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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE  
LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE FOURTH MEETING  
held at the Palais des Nations, Geneva,  
on Monday, 4 June 1962, at 3.20 p.m.

Chairman: Mr. LACHS (Poland)

Secretary: Mr. SCHACHTER

CONTENTS:

Consideration of legal problems arising from the exploration  
and use of outer space (item 3 of the agenda) (continued)  
General debate (continued)

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

General debate (continued)

Mr. SILOS (Brazil) recalled that his country had consistently advocated the principle of the equality of all Member States in the exploration and use of outer space, so that every country, irrespective of its stage of development, could share the benefits and, even though it could not participate directly in exploration, make its political and legal contribution to the establishment of the law of space.

The Sub-Committee should chiefly study such practical problems as liability for damage caused by satellites, and the recovery of space vehicles and their crews; it should perhaps also draft a declaration of the general principles which should govern the exploration and use of outer space. The existing proposals concerning those practical problems were not related to the law of outer space, but merely derived from its exploration and use. They could therefore be dealt with under the international law of Earth. For that work, as the representative of Italy had pointed out, the provisions of existing international instruments might provide a starting point. His delegation would co-operate at the appropriate time in seeking a solution for any specific legal problem which might arise. In the meantime it would support the making of studies, particularly those mentioned by the United States representative, which should - at least at first - be undertaken by working groups of the Sub-Committee.

His delegation would support a declaration of principles of space law, with the first and fundamental principle stated in the second preambular paragraph of General Assembly Resolution 1721 A (XVI): that the exploration and use of outer space should be only for the betterment of mankind and to the benefit of all States, irrespective of the stage of their economic or scientific development.

The extension of international law and the United Nations Charter to outer space should be regarded as an initial stage, to be followed by broad limitation of the sovereign rights of States. Neither existing international law, based upon State sovereignty, nor the United Nations Charter, had foreseen the coming of the space era or the use of nuclear energy.

The use of outer space for military purposes, the execution of nuclear tests in outer space, and the use of satellites for reconnaissance purposes should be dealt with not in the declaration but by the Eighteen-Nation Disarmament Committee.

His Government opposed such uses of outer space, but it would be useless to deny the political realities of the time and to try to prevent such uses outside a disarmament agreement implemented under effective international control.

His delegation did not in principle favour nuclear tests carried out to explore the geomagnetic fields, and deemed it highly advisable that they should be restricted to scientific purposes and internationally observed and controlled.

The declaration could state principles governing radio and television broadcasts, which should be placed under United Nations control.

He was fully aware of the limitations imposed by the position of his country, which at the present stage of its development did not participate directly in the exploration and use of outer space. Since, however, every nation shared the potential risks, all nations were entitled to seek ways of avoiding them.

Sir Kenneth BAILEY (Australia) said that the Sub-Committee's mandate, derived from resolution 1721 (XVI) and from the decision of the Committee on the Peaceful Uses of Outer Space at its session in March 1962, was fortunately wide: it embraced nothing less than the ultimate and possibly long-range development of a comprehensive legal régime regulating, in the interests of international co-operation, the peaceful uses of outer space. Certain factors must, however, limit the present task of the Sub-Committee. The state of man's knowledge, incomplete though rapidly growing and changing, of the exploration and use of outer space pointed clearly towards work of an inductive and empirical kind on those matters which required immediate and practical adjustment. The attempt to draw up a comprehensive general code or régime for outer space should therefore be postponed. In a milieu subject to rapid change the wise course, as the history of air law clearly illustrated, was to avoid adopting in any form principles which might fetter evolution. For lack of experience the first air navigation convention, drawn up in 1919, had been founded on rather abstract general considerations and had recognized the sovereignty of States over their superjacent air space, a rule on which the international law of the air was still based. It had proved an inadequate foundation for civil purposes because it made overflight, even of the territorial sea and in mere transit, without the express consent of the subjacent State an international trespass. Although in practice no other course might have been open to the international law-makers of 1919, how much easier and more satisfactory would have been the subsequent

development of international civil aviation if a decision on basic legal principles could have been deferred until the world's flying needs had taken clear factual shape!

In search of the proper rule to be applied to a new situation, the lawyer turned first and naturally to the rules already governing situations that could be recognized as comparable. Thus, in the early development of the international law of the air, analogies had been drawn from the law of property in land. Situations were, however, seldom if ever really identical, and the appropriateness of an analogy must always depend on the closeness of the comparison. In a field such as outer space, where man's knowledge was so rapidly developing and changing, it was peculiarly difficult to isolate features on which really fruitful analogies could be based. He did not suggest that it had been a mistake to formulate the two principles noted in resolution 1721 (XVI), which embodied the General Assembly's views on certain urgent practical issues. In the opinion of his Government, however, the existing state of man's knowledge of outer space and his activities in it made premature any attempt to work out the full implications of those principles or to extend them into anything like a general régime.

If the Sub-Committee attempted to draw up a comprehensive regulatory code, one of its early problems would no doubt be to work out a demarcation between that air space within which the subjacent State had sovereign rights, and the outer space which was open to all States and contained nothing subject to national appropriation. It would be wiser, in view of the illustration from air law, to postpone any attempt to formulate a criterion of demarcation, which might even in the end turn out to be functional and not spatial at all.

For the same reasons his Government suggested that the Committee should defer, until the scientific investigations of COSPAR disclosed a clearer factual basis for a sound and definitive formulation of principle, any attempt to deal in the Sub-Committee with prevention of the use of outer space by States in ways that might be harmful to the scientific experiments of others.

The Sub-Committee would best discharge its task if it kept faithfully within the bounds imposed by its legal character. Some of the matters specifically mentioned during the March meetings of the parent Committee, such as prohibition

of the use of space vehicles for the dissemination of war propoganda or - an even wider suggestion - prohibition of any military use of outer space, seemed to his Government plainly within the competence of the Disarmament Committee rather than that of the Sub-Committee. Even if no Disarmament Committee were in being, such matters could not properly be settled by a Legal Sub-Committee, since intrinsically they were wholly political.

The representatives of India and France in particular had called the Sub-Committee's attention to some aspects of the first of the two principles embodied in General Assembly Resolution 1721 A (XVI): that international law, including the United Nations Charter, applied to outer space and celestial bodies. No question could be more plainly political than whether to go beyond the Charter, and indeed to modify in respect of outer space the rights which both expressly and implicitly the Charter reserved to States. It was, of course, almost customary for the lawyer to enter only after the policy decisions had been taken by others. The Sub-Committee was not to decide whether there should be rules regulating the use of space vehicles for meteorological purposes or to supplement the world's telecommunications systems; although, when the scientific, technical and policy decisions had been taken, it might properly advise on rules for giving effect to them. Perhaps some of the other matters referred to at the March meetings of the parent Committee were likewise essentially scientific or political rather than legal.

In the time available for the Sub-Committee's present meetings, it could not hope to exhaust its terms of reference. There would clearly have to be other meetings later, not only because time was limited, but because new problems would arise or old ones become more pressing as the exploration of outer space continued and its use became more varied.

There seemed to be general agreement that the Sub-Committee should take up first two specific questions which might become practical problems at any time: the rescue and return of space vehicles and astronauts, and liability for damage caused by space vehicles. The second stage would apparently include the important questions of contamination of and from outer space, and of space experiments that might prevent or impair the scientific work of others (interference between space projects). The formulation of legal rules in those fields must, however, await the answers not only to the scientific and technical but also to essentially

political questions. When the consultant groups established by COSPAR had communicated their views to the parent Committee and to others, both on the importance and urgency of the questions and on how they might best be answered, it might even appear that no legal action was required.

Next in priority, in his Government's view, would come questions of the jurisdiction and law applicable to men in space and manned stations on celestial bodies, and demarcation between the air space which belonged to States in sovereignty and outer space which did not. Here the formulation of rules would be a distinctively legal task; but, again, highly political decisions might have to be taken first, no doubt in virtue of scientific and technical decisions made in the light of man's growing knowledge of outer space and the activities that were possible within it.

Such a scheme of priorities would have practical advantages, enabling work to be planned well ahead and giving some assurance of an organized study of the whole legal field. It should, however, be kept under constant review so that it might be modified in response to changing needs.

Mr. PETREN (Sweden) agreed that it would be premature to attempt to draw up a comprehensive code of space law. What was required was a review of the legal questions arising out of spatial activities so far, or about to be, undertaken, and decisions on action which could or should be taken. He agreed also that the Committee should concentrate first on the law of assistance and of liability. The first might be stated in a General Assembly resolution proposed by the Sub-Committee. The second was more complicated and called for a special convention which would have to be drafted by a working party or a separate sub-committee.

It would be useful if, before a working party or separate sub-committee were established, the members of the Sub-Committee debated such questions as the nature of the damages for which compensation might be claimed, the State liable to make compensation, the principle on which liability was to be based, and the body - preferably an international authority - which was to decide claims.

Mr. CADIEUX (Canada) said the Committee on the Peaceful Uses of Outer Space and its two sub-committees had been placed at the helm of a ship about to embark on the greatest voyage of discovery of all time. The Legal Sub-Committee was to lay the foundations of an entirely new field of law. Space law would govern not only relations between States in outer space, but also relations between

Earth as a whole and outer space, including above all the celestial bodies. No one knew what forms of life existed in outer space, and it would be presumptuous to conclude that there was life only on earth.

His delegation had listened with interest to the Soviet proposal that the Sub-Committee should draw up a set of basic principles to guide States in the exploration and use of outer space. As yet, however, Canada wished to retain a completely open mind on that proposal. Some representatives had doubted whether sufficient knowledge of outer space had been gained to form the basis for a legal code. Tentatively Canada shared that view, but his delegation would comment on it later.

In the meantime, the very fact that the Sub-Committee was considering the return of space vehicles, and legal liability and financial responsibility for space vehicle accidents, marked an important stage in planning the foundations of a code on outer space. The question of what else should be covered by that code would undoubtedly tend to answer itself as progress was made in the study of those two specific subjects.

There seemed to be general agreement that the Legal Sub-Committee itself could not draft a treaty on State responsibility for space vehicle accidents, and that the first draft should be prepared by a small drafting group. If that course were followed, the Sub-Committee would have to give the drafting group as many guidelines as possible for its work.

Over the years Canada had given full support to the principle enunciated in resolution 1721 A (XVI) that the exploration and use of outer space "should be only for the betterment of mankind and to the benefit of States irrespective of the stage of their economic and scientific development". In 1959 Mr. Diefenbaker had said of Canada in the space age:

"He would be a bold man who would venture to forecast which might be the practical applications of the extensions of fundamental knowledge which research into space is bringing. One thing, however, can be said, and that is that interest in the phenomena of space is universal. It is unthinkable that knowledge of the cosmos should be concealed or exploited for narrow nationalistic reasons. We must strive, therefore, for the development of effective co-operation between governments and nations in the exploration of space. We have before us the inspiring tradition of the scientific fraternity, which has consistently recognized that co-operation between the scientists of different nations is an imperative necessity."

Lawyers were given a unique chance to establish for outer space a rule of law which would be free of all the imperfections marring the rule of law on earth over the past centuries. He hoped the Sub-Committee would seize that chance.

Mr. TUNKIN (Union of Soviet Socialist Republics) read out a statement which his Government had issued on 3 June 1962 on the subject of the United States high-altitude nuclear explosions.<sup>1/</sup>

Mr. LEEKER (United States of America) said that he very much regretted that the representative of the USSR had seen fit to inject a polemical statement into the Sub-Committee's discussions. In October 1958 the United States, the United Kingdom and the Soviet Union had entered upon a moratorium on nuclear weapons tests, when serious negotiations were begun on a treaty to prohibit the testing of nuclear weapons. Those negotiations had continued for almost three years. During that period detailed proposals had been submitted and it had been hoped and believed that progress was being made. Late in the summer of 1961 the USSR had suddenly announced that it was repudiating the moratorium. That announcement, which had been followed by a series of Soviet tests in the atmosphere of a very high yield, cast doubt on the good faith in which negotiations had been conducted. The United States Government had been seriously concerned at that development and, with the Government of the United Kingdom, had appealed to the Soviet Government in September 1961 to halt testing. The Soviet Union had ignored their appeal, and also the General Assembly resolution calling upon it to abandon further planned tests.

Efforts to secure agreement on a nuclear test ban had been renewed in March 1962 when the Eighteen-Nation Committee on Disarmament had met in Geneva. A Sub-Committee on a Treaty for the Discontinuance of Nuclear Weapon Tests, composed of representatives of the USSR, the United States and the United Kingdom, had been established and started work. Unfortunately no progress had been made in that Sub-Committee because the USSR entirely rejected effective inspection and control. After seeking for many additional months to secure an effective test ban, and with no agreement in prospect, the United States Government had no alternative but to proceed with measures necessary to protect its own defence and security.

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<sup>1/</sup> The complete text of the statement was circulated as document A/AC.105/C.2/1



The USSR statement had given a highly-coloured account of the high altitude tests. To correct misapprehensions that the statement might have created, he wished to read out the following portions from a public statement issued by the Government of the United States on 28 May 1962:

"The Atomic Energy Commission and the Department of Defence announce that a series of high-altitude nuclear tests is scheduled to begin over Johnston Island in the Pacific in about four days. The initial test will be in the sub-megaton range and will be detonated at an altitude of tens of kilometres. In addition to the initial detonation there will be two detonations in the ionosphere at an altitude of hundreds of kilometres. One of these will be in the megaton range and the other in the sub-megaton range. At the request of President Kennedy a group of outstanding U.S. scientists, including Dr. James Van Allen, met recently to review the possible effects of the high altitude tests on the earth's natural radiation belts - the Van Allen belts. This group considered the questions regarding such possible effects that have been raised by some scientists in this country and abroad. The two detonations at altitudes of hundreds of kilometres are of primary interest in this connexion. It has been concluded that the detonation at the highest altitude may cause perturbation of a fraction of the inner Van Allen radiation belt. Any disruption of the inner belt is expected to disappear within a few weeks to a month. There will be no hazard to health. There is no need for concern regarding any lasting effects on the Van Allen belt and associated phenomena. On the contrary, these tests will give an opportunity to scientists to obtain important scientific data regarding the physics of the upper atmosphere, including the nature and cause of the Van Allen belts."

The United States delegation hoped that the Sub-Committee would not be diverted by any political sally but would give its whole-hearted attention to the problems law with which it had been entrusted.

Mr. GLASER (Romania) endorsed the statement by the USSR Government. The action of the United States Government in carrying out nuclear tests at a very high altitude, which by its own admission would affect conditions in outer space, contradicted its expressed intention of co-operating in the work of the Legal Sub-Committee. The United States reply to the Soviet Union's statement had been an excuse. The full history of the first atomic bombs and of nuclear testing, and

the vicissitudes of the disarmament talks, were however well known. The United States representative had attempted to minimize the possible effects of the high-altitude tests; but no one could be sure of their extent or nature, since no government had ever carried out such tests before. For an unknown period conditions in outer space would be changed: vast amounts of radiation would hamper movement and research there and give rise to the unpredictable and long-term dangers of fall-out. The appointment of the Sub-Committee demonstrated the confidence of governments in the rule of law. The greatest obstacle to its success was not lack of time or of adequate technical information, but the transference of the arms race to outer space.

Although it might be argued that it was too early to codify the law of outer space, it might subsequently be found too late to state the general principles which must guide international co-operation. In stating the principle that there must be no use of outer space for aggression, the Sub-Committee would not be making but interpreting international law, which, as the General Assembly had stated in resolution 1721 A (XVI), applied with the United Nations Charter to outer space and celestial bodies; since under the Charter there could be no aggression on earth or in the atmosphere, there could be none in outer space. Espionage as an act leading to aggression must also be prohibited.

The fundamental principles of international life on earth - the good-neighbour policy, co-operation for peaceful purposes, and peaceful co-existence - must also apply to outer space, and should be incorporated in the Sub-Committee's declaration of principles, along with the principles adopted by the General Assembly that outer space and celestial bodies were free for exploration and use by all States and not subject to national appropriation. It was still unnecessary to determine the demarcation line of outer space, just as it had been found unnecessary in 1919 to establish the limits of the atmosphere in order to regulate air traffic. Consideration of that question could therefore be postponed.

He endorsed the Australian representative's views on the danger of analogies. The concept of res communis usus might, if applied to outer space, be used to hinder the use of space for research by any State on the ground that it was common property. In addition to its declaration of principles, the Sub-Committee should take decisions on two questions, perhaps less urgent than the prohibition of aggression but of great topical importance: assistance to space vehicles and their crews in distress,

and liability for damage caused by accidents to space vehicles. His delegation favoured the adoption of a treaty on each question, as having greater force and the support of the conventions on aviation and life-saving at sea. A mere expression of intention in a resolution would be inadequate: governments must enter into formal undertakings.

His delegation hoped that the United States Government would make a positive contribution towards the initial regulation of the exploration and use of outer space so as to allow the progress of scientific research.

Miss GUTTERIDGE (United Kingdom) expressed her delegation's regret that the representative of the Soviet Union had seen fit to indulge in polemics and to make a political statement attacking the Government of a State represented in the Sub-Committee. Both that statement and the political part of the statement by the Romanian representative were completely out of place in the Sub-Committee and could only prejudice the outcome of its discussions.

Mr. RAO (India) again advocated the conclusion of a convention banning the use of outer space for military purposes. The debate had strengthened his delegation's opinion that the Sub-Committee should seriously consider whether to declare that outer space should be used for peaceful purposes only. The representative of Australia had doubted the wisdom of debate in the Committee on the banning of outer space for military purposes. His delegation could not accept that view. To ban outer space for military purposes would not only bring credit to the Committee but would also avoid legal chaos in a field potentially dangerous to the welfare of mankind.

His Government's considered view was that nuclear tests should not be undertaken by any State at any place, at any time, in any circumstances.

Mr. SZTUCKI (Poland) regretted that, while the Committee was discussing a basis for international co-operation in the peaceful uses of outer space, some States intended to use that space for entirely different purposes. It had been asserted that the question was purely political. The problems raised in the Soviet Government's statement were, however, closely related to the Committee's immediate legal work, since they bore directly on the principles of resolution 1721. The important legal arguments in the Soviet Government's statement deserved to be fully considered by the Sub-Committee.

Mr. AMBROSINI (Italy) regretted the course the debate had taken. He could not contest the right of the Government of the United States of America under international law to carry out the tests, nor the right of the Government of the USSR to refer to the matter. He did, however, contest the wisdom of introducing a purely political matter in the Legal Sub-Committee at a time when the Eighteen-Nation Committee on Disarmament was at work in the same building. Generally speaking, he agreed with the many representatives who had said that outer space should be used for peaceful purposes only; but he wondered how they were to achieve that object, especially in view of the absence of unanimity in the Sub-Committee. Again, if that objective was to be attained, it would be necessary to make an exception to the rule that law must follow the facts, as had been the case in the 1919 Convention on civil aviation. He wondered whether the Committee could not ban the use of outer space for military purposes.

He appealed for a return to harmony in the Sub-Committee.

Mr. PETREN (Sweden) said that the questions raised by the USSR came within the terms of reference of the Eighteen-Nation Committee on Disarmament. The Sub-Committee ought to restrict itself to its proper task, the peaceful uses of outer space.

Mr. GEORGIEV (Bulgaria) said that the spirit of co-operation which reigned in the Sub-Committee could be ascribed to the exchange of messages between the Chairman of the Council of Ministers of the USSR and the President of the United States. That exchange of messages had provided a suitable atmosphere for international co-operation, including solution of problems of international law. If the Sub-Committee wished that spirit of co-operation to continue, they must consider every happening in international life which had a bearing on existing treaties and agreements. That spirit of co-operation therefore obliged the Sub-Committee to discuss the questions raised in the Soviet Government's statement. As the USSR representative had stated, the Government of the United States of America had committed an act of aggression against humanity. It was therefore within the Sub-Committee's competence to discuss the matter. If it did not do so, it would fail in its responsibilities to mankind. Undoubtedly the question was political, but it also had very definite legal implications.

Mr. TUNKIN (Union of Soviet Socialist Republics) said, in reply to the statements by the representatives of the United States and the United Kingdom, that the USSR memorandum dealt with facts on which the success or failure of the Sub-Committee's work depended. The United States representative had blamed the USSR for breaking the moratorium; yet the United States Government itself had repeatedly declared that in certain circumstances it would not be obliged to abide by the terms of the moratorium. He could not see therefore why the United States Government expected the Soviet Union to be unconditionally bound by the moratorium. The Government of the Soviet Union had spared no effort to secure disarmament and a nuclear test ban. To any impartial observer it was clear that responsibility for the failure so far of negotiations on that subject did not rest with the Soviet Government.

The representative of the United States had quoted the opinions of scientists on the possible effects of the recent high-altitude tests. The Sub-Committee should note, however, that those were the opinions of United States scientists and that, even in the United States, some scientists did not share them.

Mr. COLLIER (Sierra Leone) said that the sphere of the Sub-Committee's discussion was clearly outlined in resolution 1721 (XVI), paragraph 2, which envisaged the study by competent experts of the legal problems arising from the exploration and use of outer space. He urged the Sub-Committee not to be led further into discussion of political implications which it was in no way competent to consider. It must confine itself to its specific task, and examine the principles governing such matters as the activities of cosmonauts and the return of space vehicles, and the procedure for dealing with issues which might arise later as knowledge of the subject grew, and might be discussed by a smaller group of experts.

Mr. KOPAL (Czechoslovakia) expressed surprise that some delegations considered the questions raised by the Soviet Government's statement outside the Sub-Committee's terms of reference. It was the task of the Sub-Committee to facilitate to the utmost the further peaceful exploration and use of outer space. The American tests might hamper space research and endanger the health of astronauts; they were therefore in clear contradiction with the purposes of General Assembly resolution 1721 (XVI) and with all the efforts made by the

Committee on the Peaceful Uses of Outer Space. He protested on behalf of his Government against preparations for such tests. The dangers of those tests had to be kept in mind, and it was very important that a document should be drafted containing general principles to guide the action of governments in matters of outer space. He hoped that a copy of the USSR statement would soon be distributed to all delegations.

Mr. MEEKER (United States) said that care should be exercised in departing from the Sub-Committee's decision that its deliberations were to be reported in summary and not verbatim records. If exceptions were admitted, it would be difficult to decide which statements were to be circulated in full.

Mr. TUNKIN (Union of Soviet Socialist Republics) said that it was recognized in all United Nations bodies that any delegation could submit a document and ask for it to be circulated as a conference document.

Mr. CADIEUX (Canada) assumed that other delegations wishing to prepare comments on the Soviet Government's statement could circulate them as conference documents.

The CHAIRMAN said he would discuss that question with the Secretariat.

The meeting rose at 6.20 p.m.