

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Legal Implications of Evolving Remote Sensing Technologies (3)

Author: Prof. Maria Elena De Maestri
Università degli Studi di Genova, Italy

INFLUENCES AND RELAPSES OF THE GLOBAL COMMONS' DOCTRINE ON REMOTE SENSING
REGULATION: PIPE DREAM OR REALITY?

Abstract

Among different and diversified tasks, law has the hard duty to maintain a balance between the interest of a single subject, being it an individual or a State, and the interest of a community, being a community of people or the International Community of States, in order to assess a legal order. In accomplishing this task, in centuries law has been influenced by the economic development of States as well as by their social and technical evolution, features that characterised policies and laws of every field of men's activity. Therefore, sometimes laws allow an activity because of the need to protect individual freedom to act or to allow national progress, and other times laws forbid a particular activity due to its riskiness or to a superior interest to be pursued. In both cases, however, the legal framework tries to keep in consideration all the interests involved and to assess a proper balance between them. The picture is partially eclipsed by the phenomena that characterised the international community in the last Fifty years. Firstly, the evolution of international cooperation gave birth to inter-governmental organizations capable to overcome the pure nationalistic approach based on national sovereignty; therefore, the will of the organization herself is the outcome of a first compromise between national views and policies. In second instance, international regulation is recently more aware of achieving benefits for humanity rather than for States, especially when natural resources are concerned. It is worth mentioning the evolution of environmental law, which is centred on the concept of sustainable development. Space law, and space policies, are the perfect arena to observe the evolution of international law, especially the clash between States' sovereignty and human kind benefit's pursuit. Precisely, remote sensing regulation represents the perfect object of investigation concerning the relevance, the content and the relapses of the "benefit of mankind" clause contained in the UN Treaties. Being remote sensing not directly regulated by international binding instruments, does the global commons doctrine influence the acquisition and movement of space-based data? Do data owner (States, international organisations, private operators) have any obligation in sharing data acquired through space-based technology? The presentation will address both questions through the exegesis of the theory of the global commons and its pre-juridical qualification with reference to outer space activities (remote sensing) in light of existing national regimes applicable to the spread of space-based data.