

UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/AC.105/C.2/SR.18
27 June 1963

ORIGINAL: ENGLISH

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE EIGHTEENTH MEETING

Held at Headquarters, New York
on Thursday, 18 April 1963, at 11 a.m.

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PRESENT:Chairman:

Mr. LACHES (Poland)

Members:

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)

Mr. PRUSA)

Czechoslovakia

Mr. LEMAITRE

France

Mr. CSATORDAY

Hungary

Mr. CHAKRAVARTY

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. KAREFA-SMART

Sierra Leone

Mr. HEDIN

Sweden

Mr. TIMERBAEV

Union of Soviet Socialist
Republics

Mr. FAHMY

United Arab Republic

Miss GUTTERIDGE

United Kingdom of Great
Britain and Northern
Ireland

Mr. MEEKER

United States of America

Secretariat:

Mr. SCHACHTER

Secretary of the
Sub-Committee

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TRIBUTE TO THE MEMORY OF MR. EVGENY KISELEV

On the proposal of the Chairman, the members of the Sub-Committee observed a minute's silence in tribute to the memory of Mr. Evgeny Kiselev, Under-Secretary for Political and Security Council Affairs.

GENERAL DEBATE (A/C.1/879 and 881; A/AC.105/L.2-6; A/AC.105/C.2/L.6) (continued)

Mr. FAHMY (United Arab Republic) said that, despite the progress made in the exploration and use of outer space and the celestial bodies, there were unfortunately no legal precepts to govern behaviour and co-ordinate activities in outer space. Although it was not necessary at that stage to elaborate a comprehensive and rigid set of rules, it was imperative to reach agreement on certain basic principles which could subsequently be supplemented or altered as required by technological and other changes. The Sub-Committee had a clear and far reaching mandate from the General Assembly and was called upon to accomplish a difficult but indispensable task. It was to be hoped that, with a clearer framework in which to function, the Sub-Committee would be able to make more progress than at the previous session. His delegation welcomed the procedure of holding a general debate, which would show whether there was any new basis for agreement.

Some of the draft declarations of basic legal principles before the Sub-Committee confined themselves to reiterating or clarifying the principles proclaimed by the General Assembly in resolution 1721 A (XVI), while others suggested additional and complementary rules of conduct. Opinions differed about whether specific problems such as liability for and assistance in space accidents should be dealt with in a declaration or a code, or separately. The fundamental difference, however, was not in the approach adopted but in the substance of the proposals.

The first principle proclaimed in General Assembly resolution 1721 A (XVI) was that "international law, including the Charter of the United Nations, applies to outer space and celestial bodies". It was the responsibility of the Sub-Committee to elaborate on that principle by developing new rules of international

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(Mr. Fahmy, United Arab Republic)

law to cover outer space. At the first session of the Sub-Committee, several members had stressed the need for a definition of the general concept of international law and the Charter. His delegation thought that a study should be made to determine precisely what rules of international law or practice were applicable to outer space. The United Nations Office of Legal Affairs might be requested to prepare a basis for such a study.

The second principle in resolution 1721 A (XVI) was that "outer space and celestial bodies are free for exploration and use by all States in conformity with international law and are not subject to national appropriation". Although the question whether States had unlimited sovereignty with regard to the air space above their territories had not yet been settled, there was an obvious preference for freedom of exploration of outer space. His delegation supported the view expressed at the first session of the Sub-Committee that such freedom should be qualified and limited so as to provide guarantees against abuse. The proposals submitted by the delegations of the United Kingdom (A/C.1/879) and the United States (A/C.1/881) merely reiterated the provision in resolution 1721 A (XVI) and did not provide for any specific or adequate guarantees. On the other hand, the Soviet Union draft declaration (A/AC.105/C.2/L.6) did contain, in its paragraphs 1, 5 and 9, provisions which went beyond international law and sought to prohibit the use of outer space for certain activities. Other delegations, including his own, believed that all non-peaceful activities should be prohibited, including the storage of weapons of mass destruction in artificial satellites circling the earth, the placing of missiles on the moon or the establishment of military bases in outer space or on celestial bodies. That had been the idea behind the first paragraph of the Code for international co-operation in the peaceful uses of outer space submitted by the United Arab Republic (A/AC.105/L.6). In resolution 1348 (XIII), the General Assembly had recognized "the common aim that outer space should be used for peaceful purposes only". The principle of the peaceful use of outer space

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(Mr. Fahmy, United Arab Republic)

had also been recognized at the Belgrade Conference of Non-Aligned Countries in 1961 and at the ninth Pugwash Conference, which had called for measures to prevent the installation of military nuclear equipment on space ships. Wide-spread concern about the militarization of space and its potential dangers had been expressed at the first session of the Sub-Committee. It was the belief of his delegation that the principle of the free exploration of outer space was fundamentally linked with the principle of its peaceful use.

The United Kingdom draft declaration (A/C.1/879) contained an eloquent formulation of the principle, based on a provision of General Assembly resolution 1721 A (XVI), that outer space and celestial bodies were not capable of appropriation or exclusive use by any State.

There was general agreement on still another principle - the need to ensure the safety of outer space - and the United Arab Republic had included a provision on that subject in its code (A/AC.105/L.6). There were however, differences of opinion about how that principle should be implemented. Two different approaches had been suggested, one in paragraph 1 of the United Kingdom draft declaration and the other in paragraph 6 of the Soviet Union draft declaration. The delegation of the United Arab Republic was not satisfied with either formulation but believed that a reconsideration of the two texts might produce an acceptable version. A concerted effort would be needed to reach agreement on that important principle, which was of interest to all countries.

Some procedure should be found to prevent further experiments which might have harmful effects and prejudice the sane development of science in space. He referred in particular to the high altitude nuclear tests which had resulted in the disruption of the Van Allen belt and increased the potential danger of manned space flight. The ninth Pugwash Conference had recommended the creation of some kind of international machinery for the discussion and clearance of space experiments that might have dangerous consequences.

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(Mr. Fahmy, United Arab Republic)

The basic principle that all States had equal rights to explore outer space was based on the principle of sovereign equality and should not give rise to any difficulties. In the two questions of liability for space vehicle accidents and of assistance to and return of astronauts and space vehicles, considerable guidance could be provided by international law and practice. There was general agreement that launching authorities should be held internationally responsible for accidents and that such responsibility should be without regard to fault. In connexion with the question of assistance and return, opinions differed only regarding the instrument in which legal provisions should be embodied.

Mr. CUEVAS CANCINO (Mexico) said that the problems confronting the Sub-Committee were no longer new but appeared to be a repetition, on a larger scale, of the old and complex problems arising from the enmity between States. If the Sub-Committee avoided idealistic generalizations, it might perhaps succeed in taking a step forward. It must be patient but at the same time recognize that the problems of outer space were urgent and vital. It must strive to bring about radical changes in existing attitudes and to advance beyond the political concepts on which the present international community was based.

The countries without experience of space exploration were the ones most interested in ensuring that the activities of man in space were based on law and circumscribed by law. His delegation had constantly reiterated the need for such legal standards. General Assembly resolution 1721 (XVI) had been an excellent beginning, but it had not been followed up. The efforts so far made to give flesh and blood to what had been essentially a profession of faith had been to no avail. It was the task of the Sub-Committee to continue those efforts within the framework of General Assembly resolution 1802 (XVII).

The discussions on outer space which had taken place in the General Assembly had not been completely futile. While there were, of course, important differences between the space Powers, there were also, as the documents before the Sub-Committee showed, various points at which their views coincided. General Assembly resolution 1721 (XVI) stated that international law, including the Charter of the United Nations, applied to outer space and celestial bodies, but the Charter, like any human document, was a product of political compromise. The

principles underlying the exploration and use of outer space must be more specific. Operative paragraph 2 of the United States draft declaration (A/C.1/881) was a step in the right direction.

In so far as the launching of satellites and space vehicles was concerned, a certain freedom had already been established. The space Powers, with the approval of the rest of mankind, had assumed the right of making all the launchings they considered desirable. The need for a supra-State authority had not appeared indispensable, and the United Nations had merely witnessed space development, without exercising any judgement. One aspect of such freedom which had not been adequately considered was the consequences of the passage of space vehicles through the atmosphere. In that respect, a conflict with the old laws seemed to have arisen, and the non-space Powers had accepted new standards in keeping with the general freedom. The implication of those new standards should be considered in greater detail.

One of the most important principles embodied in General Assembly resolution 1721 (XVI) was that outer space and celestial bodies were not subject to national appropriation. That, again, was a significant limitation on the traditional rules of international law. In spite of its great advantages, however, General Assembly resolution 1721 (XVI) seemed inadequate both in its reference to the Charter and in its reference to national sovereignty. To deny the applicability of national sovereignty in space was one thing; to avoid any possible consequence of its application was another.

The tolerance exercised by countries without experience of space exploration towards the United States and the Soviet Union had important consequences. It implied that those two Powers should pursue essentially human objectives; that they should not disregard the interest of non-space Powers; and that any satellites which proved capable of permanent habitation should be governed by a clear statute responsive to the interests of mankind. The authors of the various proposals before the Committee had already given considerable thought to those problems, but they must also be considered from the point of view of States which were not conducting experiments in space but rather were suffering from their consequences. It would be better to place less emphasis on the interests of States

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(Mr. Cuevas Cancino, Mexico)

responsible for the launching of space vehicles and to give greater prominence to the interests of mankind as a whole. The principle advocated by the Soviet Union (A/AC.105/C.2/L.6, paragraph 10) that astronauts should be regarded as envoys of mankind was admirable. The launching of such envoys into space implied an act of faith in mankind itself on the part of the State responsible.

The documents before the Committee embodied various attempts to draw up legal principles for governing man in space. There was no specific mention of nationality questions in outer space or the possibility of the commission of crimes there, although that latter problem seemed to be alluded to in paragraph 9 of the USSR text (A/AC.105/C.2/L.6) and in paragraph 7 of the United States text (A/C.1/881). The problem of State responsibility with regard to outer space had been dealt with in three of the drafts before the Sub-Committee.

There seemed to be tacit agreement that the general principles governing the future development of space should be considered first and might then be embodied in an agreement or a resolution. The problem of the actual form they should take did not seem insoluble. There was no great difference between a declaration - which was not subject to parliamentary ratification - and a General Assembly resolution, and the Sub-Committee might consider whether the Charter did not provide some means of lending greater force to the principles to be adopted by the General Assembly. The close link between juridical and political problems also opened up new possibilities. Furthermore, the Sub-Committee should not exclude the possibility of a multiple pronouncement by the principal organs of the United Nations.

There seemed to be a convergence of views between the space Powers concerning the free exploration and use of outer space for the benefit of mankind; the equality of rights of all States and the applicability of international law, including the Charter of the United Nations, to outer space; and the international liability of States responsible for launchings. There was less agreement about the restrictions which should be placed on such general legal principles. While the non-applicability of sovereignty was recognized, there were differences of opinion concerning the specific utilization of space vehicles, special programmes of co-operation, information to be submitted to the Secretary-General and the

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(Mr. Cuevas Cancino, Mexico)

assistance to be given to international bodies. There was, on the other hand, a general consensus of opinion concerning the return of space-ships, the jurisdiction of States over their own space vehicles, and, broadly speaking, the legal régime to be applied to man in space.

There was thus an ample field of actual and potential agreement which the Sub-Committee could profitably explore, and the next stage was to make progress in the elaboration of general principles. The Sub-Committee should not disregard the possibility of partial agreement, and in any event it must not return to the General Assembly with empty hands. The United Kingdom text (A/C.1/879), because of its generality and brevity, might offer an excellent starting point, but whatever the approach the Sub-Committee adopted, his delegation was ready to do everything it could to further the accomplishment of its task.

Mr. HEDIN (Sweden) said that General Assembly resolution 1802 (XVII) urged the need for further study of the legal aspects of the exploration and use of outer space. Opinions differed, however, on the matter of priorities. The United States delegation thought that priority should be given to the question of liability for space vehicle accidents, to be considered together with, or to be closely followed by, such questions as assistance to and rescue of astronauts and spaceships. In the opinion of the Soviet Union delegation, the first task was to draft a declaration of universal principles to govern the activities of States in outer space. Since there had already been detailed discussion of the universal principles involved, it should be possible for the Sub-Committee to make progress in that respect. In the view of his delegation, any attempt to prepare a complete space code would be premature. It also thought that the Sub-Committee should concentrate on such problems as liability for accidents and assistance to astronauts in distress.

Mr. HASEGANU (Romania) said that the instruments to be drawn up by the Sub-Committee at its present session must be binding on all States. The new legal statute governing outer space should contain not only a simple statement of legal

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(Mr. Haseganu, Romania)

principles but should also make effective provision for their universal application. If the principles were embodied in a General Assembly resolution, there was no certainty that they would be implemented. Numerous precedents from United Nations experience confirmed such a view. The best solution would be to draw up a declaration which would be signed by Governments and would have the legal force of an international agreement.

The Sub-Committee should give first priority to such a task, which was general in scope and was of interest to all States because it involved their rights and obligations in the use of space.

In drawing up the declaration, the Sub-Committee should begin by endorsing the principles already adopted by the General Assembly in resolution 1721 (XVI). It should then proclaim the principle that no State should take any measure in the exploration of space likely to prejudice the use of space by other States. The declaration should also contain provisions prohibiting the use of outer space for the purposes of espionage, war propaganda or the propagation of national or racial hatred. The rescue of astronauts and space-ships in the case of emergency landings and the sovereign rights of States over the objects they launched into space should be dealt with in two further provisions which should form the basis for a subsequent agreement on the rescue of astronauts and space-ships similar to other agreements which States had adopted concerning air and sea transport. Finally, the declaration should deal with the liability of each State for damage caused to another State through the exploration or use of outer space. The relevant provisions should form the legal basis for an agreement on the liability of States in case of accidents.

All those provisions, as well as others on which the Sub-Committee might reach agreement, should be drafted in the form of clear and unambiguous principles. They were all reflected in the Soviet Union draft (A/AC.105/C.2/L.6), which remained faithful to the principles set forth in General Assembly resolution 1721 (XVI) and would provide a solid basis for the Sub-Committee's task of elaborating legal principles governing outer space. The Sub-Committee could then turn its attention to the agreement on the rescue of astronauts and space-ships in the case of emergency landings.

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(Mr. Hasegami, Romania)

His delegation was also ready to examine the third problem on the Sub-Committee's agenda, namely, the proposal made by the United States concerning liability in the case of accidents to space vehicles.

The meeting rose at 12.30 p.m.