



COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE TWENTY-SECOND MEETING

Held at Headquarters, New York,  
on Wednesday, 24 April 1963, at 10.55 a.m.

CONTENTS

Consideration of legal problems arising from the exploration and  
use of outer space (A/C.1/179, 181; A/AC.105/L.3-L.6;  
A/AC.105/C.2/4; 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 26 APRIL 1963, THE TIME-LIMIT FOR  
CORRECTIONS WILL BE 1 MAY 1963.

PRESENT:

<u>Chairman:</u>	Mr. LACHS	(Poland)
<u>Members:</u>	Mr. BUDO )	Albania
	Mr. COMO )	
	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. PRUSA	Czechoslovakia
	Mr. LEMAITRE	France
	Mr. CSATORDAY	Hungary
	Mr. CHAKRAVARTY	India
	Mr. AMIRMOKRI	Iran
	Mr. ATTOLICO	Italy
	Mr. MATSUI	Japan
	Mr. HAKIM	Lebanon
	Mr. CUEVAS CANCINO	Mexico
	Mr. JARGALSAIKHAN	Mongolia
	Mr. TABITI	Morocco
	Mr. WYZNER	Poland
	Mr. JUCU	Romania
	Mr. GEORGE )	Sierra Leone
	Mr. PEARCE )	
	Mr. HEDIM	Sweden
	Mr. FEDORENKO	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
<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, 881; A/AC.105/L.3-L.5; A/AC.105/C.2/4; A/AC.105/C.2/L.6)  
(continued)

Mr. FEDORENKO (Union of Soviet Socialist Republics) said that the discussion appeared to have reached the stage of specific comment on provisions for inclusion in a draft declaration of basic principles to govern the exploration and use of outer space. His delegation wished to offer its own comments on those provisions as a contribution to the advancement of the Sub-Committee's work.

His delegation was pleased to note that the preamble to the draft declaration it had submitted (A/AC.105/C.2/L.6) had given rise to no objection on the part of any delegation. That was a hopeful sign and augured well for eventual agreement on the operative clauses. It appeared, moreover, that many of the operative paragraphs proposed by his delegation were acceptable to the Sub-Committee. Paragraphs 1, 2 and 3 had encountered no opposition, apart from the suggestion that their substance might be combined in a single paragraph. His delegation did not feel strongly on that point, but considered it preferable on grounds of logic and drafting form for the three principles involved to be stated in separate paragraphs.

There had been no opposition to the substance of paragraph 4. Some representatives had even suggested that the paragraph might be expanded, and his delegation would welcome any specific proposals that would improve it. It had been drafted in broad terms with reference not merely to Article 2 of the United Nations Charter but to the Charter as a whole, and also to the recognized principles of international law. It appeared superfluous to refer in the paragraph to international agreements, as the signatories thereof were obviously bound by the terms of any agreements they had concluded.

Paragraph 5 was the first of a series of clauses dealing with specific points, which were intended to subject the freedom of outer space proclaimed in paragraph 2 to certain necessary qualifications. The need for such qualification appeared to have been generally recognized in the Sub-Committee, particularly by the representatives of the United Arab Republic, Mexico and Czechoslovakia. Determination of the particular limitations which should

/...

(Mr. Fedorenko, USSR)

be imposed on that freedom was a problem which should be solved on the basis of realities and the experience gained thus far in the exploration and the use of outer space.

It was apparent from recent statements by authorities in his own country and in the United States of America that artificial earth satellites would soon provide an effective means of international communication. The time had therefore come to proclaim unequivocally that the use of outer space for propagating war, national or racial hatred or enmity between nations was inadmissible. Such use of outer space would be contrary to the will of the peoples of the world and to the principles stated in paragraph 1 of his delegation's draft, which appeared to be generally accepted. The Canadian representative's objection to the inclusion of such a paragraph on the ground that war propaganda was difficult to define was hardly consistent with the positive approach taken by the Canadian delegation in the Eighteen-Nation Committee on Disarmament. War propaganda had been condemned by the General Assembly as early as 1947 in its resolution 110 (II). It was therefore scarcely logical to argue that attempts to ban war propaganda in outer space were futile merely because efforts to ban war propaganda by radio had not proved successful.

No delegation had voiced objection to the first part of paragraph 6 of the USSR draft. The principle stated in the second part of that paragraph had its basis in the first part of paragraph 2 and in paragraph 3. Some measures of the type referred to in paragraph 6 had already been taken, and a very serious approach to the question of experiments in outer space was called for. It was not enough merely to require prior consultation concerning such experiments; the essential need was for prior agreement.

There appeared to be a considerable measure of agreement in the Sub-Committee on the need for a provision such as that contained in paragraph 7 of his delegation's draft. The exploration and use of outer space by private agencies would present many problems, including the possibility of bankruptcy. Moreover, such agencies might conceivably be used as a screen for activities undertaken by a State, where the latter wished to avoid responsibility for its actions. It had been suggested that private companies as well as States should have the right to explore and use outer space, but those holding that view agreed that the

/...

(Mr. Fedorenko, USSR)

state concerned should have ultimate responsibility. Consequently, he failed to see why they could not accept his delegation's formula, particularly since specific recognition of the ultimate responsibility of States would greatly facilitate international relations with respect to space activities. International co-operation in the peaceful use of outer space should be developed at the State level.

In paragraph 8 of its draft, his delegation had preferred to speak of the rights, rather than the jurisdiction of States over objects they launched into outer space. That paragraph too had been unopposed.

The principle stated in paragraph 9 of his delegation's draft was simply a confirmation and extension of an accepted principle of international law. The Canadian representative's argument (A/AC.105/C.2/SR.21) that maritime law permitted espionage in view of the fact that the ships of one State were not, while on the high seas, subject to control by any other State was not well founded for all Governments with maritime interests established - either temporarily or permanently - warning, danger, restricted or prohibited areas for numerous purposes. Moreover, air defence identification zones had been established along the coasts of North America. The norms of international law, maritime law and air law provided sufficient basis for the banning of espionage activities in outer space. The altitude from which intelligence observations might be made was immaterial. Objection to such a principle in the draft declaration was evidence of a desire on the part of some States to reserve the possibility of using outer space for espionage purposes. Not to preclude its use for such purposes would be contrary to the interest of friendly relations among nations, to which reference was made in the preamble to General Assembly resolution 1802 (XVII).

Paragraphs 10 and 11 of the USSR draft declaration had not given rise to any objections. It had been suggested that paragraph 10 should include some reference to the obligation to return astronauts and parts of space vehicles to the launching State, and his delegation would be prepared to consider specific proposals for amendment. It considered paragraph 11 to be appropriate as a broad statement of the general principle of liability. Detailed rules of liability could be set out in a separate agreement.

/...

(Mr. Fedorenko, USSR)

With regard to the form to be given to the instrument incorporating the principles, his delegation considered the Sub-Committee's task to be the preparation of a formally binding instrument. It believed that the fears which had been expressed concerning possible delays in the ratification of such an instrument were exaggerated and might reflect an artificial concern. The aim should be the entry into force of the instrument at the earliest possible opportunity, and the question was therefore essentially one of the willingness of States to accept its provisions. Those who favoured a General Assembly resolution had claimed that such an instrument would also impose an obligation on States. However, if States were fully prepared to assume obligations, they should not object to the conclusion of an international agreement in which those obligations were set forth. The absence of such an agreement would also hamper scientific and technological progress.

His delegation had submitted document A/AC.105/C.2/L.6 in a desire to contribute to the success of the Sub-Committee's task, and it welcomed the generally favourable reaction to that text. While it was prepared to accept any reasonable proposals for amendment, it felt that compromise could not be unilateral. It hoped, moreover, that other delegations would also take steps which would lead to the preparation of a generally acceptable draft.

Mr. CHAKRAVARTY (India) endorsed the view that the law should keep pace with the scientific and technological achievements in outer space. Although considerable difficulties were involved in the formulation of a law of outer space, that task offered mankind a unique opportunity, since outer space was as yet free from national conflict. The challenge of outer space should act as a unifying force in which national barriers would be forgotten and the sole consideration would be the benefit to mankind as a whole. Although General Assembly resolution 1721 (XVI) had stated that international law, including the Charter of the United Nations, applied to outer space and celestial bodies, international law did not cover all situations which might arise in that new sphere. It would take time to formulate a comprehensive space law, and its principles should be the subject of a consensus of opinion.

/...

(Mr. Chakravarty, India)

The documents under consideration revealed a considerable measure of agreement about the points to be included in a statement of principles. However, the idea of consultation and agreement between States, which was an important limitation of the principle of the freedom of outer space, was included in the United Kingdom draft (A/C.1/879) and in the Soviet draft (A/AC.105/C.2/L.6) but not in the United States draft (A/C.1/881). The Sub-Committee should take some action to prevent the use of outer space for experiments which endangered human life or which changed the space environment in such a way that the possibility of obtaining important scientific information was jeopardized. On rare occasions, a major experiment of such a type might be so important as to be desirable in the interests of science, but it should first be discussed and cleared. States launching objects into outer space were already required to furnish information to the Committee on the Peaceful Uses of Outer Space. The Sub-Committee might like to consider what role the consultative group of COSPAR could play in that connexion. Both the Soviet Union and United States representatives had mentioned the consultative group, and there seemed to be agreement on its usefulness.

A stage had therefore been reached at which a draft could be prepared incorporating the points on which there was agreement. That task could perhaps be entrusted to a small working group, which would compare the language of the different drafts submitted.

The possibility of the use of outer space for military purposes presented a serious threat to mankind, particularly in view of the development of new kinds of weapons. At the seventeenth session of the General Assembly, the United States and Soviet Union delegations had both expressed the view that as the question of reserving outer space for peaceful uses was closely linked with the question of disarmament, it could only be considered in the context of disarmament. The Indian delegation regretted that that view had not changed and that neither the United States nor the Soviet Union drafts included a provision limiting the use of outer space to peaceful purposes. His delegation was strongly in favour of such a limitation, which had been referred to in paragraph 1 of the United Arab Republic draft (A/AC.105/L.6).

/...

(Mr. Chakravarty, India)

Although it was true that the peaceful use of outer space was connected with the question of disarmament and that it was difficult to detect when outer space was being used for military purposes, his delegation nevertheless believed that a declaration to the effect that outer space should be kept free from military use would constitute a significant step in the development of the rule of law in outer space. To the extent that it excluded outer space from the area of conflict, such a declaration might facilitate the achievement of an agreement on general and complete disarmament and would make it possible to concentrate efforts on international co-operation for the peaceful use of outer space.

He recalled that at the beginning of 1958, both the United States and the Soviet Union had expressed a desire to limit the use of outer space to peaceful purposes. He cited the explanatory memoranda annexed to the Soviet Union's request for the inclusion in the agenda of the thirteenth session of the General Assembly of the item "The banning of the use of cosmic space for military purposes, the elimination of foreign military bases on the territories of other countries, and international co-operation in the study of cosmic space" (A/3818 and Corr.1), and the request by the United States for the inclusion in the agenda of that same session of the item "Programme of international co-operation in the field of outer space" (A/3902). Those documents provided ample evidence that at that time it had been considered possible to separate the question of the peaceful use of outer space from that of disarmament and to make parallel efforts to achieve both objectives. Furthermore, General Assembly resolution 1348 (XIII) had recognized that "it is the common aim that outer space should be used for peaceful purposes only". Although the Soviet Union had opposed the adoption of that resolution, it had supported resolution 1472 (XIV), which had recognized "the common interest of mankind as a whole in furthering the peaceful use of outer space".

The acceptance of the principle, embodied in resolution 1721 (XVI), that outer space and celestial bodies were not subject to national appropriation proved that man hoped to follow in outer space a wiser course than that which had characterized the period of exploration and acquisition of territories and points of vantage on earth. While the space Powers were to be commended on their restraint and their willingness to share their knowledge and extend the benefits of their discoveries to others, mankind was none the less living under a cloud of

/...



(Mr. Chakravarty, Ind)

suspicion and fear because of the impossibility of ascertaining the contents of the purpose of satellites already in orbit. Joint space exploration would all such misgivings and avoid duplication and wastage of effort and funds. If outer space was to be used for the benefit of mankind, co-operation in place of competition was essential and was bound to develop in the near future. It should then not be difficult to reserve outer space for peaceful purposes.

It was contended that the test of the legitimacy of a particular use of outer space was not whether it was military or non-military but whether it was peaceful or aggressive, defensive or offensive. However, it was sometimes difficult to define what was defensive and the establishment of any military stations on celestial bodies would require the adoption of security measures that would be tantamount to de facto appropriation. The demilitarization of outer space had, moreover, been advocated by many independent scientific groups.

Turning to paragraph 7 of the Soviet draft (A/AC.105/C.2/L.6), he noted that it sought to restrict the exploration and use of outer space to States, that aim presumably being to prevent disputes over liability and avoid the possibility of irresponsibility on the part of private organizations. His delegation did not think that the difficulties involved were insurmountable. In view of the fact that it might be difficult for States with a free enterprise system to monopolize launchings, the question of liability would seem to be suitably covered in paragraph 6 of the United States draft (A/C.1/381). The Soviet point might, however, be met by stipulating that no space craft should be operated by individuals or corporations except with a licence granted by the State of which they were nationals and that the State should give full clearance before each launching.

His delegation thought that paragraphs 8 and 9 of the United Arab Republic draft (A/AC.105/L.6) contained important provisions on international co-operation and joint exploration which should be included in a declaration of principles.

The principles concerning assistance and rescue did not seem to have given rise to any serious disagreement and the time had come to draft detailed agreements on those subjects as had been done in the case of aircraft and vessels in dist

(Mr. Chakravarty, India)

In the view of his delegation, it would be best at the present stage to adopt a declaration of general principles, to be followed later by a convention which would be ratified by States and thus become legally binding. That procedure would be preferable to a General Assembly resolution, which would have to be somewhat lengthy. So long as there was no means of verification and enforcement, a treaty would have no more value than a solemn declaration. A declaration had great moral force and, when adopted unanimously, was generally accepted as part of international law. As and when additional information was acquired, it might be necessary to modify the principles adopted, but that would be difficult to do if the principles were immediately embodied in a binding treaty or agreement.

Mr. MATSUI (Japan) expressed his delegation's gratification that a consensus of opinion, as recorded in General Assembly resolution 1802 (XVII) had emerged since the Sub-Committee's last session with regard to the need for examining general principles governing activities in outer space, liability for space vehicle accidents, and assistance to and return of astronauts and space vehicles in distress. The Sub-Committee must now make definitive, substantive progress on those subjects if it was not to disappoint the expectations of the peoples of the world. A number of delegations had suggested that positive recommendations should be made in areas in which the Sub-Committee's deliberations had indicated some possibility of agreement. His delegation saw much wisdom in that approach, which would consolidate the Sub-Committee's achievements to date. If it were to embark upon too ambitious an attempt to secure a comprehensive agreement on one item only, thus neglecting the others, or if it were to engage in too tedious a discussion concerning procedural questions, the Sub-Committee might have nothing to show for its efforts at the close of the present session. The Sub-Committee's first step should therefore be to consolidate existing areas of agreement, but it should also try to find other points on which agreement might be possible

His delegation had constantly stressed that basic principles must be evolved to ensure that activities in outer space were conducted peacefully, openly and in an orderly manner for the welfare of mankind. The basic theme of the law of outer space must be that outer space should be used for peaceful purposes only and that its use for aggressive purposes such as nuclear weapons testing or the

(Mr. Matsui, Japan)

placing of weapons of mass destruction in orbit should be prohibited. That theme had been stated in the first principle of the draft code submitted by the United Arab Republic (A/AC.105/L.6), but it had not been included in either the United States draft declaration (A/C.1/881) or the USSR draft (A/AC.105/C.2/L.6). At the previous session of the Sub-Committee, the United States representative had said that a decision on the prohibition of the use of outer space for military purposes could be reached only as part of controlled disarmament, and the USSR representative had agreed that that subject did not come within the competence of the Sub-Committee. The Japanese delegation recognized that any effort to reserve the use of outer space for peaceful purposes was bound to involve agreements on verification and control within the context of disarmament, and it believed that those agreements should be sought in the Eighteen-Nation Committee on Disarmament. It also believed, however, that the Committee on the Peaceful Uses of Outer Space could express its views on the advisability of giving States specific guidance on how to direct their activities along exclusively peaceful lines.

The Canadian suggestion, namely, that to guard against irresponsible activities a provision should be included forbidding the operation of space craft by private persons, corporations or organizations except by license granted by the State of nationality (A/AC.105/C.2/SR.21), ought to satisfy any valid concern about State responsibility for space activities conducted by private entities. His delegation also shared the Canadian delegation's interest in paragraph 1 of the United Kingdom draft (A/C.1/879), whereby States would be required to consider the potentially harmful effects of space experiments and, in case of doubt, to consult with other States. Freedom in the use of outer space should be recognized in so far as it did not prejudice the interests of other States in the peaceful uses of outer space or the welfare of mankind. In proclaiming such freedom, however, the applicability of some recent practices concerning freedom of use of the high seas should be treated with caution.

/...

(Mr. Matsui, Japan)

The contention of some members of the Sub-Committee that the rules it adopted should have unchallengeable binding legal force seemed valid in principle. Nevertheless, experience had shown that the process of obtaining ratifications of treaties was slow and that, in fact, many expected ratifications might not be forthcoming. Such delay in the present case would not be consistent with the Sub-Committee's treatment of the questions before it as urgent. Furthermore, his delegation had some doubts concerning the legal consequences of an attempt to give binding force to principles which, at best, would provide States with mere guide-lines and which could be implemented only by the elaboration of specific and detailed rules. His delegation therefore preferred the adoption of a General Assembly resolution, which would undoubtedly command general acceptance. As a United Nations body, the Sub-Committee should not belittle the weight of a General Assembly resolution which might have a limited effect legally but certainly not morally. His delegation took a favourable view of the suggestion that the General Assembly resolutions could eventually be developed into an international treaty if experience should demonstrate such a need.

The consensus of the Sub-Committee now seemed to be that space vehicles which landed outside the territory of the launching State should be promptly returned to that State. In addition, the United States (A/C.1/831) and USSR draft declarations (A/AC.105/C.2/L.6) both included a principle to that effect. His delegation, however, did not consider it reasonable or appropriate to expect a non-launching State, within whose territory a space vehicle or its parts landed, to return such objects unless it had been given advance knowledge about the vehicles in transit or in orbit that might come down suddenly and without warning on its territory. The obligation of non-launching States to return space vehicles should be conditional upon the obligation of launching States to provide adequate information in advance. The information might be supplied through bilateral channels or by other appropriate means. In that connexion, the timing and contents of the information provided under the registration system established by General Assembly resolution 1721 B (XVI) might be improved.

/...

Mr. LEMAITRE (France) was pleased that the previous speakers had raised points of possible agreement. His delegation wished to promote every effort to achieve eventual agreement, provided that the texts agreed upon were essentially legal in character.

There were two ways of approaching the legal questions of outer space. One approach would be to produce a general code, restricted to rather abstract and flexible provisions in order to take account of technical developments. The other approach would require the establishment of a list, subject to continuous revision, of the various theoretical and practical questions raised by the exploration and use of outer space and celestial bodies. It was essential that a general code or declaration of principles should be worked out with sufficient care so that it did not create a source of contention. Studies on the rules to be laid down should be undertaken immediately or in the near future, but haste was not justified.

A second way of dealing with the legal problems of outer space was to draw up detailed instruments concerning specific questions. That approach might be used with respect to liability for space vehicle accidents and the rescue of astronauts, and in that connexion the Sub-Committee could make use of existing aeronautical and maritime conventions. Although it was not possible to proceed entirely by analogy, he wished to stress that the rules laid down should not be so distinct as to be inconsistent with general international law. There had in recent years already been too many derogations of the unity of the law.

His delegation did not regard those two approaches as incompatible. Studies undertaken in the one direction might be of benefit to those undertaken in the other, in the same way that great scientific principles had many daily applications to the lives of all peoples, whereas at the same time small facts, observed by scientists and technicians, could give rise to great discoveries. The Sub-Committee might devote one meeting to the consideration of the general principles and another to the consideration of the two specific questions before it and other practical questions. Working groups could be established later. Another possible procedure would be for the Sub-Committee to consider the principles, while the working groups studied the practical questions and prepared a report for the Sub-Committee. His delegation would also favour the adoption,

/...

(Mr. Lemaitre, France)

even on a provisional basis, of measures to protect the interests of States which had not yet taken part in activities in outer space.

The problem of the form of the texts was not fundamental, and agreement should be reached first on the main points of substance. Consideration of the various provisions would probably lead to the conclusion that some should be included in a resolution or in a declaration which would take effect upon signature, while others should be included in more comprehensive agreements, which under the Constitutions of many States would require parliamentary approval in order to have binding force. Furthermore, while there should be some certainty that an obligation was legally binding on States, it was also essential to ensure actual compliance with the obligation. Thus, there was the problem of control and the difficult question of what court was competent to hear a dispute concerning the interpretation or application of the obligation.

In the opinion of his delegation, some proposals, such as those concerning propaganda and information activities, were outside the Sub-Committee's competence. Furthermore, it should be remembered that the freedom of non-commercial State vessels on the high seas had not prevented the merchant marine from developing, thanks not only to science and technology but also to carefully prepared international agreements, which had greatly facilitated the work of sailors and traders and had promoted international relations. Incidentally, the Chicago Convention on International Civil Aviation was not applicable to State aircraft. The proposals put before the Sub-Committee should not be concerned with matters - such as the establishment of a State monopoly - which were directly related to the political, social and economic systems of the States concerned.

From a practical standpoint, the essential consideration was that the States or associations of States responsible for the launching, operation and use of objects leaving the Earth should accept liability for the injuries which might arise from those activities. The ultimate distribution of the financial burden of compensation was a domestic matter. Legal rules on that point might be established after the phase of intensive research had given way to that of regular use. Until that time, the relevant problems could be settled in such a way as to enable scientists to continue their research with greater ease. On the other hand, the problem of limitations on the freedom to undertake activities in outer space should be dealt with as soon as possible.

The meeting rose at 12.45 p.m.

U  
G  
A

CO

lan  
tex  
wor  
Roo

COR

63-