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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE THIRD MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 30 May 1962, at 3.20 p.m.

Chairman:

Mr. LACHS (Poland)

Secretary:

Mr. SCHACHTER

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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. ALMOUN (Lebanon) agreed with the Chairman that law should relate closely to the facts. The affirmation in General Assembly resolution 1721 (XVI) that the United Nations Charter applied to outer space therefore raised a number of questions. The Charter had been framed for sovereign States with frontiers and human populations. Whether it could be applied in the very different conditions of outer space was doubtful. The second affirmation in the resolution that outer space and celestial bodies were not subject to national appropriation appeared much more important. It stated a novel principle in law, in thought and in action. It was a portent of the future, an expression of human solidarity transcending conflicts of interest or prestige, and might well usher in a new era. The principle, though affirmed by the General Assembly, should be reiterated by the Committee either in a declaration, as proposed by the Soviet Union representative, or in a preamble to a convention, or in any other suitable form.

For the Sub-Committee's programme of work certain specific problems had been suggested for study: liability for damage caused by space vehicles, and consequences of their emergency landings. With regard to method, statements in the Sub-Committee and a study of the documents of the Committee's previous sessions suggested that comprehensive codification was not regarded as either practicable or desirable at the present stage, because it might prejudice subsequent efforts based on a better understanding of the facts. Against that opinion, it might be contended that a space code could usefully lay down certain general principles and was quite capable of evolving in step with new developments. In its absence, some countries might create precedents favourable to themselves; its presence might limit their ambitions. Moreover, no code claimed to provide for every possible contingency.

The debate so far reflected not only a profound knowledge of international law but an awareness of the facts now confronting humanity. The members of the Committee, though jurists, were not so engrossed in their work's legal aspect as to overlook its general political side.

Reference had been made to the messages exchanged between President Kennedy and Prime Minister Khrushchev, and the United States representative had rightly said at the first meeting that collaboration in space exploration might lead to a political atmosphere in which the problems of disarmament would lend themselves much more readily to solution. The delegation of Lebanon had been happy to see the two countries which could be described as discoverers of outer space find common ground in the Sub-Committee.

Miss GUTTERIDGE (United Kingdom) said that her Government fully supported the principles enunciated in part A of General Assembly resolution 1721 (XVI). The ultimate objective of all who were concerned with the legal aspects of the use and exploration of outer space must be agreement on a legal regime for outer space and the celestial bodies. It might be attractive to draw up a code of rules immediately, but her delegation considered that the law of space should be made responsive to the facts of space and that a legal regime should be established step by step as the need arose. A comprehensive legal code was not desirable or practicable at the present stage. Scientific and technical advances were so rapid that premature codification might prejudice subsequent efforts to develop the law on the basis of a more complete understanding of the problems.

Her delegation therefore favoured a different approach: to identify the legal problems which might arise, and to decide which of them required early action. That approach appeared to command general acceptance in the Sub-Committee. Among the practical problems already defined were the return of space vehicles and assistance to space vehicles in distress. Her delegation would support a draft resolution of the kind to which the United States representative had referred. Its adoption would not necessarily preclude a formal agreement later.

She also agreed with the Soviet Union and United States representatives that liability for space vehicle accidents should be regarded as a priority item. It could not be satisfactorily dealt with by the adoption of a General Assembly resolution embodying general principles, but required a specific international agreement. Her delegation would consider both the United States proposal that a small group of experts appointed by the Secretary-General, and the Czechoslovak

proposal that a working group consisting of States represented on the Sub-Committee and chosen on a geographical basis should draft the agreement. The United Kingdom delegation would comment later on both proposals and enlarge on certain questions, such as the basis of liability when a satellite had been put into orbit jointly by or more States, or by an international organization.

The Sub-Committee might also wish to discuss the regime which should apply to a manned station established on a celestial body, a problem which might soon acquire practical importance. In doing so the Sub-Committee would in no way derogate from the general principle that outer space and the celestial bodies were free for exploration and use by all States. The topic of a declaration governing the relationship of States in outer space would be difficult to discuss until a fuller explanation had been given of the proposed scope and contents and particularly of the extent to which the existing provisions of international law, including the United Nations Charter, were considered to be inadequate.

The ultimate goal of a satisfactory legal regime for outer space would be brought considerably nearer if the Sub-Committee could agree on practical proposals for giving effect to recognized general principles.

Mr. PICO (Argentina) said that the subject transcended by its very magnitude the means and interests of individual States and called for international co-operation. As the exploration of outer space was still at an early stage of development, it was important to recognize the limitations imposed by lack of information. In evolving the law of outer space, caution should be the watchword, lest rules arrived at too hastily should be rendered inapplicable by rapid technological progress.

His delegation would like in particular to hear debate on demarcation between the atmosphere and outer space; the legal regime applicable to celestial bodies on which any State had established stations; the legal status of spacecraft control over the launching and orbits of spacecraft and artificial satellites; and liability for damage caused by spacecraft or artificial satellites in the territory of a State or by atmospheric pollution.

Mr. PATEY (France) said that his delegation believed that the problems should be catalogued, after which an order of priority should be established. Whatever approach was adopted, however, it should be borne in mind that any solutions chosen by the Sub-Committee would have to fit into a larger whole and should not be so rigid as to hamper future action.

The USSR delegation had referred to the problem of locating and rescuing space vehicles and their crews after an accident, and the USA delegation had proposed a study of liability. Both topics were closely linked with a number of others. For example, if a space vehicle was to be returned to the launching State, or had caused damage for which that State might be held liable, provision would have to be made for a means of identifying it and its various parts. Furthermore, it might have been launched jointly by a number of States, or at the instance of an international organization.

A general problem of particular concern to his delegation was the exact scope of the two basic principles set out in resolution 1721A (XVI). For most of the preceding speakers those two principles were apparently the immutable foundation on which the law of outer space was to be built; nor did he wish to contest them, since they had been approved unanimously by the General Assembly. It was doubtful, however, whether their wording expressed fully and precisely what the Assembly had had in mind. To take the first principle, not all rules of international law could apply to outer space: for instance, its rules for the appropriation of unclaimed territories. Moreover, he would hesitate to affirm that the Charter contained no provision incompatible with the objectives concerned.

His Government subscribed without reservation to the second part of the second principle. In the first part, due weight should be given to the words "in conformity with international law", since some limitations on freedom were indispensable if it was not to be abused. The Sub-Committee would have to determine what limitations would be necessary in order to ensure maximum freedom for all and among other things to prevent contamination of space and celestial bodies.

The meeting rose at 4.10 p.m.