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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE SECOND MEETING

held at the Palais des Nations, Geneva,  
on Tuesday, 29 May 1962, at 3.15 p.m.

Chairman:

Mr. LACHS (Poland)

Secretary:

Mr. SCHACHTER

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and use of outer space (item 3 of the agenda) (continued)

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CONSIDERATION OF LEGAL PROBLEMS ARISING FROM THE EXPLORATION AND USE OF OUTER SPACE  
(item 3 of the agenda) (continued)

General debate (continued)

Mr. AMBROSINI (Italy) said that the evolution of the new branch of law for outer space would depend on the reply to such questions as whether territorial law could be extended to outer space; what the legal status of that space should be; whether it was possible and necessary to establish a demarcation between the atmosphere, which was under the sovereignty of States, and outer space; and whether or not outer space should be closed to military use.

The two principles set out in resolution 1721 (XVI) were not only fundamental but also historic, for they marked the first such agreement made by all the States of Earth. Circumstances were therefore propitious for constructive work by the Legal Sub-Committee. However, pending the demarcation of inner and outer space and what Mr. Segni, the President of Italy, had termed the neutralization of outer space, it would be premature to attempt codification. He therefore agreed wholeheartedly with the suggestions made by the United States and the USSR that the Sub-Committee should focus on certain specific problems, such as assistance to and rescue of space vehicles and their crews, and the recovery of space vehicles landing off course. Fortunately the provisions of international instruments relating to the safety of human life at sea and in the air provided a useful starting point.

With regard to the duty of States and their nationals to assist craft in distress, he recalled the generous help given, before the existence of any relevant international convention, to the dirigible Italia when it had encountered difficulties in its polar flight. The proper course seemed to be, as the United States representative had suggested, to prepare a draft resolution on the subject for submission to the General Assembly.

Another problem touched upon by both speakers was the possibility, resulting from the exchange of notes between President Kennedy and Prime Minister Khrushchev, of a convention on liability for damage caused by space vehicles. That problem, though far more complex than those of rescue and assistance, also had humanitarian aspects. The United States representative had urged that liability should be absolute. Legislation in analogous fields, however, such as aviation and navigation, provided for limited liability. Insurance problems would also have to be borne in mind. The matter would therefore have to be examined carefully to determine whether

limits should be established for compensation. Work already done on the law of transport of nuclear materials and nuclear shipping - in which damage had already been caused - would need careful study. His delegation shared the United States view that that very complex question could best be dealt with by a small committee of experts, whose work, after study in the Sub-Committee, could be transmitted through the Committee to the General Assembly for approval.

Mr. RAO (India) said that the obligations set out in Article 1 (4) and Articles 13 and 56 of the Charter should be borne in mind in the context of the Committee's discussions. The law of outer space was certainly a field in which the United Nations should act as a centre for harmonizing the action of nations in the attainment of common ends. The speed of technological advance in space had not yet been matched in the building of institutions to provide an orderly framework for that new dimension of human activity.

Some non-governmental international organizations, such as the International Council of Scientific Unions and the Committee on Space Research, had been active in that field. UNESCO had encouraged such activity and had outlined the future plans for co-ordinating the scientific efforts of its members. The World Meteorological Organization and the International Telecommunication Union had already done important work, and would undoubtedly make further substantial contributions at the Extraordinary Administrative Radio Conference to be held in 1963.

He pointed out as a hopeful sign that the Sub-Committee's Secretary was Mr. Oscar Schachter, the author in 1951 of an article entitled "Who owns the Universe?" which had initiated the principle, later embodied in General Assembly resolution 1721 (XVI), that outer space was not subject to national appropriation. It was also encouraging to note that outer space had not raised such acute controversy as had, for example, atomic energy. Furthermore, a spirit of co-operation and basic appreciation of international law permeated the writings of Soviet Union and United States scholars and government spokesmen, such as Professor Korovin and Mr. Galina of the Soviet Union and Mr. Becker, Legal Adviser to the Department of State. The latter had indicated, for example, that the United States attitude towards claims to sovereignty in outer space would be similar to its attitude towards such claims in Antarctica. Professor Korovin had also observed that the Paris, Chicago and related conventions were inapplicable to cosmic space,

that national law did not extend to it, and that analogies drawn from sea or air law were not pertinent. Those attitudes augured well for the work of the Sub-Committee, and had led to comparable proposals by the USSR and the United States in their respective draft texts for general and complete disarmament e.g. articles 14 and 15 of the Soviet draft (ENDC/2) and article D (1-4), Stage I, of the United States draft (ENDC/30).

On implementation of the two principles on which agreement had been reached: that outer space should be governed by international law and should not be subject to national appropriation, his delegation held the following views. First, it would welcome a declaration by all Powers, and particularly by the two great Powers concerned, that outer space should be kept free from any military use. As the head of the Indian delegation to the thirteenth session of the General Assembly had said, not outer space but what traversed it was likely to lead to man's destruction. The ultimate objective should be the conclusion of a convention aimed at the exclusively peaceful utilization of outer space for the benefit of man.

Secondly, applying mutatis mutandis a principle set out by the Permanent Court of International Justice (Series A, No. 10, 1927) by virtue of the principle already adopted in resolution 1721 (XVI) implying the total absence of any territorial sovereignty in outer space, it should be recognized that no State might exercise any kind of jurisdiction in outer space.

Thirdly, agreement between the two most advanced countries in the field, the United States and the USSR, was a prerequisite to progress towards appropriate solutions, though it would not in any way prejudice the interests and welfare of all other States, especially the less-developed countries of Asia and Africa.

Fourthly, it should be recognized that penetration into outer space was the concern of mankind and that the jurisdiction of the United Nations over it was unquestioned.

His delegation reserved its comments on the proposals made at the preceding meeting by the United States and the USSR until they were available in written form and it had had an opportunity to study them carefully.

Mr. CALDERON PUIG (Mexico) said that any foundations for outer space legislation laid by the Sub-Committee would profoundly influence the future of humanity, friendship between the nations, and the peaceful use of outer space.

The messages exchanged between the President of the United States and the Chairman of the Council of Ministers of the USSR and the statements of the United States and Soviet representatives at the previous meeting, clearly showed a desire for fruitful international collaboration.

General Assembly resolution 1721 (XVI) provided a sound basis for the Sub-Committee's work; but no complicated framework should be constructed for regulations which scientific advance might very soon render obsolete. Space legislation should be based on the United Nations Charter; but it should be remembered that the Charter was seventeen, the space age only five years old.

It was gratifying to note that the nations which had advanced furthest in the exploration of outer space agreed in principle on the most urgent problems: humanitarian treatment for astronauts in distress, and the salvage of space vehicles involved in accidents so that the causes could be investigated. The liability of States for any damage caused by space exploration to third parties was another subject of high priority. He agreed with the Italian representative that other no less important questions might arise during the debate. The Sub-Committee should adopt a prudent and realistic attitude towards the drafting of instruments to deal with essential problems.

His delegation was firmly convinced that international collaboration for the peaceful use of outer space would contribute effectively to the work of the Eighteen-Nation Committee on Disarmament. Co-operation between the great Powers on the problems of outer space might reduce international tension and create greater mutual confidence. It was to be hoped that the space age would be known in history as the age of lasting peace.

Mr. SPACIL (Czechoslovakia) said that the exploration of outer space for the practical purpose of improving living conditions was one of the means of strengthening peaceful co-existence and international collaboration. His delegation agreed with the representatives of those countries which had already organized space flights that it would be unrealistic at the present stage to attempt a complete codification of outer space law. Such law would evolve gradually out of the results of practical space exploration, and it was not possible to predict all the legal problems that would arise. The Sub-Committee's task was to deal with those problems which had already been posed by space flights and called for a solution. It was

satisfactory to note that the principles of General Assembly resolution 1721 (XVI) were generally accepted. There also seemed to be agreement on the duty of governments to return space vehicles and crews after emergency landings, and on the need to deal with the problem of compensation for accidental damage caused by spacecraft in the territory of foreign States.

A specific problem which the Sub-Committee should take up was the preparation of a document containing general principles to guide the action of governments in matters of outer space. The United States representative appeared to deny the need for such a document and to argue that General Assembly resolution 1721 (XVI) covered the ground adequately. The fact was that the General Assembly resolution, though its importance should not be underrated, did not deal adequately with a number of principles which were more or less universally recognized and had already been discussed in the literature of international law and of the nascent space law - e.g. the right of governments to use outer space, the unlawfulness of interference with scientific space research by other States, the unlawfulness of claims to the appropriation of outer space or of celestial bodies, and the prohibition of the use of outer space for military purposes and of space telecommunication for war propaganda. Those principles should be fully defined in a Magna Carta of outer space. To say that they were fully covered by the General Assembly resolution, so that no specific international instruments were required, was like saying that the United Nations Charter covered all United Nations activities and there was thus no need for the nearly two thousand resolutions which the General Assembly had so far adopted. The Sub-Committee must look beyond the present stage of space exploration to the time when there would be not only space vehicles but also manned space stations which would serve as starting points for planetary travel. He hoped, in view of the vital importance of such a basic document, that his proposal would be supported.

A second specific question for the Sub-Committee was the obligation of governments to return apparatus and crews of foreign States which had been forced to land in their territory. The problem had immediate practical importance, and

should be regulated by a broad international convention, not a General Assembly resolution, since it was essential that any relevant legal instrument should have unchallengeable binding force and apply to all States, not only to Members of the United Nations. The question was of such great interest to all that the acceptance and ratification of a convention could be confidently expected.

His delegation was not opposed to the idea of a treaty concerning compensation for damage caused by space vehicles; but, unlike the United States representative, it felt that the preparation of such a treaty had better be entrusted to a working group consisting of representatives of States which were members of the Sub-Committee and which would be selected on the basis of geographical distribution, rather than to a working group of legal experts appointed by the Secretary-General. In that way the work would be quickened, because governments would already be able to participate in the drafting of such a treaty in the initial stages.

The meeting rose at 4.15 p.m.