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A REMOTE SENSING CONVENTION FOR THE ADVANCEMENT OF SPACE LAW

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"Contemporary international law increasingly consists of lawlike treaties, aspiring to universal application and thus pulling towards greater equality. Its rules have become both more precise and better enforced, and it now poses greater limites on the powerful, too."

Nico Krisch, Max Planck Society for the Advancement of Science (1)

ABSTRACT

The space law debate on remote sensing of the Earth from Outer Space is not over, as well as the History after the Cold War has not came to an end. The remote sensing activities are underegulated in essential aspects. The 1986 Principles became a pale and impotent reference for such vital activities all over the world. They are distant from the technologically complex reality of current practice of remote sensing in fast evolution. This is a planetary lacuna in Space Law. This paper seeks to demonstrate the necessity of creating a comprehensive and effective convention on remote sensing. It has not only to be based on the 1986 Principles but also to shape a vigorous international regime of previsibility, regularity and equity for remote sensing activities. It is not enough to recognize the freedom of remote sensing from anywhere in the Earth, at any time, as well as the freedom of selling remote sensing data. It is necessary to guarantee reliable access to as the freedom of selling remote sensing data. It is necessary to guarantee reliable access to processed or analyzed data, specially by developing countries. It is also imperative to legally specify what it means, for instance, "not to conduct remote sensing activities in a manner detrimental to the legitimate rights and interests of the sensed State". What are the rights and obligations of sensing and sensed States? It is unavoidable to know. And to settle clearnees instead of vagueness in all rules. The commercialization and the privatization of remote sensing activities can and should be a way to stimulate as much as possible the spreading of their products, not to difficult the access to them. The business requirements are important but not the unique nor the main criteria to define the needed legislation. The appropriate State remains entirely responsible for the remote sensing activities carried out by private entities. The conclusion is that more than never the remote sensing activities have and deserve to be regulated in a detailed convention as an international public service of first necessity, a inestimable matter of international cooperation and an irreplaceable instrument of security and development for all States, without discrimination of any kind.

INTRODUCTION

As a starting position in the legal analysis of remote sensing activities today, it is fundamental to take a very clear rule of law approach.

Between minimum and maximum regulation, the later seems to be the better solution, as we are in an ample area of hazardous lacunas.

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"The rule of law in international affairs involves the existence of a comprehensive system of law, certainty as to what the rules are, predictability as to the legal consequences of conduct, equality before the law, the absence of arbitrary power, and effective and impartial application of the law", as wrote Sir Arthur Watts. (2)

The stronger the presence of these elements in the exploration and use of outer space, including remote sensing activities, the greater the security and the benefits of such highly risky and necessary activities to all states will be.

As nowadays there is a strong resistance to amend the space treaties or create new ones, it is worth to remind here a Manfred Lachs recommendation. According to him, the process of development of international space law "cannot be arrested", since "space technology and economic possibilities are continuously generating new questions to which law has to find adequate answers" and this vital process "has to grow at an ever greater speed to follow life in order to resolve the many problems for the benefit and in the interests of all men" (3). It is truth that remote sensing activities are today connected to "terrestrial" computer and Internet technologies, specially in the area of imagery dissemination. However, the imagery disseminated remains output of remote sensing, without which it could not exist. Therefore, the first responsible for the imagery is the State of the remote sensing operator, not the State of the computer or Internet one.

AN INACURATE RESOLUTION

The Principles Relating to Remote Sensing of the Earth from Outer Space is an annex to the United Nations General Assembly Resolution 41/65, adopted unanimously on December 9, 1986. (4) This document is today the only specific international reference in existence on the regulation of remote sensing (5).

The Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS), discussed proposals on this issue more than 15 years ago and barely reached the modest terms of Resolution 41/65, where compromised solutions abound, subject to conflicting interpretations.

As highlighted by Professor Maureen Williams, the lengthy negotiations leading to the adoption of these Principles clearly reflect two main confrontations, as follows:

a) Between traditional principles of International Law, namely the freedom of exploration and use of outer space declared in Article I of the 1967 Outer Space Treaty (6) and the principle of sovereignty which, when applied to this field, may be seen as the principle of non-intervention in the internal affairs of States or principle of exclusive jurisdiction enshrined in Article 2.7 of the United Nations Charter, and

b) Between freedom of information (as applied to the distribution of the collected data) and the prior consent of the sensed State based on the principle of State sovereignty over natural resources, which has been repeatedly proclaimed by United Nations General Assembly Resolutions (7).

In the end, Resolution 41/65 formally incorporated both principles, without specifying in which cases and how each of them should be applied.

Symptomatically, Carl Q. Christol noted in 1988: "The Principles were the product of consensus, but there were numerous compromises along the way, This suggests that the consensus was, if not unsubstantial, at least so thin that some members of COPUOS have viewed the consensus as conditional and subject to review. It cannot be said that the agreement was a temporary one, but the commentary reviewed (...) suggests a grudging acceptance of some of the provisions, with the view on the part of developing countries in particular, that there is a need to reinforce the Principles beneficial to them in order to buttress existing assurances and commitments." (8)

As result, we have today an international satellite remote sensing order which is inacurrate and unbalanced in terms of benefits.

UNDEREGULATED ACTIVITIES

The 1986 Principles are surpassed by the skyrocketing technological advances in the sector that has occurred within these last 17 years.

It does not address the questions raised today by multiple satellite remote sensing programmes. A large part of them are operated by private companies with strictly commercial objectives. High resolution images (one meter and less) have been used exclusively by the Armed Forces until a short time ago , and are presently being sold worldwide.

Sridhara Murthi pointed out what he called the most important changes in the policy and technological environment affecting remote sensing activities around the globe, since 1986:

"- The emergence of commercial remote sensing systems in the late 1990's providing high-resolution remote sensing data globally as a sequel to several policy measures in the US.

- The spread of the Internet which facilitated global access to digital remote sensing data, triggering a new era of transparency and making some aspects of regulations on the flow of remote sensing data and information obsolete." (9)

The UNGA Resolution 41/65 says nothing about the role of the private sector in carrying out the Principles. It closed in on a certain governmental form of a certain civil segment of remote sensing from outer space as practiced till 1986, granting universal allowance for what was deemed generally permissible in that narrow band of remote sensing by the leading, space policy-setting space powers, as Wulf von Kries wrote. (10)

While remote sensing practices have rapidly evolved, and keep evolving, rule making has stopped. This, undoubtedly, should be a matter of great concern.

LEGAL VACUUM

Currently remote sensing by satellite is being operated by a number of States, *inter alia*, the USA, Russia, France, India, Chine, Israel, Japan, Brazil and Argentina. This number is expected to increase in the near future. At the same time, more and more commercial entities are capable of delivering complete remote sensing systems. More systems can provide more imagery to more users. Access to data collection from space is being benefited from technological software, cheaper computing power, and imagery data bases linked to the Internet, thus making on-line data access possible and opening an era of web-based Earth observation data availability. (11)

All this new reality is strange to the 1986 Principles, which do not cover the large spectrum of present remote sensing activities by satellite. Commercial remote sensing companies operate in a global marketplace devoid of international legal regulation. There are no limits.

Hence the timely proposal made by Shridhara Murthi: "The UN Principles could be further reviewed taking into account the new challenges of this era [of transparency] and with an aim to evolve legal principles for orderly development of commerce in this field, respecting the right of government to certain information from commercial entities when their territories are imaged." (12)

OUT OF THE TIME

Today, as the use of remote sensing satellite data for both civilian and military purposes is growing, it is also becoming increasingly difficult to distinguish between military and civilian technologies, including remote sensing ones. In this way, the dual-use technology notion is losing practical usefulness, as it is now depending more on the concrete employment of a specific technology than on its very nature as a typical space activity. Consequently, a clear dividing line between civilian and military remote sensing is becoming more and more difficult to draw. (13)

The 1986 Principles, which confine themselves to certain civilian, non-military and non-commercial applications, are inadequate to regulate the complex framework of 2003 remote sensing activities by satellite.

Meanwhile, the strictly military remote sensing activities are carried out without any specific international regulation. Is it sound?

TREATS TO PRIVACY

Sridhara Murthi observed: "The ready availability of one-meter resolution images in the market place and the promise of new

better spectral characteristics are leading to an era of growing transparency. Apart from contributing to several beneficial uses, these images of one-meter resolution quality can also detect vehicles and identify aircraft. Tanks can be distinguished from trucks and road and bridge conditions can be seen."

According to this author, "governments are concerned about the widespread dissemination of such data in the public domain", as "present policies of dissemination and access make it extremely difficult for satellite operators to specify who the ultimate users of the data are and for what purpose they will use it". Moreover, they can be used "as support for terrorism, espionage by industrial competitors, intelligence on disadvantaged regions/populations and so on".

There are real threats to the rights of privacy due to possibilities of industrial espionage and the potential use of imagery by anti-social groups. Commercial corporations from one country could gather information on exploration of natural resources in another country without the knowledge of its government and could possibly gain strategic advantages in negotiations and in world market. (14)

The United States Department of Agriculture, for instance, used to take strategic world market decisions on the basis of about two thousand satellite images made each year on the most important plantations from 120 countries. And the Department of Citrus Fruits of the State of Florida has a special satellite remote sensing service monitoring the competitor's orange plantations in other countries, including Brazil. The Brazilian Association of Orange Export Companies considered this as a case of "industrial espionage". (15)

This is an open question, not yet handled by the international community of States, but which is surely worth a serious discussion.

FREEDOM WITHOUT COMPENSATION

In the absence of more precise international legislation on the matter, Kries contends that "three international remote sensing regimes have to be distinguished – proposal, "military remote sensing enjoys the unrestrained freedom of overflight, data collection and use as implicitly granted by the Outer Space Treaty"; the UNGA Resolution 41/65 is restricted "to common utility ends" ("Remote sensing for the common good, national or international, rests on the utilitarian and solidary nature of the UN Principles Resolution."); and "commercial observation from space is developing its own rules, steadily pushing back state intervention and control".

According to Kries "the three remote sensing regimes are evolving separately and differently". He foresees that "where military observation is concerned, sensing states will continue to be opposed to any intelligence gathering rules" and that "even global access to dual-use satellite imagery will, in all probability, not give rise to intergovernmental rule making."

He also foresees that "Commercial Earth observation will essentially be governed by internationally dimensioned private law, mainly relating to copyright and patent protection. Commercial remote sensing is becoming part of the global information business. More and more intimately linked to the web, commercial satellite imagery will fully evolve to become a freely traded commodity, individually owned and universally sold."

Kries's conclusion is that "There never was, and there never will be, one uniform remote sensing order covering Earth observation in all its aspects." (16)

This view is barely acceptable.

In the first place, there are no remote sensing regimes evolving separately and differently. What we have is some remote sensing activities (above all, military and commercial) not yet submitted to international regulation.

Secondly, in most legal systems there is a strong hierarchy based on the supremacy of public interests over any other regulation, thus giving public law, whether international or domestic, the highest place.

Thirdly, the Outer Space Treaty not only grants freedom of exploration and use of outer space (including freedom of overflight, data collection and use), but also – and in the first place – stipulates that the exploration and use of outer space

be carried out for the benefit and in the interests of all countries". Thus, it follows that military remote sensing does not enjoy unrestrained freedom.

Fourthly, there is no any indication limiting the objectives and the scope of the UNGA Resolution 41/65 "to common utility ends", as it clearly affirms that the Copuos Legal Subcommittee was called "for a detailed consideration of the legal implications of remote sensing of the Earth from space, with the aim of formulating draft principles relating to remote sensing".

Fifthly, commercial remote sensing entities are not legally able to develop their own rules. To restrict state intervention and control is simply an illicit action. Regulating space activities is an exclusive competence of States. Not incidentally, the Outer Space Treaty establishes that only States bear international responsibility "for national activities in outer space (...), whether such activities are carried out by governmental agencies or by non-governmental entities, and for assuring that national activities are carried out in conformity with the provisions set forth in the present Treaty" (Article VI).

AGREEMENT IS MUCH BETTER

The UNGA Resolution 41/65, as all documents of the kind, is of an advisory character, and does not impose any obligations on the countries nor does it meet the need for a broad, secure and effective regulation of a strategic space activity for development by all countries. Remote sensing by satellites – which is an indispensable technology nowadays – must no doubt be regulated by a broad, compulsory and universally acknowledged instrument. In cases such as this, nothing can replace an international convention, negotiated and approved under the auspices of the United Nations, and open to the participation of all countries.

Carl Q. Christol suggested in 1988: "Perhaps the best long-term approach is to retain remote sensing on the agenda of Copuos so that efforts can be made to transmit the terms of the Principles into a treaty." In his view, "it is much better to have a formal international agreement, even interpretative considerations, than the more vague and uncertain constraints of customary international law." (17)

Joanne I. Gabrynowicz suggested that "Copuos ought to be encouraged to fulfill the intent of the Principles' drafters by transmitting their terms into a treaty". For this writer "the Principles must be defined to preserve and clarify these public good norms ["mutual cooperation of nations, equity, equality, and the use of outer space for the benefit and in the interests of all countries"] as well as to help define the rights, interests and obligations of public, private and hybrid entities". (18)

REMOTE SENSING IS MUCH MORE

Principle I limits "remote sensing" activities to the intention of "improving natural resources management, land use and the protection of the environment." The UNGA Resolution 41/65 does not include the use of remote sensing in observation, reconnaissance and monitoring activities of productive areas (agricultural, cattle, fishing, and industrial), transportation infrastructure (highways, railways, ports, airports) and services (meteorological, tourism), nor the verification of compliance with international treaties and activities strictly connected to military purposes which are growing by the day.

None of these activities, of clear economic and strategic relevance, have specific international regulations. This produces a legal *vacuum*, likely to cause serious harm to all countries, especially developing countries.

INTERNATIONAL PUBLIC SERVICE

Principle II states that "remote sensing activities shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic, social or scientific and technological development, and taking into particular consideration the needs of the developing countries."

Principle III, in turn, reads that "remote sensing activities shall be conducted in accordance with international law, including the Charter of the United Nations, the

Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, which, in particular, provides that the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic and scientific development, and stipulates the principle of freedom of exploration and use of outer space on the basis of equality."

These indications extol the relevance of remote sensing activities for all countries. Thus, such activities are also "the province of all mankind," and should have a legal system worthy of such exalted consideration.

Therefore, it is necessary to regulate satellite remote sensing activities with the precautions required by an international public service that is essential to the global community.

UNILATERAL POINT OF VIEW

Some developed countries hold that the UNGA Resolution 41/65 continues to play a positive role, since it supports two principles that they consider to be priorities:

I) Unrestricted remote sensing by satellite of any point on Earth, at any time; and

II) Unrestricted sale of sensory data, with the sensed State being conceded merely the access to the data over its territory "on a non-discriminatory basis and on reasonable cost terms."

Indeed the guarantee of unrestricted sensing of any point on Earth is, without doubt, important, but it is far from exhausting the array of questions generated by an activity that is so essential to all countries. It is also necessary to garantee the access of sensed State to the data concerning its territory.

Not by chance, Shaida Johnston and Joseph Cordes observed: "It is in the national interest and general public good to ensure that data are collected, archived and disseminated on an open and non-discriminatory basis. But more and more, the pressure to privatize is drawing decision makers away from this public good argument towards that of commercial market viability." (19)

CONVENTION INSTEAD OF CUSTOM

It is not sufficient to admit, as international customs, the freedom of sensing the entire world and the freedom of selling the products of such sensing, which, in fact, were never disputed by any country since Resolution 41/65 was adopted.

These customs were recognized by the Workshop on Space Law in the Twenty-first Century, organized by the International Institute of Space Law and the UN Office for Outer Space Affairs on the occasion of the III UN Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III, July 1999, Vienna).

However, this recognition did not prevent the Workshop from reaching the following enlightening conclusion, which provides a good idea of the size of the problem:

"The expanding growth in areas such as commercial remote sensing services, commercial complexity, the effects on international cooperation and scientific and industrial applications of services necessitates consideration of appropriate regulations. National restrictions on access to data are emerging." (20)

Joanne Irene Gabrynowicz, in a discussion paper submitted to the-above mentioned workshop held during UNISPACE III, observed that "the openness principle upon which most of remote sensing law is based is being weakened" and that "the restrictions are being implemented for commercial and military reasons." (21)

The commercial interest should be respected and even stimulated, but cannot supersede public interest. It should, to the contrary, adjust itself to the public function of remote sensing services.

A basic international legal system becomes necessary, in this case, in order to prevent national legislation from being imposed, in practice, on the international community, in an inevitable and unappealing form of extraterritoriality.

VAGUENESS

According to Principle XII, "as soon as the primary data and the processed data

jurisdiction are produced, the sensed State shall have access to them on a non-discriminatory basis and on reasonable cost terms; the sensed State shall also have access to the available analysed information concerning the territory under its jurisdiction in the possession of any State participating in remote sensing activities on the same basis and terms, taking particularly into account the needs and the interests of the developing countries."

The expression "on a non-discriminatory basis and on reasonable cost terms" (Principle XII) is too vague and flexible. This does not formulate a secure and effective rule, nor does it guarantee the sensed States a minimum of essential predictability in the significant commercial transactions of our time and, above all, in light of the unfailingly rigorous and non-negotiable national security policies of the great world powers.

The regularity and predictability of remote sensing services by satellite must be guaranteed.

Winter Gerd rightly noted:

"There is no unlimited access to data concerning the sensed State. There is only access on a non-discriminatory basis. It follows that the observing State may retain data if it does this equally in relation to any other State. This possibility if of utmost importance with regard to data on mineral and other exploitable resources. In addition, free access is not much worth if the cost is high. Therefore, rules on costs are of crucial importance. Again, Principle XII is disappointing in this respect. "Reasonable cost" can well go beyond the cost of handling request (which is the formula of the USA Landsat Acts) and include an element of sharing the cost of obtaining and processing of the data. At this point it becomes clear postulating a customary principle of free remote sensing and of data ownership is very one-sided if one does not add, as a twin principle, that access of the sensed State must be provided unlimited and at incremental cost. Otherwise it would have been a bad trade-off for the sensed States to have, by agreeing to the UN Resolution, implicitly given up the strict sovereignty position on the one side and, on the other, to have gotten only half way to a full concept

TO PREVENT ACCESS RESTRICTIONS

"Appropriate regulations" are needed, guaranteeing not only the right of commerce but also the right to access. Precisely in view of this need, the above-mentioned Workshop recommended that "the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space initiate the drafting of a treaty covering remote sensing from outer space on the basis of the Principles Relating to Remote Sensing of the Earth from Outer Space (...), taking into particular account the expanding growth in commercial remote sensing services and preserving the principal of non-discriminatory access to data." (23)

Thus, a convention would be necessary for two principal reasons: the commercialization of remote sensing services; and the preservation of access to the data without discrimination.

These reasons become more powerful and convincing every day.

When Resolution 41/65 was passed, the commercialization of remote sensing services practically did not exist. It emerged afterwards, and underwent an accelerated process in the 1990's, with broad impact upon the entire world.

A highly complex business, it affects international cooperation, scientific collaboration and industrial development.

Thus, the regulation of such activities cannot be restricted to the freedom to sell data. This basic freedom must be detailed, so that it does not become an abuse of rights and a privilege to the detriment of legitimate interests of other countries and the international community as a whole.

At the same time, the principle of preserving access to the data without discrimination must be further regulated, moreover because, as was emphasized in the Unispace II Workshop, "national restrictions on access to data are emerging."

One may ask what type of discrimination are we talking about? This concept must be defined as concretely as possible, in order to be aware of the actual obstacles existing and to prevent anything that could hinder unrestricted access to data.

TO FIX RIGHTS AND DUTIES

According to Principle IV, "remote sensing activities (...) shall not be conducted in a manner detrimental to the legitimate rights and interests of the sensed State".

Such principle, for Bin Cheng, "sounds like an application of the principle of good neighbourliness," that is, merely as sign of good will with regard to countries subject to sensing. (24)

The demonstration of good will, it seems, appeared to be necessary, since as Bin Cheng himself observed, "the sensed State has been given no special treatment at all, except perhaps the very vague safeguard found in Principle IV." But even this safeguard, adds the jurist, "is subject to auto-interpretation."

"In sum," concludes Bin Cheng, "those who are apprehensive that data gathered from outer space by others might work to their detriment or that the data gathered from outer space might be misused by either the sensing State or by third parties to their detriment can probably find only scant comfort from the United Nations Principles." (25)

This actually concerns protection of something not yet duly defined – the rights and interests of sensed States. Fundamental concepts must be defined in a clear and detailed manner, filling in the significant gaps that exist today.

A convention on remote sensing would therefore be necessary for outlining, first of all, the rights and duties of sensed States, as well as the rights and duties of States carrying out remote sensing activities. Neither has been clearly outlined.

The international convention hereby suggested should further contain basic norms for the defence of intellectual property and patents, especially with regard to analyzed satellite sensed data, in order to protect legitimate rights, without, however, discontinuing or hindering access to data for countries that are in need of such information, especially sensed States. In this work, it would perhaps be useful to take into account the World Trade Organization (WTO) legal instruments.

Principle I (e) indicates that "the term 'remote sensing activities' means the operation of remote sensing space systems, primary data collection and storage stations, and activities in processing, interpreting and disseminating the processed data." This is a restricted definition.

It is imperative to define with precision the concept of "remote sensing activities" in order to ease verification of possible violations of the rights and interests of sensed States and, if so, for the perpetrators thereof to be held responsible.

Responsibilities must be established for the use of remote sensing data, particularly/ concerning sensed States.

In fact, the use of the analyzed data is likely to cause more harm to sensed States than the operations involving collection, storage, processing and distribution of the processed data. It is precisely such use that is not included in the concept currently referred to of "remote sensing activities."

FOR BROAD RESPONSIBILITY

Principle XIV confirms this situation when it attributes international responsibility for remote sensing activities only to "States operating remote sensing satellites." As Nandasiri Jasentuliyana stressed, "there was no agreed interpretation of what it means to bear international responsibility for remote sensing activities, with developing countries arguing for rather broad responsibility and liability, and western countries arguing for narrow responsibility, not going beyond existing international law." (26)

This clash of interpretations, vis-à-vis a fundamental issue such as international responsibility, is another clear illustration of the need to elaborate a better and more effective international regulation for remote sensing satellite activities.

Moreover, Principle XIV, strangely enough, as noted by Bin Cheng, commits the imprudent error of limiting the application of Article 6 of the Outer Space Treaty of 1967, which establishes international responsibility for States for any and all national space activities – public and private to the "operations of remote

Thus, by means of Resolution 41/65, responsibility is established only for operations of remote sensing satellites and not for the use of the data obtained through such operations. Who is liable, then, for the use of remote sensing data that may cause harm to the sensed States? The question does not , so far, have a specific solution. And this is an issue which should not be delayed.

FOR BALANCE OF INTERESTS

Principle IV acknowledges both the freedom of remote sensing from space as well as the right and the interests of sensed States, without indicating how this conciliation may, in fact, be attained.

States carrying out remote sensing activities always stress the primacy of the freedom to carry out these activities. Sensed States seek to defend their rights and interests. Each group of countries has its own interpretation of the text.

Resolution 41/65, as drafted, allows for both interpretations. What actually prevails, in the end, is the view of the stronger side, namely the one which has the technological domain over remote sensing activities.

The Principles "often contain provisions which, according to their phraseology, can be interpreted in different ways," as stated in 1989 by Professor H.L. van Traa-Engelman, from the University of Utrecht, in the Netherlands. Therefore, in this writer's view, "it would be prudent to consider the established 'principle' as a universal code of conduct and as such a stage of development in a evolutionary process of international law-making." (27)

Balance, coherence, harmony and effectiveness should be given to the principles and rules governing remote sensing by satellite activities, in order to prevent contradictory interpretations.

FOR A JUST AND EQUITABLE LAW

According to Principle V, States carrying out remote sensing activities "shall promote international cooperation" in these activities and "make available to other States opportunities for participation therein," which includes sensed States.

However, the principle establishes, at the same time, that "such participation shall be based in each case on equitable and mutually acceptable terms."

If the conditions for participation of the sensed States are to be "mutually acceptable," this could mean that cooperation will always be subject to the will of the countries carrying out remote sensing activities. Thus, the application of the principle that establishes the obligation of the State carrying out remote sensing activities to cooperate with the sensed State would depend upon the acceptance of this obligation by the sensing State. In this way, the very rule that creates the duty is, at the same time, contributing in practice to its non-compliance.

Nico Krisch shrewdly pointed out that "every attempt by a state to weaken an existing rule or prevent a more stringent rule from developing can be regarded as a defense of freedom to act unilaterally." (28)

A just and equitable convention must ensure equilibrium between the technological and economical power of States carrying out remote sensing activities and the legitimate rights and interests of sensed States, which are the weaker party in this unbalanced relationship.

Gerson Fonseca, Jr. reminds us that "legitimate procudures offer the only way to ward off the crystallization of the principle of might makes right and to start building a solid basis for international relations in the twenty-first century". (29)

To discuss, elaborate and approuve such a convention is an almost impossible task. However, there does not seem to be any other method of attaining a higher level of justice and equality, which today does not exist yet. (30)

"I dont't fell optimistic, but I dont't think one should give in. One thing is to foresee, another one is to make ones's own choice", as I learned from the Italian philosopher Norberto Bobbio. (31)

FOR A REAL ADVANCEMENT

Conclusions and recommendations:

a) Satellite remote sensing activities must be regulated by a special and comprehensive

Subcommittee of Copuos on the basis of the Principles approved by the UNGA Resolution 41/65;

b) This convention should clarify, detail and develop the existing Principles and elaborate new ones, if necessary, in order to create a contemporary and effective legal instrument, ordering the international use of the most advanced remote sensing technology for the benefit of all nations and, in this way, harmonizing the legitimate rights and interests of sensing and sensed States.

c) The convention should stimulate an effective and sound cooperation among all countries and between public and commercial interests in remote sensing activities, recognizing the main function of these activities as a public service. "The international community prospers when law and power are in partnership, not when they are in conflict", as Sir Arthur Watts pointed out. (32)

d) The freedom of remote sensing must be preserved and the right of access by sensed States to data concerning its territory and natural resources must be guaranteed in concrete terms. It means – *inter alia* – to define the expression "access to data on a non-discriminatory basis and on reasonable costs".

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