The Impact of the Internet on International Law:  
**Nomos without Earth?**

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1. **INTERNATIONAL LAW AND THE INTERNET: AN HEURISTIC APPROACH**

The relationship between international legal order and the Internet is a bilateral one: on the one hand, in fact, the first is called to govern both the web as an infrastructure and human behaviors that take place there, on the other hand the same legal order is undergoing changes as a result of the peculiar dissemination of information made by its operators (government officials, NGOs, academics, lawyers) through the Net itself.

It is not a new process, in its basic elements: technological progress has always informed legal systems, including the international one. For examples one may think of the legal framework negotiated to regulate the conduct of States in outer space, the use of the geostationary orbit, civil aviation, nuclear energy, scientific research on the high seas. However, while in all these cases the “technical” peculiarities of the regulated objects influenced only the content of the adopted rules, in the case of the web the influence seems to have been extended not only to the substantive provisions in certain sectors, particularly sensitive to its advent, but even in the way the international legal system as a whole works.

The aim of this paper is to try and understand how the massive spread of the Internet – which certainly had immeasurable social, economic and cultural consequences – has also had an impact on the systematic way the international legal system – taken as a whole – works and, in particular, on the way the same exercises its main functions.

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The massive expansion of the web, as well as having influenced the material content of some international law rules governing specific sectors (e.g., electronic commerce, telecommunications, the regulation of trade in services) has had an important impact on the way each and every rule of international law operates, since it has had consequences for the way in which the same are produced, interpreted and applied.

In order to investigate this issue we decided to adopt a, so to speak, heuristic epistemological approach – an approach that is applied with greater frequency in sciences other than legal, such as social or information sciences. We have done this in order to identify major trend lines when, as in the present case, timely analysis of all the data relating to the observed phenomenon appears impractical.

Heuristics, as is known, is that part of epistemology that aims to facilitate the access to new empirical findings by means of a process that, to solve a given problem, relies on the contingent state of factual circumstances. It is, moreover, a method not entirely foreign to the legal science since it, in particular in the form of the so called “heuristic representation”, is often used to evaluate the behavior of people, such as witnesses, in the course of judicial proceedings.

It was also noted that the heuristic method in legal sciences is somehow linked to a different concept of rationality, distinct from the strictly logical one, and is based on an eco-logical approach that aims to examine the overall systems in which the studied rules are inserted. Conducting an examination of a strictly logical type to a legal system such as the international one, requires the complete knowledge of all and every information necessary for the analysis. If such a knowledge is impossible, and this happens more and more in the case of complex systems such as legal systems, an overall assessment in the light of a partial documentation, by this approach, is possible, and it indeed could better capture trend lines, if one examines the goals that system operators may want to reach\(^1\).

\(^1\) There are different definitions and uses of the term heuristics in the social sciences, and these uses are intimately linked to differing notions of rationality. At a minimum, it is useful to distinguish between views of heuristics based on logical rationality and on ecological rationality. Logical rationality is defined by syntax alone – such as the laws of logic or probability – whereas semantics (contents) and pragmatics (goals) are external to the norms. In this view, when judgment deviates from a logical structure, it is considered a bias or error – as in endowment effects, conjunction fallacies, and framing effects. As a consequence, a heuristic is by definition always second-best to logical thinking, at least when information is free. From an ecological (and evolutionary) point of view, this implication does not follow.