Mr. NISOT (Belgium) considered that the Secretary-General's report did not require the approval of the Ad Hoc Committee and could, under paragraphs 1 (a) and 2 of General Assembly resolution 1348 (XIII), go forward direct to the General Assembly.

Sir Pierson DIXON (United Kingdom) requested the Secretariat to prepare for the Ad Hoc Committee's next meeting a draft paper with proposals for the structure of the Committee's report to the General Assembly. In order to allow time for preparation of that paper and study of the recently circulated documents, he proposed the adjournment of meeting.

It was so decided.

The meeting rose at 4.35 p.m.

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AD HOC COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

SUMMARY RECORD OF THE THIRD MEETING

Held at Headquarters, New York,
on Thursday, 7 May 1959, at 3.15 p.m.

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PRESENT:

Chairman:	Mr. MATSUDAIRA	Japan
Rapporteur:	Mr. NISOT	Belgium
Members:	Mr. AMADEO Mr. ORTIZ de ROSAS)	Argentina
	Mr. BARLOW	Australia
	Mr. GIBSON-BARBOZA	Brazil
	Mr. ROSE	Canada
	Mr. CHAYET	France
	Mr. ADAMIYAT) Mr. ABDOH)	Iran
	Mr. ORTONA	Italy
	Mr. KAKITSUBO	Japan
	Mr. ESPINOSA y PRIETO	Mexico
	Mrs. RÖSSEL	Sweden
	Mr. EVANS	United Kingdom of Great Britain and Northern Ireland
	Mr. BECKER	United States of America
Secretariat:	Mr. DOBRYNIN	Under-Secretary for Political and Security Council Affairs
	Mr. SCHWARZ	Secretary of the Committee

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ADOPTION OF THE AGENDA (A/AC.98/Agenda 3)

The agenda was adopted without opposition.

PROGRAMME OF WORK OF THE COMMITTEE

Mr. BECKER (United States of America) said that it might be useful, before examining the legal problems which might arise in the carrying out of programmes to explore outer space, to recall the terms of operative paragraph 1 (d) of General Assembly resolution 1348 (XIII) defining the Committee's terms of reference in the matter. The Committee was requested to state, in as precise terms as possible, the nature of those problems and to prepare a list of the questions requiring legal examination; the Committee was not called upon to formulate immediate answers to those questions, nor to study them in depth with a view to proposing definite legal rules. Knowledge of the universe was still very rudimentary and it would be illusory and even dangerous to endeavour to formulate at the present stage a comprehensive legal code which progress in space science would very soon render obsolete.

It was quite plain that 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 and that those instruments were applicable to the relations of earthly States in outer space as well. In particular, the principles set forth in Articles 1 and 51 of the Charter were clearly applicable to questions relating to outer space in so far as those questions might affect the maintenance of international peace and security, the development of friendly relations among nations and the achievement of international co-operation. However, the question of the applicability to outer space of rules of customary international law and provisions of existing treaties raised very complex and time-consuming problems. It would therefore seem advisable that the Committee should not deal with those questions, which were in any case outside its terms of reference.

A considerable debate had developed in existing "space-law" literature concerning the need for or advisability of an early international agreement delimiting the boundary between "air space" and outer space. Some authors argued that it was necessary not only to define that boundary in order to fix

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(Mr. Becker, United States)

the upper limit of national sovereignty, but also to limit the application of that sovereignty to "air space" so as to permit international agreements to be reached later regarding the legal character of outer space. Among the proponents of that argument there were wide divergencies of view as to how "air space" should be defined. Some of them proposed that space should be divided into successive concentric zones extending out from the earth. Others, while agreeing that an upper limit should be fixed to air space, considered that the sovereignty of the State should not necessarily end at that upper limit.

When the Committee came to study those problems, it could examine at least three different approaches: (i) it could consider the wisdom of a strictly pragmatic approach, which would allow customary international law to develop without specific efforts being made to adapt that law by agreement to the new context of outer space; (ii) it could consider the feasibility and desirability of concluding international agreements on particular aspects of space exploration and related activities, agreements which would regulate space activities in so far as they impinged upon both air space and outer space; and (iii) it could consider whether to prescribe some limit of altitude beyond which space would be unquestionably considered as outer space, free and open to all States for activities not precluded by applicable agreements or rules of international law. In the present state of information, it would seem that there could be no definite agreement on regions of space nearer to the earth, but in the future it might be possible to arrive at an agreement on an upper limit for air space and a lower limit for the beginning of outer space than that originally agreed upon. That third approach would have the advantage of bestowing a large measure of freedom of action on nations with respect to a defined region of outer space and would make possible an early start on the consideration of the whole problem.

The Committee might also consider the possibility of entrusting the study of certain problems relating to outer space to existing international organizations. The International Telecommunications Union, for example, would be well equipped to study the allocation of frequencies to space vehicles and objects.

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It would be premature to convene in the near future a general conference to study all the legal problems raised by the exploration of outer space. In the opinion of the United States delegation, it would be preferable at the present time to consider what specific legal problems should be dealt with on a priority basis, either because of the likelihood of their giving rise to disputes in the near future or because they could be resolved easily with the present knowledge of outer space. The Committee might wish to recommend in its report to the General Assembly that those problems should be taken up in some order of priority agreed upon by States.

He proceeded to give a preliminary list of the legal problems of outer space, indicating the order in which they might be considered.

The first problem was that of the liability arising from the fall of space vehicles or objects; under the domestic law of a number of States a judicial remedy was available to plaintiffs against the State only for negligent torts, but it seemed likely that international law might develop so as to hold the State of origin liable for damage regardless of fault. The Committee might wish to explore the desirability of suggesting the conclusion of an international agreement on whether such liability should be held to be absolute. The real problem, however, was that of enforceability; in order to deal with it, a recommendation might be made that any dispute as to a State's liability for injury or damage caused by one of its space vehicles or objects should be submitted unconditionally to the compulsory jurisdiction of the International Court of Justice.

The second problem was that of the recovery of space vehicles and objects or parts of them; in that connexion, an agreement might be sought as to the right to secure the return of space vehicles or objects to the launching State after they had landed upon the territory of another State; such agreement might be made dependent upon the launching State's undertaking to be liable for any injury or damage caused and also, possibly, upon that State's giving advance notice of the launching of any space vehicle.

The identification of space vehicles and objects raised a problem which would become progressively more serious; agreed methods of identification should therefore be laid down. The markings and flags used on the earth and

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at sea seemed hardly suitable for vehicles and objects not intended to return to earth. It seemed more practical to assign to each vehicle a call-sign for transmission at regular intervals. Satellites could also be identified by their orbital characteristics. Whatever method was used, it might become desirable to establish a central system of registration of identification marks, call-signs, etc., that would be accessible to all States. In connexion with the problem of identification, consideration should be given to the associated problem of the automatic destruction of derelict satellites or the termination of their transmissions.

It might also be considered whether agreement was desirable to protect the public from hazards to health and safety, which might be created by the carrying out of space exploration projects, and what agreements and regulations were needed to safeguard space or celestial bodies from contamination.

At present, the re-entry of space vehicles and objects into the atmosphere raised few legal problems, but that would no longer be so when it became possible to put men into orbit, since an extremely minor deviation in course might have an enormous effect upon the location of the landing site. It was difficult to estimate the seriousness of those problems, but scientific advice should certainly be sought before any attempt was made to define them and to fix their priorities. One problem arose from the difficulty of distinguishing a re-entry-capable non-weapons satellite from a guided or ballistic missile; the landing rights of such a vehicle should be made dependent upon advance notice being given of launching, course and any identified variations in course, and also on the admission by the launching State of libability for any injury or damage caused by the vehicle.

Another problem the Committee might wish to consider was that of sovereignty over celestial bodies. It was not for the Committee to decide whether States were entitled to exercise sovereignty over celestial bodies or whether such bodies should be regarded as res communis, i.e., incapable of appropriation. But the Committee should point out that problem and inquire as to the scientific context in which it would be posed. In that connexion various courses were open:

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to wait until the problem actually arose, to decide that celestial bodies were incapable of appropriation, or to establish some form of international administration to co-ordinate scientific activities in that field.

Two problems seemed to be of relatively low priority: mutual interference between space vehicles and objects (scientists would have to be consulted as to the likelihood of such interference and regulations introduced to minimize it) and the questions of relations with extra-terrestial life.

He was not suggesting that the Ad Hoc Committee should adopt a particular point of view, but merely wished to draw the attention of members to the various problems involved, so as to enable them in due course to choose appropriate methods of dealing with them.

Mr. NISOT (Belgium) said he had listened with great interest to the statement of the United States representative, who had expressed views on a number of important legal problems. He would reserve the right to make a statement in the Legal Committee when he felt sufficiently sure of his facts. His silence at the present stage of the debate should not be interpreted as indicating that he had taken up a particular position on the points that had just been made so eloquently.

Mr. CHAYET (France) felt that the profound analysis given by the United States representative had mapped a course for the Committee's future discussions. It seemed premature, however, to broach fundamental issues at that stage and he would confine himself to a consideration of the problems of organizing and carrying out the task before the Committee.

The Legal Committee would first have to decide whether it should appoint a rapporteur or set up a drafting group. It would then have to decide whether its meetings should be public or closed. His delegation believed that closed meetings would be more in keeping with the nature of the Committee's work. Lastly, the Committee would have to decide on the type of opinion it wished to consult. No useful source of information should be neglected and the technical nature of the study it was undertaking should prompt the Committee to seek the advice of representatives of suitably qualified organizations, such as ICAO and ITU. It might also consider inviting representatives of scientific organizations.

With regard to the nature and scope of the work to be undertaken, his delegation felt that there was no question of proposing solutions to the problems

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raised and, still less, of drafting legislation. The General Assembly had merely requested a report on the nature of the legal problems that might arise in the carrying out of programmes to explore outer space, and the Committee's primary task was to list those problems. Theoretical discussions should be avoided and, as the law of outer space was a new field, the Committee should be careful not to argue by analogy. The results of the initial work would of necessity be provisional and everyone should be free to pursue an analysis further, or even to change an opinion.

The Legal Committee might do well to distinguish between matters of principle and practical issues. In his delegation's view, the former category included the delimitation of outer space, possible appropriation of celestial bodies, safety measures for traffic outside the earth's atmosphere and prohibition or restriction of flights by satellites in the atmosphere. The practical issues, which could be examined in greater detail, would include a study of common legal terminology, the identification of the nationality of vehicles, the use of radio frequencies, the disclosure of transmission codes and the recovery of parts of objects launched into space.

Mr. EVANS (United Kingdom) said that the statement made by the United States representative was extremely interesting and that his Government would study it very carefully.

He would merely comment at that stage on the scope of the Legal Committee's functions. The problems of space exploration were numerous, complex and difficult, but the terms of reference of the Ad Hoc Committee were limited by the wording of operative paragraph 1 (d) of General Assembly resolution 1348 (XIII). The Committee was not concerned with all the legal problems relating to outer space, but only with those which might arise in the carrying out of programmes to explore outer space. It was concerned only with the peaceful uses of outer space. That excluded, for instance, questions relating to military uses and disarmament.

Furthermore, the General Assembly resolution referred only to the "nature of legal problems". The formulation of a new body of law as complex as that which confronted the Committee involved broadly four phases: (1) identification of the problems; (2) determination of the priority to be accorded to the solution

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of each; (3) determination of the approach or method to be followed with a view to achieving a solution, and (4) working out a solution according to the method adopted. To what extent did these four phases come within the Committee's mandate? The Committee was clearly not called upon at the present stage to formulate a solution of any of the legal problems involved. Its essential function was to identify them and, in doing so, it should indicate to the General Assembly the significance and implications of each problem and perhaps add some observations on the degree of priority which might be given to its solution. He was doubtful as to the extent to which the Legal Committee should or would have time to examine the methods of reaching a solution of particular problems. He felt that the most it could do would be to give the General Assembly some indication of possible approaches or methods without choosing between them. Indeed, in many cases the choice of method would prejudge the nature of the solution.

If their work was to be successful, the Ad Hoc Committee and the Legal Committee should confine their discussion of the substance of the legal problems concerned to what was necessary to identify them and to indicate their nature to the General Assembly.

Mr. ORTONA (Italy) said that it was too early for his delegation to comment fully on the detailed statement made by the United States representative. He would therefore confine himself to a few general remarks.

His delegation welcomed the establishment of the Legal Committee as it attached great importance to the legal problems relating to the peaceful use of outer space; that had been clearly shown by the statements made by the Italian representative at the thirteenth session of the General Assembly. In order to perform its task satisfactorily, the Legal Committee should first consider how far the general rules and principles of international law could apply to outer space. Consideration could also be given to certain special rules, such as those governing air and maritime navigation. In that connexion, it might perhaps be useful for the Committee to have the assistance and advice of ICAO. However, extreme prudence should be exercised in extending the application of the existing rules to outer space. For instance, the fall of

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an object from outer space onto the national territory of a State would create a situation to which no existing rule could apply. Lastly, it would no doubt be desirable to draw on the experience acquired during the International Geophysical Year which had been an example of effective international co-operation.

The Legal Committee should therefore: (1) evaluate the general rules and practices in use, which might be applied to exploration of the atmosphere; (2) identify the rules and machinery for dealing with related matters, which were applicable in part to outer space; (3) identify particular fields for which an international codification might be attempted.

Under international and national law, outer space was generally presumed to begin where the atmosphere ended. After determining its physical limits, it would be necessary to decide whether outer space should be considered as res communis omnium, in which case it would also be necessary to decide that outer space was open to all States which would be entitled to use it in accordance with international rules.

It was difficult to establish general limits as they would have to be fixed for a long time to come and future conditions could not be foreseen, space travel being only in its infancy. There could therefore be no question of regulating at the present stage developments which were as yet unknown. Accordingly, the task now was to define appropriately the various aspects of the situation as it stood at present and the problems which it raised. That situation appeared to be as follows: vehicles and artificial satellites were now being launched without difficulty; such objects appeared to have been used so far for peaceful purposes; objects travelling in space belonged to the State which had launched them; it was necessary to determine liability for any damage such objects might cause; recovery of objects or parts of objects which fell in foreign territory created a problem which might require adoption of special rules; questions of public health and public safety were arising; it might shortly become essential to codify regulations concerning space travel; it was already planned to send human beings into outer space; it appeared necessary to arrange for the free exchange of information in order to promote further advances and avoid duplication and dangerous incidents.

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His delegation considered that the Legal Committee could perform its task effectively only by working closely with the Technical Committee. It therefore hoped that there would be permanent consultation between the two Committees and that a practical system would be evolved to ensure that information flowed satisfactorily from one to the other.

Mr. AMADEO (Argentina) said that the statement made by the United States representative was a valuable contribution but that it did not in any way imply that the Committee's attitude had already crystallized. Owing to their complexity, the legal problems relating to outer space required detailed study and his delegation reserved the right to present its views in the Legal Committee. However, it wished to emphasize at the outset the importance it attached to the general principle of the legal equality of States in the field of outer space. It would be impossible to find concrete solutions if a basic legal principle was not first established to govern that new field. That was precisely one of the functions of the Committee, as defined in General Assembly resolution 1348 (XIII).

Mr. GIBSON-BARBOZA (Brazil) considered that the statement of the United States representative was an extremely important contribution to the Committee's work. While his delegation reserved its position on the problem as a whole, it wished to remind the members of the Committee that in resolution 1348 (XIII) after bearing in mind Article 2, paragraph 1 of the Charter, the General Assembly stressed that international co-operation and programmes in the peaceful uses of outer space were to be undertaken "under the United Nations auspices to the benefit of States irrespective of their economic and scientific development."

The CHAIRMAN reminded the Committee that it had very limited time at its disposal. He hoped that delegations would be prepared to participate with the necessary calm and impartiality in the work of the Committees of the Whole, when the latter convened on 26 May.

The meeting rose at 4.35 p.m.