



Civil Security: Tipping the Scales in favour of greater control over space data in the information era?

Prof. Dr. Lesley Jane Smith, LL.M.
Weber-Steinhaus & Smith / Leuphana Universität/
Riga Graduate School of Law

with thanks to DLR

Outline

- Adequacy of current international and national RS obligations in face of security demands?
 - Call for change? Need for legislative control?
- Drivers for greater regulation of commercial Space Data?
 - = Legal certainty for civil security in society
 - = National prerogatives questionable for commercial RS operations
- Level and type of governance for an integrated space data model?
- Perspectives and prognosis

External and internal perspectives on spatial data and security

I. Space security 'externalities'

- Stakeholders' interests and relations
 - State-state + states cooperating with commercial space capabilities in international domain

II. Space security in 'internalised' sense

- Civilian benefit from RS = Communities/ Individuals
- Administrative benefits
- = Land use, pollution, law enforcement, provision of services, CAP monitoring, etc.

Greater RS security through integrated RS data structure & cohesion ?

- Current international and national regulation via space data laws or policies too limited
- Stakeholders ultimately competing market forces
- Combining creativity with RS capabilities
- Q's of ownership, access (distribution/ licensing) and use of centrally funded data
- Reduce duplication of effort / economic issues of ppt's/ public & common good
- Interoperability of systems possible e.g. GSDI

Do Paradigm Changes call for changes to law?
Mixed State /Commercial Interests in RS
capabilities

- Related issues of ppp governance
 - *Constitutionalism, accountability, transparency, justiciability*
- Legitimacy of *flowdown* of national sovereign prerogative (*qua* immunities) to private sector
- Imposing imperatives of international law on private parties
- States can undertake commercial activities (*acta iuri gestionis*), but does opp. hold true?
- Governance & accountability
 - by statute or by contract?

Prof. Dr. Ingrid Isenhardt, LL.M.
Riga Graduate School of Law / Leuphana Universität

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Privatisation of War a challenge to all forms
of regulation

- Security considerations no longer state 'prerogative'
- Use and misuse of space data
- New equation for risk allocation?
- *But* national security infrastructure still required
- Contours of State to business collaboration to be mapped in context
- Many governments unprepared
- = No provision for regulating space data

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Riga Graduate School of Law / Leuphana Universität

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Drivers for Space Data Regulation

- Aligning external and internalised drivers within legislative space policy
 - External: state to state or international state responsibility & liability for actions of private stakeholders
 - Internal ensuring authenticity & integrity; possibly immunity or guarantee before domestic courts
- Further considerations
 - Theoretical & economic consistency
 - Ownership: Government funded operations
 - Access: empowering communities

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External or International Parameters



- Five UN Treaties Source of International Space Law
 - OST, LIAB, REG, ARRA, Moon
- + 1986 UN Remote Sensing Principles
 - Inapplicability of international space law treaties to private sector
- One notable exception
 - **Art. VI OST – monitoring duties incumbent on states over private sector**
- Key issues:
 - State responsibility, state liability for private sector
 - Adherence to 1986 RSP
 - ~~Despite their controversial, non-binding nature~~

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Internal Parameters

- Transition from raw to processed data
- Control over distribution = private entities?
- In whose interest ?
- Economic theory of public good /public common
- Ensuring needs of civil society
 - FOIA v information monopolies
- Allocating copyright /database protection
- Public information access
 - Data protection, privacy impact of processed data
- Ensuring consistent approach to access and use

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Riga Graduate School of Law / Leuphana Universität

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External Regulatory Paradox: Downfall of 1986 RPS

- Sensing, not sensed, state regulates access and distribution of data
- Pr. XII: rights of sensed state to access data over its territory limited
- Consent of sensed state not required, but access on non-discrim. basis and at reasonable cost
- NB: Rights of sensed states may be limited by national security laws of sensing states = against Principles!

Prof. Dr. Lesley Jane Smith, LL.M.
Riga Graduate School of Law / Leuphana Universität

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Internal Paradox: Few National Space statutes, few on RS

- Greatest regulatory incentive to RS industry
- Decision in principal on state liability for private sector at int. & national level
- Scope and sphere of statute
 - All or only some space activities?
 - Personal and territorial jurisdiction: offside?
 - Definition of activities to be licensed
- Ownership and Liability for data provision?
- Analogies with ISP liability/ civil + criminal
- Interest in systematisation for third millenium

Blueprint for national RS statute

- Separating launching from other activities (e.g. RS)
 - USA: Commercial Remote Sensing Policy Act 2003
 - Canada: Commercial Remote Sensing Act 2005
 - France: 2008, all space activities
 - UK: 1986 ditto
- Streamlined RS: German SatDSiG 2007
- Remaining areas:
 - Shutter control; compensation for private operators; data access policy; priority access for government

Quis custodet? National v. EU regulatory competence in space

- Competence overlap limited, but force of integration
 - Supranational v. intergovernmental power
 - Transport, environment, energy v CFSP
- Recent important EU Regulations and Directives of relevance for space
 - 1. Reg. 1321/2004 and Reg. 1942/2006 on the establishment of structures for the management of the European Satellite Radio-navigation programmes (**Galileo/GNSS**)
 - 2. Dir. 2003/4/EG **access to environmental information**
 - 3. Dir 2003/98 **re-use of public information**
 - 4. **INSPIRE Dir.** 2007/2/ on creation of GSI infrastructure

EU /National areas requiring 're-construction'

- Potential for true legal conflict at international level if damage arises through Galileo GNSS
 - Liability regime for Galileo (Art. 17 Reg. 1321/2004; cf. Arts. 288 (1), 288 (2) EC)
 - Forum shopping – tort litigation
 - Competition between space jurisdictions – outflagging – “Delaware-Liberia”
 - Effective control by states *over* RS (Art VI)

External Outlook

- Resolve issue of Remote Sensing Principles through international convention
 - Codes of conduct as initial move
 - Concepts for data sharing and cooperation
- Development of interoperable RS database model
 - “mutual recognition of standards”
 - Archive
 - Authorship, provenance and access
- Development of model national space statute via recommendations UNCOPOUS
- UN Regional Cartography Conference
- Cooperation at EU level with/out Treaty of Lisbon

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Riga Graduate School of Law / Leuphana Universität

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Internal Outlook

- Clarifying liability of private sector
- Data integrity and liability for precision etc
- Liability disclaimers never waterproof
 - Reliance liability in law; investment, info get-up
 - As relate to GI systems and space data
- Unifying regulation on GNSS liability – ICAO and Eurocontrol already working on this for air traffic
- Cf. UNIDROIT Initiative – draft liability regulation
- + Data protection: knock-on effect of high resolution technology for downstream products
 - EU Data Protection Agency to investigate space data sets as lead to personal profiles – property /names

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Riga Graduate School of Law / Leuphana Universität

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Prognosis

- External: Int. code of conduct for satellite based operations / space data = space activities/ objects/ state of art/ development risk/ standards/ failure to de-orbit/ debris etc/ fault & absolute liability/
- Internal: Data protection & privacy : important for downstream products
 - Privacy an ongoing issue; data protection INSPIRE
 - EU-Google data storage complaint ongoing (Feb 2009)
- EU (over)obliging response to USA (PNR)
- How to avoid 'offside' Google syndrome?
 - International dialogue / soft law / industry concept
- Prototype for cooperation: mutual transatlantic automobile licensing for US/ EU (28 countries)
 - Model for space data management and security?

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WEBER-STEINHAUS & SMITH
RECHTSANWÄLTE · NOTAR · SOLICITORS

Baumwollbörse
Wachtstrasse 17 – 24
28195 Bremen
Germany
Tel. +49 (0) 421 – 63 93 60
Fax +49 (0) 421 – 63 93 622
www.weber-steinhaus.com
info@weber-steinhaus.com