedence.¹⁷

A great shock came in October 1957 when *Sputnik I*, the first satellite to enter space, was launched by the Soviet Union. The Americans had been beaten to outer space and, according to many, the political value of this feat was immense. About a month later, *Sputnik 2*, a much

larger satellite carrying a live dog, launched and was viewed by many as a sure sign of Soviet military superiority. In December of that year, the American attempt to send up the *Vanguard* satellite resulted in a televised failure as it exploded on the launch pad.¹⁸ The space race was not off to a promising start for America. Immediately after the launch of the first Soviet satellite, Senator Lyndon B. Johnson, chairman of the Preparedness Investigation Subcommittee, organized an investigation to determine the best way for the U.S. to build a preeminent space program.¹⁹ Special committees had also been formed by the House of Representatives, the Department of Defense, Department of State, Bureau of the Budget, and the Executive Branch.²⁰ All of these committees agreed that the creation of a new agency was needed to spearhead America's

efforts in space exploration.²¹ It was also agreed that a civilian agency would better secure prestige for the United States, despite Eisenhower's contention that outer space remain under the domain of the Department of Defense.^{22,23,24} The National Aeronautics and Space Act of 1958, which effectively created the NASA space program, declared that "it is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind."²⁵ Just a few weeks after the formation of NASA, Johnson proposed to the United Nations the creation of an Ad hoc Committee on the Peaceful Uses of Outer Space, saying:

[I]f nations proceed unilaterally...we know that the advances into space may only mean adding a new dimension to warfare. If, however, we proceed along the orderly course

of full cooperation, we shall by the very fact of cooperation make the most substantial contribution yet made toward perfecting peace.²⁶

Several countries, most notably the U.S.S.R., initially opposed the committee, based on its call for majority voting; however, it was eventually agreed upon that decisions would be made by consensus.²⁷ This new United Nations committee, created at the behest of the United States in 1958 and concerned with the protection of outer space from potential conflict, would be the setting for the eventual creation of the Outer Space Treaty in 1967.²⁸ In just a few years, the realm of outer space had advanced from a propagandized goal among the Cold War superpowers to a supposedly peaceful realm supported by an international treaty. Despite the proclamation of outer space as a peaceful environment, however,

Eisenhower's silent merging of the military establishment with the scientific community would arguably become his legacy.²⁹ Indeed, his farewell speech in 1961 warned against the very military-industrial complex that he helped to create in response to the Soviet threat of preeminence in space:³⁰

A vital element in keeping the peace is our military establishment. Our arms must be mighty, ready for instant action, so that no potential aggressor may be tempted to risk his own destruction...We have been compelled to create a permanent armaments industry of vast proportions...This conjunction of an immense military establishment and a large arms industry is new in the American experience...We recognize the imperative need for this development. Yet we must not fail to comprehend its grave implications.

Our toil, resources and livelihood are all involved; so is the very structure of our society. In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together. Akin to, and largely responsible for the sweeping changes in our industrial-military posture, has been the technological revolution during recent decades.³¹

As John F. Kennedy took office, he did not appear to be as knowledgeable about or concerned with American space policy, despite the momentous happenings of the previous administration.³² The decisions made during his presidency, however, would have a tremendous impact on the direction the U.S. space program would take. During his campaign, Kennedy was a staunch critic of the lead in the space race Eisenhower had given to the Soviets.³³ This American disadvantage was exacerbated when the U.S.S.R. managed to send the first astronaut to outer space just three months into Kennedy's presidential term. The failure of the Bay of Pigs invasion one week later did little to help improve Kennedy's perceived track record against the Soviet Union.³⁴ The president issued a memo to then-Vice President Lyndon B. Johnson

calling for a monumental space feat that would not only serve as a political diversion from the blows to his early credibility but would also have a unifying effect upon the general public:

Do we have a chance of beating the Soviets by putting a laboratory in space, or by a trip around the moon, or by a rocket to land on the moon, or by a rocket to go to the moon and back with a man? Is there any other space program which promises dramatic results in which we could win?³⁵

The same day that this memo was given to Johnson, Kennedy was quoted by reporters as saying, "If we can get to the moon before the Russians, we should."³⁶ Kennedy's naming of Johnson as the new chairman of the President's Space Council, along with Kennedy's proclamation of a newly revived space

race, firmly established America's aggressive course in space exploration that would persist throughout the 1960s.³⁷ The official announcement of the Apollo program in May of 1961 meant that NASA would have to revise the long-range goals that were established during the Eisenhower administration.³⁸ These orderly plans involved building a reusable spacecraft that would help make space operations more routine and the construction of a permanently inhabited space station. Only after these goals were accomplished did NASA intend on sending a man to the moon.³⁹ Although Kennedy's desire to demonstrate American superiority had little practical merit outside of its propaganda value, the Apollo missions would greatly increase the size, scope, and budget of NASA during the early 1960s.⁴⁰ In 1965, the funding for NASA claimed

5.3 percent of the overall federal budget, a significant margin above the typical one percent for all NASA budgets since.⁴¹

DETERIORATION OF THE COMMON HERITAGE OF MANKIND

President Ronald Reagan began the process of undermining the philosophical basis of the Common Heritage of Mankind principle when the United States became the only major power to vote against the U.N. Convention on the Law of the Sea due to the “deep seabed mining part of the convention [that did] not meet United States objectives.”⁴² Reagan’s focus on economics and market forces directly resulted in a departure from international cooperation that had continued for decades and promised to be the undoing of the Outer Space Treaty. His reinterpretation of the Anti-Ballistic Missile (ABM) Treaty of 1972 also served to

fracture America’s record of international cooperation.⁴³ The ABM Treaty was an essential U.S.-Soviet arms control policy during the Cold War that reinforced the model of mutual deterrence by prohibiting the construction by either country of defensive shields.⁴⁴ The Strategic Defense Initiative, often referred to as the “Star Wars” program, was an elaborate and costly program that stood in opposition to the ABM Treaty. This program, the largest peacetime defense project in U.S. history⁴⁵, was lauded by Reagan in the early 1980s and called for the extensive use of space weaponry.⁴⁶ The administration’s argument for reinterpretation of the ABM Treaty hinged on semantics and was denigrated by the Senate Foreign Relations Committee as “the most flagrant abuse of the Constitution’s treaty power in 200 years of American history.”⁴⁷

The Strategic Defense Initiative was eventually squelched by Congress and never materialized during Reagan's Presidency.⁴⁸

Another distinct shift in U.S. policy came when President Bill Clinton allowed the military testing of a Mid Infrared Advanced Chemical Laser against an active Air Force satellite.⁴⁹ Although no treaties were in place to prevent anti-satellite warfare, space-faring nations had been reluctant to develop systems that could jeopardize the sizeable global network of intelligence and private communication satellites.⁵⁰ The testing of this laser was met with intense disapproval from Congress and Russian President Boris Yeltsin.⁵¹ Further reinterpretation of the ABM Treaty continued during the Clinton administration and included actual construction of defensive infrastructure, while the decision to utilize the

foundation was "deferred to the next administration," that of George W. Bush.⁵²

Bush's Space Commission, chaired by Donald Rumsfeld, issued a report early in 2001 concluding that preemption in defense of U.S. space systems was necessary.⁵³ The decision to withdraw from the ABM Treaty was made shortly after the terrorist attacks on September 11, 2001.⁵⁴ The American preoccupation with power, military strength, and preemptive action that followed these attacks led to a dramatic increase in acts of American exceptionalism. This is evidenced by the considerable increase in funding for space-based weapons systems that contradict the principles of the Outer Space Treaty.⁵⁵ Based on this recent spending increase, it is not surprising that the United States refused to discuss space security at the

2002 U.N. Conference on Disarmament. Eric Javits, the U.S. ambassador to the conference, explained that, “there simply is no problem in outer space for arms control to solve.”⁵⁶ The United States, under Bush, also voted against two U.N. resolutions: the already-established resolution on the Prevention of an Arms Race in Outer Space and a new resolution put forth by Russia that would create increased transparency in regards to states’ space activities.⁵⁷ The administration’s aggressive approach is most evident, however, in the U.S. National Space Policy of 2006, which was released late on a Friday afternoon of a holiday weekend, an approach often used to suppress negative reactions.⁵⁸ Although this new policy begins with a reference to the United States’ commitment to the use of space for “peaceful purposes,” it goes on to claim that defense and

intelligence activities “in pursuit of national interests” are in harmony with this principle.⁵⁹ Yet the fact that each state determines its own national interests, combined with broad wording such as this, seems to convey an overreaching declaration of authority. The policy goes on to proclaim the United States’ right to deny other countries from developing the means to compete in space.⁶⁰ A separate publication from the Office of the Joint Chiefs of Staff asserts that “the United States must be able to protect its space assets and deny the use of space assets by its adversaries.”⁶¹ The ambiguity of this statement leaves open the possibility that any space activity by any state may be deemed by the president of the United States as a threat to American interests.⁶² As a whole, the language of the Bush administration’s National Space Policy is vague at

best. This is quite troubling as vagueness and matters of the law are not particularly compatible.

No substantive policy changes were made to the 2010 National Space Policy by the Obama administration. There was, however, a seemingly deliberate shift made towards a “less bellicose” tone by emphasizing the importance of international cooperation.⁶³ This is an important first step towards repairing America’s status as a responsible leader in outer space. However, despite this shift in rhetoric, some, including Ben Basely-Walker of the Secure World Foundation, are convinced that an “overarching space arms control accord” is unlikely for the foreseeable future.⁶⁴ Given this lack of actual legal reform, it is likely that the Obama administration’s space policy will, in effect, result in a continuation of the status quo.

RAMIFICATIONS OF AMERICAN EXEMPTIONALISM

As we learned during the first decade of space exploration, unclear laws, no matter how peaceable, can be manipulated in order to further aggressive agendas. Eisenhower capitalized on this in his attempts to define the U.S.S.R.’s territorial airspace and the “freedom of space” principle. Many years later, Presidents Bill Clinton and George W. Bush also tested the boundaries of international law with their weakening of and withdrawal from the ABM Treaty. Given America’s state of heightened tension following the September 11 terrorist attacks, eventual withdrawal from the Outer Space Treaty on the grounds of national security and protection of American assets seems likely. This would likely be quickened by a perceived act of aggression towards the United States by any of

the growing number of space-faring countries.

Withdrawal from the treaty would not be difficult. The Vienna Convention on the Law of Treaties details the circumstances under which treaties are applicable and declares that the relevant conditions under which each treaty is ratified are key to the consent of states to be compelled by that particular treaty. If these conditions drastically change, the states' obligations to adhere to the treaty may also change.⁶⁵ To this end, there were no weapons in outer space when the Outer Space Treaty was put into effect in 1967. The simple fact that space weapons were not in use at the time but have since been developed could be viewed as a basis on which to defect from the treaty.⁶⁶ Use of this convenient escape clause is not even necessary given the fact that, in the case of conflicting laws,

some laws prevail over others.⁶⁷

The inherent right to self-defense, for example, is a peremptory norm that simply cannot be violated under international law and therefore prevails over any treaty.⁶⁸ The Bush administration's creative use of preemptive self-defense put forth by Rumsfeld's Space Commission, an approach that relies on "strategic unilateralism and selective multilateralism"⁶⁹ while avoiding conformity to any international treaties that may be deemed too constrictive, is characteristic of American exemptionalism.⁷⁰ Eisenhower's attempts to establish precedence by flying satellites over the U.S.S.R. while denying the same precedence to the Soviets during the IGY are earlier examples of American self-exemption. These dangerous double standards only serve to weaken the system of international laws created in large part

by the United States in order to safeguard American interests.⁷¹

By isolating itself from and ignoring the system of international laws that it helped to create, American credibility is diminished and the ability to guard American interests is hampered. Only by heeding the warning of Eisenhower's farewell address will the military-industrial complex be prevented from "endanger[ing] our liberties or democratic processes."⁷² According to one current theory, customary international law is less restrictive to states' actions than it is derived from the status quo.⁷³ This implies that the future of outer space lies in the adherence by all space-faring nations to the peaceful principles established by the Common Heritage of Mankind principle. In order for this doctrine to become an accepted part of international law, it needs to

be reexamined and placed within a more concise legal framework.⁷⁴ In

addition, a strengthened, authoritative third-party mechanism responsible for assuring compliance, rather than the current self-enforcement model, would be required.⁷⁵ Only through the stated revisions to the language of the Outer Space Treaty of 1967 and persistent, cooperative presidential leadership will the United States be able to avoid the disaster that would certainly result were it to either continue introducing weapons into outer space or withdraw from the treaty altogether.

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