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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Sixteenth session

SUMMARY RECORD OF THE 269th MEETING

Held at Headquarters, New York,
on Thursday, 17 March 1977, at 10.30 a.m.

Chairman: Mr. WYZNER (Poland)

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

GENERAL EXCHANGE OF VIEWS (continued)

1. Mr. CANALES (Chile) said that the sensational progress achieved in space technology was influencing efforts to draft comprehensive space legislation which was just for all States. However, in carrying out that urgent task, political and juridical factors must, in most cases, take precedence over the technological or scientific considerations which were constantly evolving. Moreover, although obstacles might often arise because of a lack of consensus among States with different capacities for the exploration and use of outer space, good faith and a spirit of justice and impartiality would result in solutions which were acceptable to all.

2. In spite of the high priority accorded to the treaty relating to the moon, the Committee had been unable to complete it, principally because of the problem of the legal status of the natural resources of the moon. Once a solution had been found to that problem, it would be easier to resolve the questions of information on missions to the moon and the scope of the treaty. At the fifteenth session, his delegation, together with others, had submitted a working paper which was still fully valid. That proposal was based on the "common heritage of mankind" concept, which had a clear meaning in contemporary international law and called for the establishment of an international régime to regulate the exploration and exploitation of the resources of outer space, as well as the equitable distribution of the benefits deriving from such exploitation. The situation with regard to outer space was similar to that of the sea-bed and ocean floor beyond the limits of national jurisdiction - for which that new legal concept had already been accepted - and its appropriation by a few technologically advanced countries would widen the gap between the industrialized and developing countries. The fact that a State occupied or set up facilities on the moon's surface could not justify the appropriation of the moon and its resources, which would violate the Outer Space Treaty of 1967. Furthermore, the scope of the treaty relating to the moon should extend to all celestial bodies that might be explored or utilized in the future, since there were no cogent reasons for deferring such legislation. Any deadlock that had been reached in the adoption of specific agreements was attributable to the desire to protect the rights of the majority of the States which could not compete to any advantage in the area of space.

3. Referring to the question of elaborating principles governing the use by States of artificial earth satellites for direct television broadcasting, he said that the work of the Sub-Committee at its fifteenth session had been very effective, since Working Group II had successfully drafted nine principles. Unfortunately, it had not been possible to achieve complete agreement because of the divergent views on three very closely interrelated aspects, namely, consent and participation, programme content and unlawful/inadmissible broadcasts. Appropriate legislation should be adopted in that area; otherwise, States would be exposed to violations of their sovereignty and the fundamental principle of non-interference in the internal affairs of other States would not be observed. Radio broadcasting had made it possible to transmit programmes designed to interfere politically in the affairs of other countries, and direct television broadcasting by satellite could be an even

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more powerful weapon for hostile propaganda. Consequently, broadcasts which did not comply with the prior consent requirement should be considered unlawful and inadmissible under international law, although it should be recognized that direct television broadcasting by satellite constituted an extraordinary advance and that international co-operation in that field would contribute enormously to the cultural development of peoples.

4. Another topic which was of fundamental interest to his delegation was that of the legal implications of remote sensing of the earth from space. While international co-operation in that field had been highly effective, no final agreement had yet been reached on a number of principles which were vital to the interests of States. That situation was a cause for concern, since those States which controlled the remote sensing systems undoubtedly had access to data and information the unregulated use of which could be detrimental to other States. In order to safeguard sovereignty, security, prior consent and free access to information, the Latin American States had sponsored a draft treaty on the remote sensing of natural resources by means of space technology (A/C.1/1047), submitted by Argentina and Brazil in 1974. Chile did not wish to hamper remote sensing activities; on the contrary, it favoured progress in that field, shown by the fact that an earth station linked to the United States LANDSAT system was soon to come into operation in Chile. Basically, his delegation's position was that activities involving the remote sensing of areas under the jurisdiction of a given State could not be carried out without that State's prior consent; it was also clear that information thus obtained could not be transmitted to third parties without the express authorization of the sensed State or used to its detriment; and finally, it was logical for that State to have unlimited access to all such data.

5. The question of the definition and/or delimitation of outer space had been considered only briefly. The question was whether it would be possible to draft appropriate legislation on outer space without first knowing what its limits, and consequently its very nature, were. Document A/AC.105/C.2/7/Add.1, prepared by the Secretariat, provided a valuable summary of the positions of the various countries on that definition; it was to be hoped that, during the current session, the Sub-Committee could devote more time to consideration of the question and arrive at final conclusions. Advances in technology demonstrated the advantages of demarcating clearly the area of jurisdiction of each State in space over its territory or maritime zones. Considerations of sovereignty and security, and economic interests made it essential to establish the vertical limits of that jurisdiction in order to avoid disputes, to benefit the developing countries and to guarantee observance of the principles of the United Nations Charter, particularly with regard to non-interference in the internal affairs of other States. It was worth while recalling the problems which had arisen with regard to the law of the sea because of a lack of legislation on the jurisdiction of States. Similar problems could be expected to arise in space if a final definition was postponed. The Secretariat document referred to provided an excellent framework for devising a possible conventional line for the delimitation of outer space. In any event, the technical and scientific aspects should, because of their continual evolution, be subordinated to the political and juridical criteria, which were the province of the Legal Sub-Committee.

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6. In conclusion, he said that he was gratified by the decision of the Sub-Committee to admit other Latin American delegations as observers, and considered the attitude of Colombia, Ecuador and Guyana as a reflection of the growing interest of developing countries in matters relating to space.

7. Mr. CONSALVI (Venezuela) said that the benefits to be obtained from activities in outer space became more apparent each day, and the international community, in trying to deal with common problems and give a new direction to international relations, should endeavour to achieve effective co-operation to ensure that those benefits were utilized for the good of all on the basis of an appropriate juridical framework which took account of the new opportunities and responsibilities concomitant with the space age. It was particularly important to the developing countries that that legal framework should guarantee access to space technology, so that they could cease to be merely the recipients of the applications of that technology.

8. Although differences of opinion still existed with regard to the fundamental aspects of the items on the agenda, it was encouraging to note the rate of progress achieved by the Legal Sub-Committee in its work in 1976. The fact that legislation governing some aspects of space activities had already been adopted, and the hopes and possibilities which that process had generated, gave grounds for thinking that it would be possible to formulate, within a reasonable space of time, the norms and principles for the regulation of such areas as remote sensing and television satellites.

9. Referring to the draft treaty relating to the moon, he said that he regretted the fact that, thus far, it had not been possible to reconcile extreme positions on the régime to which natural resources of the moon would be subject; that situation was due to the prevailing opinion in some delegations that the benefits to be derived from the exploitation of those resources could not be made subject to a régime based on the common heritage of mankind. It was to be hoped that the right of conquest or possession, which had prevailed on earth for so long, was not to be applied to the moon and its resources, so that the voracious consumption of renewable resources which had taken place over the past 50 years was not repeated. In that connexion, a comparison could be made with the regulations governing the sea-bed and ocean floor since, in spite of the fact that only a few countries possessed the technology necessary to exploit marine resources, the efforts being made in the United Nations Conference on the Law of the Sea to agree on a régime for exploitation were based on the fundamental premise that the sea-bed and its resources were the common heritage of mankind. That concept was equally applicable to the moon and its resources and was a prerequisite for the elaboration of the draft treaty relating to the moon. In his delegation's view, the working paper submitted by a group of third world countries regarding articles IX bis and X bis constituted an appropriate and fair basis for the solution of that problem.

10. With regard to the problem of formulating the principles governing the use by States of artificial earth satellites for direct television broadcasting, sensitive and unresolved questions still remained, concerning, for instance, consent and

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participation and the ideological content and purposes of the programmes. The various advantages which modern communications could offer did not eliminate the possibility that States or private corporations which controlled the broadcasts could use it arbitrarily. Developing countries, which constituted the great majority of the broadcast-receiving countries, had reiterated their concern over the unilateral utilization of the broadcasts and, although they believed in the freedom of information and practised it, they rejected strongly any autocratic control of information and the use of information for political or other purposes. It was, therefore, imperative to conclude international agreements on those matters, which could affect the culture and traditions of peoples.

11. With regard to the legal implications of remote sensing of the earth from outer space, he expressed his satisfaction that the Sub-Committee was to attempt to prepare various draft principles and identify common elements in that complex and important subject. Since remote sensing activities were aimed specifically at territories which were under the jurisdiction of States, it was necessary to formulate regulations which would take into account the respect for the basic rules of sovereignty, especially if those activities were aimed at detecting natural and strategic resources in territories and at obtaining information of that kind. The regulations would promote the orderly and just use of the benefits of remote sensing.

12. Mr. LAY (Italy) was happy to acknowledge the progress which the Sub-Committee had made towards the formation of an international corpus juris to regulate the peaceful use of outer space, following the successful negotiation of the 1967 Outer Space Treaty, which was the foundation of a régime characterized by non-appropriation, the guarantee of freedom to explore and use space without discrimination, the exchange of scientific information and the goal that space activities should be carried out for the benefit of all mankind.

13. With regard to the draft treaty relating to the moon, which, in his view, should be called the "Convention on the Moon", he stressed the importance of avoiding a repetition of the principles already set forth in the 1967 Treaty, so as to avoid doubts and difficulties of interpretation. On the specific substance of the item, he referred members to suggestions put forward by his delegation at the fifteenth session (A/AC.105/171, annex I, p. 2).

14. With regard to remote sensing, his delegation hoped that, in considering the matter, the Sub-Committee would give due attention to the need to promote increased application of new technology, especially in the programmes of developing countries. It should be realized that a restrictive data dissemination policy would lead to a severe curtailment of the benefits to be derived from remote sensing activities. Concerning the practical and legal problems which might arise in connexion with the sovereign right of States over their natural resources, such problems could be avoided if a flexible approach were adopted which would enable each country to decide its position, case by case. In that connexion, his delegation fully agreed with the ideas embodied in the Final Act of the Helsinki Conference on Security and Co-operation in Europe on the subject of the exchange of information.

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15. In his opinion, the time was ripe to adopt specific measures concerning the principles governing the use by States of artificial earth satellites for direct television broadcasting. Initially, the Sub-Committee and then the Committee on the Peaceful Uses of Outer Space and the General Assembly had resolved various aspects of the matter, which had been under discussion at the time, including purposes and objectives, the applicability of international law, rights and benefits, international co-operation, State responsibility, duty and right to consult and notification to the United Nations. For its part, Italy favoured the fullest possible support for freedom of information in both its active and passive aspects, namely, the freedom to disseminate news and ideas and the freedom to receive them, since that would lead to greater understanding among peoples and the establishment of a common cultural background. In any case, freedom always implied responsibilities and he noted that in the Italian legal system the dissemination of false or distorted information constituted a criminal offence.

16. On the question of the delimitation of outer space, he noted the proposal which his delegation had submitted to the Sub-Committee at its 1975 session that the median distance set from the surface of the earth in order to define the so-called "vertical frontier" should be understood as establishing a line between the upper vertical limit of air activities and the lower vertical limit of space activities. Hence the median line of 90 kilometres, referred to by his delegation at that time as an example, should be understood as a flexible criterion, which did not exclude the consideration of proposals of other delegations, such as the one setting a limit at 100 kilometres.

17. Mr. GREENWOOD (United Kingdom) said that three matters in connexion with the moon treaty had remained unsettled at the end of the fifteenth session of the Sub-Committee: exploitation of the moon and its resources, the scope of the treaty and the information to be furnished by countries concerning their moon missions. It had not been possible to reach total agreement on those questions, although it had been agreed that exploitation should be subject to an international régime and a number of principles of that régime had been agreed. The points which had caused difficulties were, firstly, whether the moon and its resources should be the common heritage of mankind and what were the implications of that expression and, secondly, the manner of sharing the benefits of those resources. The United Kingdom's attitude was flexible and his delegation was prepared to accept any formulation which met general acceptance in the Sub-Committee, provided that the provisions concerning the sharing of resources were fair and reasonable and did not exclude any country from an equitable share in the benefits.

18. In 1976 nine principles governing direct broadcasting by satellite had been formulated on first reading. The questions which still remained unsettled were whether the prior consent of the receiving State was required and what the limits if any, should be on the content of the programme. The two opposing views on the question of prior consent were represented by the two alternatives A and B in annex II of document A/AC.105/171. His country was associated with those delegations which in 1975 had formulated alternative B, which stated that no consent from the receiving State was required. The United Kingdom continued to maintain that view, which was based on the basic human right of the freedom of the

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individual to receive and impart information and ideas, regardless of frontiers. Among the international instruments which enshrined that right were the Universal Declaration of Human Rights and the United Nations Covenant on Civil and Political Rights. His country had recently ratified the Covenant and its Optional Protocol and had for many years been a party to the European Convention on Human Rights which contained similar provisions on the freedom of information.

19. The most significant event in relation to direct broadcasting by satellite since the previous session of the Sub-Committee had been the World Administrative Radio Conference of the ITU in Geneva in January and February of 1977, which had concluded a World Agreement and Associated Plan for ITU regions 1 and 3, postponing region 2, namely, the Americas, for another conference which would be held not later than 1982. The Agreement and Plan would enter into force on 1 January 1979, subject to the approval of the final acts of the Conference by Governments. The Plan, which would remain in force for 15 years, only permitted State-to-State direct broadcasting by satellite in the case of a few groups of countries which had agreed to share orbital positions and frequencies and had a common international beam. Otherwise, orbital positions and frequencies were assigned on a purely national basis with beams confined to countries or parts of countries with minimal overspill beyond frontiers.

20. In the view of his delegation, the results of the Conference had completely altered the basic assumptions on which the question of requiring the consent of the receiving State had hitherto been considered in the Sub-Committee, since it had been shown that there were no grounds to fear that some countries with the technical ability and resources required could establish direct broadcasting by satellite to other countries against the wish of those countries. Except in the case of those few countries which by mutual agreement shared a common beam, State-to-State direct broadcasting by satellite would be in breach of treaty obligations and furthermore, in the opinion of his delegation, was in practice impossible, since there were formidable technical constraints which would prevent reception, even in the case of overspill of purely national programmes. All those constraints had resulted mainly from technical considerations, but the ITU Conference was a plenipotentiary conference of Governments and the treaty which it had concluded could not be ignored in the Legal Sub-Committee. In the view of his delegation, radical rethinking was required on the prior-consent question, since it was not necessary to formulate a principle for a situation which could not in practice arise.

21. The United Kingdom continued to support the unrestricted right to carry out remote sensing activities from outer space and the unrestricted dissemination of the resulting data and information, both of which principles were entirely in accordance with international law. It considered that unrestricted dissemination was the best safeguard for all countries against the abusive use of that information by a single sensing country or a small group of countries. It also considered it essential in the interest of such important matters as warning of certain natural disasters, such as floods, and the monitoring of pollution of the environment. Partial restriction would be very difficult since the same data were used for very different purposes. Furthermore, consideration of that question

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would be continued the following year by the Scientific and Technical Sub-Committee, and it had become clear that spatial resolution could not be the sole criterion. In the mean time, his delegation considered it premature for the Legal Sub-Committee to reach any conclusions on the question of division of data into different categories, even though there could be some useful discussion on the possible legal implications of such a division and on the definition of terms necessary for the elaboration of principles. Other work was pending on the elimination of square brackets in the five principles which had already been developed, and on the formulation of principles from the three new common elements established by the Sub-Committee the year before. There was also a possibility of establishing other new common elements.

22. The discussions on the definition and/or delimitation of outer space were still in their early stages, and comparatively few countries had as yet stated their views. In the opinion of the United Kingdom, there was no need on scientific or technical grounds to define the inner limits of outer space. The Radio Regulations, for example, had avoided a delimitation. Nor was there any need for a definition under the Convention on Liability, since liability arose in respect of any launching or attempted launching of a space object. There was likewise no need for a definition for the purposes of the Convention on Registration, since that applied to all space objects launched into earth orbit or beyond. Therefore the first matter for consideration in the Sub-Committee was for what purposes a definition and/or delimitation was required.

23. In the view of the United Kingdom, it was still premature to formulate such a definition. It would not be easy to reconcile the diverging views on the lower limit (between 80 and 36,000 kilometres). The United Kingdom had not yet concluded its views but would favour a very low limit. It believed that it would be useful to continue the discussions at the current session, since a sufficiently representative expression of views had not yet been made, and the purposes for which the definition might apply had not been sufficiently elucidated.

24. With regard to the claims which had been made by certain equatorial countries that the geostationary orbit was a natural resource belonging to the underlying country and subject to its sovereignty, it was not entirely clear to his delegation whether those countries claimed part of the geostationary orbit as a slice taken out of the rest of outer space or whether their claim included the whole of the space segment between the underlying country and the geostationary orbit. If it was the former, the Outer Space Treaty of 1967 gave no indication that different parts of outer space could be subject to different legal régimes, and it excluded the possibility of national sovereignty in outer space. If it was the latter, his view was that an extension of sovereignty up to the height of the geostationary orbit would result in undermining the benefits of the Outer Space Treaty, and particularly article I, which provided that the exploration and use of outer space should be the province of all mankind and that outer space should be free for exploration and use by all States without discrimination of any kind. The majority of useful activities

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which had hitherto been generally regarded as taking place in outer space were at or below the height of the geosynchronous orbit. In any event, the United Kingdom could not see how any country could simultaneously maintain that the geostationary orbit was subject to national sovereignty and that one of the activities which took place in that orbit, namely, direct television broadcasting by satellite, should be subject to regulatory procedures under principles being developed in the Sub-Committee. Nor was there any validity in a claim based on the law of gravity, since it was the gravity of the whole earth which kept satellites in orbit, and any attempt to subdivide gravity would be scientifically absurd.

25. It was the view of the United Kingdom that the limited availability of facilities in the geostationary orbit made it absolutely essential that no State should appropriate any part of it. The whole orbit should be available to all States for peaceful exploration and use in accordance with the Outer Space Treaty, and activities in that orbit should continue to be subject to orderly regulatory procedures by appropriate international authorities. For instance, in the sphere of telecommunications ITU had already allocated more than half of the geostationary orbit, and to split up that orbit now into different parts subject to different national sovereignties, would be quite incompatible with efficient arrangements for telecommunications for the benefit of all countries.

26. Mr. GORBIEL (Poland) said he was sure that the progress in the Sub-Committee's work would help to improve friendly co-operation among States in the exploration and peaceful use of outer space and celestial bodies, in accordance with the provisions of article I of the Treaty of 27 January 1967, and he hoped that at the current session compromise solutions would be reached on the various controversial issues.

27. Referring in particular to the draft treaty on the moon, he expressed the view that after prolonged discussions, the time had now come to formulate a solution on the question of the natural resources of the moon. The elaboration of more detailed rules governing the use of those resources was not yet an urgent matter, and differences of opinion on the subject should not delay the completion of the text of the treaty.

28. With regard to agenda item 3, the necessary prerequisites existed for a compromise formula to deal with the three questions still outstanding. The principle of prior consent should be embodied in the text of the convention to be prepared on direct television broadcasting, and there was also a real possibility of preparing draft legal principles on the remote sensing of the earth from space that would be acceptable to the General Assembly. In that connexion, he was in favour of the new proposal by the Soviet Union on the classification of remote sensing data into two separate categories. With regard to the last agenda item, he felt that it related to a problem that was very important to the entire system of existing international space law, and the assistance of the Scientific and Technical Sub-Committee would be needed in laying the groundwork for a definition of outer space which would ensure the proper future application of international space law. On the basis of that groundwork the Legal Sub-Committee would have to arrive at an acceptable legal formula for the delimitation of outer space.

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17. Finally, with regard to remote sensing of the earth by satellite, he associated himself with the USSR proposal that data obtained by such means should be classified in two categories, which would serve as a basis for agreement on the dissemination of such information, as that point was the main obstacle in the way of the conclusion of work on the subject.

The meeting rose at 11.30 a.m.