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POSITION PAPER
U.N. COMMITTEE ON THE PEACEFUL
USES OF OUTER SPACE
LEGAL SUBCOMMITTEE

GENEVA
19 June 1967

DEFINITION OF OUTER SPACE

BACKGROUND

By its resolution commending the Outer Space Treaty, the General Assembly requested the Committee on the Peaceful Uses of Outer Space to continue to work on the agreements on liability and assistance and return and "To begin at the same time the study of questions relative to the definition of outer space..." (resolution 2222 (XXI), adopted 19 December 1966.) In the April 17-19 meeting of the Committee, there appeared to be general agreement that this study should be the primary responsibility of the Legal Subcommittee, although the Scientific Subcommittee might be asked to contribute. The Legal Subcommittee will begin 19 June.

POSITION

1. The U. S. Delegation should place the study in perspective by recalling the conclusion of the 1959 Ad Hoc Committee on the Peaceful Uses of Outer Space that the determination of precise limits for airspace and outer

~~CONFIDENTIAL~~

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~~CONFIDENTIAL~~

-2-

space was not a problem requiring priority attention. Two years later, on December 4, 1961, Adlai Stevenson said to the General Assembly's Political Committee that:

"The members of the [First] Committee [of the General Assembly] will note that we have not attempted to define where outer space begins. In our judgment it is premature to do this now. The attempt to draw a boundary between air space and outer space must await further experience and a consensus among the nations.

"Fortunately the value of the principles of freedom of space and celestial bodies does not depend on the drawing of a boundary line...."

2. In his testimony on the Outer Space Treaty before the Foreign Relations Committee on March 7 this year, Secretary Rusk said in answer to a question that "an object in orbit is in outer space." The Secretary also indicated skepticism as to the existence of practical problems whose resolution depends upon the establishment of an internationally agreed airspace/outer space boundary. Our general approach is to avoid creating abstract rules and instead to work out problems as they arise or can be foreseen.

3. We are interested in learning what proposals for the conduct of the study France may make, and how this study relates to the study of "the utilization of outer space and celestial bodies, including the various implications of space

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-3-

communications." On 17 April French Ambassador Seydoux told the Outer Space Committee that "Nothing indicates, of course, that this study will not eventually show that the limits of the application between the law of the air and the law of space cannot be based on a single definition, but may perhaps involve various definitions which would be adjusted to the various activities."

4. The Delegation should indicate our views as reflected in paragraph 2 above. The Delegation may state that we anticipate the flight of supersonic aircraft at levels approaching 90,000 feet within the next five years. The United States intends to exercise traffic control over aircraft at these levels as they approach and overfly U.S. territory. We think other countries will wish to do likewise.

5. Advancing technology can be expected to raise the levels at which aircraft can fly. Also, lower satellite perigees might at some point become possible. Up to now the lowest perigees have been in the vicinity of 80 miles. Moreover, during launch and re-entry, of course, spacecraft pass through lower altitudes, including what is clearly airspace. In addition there is the possibility of hybrid

~~CONFIDENTIAL~~

-4-

craft, operating both as aircraft at some altitudes and as spacecraft at others. Should such craft ever pose problems of control, we will have to deal with them.

6. The Delegation may suggest that the Scientific and Technical Subcommittee be associated with the study. It could be asked to provide a projection of probable altitudes of aircraft during the next 5 to 10 years, and what may reasonably be foreseen as to altitudes of satellite perigees in that period. If questions should arise as to current launch and re-entry trajectories both as to manned and unmanned spacecraft, they should be referred to the Scientific and Technical Subcommittee.

7. We think much more work and experience are required before anyone could undertake to draw any boundaries or frame any definitions. Indeed it is not clear now that the drawing of boundaries or the framing of definitions will ever be a practicable or desirable way of proceeding in the development of space law. We should point out the disadvantages of premature attempts at drawing lines.

8. We would expect the Soviet position to be conditioned by the fact that the U.S.S.R. is a principal space power. However, while this fact may make the Soviets as unwilling as we to fix the balance of national interests with regard

~~CONFIDENTIAL~~

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-5-

to any boundaries, the Soviets, with their large land mass and lack of neighbors to the north, may have greater flexibility than the U.S. in avoiding re-entry overflights of other nations. This might conceivably lead the Soviets to favor extending the upper limit of air space or, even if they do share our concern, lead them to force the U.S. to bear alone the burden of opposing a restrictive definition of outer space. The Delegation should consult informally with the Soviet Delegation, without giving an impression of undue concern, and report their views.

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