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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE SEVENTEENTH MEETING

Held at Headquarters, New York,
on Wednesday, 17 April 1963, at 10.45 a.m.

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PRESENT:

<u>Chairman:</u>	Mr. LACHS	Poland
<u>Members:</u>	Mr. BUDO	Albania
	Mr. MENDEZ	Argentina
	Sir Kenneth BAILEY	Australia
	Mr. MARSCHIK	Austria
	Mr. LITVINE	Belgium
	Mr. MEDICIS	Brazil
	Mr. MOLEROV	Bulgaria
	Mr. TREMBLAY	Canada
	Mr. N'GARABAYE	Chad
	Mr. HAJEK	Czechoslovakia
	Mr. LEMAITRE	France
	Mr. CSATORDAY	Hungary
	Mr. NARENDRA SINGH	India
	Mr. AMIRMOKRI	Iran
	Mr. ATTOLICO	Italy
	Mr. NAKAJIMA	Japan
	Mr. HAKIM	Lebanon
	Mr. CUEVAS CANCINO	Mexico
	Mr. DASHTSEREN	Mongolia
	Mr. TABITI	Morocco
	Mr. WYZNER	Poland
	Mr. HASEGANU	Romania
	Mr. GEORGE	Sierra Leone
	Mrs. RÖSSEL	Sweden
	Mr. FEDORENKO	Union of Soviet Socialist Republics
	Mr. FARMY	United Arab Republic
	Miss GUTTERIDGE	United Kingdom of Great Britain and Northern Ireland
	Mr. MEEKER	United States of America
<u>Secretariat:</u>	Mr. SCHACHTER	Secretary of the Sub-Committee

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CONSIDERATION OF LEGAL PROBLEMS ARISING FROM THE EXPLORATION AND USE OF OUTER SPACE: GENERAL DISCUSSION (A/C.1/879, A/C.1/881; A/AC.105/L.2 to 6; A/AC.105/C.2/4; A/AC.105/C.2/L.6) (continued)

Mr. FEDORENKO (Union of Soviet Socialist Republics) said that, during the five and one-half years since the USSR had launched the first artificial satellite, man had penetrated farther and farther into outer space. Mars I, launched by the USSR, had been travelling towards the planet Mars for five and one-half months and was sending scientific data back to Earth from a distance of over 100 million km. The USSR had recently sent Luna IV towards the moon, and the United States' space-ship Mariner II had made a journey to Venus. Less than three years after the first manned flight by Gargarin, the Soviet people had sent Titov, Nikolaev and Popovich into space, and other daring space explorers were being trained.

The activities of States in the exploration and conquest of outer space raised very important questions of international law. Time was of the essence. Unless those questions were duly settled, the unjustified position that had been taken by certain countries would inevitably create more and more obstacles to peaceful co-operation in outer space.

The General Assembly, justifiably concerned about the state of affairs in space law, had noted with regret that the Committee on the Peaceful Uses of Outer Space had not yet made recommendations on legal questions connected with the peaceful uses of outer space, had called upon all Member States to co-operate in the further development of law for outer space, and had requested the Committee to continue urgently its work on the further elaboration of basic legal principles. He had no doubt that substantial progress in that task could be made at the current session, if all the members of the Sub-Committee were prepared to make the necessary effort.

The USSR had constantly taken the initiative in seeking a solution to legal questions concerning outer space. In his letter of 20 March 1962 to President Kennedy, N.S. Khrushchev, Chairman of the Council of Ministers of the USSR, had stated that the time had come for the USSR and the United States of America to try to find a common approach to the settlement of important legal problems that life itself set before States in the age of space, and, in view of the agreement the two countries had found it possible to reach in the General Assembly on the initial principles of space legislation, which had then been unanimously approved by all the States Members of the United Nations, he had suggested that further progress could be made.

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(Mr. Fedorenko, USSR)

The USSR had submitted to the Committee on the Peaceful Uses of Outer Space a draft declaration of the basic principles governing the activities of States in the exploration and use of outer space (A/AC.105/L.2). It now proposed a revised text (A/AC.105/C.2/L.6) which took into account proposals by the United Arab Republic (A/AC.105/L.6), the United Kingdom (A/C.1/879) and the United States of America (A/C.1/881), and opinions expressed by the representatives of various other countries.

The Soviet delegation was, of course, ready to consider any useful comments on the revised text. In its view, the aim of the declaration should be the imposition of binding legal obligations on States which would serve as the foundation of a permanent system of space law imbued with the ideas of peace and friendly relations among the peoples. In international practice, questions concerning the law of the land, sea and air were regulated by special multilateral and bilateral agreements. In the past, the rules governing such subjects as the law of the sea and diplomatic relations had taken shape very slowly, but technological and scientific progress dictated its own time-limits. The rapid development of aviation at the beginning of the twentieth century had necessitated the prompt conclusion of special agreements in that field. Now, the extremely rapid development of space technology made the legal regulation of activity in outer space even more imperative. It was sometimes contended that space law would develop by itself, through the accumulation of precedent and experience. It was doubtful, however, that in that process the law would be able to keep pace with the facts. Moreover, if reliance was to be placed on custom, there was no point to the existence of the Sub-Committee.

The General Assembly had requested a prompt solution of the legal questions of outer space. It was therefore the task of the Sub-Committee to decide substantive questions and not limit itself to measures - providing only the semblance of a solution - such as the preparation of a draft resolution for the General Assembly. General Assembly resolutions were mere recommendations. The drafting of a resolution would simply divert the Sub-Committee from its task. His delegation was firmly convinced that, if Governments really intended to observe certain principles of conduct in outer space, they would want to see those principles laid down in a declaration having the full force of an international treaty.

(Mr. Fedorenko, USSR)

The USSR had included, as the seventh preambular paragraph of its revised draft declaration (A/AC.105/C.2/L.6), the reference in the United Arab Republic's draft code (A/AC.105/L.6) to the interrelationship of the technical and legal aspects of the activities of States in outer space. That interrelationship was demonstrated by both international and national practice. For example, when a number of West European countries had decided to undertake joint exploration of outer space, their first step had been to conclude an international agreement defining their rights and duties in the venture. Similarly, the United States Government had deemed it advisable to make the Aeronautics and Space Act of 1958 the legal foundation for its exploration of outer space, and it had adopted the Communications Satellite Act of 1962 before undertaking to create a system of communications satellites. Prior legal regulation was undoubtedly the natural and the best method for organizing international co-operation in the conquest of outer space, and the United States and all other States had shown that they considered it the best way to organize their domestic activities in outer space. The need for legal regulation was even more urgent when equal and sovereign States were co-operating in a new and unknown field.

Paragraph 7 of the new Soviet draft took into account the view of some representatives that the declaration should provide for the possibility of collective activities by States in outer space, such as those already undertaken jointly by the Soviet Union and the United States. The paragraph required States which combined their activities in that way to bear separate responsibility for compliance with the basic principles governing the activities of States in outer space.

In order to meet the views of those delegations which attached particular importance to the question of responsibility for damage caused by space vehicles, the Soviet Union had included a new provision on that subject in paragraph 11. If that provision were adopted, it would be necessary to settle several details connected with the subject of international responsibility. However, before a separate agreement on international responsibility could be drafted, it was necessary to agree on the principle that such responsibility existed.

(Mr. Fedorenko, USSR)

Paragraph 2 of the new Soviet text included provisions from the United Kingdom draft declaration (A/C.1/879) dealing with the question of sovereignty over outer space. The idea of ownership of objects launched into space and their components (paragraph 8) had been taken from the United States draft (A/C.1/881). The new Soviet draft also reflected a number of other ideas in the United States draft: the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes, the use of such exploration for the betterment of mankind and of States, irrespective of their degree of economic or scientific development, and the role of co-operation in the use of outer space in the development of mutual understanding and the strengthening of friendly relations between nations and peoples.

The Soviet draft proclaimed extensive rights for peaceful activities in outer space, while containing provisions defending each individual State and the international community as a whole against abuse of those rights. The idea of the free access of all States to outer space did not mean that States were free to engage in measures which might hinder other countries in their exploration or use of outer space for peaceful purposes. Outer space might be used for undesirable purposes and paragraph 6 of the Soviet draft therefore mentioned the principle of prior discussion and agreement between the countries concerned. That principle was a logical extension of international co-operation in the peaceful use of outer space and it was also mentioned in article 1 of the United Kingdom draft declaration (A/C.1/879). A good example of the principle could be seen in the work of the Committee on Space Research (COSPAR), which had set up an advisory group to study the possible harmful effects of experiments in outer space. It was also worth noting that a sub-committee of the Inter-Parliamentary Union had drafted a resolution on the legal questions arising from the use of outer space, which had emphasized the need to refrain from experiments or other activities in outer space which might interfere with its peaceful use.

The Soviet delegation had felt it necessary to include in its draft declaration a provision prohibiting the use of outer space for war propaganda and for propagating national or racial hatred or enmity between nations. The achievements of modern technology should not be used to promote inhuman ideas.

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(Mr. Fedorenko, USSR)

The General Assembly had envisaged that possibility in 1947, when it had adopted resolution 110 (II) on measures to be taken against propaganda and the inciters of a new war. His delegation had also felt it necessary to state in so many words, in paragraph 9 of the draft declaration, that the use of artificial satellites for the collection of intelligence information in the territory of a foreign State was incompatible with the objectives of mankind in its conquest of outer space. Every system of national law prohibited espionage and imposed severe penalties on offenders, including the services of a foreign State. For example, United States law regarded as espionage the collection by practically any means of defence information which could be used against interests of the United States or in the interests of a foreign Power. The same principle should apply to espionage in outer space, which was incompatible with the practice and theory of international law. Provisions of the Hague Convention of 1907 respecting the Laws and Customs of War on Land outlawed spying, and satellites used for the collection of intelligence material would be spies. Article 36 of the Convention on International Civil Aviation signed at Chicago in 1944 stated "Each contracting State may prohibit or regulate the use of photographic apparatus in aircraft over its territory". The altitude from which espionage was practised over a territory did not change the situation.

In order to ensure that no irresponsible acts were perpetrated by individuals or companies, the Soviet delegation had included in its draft declaration the provision that "All activities of any kind pertaining to the exploration and use of outer space shall be carried out solely by States" (paragraph 7). An increase in the activities undertaken in outer space by private enterprises could lead to private capitalist competition and other undesirable phenomena from the point of view of international co-operation.

Paragraph 10 of the Soviet draft stated a basic human principle. At the previous session of the Sub-Committee, the Soviet delegation had submitted a draft international agreement on the rescue of astronauts and spaceships (A/AC.105/L.3), to which no serious objection had been raised. It therefore seemed that, once the important task of preparing a draft declaration of basic principles had been accomplished, it would not be difficult to reach agreement

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(Mr. Fedorenko, USSR)

on the question of assistance and rescue. The Sub-Committee had before it the memorandum of the Secretariat on conventions and international agreements on rescue of and assistance to aircraft and vessels in distress and their personnel (A/AC.105/C.2/2). The Soviet delegation believed that the matter should be the subject of an international agreement, since that was the way in which the question of rescue was dealt with in international law.

The Soviet delegation believed that a declaration limited to basic principles would, if adopted, provide a firm basis for further agreements. Its formulation would be no easy task since full accord had not yet been reached on all points. The task would nevertheless, have to be undertaken if the very real legal problems presented by outer space activities were to be resolved. He believed that the draft put forward by his delegation met the requirements of the situation. The preparation of a draft declaration by the Sub-Committee would make it possible to lay a sound basis for the rule of law in outer space and he hoped that all members of the Sub-Committee would co-operate in carrying out that task.

Miss GUTTERIDGE (United Kingdom) said that her delegation had been disappointed at the failure of the Sub-Committee to reach agreement at its previous session. The Sub-Committee should look ahead, however, and devote its efforts to the performance of the task assigned to it by General Assembly resolution 1802 (XVII).

Although the drafts before the Sub-Committee showed some differences of approach, they also revealed some areas of agreement and her delegation believed that the Sub-Committee should concentrate on the latter. It was pleased to note that the USSR delegation, in its new draft (A/AC.105/C.2/L.6), had taken into account some of the proposals made by her own delegation. It welcomed, in particular, the USSR delegation's expressed willingness to consider comments which might be made concerning its text. Her delegation would comment in due course on the various proposals before the Sub-Committee.

Her Government believed that early agreement was possible on certain practical issues such as liability for space vehicle accidents and assistance to and return of astronauts and space vehicles. The Sub-Committee could usefully consider at its present session such legal questions as whether liability should

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(Miss Gutteridge, United Kingdom)

be dependent on proof of negligence or fault or whether it should be absolute; how liability should be assigned in cases where more than one State or organization was involved and whether liability should be limited in amount. Some conclusions should be reached on those points before the Sub-Committee took up the question of the procedure to be adopted for drafting an international agreement on liability for space vehicle accidents. The two proposals concerning assistance to and return of astronauts and space vehicles (A/AC.105/L.3 and 4) had certain features in common. It was to be hoped that the differences between them could be narrowed and that they might form the basis for an eventual agreement in the formulation of which the provisions of other international agreements relating to rescue and assistance could serve as a guide. However, careful consideration should be given to the United States representative's suggestion at the previous meeting that the adoption of a resolution by the General Assembly might usefully precede the conclusion of a more detailed international agreement on the subject.

Four drafts had been presented on the important question of the elaboration of basic principles to govern the activities of States in the use and exploration of outer space. That of her own delegation was intended merely to indicate certain principles flowing from those already contained in General Assembly resolution 1721 (XVI) and on which early agreement might be possible. It did not claim to be exhaustive. Her delegation associated itself with the Austrian representative's suggestion at the previous meeting that the Sub-Committee should proceed by gradual stages, concentrating first on those principles which commanded general support and taking up, at a later stage, further principles relating to matters at present being discussed by other bodies. Although as stated by the USSR delegation, resolutions of the General Assembly were not - save in the exceptional cases provided for in the Charter - binding upon Member States, a resolution, if adopted unanimously, would be most authoritative and would have some advantages over an agreement in view of the possibility that all States might not accede to an agreement or that delays in ratification or failure to ratify might considerably reduce its scope.

With goodwill on the part of all delegations and concentration on the existing areas of agreement, the Sub-Committee should, by the close of the session, be able to report substantial progress to its parent body and to prove to the world that it was not only in the fields of science and technology that man was able to advance in outer space.

The meeting rose at 11.50 a.m.