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AD HOC COMMITTEE ON THE PEACEFUL 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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PRESENT:

| | | |
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| <u>Chairman:</u> | Mr. AMBROSINI | Italy |
| <u>Members:</u> | Mr. ORTIZ de ROSAS | Argentina |
| | Mr. HOOD | Australia |
| | Mr. NISOT | Belgium |
| | Mr. GIBSON-BARBOZA | Brazil |
| | Mr. KINGSTON | Canada |
| | Mr. CHAYET | France |
| | Mr. ADAMIYAT | Iran |
| | Mr. KAKITSUBO | Japan |
| | Mr. CUEVAS CANCINO | Mexico |
| | Mr. PETREN | Sweden |
| | Mr. EVANS | United Kingdom of Great Britain and Northern Ireland |
| | Mr. MEEKER | United States of America |
| <u>Representative of a specialized agency:</u> | | |
| | Mr. FITZGERALD | International Civil Aviation Organization |
| <u>Secretariat:</u> | | |
| | Mr. STAVROPOULOS | The Legal Counsel |
| | Mr. SCHACHTER | Secretary of the Committee |

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 Organization) thanked the Committee for the decision it had just taken.

GENERAL DEBATE (continued)

Mr. KINGSTON (Canada) agreed with the United States representative (A/AC.98/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.98/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

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(Mr. Kingston, Canada)

limit to a State's sovereignty over space? If so, what should that limit be? What was the legal status of outer space beyond that limit? Should there be an intermediate zone or zones which would be subject to special international regulations? What was the legal status of the celestial bodies in outer space? He proposed that a number of general questions should also be included, such as the following: was it appropriate to adopt a detailed code of space law or would it be better to adopt a more pragmatic approach in response to concrete problems?

Lastly, the Committee would have to decide whether its report should include explanatory statements in addition to the list of questions which it was invited to prepare.

Mr. GIBSON-BARBOZA (Brazil) said that the Committee appeared to be in agreement upon a number of points. Firstly, it was necessary to proceed with the utmost prudence in a field which was particularly subject to change. Secondly, under General Assembly resolution 1348 (XIII) the Committee's terms of reference were limited to the study of the peaceful uses of outer space. It was also important to avoid any political implications, in the usual strict sense of the term. Thirdly, the Committee's task was merely to submit a report to the General Assembly at its fourteenth session on "the nature of legal problems which may arise in the carrying out of programmes to explore outer space" (resolution 1348 (XIII), paragraph 1 (d)) and not to try to find solutions for those problems.

It had been suggested that the Committee should confine itself to studying matters relating to the exploration and not the exploitation of outer space, but in some cases it might be difficult to make a clear distinction between those two activities; furthermore, the fourth preambular paragraph of resolution 1348 (XIII) stated that the Assembly desired "to promote energetically the fullest exploration and exploitation of outer space for the benefit of mankind".

The United Kingdom Representative had stated that the Committee should not draw up a comprehensive code of space law but should deal with particular problems as they arose. In the opinion of the Brazilian Delegation any approach to the matter should be guided by underlying principles, some of them already established by Resolution 1348 itself, such as, specifically the sovereign equality of States and the principle that programmes in the peaceful uses of outer space should be taken "under United Nations auspices to the benefit of States irrespective of the

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(Mr. Gibson-Barboza, Brazil)

state of their economic or scientific development". He placed particular emphasis upon that principle. Also he stated that outer space should be considered res communis omnium and as such should be explored and exploited peacefully and to the benefit of mankind.

Mr. CUEVAS CANCINO (Mexico) gave a brief review of the work which the General Assembly had devoted to the question of the peaceful uses of outer space and recalled that both the legal and the political problems had been the subject of very detailed discussions. General Assembly resolution 1348 (XIII), which comprised numerous preambular paragraphs and a relatively short operative part, concerned a problem of capital importance and included a large number of legal concepts which the Ad Hoc Committee should bear in mind in order to carry out its work successfully. Thus the functions of the Ad Hoc Committee - and consequently those of the Legal Committee - were defined not only by the resolution but also by the discussions which had led to its adoption. As for its purposes, they were defined in the preambular paragraphs and might be stated as follows: to evoke the common interest of mankind, to strengthen the international co-operation which had been developed during the International Geophysical Year and to establish contacts among Member States which would open up new possibilities for mankind in space. The Committee should bear those purposes in mind in carrying out the task prescribed for it in operative paragraph 1 (d).

At the third meeting of the Ad Hoc Committee the United States and United Kingdom representatives had invited delegations to work on the concrete aspects of the legal problem. Side by side with that method, however, it was possible to think of another which was in conformity with the Latin tradition; it consisted in first stating general principles derived from the very nature of justice and then deducing from them the details of their application in law; that was the method to which the representative of Argentina had referred during the same meeting (A/AC.98/SR.3). The advocates of the first method argued that the Committee had to deal with new problems and that its work might end in failure if it engaged in philosophical and theoretical discussions. Obviously, there was a great temptation for it to set itself up as a legislator over outer

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(Mr. Cuevas Cancino, Mexico)

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

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(Mr. Cuevas Cancino, ...)

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 Bohn 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 1348 (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.

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

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- Adoption of the agenda
- Election of the Chairman
- General debate

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