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

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THE 1986 UNITED NATIONS PRINCIPLES ON REMOTE SENSING DEALING WITH THE DUAL-USE NATURE OF SPACE IMAGERY

Abstract

The United Nations principles on remote sensing belong to the category of "declarations of principles" of the General Assembly which means in legal terms that they are recommendations. Nevertheless, these principles are fundamental tools in the international legislative process. The significant element in the assessment of the legal value of the 1986 Principles derives from the States practice. The paper examines the 1986 Principles in light of the dual-use nature of remote sensing technology and the 'democratisation' of the use of Earth observation satellite-based data. The fact is that the scope of the Principles, as outlined in Principle I, refers mainly to natural resources management and environmental aspects. This issue is of primary importance as remote sensing satellites are used in many civil and military applications today. In this sense, the use of data for military purposes do not fall within the scope of the Principles and the legal issues related to these applications may not be adequately treated in the current regime. In fact, some legal issues arise from the dual use remote sensing programs, notably with regard to access to and processing of data which are generated by the private sector for governmental and military uses. Indeed, it is now possible to extract military-level information from commercial and civil Earth observation programmes. Hence, the paper underscores the "pitfall" that represents the dual-use nature of Earth observation systems for the actual UN principles. Until today, the principles have continued to show their value and usefulness. However, they do not have been updated, in particular as regards the technological development of space systems and the evolution of data collection. The provisions appear increasingly unsuitable for regulating the different uses of civil and military data. The paper aims to evaluate the possible legal adaptation of the 1986 Principles with dual-use nature of remote sensing systems, especially by taking into account the access to data without discrimination but nevertheless limited for national security reasons for example. To illustrate this point, the paper analyzes the data distribution policy of dual-use programs from a national perspective with Pléaides, Cosmo-Skymed or TerraSAR-X as well as regional level with Copernicus.