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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE NINETEENTH MEETING

Held at Headquarters, New York,  
on Friday, 19 April 1963, at 10.50 a.m.

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of outer space (A/C.1/879 and 881; A/AC.105/L.3, L.6; A/AC.105/C.2/L.6)  
(continued)

PRESENT:

Chairman:

Mr. LACHS (Poland)

Members:

Mr. COMO Albania

Mr. MENDEZ Argentina

Sir Kenneth BAILEY Australia

Mr. MARSCHIK Austria

Mr. LITVINE Belgium

Mr. MEDICIS Brazil

Mr. MOLEROV Bulgaria

Mr. DOBELL 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. DEMIDDAVAG Mongolia

Mr. WYZNER Poland

Mr. JUCU Romania

Mr. GEORGE 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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CONSIDERATION OF LEGAL PROBLEMS ARISING FROM THE EXPLORATION AND USE OF OUTER SPACE (A/C.1/879 and 881; A/AC.105/L.3, L.6; A/AC.105/C.2/L.6) (continued)

Mr. LITVINE (Belgium) expressed regret that in the present era the prudent deliberation of jurists seemed to have lost favour in the eyes of certain devotees of the exact sciences. In his view, however, the Sub-Committee's deliberations had not been slow nor the results of its work tenuous. Since it had begun work a year ago, the Sub-Committee had received the draft declaration of basic principles submitted by the USSR delegation and the proposals of various delegations for solving the problems of liability for space vehicle accident and assistance to astronauts and space-ships. Its report on the work of its first session (A/AC.105/6) would be characterized by some as a record of default, by others as the necessary groundwork for a developing discussion. A further step had been taken with the adoption of General Assembly resolution 1802 (XVII). The indication by the United States Government that it was prepared to consider the idea of a statement of principles governing space law had represented an important advance; the contributions of the United Kingdom delegation had helped to clarify the discussion; and the USSR revised draft declaration (A/AC.105/C.2/L.6), including proposals from the other drafts before the Sub-Committee, showed a trend towards synthesis which his delegation appreciated. His delegation would comment on the USSR revised draft declaration at a later stage.

As for the procedural problem which the USSR representative had discussed at length, namely whether the Sub-Committee's efforts to reach agreement should culminate in a convention or a resolution, he himself wondered whether form should not follow content - in other words, whether there should not be agreement on substance before the question of the most appropriate form was considered. He also wondered whether there were not other alternatives to a convention or resolution. As the United Kingdom representative had indicated, a resolution might foreshadow a convention. In citing the Convention on International Civil Aviation of 1944, the USSR representative had acknowledged the importance of an agreement which his country had neither signed nor ratified, and had thus demonstrated that conventions were not the form of diplomatic instrument most likely to secure geographically widespread ratification. However, the Sub-Committee should be concerned more with the substance of the agreement than with its form.

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(Mr. Litvine, Belgium)

Agreement on the form of an international instrument was valueless if there was no decision regarding its contents.

The Sub-Committee must now seek a basis of agreement which was not too narrow. It ought to decide the following questions concerning its methods of work: (1) Did it wish to give priority to some of the draft proposals before it or to consider all the proposals together? (2) If it decided to consider certain draft proposals first, should it, as a preliminary step, decide what form the statement of principles should take? (3) If it preferred to give priority to the substance rather than to the form of the statement of principles, did it consider it desirable to include political matters, which were not generally found in international conventions. In that connexion, he wished to explain that the term "peaceful" in the Committee's title was the antonym of "aggressive" and not of "military". In its approach to the aforementioned questions, his delegation attached particular importance to the securing of internationally agreed solutions to the specific, immediate and real problems of liability and assistance.

The other problems brought forward by the Working Group headed by Mr. Ambrosini should not be overlooked. If the Sub-Committee was to consider the problems of liability and assistance, it must first settle an elementary question - the sphere of application of space law. His delegation did not favour those theories which sought a demarcation between outer space and air space. It preferred to place the emphasis on the means employed - the idea of the spaceship - as the central element in the definition of space law. In its view, space law should be applicable in both atmospheric and outer space whenever the activities of space vehicles or the consequences of their activities were concerned. Hence, an internationally agreed legal definition of space vehicles should be included in any settlement of specific problems, such as liability or assistance, and also in any general statement of principles.

Mr. WYZNER (Poland) recalled that although balloons and aeroplanes had been in use before 1919, no system of international law derived from custom or international agreement had existed at that time with respect to air space. In the same way, the first satellite had been put into orbit by the USSR before any legal rules or international procedures concerning outer space had been laid down. When

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(Mr. Wyzner, Poland)

man had first acquired air flight capability, it had become necessary to extend the rules of law to air space. Now that man had reached outer space, jurists - and the Legal Sub-Committee in particular - were confronted with the task of drafting rules and principles for a new branch of international law - the law of outer space.

General Assembly resolution 1721 (XVI) laid down the fundamental principles of international law applicable to outer space; the Sub-Committee's main task now was to formulate and develop the law of outer space. In the past two decades the world had witnessed impressive advances in the codification and progressive development of international law, based on the relevant provisions of the United Nations Charter. Branches of international law which from time immemorial had been governed almost entirely or in significant part by customary rules had been codified. It would be paradoxical indeed if outer space - which more than any other area reflected the constantly developing science and technology of man - should be backward in the legal sense, and if the elaboration of the basic legal principles of outer space should be put off for years. However, the solution was not, as some delegations had contended, the adoption of another General Assembly resolution. Such resolutions, being merely recommendations without binding force, could not be considered sources of law, although States were undoubtedly correct in attaching particular importance to some of them. It was now for the Sub-Committee to translate existing resolutions on the legal aspects of outer space into more binding legal language. In support of that contention, he cited not only the opinions of many members of the Sub-Committee but also the results of studies by non-governmental organizations, such as the International Astronautical Federation, the International Institute of Space Law and the International Law Association. His delegation agreed with the Swedish delegation that it would be premature to prepare a complete code of space law, as man's knowledge and experience of outer space was still insufficient. Nevertheless, States must adopt some general principles for outer space, using available experience and analogy to other fields of law. In his delegation's view, the revised draft declaration submitted by the USSR (A/AC.105/C.2/L.6) was the most suitable text.

(Mr. Wyzner, Poland)

On the question of form, his delegation considered that a declaration open to signature or accession by States, as contemplated in the USSR draft declaration, was clearly superior to the General Assembly resolution proposed by the United Kingdom and United States delegations. In a memorandum concerning the use of the terms "declaration" and "recommendation" (E/CN.4/L.610), the Office of Legal Affairs stated that "in United Nations practice a 'declaration' is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected".

The declaration of legal principles governing outer space should be accorded binding legal force; the provision to that effect in the USSR draft declaration was in accord not only with contemporary needs but also with many precedents. Forty-eight of the 5,000 international agreements concluded after the Second World War had been designated as "declarations" by the parties thereto. Hall had included "a declaration signed by the contracting parties or their agents" among the methods by which States expressed consent to an international agreement. (A Treatise on International Law, eighth edition, 1924, section 109), and he had cited as examples the Declaration of Paris of 1856 and the Declaration of St. Petersburg of 1868. Such declarations had acquired outstanding legal authority: thus, United Kingdom court had stated in 1914 that it would regard the Declaration of Paris, not only in the light of rules binding in the conduct of war, but as a recognized and acknowledged part of the law of nations. The apprehension that all States might not accede to a binding declaration was, in his view, unjustified. States which were prepared to vote for a resolution setting out certain principles would have no difficulty in accepting as legally valid a declaration of those principles. Moreover, as practice had shown, legally binding rules were more effectively applied than resolutions. The Mexican representative, in his statement at the eighteenth meeting, had apparently acknowledged that a declaration signed by Governments and not subject to parliamentary ratification had the great advantage of precluding any misunderstanding as to its binding force. For the foregoing reasons, his delegation believed that the important principles to be adopted by the Sub-Committee should be accorded undeniable obligatory force.

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(Mr. Wyzner, Poland)

On the matter of substance, his delegation felt that the proposed declaration should reaffirm the basic principles already formulated by the General Assembly and should develop some corollaries to them. All the problems dealt with in the USSR draft declaration were extremely important.

In connexion with operative paragraph 5 prohibiting the use of outer space for propagating war, national or racial hatred or enmity between nations, he recalled: the 1926 recommendation of the International Broadcasting Union to the effect that broadcasts should not include attacks against the spirit of co-operation and international goodwill; General Assembly resolution 110 (II) condemning all forms of propaganda which was either designed or likely to provoke or encourage any threat to the peace or act of aggression; and article 9 of the draft Declaration on the elimination of all forms of racial discrimination, unanimously adopted by the Commission on Human Rights, which condemned incitement of hatred and violence against any race or group of persons of another color or ethnic origin. According to General Assembly resolution 1721 (XVI), international law, including the Charter of the United Nations, applied to outer space and celestial bodies. Hence, rules and principles applying the provisions of the Charter, such as those just cited which condemned war propaganda and incitement to national or racial hatred and discrimination, must also be applicable to outer space. Outer space could not be exempted from the rules and principles which applied elsewhere.

Operative paragraph 6 of the USSR draft declaration, to the effect that co-operation and mutual assistance in the conquest of outer space constituted a duty incumbent upon all States, was a logical consequence of the provisions of the Charter providing for international co-operation in solving international problems of an economic, social, cultural or humanitarian character. Some recognized scientists had under-estimated the harmful results of certain experiments. To avoid similar occurrences in the future, close co-operation and consultation between the States concerned were essential.

As soon as the Sub-Committee had completed its work on the declaration of basic principles, it should draft an international agreement on assistance to and return of astronauts and space vehicles. An international agreement should also be adopted with respect to liability for space vehicle accidents.

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(Mr. Wyzner, Poland)

There was danger of tension and conflict among States in outer space so long as the rule of law in that area was based on only a few general principles. The Sub-Committee must therefore make progress in the development of the law of outer space, and his delegation would spare no effort to aid it in that task.

The meeting rose at 11.30 a.m.

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