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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Seventeenth session

SUMMARY RECORD OF THE 291st MEETING

Held at the Palais des Nations, Geneva,  
on Tuesday, 21 March 1978, at 10.50 a.m.

Chairman: Mr. WYZNER (Poland)

CONTENTS

General exchange of views (continued)

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GENERAL EXCHANGE OF VIEWS (continued)

1. Mr. SIMANI (Kenya) said that the expansion of the membership of the Committee on the Peaceful Uses of Outer Space fully demonstrated the desire of the United Nations to ensure that its work was more relevant to its needs and reflected the enlargement of the membership of the Organization over the years. He disagreed with the view expressed by some delegations that the enlarged membership would make it difficult to reach decisions.
2. With regard to the draft treaty relating to the moon, he recalled his delegation's position that the moon and its resources constituted the common heritage of mankind and that any exploitation of those resources should be undertaken in accordance with that principle. The concept of the common heritage of mankind had achieved general recognition in the context of the negotiations on the law of the sea and had replaced previous theories based on res communis, which had merely endorsed the free-for-all system whereby the developed maritime Powers had exploited the resources of the sea for their own benefit. The developing countries had insisted on a principle that would ensure their right to participate in those activities on an equal basis. In the context of outer space, a similar concern was expressed in article I of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.
3. With regard to the elaboration of principles governing the use by States of artificial satellites for direct television broadcasting, and in particular the draft principle on consultation and agreements, his delegation considered that, although freedom of information was a fundamental right of individuals, it was often made subject to the right of others to the enjoyment of their freedoms, which were themselves further limited in the interests of the maintenance of public order and security. In his delegation's opinion, the right to seek, receive and impart information and ideas through any media regardless of frontiers could not be absolute. The right not to receive information of the kind contemplated should be respected, and a State wishing to provide a broadcast service to another State should first seek and obtain the consent of that State. It was with those considerations in mind that his delegation would examine the proposals to be submitted on the issue.
4. Remote sensing of the earth from space should be undertaken under an arrangement which recognized the sovereign rights of the States sensed. As those rights extended to the natural resources of the States in question, data obtained by remote sensing should be disseminated only with the authorization of the State sensed. There could be no question of freedom of information in matters of that kind, which often concerned the security of the State concerned.
5. His Government's position on the question of the geostationary orbit, was that the sovereignty of equatorial countries, which included Kenya, extended to the segments of the orbit above those countries. The provisions of article II of the 1967 Outer Space Treaty could not be invoked to contradict that view, since no generally accepted definition and/or delimitation of outer space existed. There was therefore no valid basis on which to dispute

the claim by equatorial countries of sovereignty over the geostationary orbit. That orbit was a physical fact linked to the reality of the planet, since its existence depended exclusively on its relation to the gravitational phenomena generated by the earth. Accordingly, his delegation had voiced reservations concerning the placing of satellites on that orbit. It considered that the prior consent of the equatorial countries should be sought whenever it was intended to place satellites over their respective segments of the geostationary orbit.

6. The study prepared by the Secretariat for the recent session of the Scientific and Technical Sub-Committee (A/AC.105/203) indicated clearly the danger of an accident involving objects placed on the geostationary orbit. Such an accident could create untold damage to the environment and to living resources, including human beings, particularly if the objects involved were equipped with nuclear power sources. The concern of the countries in question to have a say in the positioning of such objects over their respective segments of the geostationary orbit was therefore well founded.

7. His delegation supported the proposal made by Canada, following the recent accident involving the disintegration of a nuclear-powered satellite over its territory, that the Sub-Committee should prepare an additional instrument governing the use of nuclear power sources in space.

8. Mr. MARTINEZ (Argentina) expressed the hope that it would be possible to find agreed solutions to the question of the use by States of artificial satellites for direct television broadcasting. His Government was prepared to do everything possible to seek positive results based on internationally accepted fundamental principles, such as those of non-intervention and respect for the sovereignty of States. It attached great importance to the principle of consultation and agreements between States with a view to ensuring that broadcasts directed to a country without its consent would not give rise to situations affecting the sovereignty of the receiving country, endanger its national identity or cultural values or constitute interference in its internal affairs. His delegation also looked forward to a final formulation of the relevant principles, including that on "duty and right to consult", that would describe such broadcasts as illegal or inadmissible, thus making it possible to establish any consequential responsibility on a firm basis.

9. Some of the principles supported by his delegation with regard to the use of artificial satellites for direct television broadcasting should also govern the remote sensing of the earth from space and he hoped that all delegations would make a sincere effort to achieve significant progress in the elaboration of those principles. The latest achievements of modern technology, which were accessible only to a small group of countries, made it possible not only to detect with astonishing accuracy the possibility of certain meteorological phenomena but also to ascertain the quantity and quality of a country's natural resources. A country having access to such information could thus plan its economic activities accordingly. That inequitable situation constituted a great disadvantage for many countries which did not have access to such technology and might be adversely affected by unfair competition.

10. His delegation endorsed the view that the concept of the sovereignty of States over their natural resources could not be separated from the question of remote sensing of those States from space. A State sensed had the right to possess all the data obtained in that manner and to ensure that such information was not disseminated without its consent.

11. With regard to the draft treaty relating to the moon, his delegation hoped that progress could be achieved on the basis of the principle, endorsed by the great majority of countries, that the moon and its natural resources constituted the common heritage of mankind. That concept had been incorporated into other instruments of international law and its inclusion in the draft treaty would ensure that all countries, and in particular the developing countries, would have an equitable share in any benefits resulting from activities carried out under the treaty, including the exploitation of the moon's natural resources. Some progress had already been made in Working Group I and he hoped that further progress would be made not only towards the establishment of the principle that the moon was the common heritage of mankind, but also with regard to the scope of application of the draft treaty and to information to be submitted concerning missions to the moon.

12. The other items on the agenda, although less urgent, were also of great importance. For practical reasons, it would be useful to elaborate legal and technical bases for the delimitation and definition of outer space, since they would determine the entire physical scope of the norms in process of preparation. With regard to the geostationary orbit, his delegation considered that, since it could be saturated, it was clearly a limited natural resource, and an *ad hoc* international régime should therefore be established to regulate its use so that its benefits could be equitably enjoyed by all nations. Such a régime should make it an obligation for States which placed satellites on that orbit to remove them when they approached the end of their active life.

13. His delegation endorsed the view that there was a need to elaborate rules governing the safety and responsibility of States with regard to situations that might result from the use of space objects, particularly those carrying radio-active material that could endanger property or human beings.

14. The question of the use of solar energy from outer space, on which Argentina had submitted a working paper, might usefully be discussed as a separate item on the agenda of the Sub-Committee's forthcoming sessions. The need for new power sources was becoming increasingly apparent in a world that was rapidly exhausting known resources; consequently, when the use of solar energy became possible, it should be governed by specific norms.

15. His delegation supported all principles that would enable the developing countries to have access to the advanced space technology of the most advanced countries with a view to an effective transfer of technology for the benefit of mankind as a whole.

16. Mr. TODOROV (Bulgaria) congratulated the delegation of the USSR on the outstanding world record for remaining in space recently set by the cosmonauts Romanenko and Grechko on the spaceship Soyuz-26 and on that spaceship's docking with Soyuz-27, manned by the cosmonauts Dzhaniyev and Makarov. His delegation also wished to congratulate the Czechoslovak delegation on the successful flight of the Czechoslovak cosmonaut Remek, which had made the Czechoslovak Socialist Republic the third State in the history of mankind to have its own cosmonaut.

17. At its last session, the General Assembly had confirmed the great importance of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, one of the main principles of which concerned broad international co-operation among States in outer space exploration. In that connexion, he noted with satisfaction that co-operation between the USSR and other socialist countries in the exploration of outer space under the Intercosmos programme was constantly being strengthened and developed by agreement between the countries concerned. Intercosmos satellites were launched regularly and experiments were carried out to study problems concerning space physics, meteorology, biology and the earth's natural resources. His Government's experience in the Intercosmos programme provided striking proof that small countries which did not possess the means to launch satellites themselves could make useful contributions to space research and benefit from its achievements.

18. The concept that the exploration and use of outer space, including the moon and other celestial bodies, was the province of all mankind was a sound one. Many countries attached great importance to the question of the exploration of outer space and to the development of communication by satellites. His country had taken an active part in the preparation of the convention establishing the International Maritime Satellite Organization (INMARSAT) and was a member of the Preparatory Committee for INMARSAT. It was now participating in discussions on a possible joint venture for a second-generation maritime satellite system.

19. Notwithstanding their different interests, traditions, cultures and legal systems, all States were guided by a common desire to explore outer space and to use it for the benefit of mankind. Activities in outer space should, however, be regulated by law, with due regard for the national interests and sovereignty of all countries in the world. In that general context, the work on the elaboration of draft principles governing the use of artificial earth satellites for direct television broadcasting should be based on the principles of the sovereignty of States and non-interference in their internal affairs, which implied the need for prior consultation and agreement. It could be completed during the current session, on the understanding that the nine principles previously agreed upon merely required polishing and that they would serve as a nucleus for the final draft principles on the subject.

20. His delegation based its views on remote sensing on article I of the Outer Space Treaty and considered that it was not necessary to obtain the prior consent of the sensed State since remote sensing activities were in accordance with the principles of international law and did not violate the sovereignty of States over their own natural resources. The legal implications of the utilization of data obtained by remote sensing, however, involved the permanent sovereignty of States. A distinction should be made between global and regional data, which should be accessible to all countries without discrimination, and local data, which should not be disseminated without the consent of the State concerned, in accordance with article XI of the Outer Space Treaty.

21. In spite of considerable efforts to achieve a consensus, the Sub-Committee was still deadlocked on the key question of the natural resources of the moon. Discussions had shown the inadequacy of the concept that the moon was the "common heritage of mankind", since there was no legal definition of that term, which had not been used in any binding multilateral instrument. Nor did either the word "mankind" or the word "heritage" have any legal meaning in international

law, and the term was differently interpreted even among those who supported the concept. Furthermore, it was difficult to apply the concept of the common heritage of mankind to space law without prejudice to its applicability to the law of the sea, since there was no absolute similarity between the two domains. His delegation continued to hold the view that the formula it had suggested in document A/AC.105/C.2/L.93 in 1974 was less ambiguous than the concept of the common heritage of mankind. His delegation could accept a Mexican suggestion to include the moon itself in that formula.

22. On the question of the legal status of the geostationary orbit, his delegation considered that it constituted part of outer space and could not be subject to claims of national sovereignty which would be in contradiction with articles I and II of the Outer Space Treaty and article 33 of the ITU Convention. However, his delegation was open to suggestions on that or any other agenda item which might lead to a consensus.

23. Mr. CHARRY SAMPER (Colombia) said that the expansion of the membership of the Committee on the Peaceful Uses of Outer Space had made it more representative and hence a more appropriate forum for the discussion of one important subjects entrusted to it. It was essential that medium-sized developing countries with limited resources, such as his own, should become participants rather than spectators in the new technological era. The drafting of legal texts concerning the exploitation both of outer space and of the sea was futile unless it was accompanied by efforts to ensure that all countries achieved adequate scientific standards, since the gap between developed and developing countries would certainly increase if such texts gave advantages to the developed world. In reality, the main purpose of discussions on such texts remained the establishment of a new international economic order. Concerted efforts were required by all, with the major Powers demonstrating a spirit of co-operation towards all developing countries, whatever their economic and social systems, in order to achieve social justice and development everywhere.

24. The items on the Sub-Committee's agenda should be viewed from the standpoint of equity: hence, the initial inequality between States should be taken into account and they should not all be treated in the same way. The formula "common heritage of mankind" implied that the methods hitherto commonly employed on the earth should be replaced by a spirit of solidarity in the exploitation of outer space. As the Indonesian representative had earlier observed, that formula was the exact opposite of "first come, first served".

25. With regard to the use of satellites for direct television broadcasting, Colombia, while supporting freedom of information, nevertheless considered cultural invasions to be as reprehensible as any other type of incursion. Every country had the right to preserve its own cultural identity and prevent it from being overwhelmed by means of new channels of communication, such as earth satellites, operated by other States or multinational corporations. Such broadcasting was therefore only permissible with the express consent of the receiving State.

26. Insofar as remote sensing was concerned, the country sensed had a right to the information collected about its natural resources, which should be communicated to third parties only with its consent. Such information should not be used to the disadvantage of the sensed country, since technical and scientific factors currently conditioned economic development.

27. The draft treaty concerning the moon should be extended to make the formula of the common heritage of mankind applicable to other planets. His delegation would support efforts to seek agreement on those lines.

28. He endorsed the views expressed by the Canadian representative concerning the need to establish safeguards against accidents involving nuclear-powered space objects.

29. The question of the geostationary orbit was of special importance to the equatorial countries and they could not abandon the position they had adopted in the Act of Bogota of December 1976, which reaffirmed the principles enunciated in General Assembly resolutions 2692 (XXV) and 3781 (XXX). In the absence of an internationally agreed definition of outer space, the equatorial countries exercised full sovereignty over their respective segments of the geostationary orbit, with corresponding rights and duties. Although they recognized the principle of free transit embodied in the Treaty on Outer Space, the use of any segment of the geostationary orbit required the prior and express consent of the country concerned. The current presence of satellites belonging to other countries did not validate a claim to future use.

30. Colombia took its position as an equatorial country seriously and was proposing to launch its own satellite in 1980. It was also studying the possibility of participating in joint projects with the other Andean Pact countries and Latin American countries generally. It was prepared to place its segment of the geostationary orbit at the service of the international community, particularly the developing countries, as had been shown by its offer of space for a UNESCO satellite for educational purposes. In the view of the equatorial countries, international bodies should regulate the use of the geostationary orbit for the benefit of all countries, rather than for the sole advantage of the most developed.

31. He could not accept the comments on the geostationary orbit made by the Italian, United Kingdom and Belgian delegations at the 288th and 289th meetings. Technological advances made it impossible to establish a boundary between outer space and air space, as had been demonstrated by the United States shuttle capability. The position of the equatorial States was similar to that of the coastal States which had put forward the concept of the exclusive economic zone at the Third United Nations Conference on the Law of the Sea.

32. He could not agree with the United Kingdom representative's assertion that the geostationary orbit was part of outer space and therefore subject to the 1967 Treaty. There was no legal or scientific basis for such an assumption. All natural resources were finite, but to argue against the recognition of sovereignty over national segments of the geostationary orbit on that premise

was no more logical than to assert that since oil supplies were short they should belong to the international community as a whole. The act of Bogota did not affect the issue of telecommunication under the ITU Convention. The Belgian representative's suggestion of an altitude of 100 kilometres as the lower boundary of outer space was arbitrary and had no scientific basis. Colombia maintained the position it had adopted at the 1977 ITU Conference on Broadcasting Satellites that, according to ITU regulations, such satellites were fixed stations and therefore subject to the municipal legislation of States situated beneath them. The 1967 Outer Space Treaty had marked the beginning, not the culmination, of the development of international space law in accordance with the principles enshrined in the Chart of the United Nations.

33. Mr. KUNUGI (Japan) said that remarkable progress had been made in the application of space technology in recent years. In the important area of television broadcasting by artificial earth satellites, a new system of individual reception, which was expected to be introduced in the near future, would make it possible for emissions from a space station to be received by domestic installations with a small antenna. Such reception would be less costly than the existing community reception. His Government, with the co-operation of the United States National Aeronautics and Space Administration, was shortly to launch a satellite, known as the Medium-Scale Broadcasting Satellite for Experimental Purposes (BSE), to carry out further research and development work on the practical application and use of individual reception.

34. Direct television broadcasting by artificial satellites could bring various benefits to the international community, such as the promotion of education, mutual understanding, co-operation and cultural interchange among peoples. The Sub-Committee should therefore ensure that any principles it might formulate to govern the use of artificial earth satellites for direct television broadcasting would not in future become an obstacle to obtaining benefits from the further development and practical application of the new system of direct broadcasting by satellites.

35. His delegation still had some difficulty in accepting the draft text of the proposed principle on consultation and agreements between States. Because of the potential impact on society of direct broadcasts by satellites, due consideration should be given to the concern of any State in which such broadcasts were received. There should be full consultation between broadcasting and receiving States or their broadcasting authorities, in accordance with the agreed principle on purposes and objectives.

36. Spillover was an entirely different question from that of direct television broadcasting specifically directed at a foreign State. Any spillover that might occur as a result of domestic direct television broadcasting within the limits established by the relevant ITU instruments was unintentional and technically unavoidable. Such spillover should therefore be excluded from the scope of consultation referred to in the draft principles.



37. The various international legal instruments on outer space had defined the scope of application of the various uses of outer space which they covered, but had not expressly defined outer space itself. That functional approach to definition, which had been based on general agreement within the Sub-Committee, should continue to be used in the future. Any attempt to define the legal régime of outer space in general and uniform terms, or to seek a definition applicable to all uses of outer space would be inadvisable.

38. His delegation took the view that the geostationary orbit at an altitude of approximately 36,000 km above the equator was part of outer space and that its use was a space activity in accordance with the rules and principles of international law embodied in General Assembly resolution 1962 (XVIII) and the 1967 Outer Space Treaty, article II of which specifically prohibited national appropriation of outer space.

39. Mr. HARASZTI (Hungary) said that recent major events had marked a new phase in the peaceful exploration and use of outer space. In particular, new space records had been set by Soviet cosmonauts, and co-operation between socialist States in the Intercosmos programme had made it possible for the first cosmonaut from a country other than the two major space Powers to take part in a space mission. His delegation wished to congratulate the Soviet and Czechoslovak delegations on those accomplishments.

40. He noted with satisfaction that some progress was now being made with regard to the draft treaty relating to the moon and that, despite some doubts, the different positions appeared to have moved somewhat closer together. It did not appear impossible that some agreement in principle could be reached in private consultations.

41. His delegation welcomed the progress made at the two preceding sessions with regard to direct television broadcasting by satellites. For the first time, fundamental rules governing the use in space of one of the most important mass media had been established. Some problems, however, and in particular the problem of prior consent, remain unsolved. Although the World Administrative Radiocommunications Conference of ITU, held in 1977, had taken a great step towards a solution of that problem, his delegation did not share the view of certain delegations that the agreements concluded at that Conference had made further action superfluous, since the problem was a political one which could not be solved by purely technical means. Its regulation must be based on one of the fundamental principles of international law - that of co-operation among States, and direct television broadcasting to a foreign State must therefore be governed by arrangements made between the broadcasting State and the receiving State in prior consultation.

42. While recognizing the importance of remote sensing of the earth from space for the benefit of mankind as a whole, his delegation considered that any regulations relating to that activity should ensure the inviolability of the right of all States freely to dispose of their natural resources in conformity with their permanent sovereignty over those resources.

43. His delegation was firmly convinced that the geostationary orbit was an integral part of outer space and, in accordance with the 1967 Outer Space Treaty, could not be subject to any form of national appropriation.

44. Mr. MAIORSKI (Union of Soviet Socialist Republics) said that although the question of the legal regulation of the use of nuclear power in space craft was not on the Sub-Committee's agenda, his delegation wished to have certain observations placed on record in connexion with the comments made by a number of representatives on that subject during the general exchange of views.

45. His delegation did not consider the question to be of a sufficiently pressing nature to justify consideration by the Sub-Committee, to the detriment of items already on its agenda and without appropriate instructions from its parent Committee.

46. While he did not doubt the sincerity with which representatives had stated their views, he had noted with regret that some delegations had been influenced by the recent campaign carried out in certain mass media. The astonishing suggestion had been made that nuclear reactors were falling from space and the space Powers had been urged to admit their responsibility for mankind's safety and the continuation of the human race. His country, which had always been deeply concerned about the safety, development and progress of the human race, considered the use of nuclear sources of energy in space craft was one of the most promising means of continuing progress in space activities, particularly for future generations which would be undertaking protracted space flights. He could assure the Sub-Committee that adequate safety measures were being applied. It was in the best interests of mankind to avoid a sensational approach to the question.

47. Contemporary space law, of which the Sub-Committee could rightly be proud, already contained the necessary provisions for regulating relations among States in the unforeseen event that a satellite carrying a nuclear power source entered the atmosphere over the territory of a State other than the launching State. There was no reason to doubt the effectiveness of existing space law.

48. His delegation's comments on the matter reflected the general views already expressed by the Soviet delegation in the Scientific and Technical Sub-Committee, and were not intended as a continuation of the discussion which had taken place in the Legal Sub-Committee.

49. Mr. HOSENBALL (United States of America) said that he wished to correct a point made by the Colombian representative. The space shuttle would not be capable either of going into geostationary synchronous orbit itself or of carrying other objects into such orbit. Synchronous-orbit satellites would be placed in a circular orbit from its outside bay and would be carried into geostationary orbit by their own stages. The shuttle would ultimately increase the availability of geostationary orbits for multi-purpose satellites, which would be used for weather forecasting, communications and possibly remote sensing.

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