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## STARLINK'S PROVISION OF TELECOMMUNICATION SERVICES DURING THE TIME OF ARMED CONFLICT AND ITS CONSEQUENCES FROM THE PERSPECTIVE OF PUBLIC INTERNATIONAL LAW

**Abstract.** This article attempts to provide an overview of the most important international regulations relating to the provision of telecommunication services by private companies to one or more belligerent parties in times of an armed conflict. Taking as an example the recently widely commented issue of Starlink allegedly withholding its services otherwise provided to the Ukrainian Armed Forces, this article reviews the issue from the perspective of general public international law as well as international space law. Specifically, the customs and regulations concerning the attributability of private parties actions as well as peaceful utilisation of outer space are scrutinised.

**Keywords:** international space law, Elon Musk, Starlink, Ukraine, USA

## ŚWIADCZENIE USŁUG TELEKOMUNIKACYJNYCH PRZEZ STARLINK W TRAKCIE KONFLIKTU ZBROJNEGO A MOŻLIWE KONSEKWENCJE W RAMACH PRAWA PUBLICZNEGO MIĘDZYNARODOWEGO

**Streszczenie.** Niniejszy artykuł ma na celu zaprezentowanie najistotniejszych regulacji międzynarodowych dotyczących świadczenia usług o charakterze telekomunikacyjnym przez podmioty niepubliczne jednej lub większej ilości stron aktywnego konfliktu zbrojnego. Biorąc za przykład szeroko komentowany przypadek firmy Starlink, która rzekomo miała odmówić udostępnienia swojej sieci rządowi Ukraińskiemu, artykuł ten stara się przedstawić skrótowe studium tego przypadku z perspektywy prawa publicznego międzynarodowego, jak również regulacji międzynarodowych poświęconych wyłącznie kwestiom wykorzystania przestrzeni kosmicznej. Analiza ta w szczególności dotyczy reguł poświęconych przypisywalności państwu działań podmiotów prywatnych jak i pokojowemu wykorzystaniu przestrzeni kosmicznej.

**Słowa kluczowe:** międzynarodowe prawo kosmiczne, Elon Musk, starlink, Ukraina, USA

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## 1. INTRODUCTION

In early September 2023, all major news outlets began distributing information concerning Elon Musk's decision to "shut off communications network" of SpaceX's constellation Starlink before an upcoming military action of Ukraine's Armed Forces against an illegal aggression of the Russian Federation, which was supposed to take place on the coast of Crimea. As indicated by Elon Musk himself on his portal X,<sup>1</sup> SpaceX has received "(...) an emergency request from government authorities to activate Starlink all the way to Sevastopol" (Musk 2023). He further stated that "the obvious intent [is] to sink most of the Russian fleet at anchor. If I had agreed to their request, then SpaceX would be explicitly complicit in a major act of war and conflict escalation". This came after the company had provided "thousands" of Starlink terminals to Ukraine right after the beginning of the Russian invasion (Sheetz 2022), at the same time allegedly not allowing its infrastructure to be used for long-range drone strikes (Satariano 2023), with Starlink's CEO going as far as claiming that it was "never meant to be weaponised". Ultimately, this is merely one of the chapters in Elon Musk and Ukraine saga, with the 21<sup>st</sup> century version of the Howard Hughes seemingly changing his outlook on the business and political ramifications of the armed conflict at hand.

At the same time, the entire situation has sparked a debate on the consequences of the involvement of private parties into international armed conflicts – a debate that has been borderline framed by Elon Musk himself, and ultimately leading, in the consciousness of the general public, to a conundrum of whether the provision of Starlink services can lead to a war between the USA and the Russian Federation. Or, to put it in more scientific terms, whether the actions of a private company can amount to changing the status of any given state from neutral to belligerent. The question itself is quite complex and is in itself a prime subject for a PhD dissertation rather than a simple article. However, it is still worth conducting a review of potentially applicable rules of public international law for the Starlink's operations and involvement in the currently ongoing events. The following analysis will not concentrate on the concept of neutrality or qualified neutrality, but will, rather, focus on what are the legal ramifications for Starlink's activities from the perspective of state responsibility and outer space regulations as the two most likely avenues to tie actions of a corporate entity to its state and registration, by extension making them actions of a given state itself. Therefore, the main goal of this article is to establish whether the operations of Starlink are in line with international obligations flowing from international outer space law.

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<sup>1</sup> More commonly known as Twitter, despite Elon Musk's best efforts aimed at preventing the world from deadnaming his social platform.

As has been outlined above, the first part of the analysis will consider the Starlink operations in the light of the Articles on Responsibility of States for Internationally Wrongful Acts (hereinafter ARSIWA) in order to establish whether its actions could potentially be attributable to the USA. The second part will be devoted to an analysis of *corpus iuris spatialis* in order to determine whether the rules contained therein could nonetheless justify such attribution, and if so – how they relate to the relevant state practice.

## 2. THE ATTRIBUTABILITY OF STARLINK'S ACTIVITIES

Within the framework of public international law, states are responsible solely for actions that can be attributed to them, as indicated by the doctrine of objective responsibility. The attributability in itself became subject of a rather complex discussion, in itself amounting to a chapter within the International Law Commission's ARSIWA. While by no means legally binding, nor equipped with any treaty value as such, the ARSIWA still remains a valid point of reference, since it in itself consists of a rather comprehensive review of the last hundred years of public international law development.

Of course, one can be tempted to simplify the entire issue basing on the ARSIWA by quoting a part of its introduction to the second chapter, which observes that in general “the conduct of private persons is not as such attributable to the State” (ILC 2001b, 9). This, however, is mostly based on a “negative” understanding of the rule. As has been stated in the *Tellini* case, and what is also being invoked by the ARSIWA, “The responsibility of a State is only involved by the commission in its territory of a political crime against the persons of foreigners if the State has neglected to take all reasonable measures for the prevention of the crime and the pursuit, arrest and bringing to justice of the criminal” (League of Nations 1923, 524). The same approach, albeit much more clearly presented, was adopted in the *Janes* case, where the tribunal found that “The international delinquency in this case is one of its own specific type, separate from the private delinquency of the culprit. The culprit is liable for having killed or murdered an American national; the Government is liable for not having measured up to its duty of diligently prosecuting and properly punishing the offender” (United Nations 1951, 87). Both of the cases advocate for a state being responsible solely for “its” actions instead of those of the individuals of given state nationality, but they do not, in fact, provide us with any guidance as to what can be treated as an action of a state, apart from it not being a sole endeavour of an individual. A ruling of Iran-USA claims tribunal indicates that “in order to attribute an act to the State, it is necessary to identify with reasonable certainty the actors and their association with the State” (Iran-US Claims Tribunal 1987, 101–102). The ARSIWA as such identified seven potential cases in which a conduct would be

regarded as a conduct of a state as such. This takes place if the conduct in question is the conduct of a state organ itself, conduct of persons or entities exercising elements of governmental authority, conduct of organs placed at the disposal of a state by another state, conduct directed or controlled by a state, conduct carried out in the absence or default of the official authorities, conduct of an insurrectional or other movement, and conduct acknowledged and adopted by a State as its own. Out of the seven cited cases, only the direction or control of the Starlink activity and the acknowledgement of the Starlink's conduct by a state, contained in Articles 8 and 11 of the ARSIWA, respectively, can be reasonably taken into account as potentially leading to the attribution of the activity in question to the government of the USA.

Starting from Article 11, i.e. the adoption of the conduct, as has been observed in the *United States Diplomatic and Consular Staff in Tehran* case (International Court of Justice 1980), this requires a positive adoption on part of the state, taking the form of official and legal approval. In the referenced case, this took the form of a positive regulation that was later abided by the governmental authorities. As of the date of writing this article, the general public has not been presented with any evidence to determine that situation as described above has taken place. The same argument can be made in reference to Article 8, which concerns the control of the state over certain activities. The level of control in question varies from case to case, although one has to bear in mind that the principle in question does not “extend to conduct which was only incidentally or peripherally associated with an operation and which escaped from the State's direction or control” (ILC 2001b, 18). As has been stated in the *Military and Paramilitary Activities in and against Nicaragua* case, the state has to exercise the level of control that justifies treating the party conducting the activity as acting on its behalf (International Court of Justice 1986). In both situations discussed, in order to declare the activity of a party attributable to a state, it is required for the state in question to perform certain acts, be it in the form of the acceptance of previously made conduct or in the form of controlling the entity in question. In none of the situations described is the conduct of a private entity of any significance – for the purposes of attributing it to the state at least. On the contrary, it is the state who has to either accept it as its own or direct it – again – as it would with its other activities. Hence, it is impossible, without any further evidence to the contrary, to state that any sort of Starlink's conduct could be regarded as having even a remote relation to what can be considered as a conduct of a state. Of course, that is not to say that its conduct is entirely irrelevant, but from the public international law standpoint, it remains no different than, e.g., Microsoft's continuing licensing of operating systems to the Ukrainian authorities, or any involvement in any governmental activity of Ukraine of any given corporation. With all respect due to the technological marvel that Starlink undoubtedly is, in the world where products of corporations such as Raytheon are

provided to one of the belligerent states in one capacity or another, the notion that providing services by a single company to the same belligerent state can amount to “major escalation” is far-fetched at best and narcissistic at worst.

### 3. STARLINK'S ACTIVITIES IN THE LIGHT OF INTERNATIONAL SPACE LAW

Having roughly described how activities undertaken by Starlink (as an enterprise) can be viewed within the framework of general public international law, we should turn our attention to international space law. Referred to in the doctrine as *corpus iuris spatialis*, it is comprised of 4 treaties, namely: the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereinafter OST); the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space; the Convention on Registration of Objects Launched Into Outer Space; and the Convention on International Liability for Damage Caused by Space Objects. Out of the treaties listed above, only the OST contains provisions that are relevant to our current considerations, i.e. concerning the attribution of space activities to a state and military uses of outer space.

Due to the nature of the regulation, the drafting parties opted for a very broad application of the attributability concept. Article VI of said treaty provides that each state party shall remain internationally responsible for national activities conducted in outer space, regardless of whether such activity was conducted by a governmental or non-governmental entity that remains under their jurisdiction. Moreover, such activities do require given state's authorisation and continuing control (Lyll, Larsen, 66). This regulation creates a rather interesting case – from the purely legal perspective – where an activity of a private corporation, seemingly “invisible” to the public international law in terms of general rules on attribution and responsibility, suddenly becomes an act of the state itself, without having to satisfy any further criteria (Brown 2022). This would in itself appear to prove the point indicated at the beginning of this paper, namely that Starlink by providing its services to the state of Ukraine would help – to quote – escalate the conflict further (Goines 2022). However, the concept of a state being internationally responsible for activities in outer space was primarily designed for ensuring the compliance with the rules of the OST itself rather than providing a catch-all clause that would be equally used in and outside the OST framework (Jakhu 2006, 14).

However, the provisions of the OST are not limited to merely facilitating the attribution of outer space activities to any given state party, with the regulations and state practice on military utilisation of outer space being of utmost importance in the present case. Article III of the OST provides that every state party “shall carry

on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding”, which appears to provide additional context to the “peaceful purposes” doctrine mentioned in the preamble of the OST. Article IV, on the other hand, includes a list of outer states activities that are strictly prohibited. This includes inserting and maintaining weapons of mass destruction both on the surface of celestial bodies and in outer space, the creation of military bases, installations, and fortifications on celestial bodies, as well as testing weapons and performing military manoeuvres on the celestial bodies. Having these regulations in mind, there are two issues that need to be addressed in relation to Starlink. Firstly, assuming that Starlink’s activity could be considered as “military”, does it remain legal within the meaning of the OST? Secondly, is it compliant with the “peaceful purposes” doctrine included in the OST?

At a glance, it would appear that the OST has excluded any and all legal possibility for any military or – arguably – even dual use activity in the outer space. However, a more cautious look into the matter shows that, firstly, there is a distinction between the regulation contained in Article IV, with military activities in outer space being clearly divided between those conducted on the surface of celestial bodies, and those that are taking in outer space itself. Since Starlink constellation is not placed nor does it rely on any infrastructure on celestial bodies, the only provision applicable to it in the light of Article IV is the ban on containing any weapons of mass destruction. As the Starlink satellites are meant to be telecommunication devices, barring an instance of one of them actually containing a weapon of mass destruction, the answer to the first of the questions presented above is a resounding yes. Even if one were to declare Starlink constellation as a purely military infrastructure, there is no prohibition, on the grounds of Article IV of the OST, for it to be created and utilised.

The second question presented above concerns the concept of “peaceful purposes” and – by extension – the maintaining of international peace and security by conducting outer space activities. However, the development of this concept has included two conflicting views, with the peaceful purposes doctrine containing the meaning of either “non-aggressive” or “non-military”. Regardless of how one would decide to treat the Starlink constellation in the light of the services being provided to one of the belligerent parties, the approach of the state of registration of Starlink satellites, i.e. the USA, appears to follow the “non-aggressive” line of reasoning from the moment of drafting the treaty itself (Finch 1968, 365). A point only reinforced by subsequent state practice, with both the USA (Trump 2018) and the Russian Federation<sup>2</sup> featuring a designated branch of the military for outer

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<sup>2</sup> The Russian Federation – unlike the USA – combines the space capacity within its airforce, although still maintaining the space component in the name of this particular branch of the military.

space operations, dating back to as far as 1960s and the establishment of the North American Aerospace Defense Command (Farley 2020).

Moreover, Starlink is neither the first private or quasi-private entity to be utilised during the times of war, nor is it the only example of such an enterprise in the current armed conflict. Its role of providing necessary communications to one of the belligerent parties has been previously carried out by INMARSAT during the Persian Gulf armed conflict as well as during the Falklands armed conflict (Noorden 1995, 1), with INTELSAT services being provided to multiple militaries at the same time (Morgan 1994, 60). The same observation can be made regarding the ICEYE, a Finnish company specialising in remote sensing, including radar imagining, that has provided its services to Ukraine and continues to do so at the moment of writing this article, with the data provided being directly utilised by the military itself for – what we can only presume albeit with a fair dosage of certainty – military use. While the presented review of the state practice in respect to utilising satellite technologies within their military structure is by no means exhaustive, nor attempts to be one, it establishes well enough the notion of such type of outer space activity being not only widely used but also widely accepted, remaining within the “peaceful purposes” doctrine – if not outright within the “non-military” understanding, then for sure within the “non-aggressive” one.

#### 4. CONCLUSIONS

The observations presented above are especially valid in terms of communication satellites. Firstly, it is highly unlikely that any utilisation of such satellites in the Russo-Ukrainian war could lead to the attribution of the act in question to any state but the ones directly involved in the armed conflict, and even then, the attributable act would comprise of purchasing the service in question. As for the third parties, such activity, basing on general public international law, appears to be no different than any other provision of services by companies remaining within given states' jurisdiction. One has to bear in mind that the communication services provided by Starlink do not exist in vacuum, and arriving at a different conclusion could yield an unexpected result for seemingly unrelated industries, with software licensing being most likely to be impacted due to its widespread nature.

Secondly, from purely international space law perspective, it appears that Starlink services fit within the already existing practice of outer space utilisation. This is further reinforced by some voices in the doctrine pointing out that such use of telecommunication satellites remains within the treaty boundaries as long as they are being utilised “by the military in a manner which contributes to creating a ‘climate of peace,’ their use will be legally permissible”.



Having the explanations presented above in mind, it is highly unlikely that the concerns of Starlink's owner as well as its top official are substantiated, at the very least from the perspective of public international law and state practice available for the review of the general public as of the day of writing this article. Therefore, the answer to the question posed in the introduction to the present article appears to be affirmative. Firstly, as has been shown above, it is unlikely that Starlink's operations could be described as violating any of the discussed provisions of public international law. Secondly, the activities of Starlink appear to fall in line with the established state practice.

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