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Mr. PETREN (Sweden) agreed with the views expressed by the Chairman and several members of the Committee on the Committee's terms of reference. He had some reservations about the French term "espace extra-atmosphérique", which did not seem to correspond exactly to the English term "outer space".

The Committee would not be going beyond its terms of reference if it indicated some possible solutions without stating which it considered preferable. The Committee should not seek to prepare a comprehensive code, but should rather formulate certain questions which would help to solve problems which had already arisen or would arise in the near future. The best approach would be to concentrate on the nature of the vehicles sent into space and to avoid as far as possible any hard-and-fast definition of the various strata in outer space. Consideration must, however, be given to the question of air space: should a boundary be determined or should the question be left open? He agreed with the United Kingdom representative on that question but thought that the Technical Committee should be consulted on the terms to be used in defining the various zones in space. There was one point on which he did not agree with the United Kingdom representative: he did not think that the air space subject to the sovereignty of a State could be defined in terms of the possibility of effective control.

In conclusion, he said that the lists of questions proposed by the Chairman and by the representative of the United Kingdom provided an excellent basis on which to work.

The CHAIRMAN agreed with the representative of Sweden that it would be advisable to consult the Technical Committee on a number of questions, and particularly on the upper limit of the atmosphere, which varied, from one writer to another, from 100 to 60,000 kilometres. It was for the members of the Committee to decide how that consultation should take place.

Mr. STAVROPOULOS (Legal Counsellor) said that the Technical Committee had decided to establish liaison with the Legal Committee. That might be done in the following way: a member of the Technical Committee would follow the work of the Legal Committee and vice versa.

It was so decided.

The meeting rose at 4.20 p.m.

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AD HOC COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL COMMITTEE

SUMMARY RECORD OF THE FIRST MEETING

Held at Headquarters, New York,
on Tuesday, 26 May 1959, at 3.25 p.m.

CONTENTS

PRESENT:

Acting Chairman:	Mr. MATSUDAIRA	Japan
Chairman:	Mr. AMBROSINI	(Italy)
Members:	Mr. ORTIZ de ROSAS	Argentina
	Mr. HOOD	Australia
	Mr. NISOT	Belgium
	Mr. GIBSON-BARBOSA	Brazil
	Mr. KINGSTON	Canada
	Mr. CHAYET	France
	Mr. ZAND-FARD	Iran
	Mr. TORNETTA	Italy
	Mr. KAKITSUDO	Japan
	Mr. CUEVAS CANCINO	Mexico
	Mr. PETREN	Sweden
	Mr. EVANS	United Kingdom of Great Britain and Northern Ireland
	Mr. MEEKER	United States of America
Secretariat:	Mr. STAVROPOULOS	Legal Counsel
	Mr. SCHACHTER	Secretary of the Committee

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TRIBUTE TO THE MEMORY OF MR. JOHN FOSTER DULLES, FORMER SECRETARY OF STATE OF THE UNITED STATES OF AMERICA

The ACTING CHAIRMAN paid tribute to the memory of John Foster Dulles, former Secretary of State of the United States, and offered the condolences of members of the Legal Committee to the people of the United States and to Mr. Dulles' family. He requested the members of the Committee to observe one minute's silence.

Representatives rose and observed one minute's silence.

ADOPTION OF THE AGENDA

The agenda was adopted.

ELECTION OF THE CHAIRMAN

Mr. CHAYET (France) nominated Mr. Antonio Ambrosini, representative of Italy.

Mr. CUEVAS CANCINO (Mexico) supported the nomination.

Mr. Ambrosini (Italy) was elected Chairman by acclamation and took the Chair.

The CHAIRMAN stressed the historic importance of the Legal Committee's work, which was to lay the foundations for a new branch of law, the law of cosmic space. Caution and patience were necessary; the Legal Committee, by the very nature of its functions, would not be working on as firm a basis as would the Technical Committee, especially as the sphere of work assigned to it was often affected by political considerations. It would therefore have to proceed with the greatest objectivity and in a spirit of absolute impartiality.

He believed that the members of the Committee were convinced that the time had come for the legal regulation of space exploration, but the problems which arose first were the method to be followed and the present limits of the revelant rules. As there was not yet sufficient experience available to permit appraisal of the scope of the questions requiring settlement and of all the consequences of the exploration of outer space, the Committee must not be too ambitious. It was true that in the related field of aviation, a convention had been signed as early as 1919, before international civil aviation had really come into being. But in the case of outer space that method might possibly prove ineffectual and even dangerous. The better course, therefore, would be to attempt only a partial and even rudimentary

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(The Chairman)

body of legislation and to define first of all the clearest and most urgent cases, as the United States representative had suggested in the Ad Hoc Committee. He would have occasion to go into those questions in greater detail in his capacity as representative of Italy. For the time being he would merely point out that it was neither desirable nor possible to start making rules in so new a field without bearing in mind certain fundamental principles, in particular the principles of international law recalled by the representative of Italy at the third meeting of the Ad Hoc Committee (A/AC.98/SR.3, page 9) and especially those governing aviation and the legal status of outer space (freedom or sovereignty). In addition, the legal problems which might arise must be identified and classified. That task might be assigned to a small working group which would proceed on the basis of the suggestions made by the representative of the United States, of the works of jurists who had studied the subject and of the document already prepared by ICAO. That would be easy work and should not occupy the entire attention of the Legal Committee. Commentary should be provided on each problem and the various possible solutions should be indicated. Indeed, General Assembly resolution 1348 (XIII) should not be interpreted too narrowly. The Legal Committee would have to deal with practical and urgent problems such as the identification of rockets and artificial satellites, compensation for damages caused and the allocation of frequencies. Other problems, less urgent but equally important, would also have to be studied by the Committee: the occupation, ownership and use of the moon and other planets, the utilization of the resources of outer space, etc. Obviously a detailed code of space law could not yet be formulated but certain fundamental principles must be stated and some general technical and legal rules framed forthwith to meet the most immediate needs and to lay the foundations for a body of space legislation which could later be improved upon and supplemented in the light of experience.

GENERAL DEBATE

Mr. EVANS (United Kingdom) said that as he had pointed out at the third meeting of the Ad Hoc Committee (A/AC.98/SR.3) the terms of paragraph 1 (d) of General Assembly resolution 1348 (XIII) imposed certain limitations on the mandate of the Legal Committee. In the first place, the Ad Hoc Committee, of which the

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(Mr. Evans, United Kingdom)

Legal Committee was a subsidiary organ, was concerned only with the peaceful uses of outer space; and that excluded questions relating to other than peaceful uses and to disarmament. Secondly, the task of the Legal Committee was to study only legal problems which might "arise in the carrying out of programmes to explore outer space", i.e., problems arising in the exploratory stage.

That was a manageable assignment and it would be better not to go beyond it; otherwise the Committee would be likely to flounder in a realm of conjecture. Finally, the Committee should not concern itself with finding a solution to the problems in question; it should confine itself to identifying them and indicating their nature to the General Assembly.

He wished first to examine the problems relating to the legal status of outer space. The first problem was that of sovereignty and its possible limits. The sovereignty of every State over the air space above its territory and territorial waters was generally recognized. It had been argued that that rule of international law, incorporated in the Paris Convention for the Regulation of Aerial Navigation of 1919 and subsequently in the Chicago Convention on International Civil Aviation of 1944, related only to air space and that there was a distinction between air space and outer space. The considerations of national security which militated so strongly against the adoption of the doctrine of freedom of the air might well also apply beyond the air space, but presumably in diminishing degree as the distance from the earth's surface increased. However, the insuperable difficulties a State would have in exercising any control over a cone projected to infinity above the earth's surface had been pointed out; such a cone would have a constantly changing content in terms of celestial bodies. It therefore seemed safe to assume that the question whether there was or should be an upper limit of sovereignty would be answered in the affirmative.

It was logical to proceed from that to the question of what was the upper limit of sovereignty. Various theories had been put forward on that topic. Some believed that sovereignty extended to the limit of air space; but that term as used in the Conventions of Paris and Chicago had been variously interpreted. One theory was that it meant that region of the atmosphere in which air was present in sufficient quantities to support the flight of aircraft, which meant that the limit of air space would be fifty-three miles, or eighty-five kilometres above sea level; another, that air space was the same as atmospheric space, the maximum estimate of whose limit was

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(Mr. Evans, United Kingdom)

60,000 miles (96,000 kilometres). Others thought that the outer limit of sovereignty need not necessarily be tied to the definition of air space. The suggestion had been made that the limit of sovereignty should be at the point where the earth's attraction stopped or at the point at which objects passed from the earth's area of attraction into the gravitational control of the sun, which had been put at about 161,000 miles (260,000 kilometres). Another principle which had been suggested was that of effectiveness: the sovereignty of a State over the air space above its territory should extend up to such height as it could effectively control, or alternatively, the sovereignty of every State should extend upward into space as far as the scientific progress of any State in the international community permitted such State to control the space above it. It would, of course, be possible to fix by agreement some arbitrary level at the top of one of the atmospheric layers, or alternatively, on the basis of some arbitrarily fixed height in miles or kilometres.

What steps should be taken to solve the problem? It had been suggested that it might settle itself in the course of time. Others believed that it should be solved by international agreement; but that might be very difficult to achieve on the basis of the present state of scientific knowledge and the little experience so far gained in the uses of outer space. The advantages of an early decision might well be outweighed by the dangers of a premature decision based on inadequate information as to the practical implications and scientific background of the problem. If the matter became pressing, then an interim solution on the lines suggested by the representative of the United States (A/AC.98/SR.3, page 4), namely, the fixing of an altitude beyond which space constituted outer space, but without prejudice to the subsequent fixing of a lower limit, might certainly be considered.

The next question was that of the legal status of outer space beyond the upper limit of sovereignty. The most widely held view was that outer space should be regarded on the analogy of the high seas, as res omnium communis, i.e. incapable of appropriation. The same pattern could be followed as in the case of the high seas where jurisdiction was exercised by each State in respect of its own vessels; or, as had recently been suggested by Wilfred Jenks in The Common Law of Mankind, an international regime could be set up under which the applicable laws and regulations would be enforced by the international community through some existing organization, or through a new organization.

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(Mr. Evans, United Kingdom)

Some writers had advocated an intermediate zone or zones, subject to special international regulations, between the zone of sovereignty and outer space. The intermediate zone could either be outside the sovereignty of the subjacent State but subject to a special regime for the benefit of that State on the analogy of the maritime contiguous zone, or within the sovereignty of that State but subject to special rights on the part of other States. The idea of such a zone, or indeed of a series of such zones, each subject to a different regime, might prove to be a very useful one, but must clearly depend on the answers to other questions and in particular on the meaning of "air space".

Celestial bodies in outer space could have the same legal status as outer space itself or could be regarded as a separate problem. Should States be recognized as capable of acquiring sovereignty over them and over their natural resources, or should they be made the subject of some form of international administration? That problem had been posed very clearly by the United States representative in the Ad Hoc Committee.

A second group of problems related to the regulation of space activities. The first question was to what extent existing principles and rules of international law applied to such activities. At the third meeting of the Ad Hoc Committee (A/AC.98/SR.3, page 3), the United States representative had expressed the view that the Charter of the United Nations and the Statute of the International Court of Justice were applicable to the relations of States in outer space. While it was perhaps not for the Legal Committee to examine the matter in detail, it might nevertheless recognize the relevance of those instruments to the regulation of space activities. According to article 38 of the Statute of the International Court of Justice, one of the sources of international law was "the general principles of law recognized by civilized nations"; there was reason to believe that those principles or many of them might not be applicable to the problems of outer space.

On the other hand, the body of customary and conventional international law relating to international civil aviation did not seem to be automatically applicable to activities in outer space, since it was concerned only with aircraft operating in air space. And while in some respects outer space was more analogous to the high seas than to air space, it would be wrong to assume that the rules of maritime law,

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or any of them, were directly applicable to outer space. The legal principles established in other fields could be drawn upon; but that must be done with great caution.

In that situation, the next task was to identify those matters which might call for legal regulation. They fell into a number of categories.

First there were the problems which might arise in connexion with the launching of space vehicles. It had been suggested that rules should be laid down concerning the time and manner of launchings and the location of launching sites; however, no immediate need for such regulations had become apparent.

Secondly, there were problems arising in connexion with the operation of space vehicles in flight. The most urgent among them related to communications between such vehicles and the earth, in particular to the use of radio frequencies for that purpose; the unregulated use of such communications could have chaotic results. The matter was to be considered next August at the Conference of the International Telecommunication Union. Another question was whether international agreement would be required on the extent to which artificial satellites launched by one State could be used for observations of the Territories of other States. Yet another matter which might have to be considered at an early date was the regulation of the flight of space vehicles to avoid interference with aircraft and with each other; however, further experience and scientific information were probably required before satisfactory rules could be formulated.

Thirdly, there were the problems which might arise in connexion with the disposal or return to earth of space vehicles. It might be necessary to enact legislation for the disposal of a vehicle which had ceased to serve a useful purpose so as to prevent its being a perpetual hazard in outer space. The question of the recovery of space vehicles and of liability for any damage they might cause had already been discussed by the United States representative, with whose views he was in general agreement; in the United Kingdom Government's opinion legal provision should be made for establishing the liability of the launching State for damage caused by the descent, accidentally or otherwise, of a peaceful space vehicle.

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(Mr. Evans, United Kingdom)

Lastly, there was a group of problems of a general character. In the first place, there was need for a method of identification of space vehicles; they should all carry apparatus which would make them readily identifiable. The United States representative had already pointed out (A/AC.98/SR.3, page 6) that it might be desirable to frame regulations to protect the public from hazards to health and safety which might be created by the carrying out of space exploration projects and to safeguard space or celestial bodies from contamination. Also, problems might arise as to the treatment of and relationships with extra-terrestrial life, if discovered.

In conclusion, he stressed the fact that the legal problems which might arise in the carrying out of programmes to explore outer space were both numerous and complex, but that many of them were remote and could not be solved without further scientific experience and information. It would therefore be premature to draw up a comprehensive code of space law; the Ad Hoc Committee should not recommend that approach to the General Assembly but rather that particular problems should be dealt with as they arose and according to the method which promised to produce the most sound and lasting result.

The CHAIRMAN stressed in his turn that the Legal Committee was not concerned with questions of a military nature and should not go beyond the examination of the peaceful uses of outer space.

Mr. NISOT (Belgium) pointed out that the only problems with which the Legal Committee was concerned were those raised by the execution of outer space exploration programmes, the matter being considered exclusively from the point of view of the peaceful use of outer space. The Committee was not required to solve those problems but merely to indicate them. In particular, it was not competent to draft rules of international law. If it exceeded those terms of reference its views would carry no authority; in addition it would be more likely to be criticized for having been influenced by political considerations to the prejudice of its work. The United Kingdom representative had correctly defined the Legal Committee's terms of reference at the Ad Hoc Committee's third meeting (A/AC.98/SR.3, pages 8 and 9).

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Mr. HOOD (Australia) said that he would come back to the legal problems connected with the peaceful uses of outer space at a later stage; for the present he would limit himself to matters of organization. Broadly speaking, he was in agreement with the views expressed by the United Kingdom and Belgian representatives. The Legal Committee's task was to define the nature of the legal problems to which the execution of space programmes might give rise and then to indicate the order of priority to be assigned to the various problems. An important problem in that connexion was that of radio communications with space vehicles. Lastly, the Committee would have to recommend ways in which specific problems could be solved. The responsibility for laying down general principles rested with the General Assembly, that of dealing with technical questions with the appropriate specialized agencies and that of ultimately drawing up a code of space law with the International Law Commission. In conclusion, he stressed the importance of defining the Legal Committee's terms of reference.

Mr. MEEKER (United States of America) said that it was not open to the Ad Hoc Committee or the Legal Committee to alter the terms of reference laid down by the General Assembly in resolution 1348 (XIII). He doubted the need of a separate debate on the scope of those terms of reference and suggested that any representative wishing to comment on them might do so in the course of the general debate.

The meeting rose at 4.50 p.m.