

UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
GENERAL

A/AC.105/C.2/SR.250
7 May 1976

Original: ENGLISH

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifteenth Session

SUMMARY RECORD OF THE 250th MEETING

held at the Palais des Nations, Geneva,
on Friday, 7 May 1976, at 10.15 a.m.

Chairman: Mr. WYZNER (Poland)

CONTENTS

General exchange of views (continued)

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GE.76-85074

GENERAL EXCHANGE OF VIEWS (continued)

1. Mr. SCHOLTYSEK (Federal Republic of Germany) said that many outstanding events, in some of which his Government had participated, had taken place since the Sub-Committee's last meeting and had underlined the importance of the peaceful uses of outer space. Together with the Government of France, his Government had, in August 1975, launched model 2 of the experimental telecommunications satellite *Symphonie*, which was temporarily being used by the United Nations Peacekeeping Force in the Middle East. In January 1976 the solar probe *Helios B* had been launched and constituted the biggest space project undertaken so far in co-operation with the United States of America. Other projects were under way with the European Space Agency, to which national programmes were gradually being transferred as a result of the growing importance attached to regional co-operation. With regard to the legal framework for outer space activities, his Government had deposited its instrument of accession to the Convention on International Liability on 18 December 1975 and signed the Convention on Registration on 2 March 1976, thus becoming a party or signatory to all the international instruments prepared by the Legal Sub-Committee.

2. Turning to the topics on the agenda, he said his delegation was ready to support all efforts to overcome the obstacles in the way of the conclusion of the draft treaty on the moon. With respect to the elaboration of principles to govern the use by States of artificial satellites for direct television broadcasting, it considered that the purpose of such broadcasts was the free exchange of information to increase mutual understanding between countries. The principle of the freedom of information was well established in international law and, in his delegation's opinion, was not incompatible with the principle of State sovereignty, despite the divergent views held on the questions of consent and participation. A solution to the problem might be found at ITU's forthcoming World Administrative Telecommunication Conference, but in the meantime the Sub-Committee should concentrate on the principles on which it was most likely that an understanding could be reached.

3. He noted that his delegation had submitted draft principles with regard to the remote sensing of the earth from outer space, which were set out in document A/AC.105/C.2/L.106.

4. With respect to the definition and/or delimitation of outer space, his delegation considered that any agreement reached on the subject should not be based on technical and physical criteria alone; care should also be taken to ensure that the solution eventually adopted would not prejudice the free exploration and use of outer space.

5. Mr. D'ANDREA (Italy) said his delegation considered the present session to be extremely important because States, in passing from space theory to practical applications, were trying to base their approach on principles which had been established some years ago and which had not stood the test of time.

6. Referring to the definition and/or delimitation of outer space, he said that developments in the past few years clearly showed that a definition was urgently needed. The concept of State sovereignty, for instance, was not applicable to outer space, but

as increasing emphasis was being placed on certain economic concepts of common property, it was important to know just where outer space began. Moreover, the body of doctrine that was being built up attached growing importance to the concept of State sovereignty over national space. The criteria suggested in the past by the Sub-Committee might have been rather arbitrary, but at least they had the merit of offering a solution, and that was why his delegation had advocated the adoption of 90 km as the boundary; although that might appear to be a simplistic criterion, it would settle the problem in a rapid and rational way. If, however, the international community was not prepared to take an immediate decision, the Sub-Committee should define the political and economic priorities and set up a legal framework as soon as possible so as to avoid the danger of being drawn into the same kind of difficult and often counterproductive work that had been devoted to definitions relating to the Law of the Sea which, in the case of the common heritage of mankind concept at least, had ended in the betrayal of the objectives it had been meant to further. Another possibility might be to establish graduated boundaries, with the right of passage through them, and at the same time to reduce State sovereignty gradually. The whole question was fraught with danger, as national space could be used for all kinds of activities, including those of a military nature. Moreover, the recent proposal for a boundary of 36,000 km, which would eventually lead to *de facto* if not *de jure* ownership over celestial bodies, had negative implications that must be avoided at all costs.

7. With regard to the draft treaty relating to the moon, the turn taken by negotiations had left his delegation perplexed. Certain countries wished to defer the establishment of an international regime for the exploitation of the moon's resources to an unspecified future date when such exploitation became feasible; they refused to commit themselves to certain principles pertaining to the future regime, such as equality of access and participation, but were already claiming the right to exploit whatever was to be found on the celestial bodies for their own profit. That constituted a serious legal contradiction, and distorted the spirit and letter of the Outer Space Treaty under which they had renounced their political and military sovereignty over those bodies.

8. With regard to direct television broadcasting by satellite, his delegation believed that, by promoting the dissemination of information and better understanding between peoples and by improving relations between States, it would help to realize the objectives set forth in the Final Act of the Conference on Security and Co-operation in Europe. Consequently, the principles that were being elaborated should not hamper the free flow of information by subjecting it to the authorization or consent of the Governments concerned, for it was not irreconcilable with the maintenance of their sovereign prerogatives. His delegation did not share the fears that had been expressed to justify the establishment of restrictions, since it had been assured by technical experts that the problem of spill-over could be reduced to manageable proportions by the correct choice of a number of factors, such as orbit, frequency, type of antenna, polarization and even, perhaps, the codification of messages. The Sub-Committee was

further from a solution to the question of deliberate radiation, on which it was difficult to avoid a clash with traditional interests on the questions of consent, participation and aims. However, his delegation was convinced that the aim of freedom of information could be reconciled with State control by means of multilateral or bilateral co-operation between States. Consent should be taken for granted, unless the principle of freedom of information was being abused to the detriment of the political situation in Europe or the social, economic and cultural values of the countries covered by broadcasts, when it could be withdrawn. Italy itself had achieved a satisfactory compromise; television was a State monopoly, but three quarters of the country could receive programmes from other European countries with different political systems. He hoped that all delegations in the Sub-Committee would be prepared to display the same spirit of compromise in order not to hold up the negotiations any further.

9. With regard to remote sensing, he said that a great deal remained to be done despite the progress already made; indeed, the fact that remote sensing satellites were already in operation and ground stations were being set up made the Sub-Committee's task even more urgent. His delegation believed that certain questions were vital in respect of the space segment, and should be covered by the principles to be drafted, namely, (1) would there be freedom of access to satellites or would they be under monopoly or duopoly control; that question had important legal implications; (2) would networks of regional ground systems be set up in which all States in a given region would participate, or would the system of ground stations be geared to a particular satellite; that point would lose much of its importance if satellites could be acquired freely; (3) would private organizations engage in remote sensing for their own purposes; if so, would the principles to be drafted apply to them, and would States be responsible for their activities. A more interdisciplinary and complex question related to data processing, and he suggested that it might be desirable to set up an ad hoc body to deal with it, and indeed with all aspects of remote sensing.

10. In conclusion, he noted that political difficulties in the Mediterranean area might well have repercussions on remote sensing activities. Italy, which had established the Fucino centre in co-operation with the United States to collect Landsat data, and to cover the area of Western Europe, Eastern Europe, the Middle East and North Africa, believed that it was imperative for all members of the international community to support and take an active interest in such co-operative activities. In that connexion, it undertook to respect the principles of international law and co-operation among States, as well as the conclusions reached at the Helsinki Conference.

11. Mr. COCCA (Argentina) paid tribute to the memory of Mr. Charvet of France and Mr. Fiorio of Italy, who had represented their respective countries in the Sub-Committee.

12. He recalled that the important common heritage of mankind concept, which had gained ground in other spheres of international law, had been expounded and used for the first time by the Legal Sub-Committee; it would therefore be appropriate if the Sub-Committee could, at its present session, complete the drafting of a treaty relating to the moon, which would thus become the first international instrument to embody that very desirable concept.

13. In the opinion of his delegation, the need for that treaty was justified by the question of the natural resources of the moon, a concept which should be interpreted in its true sense, as at the seminar on the right of property on the moon held in Madrid in 1972. He also drew attention to the useful documents submitted by the French delegation to the Scientific and Technical Sub-Committee (A/AC.105/C.1/L.86) and mentioned the possible use of the moon as a space communications station and a source of energy. His delegation was convinced that the only legal concept applicable to the latter use was the common heritage of mankind.

14. The scope of the treaty should, in his delegation's opinion, cover the moon and other celestial bodies, in accordance with the 1967 Outer Space Treaty. It nevertheless appreciated the views of those delegations which considered that the treaty should cover other celestial bodies only until such time as a specific instrument was drawn up for each one. If the purposes enunciated in all instruments relating to the moon were to be fulfilled, information on lunar missions and their objectives should be widely disseminated prior to launching. As regards the proposed conference for the establishment of an international régime, the period of 10 years following the entry into force of the treaty was acceptable, providing that a conference could be convened earlier if two thirds of the States parties to the treaty so requested.

15. There was every reason to expect further progress on the question of direct television broadcasting by satellite, particularly in view of the conciliatory positions adopted by a number of delegations and, specifically, by the delegation of the United States in its statement in the First Committee of the General Assembly on 13 October 1975. Any difficulties raised by such broadcasting could be overcome through prior consultation, which was preferable to prior consent.

16. His delegation's position on the remote sensing of the earth was reflected in the Argentine-Brazilian draft treaty on the question submitted in 1974, and it hoped that consideration of the natural environment of the earth would not impede progress on that item. Argentina intended to instal an antenna for the direct reception of Landsat imagery and hoped thereby to contribute effectively to international co-operation on a regional and world-wide basis.

17. His delegation also wished to associate itself with the views expressed by the delegation of France at the previous meeting on the definition and/or delimitation of outer space. Such delimitation should be effected on the basis of a political and legal criterion similar to that used in the international law of the sea, and not in the light of physical or technological considerations. Lastly, he wished to endorse the views expressed by the representative of COSPAR at the 247th meeting.

18. Mr. DIMITROV (Bulgaria), referring to the question of a draft treaty relating to the moon, said that the achievements of scientists and astronauts in space had eclipsed the efforts of the United Nations to devise a legal régime for the moon. The divergencies between States were not, however, so great as to be irreconcilable, and in that connexion, his delegation appreciated the efforts of the USSR delegation to achieve an acceptable compromise in the form of the text for article X.bis of the draft treaty (document WG.I/1) submitted to the working group on the subject. That text should be given widespread support because it proclaimed the principle of the common interest of all countries in the exploitation of the resources of the moon and

declared that those resources were the common heritage of mankind. His delegation did not agree with the view that the moon had no owner; it belonged to mankind, which would one day use its resources just as mankind today used the sun and the air.

19. The text to which he had referred mentioned only the moon and no other celestial body. As man had not yet set foot on any other celestial body and as there were obvious differences between the moon and the planets, there was no reason to include all celestial bodies in one and the same treaty. His delegation was prepared to support any reasonable proposal which took into account the various views expressed on that question.

20. The Sub-Committee should avoid undue haste in discussing the international régime that was to govern the exploitation of the natural resources of the moon. That régime should not be established before the question had been clarified, although the preparatory work could begin once it was known that the exploitation of the natural resources of the moon was indeed feasible.

21. Mr. RENNER-THOMAS (Sierra Leone) said that the Sub-Committee's work on the establishment of an international legal order governing activities generated by rapid scientific and technological progress in the sphere of outer space was becoming increasingly important as the time when mankind would be able to derive maximum benefit from those activities approached. The conclusion of the 1967 Outer Space Treaty had been a milestone, and it was to be hoped that steady progress would continue towards the conclusion of other equally important multilateral instruments on the peaceful uses of outer space.

22. Although the Sub-Committee had been considering the draft treaty relating to the moon for five years, substantial divergencies of view concerning the legal status of the moon and its natural resources remained. Nevertheless, a spirit of compromise had emerged and his delegation noted with satisfaction that the majority of delegations were now willing to accept the concept that the moon and its natural resources were the common heritage of mankind. In order to ensure the eventual exploitation of the moon's resources for the benefit of all countries and taking into account the particular needs and interests of the developing countries, it was important to establish an international régime governing such exploitation as soon as practicable.

23. In the sphere of direct satellite broadcasting, his delegation noted with satisfaction that emphasis was being placed on international co-operation and on the need to ensure the orderly development of such broadcasting for the benefit of all countries, taking into account the specific needs of developing countries. That co-operation, however, must be subject to the sovereign right of the receiving State to grant or withhold consent and to its right to participate according to its own economic, social and cultural needs.

24. Sierra Leone was likely to derive immense benefit from the remote sensing of natural resources, and therefore supported the establishment of a legal framework for technological progress in that sphere. His delegation wished to thank those delegations, and particularly the delegations of the Federal Republic of Germany and the United States,

which had submitted working papers on that question, and was gratified to note that the United States working paper (A/AC.105/C.2/L.103) stated that remote sensing should promote, inter alia, international co-operation in the solution of international problems relating to natural resources and the environment, the development of friendly relations among States, co-operation in scientific investigation and the use of outer space for the benefit and in the interest of all mankind.

25. Mr. OLZVOY (Mongolia) expressed the hope that the Sub-Committee would be able to make further progress on the three priority items before it at the present session. A number of positive factors were likely to contribute to such progress. For example, international co-operation in the political, economic, scientific and technological spheres was increasing, and rapid advances were being made in science and technology. Moreover, international peace and security were being strengthened by the application of those achievements, as in the Apollo-Soyuz programme, in United Nations peace-keeping activities and in maintaining the "hot line" between the United States and the USSR. The reduction of international tension was therefore contributing to the development of outer space activities, which in turn promoted a better international climate. As was demonstrated by the references to outer space activities in the documents of the XXVth Congress of the Communist Party of the Soviet Union and the Final Act of the Conference on Security and Co-operation in Europe, there was growing recognition that international co-operation was becoming increasingly important in outer space affairs.

26. Like other delegations, the Mongolian delegation hoped that the Sub-Committee be able to complete its work on the draft treaty relating to the moon at the current session. A contribution towards the achievement of that goal was the compromise of article X bis submitted by the USSR, which deserved constructive consideration by other delegations. The revised text submitted by a number of delegations in document WG.1/3/Rev.1 did not, however, appear to constitute an improvement over the original text, and could not be regarded as a step in the direction of a compromise. The Mongolian delegation agreed with the view that the exploration and exploitation of the moon's natural resources were a common province of mankind and that all States should have access to the benefits deriving from their exploitation. It considered that the question of establishing a régime governing the exploitation of the moon's natural resources should be the subject of special negotiations, and need not be an obstacle to the preparation of the treaty. That régime should be elaborated on the basis of a sufficiently specific concept of the resources of the moon.

27. Significant progress had been made on the question of direct broadcasting by satellite. The Mongolian delegation attached particular importance to the principle of the consent of the State to which the broadcast was being directed. That approach was based on a fundamental principle of international law, namely, that of respect for the sovereignty of States. Nevertheless, all States had the right to engage in such broadcasting in order to strengthen international understanding, improve information and promote exchanges of

cultural values. Prior consultations between the broadcasting and receiving States should enable those States to reach agreement on the form and content of broadcasts, provided that the sovereign rights of the receiving State were duly respected.

28. Remote sensing of the earth's natural resources was of great practical significance, and thus constituted a vital part of the Sub-Committee's work. The most important aspect of that question was the principle of the right of States to permanent sovereignty over their natural resources, and for that reason his delegation considered that information received through remote sensing should not be disseminated or used without the consent of the sensed State. Conversely, States should have freedom of access to information relating to their own territory. Those two principles should be the basis of any régime governing remote sensing activities.

29. Mr. SHIGETA (Japan), referring to the draft treaty relating to the moon, said it would be premature to take a final decision on the status of the moon's natural resources and the establishment of an international régime governing their exploitation, since the quantity and quality of those resources, as well as the feasibility of their exploitation, were still unknown. A premature decision could have adverse effects on the future exploration and use of the moon. The Japanese delegation welcomed the initiatives taken to resolve existing differences, and was ready to co-operate in the search for a generally acceptable formula, which should include the concept of the common heritage of mankind as applied to the moon's natural resources and an undertaking by States to establish an international régime governing the exploitation of those resources when it became feasible to do so.

30. Considerable progress had been made at the last session on direct broadcasting by satellites, and it was to be hoped that further progress could be made at the current session, at least with the formulation of the less controversial principles, which should be considered first. The Japanese delegation had already expressed doubts concerning the principle of prior consent, as its acceptance could enable a receiving State unilaterally to render direct satellite broadcasting on an international scale difficult or even impossible. That would not promote the health development of such broadcasting, which could be of great benefit to the international community in a variety of fields. International direct television broadcasting by satellites was best conducted in a spirit of mutual understanding and international co-operation. In that connexion, the consultation procedure suggested by the United States delegation at the thirtieth session of the General Assembly merited the attention of the Sub-Committee. With regard to the question of programme content, it should be borne in mind that in some countries, including Japan, broadcasting organizations were not under the direct control of the Government, and it was to be hoped that the position of those countries would be duly taken into account during the consideration of that question.

31. The basic problem before the Sub-Committee in the sphere of remote sensing was that remote sensing technology was still at an early stage of development, which made it difficult to consider the legal problems involved; a flexible approach towards the various aspects of that question was therefore needed. With regard to the problem of respect for the sovereignty of the sensed State, the Japanese delegation could not subscribe to the view that remote sensing and the analysis and utilization

of data derived from it constituted a violation of such sovereignty. It nevertheless appreciated the concern expressed by some countries about the possible abuse of remote sensing, and considered that some adjustment measures should be explored in order to allay their concern. An equitable balance must, however, be struck between the potential benefits which remote sensing could bring to a region as a whole and the concern felt by individual countries in that region. In view of the technical difficulty of differentiating between remote sensing activities concerned with natural resources and those concerned with the environment, the principles to be elaborated should cover remote sensing activities relating to the entire natural environment of the Earth, including natural resources. In that connexion, due regard should be paid to the work of the Scientific and Technical Sub-Committee, which was concerned with the organizational and technical aspects of remote sensing. As was shown by the interesting suggestion made by the delegation of the USSR in that Committee that remote sensing data should be divided into data of general significance and data of local significance, there was a need for co-ordination between the Legal Sub-Committee and the Scientific and Technical Sub-Committee.

The meeting rose at 11.55 a.m.