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NEUTRALITY IN SPACE: THE LEGAL DILEMMA FOR COMMERCIAL SPACE ENTITIES

Abstract

The recent utilization of Starlink’s satellite services in the Russia-Ukraine conflict has spotlighted a complex legal debate concerning the application of the Law of Neutrality in space. The traditional Law of Neutrality, once confined to terrestrial disputes, faces new challenges with the development of space technology and advent of unconventional warfare, necessitating a reconsideration of its extension into outer space, where its implementation remains ambiguous.

This paper examines the critical legal issues that arise from the involvement of commercial space entities in armed conflicts. How would the Law of Neutrality be interpreted and applied in outer space? How could the standards of attribution be employed, given the “national activities” standard under the Outer Space Treaty or the “overall/effective control” standard under the Responsibility of States for Internationally Wrongful Acts, to associate commercial space activities with state responsibilities? How would key terms within the Law of Neutrality, for instance, “war materials”, be defined in outer space, and how would services like telecommunications, navigation, and remote sensing be categorized under this definition? How might telecommunication services provided by satellites satisfy the criteria to qualify for the exemptions under the Hague V Convention? How are the legal consequences for states that violate neutral obligations determined, and how could such violations lead to the states being classified as co-belligerents?

In the absence of an international consensus on the issues outlined above, the legal interpretation remains highly debatable. This paper endeavors to critically analyze the current state of international law concerning the neutrality of commercial space entities in armed conflict, seeking to explore the potential frameworks for its application in outer space.