UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.105/C.2/SR.277
5 April 1977
ENGLISH
ORIGINAL: SPANISH

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Sixteenth session

SUMMARY RECORD OF THE 277th MEETING

Held at Headquarters, New York,
on Thursday, 31 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.

ELABORATION OF PRINCIPLES GOVERNING THE USE BY STATES OF ARTIFICIAL EARTH SATELLITES FOR DIRECT TELEVISION BROADCASTING WITH A VIEW TO CONCLUDING AN INTERNATIONAL AGREEMENT OR AGREEMENTS (A/AC.105/147, annex II; A/AC.105/171, annex II; A/AC.105/C.2/L.110; WG.II(1977)/WP.1, 2, 3 and 4) (continued)

1. Mr. GORBIEL (Poland) said that there was an essential difference between direct television broadcasting by satellite and the traditional mass media - a difference which consisted mainly in the fact that television broadcasting from space made it possible to disseminate information much more effectively. The political and legal aspects of television broadcasting from space must therefore be handled with particular precision and care, especially in view of the fact that the new technology could and must help to promote culture and improve educational systems as well as contribute effectively to greater understanding between peoples and to the strengthening of friendly relations between nations, thus furthering the great ideals of progress, humanism and pacifism proclaimed in the preamble of the United Nations Charter. It must be borne in mind, however, that the new technology could also be used for purposes, such as the propagation of racism or interference in the internal affairs of other States, which were incompatible with the basic purposes and principles of the United Nations. In order to preclude any possibility of such abuses, it was essential to elaborate and adopt an international legal régime applicable to the activities of States in the field of direct television broadcasting by means of artificial satellites.

2. He was pleased to note that many delegations shared his delegation's view that such an international legal régime should embody the principle of prior consent by the receiving State for direct television broadcasts by satellite. With regard to the actual wording of the provision to be drafted on the matter, his delegation preferred the formula proposed by the representative of the German Democratic Republic at the 276th meeting of the Sub-Committee. At the same time, it felt that working papers 1, 2 and 3 of Working Group II, which had been submitted by the Austrian, Canadian and Swedish delegations, provided a very useful basis for negotiations, even though his delegation had certain reservations concerning them. The main reservation had to do with the inclusion of the provision on overspill inasmuch as a consensus had been reached at the last session of the Sub-Committee to eliminate that question.

3. With regard to the legal status of the geostationary orbit, his delegation felt that the orbit could not be subject to the exclusive sovereignty of States. Since it formed an integral part of outer space, it unquestionably came under the provisions of article II of the Treaty of 27 January 1967, which provided that outer space was not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.

4. Mr. GAVIRIA (Colombia), speaking at the invitation of the Chairman, emphasized that the Sub-Committee should include in its deliberations all those concepts which, like that of the geostationary synchronous orbit, could provide the basis for a more complete and specific definition of outer space. Otherwise, the Sub-Committee would be merely an instrument which served the interests of the highly industrialized States and harmed those of the developing countries.

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(Mr. Gaviria, Colombia)

5. His country's Minister for Foreign Affairs had already drawn attention at the last two sessions of the General Assembly to the importance which Colombia attached to the definition of outer space and to the legal régime of the geostationary synchronous orbit. However, in order to emphasize the special nature of that orbit, he wished to point out once again that it consisted of a thin ring situated above the equator at an altitude of 35,871 kilometres, Colombia's segment of which extended 609.5 kilometres and lay between 70° and 75° west latitude. The orbit was created by the earth's gravity, so that, if a satellite was placed in it and was given a synchronous velocity in the same direction as the rotation of the earth, the satellite remained stationed at a fixed point above the equator. The existence of the geostationary synchronous orbit depended on its relation to the gravitational phenomena of the earth, and the orbit therefore did not fall within the concept of outer space. In view of those characteristics of the geostationary synchronous orbit, Colombia felt that its segment of the orbit was a natural resource which had from the very outset been part of the third dimension of its national sovereignty. It therefore believed that the use, enjoyment and occupation of that segment were subject to the prior consent rule and that the placing in it of space devices must be subject to the domestic legislation of the equatorial State concerned.

6. Furthermore, the geostationary orbit was a scarce natural resource, since, according to reliable scientific information, no more than 180 satellites could be placed along the equator and, as the United Kingdom delegation had said, 50 per cent of that total was already being used. States which, like Colombia, possessed segments of the geostationary orbit must therefore take action to protect their rights in accordance with the constitutional and legal provisions in force. Guided by the thinking of ITU, which regarded frequencies and geostationary orbits as a natural resource, and by General Assembly resolutions 2692 (XXV) and 3781 (XXX), the equatorial States had accordingly reaffirmed those principles not only in the Act of Bogota, signed in December 1976, but also at the recent ITU Conference at Geneva, in which they had expressed clear reservations to the resolutions and acts adopted concerning the possibility of placing geostationary satellites in the segments belonging to them.

7. That position on the part of the equatorial countries was not in any sense contrary to the principle of free transit embodied in the 1967 Treaty on Outer Space, as had been asserted in the Sub-Committee. Every equatorial country recognized the right of free transit in any of the various orbits around the earth. Their reservations related only to the use, enjoyment and occupation by third parties of their segments of the geostationary orbit, since the latter was an integral part of the third dimension of their territory. That position could be compared to the situation envisaged with regard to the law of the sea in the 1958 Geneva Convention on the Continental Shelf and in the new concept of the exclusive economic zone, put forward at the third United Nations Conference on the Law of the Sea, which granted exclusive sovereign rights to coastal States.

8. That position could also not be said to be contrary to the principle of *res communis* embodied in the 1967 Treaty, since it was not possible to violate something that had not yet been defined, such as the precise boundary between airspace and outer space. Since the recognition of the principle of exclusive

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(Mr. Gaviria, Colombia)

sovereignty over airspace in the International Civil Aviation Convention concluded at Chicago in 1944 and since the launching of the first sputnik in 1957, numerous proposals had been made for delimiting outer space on the basis of physical criteria, technical and scientific advances or a combination of the two. So far, however, none of those proposals had gained general acceptance by the international community, with the result that outer space had yet to be defined, and its definition would necessarily have to take account of the equatorial States' claims of sovereignty over their segments of the geostationary orbit. While no such definition existed, it could not very well be said that the equatorial States were violating the Treaty on Outer Space. It was true that article II prohibited States from claiming sovereignty over the moon and outer space, but that did not apply to the geostationary synchronous orbit. In that regard, therefore, the Treaty was not binding on even the States which had ratified it; those States did not include Colombia, which had always had serious reservations regarding the Treaty's scope and content.

9. The 1967 Treaty did not take account of the interests of the developing countries, which at the time of its adoption had not been able to form an awareness of their own needs and to note the inconsistencies in the Treaty. The fact was that the Treaty sought rather to ban the use of space for military purposes than to deal appropriately with the phenomenon of telecommunications. That was why its provisions referred exclusively to States and why it had nothing whatever to say about what the ITU Convention referred to as private operating companies. Unfortunately, that gap could give some States an opportunity to try to place geostationary platforms in orbit for purposes of gain without consulting the interests of the region concerned. That attitude could imply failure to abide by the 1973 International Telecommunication Convention, since it would disregard the obligation to use frequencies and stationary satellite orbits in an effective, economical manner and for the benefit of all States without discrimination. For all those reasons, his delegation wished to urge once again, as it had on many occasions, that a special conference should consider with the proper care and seriousness the definition of outer space and the special régime called for by the phenomenon of the geostationary synchronous orbit. That would surely make it possible to create a telecommunications system that took into account not only the interests of the equatorial countries but also the real interests of all peoples in the world, for until now the only ones to benefit had been a small number of developed countries.

10. Finally, he wished to indicate the four points which comprised the position of Colombia and of other equatorial States on the matter: each State's segment of the geostationary synchronous orbit was a limited natural resource to which the State in question had inalienable, imprescriptible sovereign rights; the use, enjoyment and occupation of that segment was subject to the prior authorization of the State concerned, and any attempt by third parties to place stationary satellites in it was therefore rejected; neither Colombia nor any other equatorial State would be acting contrary to the 1967 Treaty in making its claims of sovereignty, since there was as yet no definition of outer space; in considering a definition of outer space, account must be taken of the equatorial countries' claims of sovereignty over their respective segments of the geostationary orbit.

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11. Mr. MAIORSKY (Union of Soviet Socialist Republics) said that he deeply deplored the Colombian representative's statement that the activities of the Sub-Committee might be primarily directed towards promoting the interests of the developed countries. The Sub-Committee was not accustomed to hearing that sort of thing, particularly since it acted in accordance with the principle of consensus, which ensured that the views of all countries, both developed and developing, received an equal hearing and equal respect. The attitude of the Colombian delegation was perhaps due to the fact that, as an observer and not a member of the Sub-Committee, it was not fully familiar with the latter's traditions. His delegation was nevertheless obliged to emphasize that the forum of the Sub-Committee could not be used for statements of that nature, which did not in any way contribute to the Sub-Committee's work.

The meeting rose at 11.20 a.m.