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Toward the Creation of a U.S. “Space Force”

Background

For over two decades, the U.S. Government Accountability Office (GAO) and others have found that fragmentation and overlap in national security space acquisition management and oversight have contributed to program delays and cancellations, cost increases, and inefficient operations. Congress has attempted numerous organizational and acquisition reforms to address these problems. In the view of many observers, these efforts have generally been unsuccessful.

In addition to these perceived managerial deficits, Congress has more recently expressed concern over the slow pace with which the Department of Defense (DOD) and the Air Force have addressed the growing threat to U.S. national security in space from adversaries, particularly Russia and China, and to a lesser extent North Korea and Iran. Some in the military and elsewhere now increasingly refer to space as a “warfighting domain”; once seen as peaceful and uncontested, space is now viewed as crowded and adversarial.

Generally, House Members have led the effort to remove institutional barriers to space acquisition reform by advocating for the creation of a new entity for national security space. Until recently, the Senate largely favored efforts to reform existing organizations rather than authorize new ones. However, as part of the FY2019 National Defense Authorization Act (NDAA) deliberations, both chambers passed (and the President signed) legislation that authorized the creation of a subordinate unified command known as the U.S. Space Command (under the U.S. Strategic Command). The reorganization was intended to address long-standing concerns related to space acquisition management and sharpen DOD’s strategic focus on space.

DOD recently developed a series of additional proposals that would authorize the creation of an 11th unified combatant command responsible for space. Separately, the Trump Administration called for Congress to establish by 2020 a new military service branch—Space Force—with the goal of asserting “American dominance in space.” The new service branch would be the first since the creation of the U.S. Air Force (previously part of the Army) in 1947. Inconsistencies between these various executive branch proposals have puzzled some observers and Congress could play a major role in adjudicating among them.

Given the long-standing nature of the debate over how space assets should be managed, some observers view recent proposals as initial positions in a longer-term negotiation among the part of major stake holders during next year’s NDAA and beyond.

Organizational Structure of the Military

The U.S. military is composed of three military departments—the Departments of the Army, Navy, and Air Force—and four armed forces (the Department of the Navy is responsible for both the Navy and the Marine Corps). The Secretaries of the military departments are responsible for organizing, training, and equipping their respective forces.

Unified Combatant Commands (COCOMS) are organizationally responsible for employing these forces during military operations. There are currently 10 Unified COCOMs, including 6 that are geographically defined (e.g., U.S. Central Command) and 4 that are functionally oriented (e.g., U.S. Strategic Command.) Unified COCOMs are led by a single commander and composed of a mix of servicemen and women from the military departments.

Currently, the Air Force provides space mission capabilities for DOD, primarily through the Air Force Space Command, which has its headquarters at Peterson Air Force Base in Colorado, but has additional installations around the world. Section 1601 of the FY2018 NDAA (P.L. 115-91) authorized the establishment of Commander, U.S. Air Force Space Command, and designated the commander of Air Force Space Command as the “sole authority with respect to ... [o]rganizing, training, and equipping personnel and operations of the space forces of the Air Force.”

Options for Space Reorganization

Specific organizational options that the President or Congress could implement to conduct national security space operations include the following:

Reorganization within the military services. The President could direct the service secretaries to develop new units or restructure existing units to provide greater capability and capacity to conduct space operations. Such changes might involve procuring new equipment, revising training strategies, and modifying organizational structures and relationships. Congress could also mandate such changes by statute, or influence executive branch action based on its oversight and appropriations powers.

Establish a new COCOM. Using the authority of 10 U.S.C. 161, the President could direct the establishment of a space-oriented COCOM, or a subordinate unified combatant command under an existing COCOM (similar to the subordination of U.S. Forces Korea to U.S. Indo-Pacific Command). Alternatively, Congress could require the establishment of a space-oriented COCOM in law, perhaps with special authorities, as it did with the establishment of Special Operations Command and Cyber Command (10 USC 167 and 167b). The FY2019 NDAA provided for the

establishment of a subordinate unified command, to be known as U.S. Space Command, under U.S. Strategic Command.

New military service. Congress could establish a separate military service focused on space operations within one of the existing military departments, in a manner similar to the way the Marine Corps exists within the Department of the Navy. The statutory authorities required to establish such a new service would likely resemble those used for the Marine Corps (various sections of Title 10, Subtitle C, including Chapter 506).

New military department. Congress could choose to establish a new military department with a new military service focused on space operations. The most recent establishment of a military department occurred in 1947, when Congress established the Department of the Air Force via the National Security Act of 1947. This act also transferred equipment, personnel, and installations from the Army Air Corps to the newly created Air Force. The statutory authorities required to establish a new department would likely be similar to those used for the Army (Subtitle B of Title 10), Navy (Subtitle C of Title 10), and Air Force (Subtitle D of Title 10).

Constitutional Authority to Establish a "Space Force"

Under the Constitution, authority over the Armed Forces is divided between the President and Congress. Under Article I, section 8, Congress has the power "To lay and collect Taxes ... to ... pay the Debts and provide for the common Defence," "To raise and support Armies," "To provide and maintain a Navy," "To make rules for the Government and Regulation of the land and naval Forces," and "To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States." Further, Congress is empowered "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers ..." as well as "all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Congress also has virtually plenary constitutional power over appropriations, one that is not qualified with reference to its powers in Section 8. Article I, Section 9, provides that "No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." It is well established, as a consequence of these provisions, that "no money can be paid out of the Treasury unless it has been appropriated by an act of Congress" and that Congress can specify the terms and conditions under which an appropriation may be used, so long as the restrictions do not impair power inherent solely in other branches or otherwise run afoul of constitutional restrictions on congressional prerogatives.

Article II of the Constitution vests the President with the "executive Power," and appoints him "Commander in Chief of the Army and Navy of the United States, and of the

Militia of the several States, when called into the actual Service of the United States."

Accordingly, the constitutional framework appears to contemplate that the role of establishing, organizing, regulating, and providing resources for the Armed Forces belongs to Congress, while the President is in charge of commanding the forces Congress has established using the funds Congress has provided.

It may conceivably be argued that congressional authority is limited to "land and naval forces," including "Armies" and "the Navy" as well as the "Militia" (i.e., the reserve components), and thus would not extend to a new armed force operating primarily in the realm of space. The President's commander-in-chief authority is similarly limited to the Army and Navy and activated reserve components. However, it is unclear whether a new Space Force would actually carry out functions in space or that its functions would be any different from those related to space operations already carried out by the various services. Given this uncertainty, it is possible that a Space Force would already constitute a land and naval force under the Constitution. Finally, it is of note that respective congressional and presidential authorities over the Air Force—which is not specifically mentioned in the Constitution—have not been historically called into question.

Additional Considerations

Given myriad challenges to creating some new structure around which to organize national security in space, some in Congress are looking at previous major legislative reforms. Many are focused on how best to address the challenges of solving the problems that exist today. Previous major legislative initiatives include the creation of the Air Force itself, the creation of U.S. Special Operations Command, Cyber Command, or even Transportation Command. Other significant landmark bills include the Goldwater Nichols Act, the Patriot Act, and creation of the Department of Homeland Security. Each of these took varying amounts of time and hearings to establish (e.g., creation of the Air Force took three years of hearings), and most provide varying degrees of lessons learned, both good and bad. Congress may focus on previous major legislation to determine how best and how quickly to proceed toward reorganizing DOD and its future in space.

Budgetary costs and personnel disruptions and opportunities are also likely to play in important ways that could take time to fully understand. Congress has a unique opportunity to shape the direction of U.S. national security space at this moment in time.

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