

informed Acting Defense Secretary Patrick Shanahan that more budget details are needed for the Space Force, as well as for U.S. Space Command and the Space Development Agency.³³

The U.S. military restructuring with respect to cyber operations and space does not directly implicate issues of international law. To the extent that this reshuffling results in operational actions, however, it remains to be seen how such actions will fit into the existing international legal framework. International law on the use of force and international humanitarian law are generally applicable. The specifics of how these laws apply to cyber operations have been the subject of considerable interest, with the Tallinn Manual 2.0 often looked to as the most significant piece of work on the subject to date.³⁴ With respect to space, the United States is a party to the Outer Space Treaty, which bans certain military actions in space,³⁵ and there are other sources of law specifically focused on space that are potentially relevant as well.³⁶

SETTLEMENT OF DISPUTES

The United States Resolves Its Request for Consultations Regarding Peru's Environmental Obligations Under Bilateral Trade Agreement

doi:10.1017/ajil.2019.40

On April 9, 2019, the United States and Peru reached a resolution regarding concerns about Peru's forest sector obligations under the 2007 United States–Peru Trade

Force Proposal, Says Committee Will Seek "Other Options," SPACENEWS (Mar. 25, 2019), at <https://spaceneews.com/hasc-chairman-rejects-trumps-space-force-proposal-says-committee-will-seek-other-options> (reporting on House Armed Services Committee Chairman Adam Smith's opposition to the Space Force proposal).

³³ Sandra Erwin, *House Appropriators Press for Details on Space Force Cost and Organization*, SPACENEWS (May 1, 2019), at <https://spaceneews.com/house-appropriators-press-for-details-on-space-force-cost-and-organization>.

³⁴ TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS (Michael N. Schmitt ed., 2d ed. 2017); see also Dan Efrony & Yuval Shany, *A Rule Book on the Shelf? Tallinn Manual 2.0 on Cyberoperations and Subsequent State Practice*, 112 AJIL 583 (2018) (assessing the extent to which states to date have accepted the rules set out in the Tallinn Manual); Eric Talbot Jensen, *The Tallinn Manual 2.0: Highlights and Insights*, 48 GEO. J. INT'L LAW 735 (2017) (discussing some of the key points from Tallinn 2.0). For a recent perspective on how the Department of Defense may be approaching these issues, see Michael J. Adams & Megan Reiss, *International Law and Cyberspace: Evolving Views*, LAWFARE (Mar. 4, 2018), at <https://www.lawfareblog.com/international-law-and-cyberspace-evolving-views> (also noting that the "U.S. government . . . has taken no official position on the views set forth in the [Tallinn] Manual").

³⁵ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, at Art. 4, Jan. 27, 1967, 18 UST 2410, 610 UNTS 205 (prohibiting treaty parties from putting "nuclear weapons or any other kinds of weapons of mass destruction" into orbit or onto celestial bodies).

³⁶ See Matthew T. King & Laurie R. Blank, *International Law and Security in Outer Space: Now and Tomorrow*, 113 AJIL UNBOUND 125, 127–29 (2019) (discussing the application of international law to military space operations).

Promotion Agreement (PTPA).¹ At issue was Peru's relocation of the Agency for the Supervision of Forest Resources and Wildlife (OSINFOR) to a "subordinate position" in its Ministry of Environment in December 2018.² The United States requested consultations under the PTPA on the ground that this relocation conflicted with a provision in the Environment Chapter's "Annex on Forest Sector Governance" (Forest Annex),³ which states that "OSINFOR shall be an independent and separate agency."⁴ Following the consultations, Peru agreed to restore OSINFOR to its original location within the Peruvian government.⁵

OSINFOR is mainly responsible for the "verification of all timber concessions and permits" in an effort to prevent illegal logging.⁶ In the negotiating of the PTPA, the United States specifically sought to ensure that OSINFOR would remain independent in order to protect forest oversight from political pressures.⁷ Following Peru's decision in December 2018 to move OSINFOR to within the Ministry of Environment, the United States requested consultations in January 2019.⁸ Consistent with the PTPA's protocol for resolving disputes arising under the Environment Chapter, including the Forest Annex, the United States and Peru "held technical consultations to discuss the matter" in late January.⁹ The parties then referred the matter to the PTPA's Environmental Affairs Council (EAC). A month later, this bilateral committee of senior officials with environmental responsibilities convened in Lima, Peru.¹⁰

As a result of their deliberations, Peru withdrew its previous decision to move OSINFOR within the Ministry of the Environment.¹¹ Its decree of April 9 reinstated OSINFOR's former position within the government such that OSINFOR will once again be part of the Presidency of the Council of Ministers and thus directly communicate with Peru's Prime Minister.¹² This decree also established a timeline for the Presidency of the Council of Prime Ministers to hire OSINFOR's next leader.¹³ U.S. Trade Representative Robert Lighthizer stated:

¹ Office of the U.S. Trade Rep. Press Release, USTR Successfully Resolves Concerns Raised in First-Ever Environment Consultations Under the U.S.-Peru Trade Promotion Agreement (PTPA) (Apr. 9, 2019), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/april/ustr-successfully-resolves-concerns#> [<https://perma.cc/D4GF-9R2K>] [hereinafter USTR Press Release of April 9].

² *Id.*

³ *Id.* For discussion of the U.S. request for consultations, see Jean Galbraith, Contemporary Practice of the United States, 113 AJIL 376, 400 (2019).

⁴ Trade Promotion Agreement, Peru-U.S., Apr. 12, 2006, Annex 18.3.4, § 3(h)(iii), available at <https://ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text> [hereinafter PTPA].

⁵ USTR Press Release of April 9, *supra* note 1.

⁶ See PTPA, *supra* note 4, at Annex 18.3.4, § 3(h)(iii).

⁷ USTR Press Release of April 9, *supra* note 1; see also Galbraith, *supra* note 3, at 402 n. 19 (discussing how OSINFOR once suffered from "perverse incentives and institutional pressures" because it was funded through logging revenues but gained greater independence when it was positioned inside Peru's Office of the Presidency of the Council of Ministers).

⁸ Galbraith, *supra* note 3, at 403.

⁹ USTR Press Release of April 9, *supra* note 1; see also Galbraith, *supra* note 3, at 403 (describing the dispute resolution mechanism set forth in Environment Chapter of the PTPA).

¹⁰ USTR Press Release of April 9, *supra* note 1; Galbraith, *supra* note 3, at 403 (providing a description of the EAC's membership).

¹¹ USTR Press Release of April 9, *supra* note 1.

¹² *Id.*

¹³ *Id.*; see also Galbraith, *supra* note 3, at 402 (noting that OSINFOR's former leader, Rolando Navarro, sought asylum in the United States after facing threatening protests against his efforts to carry out OSINFOR's environmental mandate).

We are pleased with Peru's decision to retain OSINFOR as an independent and separate agency, as required by our bilateral agreement This shows that strong enforcement works. I am committed to using enforcement tools to ensure that our trade agreements protect the environment and advance the interests of U.S. workers and businesses.¹⁴

In keeping with its emphasis on trade agreements and their enforcement, the Trump administration has recently initiated a set of consultations under another free trade agreement—the United States–Republic of Korea Free Trade Agreement (KORUS).¹⁵ According to the United States, South Korea's evidentiary rules governing the competition hearings of the Korea Free Trade Commission (KFTC) prevent U.S. companies from receiving procedural protections to which they are entitled under KORUS.¹⁶ The United States now seeks changes from South Korea that will “address issues related to opaque KFTC hearing procedures regarding [U.S. companies'] lack of access to evidence, including evidence used to bring allegations against” them.¹⁷

¹⁴ USTR Press Release of April 9, *supra* note 1.

¹⁵ Office of the U.S. Trade Rep. Press Release, USTR Requests First-Ever Consultations Under the U.S.-Korea Free Trade Agreement (KORUS) (Mar. 15, 2019), at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/march/ustr-requests-first-ever> [<https://perma.cc/XH7X-JP4Y>].

¹⁶ *Id.*

¹⁷ *Id.*