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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifteenth session

SUMMARY RECORDS OF THE 246th TO 265th MEETINGS

held at the Palais des Nations, Geneva, from 3 to 28 May 1976

Corrigendum

This corrigendum contains all delegation and Secretariat corrections applying to the English text of the summary records of the meetings of the Legal Sub-Committee at its fifteenth session (A/AC.105/C.2/SR.246-265).

With the issue of this corrigendum, the summary records of the above-mentioned meetings are to be considered as final.

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifteenth session

SUMMARY RECORDS

Corrections to the English text
received by 15 June 1975

247th meeting
(A/AC.105/C.2/SR.247)

Paragraph 11

For "Eclystic Probe" read "Ecliptic Probe".

248th meeting
(A/AC.105/C.2/SR.248)

Paragraph 1

For "Mr. GREENFIELD" read "Mr. GREENWOOD".

249th meeting
(A/AC.105/C.2/SR.249)

Paragraph 3

Replace the existing text by the following:

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
11 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, and to the possibility of improving the wording and, in certain cases, of adopting 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 conceivable systems: prior consultation, prior consent and prior regulation. Prior consultation appeared to be an attractive idea and had already been incorporated 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 certain reservations about that approach. It also doubted the need for - and viability of - a system of prior regulation. It therefore preferred the third system, prior consent, which seemed to be the simplest and most

appropriate for striking the delicate but essential balance between concepts such as the free flow of information and the exercise by each people of its right to cultural self-determination, a principle which had been reaffirmed by the International Covenant on Civil and Political Rights. 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 permit reconciliation between the ideas that he had just called to mind.

Paragraph 4

The first sentence should read as follows:

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 in the Committee on the Peaceful Uses of Outer Space that the drafting of the first principles on which agreement appeared possible and the detailed discussion of controversial points should proceed concurrently.

Paragraph 5

Second sentence:

Before the word "legal", insert the word "new".

Penultimate sentence:

For "it would be over-optimistic" read "it would no doubt be over-optimistic".

Last sentence:

For "an arbitration body" read "a body".

Paragraph 6

The first two sentences should read as follows:

6. However, if a need for a definition was needed, a definition must also be feasible. In the opinion of his delegation, the technical uncertainty which had been mentioned concerning that question did not constitute a valid reason for abandoning the consideration of it.

250th meeting
(A/AC.105/C.2/SR.250)

Paragraphs 5 to 10

Replace the existing text by the following

5. Mr. D'ANDREA (Italy) said that his delegation considered the current session to be of special importance: sovereign States, in passing from space doctrine to its

practical applications, were trying to base their approach on principles which, though in most cases established no more than ten years earlier, already seemed to be unable to withstand the pressure of conflicting economic and political interests.

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 had been considered as of 1967 to be inconsistent with the regime of outer space. The international community was now, however, being faced with a process of "creeping" jurisdiction in the field of outer space, which had prompted the Italian delegation in New York to advocate the adoption of 90 km as the boundary. Although that might appear to be a simplistic criterion, it offered the advantage of trying to solve the problem rapidly. If that criterion was not acceptable, the Sub-Committee should outline the political and economic interests to be protected by a definition of outer space and should work out a legal solution 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 meant to further. Any delay was fraught with danger, as proved by the recent proposal for a boundary of 36,000 km, which would eventually lead to the appropriation of equatorial or geostationary orbits by a group of States. The negative implications of "creeping" jurisdiction must be avoided at all costs, considering above all the interpretation that some countries appeared to be giving to the common heritage principle in relation to the moon and other celestial bodies.

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 while at the same time already claiming the right to exploit whatever was to be found on the celestial bodies for their own profit - a right that they derived from an interpretation of the 1967 Treaty. 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. The Italian delegation wished to see the spirit of that Treaty reaffirmed and therefore suggested that a distinction should be drawn between the status of natural resources in outer space - which could be freely used and consumed by space Powers for the purpose of exploration - and the status of moon resources when transferred onto the Earth - that is to say, when they became economic resources. In that case, such resources should be considered common heritage of mankind and be subjected to a regime of open access to all States on an equitable basis.

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, direct broadcasting by satellite 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. With regard to the difficulties that had been raised in connexion with inevitable spill-over,

the Italian 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.

8a. If, on the other hand the problem lay in deliberate radiation, the Italian delegation realized that it was difficult to avoid a clash with traditional interests on the questions of consent, participation and aims and it expressed the belief that the aim of freedom of information could be reconciled with State sovereignty by means of multilateral or bilateral co-operation between States. As to the principle of consent, the Italian delegation deemed that, as a general rule, it should be granted, unless the principle of freedom of information was being abused to the detriment of the political situation, or the social, economic and cultural values of the countries receiving the broadcasts, when consultations could be requested; and eventually consent could be withdrawn. Italy itself had achieved a working compromise in that field: television in Italy was a State monopoly, but a large part of the country could receive programmes from other European States, each with different political and economic 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: it was necessary to decide (a) whether there would be freedom of access to satellites, or whether they would be under monopoly or duopoly control; that question had important legal implications; (b) whether networks of regional ground systems would be set up in which all States in a given region would participate, or whether ground stations would remain under national control, to be geared to a particular satellite; that point would lose much of its importance if satellites could be acquired freely; (c) whether private organizations would engage in remote sensing for their own purposes; if so, whether the principles to be drafted would apply to them, and whether States would be responsible for their activities. A more interdisciplinary and complex subject matter 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 problems, which in other continents had no political implications, in the European Mediterranean region almost always had such implications. That was an unfortunate political fact of life, which was felt in the fields of direct television broadcasting by satellite and remote sensing. The Fucino centre, which Italy, in co-operation with the United States of America, had established for peaceful purposes to collect Landsat data, covered the area of Western Europe, Eastern Europe, the Middle East and North Africa. That was one of the reasons why Italy wished to confirm then and there its hope that all States of that area would take an active interest and participate in the activities of the Fucino centre. For its part, Italy would, in the management of that centre, respect the principles of international law and peaceful co-operation among States, as well as the conclusions reached at the Helsinki Conference.

251st meeting
(A/AC.105/C.2/SR.251)

Paragraph 11

First sentence:

For "it would be desirable forthwith to extend" read "it would be desirable to reach agreement on".

Paragraph 12

First sentence:

For "the representative of COSPAR" read "the representative of COSPAR, according to whom it would be feasible to set the boundary at 100 km."

252nd meeting
(A/AC.105/C.2/SR.252)

Paragraph 15

Replace the existing text by the following:

15. Mr. WANG (Canada) said that direct broadcast technology was advancing very rapidly towards a time when it would be possible to make television broadcasts by means of satellites to individual home or community receivers equipped with very small antennae; the Sub-Committee should therefore feel a sense of urgency in approaching its task. The position of the Canadian and Swedish delegations, based on a recent review undertaken by the two delegations which took into account consultations with other delegations and the debate during the previous year in the General Assembly, continued to be that the Assembly should move as expeditiously as possible to adopt a declaration of generally agreed principles in that field. Draft principles were first submitted by Canada and Sweden three years earlier, in 1973 (A/AC.105/127, annex III, and A/AC.105/C.2/L.102). Those principles sought to encourage international co-operation in the future application of DBS technology. In the view of the two delegations, such co-operation was the best way of ensuring that the benefits of DBS would be widely and equitably shared. The most effective way of ensuring an orderly development of that technology and avoiding its abuse lay in international co-operation, complemented by principles requiring the consent of receiving States to the establishment of direct television broadcasting systems intended to broadcast specifically to those States, and the right of those States to participate in activities related to the establishment of such systems. That approach would imply the right of receiving States to request consultations with the broadcasting State, and a duty on the part of the broadcasting State to enter into consultations without delay. The Canadian and Swedish delegations were gratified to note growing support for that approach.

Paragraph 18

The first sentence should read as follows:

18. In reviewing their 1973 proposals, the Canadian and Swedish delegations had taken account of views expressed by other Governments, including those of the representative of the United States of America in the First Committee at the thirtieth session of the General Assembly.

254th meeting
(A/AC.105/C.2/SR.254)

Paragraph 24

The last sentence should read as follows:

In considering the legal aspects of DBS, members of the Sub-Committee should keep actively in mind the novelty and special characteristics of the technology involved, and should concentrate on specific DBS issues.

Paragraph 25

The last sentence should read as follows:

In view of the considerable cost involved, the prospect for the foreseeable future was that only a few States would be able to operate and manage DBS systems.

Paragraph 26

The third and fourth sentences should read as follows:

The Sub-Committee was trying to formulate principles clearly expressing a political will, and the work of drafting them was necessary and urgent, irrespective of the results of the ITU Conference, although those results might facilitate the task of drafting the principles, especially those concerning the rights of receiving States with regard to DBS broadcasts aimed at their audiences from other countries. As the Canadian and Swedish delegations had repeatedly pointed out, both in the Sub-Committee and its Working Group II as well as in the General Assembly, some of those rights would only be invoked where, for some reason, broadcasting activities had ceased to be governed by the fundamental principles of international co-operation; in other words, the intention was, fundamentally to provide some basic safeguards.

255th meeting
(A/AC.105/C.2/SR.255)

Paragraph 29

Replace the existing text by the following:

29. He had greatly appreciated the United Kingdom representative's observations on the need for a balance between the principle of free flow of information, as set forth in a number of international instruments, and complete licence. Freedom of information was subject to a number of restrictions against abuse under the United Nations Charter. Article 2, paragraph 7, concerning intervention in matters which were essentially within the domestic jurisdiction of States was also relevant, and it was important that the Sub-Committee should bear in mind the need for a balanced approach.

256th meeting
(A/AC.105/C.2/SR.256)

Paragraph 6

The last two sentences should read as follows:

Consultations with other delegations had led to many positive reactions, but comments were also received which differed from the opinion expressed by his delegation. With respect to the importance of the subject dealt with, his delegation thought it appropriate to withdraw document A/AC.105/C.2/L.106, so that further detailed consultations could be held on questions which remained open. His delegation would then decide which further steps might be taken.

258th meeting
(A/AC.105/C.2/SR.258)

Paragraph 11

Penultimate sentence:

For "such principles" read "that principle".

Paragraph 15

Third sentence:

For "remote sensing activities" read "remote sensing acquisition".

The last two sentences should read as follows:

Imposing restraints at the stage of data dissemination was a more viable proposition. In his opinion, however, freedom of dissemination was the best principle and also offered the best safeguards against abuse.

Paragraph 16

The third sentence should read as follows:

The proposal outlined by the representative of Canada at the 257th meeting, whereby the dissemination of raw data would be free, while some restrictions would be imposed on the dissemination of processed, i.e. analysed, data, also called for careful study.

Paragraph 17

First sentence:

For "to suggest the elaboration of" read "to suggest the possibility of establishing".

Second sentence:

For "or to damage" read "or damage to".

Paragraph 28

The last two sentences should read as follows:

Protracted negotiations on the problem of liability had led to the complex provisions contained in article 22 of the draft Convention and article XI of the draft Operating Agreement. As to external relations, the Convention envisaged that Inmarsat would co-operate on matters of common interest with the United Nations, particularly with those of its bodies that dealt with the peaceful uses of outer space, and with the specialized agencies.

Paragraph 29

The last sentence should read as follows:

Apart from the issue of the maximum voting powers of each signatory, three issues remained outstanding: whether reservations should be permitted, whether the question of languages should be referred to in the Convention or be left to Inmarsat itself, and what the authentic languages of the two instruments should be.

Paragraph 32

Last sentence:

Before the words "in response" insert the word "also".

Paragraph 33

Replace the existing text by the following:

33. His comments on the need for flexible principles had been prompted by concern that misunderstandings might arise at the national governmental level in connexion with some of the provisions relating to direct broadcasting by satellite, which had already been drafted in the Working Group. Governments through ITU had already established and ratified significant international treaties concerning satellite radio communications. It was very important to ensure that there were no contradictions between any international instruments as seemed to be the case in some texts relating to direct television broadcasting by satellite. It was in that spirit that he had suggested that any principles adopted through the United Nations should be sufficiently flexible to avert the possibility of disputes or misunderstanding with ITU legislation which had to be applied by national authorities.

260th meeting
(A/AC.105/C.2/SR.260)

Paragraph 32

The first three sentences should read as follows:

32. Mr. D'ANDREA (Italy) said that the Sub-Committee's discussions had revealed three main contradictions. The first was the contradiction between the stated objectives of the United Nations to promote new values and to lay the foundations of

a new kind of world society, and the political philosophy of Member States which were on the contrary pursuing nationalistic aims. The emergence of a new technology such as remote sensing, which knew no geographical boundaries or political and social differences, should have been a cause for satisfaction but had instead led to anxiety, uncertainty and division.

Paragraph 33

Replace the existing text by the following:

33. A second contradiction consisted of the fact that some countries wished to derive all the consequences of the process of remote sensing from the principles of the Outer Space Treaty, while others felt that the whole process should be ruled by the principles of national sovereignty. The gathering of remote sensing data by satellite clearly fell within the scope of the Outer Space Treaty. The same was probably not true of the processing and distribution of such data on the Earth. That did not mean, however, that, because it probably fell under national sovereignty - at least in part - that process should be subjected to restrictions of all kinds or even choked by an obsessive nationalistic approach. There appeared to be quite a different consensus among the large majority of Member States. It was enough to think, for instance, of the innumerable pictures representing views of Member States freely shown or even sold throughout the world. What is more, profits accrued to the producers of such pictures, and not to the countries concerned. Furthermore, while fully aware of the importance of the principle of national sovereignty over natural resources, the Italian delegation could not share the view that the image obtained was equal in character to the object sensed and therefore subject to national legislation. Selling a picture of a gold-mine was not the same thing as selling the gold-mine itself, and the two activities should never be confused. Moreover, national sovereignty taken as an absolute criterion, could sometimes lead to a cover-up of international responsibility in those cases where the consequences of environmental pollution, for example, went far beyond national boundaries. And that was true in most cases. River pollution often affected neighbouring countries: that was certainly the case in Europe. Everyone had the right to know in which seas fish were being poisoned, since such fish could be sold all over the world. Another principle that must be respected was that of the free flow of information. For all those reasons, the Italian delegation even though not sure that the process and dissemination segment of remote sensing fell under the principles derived from outer space, still maintained that the flow of information should be free. Finally, reference had been made to the possibility of a "cut-off" point, but that concept was not acceptable, since remote sensing activities must serve all countries, regardless of their degree of development. Although a resolution of some 80 metres was sufficient for the current needs of the developed countries, much more precise definition would be needed in the future, particularly for such applications as urban and other construction.

Paragraph 34

The last three sentences should read as follows:

Any principles established merely to cover the existing situation would probably not be entirely applicable in the future, when the situation would be quite different. On the other hand, a great effort of imagination and courage was needed to regulate an ideal situation which had not yet come into being. Whatever the effort, no country should nevertheless endeavour to isolate itself from remote sensing activities, for it would soon find that it had paid a very high price in economic and social development.