AD HOC COMMITTEE ON THE PRECAUTIONARY USES OF OUTER SPACE

LEGAL COMMITTEE

SUMMARY RECORD OF THE SECOND MEETING

Held at Headquarters, New York,
on Wednesday, 27 May 1959, at 3.20 p.m.

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PARTICIPATION OF THE SPECIALIZED AGENCIES IN THE COMMITTEE’S WORK

Mr. CHAYET (France) proposed that the Committee should invite representatives of the specialized agencies to participate in its work.

It was so decided.

Mr. FITZGERALD (International Civil Aviation Organisation) thanked the Committee for the decision it had just taken.

GENERAL DEBATE (continued)

Mr. KINGSTON (Canada) agreed with the United States representative (A/AC.99/Leg./SR.1) that the Committee’s terms of reference should be discussed within the context of the general debate. He also shared the view which had been expressed at the Ad Hoc Committee’s third meeting by the United States representative, who had interpreted paragraph 1 (d) of General Assembly resolution 1348 (XIII) as meaning that the Legal Committee should limit itself to constructing an ordered catalogue of necessary legal questions and that, in view of the scanty information available, it was not its task to formulate substantive rules. There seemed to be general agreement on that in the Committee. The question, therefore, was to decide how that list should be prepared. As the United Kingdom representative had said at the preceding meeting (A/AC.99/Leg./SR.1), it seemed that the Legal Committee should try to indicate the nature of the problems to the General Assembly and to establish an order of priority, without attempting to arrive at any solutions.

He thought that in order to be fully informed the Legal Committee should continue its general debate, even if, after the debates in the General Assembly and the statements already made by several members of the Committee, that entailed a certain amount of repetition. It would also be advisable that the questions considered by the Committee should reflect all the legal aspects of the problems being discussed in the Technical Committee; it would be useful, therefore, to arrange for consultation between the two committees.

The Legal Committee might perhaps be able to outline the general form of its report at the present stage. One of the main questions to be dealt with seemed to be the legal status of outer space; that general heading could be subdivided into a number of subsidiary questions. Should there be an upper...
Mr. GUIMARÃES (Brazil) said that the Committee appeared to be in agreement with the view expressed by Resolution 110 (III) on the use of outer space in the peaceful purposes of mankind. He noted that the United Kingdom (Dr. Marchetti) had indicated that the Committee should continue its study of the matter and to make a clear distinction between the two activities. Furthermore, the Fourth Committee (Mr. de Almeida) had already established the basis for Resolution 110 (VII) and had not attempted to resolve any question relating to the use of outer space for military purposes.

Mr. GUIMARÃES (Brazil) further stated that the Committee should not try to identify the Committee with any specific legal principle. He believed that the Committee should continue its study of the matter and to make a clear distinction between the two activities. Furthermore, he noted that the United Kingdom (Dr. Marchetti) had indicated that the Committee should continue its study of the matter and to make a clear distinction between the two activities. Additionally, Mr. GUIMARÃES (Brazil) had indicated that the Committee should not try to identify the Committee with any specific legal principle. He believed that the Committee should continue its study of the matter and to make a clear distinction between the two activities.

Mr. GUIMARÃES (Brazil) further stated that the Committee should not try to identify the Committee with any specific legal principle. He believed that the Committee should continue its study of the matter and to make a clear distinction between the two activities. Furthermore, he noted that the United Kingdom (Dr. Marchetti) had indicated that the Committee should continue its study of the matter and to make a clear distinction between the two activities.
space, but his delegation thought that if the Committee wished to accomplish anything useful it should be less ambitious; for that reason it seemed to him advisable to interpret the terms of reference laid down by the General Assembly in a restrictive sense.

The discussion in the Committee had already given some indication of the method to be followed in determining the legal nature of problems relating to outer space. At the third meeting of the Ad Hoc Committee the United Kingdom representative had listed the four phases involved in the formulation of a new body of law: namely, identification of the problems, determination of the priority to be accorded to the solution of each, determination of the approach or method to be followed with a view to achieving a solution, and the working out of a solution in accordance with the method adopted (A/AC.98/SR.3). If the Committee worked methodically through the first three phases, it would be in a position to suggest a possible solution to the General Assembly. There were certain disadvantages, however, in that pragmatic method, as experience had already shown: it should not be used as a basis for formulating general principles; in that connexion, his delegation could not agree that all the provisions of the United Nations Charter and the Statute of the International Court of Justice were applicable to the international relations that might develop in outer space. When the First Committee had studied those problems at the thirteenth session of the General Assembly the Peruvian representative had drawn a distinction between the principles and purposes of the Charter, which were general in scope, and the transitory provisions of those instruments, which had been included solely for reasons valid at a given moment in history; it would therefore be better not to bring into the debate transitory provisions, such as Article 51 of the Charter, to which reference had already been made.

Similarly, care should be taken to avoid using generalizations and providing abstract definitions of possible problems; on the other hand any scientific information that might become available should be taken into account and it should then be possible to give a realistic definition of the legal problems. Any other approach would result in worthless legal formulations. He gave two examples of what he had in mind: the first concerned relations with extra-terrestrial life; it would seem that vegetable life alone could exist on certain planets in the solar system. Accordingly, the question of finding human beings - if there were any - would only arise in connexion with sidereal voyages, in the strict sense of the term, which were out of the question for several generations to come. The second example concerned the identification of space vehicles and involved such problems as colour, temperature and radioactivity which he described briefly. The Committee should be careful to restrain its legal zeal.

The specific measures which his delegation intended to propose fell within the scope of the programme defined by the United Kingdom representative at the third meeting of the Ad Hoc Committee. It should be borne in mind that the work of any jurist, even in the field of international law, was to a certain extent linked to scientific advances, as witness the work of Grotius and Vitoria. The scientific data already available were sufficient to allow of the codification of the law of outer space. A considerable number of jurists had already considered the question; they included, in addition to the Chairman and the Secretary of the Committee, Petin, Aaronson, Haley, McDougal and, above all, Cooper. The Committee might therefore base its work on the discussion in the First Committee and the efforts jurists had already devoted to man's conquest of space. He drew attention to two questionnaires, one published by Rohn and the other by Hogan, listing the specific problems which the Committee should identify so as to indicate their nature to the General Assembly. On the basis of those questionnaires his delegation had prepared a list of forty-two problems which the Committee might examine.

The immediate problems related first and foremost to outer space, its definition, the determination of the rules which should be applied forthwith, the limit of national sovereignty, the legal regime applicable to existing space vehicles, the legal status of those vehicles and the responsibility of the State in relation to experiments in outer space. Other problems were less urgent; they included the legal principles which should govern man's activity in space and the question of sovereignty over celestial bodies. It should be emphasized once again that General Assembly resolution 1548 (XIII) did not instruct the Committee to find a solution to those problems. If the other members of the Committee so desired, his delegation would circulate the list of problems it had prepared.

/.../
Mr. PETRUS (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. STEVENS (Legal Counselor) 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.