

UNITED NATIONS

GENERAL
ASSEMBLY



PROVISIONAL

A/AC.105/C.2/SR.21
25 April 1963

ORIGINAL: ENGLISH

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE TWENTY-FIRST MEETING

Held at Headquarters, New York,
on Tuesday, 23 April 1963, at 10.55 a.m.

CONTENTS

Consideration of legal problems arising from the exploration and use
of outer space (A/C.1/879 and 881; A/AC.105/L.3-6; A/AC.105/C.2/L.6)
(continued)

Corrections to this record should be submitted in one of the three working
languages (English, French or Spanish), preferably in the same language as the
text to which they refer. Corrections should be sent in triplicate within three
working days to the Chief, Meetings Service, Office of Conference Services,
Room 1104, and also incorporated in mimeographed copies of the record.

AS THIS RECORD WAS DISTRIBUTED ON 25 APRIL 1963, THE TIME-LIMIT FOR
CORRECTIONS WILL BE 30 APRIL 1963.

63-09087

/...

PRESENT:

<u>Chairman:</u>	Mr. LACHS	(Poland)
<u>Members:</u>	Mr. COMO	Albania
	Mr. MENDEZ	Argentina
	Sir Kenneth BAILEY	Australia
	Mr. MARSCHIK	Austria
	Mr. LITVINE	Belgium
	Mr. MELLO	Brazil
	Mr. MOLEROV	Bulgaria
	Mr. TREMBLAY	Canada
	Mr. PRUSS	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. WYZNER	Poland
	Mr. JUCU	Romania
	Mr. PEARCE	Sierra Leone
	Mr. HEDIN	Sweden
	Mr. TIMERBAEV	Union of Soviet Socialist Republics
	Mr. FAIMY	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

/...

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

Mr. CSATORÉAY (Hungary) said that there was a close relationship between the technical and the legal aspects of activities in outer space. The need for legal provisions to govern the exploration and use of outer space should be recognized by all who desired international co-operation for the benefit of mankind.

Although at present only the United States and the Soviet Union were engaged in outer space programmes of appreciable scope, their activities directly or indirectly affected the interests of all the peoples of the world. If space technology continued to develop at the present rate, many more countries would engage in such activities in the foreseeable future and effective legal regulations would be an imperative necessity. Like other delegations representing smaller countries, the Hungarian delegation felt that the common interest of all mankind in outer space should be recognized and that the problems arising from the exploration and use of outer space should be solved in such a way as to strengthen international peace and security. It was essential to ensure that human endeavour in outer space was beneficial, not harmful to mankind. The Belgian representative had raised the question whether political matters should be included in a statement of principles on the use of outer space (A/AC.105/C.2/SR.19). The Hungarian delegation considered that the main purpose of the United Nations Charter - a universal instrument - was to harmonize political relations among States. The application of the provisions of the Charter to outer space activities would help to solve general international problems without encroaching upon the jurisdiction of other international bodies concerned with outer space. Since the dangers presented by the misuse of outer space were comparable to those inherent in the misuse of atomic energy, international peace and security should be the main concern in formulating a pattern for the behaviour of States in outer space matters, and the legal and political issues were thus closely interrelated.

His delegation interpreted General Assembly resolution 1721 A (XVI) to mean that outer space was not a res nullius, capable of appropriation, but a

/...

(Mr. Csatorday, Hungary)

res communis omnium. The conduct of space activities, in any form, by private persons or organizations was therefore inconsistent with the principles of international law, which were the only source of guidance available in relation to outer space and celestial bodies. At the same time, the principle of the freedom of outer space imposed collective and individual responsibilities on States: no State was entitled to place its own interests above those of the world population, or to interfere in the domestic affairs or violate the sovereignty of other States. In drafting basic principles to govern activities in outer space, particular attention should be paid to activities incompatible with the principles of international law, the Charter of the United Nations and the interests of the international community.

Principle No. 9 of the USSR draft declaration (A/AC.105/C.2/L.6) dealt with one such activity. Espionage, which was contrary to the principles of international law and was generally prohibited by national legislation, should be specifically prohibited in outer space and the possibility of any violation should be precluded.

The law of outer space would not be completely new; the existing principles of international law should be extended to apply to outer space. Any instrument prepared by the Sub-Committee should have binding international force, and the most suitable form of instrument would seem to be a draft declaration of basic principles to be signed by States, as proposed by the USSR delegation. In 1959 Dr. Eugène Pépin had called for the adoption of a declaration, to be signed by all States, on the peaceful use of outer space and had expressed the view that details of limitation and control could be settled after the declaration had been adopted. The Soviet draft declaration incorporated many desirable features from the texts submitted by other delegations and laid due stress on the obligations and responsibilities of States engaging in activities in outer space.

The Sub-Committee's terms of reference, as set forth in General Assembly resolution 1802 (XVII), were clear and the general discussion indicated that it should be possible to reach unanimous agreement on the instruments to be adopted. It had been encouraging to hear the United States representative express the desire for progress in those areas in which agreement existed or could be reached.

(Mr. Csatorday, Hungary)

without too much difficulty (A/AC.105/C.2/SR.20). Another encouraging sign was the agreement reached between the United States and the Soviet Union on co-operation in the peaceful uses of outer space, which had been submitted to the General Assembly at its seventeenth session (A/C.1/880). His delegation was therefore optimistic about the outcome of the Sub-Committee's work.

Mr. TRIMBLEY (Canada) said that there was an undisputed need for the elaboration of space law. The fast-developing range of man's activities in space made the problem urgent; there was no time to await the evolution of a customary law of space. The problem concerned all States, for the activities of the space Powers affected all mankind. The Sub-Committee's task differed from that of the conferences which were convened from time to time to codify existing branches of international law, and which took decisions by vote. It had rightly been decided (A/AC.105/PV.2) that the Committee on the Peaceful Uses of Outer Space should work in such a way as to reach agreement without voting; it must be borne in mind that the purpose of that procedure was not to inhibit progress but to facilitate compromise. The Sub-Committee should make every effort to achieve results; if it again reported failure, the General Assembly might take the task of drafting space law out of the hands of the parent Committee.

The normal procedure in drafting important international conventions was for an international conference to consider material drafted by a preparatory body. His delegation regarded the Sub-Committee as such a preparatory body. However, those delegations which favoured the idea of a declaration of principles to be signed by Governments seemed to consider that the Sub-Committee's work should be final. In that case, it was even more important that progress should be made.

The Soviet draft declaration (A/AC.105/C.2/L.6) included many principles on which there was a consensus of opinion, and which merely required clarification and elaboration, and others on which opinions differed. At all events, there was enough common ground for the Sub-Committee to begin drafting space law on those subjects on which agreement in principle already existed. Meanwhile he proposed to discuss those principles which were still in dispute but which seemed to offer prospects of agreement.

/...

(Mr. Tremblay, Canada)

His delegation believed that it should be possible for the Sub-Committee to reach agreement on a principle concerning the responsibility of States for activities in outer space. It was encouraging to note that the Soviet draft declaration, as revised (A/AC.105/C.2/L.6), embodied the principle of joint or concurrent responsibility for co-operative activities in outer space. However, the Soviet draft made no provision for international organizations such as the European Launcher Development Organization (ELDO), which had a separate corporate existence and the power to conclude agreements with a non-member State or States or with other international organizations. Whatever principle was adopted should indicate where the responsibility for the activities of such an international organization should rest.

The activities of national organizations constituted another aspect of the problem of State responsibility. To be effective, the relevant principle should be so drafted as to take into account the difference between the Soviet and the Western concept of State organizations. To reflect the latter, explicit reference might be made to the principle of the liability of States for internationally injurious acts of their nationals or national organizations. In order to guard against irresponsible activities, the operation of space craft by private individuals, corporations or organizations should be explicitly forbidden save under licence from the State of nationality. That would satisfy the Soviet Union's rightful concern that States should bear final responsibility for the space activity of national and international organizations, and a valuable principle, applicable to both structures of society, could be drafted.

His delegation also believed it possible to reach agreement on a principle expressing mankind's desire that no experiments should be conducted in outer space which were potentially harmful to the earth's environment or to that of outer space. He was attracted by the United Kingdom formula for the exercise of the freedom of outer space (A/C.1/879, draft declaration, para. 1); the desirability of providing for consultation had been acknowledged by the Committee on Space Research (COSPAR).

At the seventeenth meeting, the Soviet representative had sought to justify principle No. 9 of the Soviet draft declaration (A/AC.105/C.2/L.6) by referring

/...

(Mr. Tremblay, Canada)

to article 36 of the Chicago Convention, and had maintained that the right of a State to prevent its territory from being photographed extended to all vehicles flying over it, regardless of altitude; the implication was that the provisions of air law applied to outer space. However, under General Assembly resolution 1721 (XVI), States recognized that they had no territorial rights in outer space; hence the relevant provision of the Chicago Convention did not apply. There were also certain practical differences between aircraft and space vehicles as to the action which could be taken against them. States could enforce a ban on photography from aircraft flying over their territory, but in outer space no such control was possible unless States submitted all their space vehicles to examination before launching.

The law of the sea might be more useful than air law as a source of concepts applicable to outer space. The former body of law, unlike the latter, did not recognize the peace-time right of a State to control the movement or limit the activities of ships operating on the high seas under the flag of foreign States, even so far as the gathering of information was concerned. The conditions prevailing in space were comparable to those on the high seas, and it would not be appropriate to include in the law of outer space any limitation on information-gathering activities. Orbital observations, like those made from aircraft and ships, could be conducted from a wide angle; hence the extension of vertical territorial sovereignty would prevent modern intelligence operations in outer space no more effectively than similar rules did at sea or in the air. In the circumstances, his delegation did not consider it possible at the present stage to adopt a meaningful principle regarding the use of artificial satellites for the collection of intelligence information.

Another controversial principle in the Soviet draft declaration was No. 5, concerning war propaganda. His delegation would prefer a principle formulated in positive terms, along the following lines:

"States shall endeavour to direct their activities in outer space towards the maintenance of international peace and security and the achievement of international co-operation and understanding."

/...

(Mr. Tremblay, Canada)

The last question to consider was the form of the instrument which was to embody the basic principles. As the Belgian representative had suggested (A/AC.105/C.2/SR.19, page 4), the Sub-Committee might prefer to give priority to the substance rather than to the form of the statements of principles. The Polish representative had quoted precedents (ibid., page 6) for the type of document envisaged by the Soviet delegation; however, the declarations he had mentioned were concerned explicitly and solely with the rules of war. Moreover they dealt with specific situations and required acceding States to accept very precise obligations. With the exception of principle No. 9, concerning the use of artificial satellites for the collection of intelligence information, the principles in the Soviet draft declaration were of a general character and did not establish precise obligations of the kind normally set out in binding instruments. Moreover the final preambular paragraph of the Soviet draft declaration made it clear that the principles enumerated were for the guidance of States; that appeared incompatible with the idea of a contractual obligation in the strict sense of the term.

His delegation agreed with the Polish representative that it would be premature to prepare a complete code of space law; in its view, therefore, the Sub-Committee should avoid choosing an instrument which was intended to embody codified law. The pace of technological development in outer space and the limitations of present knowledge made it desirable to select a method of recording agreed principles which could be adjusted as knowledge and experience grew. It would be highly undesirable for the Sub-Committee to recommend a form of instrument that would bind States to accept certain principles which might be obsolete in a few years' time.

The formulation of principles for the guidance of States was a solemn task, and his delegation therefore accepted the Soviet suggestion (A/AC.105/C.2/SR.17, page 4) that the guiding principles should be laid down in a declaration and not merely in a General Assembly resolution. In the case of provisions regarding assistance, return and, perhaps, liability the Sub-Committee might go even further and draft them as rules of international law to be embodied in binding treaties or conventions.

/...

(Mr. Tremblay, Canada)

In his view, the time had come for the Sub-Committee to consider specific forms of words. He therefore suggested that the Chairman should explore informally the possibilities of drafting an agreed version of those principles on which there was a consensus of opinion. His delegation would also welcome suggestions on how the Sub-Committee might consider concurrently the problems of assistance and return and of liability.

Mr. HAKIM (Lebanon) said that the three main questions before the Sub-Committee were (1) the formulation of a draft declaration of basic principles governing the exploration and use of outer space; (2) assistance to and the rescue of astronauts and the return of space vehicles and their personnel to their country; and (3) liability for space vehicle accidents. His delegation regarded the proposals before the Sub-Committee as a sound basis for agreement and for progress in the application of international law to outer space.

It was only natural that the adoption of international rules of conduct for outer space activities should lag behind the development of space science and technology, for legislation must wait until international co-operation had led to agreements. It was to be hoped that a true realization of mankind's common interest in the exploration and use of outer space would soon lead all nations to a common understanding and agreement on standards of behaviour and co-operation to those ends.

The four draft proposals on basic principles had much in common and it should not prove too difficult to reconcile the minor differences between them. The major disagreements which existed with regard to certain principles stemmed from their political implications and could be resolved only by an understanding reached in the General Assembly among the Powers concerned.

He endorsed the principle proposed by the United Arab Republic (A/AC.105/L.6) that the activities of Member States in outer space should be confined solely to the peaceful uses. In his opinion, that question was within the terms of reference of the Committee on the Peaceful Uses of Outer Space and need not be handed over to the disarmament negotiators. The armament of outer space had not yet taken place and steps must be taken, before it was too late, to prevent it. It was unfortunate that atomic energy had first been employed for war; activities

/...

(Mr. Hakim, Lebanon)

in outer space had so far been peaceful, and must never be developed for purposes of war and mass annihilation.

There was no reason why the Sub-Committee should not embark at its present session on detailed consideration of the proposals before it relating to the basic principles. In his delegation's view, those principles might first be embodied in a solemn declaration for unanimous adoption by the General Assembly in the manner of the Universal Declaration of Human Rights. Such a declaration would have greater authority than an ordinary General Assembly resolution. Later, a convention or covenant, based on the declaration, could be recommended by the General Assembly for ratification by Member States.

In contrast, the questions of liability for space accidents, and of assistance to and return of astronauts and space vehicles, were not controversial and could be more appropriately dealt with in international agreements subject to ratification. Those two questions might be referred to a panel of jurists for study on the basis of guiding principles approved by the Sub-Committee.

The meeting rose at 11.55 a.m.