

SPACE-BASED REMOTE SENSING

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AP/WIDE WORLD

Francis Gary Powers (right) on trial in Moscow. Bissell knew that the U-2 came within range of Soviet antiaircraft missiles

IS 'SPYING' UNLAWFUL?

- No restrictions on State sovereignty may be presumed: *Lotus (France v Turkey) (Judgment)*, PCIJ Reports 1927 (ser A) No. 10, p. 18

- *Outer Space Treaty*

 - Art I – freedom of exploration and use

 - Art II – no national appropriation / borders

- *Charter of the United Nations*

 - Art 2(4) – no threat or use of force **x**

- ILC Draft Articles of State Responsibility

 - Internationally wrongful act **x**

- Interference in the sovereign affairs of another State?

 - Space-based ISR does not prevent State from doing what it has a sovereign right to do



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CAN SPACE-BASED ISR BE LAWFULLY PREVENTED?

- No general explicit restrictions in international law
 - Principles of Remote Sensing ✗
 - National Technical Means ✓ (right to spy)
- Art IX, OST: Consult before taking action that would cause harmful interference with activities of other States
- Differentiate between:
 - Reversible, non-permanent – dazzling
 - Physical damage of sensor rendering it non-functional – blinding
- Consequences of intentional blinding:
 - Liability
 - Countermeasures
 - Military response involving the use of force

Google Earth Accused of Aiding Mumbai Terror Attacks

Wednesday, December 10, 2008

THE  TIMES

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AP/GeoEye

A satellite view of Mumbai's central harbor. The Gateway to India monument is at center with the Taj Mahal hotel, with pool in back, just to the left.

The group appears to have used complex GPS systems to navigate their way to Mumbai by sea. They communicated by satellite phone, used mobile phones with several different SIM cards and may have monitored events as the siege unfolded via BlackBerry Web browsers.

Police in Mumbai have said the terrorists familiarized themselves with the streets of Mumbai's financial capital using satellite images, according to the sole gunman to be captured alive.

An Indian court has been called to ban Google Earth amid suggestions the online satellite-imaging service was used to help plan the terror attacks that killed more than 170 people in Mumbai last month.

A petition entered at the Mumbai High Court alleges that the Google Earth service "aids terrorists in plotting attacks."

Advocate Amit Karkhanis has urged the court to direct Google to blur images of sensitive areas in the country until the case is decided.

There are indications that the gunmen who stormed Mumbai on Nov. 26, and the people who trained them, were technically skilled.



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VARIOUS MEANS OF PROTECTING NATIONAL SECURITY

- Non-regulatory methods
 - 'Cheque book' shutter control (expensive, discriminatory)
 - Counter-surveillance (but limited by domestic laws, rules of engagement and UN Charter)
 - Turning off the power
 - Use of cyber capabilities (again limited by domestic laws, rules of engagement and UN Charter)

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NATIONAL SECURITY AND REGULATION OF COMMERCIAL REMOTE-SENSING

- Policy objectives of government regulation
 - Comply with international law?
 - Promote commercial industry for economic value
 - Encourage scientific research
 - Maintain sovereignty and enhance national security
 - Balance civil, commercial and national security interests

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INTERNAL POLICY

- Australia, India, Argentina, Brazil, China, ... (most countries, by default)
- Exclusive and secret – Israel
- Blurring
- Shutter control
- Delay before release
- Case-by-case

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LEGISLATIVE APPROACHES

- Classification of data
- Licensing arrangements in place to comply with OST.
 - Art VI, OST: authorisation and continuing supervision
 - Art VII, OST: State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty... by such object or its component parts.

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LICENSING

- United States, Canada, Japan, France (quasi), many "in progress"
- Example of licence conditions: US General Condition for Private Remote Sensing Space System Licenses
 - Depends on level of resolution
 - Conditions
 - Limited licence
 - Review, suspension, termination
 - Inspection of premises
 - Maintain operational control
 - Shutter control
 - Records
 - Ownership and control restrictions

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LICENSING

- Extra-territorial application?
 - Activities in your territory
 - Activities by your nationals
 - Activities with a substantial connection to your State
 - Catch-all – any means to exert jurisdiction and control
- Potential for legislation to conflict around the world
 - Therefore, proliferation of such legislation forces effective affiliation with a State

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CRITIQUE OF LICENSING

- Lacks transparency
- Power to enforce?
 - Legal authority over private sector entity?
 - Share-holding
 - Undermines objective of commercialisation
- What about foreign commercial RS operators?
- Non-discriminatory access?
 - Purpose
 - Abuse of discretion – non-justiciable
- Market protectionism
- Blurring of military and commercial infrastructure in space
- Reference to resolution alone – is it effective?

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SPACE LAW: PROPOSALS TO ADDRESS CHALLENGES

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LEGAL DEVELOPMENTS

- Conference on Disarmament and PAROS

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LEGAL DEVELOPMENTS

- Conference on Disarmament and PAROS
- Hague Code of Conduct against Ballistic Missile Proliferation

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- Project to draft a 'Manual of International Law Applicable to Military Uses of Outer Space'

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QUESTIONS / COMMENTS

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