

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Space, Cyber, and Telecommunications Law
Program Faculty Publications

Law, College of

2002

Non-discriminatory Data Dissemination in Practice

Frans von der Dunk

University of Nebraska - Lincoln, fvonderdunk2@unl.edu

Follow this and additional works at: <http://digitalcommons.unl.edu/spacelaw>



Part of the [Air and Space Law Commons](#)

von der Dunk, Frans, "Non-discriminatory Data Dissemination in Practice" (2002). *Space, Cyber, and Telecommunications Law Program Faculty Publications*. 18.

<http://digitalcommons.unl.edu/spacelaw/18>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Space, Cyber, and Telecommunications Law Program Faculty Publications by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Non-discriminatory Data Dissemination in Practice

Frans von der Dunk

International Institute of Air and Space Law, Leiden University, The Netherlands

Abstract

A key element of the UN Principles on Remote Sensing is the concept of “non-discriminatory access.” This chapter examines this concept in detail, through a general discussion and through illustrative examples where it is directly related to data policy issues, including ESA, EUMETSAT, and CEOS.

1 Introduction

One of the major issues in the UN Principles discussed in Chapter 4 concerns the exact and authoritative interpretation and implementation of the central concept of Principle XII of the UN Resolution, namely the “access to [remote sensing data] on a non-discriminatory basis.” As noted in Chapter 4, “discrimination” essentially entails making distinctions between equal cases, that is cases which are not different from each other on those points that matter. This, however, still begs the question, or rather several questions. What is “equal”? What are points that matter, and points that do not? Who decides on such issues in particular cases? Is Principle XII taken into account at all? And most importantly perhaps, is there a uniform answer to these questions or does everyone have their own interpretation and implement the Resolution accordingly?

The UN Resolution purports to provide generally and globally relevant principles in the field of satellite remote sensing. For data policy issues any international legal rules on access to remote sensing data are obviously crucial. Hence, on this particular point it would be of obvious importance if such questions could be answered. The present chapter presents an effort in that direction by firstly having another look at Principle XII of Resolution 41/65 in its specific context.

Then, by way of case studies, some documents collected in the framework of EOPOLE will be analyzed. These documents drafted by various relevant bodies involved in remote sensing data dissemination (try to) provide for data policies of those respective bodies. They will be scrutinized as to whether and how they have explicitly or implicitly implemented the principle of “non-discriminatory access” to satellite remote sensing data in their particular field of activity.

2 A Second Look at Principle XII of the UN Resolution

As soon as the primary data and the processed data concerning the territory under its jurisdiction are produced, the sensed State shall have access to them on a non-discriminatory basis and on reasonable cost terms. The sensed State shall also have access to the available analyzed information concerning the territory under its jurisdiction in the possession of any State participating in remote sensing activities on the same basis and terms, particular regard being given to the needs and interests of the developing countries.

Further to what has been discussed elsewhere the first thing to be noted here is the word “basis,” which denotes that the “non-discrimination” principle is not an absolute principle. Whatever “non-discrimination” would turn out to mean anyway, it should form the point of departure from which deviations are in principle allowed. Also, the addition “and on reasonable cost terms” is noteworthy. Apparently, considerations of cost involved in collecting, processing and analyzing data could already serve as such a justification for what otherwise might have constituted discrimination.

Secondly, the focus of the principle on “the sensed State” is important. It has already been noted that this is a consequence of the free remote sensing – versus permanent sovereignty dichotomy. Proponents of the latter position claimed preferential or exclusive rights to the data concerning their own territory, or even the right to prohibit the collection of data altogether, against the purported freedom of data collection by remote sensing satellites.

This evaluation is further confirmed by looking at a few other Principles provided by Resolution 41/65 (see Appendix C). Thus, Principle II holds that “Remote sensing activities shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic, social or scientific and technological development, and taking into particular consideration the needs of the developing countries.” Largely, the permanent sovereignty position was that of the developing countries, for the time being unable in technical and financial terms to undertake their own remote sensing activities and thus both without direct interests in freedom of remote sensing, and without the principled possibility to reciprocate undesired satellite remote sensing activities. Positive discrimination of the sensed state by means of preferential access, exclusive access or a veto right, was seen as one way to protect their interests.

In a similar vein. Principle XIII asks for “international cooperation, especially with regard to the needs of developing countries” by means of “consultations with a State whose territory is sensed in order to make available opportunities for participation and enhance the mutual benefits to be derived therefrom,” “upon request” by the sensed state. The major function of this Principle seems to lie in placating sensed states that have not been granted any right to “positive discrimination” by the other Principles. It would certainly be difficult to deduce any obligation to achieve a certain result – e.g. access on a preferential basis – from this rather general and non-committing clause.

Principle III provides that “Remote sensing activities shall be conducted in accordance with international law,” making specific reference to the United Nations Charter and the treaties underpinning the International Telecommunication Union (ITU). “Non-discrimination” is one of the more fundamental principles in international law at large, as well as within the Charter and ITU-regulation, and has an important component of not discrim-

inating between developed and developing countries *de facto*. Since “the facts” (of life) within the international community clearly reflect a very uneven and unequal position for various states, this probably should read as “positively discriminating” the developing countries *de jure*.

Likewise, Principle IV makes reference to “the principles contained in article I” of the Outer Space Treaty, as ruling the conduct of remote sensing activities. This Article “in particular provides that the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development.” The Principle itself makes further reference to “respect for the principle of full and permanent sovereignty of all States and peoples over their own wealth and natural resources” and “the legitimate rights and interests of the sensed State.”

In short: the principle of non-discrimination, put forward as the basis for any data dissemination policy, as far as provided by Resolution 41/65 seems very much focused on not discriminating between sensed states and third states interested in a particular set of data. In addition, in view of the fact that developing countries would be most likely to find themselves only in the role of “sensed state,” “positive discrimination” of developing states is recommended.

However, it remains to be seen whether the various organizations having drafted data policies to interpret and respectively implement this principle did so in the same limited fashion, or whether they hold different views, and if so what juridical consequences this would have. In the last resort, independently from any particular manifestation of the principle in UN Resolution 41/65, the “non-discrimination” principle in a more general sense forms one of the pillars of international law, not to be easily negated or discarded in any particular field of international activities.

3 The European Space Agency: ERS And Envisat

The European Space Agency (ESA) so far has undertaken two comprehensive satellite remote programs, inclusive of satellite operations, data handling, and data distribution. The first concerned the two European Remote Sensing Satellites ERS-1 and ERS-2, a program that started in the early 1980s. The data policy for both ERS missions was based on one hand on “free access to the data on an open and non-discriminatory basis,” reflective of the “spirit” of UN Resolution 41/65. On the other hand, ownership and full title to the resulting data was proclaimed as a potentially restrictive tool for implementing data policy wherever and whenever “free access” was not deemed to be reasonable and desirable: “free access” apparently was not considered to be an absolute principle.

Upon closer inspection it appears that ESA considered the core element of “non-discrimination” to lie in freedom of access to ERS data for everyone in a principled way through a non-exclusive licensing system. As long as “nobody in the world can obtain ERS data alone whilst restricting its use to anyone else,” the relevant condition provided by Resolution 41/65 is considered fulfilled. Thus, the extensive licensing scheme either through so-called Principal Investigators or directly to users, was used as an extension of the ownership and full title to the data for the purpose of providing “public availability [...] through recognized channels and licenses.” It is clear, finally, that fees formed an important aspect of the licensing system.

The second program concerns the more recent Envisat. ESA's Earth Observation Program Board approved the Envisat Data Policy on 19 February 1998, after the third revision. The document "defines an overall set of policies and rules for access to all Envisat data and the associated products and services." Registration of Envisat with the United Nations Secretary-General in conformity with the Registration Convention confirms ESA's unequivocal ownership and title to use intellectual property rights mechanisms as the major data policy tool.

Envisat data are to be "available in an open and non-discriminatory way," in explicit conformity with Resolution 41/65, and with the addition that "Envisat distributing entities shall provide services to users in a fair and non-discriminatory way." The relativity of the "non-discrimination" principle immediately becomes clear when further details are provided on the system of distributing Envisat data. "Nationally registered [...] entities from Participating States shall have a higher priority than those from non-Participating States in the selection process for distributing entities, *in absence of other elements of discrimination*" (emphasis added). Thus, it is both recognized that some sort of discrimination is already involved in selecting national distributing entities for the purpose of Envisat data dissemination, and that other forms of "discrimination" might also be allowed in spite of – read: whilst still considered to be in conformity with – UN Resolution 41/65.

If one looks at further details of the Envisat data distribution scheme two such forms of "discrimination" come to the fore quite prominently. They relate to the two fundamental forms of data dissemination arising in cases of remote sensing satellites being run by operational entities themselves also controlling dissemination. The first concerns distribution "on Earth," that is after they have been received, and where appropriate, processed; the second distribution "from space," in other words direct reception by other entities authorized by the relevant operational entity.

For the first category, the distinction is made between "Category 1 use," that is use for research and applications development support, and "Category 2 use," that is all other uses including specifically operational and commercial use (see also Chapter 2). The distinction is mainly given expression through the pricing structure. In respect of category 1 use, users will only have to pay a price "at or near the cost of reproduction of the data," and such a fee will be waived moreover in case of projects either approved in the framework of the Envisat program or by the Earth Observation Program Board as such. In respect of category 2 use, ESA will fix the price of data at which these will be sold to distributing entities who are then allowed to set their own (higher) prices in order to make a profit.

The extent to which such distributing entities will, in law or in fact, be forced to implement themselves any "non-discrimination" principle, is difficult to distill from the texts. Distributing entities are explicitly allowed to define their own pricing policies in this regard, but any (further) distribution will have to take place in accordance with the Envisat data policy – that is including the prominent reference to the "non-discrimination" principle. ESA maintains some sort of control through its right to fix a ceiling level for the market price; but this rather rough tool is the only means to force distributing entities to adhere to the principle in terms of pricing. Again, the major justification for this seems to be the non-exclusive character of any license as was the case with the ERS data, and in addition the limited time-span for any license.

The second form of "discrimination" arises where the possibility for ground stations to receive data directly from the Envisat satellite is concerned. The national ground re-

ceiving stations of the states participating in the Envisat program have the right to receive Envisat data without having to pay a fee, but in turn these states have an obligation to implement the Envisat data policy in their respective territories in good faith. Foreign stations – that is stations in states not participating in the Envisat program – will be charged an access fee.

ESA, in short, does adhere in name to the “non-discrimination” principle as proclaimed by Principle XII of Resolution 41/65, and can justify any differentiation in its data access policy by pointing at the fundamentally different cases underlying such different treatments. While, furthermore, no reference has been made to the special interests of either “sensed states” or developing states, the possibility even remains in fact to respect in any particular case the special rights and interests of such states. Taken from the other end, however, neither can any principled adherence to such rights and interests be distilled or presumed.

4 EUMETSAT: Data Policy Developments

The 15th EUMETSAT Council agreed to a first fundamental and comprehensive EUMETSAT Data Policy on 4 and 5 June 1991. The desire to draft such a document was the result of developments, including the increasing commercialization of the meteorological remote sensing sector, which challenged the traditional principle of “free and open exchange of data” and called for certain important restrictions to that principle, while continuing to adhere to the principle of free exchange of certain data amongst the members of the World Meteorological Organization (WMO).

In 1998, a new Resolution on EUMETSAT Principles on Data Policy was adopted at the 38th meeting of the EUMETSAT Council on 1-3 July, which developed EUMETSAT’s data policy. Since 1991, perhaps the most important quasi-legislative event at the global level relevant for the issue of data policy in terms of meteorological satellite remote sensing concerned the promulgation of WMO Resolution 40 (see Appendix B). The dichotomy between scientific data of public value and commercial use of satellite data had increased in importance. WMO Resolution 40 in dealing with this issue consequently had the effect of strengthening EUMETSAT in its resolve to continue to apply a data distribution system reflecting this dichotomy. Thus, the “need to preserve the benefits of EUMETSAT membership” was now explicitly mentioned in the preamble paragraphs to the EUMETSAT Data Policy.

The national meteorological services of the member states now receive all EUMETSAT data for free, but only as far as “*for their Official Duty Use*” (emphasis added). Principle I further defines “official duty” as encompassing all “internal” activities of the organization as well as those “external activities [...] resulting from legal, governmental or intergovernmental requirements relating to defense, civil aviation, and the safety of life and property.” In other words all commercial activities of a national meteorological service may no longer avail themselves of EUMETSAT data for free. Principle III indeed provides that for such commercial activities the national meteorological services are to be treated “in an equivalent way” to other commercially operating entities.

Principles IV through VII of the EUMETSAT Data Policy provide that certain sets of data are to be provided for free, namely to all WMO members as following from Resolution 40, to national meteorological services of non-EUMETSAT member states for official

duty, for research and educational projects *per se*, and to the ECMWF for its own use. All other users qualify for reception of data, products and services “under conditions defined by the Council.” This obviously involves the levying of fees, although the Council may waive such payment.

Most interesting from the perspective of Resolution 41/65 and its emphasis on the needs and interests of developing countries in the framework of data distribution on a “non-discriminatory” basis is Annex III of the EUMETSAT Data Policy, dealing with the various fees wherever applicable. A threefold structure is applied to national meteorological services of non-EUMETSAT member states. For those states with a per-capita GNP below or equal to US\$ 2,000, data for “official duty” usage are provided to the national meteorological services for free. At higher per-capita GNPs, a fixed percentage (50% for hourly and 60% for half-hourly data) of an equivalent member state contribution is charged, with a certain linear gliding factor mitigating the effects of this system for the states whose per-capita-GNP is between US\$ 2,000 and US\$ 3,000. In any case, a cap is imposed upon fees in accordance with detailed tables. A clear picture of “positive discrimination” of developing countries arises, albeit obviously as far as “official duty” usage is concerned. This positive discrimination, however is totally regardless of whether the applying national meteorological service is that of a “sensed state” or not.

5 The Landsat 7 Data Policy Plan

The United States Land Remote Sensing Policy Act of 1992 was enacted with a two-pronged objective: to stimulate private involvement in the United States in satellite remote sensing activities wherever feasible – that is most notably in the data distribution and marketing sector – while preserving the interests of the public at large in the continuity of the Landsat program. Section 105 of the 1992 Act in furtherance of this general aim called for development of a data policy for Landsat 7 data that led to the Data Policy Plan of 31 October 1994.

The Data Policy Plan drafters were specifically instructed “to ensure that unenhanced data are available to all users at the cost of fulfilling user requests,” while ownership of such data would remain with the United States. On the other hand, “the provision of commercial value-added services based on remote sensing data [should remain] [...] exclusively the function of the private sector.”

Nowhere does the Data Policy Plan itself refer explicitly to Resolution 41/65, whereas the underlying Act of 1992 does only refer in general terms to “international obligations” of the United States to which any licenses to be provided under the Act should conform. In view of the legal status of Resolution 41/65 it is highly doubtful whether it does provide for “obligations” in the legal sense of the word; therefore, the general reference in the 1992 Act might at best involve general and well-accepted principles contained in the Resolution.

However, when it comes to data distribution and access issues a principle of “non-discrimination” is invoked: Landsat 7 data “will be provided to all requesters on a non-discriminatory basis at the ‘cost of fulfilling user requests’ (COFUR).” COFUR is defined by the 1992 Act as “the incremental costs associated with providing product generation, reproduction, and distribution of unenhanced data in response to user requests,” and should not include any overheads or general costs related to the satellite remote sensing operation. Thus, the definition of COFUR seems to come close to that of the price to be

paid for category 1 use of ESA's Envisat data, as being "at or near the cost of reproduction of the data," albeit restricted here to unenhanced data.

Somewhat similar also to ESA's attitude to the "non-discrimination" principle, the Landsat 7 data policy document focuses on "non-exclusivity" as a fundamental concept capturing the perceived relevant essence of Principle XII of Resolution 41/65. The United States however applies this concept in a much more comprehensive fashion: contrary to ESA in addition to the "non-discriminatory basis" on which Landsat data will be provided. There are no comprehensive and principled restrictions whatsoever as to subsequent use, sale, or redistribution.

The United States policy to draw a fundamental borderline between unenhanced data provided for the cost of fulfilling user requests because the basic remote sensing operations are publicly funded, and enhanced data which are to be left to the private sector both to fund and to market and sell, results in a clear and simple data distribution scheme. Also, this scheme seems to take any "non-discrimination" principle into account in a better way since complexity breeds the creation of more distinctions easily ending up as *de facto* discrimination.

This being said, obviously the relevant licensing authorities in the United States under the 1992 Act maintain a kind of subsidiary control when it comes to *inter alia* international obligations of the United States and/or United States national safety, security and interest being at stake. The particular example of 1 meter resolution data of Israel not being allowed to be sold on the open market is an interesting precedent; it could be argued both to be "non-discriminatory" as this restricted access equally concerns all entities interested in these data, and to constitute "discrimination" since, for example, other sensed states might be interested in a similar kind of "protection" of their privacy and national interests as Israel.

6 Radarsat 1 Data Use and Access

The Canadian Space Agency (CSA), as owner of the intellectual property rights to the data generated by the Radarsat 1 satellite, released a policy document on access to and use of Radarsat 1 data on 19 July 1996. The document is expressly disclaiming "any legal value" as well as being a comprehensive "interpretation of Radarsat 1 data policies"; it purports merely "to facilitate the understanding of the Radarsat 1 system and its data use and access."

Radarsat 1 is the result of an international partnership involving Canadian and United States governments and various Canadian provincial governments. These partners are entitled to predetermined data allocations pursuant to relevant agreements concluded with the CSA, "at the cost of processing and distribution." This definition seems to closely resemble the price "at or near the cost of reproduction of the data" for category 1 use Envisat data, and the "cost of fulfilling user requests" for unenhanced Landsat 7 data – but applies to certain allocated and agreed quota only.

Central to the system of Radarsat 1 data distribution outside the scope of the partnership proper is the Master License Agreement, by means of which the private company Radarsat International (RSI) is given the exclusive right of worldwide marketing and distribution as regards commercial data. RSI in addition is given the discretion to set the prices of data and data products. RSI is also allowed to license local distributors on an ex-

clusive basis, that is exclusive both with respect to their “areas of prime responsibility,” and with respect to RSI as sole entity delivering data to these distributors. Thus, the policy followed by CSA in this respect is quite contrary to the “non-exclusivity” which figures so prominently in both ESA’s and the Landsat 7 data policies.

The Radarsat document does mention UN Resolution 41/65 as well as the “open non-discriminatory basis” required by it for access to its data; apparently the principle (with the addition of the word “open”) is not seen as leading to any conflict with the exclusivity of distribution handed to RSI or with the discretion of RSI to determine the prices for data products as long as no price differentiation results on the basis of the type and status of the requester, as opposed to the type of data, data product or service requested.

It should be noted finally that the whole “structure” of CSA’s Earth observation activities and the role of RSI in this regard as sketched above have been shifting recently, as a consequence of fundamental changes in ownership and operational responsibilities of the various players concerned.

7 CEOS Satellite Data Exchange Principles

The Committee on Earth Observation Satellites (CEOS) drafted its own Satellite Data Exchange Principles in Support of Global Change Research in 1991 (see Appendix D). CEOS holds an interesting position in the field in that it brings together the primarily government “primary distributors”: distributors of satellite data who run their own remote sensing satellite systems or participate in the running of satellite systems. This position is reflected in the CEOS principles in focusing on the exchange between fundamentally equal entities — “haves” in terms of remote sensing satellites.

The general dichotomy between scientific use and liberal data distribution policies is the main theme of this particular document. Thus, the investments made by governments and other public bodies in the sector are seen as deserving protection — obviously by means of a not-too-liberal distribution mechanism. From this perspective, the document is primarily targeted at establishing a sort of level playing field, preventing more liberal-minded primary distributors from undercutting such general protection efforts. At the same time principles for data exchange beyond these scientific uses were still to be developed.

The general principle of “non-discriminatory access to data” is reaffirmed, albeit without explicit reference to Resolution 41/65; little is provided by way of further explanation. The goal of providing global change research entities with data at a price “reflecting primarily the cost of fulfilling the user request” is a common denominator of individual policies of the parties involved. “Non-discriminatory” access to data is to be applied to “all users for global change/climate and environmental research and monitoring” under Principle 5 of the CEOS data policy, whereas Principle 6 adds that preferably particular programs should not be given exclusive periods to use the data.

8 Taking Stock: “Non-Discrimination” in Data Policy Documents

The analysis above of interpretation and implementation of the “non-discrimination” principle as it is provided for by Principle XII of Resolution 41/65 of course is far from exhaus-

tive. Nevertheless, the documents dealt with here may represent an interesting cross section when it comes to the general aspects of interpretation and implementation since they are quite varying in character and origin. ESA and EUMETSAT are two European organizations in different ways actively involved in satellite remote sensing. Landsat 7 and Radarsat 1 are remote sensing satellites run by national operators. CEOS is in juridical terms a rather low-key international cooperation forum for remote sensing satellite operators.

Some of the documents dealt with make explicit reference to Resolution 41/65 and/or the principle of “non-discriminatory” access; others do not even make such reference implicitly. This should not be interpreted as comprehensive disregard, neglect, or denial, for example in view of some aspects of “non-discrimination” having the status of a general principle of international law not specifically depending upon Resolution 41/65. Rather, the conclusion should be that Principle XII of Resolution 41/65 not being legally binding to begin with is of such a general character that perhaps the only type of discrimination which would clearly violate this Principle would be the discrimination as between “sensed state(s)” and other third states interested in a particular set of data, such discrimination being to the detriment of the “sensed state(s).”

This leads to the next question: *how* is the Principle, explicitly or *de facto*, interpreted and/or implemented? In the documents dealt with, very little is provided in any direct way. *Not a single reference to the notion of a “sensed state” can be found.* The principled discussion at the inter-state level between proponents and opponents of freedom of satellite remote sensing and data dissemination as underlying Principle XII of Resolution 41/65 was not touched upon. Wherever the notion of “non-discriminatory” access is coined, it is either not dealt with in any further detail or elaborated in different directions – apparently meaning that the relevant policy makers considered “non-discrimination” of the “sensed state” to be respected without requiring further guarantees or provisions.

The policy of “non-exclusivity,” which is particularly prominent in a number of documents dealing with the interests of the scientific community in liberal data dissemination is immediately apparent. Radarsat 1, involving in a fundamental sense a private company in the distribution mechanism was the exception to the rule. This policy of “non-exclusivity” can be argued to be in line at least with the basic underlying idea of the “non-discrimination” principle: that no one should find himself totally unable to obtain certain sets of data available to others.

“Non-discrimination” obviously has other aspects. Here it becomes clear that distinguishing between various categories as such is not generally considered as being in violation of this principle since it appears frequently and in many forms. To begin with, it is quite logical that the fundamental distinction in terms of access and/or pricing between the (usually public) organizations paying for certain satellite operations and “their” entities, and “outsiders” not participating as such in the satellite remote sensing operations, does not constitute “discrimination” in the proper sense of the word.

However, the allowable distinctions go beyond advantages for the participants in the program generating the data at issue. Two methods of distinction are generally followed here: distinguishing by use (usually non-commercial versus commercial) and distinguishing by user (usually scientific/public versus commercial/private). Generally speaking, the first might be more faithful to any “non-discrimination” principle in theory but more difficult to apply in practice. The effects of such distinction are found in various areas: regarding the sets of data to which access is provided, the conditions under which it is pro-

vided, and the price to be paid for such data. Other than such general aspects, little uniformity can be detected amongst the various policy documents analyzed.

Finally, with a view to the general background of the “non-discrimination” principle as pronounced by Principle XII of UN Resolution 41/65, it is noteworthy that with the interesting exception of EUMETSAT’s 1998 Data Policy, no evidence has been found during the present research for implementation of any measure of “positive discrimination” of the developing nations.

9 Conclusions

The “non-discrimination” principle of Resolution 41/65 generally referred to by the various documents which were evaluated and thus (even if often only *de facto*) interpreted and implemented by the relevant bodies is of a fairly limited nature. The additional proviso on “reasonable cost terms” opens the door to a number of important distinctions. “Equal” cases not to be discriminated between under Principle XII thus essentially concern the cases where one state (or its entities) seeking access to certain data is the “sensed state” and another state (or its entities) seeking access to the same data is *not* the object of those data.

Participants to a particular satellite remote sensing project and non-participants are definitely not to be considered “equal” cases even if this appreciation – logically and politically obvious as it may be – leads to a *de facto* “discrimination” of developing states generally. Developing states have almost by definition less opportunity, financially and otherwise, to become participants in satellite remote sensing. Exceptions such as the People’s Republic of China, India, Indonesia and Brazil are still just that.

Furthermore, scientific or other clear public usage versus commercial usage and users are not considered “equal” cases either. In whatever way the distinctions are usually made they all involve the pricing instrument, thus implementing the “reasonableness” of “cost terms” in a particular sense. Scientific and public usage and users are presented with fees at cost level (with only minor deviations as to the exact definition of “cost level”) or even a waiver of fees, whilst commercial usage or users will lead to higher prices and, in addition more discretion of the actual data distributor in determining the exact prices.

Finally, these general threads are more or less the maximum extent to which any uniformity can be discerned at all amongst the policies concerned. They reflect more of a general international legal principle of “non-discrimination” than the particular version of Resolution 41/65, unless one chooses to focus on the “reasonable cost terms” proviso. Consequently, from the perspective of satellite remote sensing data policy, the “non-discrimination” principle of Resolution 41/65 provides only marginal guidance and even less obstacles or legal parameters. If a global – or even Europe-wide – level playing field in terms of data availability, balancing in a uniform way the interests of science and the public at large with the interests in protecting investments in satellite remote sensing systems and operations, is to be the final aim, a lot of legislative and quasi-legislative work remains to be done.