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A/AC.105/C.2/SR.315
5 April 1979

ORIGINAL: ENGLISH

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Eighteenth session

SUMMARY RECORD OF THE 315th MEETING

Held at Headquarters, New York,
on Tuesday, 3 April 1979, at 10.30 a.m.

Chairman: Mr. WYZNER (Poland)

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Matters relating to the definition and/or delimitation of outer space and outer space activities, bearing in mind, inter alia, questions relating to the geostationary orbit (continued)

Other matters

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The meeting was called to order at 10.50 a.m.

MATTERS RELATING TO THE DEFINITION AND/OR DELIMITATION OF OUTER SPACE AND OUTER SPACE ACTIVITIES, BEARING IN MIND, INTER ALIA, QUESTIONS RELATING TO THE GEOSTATIONARY ORBIT (continued) (A/AC.105/C.2/7 and Add.1, A/AC.105/C.2/L.121)

1. Mr. ENTERLEIN (German Democratic Republic) said the fact that increasingly sophisticated space technology was being developed and that an increasing number of States were directly or indirectly taking part in outer-space activities justified the view that it was now time to establish a convention making a clear distinction between air space and outer space, which would assist in reducing legal ambiguity and avoiding tensions. His delegation therefore supported the Soviet proposal (A/AC.105/C.2/L.121) that space beyond an altitude of 100 (110) kilometres should be outer space and that an international convention should establish a demarcation between air space and outer space. The proposal was realistic, conforming to the position of a great number of States. The Sub-Committee and the competent international organizations should now undertake to identify the legal problems involved in establishing the boundary. His delegation also felt that States should be conceded transit rights in those parts of the air space of other States required for the launching and landing of space objects for the peaceful exploration and use of outer space.

2. On the subject of geostationary satellites, he noted that many satellites had been launched into earth orbit - some of them were still in orbit, including some in geostationary orbit - and until recently no State had protested against that situation. In practice, the principle of the freedom of outer space had applied; it was a generally accepted principle of customary international law, expressly confirmed by the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, and, as such, could not be set aside by any unilateral statement. Despite the absence of a definition of outer space or of the delimitation between outer space and air space, it was not in the interest of co-operation in the space field for States to claim national sovereignty over portions of an orbit. His delegation maintained that the orbit of geostationary satellites was part of outer space and could not be the object of national appropriation. The exploration and use of outer space was open to all States without discrimination, on the basis of equality and in compliance with international law. Furthermore, the placement of a geostationary satellite in orbit did not establish sovereign rights over certain portions of the orbit, and States orbiting geostationary satellites should be governed by the principle of co-operation and should give due consideration to the interests of other States.

3. Mr. BONILLA (Colombia) said that his delegation could not agree with the Soviet working paper (A/AC.105/C.2/L.121). The proposed limit was arbitrary and completely without scientific or technical basis. His delegation hoped that it would be possible for the United Nations to arrive at a correct definition of the limits of outer space, taking into account the special situation of the geostationary orbit. In the past, some resolutions adopted by the General Assembly

(Mr. Bonilla, Colombia)

had contained ambiguous terms which had led to conflicts threatening international peace and security. The subject of the definition of outer space and the special situation of the geostationary orbit could have a serious impact on the harmony of nations and should therefore be studied very carefully and scientifically. Colombia maintained that the portion of the geostationary orbit over its territory was subject to its sovereignty. That did not mean, however, that his country wished to appropriate that portion of the orbit for its exclusive use; the orbit remained at the service of the international community, in accordance with his country's policy of co-operating in all projects of benefit to human welfare and progress. His delegation was not surprised by the explicit policy - already familiar from the colonialist past - of some developed countries to rob the equatorial countries of part of their natural resources, namely, those portions of the geostationary orbit belonging to them. Lastly, while his delegation welcomed the valuable assistance of the International Civil Aviation Organization in preparing a definition delimiting air space from outer space, it should be remembered that that specialized agency could act only as an advisory body whose findings were not binding and that the Sub-Committee was the only suitable forum for the study of the definition and delimitation of outer space.

4. Mr. GÓRBIEL (Poland) said that in his delegation's view the geostationary orbit was an integral part of outer space and was therefore under the régime of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, meaning that it was not subject to national sovereignty. On the subject of defining outer space, there were three basic questions which needed to be answered: was such a definition necessary, how should it be drawn up, and what should be the content of such a definition? The recent controversy over the status of the geostationary orbit was convincing proof of the need for a legal definition of outer space. Despite the existence of a large body of international law governing air space and outer space, the territorial spheres for the application of the provisions regulating air space and those regulating outer space had not yet been determined. On the methods to be used in preparing such definitions, he felt that the functional approach did not appear to make a satisfactory and exact distinction between air-space activities and outer-space activities, and therefore the spatial approach should be followed, i.e. the establishment by treaty of a linear delimitation between air space and outer space. The final question dealt with the altitude at which the agreed limitations should be set. Various criteria had been suggested, of which the most important, in his delegation's view, were those applying to the geophysical and technical aspects of the problem. For that reason, his delegation supported the Soviet proposal (A/AC.105/C.2/L.121) that the region beyond 100 (110) kilometres above sea level should be recognized as outer space. The proposal was in line with numerous other similar suggestions made in recent years. His delegation also felt that space craft should have the right to enter the air space of other States when going into orbit or returning to earth.

5. Mrs. ARUNGU-OLENDE (Kenya) said that her country, as an equatorial State, felt that the geostationary orbit was determined by geophysical properties of the earth and constituted a natural resource of certain States. Her country, therefore, put

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(Mrs. Arungu-Olende, Kenya)

reservations on the placement of satellites into the geostationary orbit and wanted launching States to seek its consent before such placement until the legal régime governing that orbit was established.

6. Mr. RASHID (Iraq) said that the establishment of a boundary dividing air space and outer space did not entirely solve the problem of delimiting outer space. Therefore, the functional approach based on a definition of space activity was also necessary. Air space had two aspects, scientific and legal, neither of which had been defined as yet. In his view, a legal limit for air space would have to depend on the scientific definition of that space. A legal framework for the operation of national legislation applicable to the space above a nation's territory should establish reasonable and stable boundaries based on reliable scientific data. His delegation felt that there should be a definition of space activity which would allow the rules of space law to apply uniformly to a specific activity, whether it took place in air space or in outer space, and would avoid the need for two separate legal régimes. Such a definition should not depend on the nature of the space craft, whose flight was based on different principles in the two kinds of space. Lastly, his delegation believed that the extension of national sovereignty to include the geostationary orbit would not protect the interests of subjacent States, since it would be based on a legal fiction and not on specific substantive considerations.

7. Mr. SUPANDI (Indonesia), referring to the question of the definition of outer space, drew attention to the 1944 Convention on International Civil Aviation, which recognized that every State had complete and exclusive sovereignty over the air space above its territory. He also pointed out that, under article VII of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, States were internationally liable for damage caused by space objects on the earth, in air space or in outer space. In his delegation's view, both of those provisions clearly highlighted the distinction between earth, air space and outer space. Since the scope of the two instruments had not been clearly determined, a legal question had arisen concerning the right of a State to launch space objects that passed through the air space of other States. The delimitation of outer space was of great importance, owing to the increasing number of objects launched into outer space and the participation by a growing number of States in space activities, which had a great impact upon generally accepted principles of international law, including national sovereignty.

8. His delegation believed that the unique nature of the geostationary orbit should be taken into account in any definition of outer space. Article 33 of the 1973 International Telecommunication Convention of the International Telecommunication Union (ITU) had recognized the geostationary orbit as a limited natural resource. It was desirable, therefore, that that orbit should be governed by a specific legal régime. The continuous occupation of the orbit by a growing number of satellites represented de facto appropriation by States, which was contrary to article II of the 1967 Treaty. His delegation favoured the inclusion of an item on the geostationary orbit in the Sub-Committee's agenda as a priority issue.

9. Mr. LAY (Italy) said that his delegation's position concerning the geostationary orbit had been expressed in the general debate. As for the definition and/or delimitation of outer space, he hoped that, on the basis of the ample documentation now available and with the usual spirit of co-operation, the Sub-Committee would be able to reach a consensus. His delegation favoured an approach which would establish the delimitation line on a conventional basis only, since it believed that such a delimitation should be specified, in a general treaty, as equal for all States. Moreover, the right of free transit of space objects through foreign air space should be explicitly acknowledged, provided that such transit did not harm or prejudice third States. Given the lack of an agreed definition of the expression "space objects", prior agreement on that definition would be essential in the elaboration of a general treaty.

OTHER MATTERS

Legal aspects of the use of nuclear power sources in outer space

10. Mr. GARCIA (Brazil) said that his delegation endorsed the position expressed in paragraph 3 of the working paper submitted by a number of delegations at the previous session (A/AC.105/218, annex IV), namely, that substantive discussion should begin on the legal aspects of the use of nuclear power sources in outer space, in particular on those of the issues of notification and emergency assistance, which did not require special scientific and technical study. His delegation also supported the Canadian proposal that the Sub-Committee should recommend to its parent Committee the inclusion of that new item in its agenda, with a view to starting work on it at the next session.

11. Mr. DE LA PEDRAJA (Mexico) said that his delegation, as one of the authors of the working paper in annex IV to document A/AC.105/218, welcomed the Canadian proposal for a study of the legal aspects of the use of nuclear power sources in outer space, devoting attention to the four aspects mentioned in that proposal.

12. It fully agreed with the Canadian delegation that the Sub-Committee should consider the items on the agenda of the Scientific and Technical Sub-Committee and shared the conviction that the study of the legal aspects should not hinge upon the final results of work on the scientific and technical aspects. That view was substantiated by experience in such fields as remote sensing and direct television broadcasting by satellite.

13. Mexico therefore supported the proposal that an item on the use of nuclear power sources should be included in the Sub-Committee's agenda, for which the necessary recommendation should be made to its parent Committee. He suggested that the Sub-Committee should also recommend a decision by the parent Committee that all items on the agenda of one of the two Sub-Committees could be dealt with by the other. There was general agreement that consideration of both the scientific and technical aspects and the legal aspects, of all items relating to the exploration and use of outer space should proceed in parallel.

14. Mr. TORRES (Chile) said that his delegation, which had joined others in submitting the working paper in annex IV to document A/AC.105/218, felt that the

(Mr. Torres, Chile)

time had come to begin work without delay on the legal aspects of the use of nuclear power sources in outer space. At the preceding meeting, the Canadian delegation had proposed certain aspects of that question for further work in the Sub-Committee, with a view to establishing, on the basis of existing legal instruments, additional measures and/or new international instruments for regulating the use of such power sources in order to protect human life and the environment. His delegation supported the proposal concerning the inclusion of a separate item in the Sub-Committee's agenda on the legal aspects of the use of nuclear power sources in outer space. He believed that there should be a flexible practice whereby either Sub-Committee should be entitled to recommend study of an item already being considered by the other when the nature of the item required a more complete study.

15. Mr. DANIELSSON (Sweden) said that his delegation, which had joined in submitting the working paper in annex IV to document A/AC.105/218, wished to express its satisfaction that the Working Group on the Use of Nuclear Power Sources, established under General Assembly resolution 33/16, had started its work constructively during the recent session of the Scientific and Technical Sub-Committee. It hoped that the Group would be able, perhaps by 1980, to produce a technical basis for safety measures upon which the Legal Sub-Committee would be asked to elaborate regulatory instruments.

16. His delegation welcomed the general agreement that launching States should, pursuant to General Assembly resolution 33/16, inform States concerned when a space object with nuclear power sources on board was malfunctioning with a risk of re-entry of radio-active materials to the earth. It saw that provision as an important first step which it hoped would, at the appropriate time, be included in a legally binding instrument. Notification prior to launch should also include information regarding the type of nuclear power source involved. Another aspect of the problem concerned emergency assistance in case of an accident. The Sub-Committee should in due course look into the question whether and how the existing legal instruments relating to outer space needed to be strengthened with regard to those aspects. Obviously, strict adherence to the existing United Nations instruments would help to solve problems after an accident occurred.

17. His delegation supported the Canadian proposal relating to legal aspects of the use of nuclear power sources in outer space. It agreed that a new item on the subject should be included in the agenda for the next session, by which time the Working Group on the Use of Nuclear Power Sources might be expected to have prepared its report.

18. His delegation would consider any other constructive proposal that could improve safety in the use of nuclear power sources in outer space.

19. Mr. SUCHARIPA (Austria) said that the question of nuclear power sources in outer space could best be dealt with in a co-ordinated effort of the two Sub-Committees. His delegation had therefore welcomed the General Assembly's decision to include that question in the agenda of the Scientific and Technical

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(Mr. Sucharipa, Austria)

Sub-Committee and to allow for a connected debate in the Legal Sub-Committee under the item "Other matters". It also welcomed the first report of the Working Group on the Use of Nuclear Power Sources and trusted that the Working Group's future work would continue to yield positive results.

20. He reaffirmed his delegation's interest in developing a framework of agreed safety standards, notification procedures and regulations concerning co-operative measures to assist in rescue and clean-up operations in the event of accidents. He hoped that the future discussion of the use of nuclear power sources within the Scientific and Technical Sub-Committee would facilitate the further development of legal mechanisms within the Legal Sub-Committee, and he trusted that the latter would embark on that work in 1980. As a first step, he suggested that it should consider existing international legal norms with a view to ascertaining those areas where the norms seemed to be inadequate. Thus, with the help of the Scientific and Technical Sub-Committee, it could establish a number of areas for the elaboration of rules or generally agreed principles which would both take into account the necessity of using nuclear power sources in outer space and at the same time minimize their inherent dangers.

21. Mr. BOND (United States) said that, while the key factors so far identified in the consideration of the question of the use of nuclear power sources in outer space were highly technical, his delegation believed that useful discussion of certain legal aspects could be commenced at the Sub-Committee's next session. It therefore supported the Canadian proposal to recommend adding such an item to its agenda for that session.

22. His delegation believed that the question of notification on expected re-entry or on malfunction of a space craft carrying a nuclear power source, while involving parameters of a technical nature, could be fruitfully discussed in the Legal Sub-Committee, provided that the Sub-Committee recognized the possible influence of technical factors on shaping or revising its tentative attitudes. Similarly, the legal aspects of providing assistance both in search and recovery operations and in rendering emergency assistance could be usefully considered.

23. In regard to other possible areas, such as the establishment of legal norms for radiation-exposure levels, the Scientific and Technical Sub-Committee should be permitted to pursue its discussion of the technical factors without the Legal Sub-Committee's having prejudged or unintentionally restricted the outcome. The debate on legal norms should therefore be deferred until the technical parameters had been developed.

24. The United States had followed a practice of thoroughly reviewing and publicizing in advance all plans to use nuclear power sources in space. However, advance notice of launch was far less important to the common objective of mitigating or averting any hazards from nuclear power sources than other possible areas of work, such as notification of expected re-entry or the rendering of emergency assistance. In his delegation's view, it was to those two areas that the Sub-Committee should devote its efforts.

25. Mrs. ARUNGU-OLENDE (Kenya) said that her delegation supported the Canadian proposal concerning the use of nuclear power sources in outer space. It also wished to stress the importance of establishing legal regulations on the use of nuclear power sources in outer space because, despite the risks associated with those power sources, there appeared to be no alternative sources. It was therefore high time to take precautions in order to protect the earth and its environment. The Sub-Committee should discuss the matter on a priority basis with a view to adopting appropriate legal measures.

26. Her delegation supported the view that the Sub-Committee should not continue to wait for the scientific and technical aspects to be finalized before it established the preliminary legal requirements. The scientific and technical work already done was enough to provide guidelines for legal principles, which could be supplemented by continuing work on the technical aspects.

27. The principles that could provide an initial basis for the Sub-Committee's work should include such matters as the need for notification prior to launching and information concerning the type of power source used. That could be followed by the obligation of the launching State to notify States of expected re-entry or malfunction. The Scientific and Technical Sub-Committee would complement the legal norms in that connexion by providing accurate predictions. Attention could then be focused on the requirement for emergency assistance and liability for damage.

28. The responsibility of launching States could no longer remain voluntary but must instead be governed by legal norms. Some had argued that such requirements would constitute interference with the sovereign rights of States, but in view of previous disregard of human safety and the environment, it was necessary to demand strict safety measures. One proposed measure would be to place satellites using nuclear power sources into higher orbit or, failing that, to arrange for radio-active material to be dispersed in space prior to re-entry.

29. Since the formulation of legal regulations covering such matters was a lengthy process, the Sub-Committee should embark on that work without delay.

30. Ms. MALIK (India) supported the Canadian proposal that the Sub-Committee should commence discussion of the legal aspects of the use of nuclear power sources in outer space. She felt that there was no need to await the results of the work of the Scientific and Technical Sub-Committee. She therefore supported the proposal that a new item on the subject should be included in the agenda for the next session.

31. Mr. DIEBERGH (Belgium) said that his delegation supported the Canadian proposal put forward at the preceding meeting concerning the use of nuclear power sources. It also felt that, in addition to the scientific and technical aspects of the matter, there was a need to study and clarify the scope of existing legal instruments governing space activities. It would be better to proceed through the adoption of General Assembly resolutions and to ascertain later whether new legal instruments were called for. His delegation also agreed that the

(Mr. Debergh, Belgium)

Sub-Committee's work would be more effective if the question was included in the agenda as a separate item.

32. Mr. SUPANDI (Indonesia) welcomed the Canadian proposal on the use of nuclear power sources and expressed the hope that priority attention would be given to the question at the Sub-Committee's future sessions.

The meeting rose at 12.20 p.m.