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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE ELEVENTH MEETING

held at the Palais des Nations, Geneva,
on Thursday, 14 June 1962, at 3.30 p.m.

Chairman: Mr. LACHS (Poland)

Secretary: Mr. SCHACHTER

CONTENTS:

62-18794

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

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

Mr. PETREN (Sweden) said that the Sub-Committee's first duty was to avoid failure to make any progress in carrying out its task, a negative result which would be all the more regrettable in view of the promising beginning that had been made. It was plain that the least controversial proposal before the Sub-Committee was that of the United States concerning liability for space vehicle accidents (A/AC.105/C.2/L.4), a question of interest to every State, whether or not it was actively engaged in the exploration of space. It would therefore be desirable primarily to attempt to make some progress in that direction, leaving aside for the moment the other subjects on which opinion was more sharply divided and on which further discussion and negotiation would be required.

The Swedish delegation could support the United States proposal for the establishment of an advisory panel which would prepare a draft international agreement on liability for space vehicle accidents, although it was not yet clear how the panel would be constituted.

The United States proposal also contained, in paragraph 3, certain guiding principles for the advisory panel. Although it might be argued that the adoption of those principles at that stage of the Sub-Committee's work would be premature, it would be useful if delegations in a position to do so would express their opinion on the proposed principles. The Swedish delegation had no difficulty in endorsing the first principle, set out in paragraph 3(a): it would merely point out that the adoption of that principle would make it necessary to establish a series of definitions, some of which might prove somewhat difficult. It would, for example, be necessary to define the meaning of the term "space vehicles" whether by reference to the design or by reference to the destination of the devices. If they were defined by reference to destination, it might also become necessary to define "space" in relation to the atmosphere, a definition which it had been judged preferable to avoid at that stage of scientific and technical development.

It would also be necessary to define the link between the State and the space vehicle for which it would be held responsible. It had been argued by the

delegation of the Soviet Union that only States should be authorized to carry out activities in space. He would incline to the opinion that space activities could not be limited by what particular States regarded as most appropriate in the light of their own systems. If non-governmental bodies were to be authorized to launch space vehicles, however, it would be necessary to envisage the granting of licences by the States concerned, and such a licensing procedure would provide the guarantees necessary for the purposes of international responsibility. He would also favour the provision of some system of registration or identification for space vehicles, so that the principle in paragraph 3(c) could be given full effect.

His delegation had also noted the principle in paragraph 3(b), under which negligence or fault on the part of the victim of the accident could be taken into consideration. In that connexion, it would perhaps be necessary to make some distinction according to the way in which the damage occurred. It might be that the space vehicle, following the law of gravity, would fall on the territory of a State other than that which had launched it or on a ship on the high seas. It might also be that the missile, of necessity passing through the atmosphere on its departure or return, would collide with a conventional aircraft, thereby also bringing into play the relevant legislation concerning the collision of aircraft. Again, if the traffic in outer space grew more intense it might be that two space vehicles would collide; or if space vehicles developed defects in space they might considerably disturb life on earth, for example, by the emission of Hertzian waves, affecting radio and electronic communications in a particular country. It might be, thus, that the question of the absolute nature of liability would have to be considered in a different light in different cases.

The guiding principle set forth in paragraph 3(c) also appeared acceptable. It should, of course, be taken in conjunction with paragraph 3(e), which was also acceptable to his delegation, and which provided for jurisdiction by the International Court of Justice in the absence of an agreement between the States concerned upon another means of settlement. His delegation considered that such litigation should be submitted to international jurisdiction.

In regard to the question of assistance to and return of space vehicles and their crews, and the draft declaration of principles (A/AC.105/C.2/L.1), he said the debate had shown that there was a link between the manner in which

several members of the Sub-Committee wished to approach those problems and the questions under consideration by the Eighteen-Nation Disarmament Committee, which should first take a decision on the subject. It would therefore be advisable for the Sub-Committee to defer any action on those questions in the meantime.

Sir Kenneth BAILEY (Australia) said that his country, although in a relatively minor degree as compared with the United States and the Soviet Union, was already a launching State, and, through membership of ELDO, which was to use Woomera as its launching site, would become more extensively so in future. The problems, technical and legal, of assistance and return and of liability might well be of serious practical concern to his Government.

Four proposals for legal action had been submitted, together with a proposal by the delegation of India (A/AC.105/C.2/L.5 and Corr.1) which represented a timely attempt to crystallize the Sub-Committee's thinking and suggested certain action in regard to the subjects covered by the other proposals. Although not one of the four proposals for legal action had been supported by anything like unanimity, that did not mean that there was no prospect of any practical achievement by the Sub-Committee. The success of the Scientific and Technical Sub-Committee was a challenge to examine, in a spirit of co-operation, the subjects which it might be possible for the Legal Sub-Committee to take by general agreement, notwithstanding the divergent views which had been expressed on matters both of legal substance and of legal form.

The differences of opinion in regard to the United States proposal concerning liability for space vehicle accidents (A/AC.105/C.2/L.4) related rather to questions of administrative and legal procedure than to legal substance and might, therefore, be more readily accommodated. His delegation found the proposal acceptable in its entirety. Since, however, it had been suggested that some of the guiding principles proposed in paragraph 3 might not be generally acceptable there might be good reason for not insisting on a panel of experts selected by the Secretary-General but rather for referring the matter to a working group consisting of States members of the Sub-Committee, chosen by the Sub-Committee, and each appointing its own representative. On the understanding that the working group would have access to all the records of the Sub-Committee, his delegation would therefore support the action proposed in paragraphs 3 and 4 of the Indian proposals (A/AC.105/C.2/L.5 and Corr.1).

In regard to the proposal of the Soviet Union for a draft international agreement on the rescue of astronauts and spaceships (A/AC.105/C.2/L.2), his delegation had no objection, in principle, to the preparation of a formal agreement, although it would not be surprising if a drafting group, in settling a text, found some technical questions rather intractable in the existing state of knowledge. Article 7 of the Soviet draft was, however, completely unacceptable for adoption by a Legal Sub-Committee. On a fair construction of the principles commended by the General Assembly in resolution 1721A (XVI), that international law applied to the conduct of States in outer space but that the use of outer space was free to all States, it would seem absolutely clear that to obtain information about the earth by means of a space vehicle did not per se involve any breach of international law. A decision to alter the law in that regard, by requiring all States to waive their legal rights, would be a top level political decision and therefore altogether outside the competence of a Legal Sub-Committee to take on its own initiative. Article 7 was unacceptable since it necessarily assumed that such a decision had been taken.

While maintaining that, in principle, it would not object to dealing with assistance and return by means of a formal agreement, the Australian delegation did not quite understand the reasons for the objections raised to the adoption of the course proposed by the United States in document A/AC.105/C.2/L.3 - a resolution of the General Assembly which could be adopted in the current year, even as an interim measure pending the preparation and adoption of a formal agreement. For that purpose, the United States proposal seemed altogether unexceptionable.

There was no doubt much to be said for the proposal made in paragraphs 2 and 4 of the Indian delegation's proposals, and for referring the subject to the same working group as was proposed for the question of liability, with instructions to consider both legal form and substance. The differences of view had been so strongly expressed in the Sub-Committee, however, that it was hard to see how a working group could be expected to resolve them. In those circumstances, it would seem that the Sub-Committee should be much influenced by the views of the States actively carrying on experiments in space. Perhaps, indeed, the question was at that stage rather of theoretical interest then of practical concern. As between a non-launching State and a launching State, the former would doubtless assist and return an astronaut from motives of sheer humanity and decency, whether there

was any applicable international instrument or not. Similarly, it seemed that a non-launching State should return to a launching State, as a matter of course, a space vehicle or its components, to which the non-launching State could scarcely lay claim. As between what might be called the recognized and established launching States themselves, the matter was perhaps best considered simply as one of give and take. If, therefore, the general feeling was that the subject could profitably be deferred for future consideration by the Sub-Committee, his delegation would not be disposed to object. Although the problem of space accidents was no doubt immediate enough, perhaps the need of a legal arrangement was not.

In regard to the draft declaration of principles proposed by the Soviet Union (A/AC.105/C.2/L.1), his delegation was not opposed to the formulation by the Sub-Committee of the basic legal principles applicable to the activities of States in the exploration and use of outer space. It endorsed the view expressed by the representative of the Soviet Union that it would be desirable to formulate, in an instrument having full juridical effect, the law intended to be covered by the two principles which the General Assembly had commended to States in resolution 1721A (XVI). A formal declaration to be accepted by States would be an appropriate instrument which would, incidentally, serve to give further precision to the principles, making it clear, for example, where and how they would operate as a formal waiver of rights that States would otherwise have at international law. The usefulness of such an instrument at the moment would, however, depend largely on its prospects of securing general adoption. If it were to contain elements making it unacceptable to the main groups of States, its very existence would necessarily impair the effectiveness derived by the General Assembly resolution from its unanimous adoption. His delegation would therefore approach with much caution the task of preparing such a declaration.

Moreover, the Sub-Committee should not transgress certain constitutional limitations inherent in its own existence as a Legal Sub-Committee, although it was not restricted to questions of mere form and was not merely a drafting committee: in carrying out its proper tasks it would frequently have to reach conclusions on matters of principle. First, however, it was necessary to determine its proper tasks: his delegation could not agree that the Sub-Committee's mandate was comprehensively legislative in the sense that it could deal with any subject whatever and recommend what the law should be. Other organs were responsible for considering some aspects

of the regime of outer space. The Eighteen-Nation Disarmament Committee, for example was dealing with matters of disarmament which were outside the Sub-Committee's terms of reference. It was proper that where relevant the Sub-Committee's decisions should wait on those of the Eighteen-Nation Disarmament Committee. The Legal Sub-Committee's true function was to study legal, and not political or technical, questions. If a Government contemplated the launching of a satellite and wished to consider whether the satellite should be equipped to record information about the earth (principle 8 of document A/AC.105/C.2/L.1) it might well ask its legal advisers whether to do so would be in accordance with its rights under international law. It was plain, however, that no Government would refer to its law officers the question whether, as a matter of policy, a direction should be given that such information should not be collected.

For example, the two practical questions of assistance to and return of space ships and their crews and liability for space vehicle damage had come within the cognizance of the Sub-Committee after consideration by the ad hoc Committee on the Peaceful Uses of Outer Space, and in document A/4141, placed before the General Assembly in 1959, the question of preparing legal arrangements for giving effect to the principles involved was listed among the legal problems requiring early consideration. The manner in which the General Assembly had dealt on that occasion with item 25 of its agenda (the documentation of which included A/4141) seemed clearly to justify the view that, in so far as the decision that those principles should be adopted was of a political character, it had been taken by the General Assembly on the report of its Political Committee. It would be wholly pedantic and unrealistic to cavil at the appearance of those matters on the Sub-Committee's agenda.

On the other hand, some of the matters dealt with in principles 5, 6, 7 and 8 of the Soviet draft declaration seemed to be plainly within the competence of other bodies, such as the Disarmament Committee. All four clauses included elements which required decisions wholly political in character and which could not usefully be considered by the Sub-Committee until the necessary political decisions had been taken by the appropriate organ of the United Nations. In view of the opinions expressed in the course of the discussions, it would not seem that the Sub-Committee could go further than the statement in paragraph 1 of the Indian proposals, although the delegation of Australia would envisage future discussions

in the Sub-Committee on the question of basic principles. Apart, perhaps, from some further analytical study of what, as a matter of law, was expressed and implied in the provisions of resolution 1721(XVI), greater progress might well be made, not by a frontal attack in the abstract, but as generalisations emerged, drawn from the Sub-Committee's examination of the further legal problems remitted to it, such as the avoidance of contamination, the avoidance of interference between space experiments, the exercise of jurisdiction over men in space and over stations on celestial bodies, and the demarcation between air space and outer space.

Mr. EL-ERIAN (United Arab Republic) thought that the Sub-Committee had made substantial progress in its deliberations, thanks largely to the initiative of the United States and USSR delegations in submitting the proposals contained in documents A/AC.105/C.2/L.1 - L.4. There appeared to be no difference of view with regard to liability for space vehicle accidents. The United States proposal (A/AC.105/C.2/L.4) covered the general outline of the legal problems which might be encountered. The principle of absolute liability seemed to command more or less general agreement; his delegation would give careful consideration to the proposition in paragraph 3 (c) and (d) that the prior exhaustion of local remedies should not be required and that any claim should be presented within a reasonable time after the loss had been incurred.

On the question of assistance to astronauts and space vehicles, too, there seemed to be agreement on general principles, but some difference of opinion on whether that matter should be dealt with by a General Assembly resolution or by an international agreement. He hoped that the United States and the Soviet Union would come to an understanding on that point. He supported the Italian delegation's suggestion that a declaration might be drafted as a first step, to be elaborated later, if necessary, in an international convention.

The need for the establishment of a working group was generally admitted, but the United States advocated a panel of experts appointed by the Secretary General, whereas the Soviet Union favoured an inter-governmental sub-committee. In that matter, too, it should be possible to reach agreement.

The general principles which should govern relations between States in the exploration and use of outer space raised a number of difficult questions, but

the discussion in the Sub-Committee had revealed considerable common ground. A combination of the "case law" and the "code" approach, as suggested by the Canadian representative, appeared to commend itself to most delegations, and it was recognized that the principles of General Assembly resolution 1721A(XVI) would have to be amplified.

Some representatives had stressed the need to obtain scientific data before any codification was undertaken and the need for prior agreement on policy decisions, and they had urged the Sub-Committee not to encroach upon the jurisdictic of other United Nations bodies. He admitted the force of those arguments, but suggested that they should not be applied too strictly. There was a causal relationship between the legal and the political aspects of many problems, and the Sub-Committee's work might give an impetus to policy decisions. The need for scientific data could be taken into consideration by whatever expert group was asked to prepare specific drafts.

The Indian proposals (A/AC.105/C.2/L.5) served as a meeting ground for the Soviet Union and the United States, and he hoped that the delegations of those two countries would be helped by the other delegations in the Sub-Committee to reach agreement. The Indian document recorded the progress made and enabled the Sub-Committee to pronounce itself on certain principles. His delegation supported the Indian proposals, which should provide a sound basis for general agreement. In its report to the parent Committee, the Sub-Committee should record the progress made and suggest the establishment of a working group.

The meeting rose at 4.30 p.m.