

REFLECTIONS ON TECHNOLOGY, GLOBALISATION AND INTERNATIONAL SPACE LAW

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ABSTRACT

When questions are stated clearly it is easier to define subsequent answers and guidelines. For these reason our starting point involves more questions than statements.

Which are the specific issues in Space Technology that should be taken into account from the legal point of view? Should we work by analogy with other specific branches of law despite their own significant differences?

Can the present relationship between Domestic and International Law be taken as a general rule, or should it be specifically stated for every item within the Space Law context?

What is the role of globalization in the legal relationships originated by the achievements of our present technology? The possibilities of estimating the means of developing regions to participate or conduct an investigation , and not being mere passive subjects in the field , is in itself a challenge.

If the scope of the new technologies is almost unlimited for human relationships - so far made up of National States and their domestic legislation - should we include ethical regulations in national and international rules? In the affirmative, which will be their force and which ruling institutions would enforce them, and with which authority and in what way could they coexist with national or "regional" sovereignties?

Every tool has its own double sharpened edge. In this field it should ensure the emerging benefits for the harmonious development of humanity .

INTRODUCTION

The development of law, today, implies a link with modern technology, a source of permanent challenge for the promotion of wide social benefits, sustainable in themselves, and that are not destructive for the environment. Therefore, a

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systemic, interdisciplinary approach should be taken. Our task is, in the first place, to reach international consensus on basic matters in each area and define the main guidelines for the solution of conflicts arising from globalisation, advanced technologies and the informatic revolution. This task is inconceivable if the bodies in charge of international cooperation and the supranational bodies for the settlement of disputes are not strengthened.

In the same way the challenge of facing the legal disciplines is unavoidable, the challenge faced by the scientific community is significant, as it must overcome the peculiarities linked to scientific specialisation to enable an overall systemic approach. Disciplinary contribution leads to the integral study of the subject. Possibly, this should be undertaken with a view to reaching "wisdom", a value often forgotten when it comes to giving problems a technical definition.

Today, within the globalisation framework¹, that wisdom could act as engine, triggering the benefits brought about by scientific progress resulting from space technology, such as information which, as the moving spirit of this process is, no doubt, one of the keys to cooperation, provided it is appropriate, precise and true. This is when law is called upon to play a part, in its conducting and unifying role. The inter-disciplinary approach is a priority to reach realistic benefits.

It is our view that in the future, and following a rhythm of permanent evolution, we shall have an order of this kind. We live submerged in a crucial process of changes, where communications will be the all-embracing or globalising power that accelerates

everything². Space technology is not alien to this context, furthermore, it could be considered the system's own axis, because it is a novelty in the history of mankind, and because it is born with the new cultural and scientific parameters reached by our species.

This combination of law and technology for the benefit of mankind should influence the relationship between states or other subjects of the international community, which are developed both culturally and technically, and developing states, so as to reach the necessary leveling to enforce the results caused by our constant evolution. Information, as the spirit of globalisation, is the key to this process.

Within the international legal framework, and particularly in the field of space law, the idea of a permanent mutual international assistance has arisen, including the possibility of exchanging experience that has been gained as a result of inter-state cooperation, undoubtedly the necessary alternative for development in space.

It is vital to consider, in this context, the Declaration on International Cooperation for the Uses of Outer Space - to which reference is made later in this paper - as this instrument will ease the achievement of the objectives stated therein and, namely, the benefit of all mankind.

The conditions are favourable, the required tools are ready, the paths are defined, and the conjunction of all these elements is the necessary factor that will allow the objectives to materialise. In this case coordination will imply unification and cooperation. The law itself will then play that essential part: international law as the main guideline, conductor or organiser and domestic law as the pillar

¹ Held, David et al *op cit*.

² Frías, Pedro J. *op cit*

of the new legal and technological order. Both areas of law are liaised together in a conjunction that should give optimal results.

The whole pre-existing order has an unfathomable value. This reflects the important task that has been building lately, during these last years.

THE REGULATION OF TECHNOLOGY IN THE FRAMEWORK OF GLOBALISATION

It is possibly in the field of freedom of expression where the relationship between technology -mostly space technology- and law is most clearly set out. The unprecedented technological developments of the last years, together with the globalisation framework, putting aside all concepts of sovereignty, is a test for all previous legal orders, whether domestic or international³, in their adaptation to the constant changes.

The human forms of expression and communication are at the heart of the evolution of human society. Will law be able to clarify and govern these aspects? In fact, the 1967, Space Treaty, is a good example where a number of principles are laid down. After World War II information and communications have been affected by an unprecedented, speedy technological development. For instance, in the midst of the Cold War, direct radio broadcasting from a satellite to the domestic television sets began. This is when the legal order started to link with technology. However a development of these two sciences, as proposed in the Declaration for International Cooperation in the Use and Exploration of Outer Space, was not possible until the end of the political confrontation between the two political blocs in which the world

was divided. Once the East-West confrontation was over, the data revolution was a fact that consolidated in the Internet, allowing more than ever for the development of man. Internet, considered the "largest change in communication between human beings since the invention of the press"⁴ reflects the importance, today, of the right to communicate and to be informed, as it is now and since 1989 (fall of the Berlin Wall and preannouncement of the end of the USSR) that these new horizons were perceived.

It is important, however, to highlight the fact that the adequate platform of permanent evolution should not be the kind of suffocating information, whereby the recipients (i.e. the society of individuals) cannot discern or draw dimensions of the reliability of the amount of data received to then resume the building process, taking individuals as elements within an integrated global structure.

In this context we believe that the spirit of the Declaration is on the right path insofar as it is seen in a framework of mutual global cooperation, with permanently selected information and with the objective of a proper human and technological integration. As we have already mentioned, once again the law is present with a main role in, possibly, the most important setting in history.

In the present times, the building tendency of global legal order is moving towards this kind of regulation of information which is no doubt necessary for the technological development of undeveloped, or developing, areas. The tools are now available. In the first place, space technology, allowing for global

³ Cf. Agulla, Juan Carlos *op.cit*

⁴ Bill Clinton, comments in "Reno, Attorney General of the United States Vs. American Civil Liberties Union".

information (Internet) which is a key to human progress and which at this stage we consider globalised; the other optimising tool is the law. The challenge we face, as lawyers of an integrated humanity, is to develop the legal order and level it with the challenging constructive balance.

On the other hand, it is clear that technological achievements, in a global context, would operate in an almost compulsive manner in the world⁵, and this could lead to imbalances in the developing process which would somehow influence international relations, as was recently the case with spill-over.

Let us now attempt to picture the magnitude of technological development, permanent and present. The task is not easy as progress is overwhelming and constant.

This leads us to the idea that technologies that advance too rapidly might cause serious damage to international relations. Perhaps their unrelenting speed will cause disparities among national or supranational interests. We believe both factors are merged together, namely technological progress and the speed at which it moves, and this could cause concern in the context of globalisation. May we suggest that this phenomenon without frontiers, now that the Cold War is over, would start a process of extinction of the traditional subjects of international law, namely, the states, who were really the creators and formulators of the technological progress in question.

We believe, however, that the present conflict should be seen as a situation caused by a new phenomenon, or as a seed that grows within political-scientific settings. There seems to be a

growing universal ethical awareness which will enable the reaching of consensus for development and for the settlement of disputes arising from the globalisation process.

That consensus, together with the rule of law, could ease the way towards the reduction of present and future imbalances. Space technology is no doubt the most illustrative example in the case of areas beyond national jurisdiction. In this field, the task carried out by the international community in the legal context will be reinforced. This task is being carried out today with a global scope.

In the present times, and with the world no longer divided in two opposed political units, the rule of law should be applied globally, as is the case with the technological achievements which have an impact on mankind and should be available to all. An enlightening element in this tough challenge is the Declaration hereunder analysed.

IMPORTANCE OF THE 1996 DECLARATION ON

INTERNATIONAL COOPERATION

The principle of international cooperation is established in paragraph 1. It refers to joint action, by both developed and developing states, for the benefit and interests of all states, whatever their degree of economic, social, scientific or technical development, and this is of concern to all mankind. The reference to their degree of development, whatever stage it is in, will be the key for a genuine identification of the real benefits. The mention of concern to all mankind is also significant. We believe the 1996 Declaration will soon turn into applicable law. All individuals and states shall have the right to claim the benefit or benefits, and the individual will have the right to claim participation on behalf of, and

⁵ Cf. Agulla, Juan Carlos *op.cit*

representing, a collective interest supported by an overall social awareness, achieved through the global technological system in force.

This obligation on behalf of developed states to cooperate, promote and strengthen international cooperation, which means a real benefit for developing states, is precisely the aim of paragraph 3. What draws our attention is the fact that neither encouragement nor recommendations are mentioned. Instead, the reference is made to the "obligation to cooperate" towards the target in question.

It is timely to analyse, in this setting, the role of individual rights, such as intellectual property. This issue is dealt with in the Declaration in an interesting manner, as commented in the postgraduate courses of the University of Buenos Aires, dealing with the New Trends in International Law⁶. The named Declaration enshrines general principles of law; however it makes special mention of intellectual rights (paragraph 2) and does not refer to other principles, also significant in any modern legal order, such as the right of privacy within the context of an information society. This reflects the importance given by the present system to copyright and intellectual property rights in general.

Paragraph 5 refers to the objectives, namely to develop space technology, to promote the development of space activities of the interested states and of those states having a real possibility to do so. Of great importance is the aim of easing the exchange of knowledge and technology between states, on a mutually reasonable basis. Intellectual property is, no doubt, the

essence of these lines. It is the key for humanity to develop this new interdisciplinary dimension and to achieve fluency in the discoveries and their applications without causing a detriment to the authors/discoverers/inventors. Hereby is a new opportunity for creating new law.

CONCLUSIONS

A main pillar are the conclusions drawn at the 1997 Darmstadt Conference (in this case, on Space Debris), as they consolidate the principle of solidarity embodied in the 1996 Declaration on Cooperation. And as commented by Prof. Maureen Williams⁷, these encouraging coincidences between space sciences and the legal disciplines pave the way, in the field of space technology and its effective development, for the different interests to be balanced by the rule of law.

As outlined in Darmstadt, cooperation among states will become the true basis to solve any conflicts and for the effective settlement of disputes arising from such a complex development, and also for taking into consideration the need to share the applications of new technologies in a globalising scenario that cannot be ignored. This possibility is not far, and no doubt provides a safeguard for the equilibrium within which the rights of the individual will survive. It is a challenge to be taken up by the legal sciences at an international level.

The tools are available, the ideas rightly orientated, and a shared development is a possible reality which we must all help materialise.

⁶ Seminar "New tendencies in Contemporary International Law", directed by Prof. Maureen Williams with the assistance of Prof. Silvia Blumkin (1999-2000)

⁷ Williams, Silvia Maureen, "El Riesgo Ambiental y su Regulación", Abeledo-Perrot, Buenos Aires, 1998.

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