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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifteenth Session

SUMMARY RECORD OF THE 249th MEETING

held at the Palais des Nations, Geneva,
on Thursday, 6 May 1976, at 10.50 a.m.

Chairmen: Mr. WYZNER (Poland)

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GENERAL EXCHANGE OF VIEWS (continued)

1. Mr. CHAHID-NOURAI (France) expressed appreciation of the tribute paid to the memory of Mr. Charvet, a former member of the delegation of France, by the representatives of the Soviet Union, the United States and the United Kingdom. He in turn wished to pay a personal tribute to the memory of Mr. Fiorio, who had represented the delegation of Italy in the Sub-Committee.
2. At its current session, the Sub-Committee would be dealing with four main questions. As regards the first, namely, the draft treaty relating to the moon, one major obstacle still stood in the way of agreement. If agreement was achieved on the principle of a distinction between two phases in the establishment of the status of the resources of the moon, the Sub-Committee would still have to settle a number of essential points, such as how the transition to the second phase would take place, the question of time-limits and the régime applicable during the transitional period. His delegation would support any compromise reached on those points in accordance with the fundamental principles of the 1967 Outer Space Treaty.
3. The second question related to direct broadcasting by satellite, on which the Sub-Committee had made substantial progress at its previous session. If further progress was to be made, it should concentrate on those principles which did not call in question the fundamental options open to the Sub-Committee and it should take up those options only within the limits of the time available. Priority attention should therefore be given to the deletion of the brackets from the text agreed on at the previous session, the improvement of the wording and, in certain cases, the adoption of a single text when the alternative versions did not reflect a fundamental difference of approach. Once that had been done, it would be possible to reconsider the basic choice between the three systems: prior consultation, prior consent and prior regulation. Prior consultation appeared to be an attractive idea and was already reflected in the 1967 Treaty, in which it was, however, applied to activities that did not involve the sovereignty of States. Furthermore, it seemed doubtful whether the good faith on which prior consultation depended could overcome all the obstacles in every case. His delegation therefore had reservations about that approach. It also doubted the need for, and viability of, a system of prior regulation. It therefore supported the third system, prior consent, which seemed to be the most simple and the most appropriate for striking the delicate but essential balance between concepts such as the free flow of information and the essential national sovereignty of ideas. The position adopted by his delegation did not mean that it insisted upon a certain terminology but that, for the moment, it did not see what other procedure would be acceptable.
4. Thirdly, on the question of the remote sensing of the earth, his delegation was relatively optimistic since progress had recently been achieved in two areas: the Scientific and Technical Sub-Committee had carried out a detailed examination of concepts, and it had been agreed that the drafting of the first principles on which agreement appeared possible and the detailed discussion of controversial points should proceed concurrently. In the opinion of his delegation, those two tasks should be undertaken with equal vigour and in a spirit of compromise.

5. The fourth question before the Sub-Committee - the definition and/or delimitation of outer space - had so far been neglected because of lack of time, the memory of past failures and the fairly widespread view that there was no urgent need for a solution. Those views were no longer valid however, since a solution of the problem had now become necessary for legal, practical and political reasons. Firstly, no definition of outer space had been included in any of the international legal instruments on space so far concluded, and such a definition would become increasingly necessary as new instruments were concluded. Secondly, there was a practical need for a definition as more and more States became active in space matters and activities involving both national air space and international space became increasingly common. In those circumstances, it would be over-optimistic to hope that no dispute would arise. Thirdly, for political reasons, the international community could not accept the prospect that space might become a source of disputes or that such disputes might be settled on the basis of unilateral decisions or by an arbitration body whose rulings were not based on guidelines established in accordance with the collective views of sovereign States.
6. Apart from the question of the need for a definition, a definition must also be feasible. In the opinion of his delegation, the technical uncertainty which had been mentioned in that respect did not constitute a valid reason for abandoning attempts at a definition. It had also been maintained that the proposals for definitions already submitted had been insufficiently specific. Many ideas had been adduced, however, as was apparent from the various working papers on the question. There would not be sufficient time at the current session to evaluate thoroughly the various proposals made, but the Sub-Committee would have made considerable progress if it could draw attention to the increased importance of the question and decide on a practical approach to be adopted at the following session.
7. Mr. MACAULAY (Nigeria) said that his delegation wished to place on record its appreciation of the efforts made by the States concerned to achieve agreement on the establishment of an international space régime in a spirit of co-operation and compromise. In expressing that appreciation, his delegation had been impressed by the concern displayed by the two undisputed space Powers, the United States and the Soviet Union, and the undisguised concern of less advanced States and the third world as a whole. Since 1971, when the Minister for Foreign Affairs of the Soviet Union had requested that an item relating to the preparation of a treaty concerning the moon should be included in the agenda of the General Assembly, emphasis had been placed on the "exploration" of the moon for peaceful and scientific purposes, an approach that was apparent in the many proposals and working papers which had been submitted on the subject.
8. His delegation had been constrained to request a review of the suggestions made in those proposals and working papers in the light of the apparent shift of emphasis from "exploration" to "exploitation" referred to in the latest unofficial text under consideration. In the opinion of his delegation, there appeared to be unnecessary hesitation in accepting the principle that the moon and its resources were the common heritage of mankind, and it was therefore forced to draw the conclusion that the

inclusion of that concept in article X of the draft treaty was distasteful to certain delegations. It wished to ask the representatives of the United States and the Soviet Union what danger there would be in including such a clause in article X, if the exploitation of the resources of the moon might never be feasible.

9. His delegation was prepared to follow one of the alternative courses suggested by the representative of Belgium at the 229th meeting of the Sub-Committee, namely, to assume the existence of exploitable resources. It also supported the view expressed by the representative of Sweden at the previous session that a provision concerning the natural resources of the moon should be unambiguous and should balance the interests of the world community and the rights of space Powers in regard to their research activities. Furthermore, a treaty relating to the moon should cover all celestial bodies. The developing countries might not be in a position in the foreseeable future to reach the moon, but since they knew that the exploitation of the resources of the moon might be feasible, that concept, however remote, should, in their opinion, be included in any treaty relating to the moon.

10. He wished to draw attention to chapter V of the report of the Scientific and Technical Sub-Committee on its thirteenth session (A/AC.105/170) which, in his view, might be of help to the Sub-Committee in its work. In paragraph 111 of the report, the Scientific and Technical Sub-Committee had expressed appreciation of the working paper submitted by Belgium entitled "Guidelines to the Secretary-General" (A/AC.105/C.1/L.79) and had expressed the view that similar guidance from the Committee would be required in regard to its request for scientific and technical criteria for defining the notion of "natural resources of the moon and other celestial bodies", and possible ways, means and time-limits for their exploitation. His delegation therefore hoped that, if the Legal Sub-Committee agreed to proceed on the assumption that exploitable resources existed, it would accept the Austrian proposal contained in document A/AC.105/L.74 as the best attempt to resolve the question.

11. Mr. DELROT (Belgium) said his delegation was pleased to announce that the Belgian Government had submitted to Parliament for approval the Agreement on the Rescue and Return of Astronauts and the Convention on International Liability; it hoped shortly to be able to announce that they had been ratified.

12. On the question of a treaty relating to the moon, it should be emphasized, as was done in the document which his delegation had submitted to the Scientific and Technical Sub-Committee (A/AC.105/C.1/L.79), that the existence of economically exploitable resources on celestial bodies remained hypothetical. Jurists should nevertheless display imagination and devise a coherent system on the basis of that assumption. For that reason, his delegation hoped that the basic legal concepts would be clarified: the essential point was to achieve a delicate compromise between freedom of pre-operational exploitation and economically-feasible exploitation, an approach which would require both realism and juridical innovation.

13. With respect to direct television broadcasting, the main problem involved the prior consent of States which received broadcasts without having participated in them; it was important to define the exact scope of that problem. It would be the responsibility of the ITU Planning Conference to be held in 1977 to effect a judicious distribution of frequencies in the light of orbital positions, the power of the transmitter and the radiation of the signal of direct television satellites. The harmonization of those parameters should therefore limit to the technically unavoidable spill-over the question of the broadcasts received by the nationals of States not participating in the operation of the satellite. Scientists had given an assurance that progress in that field would make it possible to reduce such spill-over considerably. Given that situation, two situations might arise: either a broadcast which spilled over beyond the territory of the broadcasting State might be considered as intrusive by the State or States for which it was not intended, or that broadcast might be specifically intended for a foreign audience.

14. His Government had always supported the principles of freedom of broadcasting and the free circulation of information and ideas, which were obviously susceptible of subsequent redress procedures, such as the exercise of the right of reply. That position was consistent with Belgium's traditional opposition to any prior censorship of broadcasting. In view of its small size, Belgium would always receive broadcasts from neighbouring countries and, far from being alarmed at the prospect, it regarded that situation as an advantage rather than a constraint. On the question of direct broadcasting by satellites, however, Belgium had accepted the principle of State responsibility. It nevertheless appreciated other considerations, such as respect for cultural, moral, philosophical and religious diversity, and believed that it should be possible to establish a system of consultation which would satisfy those States which considered that their interests had been jeopardized; the principle of responsibility would of course be firmly grounded in such a system. For its part, his delegation was prepared to co-operate in efforts to find a solution along the lines he had mentioned.

15. In the sphere of remote sensing, common ground must be sought between apparently opposing views based on national sovereignty over natural resources and on the freedom of scientific research. The first task would be to distinguish between data of general interest and those of regional or local interest. As remote sensing became more international, the areas in which conflicts resulting from the requirements of sovereignty were likely to arise would be diminished. Legal problems could be reduced or even eliminated through the storage and dissemination of remote sensing data by an international organization and, conceivably, through the management of a space segment by such an organization. For the moment, Belgium considered that regional efforts should be continued and encouraged, and it was accordingly participating in the programmes of the European Space Agency. Measures were also needed at the international level for the training of specialized personnel.

16. A balanced integration of the various levels of remote sensing was clearly feasible, and special emphasis should be placed on the benefits which developing countries were entitled to expect. The principle of the sovereignty of States over their natural resources should certainly be reaffirmed in the legal norms to be prepared, and the right to access to data on those resources as well as the right to determine their exploitation undeniably existed. Nevertheless, care should also be taken not to create arbitrary obstacles to scientific research on remote sensing.
17. The Belgian delegation noted with satisfaction the work done in the Scientific and Technical Sub-Committee to clarify the problem of defining outer space. In that Committee, it had submitted a document (A/AC.105/C.1/L.76) which concluded that the natural frontiers of outer space should be set at 100 kilometres. The COSPAR study on the minimum perigee of satellites (A/AC.105/164) was an important contribution to the solution of that question. The Legal Sub-Committee would thus have sufficient material to make progress in the selection of criteria for a definition of outer space.
18. Mrs. LAKSHMANAN (India) expressed her delegation's condolences on the death of Mr. Félix Charvet.
19. In the consideration of the draft treaty relating to the moon, no consensus had yet been reached on any of the basic questions. Any solution to the problem of the moon's natural resources would have to take into account the fundamental principle that the areas or resources of the moon and other celestial bodies were beyond the limits of national jurisdiction and thus the common heritage of mankind. Those resources should be exploited under an international régime to be established with the participation of all States, and the framework for scientific research and development should be that the moon and its resources were accepted as the common heritage of mankind.
20. Some progress had been made in drafting principles concerning direct broadcasting by satellites, but a number of controversial issues remained and efforts should be made to reach generally acceptable solutions. In particular, guiding principles should be formulated to ensure that direct broadcasting by satellite was carried out in an orderly way that did not give rise to conflicts and disputes.
21. In the sphere of remote sensing, the Indian delegation considered that the permanent sovereignty of peoples and nations over their wealth and national resources provided a legal basis for the view that States had the sovereign right to the data acquired, and that such data should be considered as subject to the exclusive control exercised by each State over its national resources. Countries engaged in remote sensing activities should be precluded from misusing the information collected to the detriment of another country, but the legal framework to be established should not make remote sensing difficult.

22. Space research could have a great impact on the economic, social and cultural progress of a country like India. The principal objective of the Indian space programme was to exploit space technology for peaceful purposes in the furtherance of national development in a number of areas, and emphasis was therefore being placed on practical applications, such as television broadcasting for educational purposes, telecommunications and remote sensing. Technology was developing rapidly, and if the Sub-Committee did not settle its differences of approach in a spirit of creative harmony it was likely to be overtaken by events.
23. Mr. TINCA (Romania) said he would recapitulate some of the basic principles which his delegation considered to be of major importance in relation to the topics on the agenda.
24. With regard to the draft treaty relating to the moon, his delegation had always believed that the question should be given high priority by the Sub-Com in order to find formulae that would represent a constructive compromise between the positions and interests of all States.
25. As far as relations between the space Powers were concerned, his delegation was in favour of the principle of equal rights in the exploitation of the moon, complemented by other principles of international co-operation to prevent inequities between the space Powers and other States as a result of disparities in their levels of scientific and technological development. Now that the United Nations was engaged in establishing a new international economic order, the Sub-Committee should be aware of the efforts required of it to ensure that the errors of the past would not be repeated in outer space.
26. His delegation believed that the only way to promote effective co-operation between States in the exploration and exploitation of the moon would be to adopt the principle that the moon's natural resources were the common heritage of mankind and should be exploited under an international régime for the benefit of all States. Hence it did not concur with the view that the moon and its natural resources could be considered res nullius. The treaty relating to the moon should therefore make clear provision for the exploitation of the moon's natural resources in the interest of all States and particularly of the developing countries. The technologically less advanced countries should also be encouraged to participate in the exploration and exploitation of the moon, and arrangements made for exchanges of data so that all States could be informed about activities on the moon and the benefits to be derived from international co-operation in that respect.
27. His delegation was among those that realized the difficulty of establishing an international régime for the exploitation of the moon's natural resources at the present stage, and would prefer it to be postponed until their exploitation became really feasible. However, the States parties to the treaty should undertake to negotiate such a régime, and his delegation would welcome any proposals to that effect. In agreeing to the postponement of the régime, however, his delegation did not anticipate that there would be a legal vacuum until the exploitation of the moon's natural resources became feasible, but felt that the activities of States should be undertaken in conformity with general principles relating to the most important substantive aspects which could then be elaborated upon to provide the foundation for the régime itself.

28. With regard to the question of direct television broadcasting by satellites, his delegation considered that it was extremely important to draw up a legal instrument on the subject, as such broadcasts now offered extensive possibilities for the dissemination of culture and the promotion of friendly relations and co-operation among States. His delegation was glad to see that some principles had already been drafted, and hoped that substantial progress would be made on the remainder during the present session. The most important point for his delegation was the notion that all States should have the right to use artificial satellites for direct broadcasting without discrimination.

29. The content of direct broadcasts, which was a vital aspect, raised a number of delicate problems which could be solved only by laying down legal principles based on full observance of the sovereignty of States. The principles of consent and participation were essential to safeguard the sovereign rights of States whose territory was covered by satellite broadcasts, and should be defined in such a way as to guarantee those States the right to be informed of the content of programmes beforehand and to refuse to allow the broadcasts if it was felt they might have harmful effects. Those principles should be complemented by clearly defined stipulations on the responsibility of States for the content of programmes broadcast from their territory which could be received in the territory of another State.

30. Turning to the problem of remote sensing, he said that his delegation, like others, had consistently advocated the adoption of a binding legal instrument for such activities. Indeed, as remote sensing was already taking place and could help in the location and subsequent exploitation of unknown resources, the elaboration of an instrument of that nature was of practical interest to all countries. The principles and rules his delegation wanted to see incorporated in that instrument should encourage international co-operation in the application of space technology for the benefit of all countries, and of the developing countries in particular, provide for free access by all States to data concerning their national territory, and make it incumbent on countries engaged in remote sensing activities to furnish such data.

31. As remote sensing differed from other space activities in that it related to the surface, subsurface and atmosphere of the earth, all such principles and rules should be based on respect for the sovereignty of States over natural resources within their territories and over information relating to those resources. States engaged in remote sensing should undertake not to transmit data or information on the territory and natural resources of one State to another without the prior consent of the former.

DRAFT TREATY RELATING TO THE MOON (agenda item 2) (A/AC.105/147) (continued)

32. Mr. LOPEZ-BASSOLS (Mexico) said that his delegation was convinced that the Sub-Committee was on the brink of agreement on the text of a draft treaty relating to the moon. It wished to thank the delegation of the USSR for its constructive work in producing a compromise text (A/AC.105/C.2/WG.I/1). Nevertheless, it had some doubts concerning the provision that the international régime governing the exploitation of the moon's natural resources should come into force when such exploitation was "feasible". That word was subject to various interpretations, and the provision in question could be taken to mean that there should be a moratorium. There would

certainly be a vacuum between the adoption of the treaty and the establishment of the international régime, and a set of objectives should therefore be specified to cover the intervening period. The list given in paragraph 3 of document A/AC.105/147 could be used for that purpose, together with an indication that particular account must be taken of the needs and interests of developing countries. The principle that the natural resources of the moon were the common heritage of mankind should be proclaimed in a separate article of the draft treaty.

33. With regard to the procedure for establishment of the international régime, the idea that a conference of States parties should be convened every ten years was acceptable to his delegation, provided that parties also had the right to request an earlier conference if they so desired. A democratic voting system was essential, and decisions at the conference should therefore be taken by simple majority.

34. In conclusion, he expressed the view that the draft treaty should apply not only to the moon but also to other celestial bodies; an alternative approach, however, would be to draft a separate treaty for those bodies.

35. Mr. LAGOS (Chile) said that the provisions concerning the legal status of the moon and its natural resources constituted the cornerstone of the draft treaty. His delegation was glad to see that there were signs at the present session of a desire to resolve the question of legal status in an equitable manner with a view to the conclusion of the treaty as soon as possible. It was also encouraging that an increasing number of delegations were ready to accept the idea that the moon and its natural resources were the common heritage of mankind; in his delegation's opinion, that was the key to any compromise solution that might be achieved.

36. His delegation hoped that, once a consensus had been reached on that principle, no major difficulties of implementation would arise, since it was logical that if States were prepared to recognize the moon and its natural resources as the common heritage of mankind, they should also be ready to establish a régime to give effect to that principle. The two elements could not be dissociated, and his delegation would have preferred the relevant article to provide for the establishment of an international régime as soon as the treaty had entered into force. However, as several delegations apparently wished to postpone the establishment of that régime, his delegation was prepared, on certain conditions, and in a spirit of compromise, to go along with them.

37. It regarded informal working paper WG.I/1 as merely a starting-point in that respect, since certain points needed further elaboration or clarification. For example, his delegation did not think that the establishment of the régime should be contingent on the feasibility of exploiting the natural resources of the moon, mainly because the provisions on that subject in paragraphs 2 and 4 of article X bis were ambiguous. Did they refer to the physical or economic feasibility of exploitation and, if the latter, how was such feasibility to be determined?

38. His delegation would therefore prefer the reference to feasibility in article X bis to be deleted and felt that the most appropriate time for the establishment of such a régime should be determined by the conference of States parties. In reaching their decision, either at that or subsequent conferences, they would undoubtedly take into account the feasibility of exploitation and no doubt other criteria as well.

39. The 10-year period that had to elapse before that or any other conference could be held was too long, since the progress of space technology might make it necessary to set up a régime earlier. However, again in a spirit of compromise, his delegation was prepared to accept that time interval provided that one third of the States parties could, if necessary, convene that or subsequent conferences at an earlier date. His delegation also believed it was indispensable that, during the interim period between the entry into force of the treaty and the establishment of an international régime, it should be made quite clear that prior exploitation of the natural resources of the moon could be undertaken solely in accordance with certain basic objectives, taking into account in particular the needs and interests of the developing countries. To give that requirement greater force, paragraph 6 of article X bis should call upon contracting parties to submit information not only on the discoveries that might be made on the moon but on any other activities, in the broad sense of the term, undertaken there.

40. A new informal working paper (WG.I/3) had been prepared by his and other delegations in the hope of offering a compromise solution, bringing about a better arrangement of the articles in question, and making the principle that the moon and its natural resources were the common heritage of mankind a separate provision, introducing articles X and X bis.

The meeting rose at 12.10 p.m.