Corporate Governance and the Re-Emergence of a Director's Duty in Negligence in Malaysia

A director's duty in negligence in the past did not receive much attention from practitioners of the law as well as from academics primarily because the law pertaining to this aspect of a director's duty is lax in comparison with a director's fiduciary duties.

Whist most directors are aware of their fiduciary duties, sadly not many know of their duties of care, skill and diligence which collectively constitute a director's duty in negligence.

Lack of appreciation by directors as to this aspect of a director's duty is partly due to the fact that currently there is no express statutory provision as to this effect in the current Companies Act 1965.[1] Other reasons will also include the fact that most of the common law principles pertaining to a director's duty in negligence are out of date and do not conform with current expectations.[2]

Other than this, lack of enforcement is also seen as a contributing factor. Most companies, more so if they are a going concern will not take up litigation against negligent directors for fear of adverse publicity.[3]

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[1]Section 132(1) of our Companies Act 1965 currently only provides that directors are to act honestly and use reasonable diligence in the discharge of the duties of his office. Despite this omission the duties of care, skill and diligence owed by directors is still part of our law by virtue of common law.

[2]Opined Professor Farrar, *Farrar's Company Law*, Third Edition, 1991, at page 396, this is an area where common law has failed to keep pace with modern developments and instead presents a lamentably out of date view of directors duties. The Australian *Conney Committee Report on Director's Duties 1989* also shares similar views.

[3]As with a director's fiduciary duties, this duty is owed to the company. Breach of this duty as a general rule requires the company to take action and not its member or members as this is in accordance with the proper plaintiff rule as advocated in *Foss v Harbottle* (1843) 2 Hare 461. Though there may exist situations when this strict rule may be relaxed as in the case when 'fraud on the minority' is alleged, practical considerations such as the difficulties attached in having to establish fraud on the minority, cost and time will deter the shareholder from litigating the matter.

But all this will change now in light of the importance attached to Corporate Governance. Corporate Governance has placed upon directors, more so the non-executive directors, great expectations.[4]

To realise these expectations, reforming existing laws is inevitable.[5]

Corporate Governance and its Relationship with a Director's Duty in Negligence

Corporate Governance within the Malaysian context is defined as:

> "...the process and structure used to direct and manage the business and affairs of the company towards enhancing business prosperity and corporate accountability with the ultimate objective of realising long term shareholder value, whilst taking into account the interests of other stakeholders."[6]

It is pertinent to note that part this definition includes the words 'the process and structure used to direct and manage the business and the affairs of the company'.

[4]The proposed *Malaysian Code On Corporate Governance*, Part 2, A4, III, provides that:

> "Non-executive directors should be persons of calibre, credibility and have the necessary skill and experience to bring an independent judgement to bear on the issues of strategy, performance and resources including key appointment and standards of conduct. To be effective, independent non-executive directors need make up at least one third of the membership of the board."

[5]Corporate Governance is a global concept today. Most countries have come to acknowledge that implementing good corporate governance practices is necessary in order to promote investor confidence. To implement these practices countries such as Malaysia and the United Kingdom have resorted to the use of self-regulating codes. Yet these codes are not law and this in itself may prove to be detrimental to the successful implementation of corporate governance. Given this drawback, some countries have chosen to reform their law in part or in whole so as to legally implement the concept of corporate governance. Australia via its enactment of the Corporate Law Economic Reform Program Act 1999 is one such country that has done so. Malaysia on its part may not embark on such a radical approach as undertaken by Australia, but it will most certainly reform some of the existing laws as recommended or proposed by the *Report On Corporate Governance* by the High Level Finance Committee.

[6]This is the definition provided for in the Report prepared by the High Level Finance Committee On Corporate Governance which was issued on 9 March 1999.

It would be erroneous for one to assume that prior to the introduction of Corporate Governance in Malaysia there was no available process or structure present to direct and manage the business and affairs of the company.

Company law has always provided us a process and a structure to direct and manage the affairs of the company.

The process and structure envisaged by company law comprises of the shareholders of a company appointing and removing the directors of the said company whilst bestowing upon the directors the discretionary power to manage the company as that provided for in our current Table A.[7]

To this extent, Corporate Governance in Malaysia is not about introducing a structure or a process of governance but it is more of enhancing the existing standard of governance so as to make it conform with current public expectations.

The intended purpose of Corporate Governance is to ensure that companies, more so public listed companies, are governed effectively so as to ensure their economic success. Abuse of power, fraud and business loss is to be minimised in the process.

In Malaysia, to achieve these objectives, the steps undertaken includes the setting up of the MICG, followed by the introduction of a Code on Corporate Governance, a Code of Best Practices, educating directors of their roles and responsibilities, monitoring management via the usage of various committees in particular the 'audit committee', extending the role of independent directors, auditors, reinforcing and extending the rights of members to correct or prevent a wrong or an abuse of power.

Enhancing the standard of governance in part requires and also facilitates the creation of a new generation of directors, ones who are knowledgeable in their companies' affairs, proactive in decision making, supervising management and who will strive to ensure the success of their company within the existing legal framework.

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[7]Flexibility is currently maintained by our Companies Act 1965 as to how companies must be managed. This is because the Companies Act 1965 does not by itself specify the exact model of management that must be adopted by those who wish to incorporate a company. That matter is left to the discretion of those who incorporate the company. In most cases the incorporators will adopt the model provided for in Table A wholly or with modifications.

The responsibility of enhancing the standard of governance primarily rests upon the directors of the company.[8]

To this end, directors and in particular how they manage the affairs of the company are crucial to the successful implementation of Corporate Governance though the responsibility of ensuring that Corporate Governance becomes a norm is a shared responsibility by all officers in a corporation.

Crucial to the successful implementation of Corporate Governance is the 'making of directors accountable for their wrongful conduct in managing the affairs of the company.'

Whilst a director's fiduciary duties are concerned with ensuring that directors act in the interest of the company, a director's duty in negligence is concerned with the care taken by directors in managing the affairs of the company.[9]

Given this observation, a director's common law duty in negligence thus requires further consideration as the law is seen as a catalyst for change.

Are the Existing Common Law Principles Sufficient to Achieve the Goals of Corporate Governance or is There a Need for Legislative Reform?

Common law in the past did very little to advance the importance attached to this duty as a means of regulating the director's conduct in managing the affairs of the company.[10]

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[8]Article 73 of Table A currently provides that directors collectively will manage the business of the company. Given this observation the responsibility of ensuring the proper implementation of corporate governance must consequentially fall upon the directors of the company as they are the captains of the ship.

[9]See *Pennington's Company Law*, Seventh Edition, at page 778.

[10]'Past' is emphasised here because as of the late 1980's with cases such as *Dorchester Finance Co. v Stebbings* [1989] BCLC 498 and *Daniels v Anderson* (1995) 16 ACSR 607, there now appears to be a change in the common law trend. Paul L. Davies in *Gower's Modern Company Law*, Sixth Edition, at page 640, himself acknowledges that this area of law relating to a director's duties is at last beginning to undergo a profound change in light of these cases.

Its reasons for so doing included the fact that in the past many of the directors were only part-time directors[11] who in most cases were not skilled and who only attended occasional board meetings. The courts also did not wish to interfere with how companies were managed as its judges were not trained in such matters. Common law also at that point of time did not wish to make this duty so burdensome to the extent that men of ability would be deterred from serving as a director.

Further to this, managing a company also requires the directors to take risks in the hope of obtaining higher profits.[12] The fear of emphasising a higher standard of care in managing the affairs of the company is that it may result in the decline of entrepreneurial activity undertaken by the directors.[13]

Given the above reasons, directors in common law would only be liable in negligence if it was established to the courts that their conduct was gross or culpably negligent in a business sense.

Opined Lindley MR:[14]

> "If directors act within their powers, if they act with such care as is reasonably to be expected of them, having regard to their knowledge and experience, and if they act honestly for the benefit of the company they represent, they discharge both their equitable as well as their legal duty to the company...The amount of care to be taken is difficult to define; but it is plain that directors are not liable for all mistakes that they make, although if they had taken more care they might have avoided them...Their negligence must not be the omission to take all care; it must be much more blameable than that; it must be in a business sense culpable or gross."

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[11]Part-time directors are also termed as non-executive directors and these directors are supposedly independent as they do not have a contract of service with the company.

[12]See Farrar J., *Corporate Governance, Business Judgement and the Professionalism of Directors* (1993) 6 CBLJ 1, at page 3 makes the point that neglect of this simple truth is the source of much error in the contemporary debate about directors' duties.

[13]Sealy L.S., *Director 'Wider' Responsibilities-Problems Conceptual, Practical and Procedural* (1987) 13 Mon ULR 164, at page 176 has argued "...that a duty of care and the liberty to embrace risk are incompatible bedfellows."

[14]*Lagunas Nitrate Co v Lagunas Syndicate* [1899] 2 Ch. 392, at page 435.

In the past the following conduct of the directors did not receive sanction:

(i) completing a purchase of a business without consulting the shareholders even when it was discovered that the liabilities of the business exceeded the value of its assets,[15]

(ii) assets bought which did not conform to the contract description and the vendor had not rectified this state of affairs although called on to do so,[16] or

(iii) making a loan without ensuring that the security was in fact given.[17]

To this extent, Professor Pennington has pointed out that in most cases involving a director's negligence, the said director has been acquitted.[18]

On the other hand, the proposed *Malaysian Code On Corporate Governance*, Part 2, A4, III, provides that:

> "Non-executive directors should be persons of calibre, credibility and have the necessary skill and experience to bring an independent judgement to bear on the issues of strategy, performance and resources including key appointment and standards of conduct. To be effective, independent non-executive directors need make up at least one third of the membership of the board".[19]

Corporate Governance has thus placed great expectations and responsibilities upon this type of director that is not consistent with the traditional common law approach.

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[15]See *Overend & Gurney, Co v Gibb* (1872) LR 5 HL 480. This conduct should however be regulated by our section 132(C) of the Companies Act 1965.

[16]See *Lagunas Nitrate Co v Lagunas Syndicate* [1899] 2 Ch. 392.

[17]See *Re New Mashonaland Exploration Co* [1892] 3 Ch. 577.

[18]See *Pennington's Company Law*, Seventh Edition, 1995, at page 802.

[19]Both the *Cadbury Committee Report* and the *Hample Committee Report* have echoed similar views pertaining to the role of the independent director.

In 1924, Romer J[20] following the traditional approach of the common law summarised the duty of care, skill and diligence owed by non-executive directors into the following three propositions that is not in harmony with the current expectations of Corporate Governance. The propositions are as follows:

(i) a director is bound to take reasonable care and diligence that is to be measured by the care an ordinary man might be expected to take in the circumstances on his behalf but need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience

This proposition imposes no minimum skill base requirement for directors and the level of skill expected of a director is to be subjectively assessed in relation to his knowledge and experience.[21] Actions of a director that results from the director's inexperience, lack of qualification or skill will not constitute a breach of duty.

This proposition is not in harmony with Part 2, A4, III of the proposed *Malaysian Code On Corporate Governance* which requires a director to have a minimum skill base when taking office or for that matter when carrying out his functions as a director.[22]

This proposition can also be criticised for the fact that it imposes varying standards to different types of directors and such coherency or uniformity is an unobtainable goal for the common law of negligence.

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[20]*Re City Equitable Fire Insurance Co* [1925] Ch. 407.

[21]In *Re Brazillian Rubber Plantation and Estate Ltd* [1911] 1 Ch. 425, Neville J remarked "...that a director can undertake the management of a rubber company in complete ignorance of everything connected with rubber...". Note however this proposition should not apply to executive directors by virtue of their service contracts.

[22]However those who support this proposition will point to the fact that firstly there is no statutory requirement that a director must be qualified or skilled when he takes office and secondly the fault is not that of the directors but instead it is the fault of the shareholders. This is because shareholders appoint the directors.Though this may be so, the question is whether shareholders in fact act independently when appointing directors?

(ii) that a non-executive director is not bound to give continuous attention to the affairs of his company. He is also not required to attend all board meetings

Ironically there is also judicial *dicta* to support the view that it would be better for a director not to attend a meeting than to attend a meeting and fall asleep.[23]

Clearly this second proposition is not in harmony with the current views on Corporate Governance.[24]

(iii) in respect of all the duties that having regard to the exigencies of business and Articles of Association may properly be left to some other official, a director is, in the absence of grounds of suspicion, justified in trusting that official to perform such duties honestly

This proposition allows for the delegation of authority by directors to officers and committees[25] and at the same time it enables the director to place reliance upon those delegates. This placement of reliance in turn provides a shield to the directors against potential liability in negligence. Reliance, according to this proposition is only unreasonable when the circumstances are manifestly suspicious to virtually everyone.[26]

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[23]Lord Hatherly, in *Land Credit Co of Ireland v Lord Fermoy* (1870) LR 5 Ch. App 763, opined that "Their being asleep (with reference to directors) would not exempt them from the consequence of not attending the business of the company".

[24]Corporate Governance has placed high expectations upon the non-executive directors. How can these expectations be realised if we were to go on allowing for such conduct? On the other hand, there are those who say that we do not allow such conduct as the Articles of the company may be drafted to sanction such conduct. For example Article 72(f) of Table A provides that "...the office of a director shall become vacant if the director for more than 6 months is absent without permission of the director's." Whilst in the case of an executive director such conduct will give rise to an action in breach of contract.

[25]Table A envisages delegation of authority. Directors can delegate authority to attorneys, Managing Directors and also committees of directors.

[26]In *AWA Ltd v Daniels* (1992) 7 ACSR 759, at page 868, Rogers J opined that:

> "Reliance would only be unreasonable where the director was aware of circumstances of such a character, so plain, so manifest and so simple of appreciation that no person, with any degree of prudence, acting on his behalf, would have relied on the particular judgement, information and advice of the officers."

The question however is whether this current common law proposition as it stands provides the impelling force upon directors to supervise and or monitor their delegates adequately?

The *Conney Committee Report 1989* (Australia) on Company Director's Duties was very critical of this proposition and thus stated that:

> "The entitlement to rely on others is not set down by companies legislation. The limits of reliance are not firm and are worked out on a case to case basis. There is no requirement that directors actively supervise delegates or positively believe an official, on whom reliance is placed, is trustworthy."

Corporate Governance does not prohibit delegation. In fact, it envisages delegation of authority by the very fact that it advocates the usage of the Audit and Remuneration Committees.

However Corporate Governance on the same premise also advocates the notion of effective monitoring and/or supervision of management of companies via the usage of Audit Committees, independent directors and auditors.

The Current Common Law Approach

The traditional common law approach discussed above may now have to be discarded in light of recent common law cases.

In *National Mutual Life Nominees Ltd v Worn*,[27] Henry J in *obiter* remarked:

> "The standard of care to be exercised by a director has been said as being to exhibit the degree of skill reasonably to be excepted from a person of his knowledge and experience, Re City Equitable Fire Insurance Co Ltd....I have some reservation as to whether the subjective qualities of a particular director are appropriate factors to apply in determining the yardstick in today's world of business."

[27](1990) 5 NZCLC 66.

Similarly in *Daniels v Anderson*,[28] the majority judgement of the New South Wales Court of Appeal provided for the following propositions:[29]

(i) that directors of a public company are under a duty to familiarise themselves with the company's business and how it is run. They must ensure that the board has the means to monitor management so as to satisfy themselves that the company is being properly run;
(ii) that the director's duty of care is not merely subjective and limited by the director's knowledge and experience or ignorance or inaction;
(iii) that directors are subject to the common law duties of negligence which require them to exercise reasonable care in the performance of their office. The test of proximity developed in the law of negligence applies to the relationship between a director and a company; and
(iv) that non-executive directors are not subject to a lower standard of care than that applied to executive directors. Non-executive directors are not entitled just to rely on information provided to them. They must make inquiries where these are warranted by the circumstances.

What Legislative Reforms If Any May Be Expected?

In this part of the article, I will attempt to show some of the Commonwealth legislative reforms undertaken or proposed so as to enhance the existing standard of governance that may in turn influence the legislative reform to be undertaken by Malaysia.[30]

Commonwealth legislative reforms centre around:

(i) providing expressly for the duty of care and skill which is currently omitted by our current section 132(1) of the Companies Act 1965;
(ii) providing for an objective assessment of the standard of care (in part or in whole) with reference to circumstances. Currently the

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[28](1995) 13 ACLC 614.

[29]See Phillip Lipton & Abe Herzberg, *Understanding Company Law*, Eighth Edition, at page 316.

[30]These reforms and provisions were noted briefly in the report prepared by the High Level Finance Committee on Corporate Governance.

position taken in Malaysia is that as advocated by the common law which emphasises a subjective assessment of care;

(iii) extending this duty of care on to officers, section 132(1) of our Companies Act 1965 is currently silent on this matter as it only speaks of the duties of a director;

(iv) making the directors more responsible for the acts carried out by their delegates. Currently in Malaysia there is no legislative provision as to whether the directors can in fact delegate and what if any are its limitations; and

(v) providing for the statutory enactment of the 'Business Judgement Rule'.

Section 130 of the New Zealand Companies Act 1993 provides:

(i) subject to any restriction in the constitution of the company, the board of a company may delegate to a committee of directors, a director or employee of the company, or any person, any one or more of its powers other than its powers under any of the sections of this Act (*reserved for the board solely*);

(ii) a board that delegates a power under subsection (1) of this section is responsible for the exercise of the power by the delegate as if the power had been exercised by the board, unless the board -

  (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on directors of the company by this Act and the company's constitution; and

  (b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

Section 137 of the same Act further provides:

"A director of a company, when exercising powers or performing duties as a director, must exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation,

(i) The nature of the company; and
(ii) The nature of the decision; and
(iii) The position of the director and the nature of the responsibilities undertaken by him or her."[28]

Australia has enacted the following provisions as part of its Corporations Law via its Corporate Law Economic Reform Program Act 1999.

Section 180 reads, a director or other officer of a corporation must exercise their powers and discharge their duties with the care and diligence that a reasonable person would exercise if they were a director or officer of a corporation in the corporation's circumstances and occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

Section 190 further reads, if the directors delegate a power under section 198D, a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves.

A director is not responsible under subsection (1) if:

(i) the director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on the directors of the company by this law and the company's constitution (if any); and
(ii) the director believed on the reasonable grounds, in good faith and after making proper inquiries if the circumstances indicated the need for inquiry that the delegate was reliable and competent in relation to the power delegated.[29]

Section 134 of the Business Corporation Act Revised Statues of Ontario 1990 reads, every director and officer of a corporation in exercising his or her powers and discharging his or her duties shall act honestly and in good faith with a view to the best interests of the corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

[28] This text was downloaded from http://rangi.knowledge-basket.co.nz/gpacts/.

[29] This text was downloaded from http://www.auslii.edu.au/au/legis/cth/consol.

Section 123(4) of the proposed Canadian Business Corporations Act reads:

> "A director is not liable under section 118 or 119, and has complied with his or her duties under subsection 122(2), if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances...".

How Do We Reassure the Honest and Responsible Director?

The fear of reforming law so as to enhance the existing standard of governance is that it may stifle innovation, venturesome business activity and deter qualified persons from taking on the office of a director.

Furthermore, as indicated by the Report prepared the High Level Finance Committee on Corporate Governance, Malaysia is merely at the initial stages of developing independent and effective boards.

Any laws to be enacted must thus address these fears, for failing to do so may have serious economic implications.

In America, this fear is overcome by applying 'the business judgement rule' which prevents the courts from questioning the merits of a business judgement made by directors and officers provided it can be shown that the judgement was arrived at after reasonable investigation, in good faith without personal interest and in the reasonable belief that it would benefit the company.[30]

Section 180(2) of the Australian Corporate Law Economic Reform Program Act 1999 has now introduced a statutory version of this 'business judgement rule'. The section reads, a director or other officer of a corporation who makes a business judgement is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgement if they:

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[30]Australian company law has common law principles akin to that of the 'business judgement rule'. The judicial *dicta* in *Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance)* (1968) 12 CLR 483 appears to suggest this. The court here remarked that:

> "Directors in whom are vested the right and duty of deciding where the company's interest lie and how they are to be served may be concerned with a wide range of practical considerations, and their judgement, if exercised in good faith and not for irrelevant purposes is not open to review in the courts."

(i) make the judgement in good faith for a proper purpose;
(ii) do not have a material interest in the subject matter of the judgement;
(iii) inform themselves about the subject matter of the judgement to the extent they reasonably believe to be appropriate; and
(iv) rationally believe that the judgement is in the best interest of the corporation.

The director's or officer's belief that the judgement is in the best interest of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.[31]

Corporate Governance advocates the making of informed decisions by directors. The law must sustain this desirable conduct by directors.

For instance section 189 of the (Australian) Corporate Law Economic Reform Program Act 1999 provides that if a director relies on information, professional or expert advice, given or prepared by an employee of the corporation whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned or a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence or another director or officer in relation to matters within the director's or officer's authority or a committee of director's on which the director did not serve in relation to matters within the committee's authority and the reliance was made:

(i) in good faith;
(ii) after making an independent assessment of the information or advice, having regard to the director's knowledge of the corporation and the complexity of the structure and operations of the corporation; and
(iii) the reasonableness of the director's reliance on the information or advice arises in proceedings brought to determine whether a director has performed a duty...

[31] Subsection (1) deals with a director's general duties of care and skill, which have already been reproduced, *supra*.

the director's reliance on the information or advice is taken to be reasonable unless the contrary is proven.

Conclusion

Malaysia is dedicated towards enhancing the existing standards of Corporate Governance as evidenced by the many steps that have been undertaken so as to ensure its successful implementation.

Enhancing the existing standard of governance is by no means a minor task and in part it would require a reassessment of existing laws. Laws would have to be reformed in light of this exercise.

Reforming a director's duty in negligence is merely one of the many laws that will undergo reform in this near future in light of this exercise.

In this article I have attempted to show why current common law principles pertaining to a director's duty in negligence is not in harmony with the global expectations of corporate governance.

Corporate Governance requires responsible and accountable directors in managing, supervising and directing companies so as to ensure the companies' economic success and furthermore it has also placed great expectations on the independent director or non-executive director that is not consistent with the traditional view of common law.

Legislative reform is thus required if we are to make directors more accountable for their management actions or inaction.

I have also attempted to show what legislative reforms may be expected in the near future with reference to legislative reforms undertaken by other Commonwealth countries in respect of this aspect of a director's duty.

However ultimately what legislative reform may actually take place in Malaysia is dependent upon the economic, social and political agenda of the government of the day.

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Remote Sensing: Capabilities and Legal Issues

Introduction

The term 'remote sensing' is not yet a household word, but it may soon be. As a species, we have been literally blind to the universe around us. Socrates once said "man must rise above the Earth to the top of the atmosphere and beyond, for only thus will he fully understand the world in which he lives".[1] Remote Sensing is the observation of an objection of an object from a distance. It involves an activity we all have engaged in - taking photographs - with two twists.[2] First, in place of a camera, remote sensing has traditionally involved the use of mirror-like sensors to "photograph" particular images in a digital format. Second, the sensors are housed on board a satellite that is usually placed on a low polar orbit so that it may vertically scan the Earth while the Earth is revolving around its axis. Simply put, remote sensing is the technology for taking photographs of the Earth from outer space. The United Nations defined the term "remote sensing" as the sensing of the Earth's surface from space by making use of the properties electromagnetic waves emitted, reflected or diffracted by the sensed objects, for the purpose of improving natural resources management, land use and the protection of the environment.[3]

Many areas of human activity have benefited from remote sensing activities in the past few years. Few uses of space have helped man more directly and immediately than has monitoring of the global environment – air, land and sea. Satellite weather photographs are not

[1]Adigun Ade Abiodun, 'Remote Sensing in the Information Age', 28 January 1998.

[2]'Heaven and Earth: Civilian Use of Near-Earth Space', at page 139.

[3]Principle 1(a), Principles Relating to Remote Sensing of the Earth from Space.