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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE TWENTIETH MEETING

Held at Headquarters, New York,  
on Monday, 22 April 1963, at 10.55 a.m.

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PRESENT:Chairman:

Mr. LACHS 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 Czechoslovakia

Mr. LEMAITRE France

Mr. CSATORDAY Hungary

Mr. CHAKRAVARTY India

Mr. AMIRMOKRI Iran

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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, 881; A/AC.105/L.3-6; A/AC.105/C.2/4; A/AC.105/C.2/L.6) (continued)

Mr. ATTOLICO (Italy) said that the statements of the previous speakers gave hope that the deliberations of the Sub-Committee would result in real progress. The urgent need for the formulation of general principles had been recognized by them all, and a number of valuable suggestions had been advanced. There appeared to be a measure of agreement on the main aspects of the problems under consideration. What points of disagreement had emerged - and his delegation did not underestimate their importance - did not really hinge on problems directly related to the use and exploration of outer space. Those issues which had in the past been considered in the contexts to which they naturally belonged, had some impact on the use of outer space only because of the necessary connexion that existed between all the problems which beset mankind. For example, the failure to train women as astronauts might be said to constitute discrimination on the ground of sex, but it was quite clear that the Sub-Committee had not met to deal with an issue which related essentially to the status of women rather than to the problems of outer space.

As the Sub-Committee could not therefore settle all problems directly or indirectly connected with outer space, his delegation did not believe that it should deal with the problem of banning propaganda. It seemed unwise to stress the conflict of opinion over that issue, when such a course would only undermine the measure of agreement which was being achieved on matters more directly concerned with outer space. Although it was true that the problem of propaganda was related to the use of outer space because a space-ship might be equipped with transmitting gear, the legal aspect of propaganda would not differ if the transmission was received from a radio located on earth or conveyed through a space-ship. The origin of the transmission was not the point at issue.

Similarly, if there was a problem of espionage from outer space, it primarily concerned espionage and should be treated accordingly. To deal with the problem in the context of outer space would not seem to serve any useful purpose. Furthermore, that problem really fell more appropriately under the heading of

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observation than under that of espionage. Observation for peaceful and indeed deserving purposes had heretofore been considered to be consistent with international law, as in the practice of observation from the high seas. If the concept of freedom of the high seas was to be extended to outer space, precedent would not support the exclusion of such activity in outer space.

Of course, if the Sub-Committee was afforded the opportunity to improve on past practice, it should certainly do so. His delegation submitted that the most urgent issue was the banning of all activities of an aggressive nature in outer space. Surely that idea should be at the basis of any set of principles the Sub-Committee might produce. The first conclusion to be drawn from the principle laid down by the General Assembly in its resolution 1721 (XVI) to the effect that international law, including the Charter of the United Nations, applied to outer space and celestial bodies, was that the provision of Article 2 (4) of the Charter prohibiting the threat or use of force was legally binding in respect of activities in outer space. There were of course other existing rules of international law applicable to outer space, and certain basic tenets governing international relations should provide a most useful foundation for elaborating guiding principles to regulate the exploration and use of outer space.

The other principle set out in General Assembly resolution 1721 (XVI) - namely, that outer space and celestial bodies were free for exploration and use by all States in conformity with international law and were not subject to national appropriation - had its origin in the practice which had become established since man's first penetration into outer space, and the consensus of opinion in support of that principle was not in question. As a number of delegations had rightly stated, the time had not yet come for the elaboration of a comprehensive and rigid system to govern in detail the exploration and use of outer space. There appeared to be agreement that what the Sub-Committee was trying to achieve was the identification of very general rules of conduct to inspire and guide men's actions in respect of outer space. The question before the Sub-Committee, therefore, was how best to qualify freedom of exploration and use within the framework of a set of general principles. In that respect he agreed with the Mexican and other delegations that there was merit in the

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brevity and comprehensiveness of the draft declaration submitted by the United Kingdom (A/C.1/879). That document provided a method of overcoming the technical difficulties involved in stating exclusions and restrictions which were apt to be too detailed and specific for inclusion in a set of general principles.

Another basic point on which there was no disagreement was the importance of international co-operation in respect of activities in outer space. The common interest of mankind in furthering the peaceful uses of outer space and the urgent need to strengthen international co-operation in that field should be adequately reflected in any set of principles drawn up by the Sub-Committee. That idea figured prominently in most of the draft proposals before the Sub-Committee. Paragraph 6 of the draft code submitted by the United Arab Republic (A/AC.105/L.6) seemed to be especially appropriate in singling out the particular interest of the developing countries in participating in international co-operation in outer space. Another facet of international co-operation was the important role which international organizations might play in the exploration and use of outer space. Activities in that field demanded resources available to only a few countries, but it had been proved that groups of States, by pooling their resources, which individually would be inadequate, could successfully attempt the exploration and penetration of outer space. That avenue should surely be left open in an era when interdependence was increasing, and co-operation among States in all fields had given striking results. Since subjects of law were automatically accorded equal treatment unless their capacity was limited by the law itself, a specific reference to international organizations in the general principles on the use of outer space might not be indispensable. On the other hand, the role of such organizations in the exploration and use of outer space was likely to prove of such paramount importance that a set of principles which did not specifically refer to them would be patently incomplete. Moreover, the mention of international organizations in connexion with activities in outer space would emphasize the concept of co-operation. A further consideration was that international organizations capable of carrying out

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activities pertaining to the exploration and use of outer space were responsible, at least by implication, for the activity undertaken and liable for any damages that might ensue. That, too, would encourage the participation of countries with limited resources in activities undertaken by international organizations. Recognition of the liability of international organizations would provide a means whereby liability for damage could ultimately be proportioned to the measure of the actual participation of a given country in a project.

With regard generally to the question of liability for space vehicle accidents, his delegation concurred in the view that, with the increasing activity in the field of space exploration, there was an urgent need to regulate that matter comprehensively and in detail.

Noting that one of the points covered by the draft declarations of principles before the Sub-Committee was jurisdiction over and ownership of space vehicles, he suggested that jurisdiction over space vehicles might be more immediately related to the concept of the flag flown by such vehicles than to the concept of ownership. That suggestion would also, of course, apply to vehicles belonging to international organizations.

There was general agreement that the problems concerning assistance to and return of space vehicles and personnel should be mentioned in the general principles and should also be the subject of a separate comprehensive and detailed instrument. There appeared to be much common ground between the specific proposals on that subject advanced by the USSR (A/AC.105/L.3) and by the United States of America (A/AC.105/L.4). If agreement was reached on substance, the differences in approach to the question of form might also dwindle. As the United States representative had pointed out, the adoption of a resolution and the adoption of an international agreement on assistance and return were not mutually exclusive; in fact, one would complement the other. A resolution offered the advantage of relatively speedy adoption; and the conclusion of a treaty could then follow.

The question of the form of the general principles was by no means an insoluble problem and surely should not stand in the way of the actual

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formulation of the principles themselves. The Sub-Committee would do well to concentrate at present on the substance of the principles; when the scope and nature of the principles was quite clear, it should prove possible to decide on the form in which they were to be enunciated. His delegation did not, moreover, feel that the binding force of the principles would be undermined by the mere fact that they were enunciated in the form of a General Assembly resolution. In international law, rules were binding primarily because States considered themselves bound by such rules, whatever their origin. From that viewpoint recommendations of the General Assembly undoubtedly had binding force. In any case, recommendations of the General Assembly had the function of identifying, and even of eliciting participation in the formation of, the rules exacted by the awareness of the international community to certain basic needs - an awareness which was the primary and fundamental source of international law. Finally, it might be useful to pursue the Mexican representative's suggestion that the Charter might provide some means of lending greater force to the principles to be adopted by the General Assembly.

Mr. HAJEK (Czechoslovakia) said that his delegation agreed with those which had emphasized the increasing urgency of the need to establish binding legal principles to govern activities in outer space. The discrepancy between technological advances and the development of legal norms in the space field was increasing, and there was a danger that the absence of an internationally accepted legal basis for space activities might slow down the progress of technology and possibly lead to grave complications in the relations between States.

The early formulation of legal norms for outer space activities had also become imperative because of the rapid growth of the scientific, industrial and financial investment in national space operations and the general effect on the economy of some countries of their undertakings in that new field. Even States which had not undertaken the launching of space vehicles were taking part in international co-operative observation programmes. A whole complex of new installations, realities and relations had emerged almost overnight, and the situation therefore differed greatly from what had prevailed in the field of maritime and aeronautical activities. To think that the basic principles of the law of outer space could be developed progressively as the need arose and

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whenever international agreement appeared readily attainable was to be unrealistic. The very speed of developments in the new field demanded that certain basic principles of law should be adopted immediately even though detailed rules of law covering every possible contingency that might arise would have to be developed at a later stage. There appeared to be a general recognition in the Sub-Committee of that need.

Although the two principles stated in operative paragraph 1, sub-paragraphs (a) and (b), of General Assembly resolution 1721 (XVI) constituted a useful starting point, an instrument of greater scope and more appropriate form must now be forged. His delegation considered it important that the legal principles to be adopted should be unequivocally binding on States and should clearly indicate their rights and obligations. A General Assembly resolution which merely recommended or appealed to States would not be adequate for that purpose. His delegation therefore agreed with those which favoured the conclusion of an international multilateral agreement or declaration which would be binding upon all the Contracting Parties. The question of the form of the instrument to be adopted was important and would have to be resolved at an early stage.

The basic features of a fundamental law of outer space were already emerging from the various proposals now before the Sub-Committee. His delegation wished to comment on several of the points which had been made.

As several representatives had suggested, it would be desirable to qualify to some extent the principle of the freedom of outer space and celestial bodies for exploration and use by all States, by providing that it should be exercised for the benefit and in the interest of mankind as a whole. It was not sufficient merely to state that that freedom should be exercised in conformity with the Charter and international law. Some more positive provisions appeared necessary in order to preclude such flagrant abuses as the conduct of espionage or war propaganda in outer space. The principle of the security of the State already constituted an important aspect of maritime and air law and should be incorporated also in the law of outer space.

His delegation also favoured the inclusion in the space law instrument of the principle that the launching of a space vehicle by any State should be the subject of prior international consultation and agreement. Such a step would

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serve to guarantee the principle of national security and the maintenance of equal rights for all States. Any launching or space experiment undertaken without such consultation and agreement should be prohibited. In that connexion, his delegation was distressed at reports that space experiments which had been viewed with misgiving in many quarters might be repeated. The ninth Pugwash Conference and the Inter-Parliamentary Union's sub-commission on the law of outer space had recently voiced disapproval of space projects that did not meet international criteria of acceptability.

His delegation had some doubts regarding the need for a provision prohibiting the use of outer space for war purposes. While it sympathized with that objective, it believed that the question was outside the Sub-Committee's terms of reference. Moreover, the provisions of Article 2 (4) of the Charter and of operative paragraph 1 (a) of General Assembly resolution 1721 (XVI) appeared to cover the question of principle that was involved. Practical implementation of those provisions could be ensured only by the negotiation and conclusion of an agreement on general and complete disarmament, that being the only effective way of guaranteeing that outer space was not misused for warlike purposes.

His delegation considered that any basic principles of space law should refer only to States and to the rights and obligations of States, as it believed that States alone should engage in and have responsibility for space activities. If undertaken by private enterprise such activities might not be entirely amenable to the control of international law.

For those various reasons, his delegation believed that the most useful draft principles advanced thus far were those submitted by the Soviet Union in document A/AC.105/C.2/L.6. That text appeared to constitute a suitable answer to the problem assigned to the Sub-Committee. It embodied a number of points suggested in the drafts submitted by other delegations; it was in the form of a binding international declaration specifying the rights and obligations of States; and it included all necessary safeguards. It was to be noted, moreover, that the Soviet delegation had expressed its willingness to consider any suggestions for improving or supplementing the text. His delegation approved the document in its present form, but would be interested to hear further comments upon it.

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Once agreement had been reached on a declaration of basic principles, the formulation of rules to govern liability for accidents in outer space and assistance to and return of space vehicles and personnel should not present any great difficulty. The instruments dealing with those two aspects of space law should also be drawn up in the form of legally binding international documents in which the rights and obligations of States would be set forth in the clearest possible terms.

Mr. MEEKER (United States of America) said that, although the substance of the instruments to be drawn up by the Sub-Committee was of primary importance, consideration might briefly be given to what type of instrument was the most suitable. In the view of his delegation, the question of form would be determined by the nature of the subject matter.

Although a statement of basic legal principles could contain a general principle on the subject of liability, the question of liability for space vehicle accidents clearly required a formal international agreement. Detailed provisions of a legal nature would be needed to define the scope of international liability, to specify the procedure for the presentation of claims and to designate an appropriate forum for settling questions concerning the interpretation or application of the agreement.

With regard to the question of assistance and return, what was needed was some general expression of the widely felt humanitarian concern for the well-being of astronauts in distress. His delegation thought that the subject should be dealt with in a resolution which the General Assembly might adopt either separately or as part of a statement of general principles. At a later stage, there could be a detailed international agreement specifying the obligations of launching and other authorities and regulating procedural matters and the question of reimbursement for any expenses incurred.

A General Assembly resolution would be the most appropriate instrument for a declaration of general principles. Some delegations had argued that only an international agreement signed by Governments would be legally binding. International agreements were not, however, the only sources of law. As stated in Article 38 of the Statute of the International Court of Justice, decisions of international tribunals and the growth of customary law as evidenced

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by State practice should also be taken into consideration. When a General Assembly resolution proclaimed principles of international law - as resolution 1721 (XVI) had done - and was adopted unanimously, it represented the law as generally accepted in the international community. In that connexion, it might be recalled that some of the delegations which favoured an international agreement had at the seventeenth session of the General Assembly supported a draft resolution proposing that the General Assembly should adopt a declaration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations (A/C.6/L.505). The adoption of an Assembly resolution would have the advantage of avoiding the delays inherent in the preparation and conclusion of a formal agreement and the inevitable uncertainty about the number of States which would become party to it. At a later stage, when the law of space had become relatively more developed, it might prove feasible and desirable to draft a treaty or convention codifying that law.

The first principle in the United States draft declaration of principles relating to the exploration and use of outer space (A/C.1/881) dealt with topics which had also been covered in paragraphs 2, 3 and 4 of the Soviet Union draft declaration (A/AC.105/C.2/L.6). The United States text had the advantage of embodying in one statement the three important and related ideas of freedom in the exploration and use of outer space, equal rights for all States, and conformity with international law. Paragraph 1 of the United Kingdom draft declaration (A/C.1/879) stated the same ideas but added the correlative obligation that freedom in the exploration and use of outer space should be exercised with due regard to the interests of other States and the need for consultation and co-operation between States. In that connexion, it should be recalled that the Committee on Space Research (COSPAR) of the International Council of Scientific Unions had, in April 1962, established a Consultative Group to study the problem of interference and contamination in outer space and to serve as a means for consultation and discussion. The United States, which followed the practice of consulting the international scientific community on matters of common interest in the field of space science, welcomed the establishment of the Consultative Group.

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The second principle in the United States draft declaration covered the same subject as paragraph 3 of the United Kingdom draft and paragraph 4 of the Soviet Union draft. It was more complete than the Soviet text, however, since it covered international law in general and the relevant provisions of international treaties and agreements including the whole of the United Nations Charter. The Soviet draft dealt only with "generally recognized principles of international law" and "the Principles of the United Nations Charter", which are set forth in Article 2.

The third United States principle, pertaining to the incapability of outer space and celestial bodies of national appropriation, was concerned with the same matter as paragraph 2 of the United Kingdom draft and paragraph 2 of the Soviet draft.

The fourth and fifth principles on assistance and return included a provision that the launching authority should furnish identifying data prior to return. The same idea was embodied in paragraphs 4 and 5 of the United Arab Republic code for international co-operation in the peaceful uses of outer space (A/AC.105/L.6), and in paragraph 10 of the Soviet draft which, however, did not provide for the return of astronauts or parts of space vehicles.

The sixth principle in the United States draft declaration dealt with international responsibility. It was recognized that in some instances a governmental authority might choose to license a private firm to carry out activities in space. Such private agencies would not be free to engage in space programmes without governmental permission and continuing governmental supervision. The principle of national responsibility for national space activities was embodied in the United States Communications Satellite Act of 1962. The first part of the principle in the United States draft was designed to make clear the international responsibility of any Government from whose territory or with whose assistance or permission space projects were undertaken. The second part of the principle stated the idea of financial liability, which was also included in paragraph 11 of the Soviet draft. The United States draft, however, was more precise since it specified what types of injury and damage were envisaged and said that responsibility existed for such damage or injuries on the earth or in air space. Because of possible difficulties involved in the assignment of absolute liability, separate provisions would be required to cover liability for accidents in outer space itself.

The last principle in the United States draft declaration covered the questions of jurisdiction over a space vehicle in transit and property

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rights in a space vehicle, both of which were also dealt with in paragraph 8 of the Soviet draft.

The United States draft proposal on liability for space vehicle accidents (A/AC.105/L.5) suggested guide lines for an international agreement on the subject of liability. His delegation would welcome comments on the text.

It was heartening to find that there were many areas in which agreement existed or could be reached without too much difficulty. The United States delegation supported the view that the Sub-Committee should record those areas of agreement, so that it would be able to report progress to the full Committee and to the General Assembly.

The meeting rose at 12.25 p.m.