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REFUGEES AND THE ROLE OF SPACE
COMMUNICATIONS: STATUS AND PRACTICE OF
THE CHARTER FOR MAN-MADE DISASTERS

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Seeing People

Using Satellites for the Benefit of All

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I. Introduction

As a result of the civil war raging in Syria, a mass migration of people began pouring out of the country to escape the violence.¹ These individuals moved across international borders seeking refuge and facing the challenges of an arduous journey and, oftentimes, unfriendly receiving states. Most of these refugees will find themselves in the limbo zone that is a refugee camp. They will be unable to return to their home state and they will lack the means to find and get to a state that would receive them. They become people without a place existing in lacunae between borders. This migration, like others before it, makes clear the deep rift in international law between sovereignty and the individual. The international system attempted to incorporate human rights as an element of international law, while maintaining as solemn the sovereignty of the state. International space law is emblematic of this issue. The formative documents of international space law highlight a distinct hopeful aspiration for humankind to be advanced by space technology that, at the same time, is tempered with deep concern for the preservation of core state centered rights. Regardless, the space law regime does address the human condition and humanitarian concerns with a different legal rhetoric than that found in other treaties of its ilk. This is significant in light of the fact that the Syrian refugee crisis was extensively imaged using remote sensing technologies, thereby casting the world's gaze onto those holding a questionable legal status.

This paper will investigate how satellites can be used to advance humanitarian outcomes and suggest legal frameworks for these types of activities. It will argue that the “common interest of all mankind” standard

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1 See UNHCR, “Syria conflict at 5 years: the biggest refugee and displacement crisis of our time demands a huge surge in solidarity,” Mar. 15, 2016, www.unhcr.org/afr/news/press/2016/3/56e6e3249/syria-conflict-5-years-biggest-refugee-displacement-crisis-time-demands.html.

found in international space law was intended to create a heightened obligation on the part of spacefaring nations to use satellites to respond to a variety of humanitarian causes, including refugee crises; natural and manmade disasters; and genocide and other crimes against humanity. While this heightened standard does not always require direct action by states, it does require good faith efforts at cooperation mechanisms to ensure that the benefits of space are extended to vulnerable groups.

This paper will proceed first by looking at how the international human rights system functions, and it will explore the inadequacies of this system in actually ensuring that human rights are spread evenly across the global population. It will then turn its attention to the international space law regime, and how it implements humanitarian concerns into its core values. This section will argue that space law creates a heightened duty for states to cooperate in using space to achieve humanitarian goals. Finally, this paper will dedicate two sections to examining how human rights law fits into international space law and specifically probing how space law can better help to protect refugees.

II. Protection of the Human Population

The post-World War II adoption of the UN Charter is a watershed moment in international law. The Charter did more than simply form a union of states, it rearranged the global geography by changing the nature of the state itself. Using a system of sovereign equality, the new international system attempts to outlaw the use of war in foreign relations by states. It creates borders that are hardened against the outside world through a legal prohibition on the use of force.² At the same time, it attempts to make these same states accountable for their internal conduct by formally recognizing the concept of human rights both in the UN Charter and in the Universal Declaration of Human Rights.³

This is, of course, no coincidence. The UN Charter is both a reaction to the “scourge of war”⁴ and to the mass atrocities of the Holocaust. As a result, the states negotiating the Charter sought to outlaw war, while at the same time getting states to commit to proper treatment of the individuals within their borders. These goals, while noble, created a paradox. States became protected from external intervention, which left them free to treat their populations as they saw fit. This is made clear by comparing the “never again” sentiment surrounding the adoption of the Genocide Convention, and

2 UN Charter Art. 2(4).

3 UN Charter Art. 1 and UNGA Res. 217 A – Universal Declaration of Human Rights (December 10, 1948).

4 UN Charter Preamble.

the international community's inability to effectively stop subsequent genocides.

The human rights regime that emerged as part of the post-WWII settlement was revolutionary in that it for the first time recognized that the individual has rights that go beyond those which the state grants, but it failed to give the individual any way to vindicate those rights against the state that occupies the territory of the individual's existence. This means that the notion of self-determination, as an anti-colonial concept of liberation, became bastardized into a concept of oppression as rulers placed premiums on power over the wellbeing of their populous. It has only been in areas willing to accept regional agreements that the human rights regime has been given any teeth, resulting in uneven enforcement of what were intended to be global standards.

Refugees represent a particular problem in this regime. Refugees are individuals and populations that flee local conditions of war and mass atrocity by transiting international borders in hopes of landing on shores where they can exist without constant threat to their right to life. These individuals are attempting to vindicate their human rights by escaping local conditions and placing themselves at the mercy of the international community. In so doing, refugees make clear the vast gap between the aspirations of the human rights regime and its realities. This is because the internationalized standards of human rights were intended to transcend states and borders, but if no state is willing to take a refugee, then there is no state that can ensure that individual's human rights. When a refugee becomes stateless it makes stark the impotence of international human rights standards and serves as a reminder that the UN Charter failed to implement mechanisms for the realization of human rights spread equally across the human population. The act of availing oneself to statelessness as a way to vindicate one's human rights accomplishes the exact opposite as it places an individual in a position in which they become less protected because they exist outside of a geography that is recognizable by the international system. This strips the individual not just of geography and place, but of humanness in the sense that their human rights become further eroded.

III. Transcending Borders

At the time of the UN Charter, it would have been much easier to agree to human rights standards that were unachievable in fact. This is because it was easier to take a state's word, as states had no ability to see the populations of other states. Indeed, the human rights system to some extent depended on this blindness due to the divergence between liberal and socialist definitions of human rights, which rooted human rights in value systems with seemingly oppositional values. Aspirational standards with local interpretations was all that the global community could agree on at the time, and the relative

opacity of the state, with its freshly hardened borders, allowed states to exist in a fiction in which human rights had been internationalized.

The introduction of space technology resulted in a dramatic shift in our understanding of the post-WWII international system and its geography. Not only did *Sputnik* open a new space that was outside of state borders (similar to the high seas and Antarctica), it opened up a space that transcended state borders. This was recognized immediately, and can be seen in the famous statement that the USSR did the US “a good turn” by orbiting *Sputnik* and establishing the freedom to orbit over another state’s territory.⁵

This transcending of borders was most evident in remote sensing applications, and specifically the use of remote sensing in arms control and disarmament. The use of national technical means (NTM) in arms control agreements recognized that for the first time states could peer into each other’s territorial bounds in order to better understand each other. This application naturally led to some controversy as developing states who lacked space technology became suspect of the space power’s use of this technology. While the USSR and the US were able to agree on terms of its use in arms control agreements, developing states saw the potential for these superpowers to use it to advance their respective, unique imperial projects. This led to the development, first in US domestic law and then in international law of the concept of “nondiscriminatory access” that gave sensed states access to raw data collected about their respective territories.⁶

Non-discriminatory access is interesting as it can be read as one of the fruits of Article I of the Outer Space Treaty, which requires states to carry out their use of space in a way that advances the common interests of all states and contributes to the use of space technology for the common interests of humankind. The distribution of collected data to the territory from whence it was collected was made a central pillar of remote sensing law. Remote sensing is an area through which the international community has consistently pursued “the benefit of mankind” as required in international space law, first through global security gains in disarmament and then in shared access to data resources.

It should be noted, that the idea of using space for the benefit of humankind is a legal obligation, both customary and treaty, but it is a highly aspirational one. Its language is so ambiguous that it defies definition, and as a result, it defies and true enforcement – judicial or otherwise. It nevertheless, forms a central legal and political value that underpins the international space law regime. States are required to use space in such a way that it benefits all humankind, which is significant because it casts the parameters of space use

5 A.J. Goodpaster, Memorandum of Conference with the President, October 8, 1957, https://archive.org/details/ERIC_ED462354.

6 UNGA 41/65. Principles relating to remote sensing of the Earth from space (Dec. 3, 1986), Princip. XII.

and exploration in terms of the global population, not a distinct domestic population. This is why for instance many states implement nondiscriminatory access in such a way that it gives access to anyone, not just the government of the sensed state.⁷ One of the important aspects of the benefit of all humankind principle is that it transcends borders. It is not related to state territory, but instead it is related to global populations not defined by borders, but instead defined by their humanity.

To be clear, international space law is in general silent on how particular applications should be implemented. The Outer Space Treaty is technology neutral, and only nonbinding UN General Assembly resolutions address specific technologies like remote sensing. The system functions on a premise that core values and principles should inform the use of all space technology for the sake of humanity.

IV. Seeing People

As seen above, international space law is intrinsically related to the human rights project in international law. Human rights were intended to transcend borders, and space, for the first time, presented a real ability to look back at the earth and see it without borders. Space facilitated the concept of a global population with visual optics, that were lacking when the human rights regime was first established. Unfortunately, space has been poorly implemented into the human rights regimes.

Space does have a role in human rights. For instance, instruments such as the Disasters Charter and the Tampere Convention facilitate the use of space assets in disaster mitigation to protect civilian populations. Space has however, lagged behind as a tool in protecting human populations. The aforementioned instruments are only reactive to crises that have already occurred. The same can be said of the use of satellite images in venues such as the International Criminal Court, which is a reactive use to prove an atrocity that has already happened. These technologies, though, have never found their way into human rights agreements for purposes such as verification, which we see in arms control agreements.

Space technology, and remote sensing in particular, has the ability to play a much greater role in the realization of truly international human rights standards. This is because these technologies present a unique set of tools that can assist in the prevention of mass human rights violations. Remote sensing technology is a powerful tool for seeing the human condition in states that would commit atrocities against their own populations. This tool, while

⁷ See generally, P. J. Blount, "Remote Sensing Law: An Overview of Its Development and Its Trajectory in the Global Context," in *Remote Sensing Handbook, V. 1: Remotely Sensed Data Characterization, Classification, and Accuracies*, ed. Prasad S. Thenkabail (Boca Raton: CRC Press, 2016), 605-21.

important for its evidentiary uses after the fact, can reveal a number of early warning signs that could prompt action by the international community. Such uses could be increasingly important if the principle of the Responsibility to Protect (R2P) continues to advance within the international community. Prevention of atrocities is explicitly the goal of the law in many cases. For example, full title of the Genocide Convention is the Convention for the *Prevention* of Genocide (emphasis added).⁸ The international community's use of space in such a manner would be a significant fulfillment of the benefits of humankind principle.

V. Remote Sensing and Refugees

Obviously, remote sensing is not a balm for all human rights atrocities. Its utility is directly linked to visibility, which means that it will only be an effective tool when a human population is visible.⁹ Despite the advances in remote sensing resolution, the application of this technology is likely to be constrained to instances of possible mass violations, i.e. those which threaten populations rather than specific individuals. Refugees taking part in mass migrations and confined in refugee camps present a specific instance in which this technology can be an effective tool for helping to ensure the human rights and human dignity of refugees.

While mass migrations are not new, as of late they have become a prominent global issue as mass migrations have been televised and global awareness has been raised about the risks to these individuals as they flee their home countries. A report by the UN Secretary General notes that “[l]arge movements of people will continue or possibly increase as a result of violent conflict, poverty, inequality, climate change, disasters and environmental degradation,” and the “responses have been inadequate” to cope with this growing problem.¹⁰ This same report goes on to argue that International cooperation is a central element to solving this problem, which is significant due to the prominence of international cooperation in international space law.¹¹ Indeed, the Secretary General's report indicates that when there are problems that transcend borders, then responses must also transcend borders.

The Secretary-General's report suggests three pillars on which to build state and international responses to mass migration crises, including refugees.

8 Convention for the Prevention of Genocide (Dec. 9, 1948).

9 See P.J. Blount, “The Satellite and the Individual: The Legal Resolution of Remote Sensing,” in Rafael Moro-Aguilar, P.J. Blount, Tanja Masson-Zwaan, eds. *Proceedings of the IISL 2016* (2017).

10 “In Safety and Dignity: Addressing Large Movements of Refugees and Migrants” (United Nations General Assembly, April 21, 2016) at 2.

11 *Id.* at 2.

States are called on to: first, uphold the safety and dignity of refugees and migrants; second, to share responsibility for refugees and migrants; and third, to ensure that migrations are safe, regular and orderly.¹²

As stated before remote sensing does not solve all problems with refugees, but it can play an important role in supporting effective responses to these problems. Most prominent is the ability of remote sensing technologies to provide important data on mass migrations which can be used in a variety of ways to support safe migrations. Specifically, this data can be used to monitor these migrations and to ensure the safety of the individuals involved in them. Similarly, this data provides unique insights into the geography of refugee camps, which can be used to better allocate international resources within these camps. By helping to ensure the safety of refugees, remote sensing can become an invaluable tool in responding to these issues.

Remote sensing can also play a role in mitigating the causes of refugees by monitoring conflict, environmental degradation, and other causes that create refugees. This is the most important step to dealing with refugees, both in terms of preventing these crises and in terms of mitigating these circumstances to speed repatriation of these individuals to a safe and welcoming home country. Remote sensing data will be extremely important in these efforts, but its use for these purposes certainly fits into the obligation of using space for the benefit of all.

Remote sensing does have its risks. Refugees are vulnerable populations, and the international community needs to be aware that data on their location and movement can be used to make them more vulnerable. For instance, the state from whence the refugees came could use the data to target these individuals, or a receiving state could use the data to effectively block a mass migration. Further, wide dissemination could allow criminal elements to find and infiltrate these migrations in order to target these people for a variety of reasons. As a result, remote sensing data should be treated as sensitive and the international community needs to find ways to ensure that that data is used to benefit that population rather than to increase its vulnerability.

V. Conclusion

Remote sensing satellites will have an increasing role to play in coping with refugee and other human rights problems, but at this time there is little law or specific rules on how this data can or will be used. Despite that lack of law, the obligation to use space for the benefit of all should be a guiding principle when using this technology for these purposes. If the global community can properly leverage this technology it will be an important tool

¹² *Id.* at 23-26.

in ensuring that human rights are a global rather than local standard, and further spreading those rights across the global population.