

Abram Chayes, Oral History Interview—JFK#3, 6/23/1964
Administrative Information

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Biographical Note

Chayes, Staff director of the Democratic Platform Committee (1960) and legal adviser to the Department of State (1961-1964), discusses maritime labor laws and flags of convenience, the Satellite Communications Act of 1962, and other domestic and international issues surrounding U.S. satellites, among other issues.

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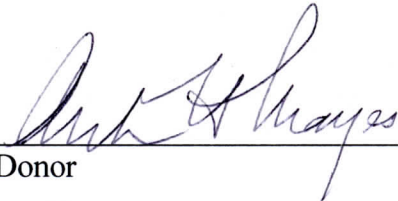
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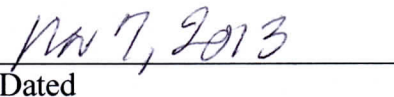
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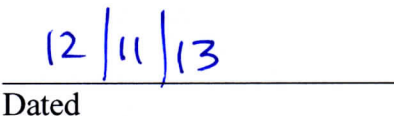
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Abram Chayes—JFK #3

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Third of Three Oral History Interviews

with

Abram Chayes

June 23, 1964
Washington, D.C.

By Eugene Gordon

For the John F. Kennedy Library

GORDON: Well, we left off yesterday when we were talking about some of the early events of 1961.

CHAYES: Yes.

GORDON: You thought you might say something about the flags of convenience.

CHAYES: Well, I think now we may slip out of a chronological framework and move into a more topical series of things. Flags of convenience have to do with ships owned and usually operated by Americans

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or American companies, but flying foreign flags. They fly foreign flags and are registered in a foreign state and are usually crewed by foreign crewmen who accept wages much lower than American seamen. The controversy, of course, had to do with the effort of American maritime unions to organize these ships. There were a whole series of cases in 1961 and '62 in the courts and in the NLRB [National Labor Relations Board] involving efforts by the American unions to organize the ships. The NLRB asserted jurisdiction over the ships under the National Labor Relations Act saying that this was foreign commerce of the United States

and they were entitled then to apply the standards of the National Labor Relations Act. They ordered elections on a number of ships, and those cases were winding up through the federal courts. On the other hand,

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some cases got into the state courts in different ways. The unions would be striking and picketing the ships—the American unions, that is—and the owners sought injunctions against these strikes or picketing, usually in the state courts. And those cases were coming up through the courts. Moreover, the general question of how to deal with the American maritime labor problem was one that drew the attention of the Administration early. There was a threatened strike or a strike in 1961, I believe, in the Atlantic ports, and it was settled on the basis. That a three man committee headed by Arthur Goldberg [Arthur J. Goldberg] would address the problems. One of the aspects of the committee's work was to determine what the U.S. position would be towards flags of convenience.

Now, the problem was somewhat complicated because these flags of convenience ships, by

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a variety of arrangements, are available to the U.S. in times of emergency. The Defense Department has always thought that if these ships were subjected to American labor law, either they would be sold out of American hands or they would just be mothballed or something like that because they couldn't operate competitively. Thus, the availability of these ships to the U.S. in a time of emergency would be reduced because even though the sales would probably be to allied nationals, the control would be somewhat less clear. So there was a very widespread interagency study to see what policy the United States should take in these cases, which were coming to the Supreme Court on flags of convenience and the impact of U.S. labor law on ships registered under foreign flags.

GORDON: Well, had we ever tried organizing foreign ships which were foreign owned?

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CHAYES: Well, in part. Of course, they were usually organized by unions in the foreign countries, often government dominated unions, let's say in Honduras or Liberia or Panama. But, in any event, the governments asserted that jurisdiction over the ship was determined by the flag of registry, particularly as to matters affecting discipline on the ship. And labor relations and labor conditions were said to be closely related to matters of discipline and so on and, therefore, these matters were subject to the law of the country of registry. The development of the study was elaborate and complex and slow and burdensome. It was a very big committee. I remember we took a position in the State Department suggesting there might be cases in which the Labor Board had jurisdiction where the contacts with foreign country were so ephemeral and so...

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GORDON: Tenuous.

CHAYES: ...tenuous, exactly, that the registration really didn't amount to anything, and where the main contacts were with the United States. But the Defense Department was very strong for saying there was no jurisdiction at all, and Commerce and others. We finally developed a report in which every agency...

GORDON: That doesn't really make sense to me, why would.... I would think the State Department would be taking the position somewhat similar to Defense.

CHAYES: Well, in the end I suppose we did come out pretty close to Defense. I must say I myself never believed that was a sound legal position, and I also believed that there were ramifications of this in other fields where the same problem of overlapping jurisdiction existed—where two countries both have the power, the sort of physical power or

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sovereign power, to assert their own jurisdiction over a particular activity. It has always seemed to me that it never pays very much, and our interests are not served by drawing black and white mechanical lines like the country of registration, for example, as a touchstone to provide a very sure result, clear result, but not often a very satisfactory one. Take the case of a ship that is registered, let us say, in Liberia, but owned completely by Americans and doesn't ever touch at Liberia at all, doesn't carry on any of the Liberian commerce and may not even be manned by a Liberian crew. It seems a little odd to assert then that Liberian law should govern the labor relations on that ship.

Everybody understood that the flags of convenience cases were not going to solve the problem of U.S. maritime labor, but the

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cases would set the terms within which the solution was worked out. The solution ultimately would have to be a legislative one and maybe not even that—it may have to involved a different approach to U.S. merchant shipping, a much more highly automated kind of ship, and so on. The Commerce Department has been doing studies on that.

But the amusing thing about this was that after a long period of the most heavy handed kind of bureaucratic gestation, this report finally found its way to the White House. We all had a meeting, each interested agency, in the Cabinet Room one day in the President's [John F. Kennedy] absence. Every agency, including the Solicitor General and everybody else, came out for, in effect, the Defense Department position, that the law of the flag governed and that there was no jurisdiction in the Labor Relations Board. The only dissenter

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was the Labor Department itself, which had its own constituency. And Bill Wirtz [Willard Wirtz] who was sitting.... I think this may have been the first time he appeared as Secretary of Labor; it might have been just after Arthur Goldberg's appointment, but it also may have been that he was sitting because Arthur was someplace else. But I do believe this was the first time he sat as Secretary of Labor at a meeting of this kind. Bill made a short speech stating the grounds of his dissent. Then when it was all over, the President came in and took his seat at the center of the Cabinet table, and I guess Archie Cox [Archibald Cox] began to present the general views of the group to him. Archie hadn't talked for three or four minutes, but the President said, "Oh, we can't do that. I came out against runaway ships in the campaign." And he

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grabbed or asked for, and somebody handed him, the green bound book of all his campaign speeches that was put out—there was one of Nixon's [Richard Milhous Nixon] and one of his and one of the debates; it is a nice little set—by the Government Printing office and, sure enough, got the place where he sent a telegram to Joe Curran [Joseph Edward Curran] during the campaign saying he was against runaway ships. So the entire interagency committee did a very neat flip-flop at that point. Archie Cox developed a...

GORDON: Had it not occurred to anybody to check on this before?

CHAYES: Well, it apparently hadn't. It certainly didn't occur to me, and actually it wasn't a major campaign pronouncement. It wasn't a big issue in the campaign or anything else. But there it was, a telegram to Joe Curran in which he said he was opposed to runaway ships.

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GORDON: Well, what happens that allows an extensive, expensive study like this to get undertaken that is going to be refuted by a word like this from the President, without the President or somebody in his entourage knowing about it?

CHAYES: Well, this was done at an interagency level. There wasn't White House involvement until the very end. Even if there had been, it is at least somewhat unlikely that whoever it had been who was in on it would have known of this particular statement. The fact is, if the President had addressed the case on the merits as a new problem, he might very well, probably would have, accepted the recommendation of the interagency committee. Especially when there was such a broad consensus on it. But, as it was, this telegram—one telegram in a great big four-inch thick book of printing—

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stuck in his mind, and he called for the book, showed the telegram. Archie developed a different stance on the cases, which reserved the question of whether there was any case in which the Labor Board might have jurisdiction, and simply took a narrow position that in these cases, because there was significant contact with the country of registry, there was no Labor Board jurisdiction. And he took that position and argued it in court. The Court, however, came down and decided the straight law of the flag position, so that everything worked out well. The President kept his promise, and the Defense Department won the case in the end. I am not sure the Court's decision was right, but at least it is subject to a legislative correction if Congress ever wants to try.

GORDON: So much for the flags of convenience?

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CHAYES: Yes.

GORDON: There is the story you mentioned about the adherence of the United States to the Hague Protocol.

CHAYES: Well, here I don't think the President had any personal involvement in this at all. It was again a rather elaborate interagency mechanism designed to decide whether the United States should adhere to the Hague Protocol to the Warsaw Convention. The Warsaw Convention governs the liability of international air carriers for death or injury in flight and was signed in 1929. It limits liability to \$8,300, so that if you are killed on an international air accident, you can collect \$8,300. Of course, that is a ridiculous sum by our standards. It is further complicated by the fact that there are a lot of anomalies. For instance, suppose you are flying from here to Paris and the first section of your

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ticket is by a domestic carrier from here to New York, from here to Idlewild let's say, and there you are to change and get on a flight to Paris. Well, if the plane from here to Idlewild crashes and there are some people on it who are not shifting over to a flight abroad, they will be governed by domestic law and have unlimited recovery whereas you, since you are on a ticket for international carriage, will be limited to \$8,300. Back in, I think, 1959 or 1960 a Protocol to the Warsaw Convention was negotiated which in effect doubled this liability limit up to \$16,600, and made some other minor changes which really are rather too complicated to go into here. And the question was whether we should adhere to that Protocol. We in the State Department thought that \$16,600 was too small an amount.

GORDON: What brought the issue up in 1960?

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CHAYES: Well, because the...

GORDON: Why not 1954 or 1947?

CHAYES: Well...

GORDON: In 1947 there probably wasn't that much international travel.

CHAYES: That's right. And the carriers, of course, and particularly the foreign carriers, were very reluctant to increase the liability limits. They have a much different approach to these problems in Europe.

GORDON: The passengers really don't have much of a lobby.

CHAYES: That's right, exactly. Well, the State Department took on the burden of being the passenger lobby, and we posed the issue before this interagency body—Intergovernmental Committee on International Air Policy, something like that—headed by Jeeb Halaby [Najeeb Elias Halaby]. We posed the issue as to whether we should just denounce the Warsaw Convention

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altogether. That would mean that in the United States unlimited liability would apply. And there are a complicated set of legal doctrines by which one could impose unlimited liability on foreign carriers as well. You could serve them in the United States, and United States courts would probably, at least New York courts under doctrines that had already been developed in New York, ignore foreign limitations on liabilities as against the public policy of the forum. So this is the proposition that we went in on. We held a series of hearings and eventually developed a position whereby we would submit the Hague Protocol for ratification but at the same time submit legislation for \$50,000 worth of compulsory insurance on each passenger on a U.S. air carrier. That would give you \$66,000, which we thought was beginning to get into the area where it was a reasonable compensation

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by our standards. There were some troubles with that, of course. But on balance we thought that worked out all right. We thought that once the American carriers started doing it, the foreign carriers would be compelled to do so to meet the competition. There are so few differentiations between one airline and another—they try to do it by the number of bubbles in the champagne—so certainly this kind of factor would be important. As I say, I don't think the President ever involved himself in this. The Committee did make a recommendation to the Secretary of State [Dean Rusk]. The Secretary of State adopted it. I don't know that the President ever got it. I do know that the thing still hasn't gone forward to the Congress. We are still fussing about the exact linkage between the two parts of the package. But as I say, it doesn't seem to me that President Kennedy

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really interested himself very much in this, except perhaps to ask the Committee to make the study.

GORDON: Let's check the tape.

CHAYES: I want to add one thing, however.

GORDON: Go ahead.

CHAYES: It may be interesting to add one thing on this. As you said, the passengers have no lobby. I don't think there would have been any real issue on this except for a man in my office named Ely Maurer who was really outraged by what he thought was the injustice of this to the passengers. He was the fellow who insisted that I make an issue in the Committee rather than just let it go right through, which was really what probably would have happened unless an issue was made. And the whole subsequent history simply stems from the fact that he pressed me to make an issue and kept

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pressing me to make an issue. It is an indication of how one little guy, pretty far down the line—an Assistant Legal Adviser, he was GS-15—and not a very prominent or, indeed, a terribly able man in general—can have really quite a large impact on policy in matters of this kind.

GORDON: It may sound naïve, but is it very difficult to convene a conference to work out an international agreement on air things? Does that make sense?

CHAYES: Yes, because most countries don't believe higher liability makes sense. We have very high liability judgments in this country. In most European countries, for example, the judgments just cover out-of-pocket expenses—medical costs, burial fees, things of that kind. You don't get compensation for the lost earnings or for pain and suffering and so on. So what you have got here is two

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ends of the trip having totally different philosophies about the liability of carriers. And we had just been hooked in on the wrong philosophy—or at least the one that doesn't correspond to our domestic philosophy—from the beginning, at a time when it didn't appear that international air transport was a very significant factor back in 1929.

GORDON: It is amazing that they even bothered to have a Protocol.

CHAYES: Well, I don't know. You see, for example, right today we are negotiating a

communications satellite agreement, and one of the first things we have in the agreement is an exoneration of all parties from liability to each other. This is one of the things that people engaging in a new enterprise where the risks and potential damages are unknown and possibly very great are likely very quickly to limit, just because if they can't...

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GORDON: Nobody is going to take the chance.

CHAYES: That's right. Nobody is going to invest.

GORDON: What about the Communications Satellite Act?

CHAYES: Well, I had a good deal of contact with the Act at various stages in its trip through Congress, and I have had very close and very intimate contact with the Satellite Corporation since last October when it began on its course of international negotiation. I don't think I ever talked to the President about it, although, of course, he was very heavily engaged in the development of the Act and in the formation of the Corporation. Long before the Act was introduced, there was again an interagency study as to the kind of organization that was appropriate for satellite communications. American technology had advanced very rapidly in this field. It was one of the space activities in which we had done well, done very well. It didn't require big boosters which was the

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area of our inferiority. Things like miniaturization and so on had a great role to play in it. And so we went forward very fast with satellite communications both on the public side and, of course, most spectacularly, AT&T developed Telstar and then Relay. I don't exactly recall the date sequence between the first launching of Telstar successfully and the legislation, but they were playing back and forth against each other. Either Telstar came up while the legislation was before Congress or just before it was introduced or something like that. It did, in fact, help dramatize the whole legislative problem. In the period before the Administration took a position, the main issue was public versus private ownership of the satellite communications venture. The State Department took a position for public ownership, for a public corporation some kind modeled on TVA [Tennessee Valley Authority] or RFC [Reconstruction Finance Corporation], government

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owned corporations. I think we may have been the only agency in the government that took such a position. Most instrumental in taking this position was our office and the office of the Science Adviser of the State Department. Phil Farley [Philip Judson Farley] was the Science Adviser at the time, not a scientist; he is an old-line foreign service officer, very good man.

GORDON: How can you call him Science Adviser if he isn't one?

CHAYES: Well, because the problems of how foreign policy relate to science have as much foreign policy in them as science. I have been talking all last week to Science Advisers from all the foreign offices of Europe, and none of them are scientists; they are mostly foreign office people. Now, they have scientists on their staffs, and there are consultative committees and so on that give technical and scientific

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information with which they work. But it is also true that they have to understand the foreign policy implications of particular scientific developments. I think it wasn't the Science Adviser anyway. I think it was the Office of Science and Technology in the Department, which is perhaps a little bit different than the Science Adviser. Farley's office had action on the problem, and we were only advisory. But we were in full concurrence with them, and so was Harlan Cleveland's [J. Harlan Cleveland] bureau, the International Organizations Bureau. Those were the three parts of the Department that seemed to have jurisdiction. Farley held several meetings with the Secretary and got the Secretary's concurrence in this general approach, but the Secretary never really signed on. He was never really enthusiastically or fully engaged in this line of policy that we were projecting. As

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I say, we were the only ones in government that were going in this direction. As an abstract matter I still think that was the right direction, but it was clearly untenable politically. Quite apart from the political power that AT&T and the carriers could muster to block this kind of thing, it is clear that Congress just on its own was in no mood to set up a big publicly owned venture of this kind. And so, although it would have saved us a lot of trouble and a lot of problems if it could have been done, it was clearly an illusory kind of policy. Sitting where I sit now and thinking back on it, I wonder whether I would have now taken the same position as I took then in favor of a public corporation. Even if we were going to do that we would have had to do a lot more work outside the Department on other

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interested agencies in order to develop support and so on, which we didn't do.

GORDON: What was the argument? I mean, what was your...

CHAYES: Well, the argument was that this is a public resource largely publicly developed—the same kinds of arguments that people made in the filibuster—that obviously it was an important instrument of foreign policy and world cooperation and things of that kind; that it had important political and defense aspects, and it should be exploited by a public company. It was going to, depend, in large measure, on public services for launching, for example. A lot of the traffic would be public. It would

involve questions of transmission of public service kinds of programs and so on. The argument was to treat this as a kind of international resource rather than as a commercial activity—

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not very much in harmony with our tradition, as you can see. In any event, not only did we lose in the interagency struggle—it wasn't much of a struggle—but we emerged as more or less the *bete noire* of the congressmen and the carriers who were interested in the development of this program. The State Department in general is on the receiving end of this kind of situation, and to have been for this kind of public corporation made us even more suspect among the people who were interested in the development of the program. Once this interagency study was made, Kennedy issued a public statement on policy on space communications in which he came out for private ownership provided certain conditions were satisfied, including conditions of harmonization with the public interest and anti-monopoly conditions. At that

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point we really lost contact with the formulation and development of the legislation. It was done mostly in NASA and FCC, and also the Justice Department with Nick Katzenbach [Nicholas deB. Katzenbach] was very heavily influential throughout in the development of legislation. And the issue was between two different concepts. One was a consortium of carriers—that is, AT&T, IT&T and the other carriers would get together and jointly finance the satellite operation just as they now often get together and jointly finance a cable. In their view, there wouldn't be any special organization or special arrangement for this activity. They would just treat the satellite as another kind of cable and finance it from that way and deal with foreigners as though this was simply a different kind of cable, a cable in the sky instead of under the water.

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This was the solution proposed very strongly by the carriers. It ran into trouble in Congress and among others interested in it because it seemed to extend carrier monopoly—and that really meant AT&T monopoly—over foreign communications to an unconscionable degree. So there was developed an alternative plan whereby a special federally chartered corporation, the Communications Satellite Corporation [COMSAT], was to be established which would be the United States chosen instrument in the field of satellite communications. It had an odd structure as you know. Half of its shares were to be sold to carriers. That was the residuum of the carrier consortium idea. Half of its shares were to be sold to the public, thus creating a new publicly held corporation to compete with existing overseas carriers. of the fifteen directors, six would go with each of these halves and

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three were to be appointed by the President. And there were other elements of Federal regulation and Federal supervision involved. That, in effect, was the Act which ultimately passed.

Again, looking back on it, I am not sure that, as long as you weren't going to have a public corporation, it wouldn't have been much better not to invent this new hybrid monster but to go right ahead and let the carriers do what they have always done. But that's neither here nor there. Kerr [Robert S. Kerr] was perhaps the chief protagonist of legislation of any kind in this field. Essentially he became chief protagonist of this bill.

GORDON: Senator Kerr?

CHAYES: Yes, Senator Kerr.

GORDON: Of Oklahoma.

CHAYES: Of Oklahoma. He was very closely in contact

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with the AT&T people and moved very responsively to their desires. The only thing we had to do with the bill turned out to be one of the most controversial features of it. There was a section in the draft legislation about the conduct of foreign negotiations on behalf of this enterprise. That section was drafted in my office. In fact, Len Meeker [Leonard C. Meeker] drafted it. He was my deputy. Of course, I saw it and approved it and so on. He was more the leading protagonist at this point. The section said that all negotiations with foreign governments or foreign communications entities would be conducted by the State Department. Well, again perhaps in the light of hindsight, that was an overreaching assertion. There were all sorts of negotiations that we wouldn't have any possible interest in allocations of frequency, allocations of

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channels to particular people, operating arrangements, negotiations about the size or shape or capacity of ground stations.

GORDON: But it seemed less sensible to give the State Department some sort of detailed power rather than...

CHAYES: Well, the problem was, again, we were still concerned, and I think properly so, with the important political aspects of this new space resource. After all, this is the first big space venture of a practical kind. It has lots of glamour. The fact that it deals in communications itself has important political significance. Control of communications systems and influence on communications systems, we have found out in recent years, is of great importance in terms of political influence and political control. If you

look at West Africa, for instance, you can't call New York from Ghana without going through London. You can't call anywhere from Ghana

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without going through London. You can't call Nigeria from Ghana without going through London. Maybe you can now, but you couldn't at one time. All of that means a good deal in terms of the influence and control that London has over these places. We have just been coming to appreciate the political significance of communications control. There was and is a wide area for direct governmental involvement in this thing, and that's been demonstrated in our negotiations in recent months. But there is also a very wide area of technical activity about which we couldn't care less. So this section was an overbroad section. As I have since found out, it touched very sensitive nerves among the carriers because the carriers had conducted their cable negotiations without any governmental supervision or involvement on either side. Of course that is a little

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misleading, because in Europe the cable entities are in fact either government-owned or government agencies themselves, communications ministries. But at least the Foreign Offices were not involved. AT&T and the other carriers thought they had done very well this way, and they thought that the only thing that could happen if governments got in was more trouble. In fact their effort has been, not only at that point but ever since, to try to minimize the involvement of governments on both sides, our government and foreign governments, in the negotiations relating to the communications satellite system. So they got Kerr very exercised about this particular section of the bill.

George McGhee, then Under Secretary of State for Political Affairs, was our witness. He was not very well briefed on this problem. When the questioning began, instead of saying

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what he ought to have said—namely, that of course this is too broad and we don't want to be in all these technical and operational agreements; and this is only meant to apply to negotiations having political significance—he more or less tried to defend the section as written, and he was really cut up very badly by Kerr. I myself didn't go up with him, I am sorry to say. If I had known then what I know now, I would have taken a lot more care with his testimony. It seemed to us that we had only a peripheral interest in the bill. We hadn't focused on this problem as is shown by the fact that we let the section go in that way. We didn't expect him to have any trouble, and it was really quite a surprise and shock to us when he got badly beaten up. As a result, Kerr drafted an amendment to the bill in which he said, in effect, the State Department should have nothing to do with any foreign negotiations.

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That was too much on the other side and eventually, through Katzenbach negotiations with Kerr, a compromise, not a very good one, was worked out in which one section of the bill referred to business negotiations. It said those should be conducted by the Corporation, and the State Department should be notified and should give advice on the foreign policy aspects. Another section of the bill said the President—not the State Department, but the President—would have the authority to assure that the activities of the Corporation were carried out consistently with the national interest and foreign policy of the United States. We were prepared to argue that under that presidential section, the State Department, as the President's instrument for the conduct of foreign policy and foreign affairs, could have a controlling role in negotiations when that was required

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by the foreign policy of the United States. Well, we wouldn't have had very much of a chance to make that case if the filibuster hadn't occurred. As you recall, Morse [Wayne L. Morse] and Gore [Albert Gore, Sr.] and perhaps twenty liberal senators in the late summer of 1962 began conducting a very intense filibuster against the Act. Kefauver's [Estes Kefauver] position was that this should be a public corporation, like the TVA. It was much like the earlier State Department position. Gore and others argued more on the ground that the President's power to conduct foreign policy was not adequately safeguarded in the bill, in fact coming down right on the very point that we have been discussing. There were some amusing events in that. filibuster. I remember I was on the maiden voyage of the Nuclear Ship, *Savannah*, a guest of Hodges [Luther H. Hodges], during the course of that filibuster. He had three

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senators with him, Yarborough [Ralph W. Yarborough], Bartlett [E.L. "Bob" Bartlett], and McGee [Gale William McGee]. There was a quorum call, and things were all set to send a helicopter down to Norfolk to pick those three senators up off the ship on a lovely summer Saturday afternoon to meet quorum call until, I don't know, some arrangement was made not to do it. Eventually, you will recall, cloture was imposed on that filibuster. I always thought that this was one of the rather significant things leading to the imposition of cloture this year. Because many people, southerners or conservatives, who had theretofore said that they were against cloture as a matter of principle, in fact voted for cloture on the Communications Satellite Act, and therefore were not in a position to say that they were against it on principle this year.

GORDON: Also, that may have been the first time that cloture...

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CHAYES: No, no. Cloture had been imposed before, a number of times. But never on a Civil Rights Bill before. It was imposed, for example, on the Versailles Treaty, in 1919.

GORDON: I didn't realize the revision was that old.

CHAYES: Oh yes, about 47 years old now. Well, the filibuster was in fact resolved, or maybe it wasn't resolved, but at least one of the maneuvers in the game was to send the bill back to the Foreign Relations Committee of the Senate for testimony on this point as to whether the foreign relations power was adequately safeguarded in the bill. That gave us a great opportunity to beef up what was, after all, fairly limited language in the bill. At that time I got into the act pretty heavily. I wrote the Secretary of State's testimony for the Senate Foreign Relations Committee and appeared with him. In fact, I testified to some extent myself. We did

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prepare a series of questions, which Sparkman [John J. Sparkman] as Chairman of the Committee asked the Secretary, concerning the relationship between the section dealing with business negotiations and the other section dealing with the Presidential power. The Secretary made it clear that, the way we construed the bill, it meant that whenever the President thought that foreign policy considerations were involved, then it was no longer a business negotiation. He could take whatever steps he needed, including directing the Secretary of State to conduct the negotiations.

One incident in connection with that testimony annoyed me. Ernest Gross [Ernest A. Gross], one of my predecessors as Legal Adviser and now a partner in a Wall Street firm, was called to testify on the bill at these hearings. He called me and talked to me about it in advance.

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I explained to him what our situation was; that the prospects for amendment of the bill were slim; and that our one opportunity at the hearings was to establish a legislative history of the section on presidential power that would give the Department the freedom of action it would need in the future. When we finished the call, I was left with the impression that he would testify generally along lines that would support the Secretary's testimony. But he didn't. He went right down the line with the filibusterers, arguing that this bill as written deprived the Department of its rightful and necessary power.

I could never understand what purpose was served by that testimony. True, a tenable legal argument could be made for the position, but I don't think a court would have upheld it in the very unlikely event the issue were ever to get to the court. In fact, of course,

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the question was not over law in the conventional sense. The statute did not assert a legal proposition at all, it established a political framework within which the relation between the Department and the Corporation would be worked out over time. And in that sense, it was important to garner as much strength as possible for the Department's side of the discourse.

That is why the colloquy with Sparkman was so important—and we have had several occasions to cite it to the Corporation.

I should say also that after his testimony, the Secretary remarked, “You know, our original position”—i.e. in favor of a public corporation—“wasn't so bad after all.”

GORDON: This must be an old issue, the question of where business negotiations leave off and foreign policy issues become...

CHAYES: Well, of course, it is usually never addressed

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that specifically by statute. But if you take a look at the situation when a negotiation between a businessman for a concession with a foreign government begins to bring American foreign policy interests into play, when and how the government steps into or takes part in negotiations of that kind involves very interesting considerations.

GORDON: Has it ever actually been legislated on?

CHAYES: Well, no. That is my point, I think this is the first time that an effort to address this legislatively was undertaken. We got the Senate Foreign Relations Committee to adopt this view of the matter, and indeed this colloquy between Sparkman and the Secretary is included in the report and was read again on the floor by either Humphrey [Hubert H. Humphrey] or Pastore [John Orlando Pastore], one of the bill's managers. Then after...

GORDON: Of course when it comes to something like nuclear

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power, I imagine that there are all kinds of restrictions on the ability of Westinghouse, anybody else having anything to do with nuclear power, to do anything at all with a foreign government or with a foreign business or what have you. They are probably restricted by the Defense Department, the State Department, and everybody else.

CHAYES: There is a federal monopoly of special nuclear materials—that is, of weapons grade plutonium and uranium and other things—so that any device which could be used to produce that becomes subject to federal control and regulation by statute. So that's really rather different a problem than here.

GORDON: Well, except that a nuclear reactor can be privately owned, but they couldn't ship it overseas.

CHAYES: Well, they can't because the statute says they can't. But, again it doesn't say

what is business negotiation and what is a...

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GORDON: I doubt that they could negotiate to build a reactor.

CHAYES: No, I'm sure they couldn't.

GORDON: Without...

CHAYES: Without approval. Sure, and approval, as in the case of Rumania a couple of weeks ago, involves the imposition of special safeguards—inspection mechanisms and so on. In any event, after the hearings I developed language that I thought would more accurately reflect the balance between governmental interest and business interest here. I thought that I might be able to use this to break off the Gore half of the filibuster. And so I conducted some negotiations with Gore—first having cleared the whole business with Pastore and Humphrey and with Katzenbach and others in the Administration—in an effort to see if he couldn't be gotten to abandon the filibuster. That would have meant that

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filibuster would have been broken because if Gore had gone, perhaps half or more of the filibustering senators would have gone with him. For a time it seemed as though Gore was prepared to take those amendments. He didn't partly because he said he had committed himself to Kefauver and he said he was going to stick with him, and partly because I think Kerr—not the rest, not Humphrey and Pastore—was adamant. No changes. Kerr was a man who loved to exercise power, and he loved to exercise it often in a very brutal way. This was the way he lived and the way he enjoyed doing things. And I enjoyed watching him. It was not offensive to watch him do it even though sometimes you were in the middle. Kerr insisted that there weren't going to be any changes, and they did have the votes for cloture and they put through cloture. The

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bill passed. I then had nothing to do with the organization of the Corporation, the appointment of the directors by the President, interim directors. We saw the articles of incorporation in my office and made a few minor comments on them and...

GORDON: Whose idea was this? I know it sounds like many people must have contributed to it, but the final compromise of this corporation.

CHAYES: My own feeling is—again I wasn't close enough to it to know exactly—that Katzenbach had probably more to do with it than anyone, in inventing this monster, this hybrid. I think it was probably more his idea than anyone else's.

GORDON: Was Telstar already up?

CHAYES: At some point it was up, yes.

GORDON: How does a thing like this, or how does this particular thing at any rate, get going? Namely, who said, "Now look, fellow, we are

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going to have this satellite up there rotating around, and it is going to require some new laws;" who understood this?

CHAYES: Well, I'm not altogether sure where the impulse for the first consideration before the President's first statement came from. I don't know how that started. It probably started from the White House. Maybe Jerry Weisner [Jerome Weisner], maybe Ed Welsh [Edward C. Welsh]. It may have come out of the National Aeronautics and Space Council, which Johnson [Lyndon Baines Johnson] sat on, of which Ed Welsh is the Executive Director. As a matter of fact, as I begin to think of it, that probably was where it came from. They were reviewing national space policy and seeing areas which looked like they needed work.

You will recall that Phil Graham [Philip Leslie Graham] was appointed as president of the Corporation by Kennedy. And this was at the time when Phil was getting very erratic. One of the

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people that he got very erratic at was a fellow in the State Department named Gil Carter who had been taken on as Special Assistant for Space Communications to the Economic Bureau of the Department. He made a trip around Europe, in effect stating what our overall policy objectives were in the space communications field, doing little more really than recapitulating the preamble and policy objectives of the Act which laid a good deal of stress on the international value of space communications and the foreign policy objectives. But this was seen by Graham and others as the intrusiveness of the Department into the field and raised all the old bogies and ghosts of the earlier days. Graham got very angry at Carter and the Department as a result of this trip. It was in the spring of 1963, probably March of 1963. I remember it because I saw

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these people in Paris when I was there on another matter myself.

GORDON: Graham committed suicide that summer.

CHAYES: Yes, Graham committed suicide that summer, although he had resigned from

the Corporation somewhat earlier than that. But it was perfectly apparent that the Department wasn't doing itself any good in this area, and indeed it began to be clear that there wasn't any effective governmental liaison with the Corporation. There was supposed to be a Director of Telecommunications Management in the White House who would assume these functions among others. But they never found one. That post remained vacant. What happened subsequently was rather interesting as an example of how the Kennedy Administration organized itself to deal with problems of this kind. Nick Katzenbach and Jerry Weisner decided to form a committee of representatives of

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interested agencies, called the *Ad Hoc* Committee, which would meet jointly to consider questions of policy with relation to the Satellite Corporation. I think Jerry probably got a little memorandum from the President setting up the committee, but it may be there was no other authority than just Jerry and Nick's initiative. The Committee met in Jerry's office over in the Executive Office Building, in his Conference Room. Jerry and Nick picked out people who were Administration men in the various interested agencies—there was a little maneuver here and there before you got to the people you wanted—to sit on this committee. In the Defense Department it gradually gravitated over to John McNaughten [John T. McNaughten]. In the State Department there was a little fuss in the beginning whether it would be Griff Johnson [G. Griffith Johnson], who was in the

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Bureau of Economic Affairs, or I. Of course, Nick and Jerry preferred me because we had worked together. In the end, I was designated as Johnson's alternate, but then Johnson never took any part in it after that. And in the FCC, Bill Henry [E. William Henry], the Chairman, got drawn into it. Generally it was very interesting to see how this organization, the *Ad Hoc* Committee, sort of self-organized, pulled itself together to deal with these issues on a common basis with the President's interest in view. We all started from the premise that it wasn't going to help the President at all for a knock down drag out fight between the Department and Corporation. Now on the other hand, everybody understood that the Department had to be in the picture. And so we had a long process in which the Department rather than asserting its views and fighting to bring the Corporation in

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line did the reverse. That is, we would analyze a situation and say, well, we don't think this approach to a particular European problem, let us say, is likely to be fruitful, but if you want to go ahead and try it, we will go along with you and try it. Then the Corporation would run up against a stone wall, but it wasn't the State Department that prevented it from doing what it wanted to do. At the same time, in public and vis-à-vis foreigners, we maintained an absolutely solid front with the Corporation. And gradually if our predictions were good, if our judgments as to what the right line of approach was were good, two things would happen: First, the Corporation would begin to get confidence in that judgment; and second,

the policy would flow in the right direction anyway, although with much more friction and much more abrasion with the foreigners. And

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the fact is that this is exactly what happened. Eventually, the Corporation and Department moved side by side into the major negotiations with the Europeans over the last six months. The critical turning point in this thing came in October when there was a meeting in London of the Europeans' telecommunications entities. The newly appointed chairman of the Corporation, Leo Welch [Leo Dewey Welch], wanted to go over there and tell them how the Corporation expected to run this thing; that they weren't going to have an intergovernmental agreement, and they were going to operate not with a group of Europeans—the Europeans had organized themselves into a single group to deal with this thing—but the Corporation was going to deal individually with European countries on whatever basis it chose. And of course he ran into a completely stone wall in London.

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Instead of him reading lectures, he was read lectures by every European country, large and small. And he came back...

GORDON: A sadder, but wiser man.

CHAYES: Well, somewhat sadder, somewhat wiser. It has been a long process of educating him and of him then educating his Board.

GORDON: Gee, that doesn't sound like, you know, it requires the State Department to predict trouble. It sounds like what Dale Carnegie...

CHAYES: Well, yes, but the State Department is viewed with suspicion. It was thought, for example, that we were subject to this general tendency of foreign offices to meddle in where they weren't wanted and weren't needed and that if only the Corporation could talk to telecommunicators all over the world, why there wouldn't be any problem. The only thing is that none of the European foreign offices were letting their telecommunicators

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talk. Well, it was very interesting to see this *Ad Hoc* Committee work because, as I say, it organized itself around a nucleus of Kennedy people.

GORDON: What do you mean by Kennedy people?

CHAYES: Well, I mean people like...

GORDON: Kind of vitality within the Administration?

CHAYES: These are people who were brought in by Kennedy and who often had links with each other before the Administration, knew each other and understood each other well before they got to Washington. I knew McNaughten, Katzenbach, Weisner, Dungan [Ralph A. Dungan] long before I came to Washington. Our loyalties surely ran to our own agencies, but they also ran rather directly to the President.

GORDON: Weren't there other people in Defense Department, for example, who were brought in by Kennedy, who you didn't know?

CHAYES: Yes, for example...

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GORDON: I remember the story you told about McNamara [Robert S. McNamara] himself for that matter. That nobody knew him.

CHAYES: Yes, that's true. So it wasn't necessarily that you knew them. Actually, people began to form relationships within the Administration that is also true. But all I'm saying when I say Kennedy men, is men who were really brought in by Kennedy and often had some form of prior knowledge or communication.

GORDON: And except for the Armed Services and the Foreign Service, in most other agencies weren't all people at this level Kennedy men?

CHAYES: Not always. And also even people that were brought in, some of them were brought in on a different basis or for different reasons. Maybe I am saying this more or less intellectual or academic group of Kennedy men—I'm not sure. As I said to you earlier, I never talked, I think, to the President on communications

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satellites at all. But I had the feeling that through Dungan and Katzenbach and Weisner, who were in contact with him as need be, I was really in fairly close communication with the President. I knew what his objectives were and what his overall line was. I think this communication network through key individuals who were spotted around and who, as I say, had loyalty to their own chiefs and their own agencies, but also had direct ties to each other and the President, was a very, very, important feature in the way the Administration worked. What happened to the Ad Hoc Committee is that like all other committees, it grew. We began to take staff to the committee meetings and then finally there were thirty or forty people sitting around the table. Well, in direct proportion, as the committee grew, you could say less. So it became rather a formal mechanism for approving decisions

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made elsewhere. Nick and Jerry and John McNaughten and Bill Henry and I would meet informally at lunch or in an informal meeting, or our key men on the thing would clear around among the five of us, or our key staff people would communicate with each other, and when a decision was made or a consensus reached in that way, it was easy to submit it to the Ad Hoc Committee—which had a somewhat broader membership—without ever getting any of the discussion in the Ad Hoc Committee. It is interesting how there is this rather live, vital, functioning organization that forms itself and begins to deal with the problem, immediately the bureaucracy tries to enclose it and encompass it and control it, and changes the organism into one that is much more structured and formal, and then the moving point unhooks itself from that structure and goes somewhere else and does

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its actual decision making.

Well, as you know, since the President's death there has been a series of negotiations that culminated just recently in almost complete agreement between us and the Europeans. I think an agreement will now be signed for a world-wide communications system in mid-July. It will be a major achievement in U.S. space policy.

I should say that this whole development is an example of how policies can be misconceived, or programs can be misconceived, by people who are very close to them and dealing with them very intimately. I think if you ask most Congressmen, not only who voted on this bill but who worked hard on it, they saw this as an American venture. They saw this as kind of like General Motors. Anybody can buy a car from General Motors, but General Motors is an American company

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and the COMSAT that was going to put up this system was going to be an American company. Sure, anybody could plug in, but this was an American show. Now certainly the general public regards it as that. I think most of the Board of Directors of COMSAT originally regarded it as that, and many of them still do. The fact is we knew in the State Department from the beginning that this just wasn't going to be the case. It takes two to communicate. And in this case more than two. This isn't a cable that involves point to point communication. This is the sort of scheme that goes around the whole world. It didn't make any sense unless it was global, or almost global, in character. So that you couldn't, as you did in cables, just deal with a single partner at a non-political level. Besides which there was, as I said, all the glamour of space and so on. You

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were going to have to have a multilateral negotiation. Foreign countries were going to be politically interested. They weren't going to let the United States just put up a system and anybody else plug in. They were going to want to have some say, some meaningful share in the system. And if they weren't going to get it, they weren't going to let you communicate

that way with them. So it was clear to us from the outset that there was going to have to be some sort of international entity, of which COMSAT would be only one part. The question would be how big a share, how big a role, you could preserve for the United States within this international entity. If you look at the State Department testimony, that point is always preserved and nobody can ever say we deceived the Congress. But although we made the point, and made it quite clearly—

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I don't mean we made it as a subterfuge or anything—people weren't attuned to listen to it. So I don't think most people understand, maybe even to this day, what is involved in the international arrangements. Even now when you talk to newspapermen about these international arrangements, they say, "Well, what's going to happen? Are foreign governments going to buy stock in the COMSAT corporation?" In other words, they don't really understand that what is involved is a much broader international venture of which COMSAT is only a part.

GORDON: The other aspect that I'm curious about is about the private corporations versus having it public. How did Congress or anybody get around the fundamental fact that in order to get a communications satellite up there you have to use a United States Air Force rocket to get it there? It is one thing

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to lay a cable with a private ship and private cable and so on, but here an integral part of the arrangements had to be the use of a public development.

CHAYES: Well, of course, this was one of the main arguments for the public corporation. That both on the booster side and the communications technology side, most of the activity, most of the research and development, most of the experiments had been financed by U.S. public funds.

GORDON: But even if it is not a percentage, Abe, just the.... There is a link there that is wholly public.

CHAYES: That is right. And the Act...

GORDON: It is a *sine qua non*, it is a necessary condition.

CHAYES: And the Act provides that NASA shall provide launch services to the Corporation on a reimbursable basis. So that is what is

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going to happen. NASA will launch...

GORDON: But is there any other corporation which requires, you know, a government—I suppose trucking corporation, or roads...

CHAYES: Lots of them. Air carriers land on public airports and so on. So that this mixture, public-private, is endemic in our society.

GORDON: Well, except that here is something that you couldn't possibly entrust—booster manufacturing and operation—to the American Telephone Company.

CHAYES: I'm not sure. I'm not sure how long in the future it will be before we have privately financed space transport. Well, I think that does that. What is the next...

GORDON: The next thing we have listed is the reconnaissance problem.

CHAYES: Oh, I know what that refers to. That also has to do with satellites, that's right. And I don't think anything that I say here is

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terribly highly classified. We faced the problem in about the same summer. I'm trying to date it accurately for a minute. Let's see, the U.N. Legal subcommittee and the U.N. Outer Space Committee met this spring and achieved.... No, it met last summer and achieved a declaration of principles on the law of outer space. That was the summer of 1963. So it must have been the winter and spring of 1962-1963 in which the Russians had taken their earlier position, so it must have been the summer of 1962 when we first began to address this problem. This was a problem which, again, was discussed on an interagency basis within the Administration. The discussion in this case was stimulated from the State Department and again by our office and some of the scientific and technical people in the Department—Ray Garthoff [Raymond L. Garthoff] was important

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in this and Dana Orwick, who worked for Alex Johnson [U. Alexis Johnson]. Alex chaired the interagency committee. The question was this: How was one to protect our satellite reconnaissance operations politically? Everybody had the U-2 incident in mind. Although we had a beautiful technical instrument for reconnaissance, when the thing was disclosed, there was no political defense for it. And in the State Department on the whole, we thought that you gained something politically by being somewhat more open about our operations and developing a climate of legitimacy about them instead of trying to keep them completely secret. The opposite view was, let's keep them very, very secret. First of all, nobody knows about them. And what they don't know won't hurt them. And anyway nobody knows how good they are. And secondly, to the extent that this gets out in public, it forces the

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Russians to make a challenge of some kind because they can't accept the fact that they are being observed and, therefore, they would have to make some form of political challenge.

GORDON: It was better to make it...

CHAYES: Yes. And that we could never defend against a political challenge because there was so much power in the idea of peaceful uses of outer space, and this might not be regarded as a peaceful use and so on.

GORDON: Contrary, it could be argued that it was a peaceful use.

CHAYES: Well, we of course have always taken the position that the difference between peaceful and non-peaceful is not the difference between civilian and military; that communications, reconnaissance, navigation, weather, all these activities in space, are not by nature either peaceful or warlike; and that the only

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thing that was really warlike was aggressive activity in space. In addition, we were alert to and are still alert to the possible uses of reconnaissance satellites to inspection systems in connection with disarmament. So there was a special way in which the development of satellite reconnaissance was peaceful or at least had implications for peaceful purposes. Well, again after a long and difficult study, it was decided to embark on a series of briefings of our closest allies. They were briefed quite fully, sometimes by the President on state visits, more often by special teams who talked only to the head of state, foreign minister, or defense minister and gave them a sense of what the scope of our program was, how good it was, and what its relation was to our overall strategic picture, which was very intimate.

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Thus, when issues of this kind arose in the United Nations, for example, these people understood the implications of the political issue and were prepared to give us support. This was really quite successful. When in the winter of 1962-'63 the United Nations Outer Space Committee began to discuss the question of legal principles for outer space, the Soviet's draft always had a provision banning satellite reconnaissance. They got no support for this from anyone. Of course we had a legal position developed which we argued. At the same time we were doing these briefings on the technical side, we began to state the legal position which was that outer space was not under the sovereignty of any nation. It is like the high seas, and there just is nothing illegal about observing another nation from the high seas.

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Soviet trawlers do it all the time from more than three miles off the Atlantic coast, and this was no different than that. Here was a completely non-territorial regime and, therefore, anything other than an aggressive act from that medium was consistent with international law—and so on. And in the end...

GORDON: Also, wasn't technology a part of it here. That is that I would guess these are all, but undetectable or...

CHAYES: I don't think that is so. I think probably they are a) detectable and...

GORDON: Can you tell what they are up to, though, with scrambling devices and so on.

CHAYES: Well, I would think at least within a relatively short time it will be possible either to shoot them down or to disrupt them so that they won't do their work. And what will happen when that comes about, I don't

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know. Maybe the legal principles that we have developed already will stick, maybe they won't. Khrushchev [Nikita Sergeyeovich Khrushchev] has made a number of comments in public and private recently that suggest he is willing to accept such observation with some equanimity. But he may not know how good our stuff is. One of the other things that we tried to...

GORDON: We could sink the trawlers, too.

CHAYES: Well, that's right, but there is a long tradition behind the freedom of the high seas, whereas...

GORDON: And people are involved.

CHAYES: It is also true that air space was once regarded as non-territorial in the very early days of aviation. And it began to appear that that just wasn't going to work after the technology developed. So I don't think we are far enough along to say how it is going to be. But this turned out to be a

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very successful operation because last spring when we reconvened the Legal subcommittee—I guess it was the summer of 1963 before Kennedy's death—the Soviets withdrew this insistence on banning reconnaissance satellites, and we did develop a declaration which was enacted by the General Assembly last year. I think that legislative history, so to speak, is very significant on the issue.

GORDON: I think this is a good time to stop.

CHAYES: All right, fine.

[END OF INTERVIEW #3]

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