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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE TWENTY-THIRD MEETING

Held at Headquarters, New York,  
on Thursday, 25 April 1963, at 11 a.m.

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Organization of work

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PRESENT:

<u>Chairman:</u>	Mr. LACHS	(Poland)
<u>Members:</u>	Mr. BUJO	Albania
	Mr. MENDEZ	Argentina
	Sir Kenneth BAILEY	Australia
	Mr. MARSHIK	Austria
	Mr. LITVINE	Belgium
	Mr. MELLO	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. NAKAJIMA	Japan
	Mr. HAKIM	Lebanon
	Mr. CAVILLO-TREVIÑO	Mexico
	Mr. DASHTSEREN	Mongolia
	Mr. TABITI	Morocco
	Mr. WYZNER	Poland
	Mr. JUCU	Romania
	Mr. PEARCE	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
<u>Secretariat:</u>	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-L.6; A/AC.105/C.2/4; A/AC.105/C.2/L.6  
(continued))

Sir Kenneth BAILEY (Australia), recalling the Sub-Committee's terms of reference under General Assembly resolution 1802 (XVII), observed that a survey of the proposals referred to the Sub-Committee as a basis for its work had already disclosed a substantial area of agreement under each of the headings specifically mentioned in that resolution. In view of that fact, the Sub-Committee would be lacking in respect for the General Assembly if it did not take at least one stage further, under each of those headings, the material referred to it.

The proposals submitted to the Sub-Committee and the views which had been expressed showed that there was complete agreement in broad principle that a State launching a space vehicle should be internationally liable, without fault, for injury, loss or damage caused by the vehicle on the earth or in the air space, and that States should be under a duty to render all possible assistance to the personnel of a space vehicle landing by accident, distress or mistake and to return to the launching State both personnel and vehicle. It was also apparent that an important measure of agreement existed concerning the further elaboration of basic legal principles governing the activities of States in the exploration and use of outer space. In all four of the draft statements of general principles, the two basic principles laid down in General Assembly resolution 1721 (XVI) were expanded into half-a-dozen similar propositions. Although important elements in the USSR draft declaration (A/AC.105/C.2/L.6) and the United Arab Republic draft code (A/AC.105/L.5) did not appear in the other drafts, the Sub-Committee should - if it was, in the time available to it, to break away from the stalemate in which its first session had ended - accept the fact of certain disagreements and adopt a text embodying the elements on which agreement existed. That would have the twofold advantage of enabling the Sub-Committee to record some progress and thus restore faith in its continued usefulness, and of providing, with the least possible delay, adequate guidance from the international community to Member States in the conduct of their activities in outer space.

On the question of the form of the instruments which should embody the legal rules to be elaborated by the Sub-Committee, his delegation's view was purely empirical. Prima facie, legal rules - and that applied to the rules under each

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(Sir Kenneth Bailey, Australia)

of the headings in resolution 1802 (XVII) - should be embodied in a convention or other like instrument having legally binding effect. It did not follow, however, that no instrument could be adopted until an acceptable draft had been prepared in the form of a convention or its legal equivalent. There might, on the contrary, be great advantages, especially in that new field of law, in making a start with instruments in resolution form, in which unanimity could be achieved without loss of flexibility. Full legal form could be developed later, as experience warranted. In recent uses of the convention form, the Geneva Conventions on the law of the sea and the Convention on Consular Relations currently being discussed at Vienna had emanated in draft form from protracted study in the International Law Commission. They had then been referred to Governments for comment and later discussed in the General Assembly before being considered at diplomatic conferences, and even at the conference stage many amendments had been offered. Judged in the light of that experience, the proposals before the Subcommittee, particularly in the matter of basic principles, were not yet ready for adoption in convention form.

His delegation appreciated fully the difference between a resolution adopted by the General Assembly, whether expressed as a recommendation or as a declaration, and an instrument in the nature of a convention or legally binding declaration, duly executed and ratified by Governments. It was not his delegation's view that a resolution adopted by the General Assembly could have no part in the creation of international law, or that it ought not to be adopted in the solemn and emphatic form of a declaration. A resolution or declaration by the General Assembly, especially if universally adopted and adhered to in practice, might be valuable evidence of international custom, and hence a most important source of law. Nevertheless, a resolution or declaration by the General Assembly was certainly not law-making in the sense that a treaty, convention or declaration formally ratified by Governments was.

Whether or not a set of propositions could appropriately be embodied in convention form depended on a number of factors. One was the degree of precision with which the rules were expressed. States would be more disposed to accept legal obligations that were clearly and precisely formulated, as Governments would then know with some exactitude what they were undertaking. Very general expressions were not likely to secure wide acceptance unless they represented a

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consensus of opinion both as to their meaning and as to their scope. Any wide divergence of view, or even uncertainty about what was meant, would seriously militate against acceptance in legally binding form.

Another important factor was suitability for application or enforcement by legal procedures. The exact point in the broad field of ethics at which it was useful to embody a precept in legal form was one of the most difficult decisions for any law-making body.

Applying those rather elementary considerations to the draft declarations which had been referred to the Sub-Committee, his delegation did not regard as suitable for adoption in convention form or its legal equivalent a number of the paragraphs in the revised USSR proposal. Wary of giving legal character to broad moral concepts or declarations of objectives, his delegation doubted whether operative paragraph 1 and some parts of operative paragraphs 4, 6 and 10 of the USSR draft declaration were appropriate for legal purposes; that view, however, did not imply any disagreement in substance with the ideas embodied in those passages. In general, therefore, his delegation thought it premature to adopt at present any formulation of the basic principles in convention form or its legal equivalent; on the other hand, it agreed with the United States delegation that the principles could appropriately be expressed in a resolution of the General Assembly.

Delegations supporting the USSR draft declaration had implied that they might not support adoption by the General Assembly of those principles which were common to the various drafts unless the proposed declaration was open for signature by Governments. He wished, however, to point out that the Sub-Committee's terms of reference did not justify its insistence on that particular form, and that it would be disrespectful to the General Assembly and disappointing to the Members of the United Nations if the Sub-Committee were to fail, on technical grounds, to place on record the basic legal principles which were common to the various proposals it had considered.

He suggested that, with a view to the possible adoption of a joint draft embodying all the principles for which agreement could at present be found, the four sponsors of proposals, assisted by any other delegations that might be willing to participate, should form a working party within the Sub-Committee. He would like, for the benefit of such a group, to draw attention to several paragraphs in the drafts with which his delegation had difficulty.

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Paragraph 5 of the USSR draft declaration did not seem to his delegation to fall within the scope of the Sub-Committee. Australia had fully supported the condemnation of war propaganda in so far as General Assembly resolution 110 (II) was concerned, but responsibility for formulating the duties of States in that field had passed, since then, to the Eighteen-Nation Committee on Disarmament. In any event, the text of paragraph 5 was too open to divergent and subjective interpretations to be acceptable as a basic legal principle governing the activities of States. In that respect, it differed from the text at one time agreed upon at Geneva, which had been detailed and precise - and, incidentally, not in the form of a convention or its legal equivalent.

The USSR, United Kingdom and United Arab Republic drafts all dealt with the problem of harmful experiments, although the latter two, unlike the USSR text, did not give other States an actual veto on a State's proposed space activities. The duty to consult in the event of a potentially harmful experiment seemed to be either explicitly or implicitly common to at least three of the texts. Noting that the United States representative had referred to the establishment by COSPAR of a consultative group to study the problems of interference and contamination in outer space and to serve as a means of consultation and discussion in relation to particular projects and that the USSR representative had mentioned the 1962 Pugwash recommendations, he wondered whether a duty of international consultation in the event of a proposed activity which the State thought might be potentially harmful could not be linked explicitly with the consultative group of COSPAR.

Paragraph 1 of the United Arab Republic draft code (A/AC.105/L.6), in which it was provided that the activities of Member States in outer space should be confined to peaceful uses, had received some support in the Sub-Committee. On the other hand, it had been commented on adversely by the delegations which held that the question of military activities in outer space was not within the Sub-Committee's terms of reference and that general and complete disarmament was the only way to deal with the question. Since there did not appear to be any possibility of including that provision in the draft general principles to be elaborated by the Sub-Committee, he would suggest two ways in which the wide-spread

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decision on that matter in the Sub-Committee might be recorded. First, it might be possible - either in the Sub-Committee's own draft of basic principles or in the Sub-Committee's report to the Committee on the Peaceful Uses of Outer Space - to give fresh contemporary expression to the aim expressed in General Assembly resolution 1348 (XIII) that outer space should be used for peaceful purposes only. Secondly, the Sub-Committee, either in its draft of basic principles or in its report, might formally welcome, or at least take note of, the statement made by the United States representative in the First Committee of the General Assembly the previous year that the United States had no intention of placing weapons of mass destruction in orbit unless compelled to do so by actions of the Soviet Union (A/C.1/PV.1289). For maximum effect, it would be desirable to be able to welcome a parallel statement from the USSR. In that regard, he noted that a recent press report had referred to an article in a Soviet military newspaper describing some potential military uses of outer space.

The drafts before the Sub-Committee included provisions dealing with the obligation to return space vehicles and render assistance to their personnel and with the question of liability for space vehicle damage. Articles on those subjects, in some agreed form, would presumably be included in the basic legal principles which might be drafted by the working party. It seemed, however, to be generally agreed that a relatively detailed instrument, in convention form, would eventually be required on each of those subjects. As such instruments could scarcely be drafted at the present session, his delegation suggested that the working party might be asked to consider those subjects also, if necessary after the session had concluded, and to prepare draft texts for subsequent consideration. Upon the conclusion of the present session, the working party would no doubt welcome written comments or suggestions from other delegations. By adopting that procedure, the Sub-Committee would be complying with its terms of reference, justifying the confidence placed in it by the General Assembly and making a prompt and substantial contribution to the development of the law of outer space.

Mr. MOLEROV (Bulgaria) emphasized that not only the major Powers but also the small countries had an obligation to assist in formulating basic legal

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(Mr. Molerov, Bulgaria)

principles to govern outer space activities. The contribution of smaller countries like his own could not be great, but all nations, as members of the world family, could assist in solving the problem of space law just as they shared pride in the great achievements wrought by mankind since space exploration had commenced five and a half years before.

The time had not yet come to attempt a definitive codification of the law of space, and his delegation believed that the Sub-Committee's first task should be to prepare a basic document of international law - a declaration or agreement establishing the fundamental principles to govern the various activities of States in the exploration and use of outer space. It did not consider a General Assembly resolution appropriate for that purpose. The General Assembly had, in fact, already adopted resolutions on the subject, and his delegation failed to see why States which were prepared to subscribe to certain principles should not wish to see them embodied in a text having binding force.

The law of outer space required a firm basis, and that could best be provided by an international legal instrument imposing a binding obligation on the countries acceding to it. If the Sub-Committee succeeded in preparing such a basic instrument, it would not only have carried out the task assigned to it by General Assembly resolution 1802 (XVII), but would also have created a sound basis for broad co-operation in the future in the exploration of outer space, and would have greatly facilitated agreement on the practical questions of liability and assistance to space vehicles and their crews.

His delegation considered that the USSR draft declaration (A/AC.105/C.2/L.6) met the requirements for a basic document of space law; it also had the merit of including a number of principles taken from proposals submitted by other delegations. The task assigned to the Sub-Committee gave its members a responsibility, not only to their Governments, but to all mankind. For that reason, the humanitarian principles by which States were governed in the exploration of outer space should also inspire the work of the Sub-Committee. Important humanitarian principles had been stated in articles 1, 2, 5, 7 and 9 of the USSR draft declaration.

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(Mr. Malerov, Bulgaria)

His delegation attached equal importance to the form and to the substance of the document to be drawn up by the Sub-Committee. Simultaneous discussion of its form and of its content was justified and useful at the present stage of the Sub-Committee's work.

As man was penetrating further and further into outer space, the need for co-operation was increasing. His delegation believed that such co-operation should manifest itself in the Sub-Committee where every effort should be directed towards reaching agreement. It believed that a common ground for agreement could and should be found.

Mr. YAMCHUREN (Mongolia) noted the progress that had been made since the Sub-Committee's previous session, and the fact that several draft texts of basic principles on the exploration and use of outer space were now under consideration. In view of the advances made by science and technology and the number of objects which had already been launched into space, it was generally recognized that basic rules were needed to govern behaviour in outer space. The absence of general rules to govern that new field of human endeavour could no longer be tolerated.

The view had been expressed that the questions of assistance and return should be dealt with in a General Assembly resolution, which would be followed by a more detailed international agreement. In the opinion of his delegation, the same procedure should be adopted for the basic principles. Since, however, such principles had already been embodied in General Assembly resolution 1721 (XVI), the time had come to draw up an international instrument based on the provisions of that resolution. The mere reiteration of the provisions of General Assembly resolutions would be pointless.

The Mongolian delegation considered that the Soviet Union draft (A/AC.105/C.2/L.6) represented a good working basis. That text, which took into consideration the interests of all countries, including the smaller countries which were not engaged in space activities, included many of the points contained in the other drafts which had been submitted as well as important additional provisions. The provisions of paragraphs 5, 6 and 9 of the Soviet draft were of particular importance, especially to countries which were not space Powers.

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(Mr. Dashtseren, Mongolia)

Those provisions should be taken into account in codifying the principle of the peaceful use of outer space. As there was general agreement that non-peaceful uses of outer space should be prohibited, that principle should not give rise to serious objections. It would, however, be necessary to define what was meant by the peaceful use of outer space if the instrument to be drawn up was to be of any value.

His delegation thought that the general principles of outer space law should be embodied in an international treaty which was binding on all States, in the same way as treaties had been prepared to govern activities on land, in the sea and in the air. When basic general principles had been elaborated, it should not be difficult to reach agreement on points of detail, such as the questions of assistance and return and liability for space vehicle accidents.

#### ORGANIZATION OF WORK

Mr. MARSCHIK (Austria) noted that the different delegations had displayed flexibility and a willingness to compromise on an acceptable statement of principles and that there was a general feeling that the time had come to draw up a statement of the principles on which agreement was possible. He suggested that the task of drafting a text should be entrusted to a working group, which should be established as soon as possible. That suggestion would not necessarily preclude the procedure suggested by the French representative (A/AC.105/C.2/SR.22), namely, that the Sub-Committee should consider general principles and specific questions at alternate meetings.

After a short discussion, it was decided to postpone the decision on the organization of work until Monday, 29 April, on which date the general debate would have been concluded.

The meeting rose at 12.25 p.m.