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## COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

## LEGAL SUB-COMMITTEE

## PROVISIONAL SUMMARY RECORD OF THE TWENTY-SIXTH MEETING

Held at Headquarters, New York,  
on Wednesday, 1 May 1963, at 11.20 a.m.

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PRESENT:

Chairman:

Mr. LACHS (Poland)

Members:

Mr. BUDO Albania

Mr. MENDEZ Argentina

Mr. COOK Australia

Mr. MARSCHIK Austria

Mr. LITVINE Belgium

Mr. MEDICIS Brazil

Mr. MOLEROV Bulgaria

Mr. DOBELL Canada

Mr. N' GARABAYE Chad

Mr. PRUSA Czechoslovakia

Mr. LEMAITRE France

Mr. PRANDLER Hungary

Mr. CHAKRAVARTY India

Mr. AMIRMOKRI Iran

Mr. ATTOLICO Italy

Mr. NAKAJIMA Japan

Mr. HAKIM Lebanon

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 )  
Mr. EL REEDY) 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

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, L.7)  
(continued)

Mr. PRANDLER (Hungary) noted with satisfaction that the Sub-Committee had concentrated its efforts at the present session primarily on paving the way for a general legal regulation of activities in outer space. In doing so, the Sub-Committee had in effect recognized the need for a general international instrument governing the activities of States in outer space, which could serve as a basis for solving other specific aspects of space exploration. The USSR draft declaration of basic principles (A/AC.105/C.2/L.6) merited particular attention as a starting point for the preparation of such an instrument for the following reasons: (1) it expressed the common interest of all mankind in the exploration and use of outer space for peaceful purposes; (2) it took into account the necessity of promoting broad international co-operation in the exploration and use of outer space, so as to contribute to the development of mutual understanding and to the strengthening of friendly relations among nations; (3) it embodied the principles, unanimously adopted by the General Assembly in resolution 1721 (XVI), which defined the legal nature of outer space and established the applicability of the relevant rules of international law; and (4) it took a specific approach to the problems of international peace and security in outer space by giving detailed and comprehensive guidance to States entitled to conduct space activities and at the same time responsible under the United Nations Charter for the maintenance of international peace and security. The USSR draft declaration represented a realistic and new approach to problems which were theoretically and practically ripe for solution at the present time. Despite existing differences of opinion on those problems, his delegation was convinced that there would ultimately be an identity of views and that potentially harmful actions would be precluded and co-operation established in outer space.

He wished to reply briefly to some of the arguments put forward against paragraphs 5 and 9 of the USSR draft declaration. While no delegation had explicitly advocated the advisability or admissibility of war propaganda by means of telecommunications satellites, the Australian representative had contended that the text of paragraph 5 was too open to divergent and subjective interpretations

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to be acceptable as a basic legal principle governing the activities of States (A/AC.105/C.2/SR.23). That contention disregarded the definite provisions of General Assembly resolution 110 (II), which should be applied to outer space. The remarks of the Brazilian representative (A/AC.105/C.2/SR.24) concerning the desirability of establishing international supervision and control over telecommunications activities in outer space seemed to support the proposal for prohibition of war propaganda in that environment. The first step in curbing the activities which the Brazilian representative feared might occur would be to ban them under a provision such as paragraph 5 of the USSR draft declaration of basic principles.

If the future space activities of States were peaceful, i.e., non-military and non-aggressive, the exploration and use of outer space could be expected to benefit all mankind. On the other hand, if such activities were unlimited by law and therefore anarchical, the exploration and use of outer space would be a menace to present and future generations on earth. Freedom in the exploration and use of outer space did not mean anarchy.

The use of artificial satellites for military purposes or for the collection of intelligence information should be effectively precluded by international agreements. In his delegation's view, the argument that reconnaissance satellites travelled above the spheres of sovereignty of the subjacent States and could therefore operate free from legal prohibitions was ill-conceived, was based on an alleged vacuum in space and gave a false interpretation to the negative side of the theory of sovereignty. Admittedly, General Assembly resolution 1721 A (XVI) declared outer space a res communis omnium; but in interpreting that resolution it must be understood that outer space could be used only in conformity with international law, including the United Nations Charter. In his delegation's opinion, the use of reconnaissance satellites constituted a delict under international law, being in violation of the relevant provisions of the United Nations Charter and being perpetuated in "zones" which were unquestionably subject to the sovereignty of the subjacent State.

He wished to refer next to one specific point in connexion with the problem of the rescue of space vehicles and their personnel. His delegation believed that

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the principle of absolute priority for distress calls from astronauts and spaceships making emergency landings should be laid down in the international agreement adopted on that subject. The problem of distress calls during orbital flights should be treated as it was in navigation and air transport - by giving priority to the conventional distress signals. The technical problem of determining the wave length of emergency signals should be referred to the International Telecommunication Union for study and solution. Humanitarian considerations underlined the necessity for reaching agreement as soon as possible on the general principle involved.

Turning to the question of liability for space vehicle accidents, he recalled that his delegation in the past had stressed the importance of the legal regulation of that subject for the general advancement of international law. The traditions and rules of liability differed widely in many countries. As Lipson and Katzenbach had stated, the problem of liability for injury was compounded by the divergent systems of jurisprudence; under the Napoleonic Code, which had exerted a strong influence on Germanic and Latin American jurisprudence, liability without fault was not looked on favourably, while in the United States the contrary prevailed (Report to the National Aeronautics and Space Administration on the Law of Outer Space, 1961, page 32). In view of those acknowledged divergencies, there should be agreement on at least some basic principles before the rules on liability were elaborated.

On the question of the source of liability, his delegation would suggest that if damage was done to a space vehicle or object or its crew - the launching of the vehicle or object having been attempted or carried out - each of the parties concerned should assume liability for the damage it had sustained, with the following exceptions: (1) if one of the parties had undertaken the launching with a view to pursuing an unlawful activity, or if the space vehicle or object in question had exercised an unlawful effect, that party should assume full liability; (2) if one of the parties produced evidence that damage had been caused through the wilful act or gross negligence of the other party, the latter should assume liability also for the damage caused to the former.

As for jurisdiction and procedure, his delegation shared the Soviet delegation's views concerning the complexity of that problem and agreed that a

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simple reference to the International Court of Justice was not satisfactory. If the parties were unable to reach an agreement within a reasonably short period of time, as envisaged in Article 33 of the United Nations Charter, they should be bound to submit the dispute to arbitration by mutual consent. In his delegation's view, provisions setting up an arbitral body and establishing its procedure might be embodied in a special agreement.

In conclusion, he wished to stress again that no major achievements were possible in any particular field of space law without an agreement on basic principles. For that reason, his delegation considered that, until progress had been made in establishing a set of basic principles - which was the Sub-Committee's primary task - any organizational measure aiming at elaboration of a limited field of space law would be premature.

Mr. JUCU (Romania) said that there appeared to be divergent views in the Sub-Committee as to both the form and the substance of the proposed declaration of basic principles.

In view of the part which the declaration of principles was intended to play in governing the activities of States in outer space, his delegation believed that it should have binding force. As Mr. Ambrosini had rightly said in the First Committee, in any human activity which was new, interests were created which might give rise to disputes or differences, and they must be equitably and rationally regulated on the juridical plane lest confusion and anarchy arise (A/C.1/PV.982, page 51). The activities of States in outer space demanded such regulation. Most publicists had drawn attention to the consequences which might ensue from delay in the regulation of the exploration and use of outer space. Mr. Eugene Pépin - to cite only one of many - had declared that the total absence of rules concerning the exploration and use of outer space could only lead to anarchy, with each State considering itself free to act as it wished ("Les problèmes juridiques de l'espace", Revue française de droit aérien, no. 4, Oct.-Dec. 1959). The Sub-Committee must at its present session agree that the declaration of basic principles on the law of space should have binding force.

With respect to the substance of the declaration, the debate had shown that some States were opposed to the inclusion of principles prohibiting war propaganda

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and the use of artificial satellites for the collection of intelligence information. His delegation considered that the most important criterion for inclusion of a principle in the declaration was its juridical effectiveness in bringing about peaceful co-operation among States in outer space. The inclusion of the principle prohibiting the use of outer space for war propaganda would help to encourage constructive international co-operation.

War propaganda in atmospheric space had been prohibited since 1936 by the International Convention concerning the Use of Broadcasting in the Cause of Peace. The parties to that Convention included, among others, the United Kingdom, France, India, Brazil, the United Arab Republic, Sweden and Australia. Under article 2 of that Convention, the parties mutually undertook to ensure that transmissions from stations within their respective territories should not constitute an incitement either to war against another party or to acts likely to lead thereto. Under article 1, the parties were required to prohibit within their territories "any transmission which to the detriment of good international understanding is of such a character as to incite the population of any territory to acts incompatible with the internal order or the security of a territory of a High Contracting Party." That Convention was a precedent, which showed that, as broadcasting had grown, States had felt the need to prohibit the use of atmospheric space for purposes contrary to international law, and specifically for war propaganda. With the development of television and of the means of using outer space for war propaganda, a similar prohibition of war propaganda in outer space had become imperative. He hoped the members of the Sub-Committee would be able to agree on that very important issue.

Mr. COOK (Australia) inquired whether the procedural suggestion made by the Lebanese representative at the previous meeting was before the Sub-Committee as a formal proposal.

Mr. HAKIM (Lebanon) said that he would submit a formal proposal to the Sub-Committee only if it appeared that there was wide support for the suggestion he had made.

Mr. COOK (Australia), Mr. PEARCE (Sierra Leone) and Mr. MEEKER (United States of America) expressed support for the Lebanese suggestion.

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Mr. FAHMY (United Arab Republic) suggested that there should be a further opportunity for informal consultation

Mr. TIMERBAEV (Union of Soviet Socialist Republics) believed that there had been some expressions of opposition to the action suggested by the Lebanese representative.

Mr. PRANDLER (Hungary) said that he had made no specific reference to the action which had been suggested by the Lebanese representative, as the Sub-Committee had had no formal proposal before it. However, he thought he had made his delegation's position clear at the end of his previous statement.

Mr. FAHMY (United Arab Republic) proposed that the meeting should be adjourned.

It was so decided.

The meeting rose at 12.5 p.m.