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Held at Headquarters, New York,
on Monday, 17 November 1958, at 3 p.m.

Chairman:

Mr. URQUIA

(El Salvador)

Question of the peaceful use of outer space [60] (continued)

- (a) The banning of the use of cosmic space for military purposes, the elimination of foreign military bases on the territories of other countries and international co-operation in the study of cosmic space;
- (b) Programme for international co-operation in the field of outer space.

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AGENDA ITEM 60

QUESTION OF THE PEACEFUL USE OF OUTER SPACE (continued)

- (a) THE BANNING OF THE USE OF COSMIC SPACE FOR MILITARY PURPOSES, THE ELIMINATION OF FOREIGN MILITARY BASES ON THE TERRITORIES OF OTHER COUNTRIES AND INTERNATIONAL CO-OPERATION IN THE STUDY OF COSMIC SPACE;
- (b) PROGRAMME FOR INTERNATIONAL CO-OPERATION IN THE FIELD OF OUTER SPACE

Mr. SCHURMANN (Netherlands): When I pondered some of the contentions and arguments advanced in various writings and debates on the problems of outer space, I could not avoid being assailed by a feeling of uneasiness. Facing the infinite mysteries of the universe, some people seem to take it for granted that man's possessive instinct, which has wrought so much harm on this earth, could and should lead him to extend his efforts at conquest and domination into the distant areas that have hitherto been beyond his grasp. Earthly concepts, owing their origin to conditions prevailing on the surface of this minor planet, are being projected into realms that are still largely unknown and where their application becomes, if perhaps not entirely impossible, at any rate an absurdity. When we talk of dividing up outer space, of the occupation of, and sovereignty over, other planets and the possibility of carrying our terrestrial warfare into the infinite, are we not over-reaching ourselves and giving a monstrous demonstration of that over-inflation of the human ego which the Greeks called "hubris"? In the Bible the Psalmist castigated this overweening pride and presumption when he warned the kings and rulers that: "He that sitteth in the heavens shall laugh: the Lord shall have them in derision".

It seems to me that it would be becoming for us to realize our modest place as inhabitants of a small speck in the great vastness of the universe and to consider, in due - and I might add, religious - humility, whether certain notions by which we are swayed on earth do not altogether lose their sense when we endeavour to legislate for stretches beyond our imagination which have so far been happily exempt from our human greed and strife.

(Mr. Schurmann, Netherlands)

To make this realization and to attune our behaviour to it does not imply, of course, that in our dealings with outer space we should jettison all our ideas of law and of right and justice. Our laws make a useful distinction between rules defining relationships between persons and rules applying to the relationships of persons to things. The first group of rules remains valid whatever the occupation in which those for whom they were formulated are engaged, be it tilling the soil, buying goods or conducting policies of state on earth, or investigating what lies beyond the atmosphere of the earth and, as may some time become possible, flying through that beyond. It is only the second group of laws, those that establish a legal connexion between man and his inanimate earthly environment, which become inapplicable when the counterpart of man in the connexion is no longer a terrestrial object but celestial ranges and bodies of a nature unknown in our natural habitat.

Allow me to give a few examples of how this distinction could help us to determine what rules of our mundane laws could give guidance to our conduct in cosmic space and what others must of necessity remain irrelevant.

So far as international law is concerned, there can be no doubt that the behaviour of States towards each other must, even in outer space, continue to be subject to what the celebrated phrase in Article 38 of the Statute of the International Court of Justice calls "the general principles of law recognized by civilized nations".

Some of these principles can be held to be directly applicable, for instance the principle of responsibility. Any State that launches an object into outer space will most certainly be held responsible for any damage that such an object might cause to another State or its citizens.

(Mr. Schurmann, Netherlands)

Other principles of international law could easily be adapted to the new environment in which man has started to operate. Thus, the principle of the freedom of the sea and the cognate doctrine of non-interference with the right of others to make use of that freedom is equally pertinent to outer space. If, instead of "high seas" we read "outer space", we can without any difficulty transfer to cosmic space the rule of Article 2 of the Convention on the High Seas that was adopted in Geneva this last summer, in 1958, which states:

"These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas."

That would certainly equally well apply to the exercise of the freedom of cosmic space.

Equally, the famous dictum of Lord Stowell contained in his judgement in the case of "Le Louis" of 1817 -- and I am purposely choosing here a very old case -- which concerns the equal rights of all nations on the high seas, enshrines a principle that should underly the relation of States with each other in outer space as well. The words of that dictum are:

"Relative magnitude creates no distinction of right. Relative inequality, whether permanent or casual, gives no additional right to the more powerful neighbours, and any advantage siezed upon that ground is mere usurpation. This is the great foundation of public law".

Besides these maxims of conduct of States towards each other, applicable directly or by analogy to outer space, there are, however, certain rules of international law that are based on notions and concepts which have no significance in outer space. To this class belong the rules concerning territory, sovereignty and occupation. The phenomena with which these rules deal are particular to life on this earth and have no parallel in outer space. Territorial sovereignty presupposes a precisely defined area of exclusive jurisdiction. In cosmic space no such precise delimitation is obtainable. If the surface territories of States were to be projected into outer space, the areas of alleged exclusive jurisdiction would expand ad infinitum and vertical demarcations would become increasingly blurred. Such parcelling out of the universe, moreover, would lose

(Mr. Schurmann, Netherlands)

all reasonable meaning, since it would no longer be directly related to control over the surface of the earth. In outer space there can be no "above" nor any partitioning based on the territorial pattern of our rapidly spinning globe. Here there is no analogy with the sea. If all States wished to do so they could divide up the high seas into separate regions under State sovereignty, but the free universe could not be so divided. We are therefore forced to conclude that outer space is by nature indivisible and that the notion of State sovereignty cannot apply to it.

It is valuable to note that State practice seems already to have accepted and confirmed the doctrine of indivisibility of the universe. When man-made satellites crossed the space covering the territory of many States no protest was heard from any quarter.

Closely related to the principle of legal indivisibility of the universe is the inference that there can be no place in space law for the concept of occupation with regard to celestial bodies. Quite apart from the patent preposterousness of the notion of attributing planets to terrestrial States -- presumably as non-self-governing territories -- the essential requirement for legal occupation in international law, namely effectiveness, would be absent in the case of the heavenly bodies. Here again, the analogy with earthly conditions fails. When in olden days conquerors or emigrants settled in faraway parts and occupied them in the names of their sovereigns, they were carrying with them the law of their fathers which they adapted to the life and exigencies of the new, but fundamentally similar, communities. Since, even as United Nations, we form no community in that same sense, and since the ecology of the planets bears no resemblance to the earthly conditions within which our laws have been framed, we cannot do the same in outer space.

What I have said about cosmic space does not apply to what is conveniently called air-space, that is, the layer of space immediately above terrestrial land and sea, beyond which the real outer space begins.

There is no sign that, in view of the new prospects of the use of outer space, States are reconsidering the concept of complete and exclusive sovereignty over the atmosphere above their territories. This concept remains valid as a general principle of international law. Nor can grounds be seen why what holds for the air-space above dry land should not equally remain applicable to the layer

of air-space above the high seas. Regulation in that area, above that international area, falls within the competence of international bodies such as ICAO. A number of criteria have already been suggested by experts for defining with a certain degree of exactitude a reasonable, practical and functional altitude for that air-space. No doubt such a delimitation will have to be undertaken at some time and for that purpose the question should be referred to some decision-making machinery to be set up in the future. Pending that decision it would seem to my delegation that there is merit in distinguishing between the concepts of air-space and of outer space, as representing different regimes, just as it makes sense to distinguish between the territorial seas and the high seas, notwithstanding the fact that the delimitation between both zones still gives rise to considerable difficulty, as we know only too well.

These few marginal notes on some legal aspects of the problem were intended only to show that if we use our juridical concepts with the necessary circumspection and if we remain aware of the essential difference between rules that can be made applicable to outer space and rules that cannot be given a similar extension, the usable rules reinforce the argument that, as draft resolution A/C.1/L.220 has it, the extension of national rivalries into this new field should be avoided.

It is for this reason that my delegation is in favour of placing strong emphasis on the necessity of preserving outer space for peaceful uses only.

(Mr. Schurmann, Netherlands)

One of the main aims of the idea of international co-operation in the field of nuclear power was to ensure that it should be used for no other than peaceful purposes, and the plan of European integration was in part designed to render wars between European States impossible by a joint regime of their production of coal, steel and atomic energy. In the case of the international plans in respect of atomic energy, the original United States proposals, which could have achieved that aim, were unfortunately not accepted. In the matter of outer space, however, there still seems to be a reasonable chance of avoiding the addition of another new dimension to the scourge of war.

If that be our aim -- and I believe it should be -- then it follows that the linking of the question of foreign military bases on earth with the totally unrelated problems of cosmic space can only be harmful to a dispassionate study of the item on our agenda. As Mr. Freitas-Valle of Brazil explained so well and so clearly this morning, that question is within the competence of the Disarmament Commission and should be dealt with there.

That such a study should be made is desirable, not in order to arrive immediately at concrete rules and decisions, but that a spirit of co-operation and calm scientific enquiry may possess all the nations from the start, when they set themselves to dealing with these matters.

Our revered master, Mr. Belaunde, quoted the other day the motto of Emperor Charles V: plus ultra. I should like to ask Mr. Belaunde's leave to remind members of the fact that in his youth that Emperor used another motto: nondum, "not yet". The time for treaty-making and for final decisions is not yet, but the time for study has come. And these studies should bear principally on the means of promoting international co-operation in this field, on the organizational arrangements and the appropriate machinery that can support such co-operation, on the co-ordination of such arrangements and machinery and on the nature of the legal problems which may arise.

The success of the scientific co-operative programme of the International Geophysical Year has demonstrated that much can be achieved by careful planning and that not all our endeavours need be connected with warlike notions. In that planning not only national and international organizations should work together,

(Mr. Schurmann, Netherlands)

but the non-governmental and private organizations, of which there are so many that take a profound interest in the technical as well as in the legal problems that lie ahead, should be given every opportunity to play their part.

The attainment of these desirable ends can, in our view, be promoted by adoption of the draft resolution of which my delegation has the honour to be one of the sponsors. We hope that its terms will be found acceptable to the large majority of the Members of the United Nations.

I would only add that the idea which animated the drafters of the proposal was that, in this new venture, mankind should carry into outer space only the best, and not the worst, traits of our civilization. Any other conduct, in our view, would be sacreligious.

Mr. JORDAAN (Union of South Africa): As we all know, the principal task of the United Nations -- and the task which is the main reason for its existence -- is the maintenance of peace and security. Up to the present the United Nations has not been able to prevent local wars and threats to the security of others. It has had to content itself with efforts to restore the peace and stabilizing situations after violations of the Charter principles have taken place. Now for the first time the United Nations is in a position to consider a problem with a view not to remedial action, but to a plan for the future.

Now that man has pierced outer space and has done so in a controlled way, the imagination is staggered -- and tantalized -- by what the future may hold. The earth satellites hurtling through outer space, while testifying to man's ingenuity in control of the forces of nature, are indicative of what may still be achieved in the future. Here surely is a field of unlimited opportunities for international co-operation.

In the political field the United Nations has had to operate, in the past, on the basis of certain fixed attitudes and long-standing national interests. Here, however, we have the chance of fostering co-operation and preparing the ground for combined peaceful efforts before well-nigh insurmountable problems have been created by established national interests.

(Mr. Jordan, Union of South Africa)

Now, how are we going to undertake this task? How are we going to meet this stimulating challenge? Are we going to fall victim once again to the old propaganda approach, or are we going to tackle our task in a businesslike manner with the sincere desire of creating fruitful international co-operation?

The Soviet Union wants the United Nations forthwith to ban the use of cosmic space for military purposes. Just as the whole world would like to see the cessation of atomic tests, so would we all endeavour to ensure that outer space is used for peaceful purposes only. But, as my delegation and many others pointed out in the course of the debate on disarmament, it is futile to single out one or even two aspects of this complicated problem in an effort to deal with them in isolation. The question of disarmament can be dealt with only as a whole. Pressing as the need might be for international agreement on any particular aspect, even greater is the need for the promotion of the fundamental aims of the United Nations in the overall field of disarmament. The introduction of any particular political aspect of disarmament in our present discussion can only divert our attention and lead the discussion into the old propaganda grooves. On the other hand, we have no objection to isolating certain non-political scientific elements from the politically controversial elements in the total problem of disarmament. In fact, this approach has been most promising in the case of atomic test explosions and is also being followed in the study relating to surprise attacks.

My delegation, for its part, proposes to follow this line also in regard to cosmic space. We would also appeal to all concerned not to introduce extraneous matters, on which there is marked and well-known disagreement, into these considerations.

No purpose would be served by having another marathon debate on the Soviet Union draft resolution or to join the sponsor of that resolution in the propaganda campaign. In fact, when the Soviet Union representative first spoke on this item, I got the impression that the peaceful use of the cosmos was not within space miles of his thinking. His sole target appeared to be United States bases.

Clearly, no practical results could be reached in this way. In spite of the startling developments during the last year, outer space is still shrouded in a veil of mystery. Clearly, we do not yet know enough to decide here and now on a particular line of action. The logical approach seems to be the one suggested in the twenty-Power draft resolution contained in document A/C.1/L.220, which my delegation has the honour of co-sponsoring. It proposes the establishment of an ad hoc committee to undertake a provisional study and to report to the next session of the General Assembly. It is our hope that this study will greatly advance the General Assembly's knowledge and understanding of the problems concerned. It is impossible at this stage to foresee what action the General Assembly might wish to take in the light of such a study, but it is clearly premature, with the limited knowledge at our disposal, to proceed on the lines suggested by the Soviet Union.

For these reasons, I would commend the twenty-Power draft resolution for the consideration of the Committee, in the hope that it will be adopted by a unanimous vote.

Mr. ORTIZ (Costa Rica) (interpretation from Spanish): If, when I was in high school, I had dreamed that one of my colleagues would one day, in an international body, discuss the possible claiming of outer space, we would have believed that the reading of Jules Verne, which fascinated those youthful hours, had taken his mind. If, later on, my colleagues who studied law with me, and especially the chapter of claims under the Latin apothegm "Ad coelum et ad inferos", one had felt that among these colleagues was one who one day would participate in a debate on the regulation of the claims of terrestrial States over space beyond the well-known skies, they would obviously think they were justified in believing that his mind had cracked under the weight of so many new doctrines, concepts, truths and ideas that transformed the philosophic, economic and social universe. Yet today, however, the truth of the matter is that the tremendous speed achieved in the scientific field ever since we have come into the atomic era leads us daily into such extraordinary and unexpected situations that we are forced to confront them and contribute to their understanding with careful thought, and try to keep up with the time in which it has been given us to live.

My delegation understands that the problem before us should be divided into two obvious parts. The first is the truly scientific basis of the exploration of outer space, which began theoretically with the work of the commission preparing the International Geophysical Year, and was summed up and crystallized with the putting into orbit of the Soviet Union Sputniks and the American Explorers. The second aspect contains theoretical deductions, if you like, well founded but, nevertheless, still in the field of fecund imagination. The proved and proven aspects already concern States, because these advances may be used for military purposes, and therefore States are trying to regulate outer space, and put such regulation into the hands of an international organization, which would have to be the United Nations, so that, as the highest representative of the Members of the Organization and in accordance with the principles of the Charter this Organization control that powerful force and manage it and handle it for the good of humanity, and not for the evil of mankind.

The theoretical aspect has already given rise to controversies which are characteristic between jurists who try to set up the juridical nature of outer space, and its relations with the rights of all to travel through it, the

(Mr. Ortiz, Costa Rica)

astronauts, and the rights of all the States of the world today to acquire such rights of travelling through outer space. Some speak of res nullius, others basing themselves on the precedent of the sea language of res communis omnium; and on this point my delegation, although we do appreciate the juridical clarity with which the experts have tried to impose law before force imposes itself, understand the many problems that crop up, and especially do we feel that there are no basic reasons with which to solve the problem at the moment. What is there in outer space? Can it be conquered? Would outer space be at the mercy of invasion from one or more Powers of this planet on which we live? We do not know whether there may not be communities that are just as powerful as we are, that already own outer space, and already have ways of permitting or stopping any foolhardy effort on the part of man, to use their astral powers for scientific purposes or for purposes of conquest, to dominate us or to dominate others who may be people as developed as we are. Furthermore, the juridical nature of outer space cannot be established only with theoretical deductions. It must be established on facts that are proven, that will permit us to state that the subject of law, which is man, has the right and the capacity to take over -- and we will then find out how -- these so far unknown regions.

Therefore we cannot get into that tremendous problem, which has caused so many sleepless nights to those precursors in this field of the science of law; but this brief reasoning explains why to agree with the logical content of the draft resolution submitted by the delegation of Australia and nineteen other countries would be quite perfect, and that is, that the right of States to explore scientifically is an undeniable right. If our small country had the economic and scientific means to shoot off satellites that might be placed in orbit, no one would dare to deny us the right to do so, as no one has denied the right to do so to those who have led the scientific race. This right is set forth in the draft resolution I referred to, where there is no effort made to mete out but, rather, to make sure that these celestial powers be not taken over by some, but to serve all equally. Furthermore, the ad hoc committee is to be set up, which will bear in mind all progress achieved, all details discovered and all contingencies which may arise, and in view of what already is known and proved, can gradually analyse and gather juridical consequences that, as the

(Mr. Ortiz, Costa Rica)

science laws have done, will regulate the relations emerging from the new situation and that must be developed under the aegis of justice.

The United Nations could do nothing better than to place itself in a position of absolute reality now, and then, as events take place, can dictate the norms adequate to that period. But great discoveries often provoke tremendous changes, which change the points of view and the minds of men, that transform the physical aspect of the world itself, and that is why, as an historical antecedent, we might remember the great Admiral, who knew very little of the details of the nautical sciences, but at the same time who was a seductive weaver of tales, and, seeking a shorter route to the Indies, stumbled over America, and changed the route and the path of history. Now we do not know where the light of the stars will lead these rockets that are shot into the heavens by men in their indomitable desire to steal from nature what secrets she still has.

Mr. WISOT (Belgium) (interpretation from French): The question of the peaceful use of outer space is among those whose progress Belgium has watched with great interest. Speaking on 1 October from the rostrum of the General Assembly, the Belgian Minister for Foreign Affairs, Mr. Wigny, emphasized the necessity of following up the study of it. This is an urgent need. It is, in fact, impossible to make headway toward elucidating the various aspects of the problem by means of dispassionate and disinterested enquiry without seeking to determine, with some measure of accuracy, the potentialities of outer space for the well-being of mankind, the conditions and modalities of the exploitation of these potentialities, and the ways and means of bringing them to fruition, and also the pressing nature of setting afoot the kind of international co-operation that will make it possible to do this exploratory work in clearing the ground. In the present phase, this aspect of the problem, which is distinct from the one which relates to disarmament, appears to require priority of treatment in a purely scientific frame of mind, outside the realms of controversy and sheltered from the facts which would hinder the discovery of the truth.

(Mr. Nisot, Belgium)

Clearly this realistic conception, this constructive concern, underlies the draft resolution (A/C.1/L.220) sponsored by twenty Powers, including Belgium. This draft resolution would ask a committee to make available to the General Assembly certain preliminary information. In fact, what is necessary is to find our bearings in the quest for what is possible, in order to have elucidation and fulfilment.

How can existing instruments of international co-operation be utilized? That applies to the United Nations and such specialized and other agencies whose assistance would, at first sight, appear to be advisable. Having in mind the purposes envisaged, what are the constitutional powers of these organs? Is their machinery adequate or would it be required to be extended or perfected?

Some questions will require preliminary determination, to be carried out with the assistance of qualified bodies or organs. Are there at present juridical rules that would limit, in respect of outer space, the freedom of States, individually considered or as institutionally organized?

The doctrine of international law has conceived of a number of systems. It may well be that these inquiries will help in finding the lex ferenda that might, with likelihood of success, be proposed to the States for their acceptance. The problems turn out to be fairly complex, whatever the angle of approach, be it juridical or political.

The purpose of the draft resolution is to carry out a fresh enquiry, a necessary stage indeed on the way toward international co-operation that would be commensurate with the objectives to be reached. The draft resolution assigns a significant role to the assistants of the Secretary-General, upon whom it would confer even a power of recommendation which would go beyond the framework of measures which are expressly specified in the text.

In short, the draft resolution seems to be satisfactory, in the present phase, as far as possible, having in mind the need of finding the most adequate method to ensure the peaceful uses of cosmic and outer space. The Belgian delegation hopes and trusts that the draft resolution will be adopted.

The CHAIRMAN (interpretation from Spanish): As no one else desires to speak this afternoon, I am compelled to adjourn our meeting at this time.

The meeting rose at 4.5 p.m.