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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Sixteenth session

SUMMARY RECORD OF THE 270th MEETING

Held at Headquarters, New York,
on Friday, 18 March 1977, at 10.30 a.m.

Chairman: Mr. WYZNER (Poland)

CONTENTS

General exchange of views (continued)

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

GENERAL EXCHANGE OF VIEWS (continued)

1. Mr. LE GOURRIEREC (France) said that the Sub-Committee's work had always been characterized by a spirit of conciliation, which in the past had facilitated the adoption of a number of international legal instruments. Its task was particularly complex in that the elaboration of international space law was a continuing creative activity and, at times, space technology moved forward before the corresponding international régime could be established.

2. With respect to the draft treaty relating to the moon, his delegation considered that it would be premature at the current stage to prepare a régime for the exploitation of the natural resources of the moon. Before so doing, it would be necessary to know the specific consequences of exploitation activities and to take account of the technological progress made.

3. The Legal Sub-Committee's work in the area of remote sensing of the natural resources of the earth was bound up with the progress made by the Scientific and Technical Sub-Committee. In his opinion, the Legal Sub-Committee should seek to improve the draft principles prepared at previous sessions and, in addition, should begin work on draft principles relating to the common elements referred to in the report of Working Group II. His delegation would continue to base its approach in that regard on the draft principles submitted jointly by France and the Soviet Union.

4. At its previous session, the Sub-Committee had made considerable progress with respect to the use by States of artificial earth satellites for direct television broadcasting, and nine draft principles had been prepared. However, the most important question, that of prior consent, had not yet been settled. His delegation strongly favoured the idea of prior consent, which represented a satisfactory balance between freedom of information and the need for an international framework in which account was taken of the particular characteristics of States. In dealing with the question, it would be necessary to take into consideration the results of the work carried out by ITU.

5. With regard to the delimitation of outer space, his delegation considered that a thorough study of the issue was required, in view of the necessity of determining limits for the application of space law, since a legal system whose scope of applicability was not defined was inconceivable. The different views expressed on the substance of the problem pointed to the need to seek a definition which included both scientific criteria and elements of a conventional nature.

6. Mr. RUDOLPH (Federal Republic of Germany) said that although it had not been possible to reach a consensus on the draft treaty, relating to the moon, the Sub-Committee had covered a great deal of ground in respect of the exploration and exploitation of the natural resources of the moon, a key issue on which it should continue to focus its attention. In his opinion, the right to freedom of exploration and exploitation must be the yardstick for any solution.

(Mr. Rudolph, Federal Republic of Germany)

7. Regarding the use of artificial satellites for direct television broadcasting, nine principles had been formulated, and it was his understanding that those principles would be reconsidered when a consensus on the draft as a whole appeared feasible. With respect to the principle of State responsibility, it must be made absolutely clear that State responsibility was limited strictly to areas in which Governments could, in fact, exercise control over television broadcasting. The complex principle of consent and participation had not yet been formulated because so far no consensus had appeared possible. It was his delegation's firm belief that the principle of the free flow of information should be retained, bearing in mind that it afforded every nation the best means of presenting its cultural identity to the outside world. In any event, a clear distinction had to be made between recognition of that principle as a political matter and the question of its technical implementation. On the technical side, the concept of prior agreement had already been accepted, and the technical problems of direct television broadcasting had been settled by ITU Regulation No. 428 and the World Administrative Radio Conference, which had met earlier in the year at Geneva. Acceptance of that concept was logical, since it was the only way of using for the benefit of all a limited natural medium, such as frequencies. On the other hand, technical agreements concluded bilaterally or multilaterally should not bind the Sub-Committee in its efforts to draft appropriate political principles. Since the accepted technical regulations already provided for prior agreement, the legitimate interests of States in participating in the direct television broadcasting activities of other States were already catered for, and consequently, in his opinion, it should be possible to overcome existing difficulties when the Sub-Committee dealt with the principle in question.

8. Regarding remote sensing of the earth from space, he expressed his delegation's satisfaction that the Scientific and Technical Sub-Committee was willing to continue to give priority to aspects of remote sensing and to assist the Legal Sub-Committee in finding solutions to scientific and technical problems of juridical importance. Obviously, the item on remote sensing would assume increasing significance, bearing in mind the improvements in living conditions, especially in developing countries, which that new branch of space technology would bring about. It was necessary to guarantee to all interested States the widest possible access to remote sensing technology, so that all might benefit from it. Accordingly, there should be a policy of open collection and dissemination of data and information, even though certain restrictions would have to be introduced, for example, the proviso that data and information should be made available to the sensed State not later than to any other State. In addition, possibilities for extensive participation by developing countries in remote sensing activities should be explored.

9. Turning to the question of the definition of outer space, he praised the background document prepared by the Secretariat (A/AC.105/C.2/7/Add.1), which gave an excellent digest of existing approaches to the problem. His delegation believed that a definite solution continued to be premature and, in particular, that any attempts to subdivide outer space into several strata would only complicate matters. Instead of trying to work out definitions, it seemed more appropriate at the current stage to seek agreements if problems should arise.

10. Mr. MOGHTADERI (Iran) said that the Sub-Committee's completion of the text of the preamble and 21 clauses of the draft treaty relating to the moon at its previous session was a significant accomplishment, despite the fact that there still remained wording between square brackets and variants. In accordance with General Assembly resolution 3388 (XXX), the Sub-Committee now had the responsibility of addressing the issues which so far had eluded agreement: the scope of the treaty, the legal status of the natural resources of the moon, dissemination of information on missions to the moon, and the concept of the moon as a common heritage of mankind. Iran had consistently supported the premise - endorsed by many other States, as had been demonstrated during the thirty-first session of the General Assembly - that the moon and its natural resources were a part of the common heritage of mankind. When conducted with a view to the well-being of all mankind, moon-based exploration activities, solar energy investigations, and the actual recovery of lunar mineral deposits, *inter alia*, held out great promise for the future, without fear of the potential hazards which could attend such activities if pursued with less altruistic motives.

11. The agreement reached the previous year on nine draft principles relating to direct television broadcasting from artificial satellites attested to the progress made towards an international convention on the subject and constituted a firm foundation from which to approach the three most difficult subjects: consent and participation, programme content, and unlawful or inadmissible broadcasts. To characterize those issues as representing the right to total freedom of information on the one hand, and the concept of absolute State sovereignty, on the other, was an oversimplification. The considerations involved touched upon cultural, political and religious sensitivities, and there was a need to respect such sensitivities as well as the basic precepts of State sovereignty.

12. Pre-operational experiments conducted by India in 1974 and 1975 using the NASA ATS-6 satellite had suggested the potential of such technology for the education of people in remote areas. However, the possibility of cultural exchange between countries and the prospects for the transfer of technical information to accelerate the development of peoples were contingent on reconciling the divergent concerns of States, taking into account the rights of both receiving and broadcasting States. Iran continued to hold the position expressed at the fourteenth session of the Sub-Committee: in view of the importance of the question, every effort must be made to blend in a workable formula the best elements of the two basic positions.

13. There were similar considerations of prior consent and State sovereignty to be dealt with in considering the operations of remote sensing of the earth's resources. The legitimate concerns of States were based on the wide range of potential applications of remote sensing to such problems as water pollution, the encroachment of deserts, erosion from wind and water, animal and sea life migration, natural disaster prevention and even the surveying of some mineral resources, as well as the prediction of agricultural crops. Respect for the sovereignty of States must include safeguards against disclosure of critical information regarding natural resources to third parties not authorized by the sensed State to receive such information.

(Mr. Moghtaderi, Iran)

14. The United Nations continued to be the most promising forum for the co-ordination and co-operation necessary in that field, as had been proved by the Sub-Committee's successes in formulating five draft principles to govern remote sensing and in identifying three additional common elements. His delegation believed that complete consensus could be reached on that complex matter if members of the Sub-Committee maintained their determination to do so. That determination stemmed from a recognition that the rapidly advancing technical and scientific threshold of remote sensing required the development of a legal régime to promote co-operation between interested States, before they were forced into a mode of reaction to conflicts which could be avoided by the establishment of mutually agreeable international procedures. It was gratifying to note that interest in remote sensing had generated numerous seminars, training sessions and bilateral and multilateral agreements, and it was of particular importance that opportunities were made available to persons from developing States to participate in such activities.

15. With regard to the agenda item relating to the definition and/or delimitation of outer space and outer space activities, which some believed should precede all the others, the Scientific and Technical Sub-Committee and the Legal Sub-Committee itself had advanced various bases for resolving that question in document A/AC.105/C.2/7/Add.1, which had been prepared by the Secretariat. That document clearly indicated, however, that there were widely varying views on the subject and that the resolution of the many outstanding questions might be the product of evolution, and evolution was a function of time.

16. In order to dispel the impression of an overwhelming accumulation of unresolved matters, it need only be recalled that not even 20 years had elapsed since the space age had begun with the launching of the first "Sputnik" and that, as far as outer space was concerned, the intervening years had constituted the most concentrated period of change in the history of man. The very fact that a Committee on the Peaceful Uses of Outer Space existed was evidence of the maturity which had been achieved in international relations in that field.

17. Iran pledged its complete dedication to the principles of respect and co-operation between members of the world community; it would endeavour to contribute to the resolution of the matters before the Sub-Committee and it reaffirmed its commitment to the peaceful achievement of its objectives.

18. Mr. KATO (Japan) said that he was convinced that the work of the Sub-Committee - which was to establish a legal framework for the future activities of man in outer space - was becoming increasingly important in view of the rapidly accumulating experience in the peaceful uses of outer space. His delegation, which represented a country faced with difficult problems relating to space activities, was particularly happy to participate in that work.

19. He informed the Sub-Committee of the launching of the Japanese satellite Kiku II (ETS-II), his country's first geosynchronous satellite. The main purpose of the satellite was to familiarize Japan's engineers with the basic technology for launching, tracking and controlling that type of satellite. Japan was making sustained efforts to develop further its own technology for the exploration and use of space.

(Mr. Kato, Japan)

20. His delegation noted that at the preceding session of the Legal Sub-Committee serious efforts had been made to reach a compromise on the draft treaty relating to the moon, although no success had been achieved with regard to three basic issues: natural resources, the scope of the treaty and the information to be provided on moon missions. Without repeating the basic position of his delegation he expressed the hope that the Sub-Committee would continue its useful deliberations with a view to working out a generally acceptable formula on a consensus basis.

21. As to the two other agenda items, relating to direct broadcasting by satellite and remote sensing, his delegation would explain its position in the working group dealing with those two items. However, the guidelines which would be laid down should not preclude the enjoyment of the benefits of future scientific and technological development by the widest number of people. He was sure that the divergent positions taken by delegations could be reconciled if all delegations realized that the main purpose of the Sub-Committee's work was to find ways to secure the maximum benefit for all mankind from activities in outer space.

22. Mr. COCCA (Argentina) said that the presence at the Sub-Committee's meetings of representatives of Colombia, Ecuador and Guyana and observers from an increasing number of intergovernmental and non-governmental organizations was evidence of the growing interest in the questions with which it dealt and highlighted the fact that outer space activities must be conducted in conformity with the principles of international law, co-operation among States, the rights of developing countries to share in the technology of more advanced States, the exclusive sovereignty of States over their natural resources and the liability of States and international organizations for damage caused by space activities and, in general, in accordance with the principles of the 1967 Treaty.

23. With regard to the treaty relating to the moon, Argentina hoped that, if the text could not be finalized, substantial progress would at least be made in that direction. In that connexion, a tendency had emerged which his country together with more than half the Member States present were fostering, to reconcile and blend the various viewpoints. The question of the legal status of the natural resources of the moon was the touchstone of the legal instrument which was being prepared and specific provisions relating to it should be included in the treaty. Argentina had held such a view since 1970, when it had submitted the first document on that question (A/AC.105/C.2/L.71).

24. With regard to the legal problems related to direct broadcasting by satellite there was every indication that agreement would be reached on new basic principles. In that connexion, mention should be made of the draft international convention which Argentina had submitted in 1974 (A/AC.105/134) and the results of the River Plate Congress on Space Law held at Montevideo in November 1976.

25. With regard to remote sensing of the earth by satellite, his delegation had indicated its position in document A/AC.105/C.2/L.73 in 1970 and in 1974 it had submitted jointly with Brazil draft basic articles (A/C.1/1047), which had been sponsored by all the Latin American members of the Outer Space Committee and by other delegations as well. Consideration should be given in that connexion to the studies on remote sensing which had been prepared by the Scientific and Technical Sub-Committee, and in particular to the conclusions it had reached with regard to the desirability of prior consultations and regional co-operation. Argentina was in the process of setting up a LANDSAT station and had been putting the recommendations of that Sub-Committee into effect.

(Mr. Cocca, Argentina)

26. An item which grew increasingly more interesting, even though the General Assembly had not assigned priority to it in resolution 31/8, was the definition and/or delimitation of outer space and space activities. In that connexion, he commended the Secretariat on the preparation of documents A/AC.105/C.2/7/Add.1 and Conference room paper No. 1 (1977) and on its revision of the 1969 study; he stressed in particular the usefulness of the sorting out of opinions and the synoptic presentation of proposals and suggestions contained therein. Argentina had for some time endorsed, and had communicated its position to the Secretariat, the establishment of a 100 km limit. That limit had been supported by the observer for COSPAR and by many other delegations. As was well known, the traditional position of Argentina was that the limit should be established by treaty on the basis of a legal-political criterion consistent with the scientific criterion advocated by his country and COSPAR, among others.

27. In conclusion, he referred to the question raised by Argentina at Geneva in 1976 concerning international problems arising from the exploitation of solar and other related energies, a question dealt with in document A/AC.105/L.91. On that occasion, the Committee had discussed the question and had requested States to submit information on the matter to the Scientific and Technical Sub-Committee. Of the reports received, mention should be made of the United States report on the use of systems for the generation of energy by satellite, and that provided by the Soviet Union, which linked solar radiation with the world's future supply of energy. Recently, the General Assembly had also been concerned with the question, as could be seen from paragraph 8 (c) of General Assembly resolution A/RES/31/8; however, the Organization's preoccupation with solar energy was not new, and had begun more than 20 years earlier, as evidenced by Economic and Social Council resolution 598 (XXI). The question had also been dealt with by the Committee on Natural Resources, the Committee on Science and Technology for Development, ECA, ESCAP, UNEP and the United Nations University. It was also being considered by COSPAR and the International Astronautical Federation, and would shortly be examined during the National Days of Aeronautical and Space Law to be held in Argentina. That demonstrated the interest that many countries, including Argentina, took in solar energy, and gave reason to hope that, once the items on the current agenda had been concluded, studies on the exploitation of solar energy could begin.

28. Mr. JAPIAL (India) said that his country, which was deeply interested in the use of space technology for the general good, had established a space programme with the aim of developing space science and technology so that they could be used in the solution of problems related to social and economic development. The programme covered three broad areas of activity, namely space science, space technology and space applications, and was marked by active collaboration with other countries. Thus, with the collaboration of the United States, India had recently concluded its first large-scale experiment in educational television by satellite. In the field of remote sensing, efforts were being concentrated on operational aspects, research and development. With the co-operation of the Soviet Union, the first satellite had been launched in 1975, and there were plans to launch a second satellite in 1978. India also had collaboration arrangements with France and the Federal Republic of Germany.

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(Mr. Japial, India)

29. With regard to the draft treaty on the moon, he reiterated his country's position that any such text must declare unequivocally that the moon and other celestial bodies and their natural resources were the common heritage of mankind, a concept which had been accepted by the majority of States Members of the United Nations and which could give rise to no reservations. Furthermore, it was only logical to apply to the moon and other celestial bodies the same principle agreed upon with respect to the international sea-bed area and its resources. Naturally, the concept of the common heritage of mankind implied that such resources could not be commercially exploited except in accordance with an agreed international régime. He saw no urgent need to exploit the natural resources of the moon pending the establishment of such a régime. Any attempt to do so would provoke a space race which would lead to confrontation. There could, of course, be no objection to the pursuit of pure scientific research. However, at a time when the international community was in the process of liquidating colonialism on earth, the growth of extraterrestrial colonialism must be prevented. His delegation would have no objection if the draft treaty dealt with other celestial bodies, although it recognized that in time, there might be a need for separate treaties for different celestial bodies in the solar system.

30. His delegation thought that the benefits that might be derived from the natural resources of the moon should be equitably shared, and that information on the various aspects of missions to the moon, as well as the results of such missions, including results of a scientific nature and those relating to natural resources, should be made available to all. Although it was clear that an international régime would have to be established, such a régime would become necessary only when the exploitation of the moon's natural resources was feasible. The Secretary-General could convene an international conference for that purpose, and his delegation thought that article X, paragraph 4, of the draft treaty should be amended to make it plain that the purpose of such a conference was not to decide whether the international régime should be established or not, but to decide when it should be established.

31. As to the use by States of artificial earth satellites for direct television broadcasting, he pointed out that no agreement had yet been reached on the questions of prior consent and participation, programme content and unlawful or inadmissible broadcasts. His delegation supported the general principle that television broadcasts aimed at a foreign country should not be permitted except with the specific consent of that country. Such an approach was consistent with the principle of sovereignty of States and the principle of non-intervention in the internal affairs of other States, as well as with the recognized right of States to regulate their communications systems and to decide the type of broadcasting services required by them. As a logical corollary to the principle of prior consent, his delegation favoured co-operation between States participating in direct television broadcasts by satellites in the field of programming, programme content, etc. The broadcasting of commercial advertisements should be on the basis of agreements between the parties concerned, and broadcasting that was detrimental to international peace and security should be prohibited. On the other hand, his delegation had no firm views on the question of international liability for unlawful or inadmissible broadcasts, and wished to hear the views of the Outer Space Affairs Division on that question.

(Mr. Japial, India)

32. With regard to the legal implications of remote sensing, there were still some controversial issues, as became clear from paragraph 9 of annex II of the report of the Legal Sub-Committee on its work of its fifteenth session (A/AC.105/171). His delegation was of the view that meteorological data obtained through remote sensing activities should be made available freely and promptly, but that data concerning a State's natural resources should not be disseminated without the consent of that State. At the same time, care must be taken not to put legal obstacles in the way of remote sensing activities carried out in the interests of pure scientific research. He recalled that, in the Scientific and Technical Sub-Committee, the Soviet delegation had suggested a classification for remote sensing data. The Secretariat had already been requested to carry out a scientific study in order to establish which type of data would correspond to specific applications, and the Legal Sub-Committee should await the results of that study before taking a decision.

The meeting rose at 12 noon.