

(Mr. Wegener, Federal Republic of Germany)

A multilaterally negotiated protection régime for satellites would have two dimensions: the legal immunization of satellites on the one hand, and agreements on flanking confidence-building measures, possibly contained in a "rules of the road" agreement, on the other.

There is some precedent in the bilateral treaty relationship between the two Major Powers. The ABM Treaty, and the treaties on SALT I and SALT II provide immunity for the satellites designed to verify these agreements (one might compare for instance article 50, paragraphs 1 and 2, of the SALT II agreement). There are other satellites which enjoy immunity, -- those designed to maintain communications links under the Nuclear Accidents Agreements of 1971, the subsequent Protocol on the Prevention of Nuclear War of 1973, and the Hot Line agreement in its various versions. However, these treaties are all of a bilateral nature, and satellites of other nations are not protected in the same manner. Again, it is clear that the use or threat of force against satellites of third countries would constitute a violation of Article 2, paragraph 4, of the Charter, with the exception of course of Article 51 in the case of an armed attack. This would particularly be true in the case of satellites of third countries that would be manifestly for peaceful uses; but even here the question is unclear what constitutes an armed attack in outer space.

Beyond these cases the status of satellites with limited military functions is unclear. Such military functions could also be of a dual nature. Satellites that are deployed to verify arms-control duties could at the same time be used for the reconnaissance of sensitive military information; early warning satellites possess the same ambivalence. It would be difficult to say a priori in which function a satellite would be "immune" and in which function an impingement on its operability could be qualified as a legitimate act in the exercise of the right of self-defence. This definitional calamity might call for different approaches to the closing of these particular existing legal loopholes.

One might, for instance, consider making a distinction in functional respects by giving priority to the stabilizing function; a distinction could also be made according to geographical criteria, for instance by protecting satellites according to their deployment area, altitude of orbit or geostationary position, or within "space sanctuaries".

Another set of criteria might be qualitative: the immunity of certain satellites that would be indispensable from a strategic viewpoint could extend to the immediate environment of such a satellite, an environment to be controlled by special sensor satellites, capable of sounding the alarm in case of attack. However, the option of general immunity for all satellites, limited at most to objects with a particular identification or above a certain deployment altitude should be examined in the first place. Such a comprehensive protection régime should also include the immunization of related ground facilities.

There is no doubt that the effectiveness of any protection régime of this nature would presuppose the improvement of the registration requirement for space objects. A broadening of the obligation to register space objects and to identify their functions is, however, a delicate subject and should be approached with care. It might, however, be worth exploring the possibility of bestowing upon registered objects, by international agreement, a special