(The Chairman)

had adopted the principle of State sovereignty. The latter principle had undeniably caused very serious difficulties in the operation of air lines, since States could at any time prohibit flights over their territory and withdraw commercial concessions. The same situation could arise in respect of outer space if decisions were not taken without delay. It was unlikely that there would ever be any commercial traffic in outer space, but the scientific exploration and exploitation of space raised problems which should be brought within the scope of legal rules without further delay, even if some States did not participate in drafting them. Experience showed that in the end States always acceded to international instruments, if the rules they embodied were just and satisfactory. That was true of the United States, which had not ratified the Paris Convention of 1919 on air navigation, and also of the USSR, which, although it had not acceded to the Paris or Chicago Conventions, had adopted the same rules of law as contained in those Conventions.

Mr. HOOD (Australia) said that he wished to make it clear that he had not intended to dissociate himself from the supporters of the so-called pragmatic view of the Committee's terms of reference. He believed that although the Committee was fully competent to examine the legal problems raised by the exploration of outer space, its terms of reference did not permit it to undertake an actual codification at the present time, that being a task that would devolve later on other bodies such as the International Law Commission.

The CHAIRMAN declared the general debate closed.

Recalling that at its previous meeting the Committee had set up a small working group, he said it was understood that any member of the Committee could attend the group's meetings and submit documents to it.

The meeting rose at 12.15 p.m.

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AD HOC COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL COMMITTEE

SUMMARY RECORD OF THE THIRD MEETING

Held at Headquarters, New York,
on Thursday, 29 May 1959, at 3.20 p.m.

CONTENTS

PRESENT:

Chairman:	Mr. AMBROSINI	Italy
Members:	Mr. ORTIZ de ROZAS	Argentina
	Mr. ROBERTSON	Australia
	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
Representative of a specialized agency:		
	Mr. FITZGERALD	International Civil Aviation Organization
Secretariat:	Mr. SCHACHTER	Secretary of the Committee

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GENERAL DEBATE (A/AC.98/L.6 and L.7) (continued)

Mr. KAKITSUBO (Japan) said that the first question which arose in the study of the legal status of outer space was that of defining outer space or, to be more exact, of ascertaining where air space ended and outer space began. That was one of the basic questions which the Legal Committee might well consider, but it would be premature to try to find a final solution, since knowledge about outer space was still rudimentary and it was impossible to foresee future activities there. For example, the delimitation of the boundary between air space and outer space might be influenced by considerations of national security, by the possibility or impossibility of effectively prohibiting the use of outer space for military purposes. At the present time prospects for a disarmament agreement did not appear bright, and certain countries might claim that their sovereignty extended to an altitude where there was no risk of anything dangerous falling on their territory and where observation of their territory by foreign space vehicles became impossible. The difficulties to which that apparently simple question gave rise showed the need for a cautious approach and for avoiding any hasty decision.

On the other hand, if human activities in outer space were left unregulated, an accumulation of faits accomplis might make for the development of customary international law which might prove to be detrimental to the formation of a rational regime. In order to avoid that danger, a beginning might be made, as had been suggested, with the conclusion of agreements on particular aspects of space exploration, as the necessity arose, without waiting for a comprehensive codification of space law. To pave the way for such agreements, the Committee might undertake to draw up a list of the legal problems which had arisen or were likely to arise in carrying out space programmes.

A second approach to the problem would be to establish a number of general principles which might serve as a basis for the agreements in question, in such a way as to ensure the orderly development of a rational legal system. For instance, there appeared to be a general agreement that outer space, at least in the part considerably distant from the earth, was beyond national sovereignty and should be used freely for the welfare of mankind. The Committee might accordingly discuss whether or not it was feasible and desirable to establish such general principles and, if the answer was in the affirmative, what those principles could be.

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(Mr. Kakitsubo, Japan)

Finally, the Committee might point out briefly in its report that any consideration of a codification of space law was not practical at present and that the Committee had therefore not dwelt upon it. His delegation reserved the right to speak on the details of the legal problems later.

Mr. CHAYET (France) stressed that in the study of the problems before the Committee it was necessary to exercise caution and to retain a sense of proportion, while at the same time taking care to ensure that action was not entirely inhibited by excessive humility.

Referring first of all to problems of method and the form he thought the report to be prepared by the Legal Committee might take, he pointed out that the main ideas set forth in the United States working paper (A/AC.98/L.7) were very similar to those held by his own delegation.

Under resolution 1348 (XIII) the Committee was required only to deal with the peaceful uses of outer space. Furthermore, it was instructed to report on the nature of the legal problems which might arise, rather than suggest methods of settling them. There could, however, be a happy medium between the mere listing of the major problems involved and the preparation of a code of regulations applicable to outer space. It would be useful to state as briefly as possible, after the description of each problem, the various ideas which had been expressed in that connexion, on the understanding, of course, that no solution would be proposed and no preference expressed for any particular suggestion.

Moreover, he thought that the words "programmes to explore outer space" in resolution 1348 (XIII) did not apply only to programmes in progress or already completed but also to those which were expected to be, and probably would be, put into execution in the fairly near future. It was known, for instance, that some scientists were at present deeply concerned over the unfortunate and irrevocable consequences which the dispatch to the moon of certain vehicles or substances might have for future exploration of outer space. Even if no theoretical rules were to be established, it would seem that before certain exploration programmes now under consideration were put into effect a few common-sense provisions might be adopted in order to safeguard common property.

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(Mr. Chayet, France)

The general lines of the document to be prepared by the Committee having thus been sketched, the rules of law already applicable in outer space should be indicated. Some of the general provisions of the Statute of the International Court of Justice and of the United Nations Charter, in particular Article 1, could most certainly apply to human relation in space.

The United Kingdom representative had given a very good description of the nature of the legal problems involved. He did not propose to go over each of those problems in detail but wished to state his point of view on the basic question of the definition of outer space. On the basis of the universally recognized rule of the sovereignty of each State over the air space above its territory and its territorial waters, the first concern should be to prescribe the upper boundary of the atmosphere. In view of the manifest inaccuracy of the scientific data upon which jurists would have to base their deductions, it seemed vain to seek a solution to that problem; nevertheless it was still desirable to establish an approximate boundary, even on a provisional basis, in order to limit the field of application of juridical rules concerning air space and those, obviously different in many respects, which would be prescribed for outer space. In that connexion it might be possible to establish, as had been suggested, an intermediate zone between air space and outer space, in which the exercise of exclusive sovereignty by the subjacent State would be limited. That would in fact be the only justification for establishing a zone contiguous with air space, for none of the other arguments thus far advanced in favour of such a zone appeared convincing.

With regard to the legal status of outer space, it appeared likely that the Committee would have to state that at the present time there was no rule of law that would be applicable, apart from certain provisions of the Charter and the Statute of the International Court. If the Committee did not think it was in a position to recommend any solution of that problem, it should at least point out the many disadvantages of accepting the theory that some parts of outer space should be regarded as under the exclusive jurisdiction of a single State and it should indicate that world public opinion was clearly inclined to regard outer space as res communis. The French delegation would consider that an appreciable advance

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(Mr. Chayet, France)

had been made in international co-operation if the Committee's work finally resulted in preventing the appearance in outer space of the disputes that divided States in their terrestrial relations.

Those rules were equally applicable to the annexation of celestial bodies, and the Committee could indicate the advantages of joint exploitation. It would also be advisable to draw a distinction between the various types of vehicles travelling in air space and outer space respectively, particularly since the rules now applicable to vehicles travelling in air space might be considered applicable, at least during a part of the journey, to vehicles launched into outer space and designed to return to earth; thus the rules applying to the various vehicles should accordingly be based on their nature and characteristics. There were some very apt comments on that point in the document submitted by the Italian delegation (A/AC.98/L.6) and in the report of the ICAO secretariat.

In conclusion, he said that the drafting of the document that the Committee had been asked to produce should be entrusted to a small drafting group that would meet privately and submit the results of its work to the Committee.

Mr. MEEKER (United States of America) said that his delegation's working paper (A/AC.98/L.7) was based on observations and suggestions made during the general debate and had, for convenience, been drawn up in the form of a draft report by the Committee to the General Assembly. The Ad Hoc Committee had been asked to report on the nature of legal problems which might arise in the exploration of outer space. That entailed the preparation of a list of actual and anticipated legal problems. A bare list, however, would not be very illuminating to those who had not taken part in the debate and it would therefore be appropriate to provide a selective list accompanied by some discussion which would indicate why particular questions had been included and furnishing some clues regarding priority of treatment. At the same time it should be remembered that the Committee had not been asked to recommend solutions. The United States delegation thought that it would be most helpful to the General Assembly in its future work if currently identifiable problems were separated into two general groupings according to whether or not they could be dealt with relatively soon.

The problems that should be dealt with first, which were listed in section B of document A/AC.98/L.7, concerned relations among Governments and were not

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(Mr. Meeker, United States)

immediately and primarily concerned with relations between Governments and private persons. The United States draft did not attempt to prescribe organizational or procedural means of solving the various problems listed and of promoting international co-operation under United Nations auspices; the Ad Hoc Committee might wish to consider those questions in connexion with paragraph 1 (c) of General Assembly resolution 1348 (XIII). It should be observed that some legal questions might not call for special treatment by way of international agreement or otherwise; for example, the application of the United Nations Charter and the Statute of the International Court of Justice was not limited to the confines of the earth; moreover, the representative of Brazil had enunciated the principle that outer space was free and open to all States on the basis of equality among States as set forth in the Charter.

Section C of the United States working paper listed a second group of problems, those which could already be foreseen but which did not appear susceptible of early disposition. They were no less important than the first group. It was recommended that the legal problems and their relative priority should be kept under continuing review by whatever means the General Assembly might deem fitting.

He proposed that after the close of the general debate a working group, perhaps appointed by the Chairman, should study the various documents before the Committee and the records of the debates on the legal problems that had taken place in the General Assembly, the Ad Hoc Committee and the Legal Committee. The working group could prepare a draft report on the subject referred to in paragraph 1 (d) of General Assembly resolution 1348 (XIII). The group could consult members of the Technical Committee and representatives of the specialized agencies, as required. It could then report to the Legal Committee, which would examine the report before submitting it to the Ad Hoc Committee.

In conclusion, he said that, because of the acceleration of the pace of history in the modern era, it was now possible to view contemporary events in a wider and deeper perspective; that laid increased responsibility upon the peoples and Governments and gave greater opportunities for creative political action. The challenge was so great and its demands on human knowledge and resources so vast that a level of international co-operation commensurate with the task ahead could in time relegate international differences to insignificance. It was therefore

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(Mr. Meeker, United States)

to be hoped that well-considered beginnings in developing law to govern activities in outer space would result in rules and relationships that would stand the test of time.

Mr. ADAMIYAT (Iran) said that the Committee was not called upon to formulate a code of laws for outer space or to study the legal aspects of the question in detail; it should confine itself to identifying the legal problems raised by the execution of space-exploration programmes, enumerating them and possibly grouping them according to subject and order of priority.

The debate had shown the importance of the legal, political and economic questions raised by the conquest of space, and while it would be rash to embark on an over-ambitious attempt at codification it would be equally unwise to delay too long in studying the problems involved and finding solutions, since unnecessary delays could only increase political rivalries and international tension.

With regard to the space problems themselves, he said that outer space should be used for peaceful purposes only, as the General Assembly had already recommended in its resolutions 1148 (XII) and 1348 (XIII). An international agreement on the subject should be concluded as soon as possible.

It appeared that any study on the legal status of outer space should begin with the consideration of the doctrine of sovereignty over air space. The recognition of the principle of absolute sovereignty over air space by the Paris Convention of 1919 and the Chicago Convention of 1944 constituted a repudiation of all previous theories about freedom of flight above the territories and territorial waters of a State. Perhaps there had been no need at that time to determine the upper limit on the air space subject to the sovereignty of States, but there were no grounds for stating that the Conventions of 1919 and 1944 made it possible to extend the sovereignty of a State into outer space. It was therefore necessary to reach an understanding on the exact scope of the rule of international law on the subject.

With regard to the rules of law that applied, he did not consider that it was possible to invoke the general principles of law recognized by civilized nations, or the United Nations Charter, for the purpose of governing the relations between States in outer space. The question of the law of outer space should be approached from a truly international point of view in order to obviate national

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(Mr. Adamiyat, Iran)

rivalries. The notion of ownership of outer space had no place in international law, since space was infinite and could not be subject to national sovereignty; space and celestial bodies should be regarded as the common domain of all nations. All States should have an equal right of access to and use of outer space and to that end there should be international control within the framework of the United Nations.

Another very important question was that of responsibility for damage caused by the fall of vehicles sent into outer space; the Iranian delegation considered that disputes concerning State responsibility in the matter of space vehicles should be subject to the compulsory jurisdiction of the International Court of Justice, whose judgements would constitute one of the sources of space law.

In conclusion, he said that the study of the issues concerned should be undertaken as soon as possible, since solving new international problems was often a lengthy process.

The CHAIRMAN suggested that the working group proposed by France and the United States should consist of the representatives of France, Japan, Mexico, the United Kingdom and the United States, the Chairman and the Secretary-General's representative being ex officio members; Mr. Nisot, Rapporteur of the Committee, could also be a member. Representatives of the specialized agencies, too, could attend the discussions if the working group considered that necessary.

It was so decided.

The meeting rose at 4.20 p.m.