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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE TENTH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 13 June 1962, at 3.30 p.m.

Chairman:

Mr. LACHS (Poland)

Secretary:

Mr. SCHACHTER

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

Draft proposals by the USSR and the United States of America (A/AC.105/C.2/L.1, L.2, L.3 and L.4) (continued) and draft proposal by India (A/AC.105/C.2/L.5)

Mr. RAO (India), formally introducing his delegation's proposals as to the conclusions of the Legal Sub-Committee on Outer Space (A/AC.105/C.2/L.5 and Corr.1) said that the members of the Sub-Committee might be regarded as the authors of the document; he had merely summarized their views. After having very carefully studied all statements made in the Sub-Committee, he could affirm that nothing said by any delegation could be construed as conflicting with the contents of the Indian proposals. In submitting the document for discussion he stressed that the items proposed were all of a strictly legal character.

Miss GUTTERIDGE (United Kingdom) said that the task of the Sub-Committee was a continuing one. No spectacular results had been expected from the current series of meetings, but the members were united in their wish to lay a solid and lasting foundation for a legal regime for outer space. The extent of agreement might be judged by detailed examination of the first four proposals laid before the Sub-Committee.

Principles 2, 3 and 4 of the draft declaration submitted by the Soviet Union (A/AC.105/C.2/L.1) restated the two basic principles set out in General Assembly resolution 1721A (XVI). Her delegation regarded those principles as only a beginning, although a very important one and would certainly not rule out their elaboration and clarification as a task which might at some time be undertaken by the Sub-Committee. If, however, a declaration of principles was to be effective and to represent any real contribution to the development of international law, the principles embodied in it should be the outcome of a consensus of the international community, expressed in the practice of States or in some other way and so commanding general support and acceptance. An outstanding example of a declaration of that kind was Article 2 of the United Nations Charter. Although the somewhat different language employed in principles 2, 3 and 4 of the draft declaration, as compared with resolution 1721 (XVI), did not seem to represent any fundamental difference of meaning, any attempted elaboration of the basic principles commended to States by the General Assembly might cause confusion at the present stage in the development of the law of outer space.

The United Kingdom delegation did not, therefore, believe that the paragraphs in question would contribute to the clarity and application of the basic principles.

Again after very careful consideration, the delegation of the United Kingdom was unable to accept the other principles set out in the Soviet draft declaration. Some of the suggested new principles were in essence political rather than legal; others concerned matters on which opinions were divided. Principle 5, which had a bearing upon a subject considered quite recently in another form, would be inappropriate for consideration by the Sub-Committee.

Although the representative of the Soviet Union had denied that the intention of principle 6 was to enable one State to impose a veto on the activities of others in outer space, the fact that such a criticism - which the United Kingdom delegation endorsed - could be made necessarily meant that, before any attempt was made to lay down basic principles governing the matter, much further consideration would have to be given to the question of the exercise, in the general interests of all States, of the basic freedom to use and explore outer space. Her delegation did not, of course, reject the idea of international consultation and co-operation among scientists and technicians: it had noted with interest and satisfaction the beginning recently made by the Committee on Space Research of the International Council of Scientific Unions (COSPAR). It was in that direction that progress could be made, rather than by the formulation of insufficiently considered general principles.

The same general criticism could be made of principle 7: it contained a proposition which could not be stated as a generally accepted principle, and which seemed to be based on the practice of certain States where all activities were carried out by the State itself. It took no account of the cases in which certain activities in outer space were carried out by private entities, for example, the TELSTAR communications satellite. The control which might need to be exercised by States over such private enterprise, and the international obligations to be assumed by States in that respect, would develop out of State practice. It was likely, for instance, that most States prepared to permit private enterprise in that field would wish to provide some system for the licensing of space vehicles. Certain questions arising in that context were closely linked with the question of liability for damage caused by space vehicles.

and could not be resolved by the adoption of a general principle under which activities pertaining to the exploration and use of outer space should be carried out only by Governments, a proposition which was unrealistic in view of present and likely future developments.

Principle 8 constituted, in substance, a ban on the use of space vehicles for observation purposes and was, again, so closely connected with controversial political questions as to be quite unsuited to a declaration of basic legal principles. Moreover, in contradiction to the assertion by the representative of the Soviet Union, the United Kingdom held that observation from points outside the territory of any State was not contrary to international law; nor did such observation offend against Article 2 (4) of the United Nations Charter, since it involved neither the use nor the threat of force.

The general statement made in principle 9 did not add anything to the more detailed consideration of the question of assistance to space ships and their crews which should be attempted by the Sub-Committee, and concerning which there were two proposals (A/AC.105/C.2/L.2 and L.3). Her delegation would prefer, in the first place, a resolution of the General Assembly specifically affirming certain basic principles concerning the recovery of space vehicles which could be accepted and applied immediately by all States. It did not, however, rule out the possibility of an international agreement if that should later become necessary and desirable. For that reason it had given careful consideration to the Soviet proposal (A/AC.105/C.2/L.2) and had compared it with the United States draft resolution (A/AC.105/C.2/L.3). The latter covered points which were not included in the Soviet proposal: in particular it took into account the possibility that not only States or groups of States, but also international organizations, might be responsible for the launching of space vehicles. Although the plans of the European Space Research Organization (ESRO) did not include the launching of a manned spacecraft, the possibility was not excluded that an international organization might one day do so.

Article 4 of the Soviet draft agreement (A/AC.105/C.2/L.2) placed too broad an obligation on the State carrying out a search in the case of a descent on the high seas: it would be both useful and constructive to compare the provision in

the draft with article 25 of the 1944 Chicago Convention on International Civil Aviation (A/AC.105/C.2/2, Annex 1, page 1) and Regulation 15, Chapter 5 of the International Convention for the Safety of Life at Sea, 1948 (A/AC.105/C.2/2, Annex 2, page 2).

Article 7 of the Soviet draft agreement gave rise to many difficulties. If, for instance, the decision as to what constituted a device for the collection of intelligence information was left to the State in which the space vehicle had fallen, that State might refuse to return it whatever its true purposes. Even apart from that specific point, the article as it stood was clearly unacceptable to many members of the Sub-Committee and raised controversial political issues.

Her delegation supported the United States proposal that the drawing up of an international agreement on liability for space vehicle accidents should be entrusted to a group of experts who would prepare a text for subsequent consideration by the Sub-Committee (A/AC.105/C.2/L.4). Furthermore, as some particularly complicated problems relating to liability might arise in the case of launchings of space vehicles by international organizations, an opportunity should be given to representatives of intergovernmental bodies such as ELDO and ESRO to state their views during the preparation of the text and before it was submitted to the Sub-Committee. Although her delegation supported the United States proposal that a group of experts should be appointed by the Secretary-General of the United Nations, it was also prepared to consider the alternative proposal for the setting up of the group which had been made during the Sub-Committee's discussions.

However it was appointed, it would be necessary to give the group some indication of what the Sub-Committee considered to be the problems and the lines along which they should be resolved by the drawing up of an agreement. Her delegation would, therefore, be prepared to support a draft resolution such as that submitted by the United States, which included, in paragraph 3, certain guiding principles. Liability for space vehicle accidents should be an absolute liability: in the case of space vehicles, as contrasted with aircraft, it would be impossible, or at least extremely difficult, to prove fault or negligence. As suggested in the United States proposal, however, consideration might be given by the group of experts to the degree of care which might

reasonably have been exercised by the person or entity on whose behalf a claim was made. Her delegation also agreed in general with the other guiding principles suggested in paragraph 3, although it would endorse the comments by the representative of France in regard to the special case of a dispute to which one of the parties was an international organization.

The United States proposal rightly took into account the possibility that international organizations, not only States, might be responsible for the launching of space vehicles. In the context of liability, however, special problems might arise in the case of a joint project in which the State constructing and owning the space vehicle was not the same as the launching State. In particular, it would be necessary to consider whether the test for liability should be jurisdiction, in the sense of effective control over the space vehicle, rather than ownership. In some circumstances jurisdiction in that sense might be shared, and the group of experts would no doubt wish to consider whether in the case of a joint project liability should be joint or several. The group of experts might be asked to consider those points in addition to those set out in the United States proposal. It might also wish to consider the question of liability for accidents caused by space vehicles owned by a private entity. In that case, too, it should be provided that international liability should rest on the State which had jurisdiction over the private entity and which had authorised its activities in outer space, possibly through some form of licensing.

The United Kingdom delegation was most anxious that the meetings of the Sub-Committee should be seen to have achieved some useful and constructive result. If a start could be made by taking effective steps to lay the foundation of the law of space on two important matters - assistance to and return of space vehicles and personnel, and liability for space vehicle accidents - its work would have been well worth while. It should also keep in mind the possibility of the gradual evolution of further basic principles, an evolution which could not, however, be forced but should gradually develop through the growth of scientific and technical knowledge and the practice of States.

Mr. AMBROSINI (Italy) said that he was happy to note a conciliatory spirit in recent statements, which augured well for the success of the Sub-Committee's deliberations. In the establishment of general principles, the Sub-Committee should concentrate on problems on which something like unanimity prevailed. Any principles adopted over the opposition of a substantial minority, let alone a majority of countries, might not be applied, since ultimately rules of international law depended on consent. Of the principles proposed some appeared to command fairly general acceptance, others not. Patience was needed, and in time controversial problems would certainly become ripe for settlement by legal rules. The use of outer space for military purposes was a special case needing careful consideration: there was no need for factual experience in that connexion, but unanimous consent by all States would be necessary.

He did not share the view that the Sub-Committee should not concern itself with political issues. Law had an irreducible political element. The legal systems of States were based on their political and social concepts. The Sub-Committee, being called upon to deal with legal problems, was also competent to deal with the political aspects of those problems; but it would be necessary to await the agreement of a substantial majority on those problems before establishing a legal rule or principle.

At the previous meeting, the Bulgarian representative had said that the rights of property owners were qualified, even under the law of the capitalist countries, by the rights of other property owners. That was true, but only to a certain extent. Normally all owners of property had equal rights, and besides, the rules of private municipal law could not readily be transposed to public international law.

With regard to the return of astronauts and space vehicles, he said it would be a very useful beginning if the General Assembly adopted a resolution reaffirming the humanitarian principles which should be applied. Subsequently, a convention should be drafted, a task which would be extremely laborious and complicated as a glance at annex 12 of the Chicago Convention (A/AC.105/C.2/2, Annex 1) showed.

On the question of liability for accidents caused by space vehicles a declaration by the United Nations would likewise be very useful and should be followed by a convention. The representative of the United Kingdom had

advocated the principle of absolute liability. The Sub-Committee should, however, remember that in some instances that principle could not be applied: if for example, two space vehicles collided, to whom was absolute liability to be imputed? Nor could States always be held liable, for non-governmental agencies already existed which might engage in space projects. Besides, the operator of a space vehicle might not be identical with the owner, a situation quite common in aviation. In such instances, the operator should be held answerable.

The Indian proposals as to the conclusions of the Legal Sub-Committee (A/LC.105/C.2/L.5) seemed at first sight acceptable, but he might wish to comment on them in greater detail after having had more time for study.

The meeting rose at 4.25 p.m.