



COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE TWENTY-EIGHTH MEETING

Held at Headquarters, New York,
on Wednesday, 5 May 1963, at 12.20 p.m.

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PRESENT:Chairman:Members:

Mr. LACHS	(Poland)
Mr. RUDO	Albania
Mr. MENDEZ	Argentina
Mr. COOK	Australia
Mr. MARSCHIK	Austria
Mr. LITVINE	Belgium
Mr. SILOS	Brazil
Mr. MOLEROV	Bulgaria
Mr. TREMBLAY	Canada
Mr. N'CARABAYE	Chad
Mr. PRUSA	Czechoslovakia
Mr. LEMAITRE	France
Mr. VARGA	Hungary
Mr. CHAKRAVARTY)	India
Mr. NAGENDRA SINGH)	
Mr. AMIRMOKRI	Iran
Mr. ATTOLICO	Italy
Mr. MATSUI	Japan
Mr. HAKIM	Lebanon
Mr. CUEVAS-CANCINO	Mexico
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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
Mr. STAVROPOULOS	Legal Counsel
Mr. SCHACHTER	Secretary of the Sub-Committee

Secretariat:

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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, L.7)
(continued)

Mr. MARSCHIK (Austria) recalled that at the beginning of the session his delegation had expressed its conviction that the various proposals submitted to the Sub-Committee showed a significant area of agreement and its confidence that the Sub-Committee would therefore make substantial progress. The general debate had confirmed that view; almost every delegation had called attention to the existence of substantial areas of agreement. Opinion had been unanimous that the draft declaration of basic principles should contain the following principles: outer space and celestial bodies were free for exploration and use by all States; sovereignty could not be acquired over outer space or celestial bodies; States were liable for damage caused by space vehicles; and assistance should be accorded to space vehicles and their personnel in distress. His delegation had also noted a considerable rapprochement on other questions, such as that of prior consultations concerning experiments affecting outer space. It had hoped at that stage, when what seemed necessary was primarily the drafting of those principles in acceptable language, that it would be possible to record the agreement which existed.

His delegation had also considered that substantial progress could be made at that session on the two specific issues before the Sub-Committee, i.e. liability for space vehicle accidents and assistance to space vehicles in distress. The debate on those two points and the working paper submitted by Belgium (A/AC.105/C.2/L.7) had confirmed that belief. His delegation had therefore suggested that the Secretary-General might be asked to provide the Sub-Committee with a draft on those questions for consideration at later meetings, and it had been gratified when the Lebanese representative made an informal proposal along the same lines. It regretted that some delegations had felt such a step to be premature.

His delegation was still convinced that significant areas of agreement existed and that substantial progress was possible. What was lacking was not

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(Mr. Marschik, Austria)

agreement but the will to record it. In view of the difficulties which had been encountered in the drafting of the report on the work of the session, he deemed it appropriate to place his delegation's views on record for the benefit of the members of the Committee on the Peaceful Uses of Outer Space who might have difficulty in understanding the results of the Sub-Committee's deliberations.

Mr. ATTOLICO (Italy) agreed with the Austrian representative that an appreciable measure of agreement had been reached during the session. The Canadian representative's summarization of the results of the Sub-Committee's work (A/AC.105/C.2/SR.27, pages 4-5) was, in his view, an accurate one. His delegation favoured the adoption of a declaration of general principles to govern the exploration and use of outer space and supported the principles set forth in the drafts submitted by the United States of America (A/C.1/881), the United Kingdom (A/C.1/879) and the United Arab Republic (A/AC.105/L.6), although it had certain reservations regarding the actual drafting of those principles.

With regard to the revised Soviet draft (A/AC.105/C.2/L.6) his delegation's objections were confined to the principles set forth in its paragraphs 5 and 9. He had pointed out (A/AC.105/C.2/SR.20, page 3) that the questions referred to in those paragraphs could more appropriately be dealt with in a broader context, as they did not arise exclusively in connexion with outer space activities. His delegation also had certain objections of a technical nature with regard to the manner in which some of the ideas in the Soviet draft had been presented, but it nevertheless regarded the submission of that text as a constructive and encouraging step.

The question of the form of the instrument in which a declaration of general principles should be embodied was, in his delegation's view, one which could be settled at a later stage. It was unfortunate that differences on particular points should impede over-all progress, as many delegations appeared to consider that the area of agreement in the Sub-Committee was quite large. In particular, there appeared to be general agreement concerning the desirability of incorporating in an international convention provisions concerning liability for

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(Mr. Attolico, Italy)

space vehicle accidents and the question of assistance to and return of space vehicles. His delegation had supported the interesting suggestion put forward by the Lebanese representative in that connexion (A/AC.105/C.2/SR.25, page 8).

There were many indications, therefore, that further substantial progress could be made and he hoped that the differences which existed within the Subcommittee would soon be resolved.

Mr. CHAKRAVARTY (India) recalled that his delegation had referred, at the twenty-second meeting, to the basic legal principles on which it believed that a considerable measure of agreement had been reached. The draft principles in paragraphs 1, 2 and 3 of the United States draft (A/C.1/881) and in paragraphs 1, 2, 3 and 4 of the United Kingdom draft (A/C.1/879) were to be found in paragraphs 2, 3 and 4 of the Soviet draft (A/AC.105/C.2/L.6). Paragraphs 4 and 5 of the United States draft were more or less covered in paragraph 10 of the Soviet draft and paragraphs 4 and 5 of the United Arab Republic draft (A/AC.105/L.6). Paragraph 6 of the United States draft found a parallel in paragraph 11 of the Soviet draft and paragraph 7 of the United States draft was covered in paragraph 8 of the Soviet draft. His delegation had also indicated that there appeared to be a possibility of rapprochement on the questions referred to in paragraph 7 of the Soviet draft and had pointed to the non-controversial nature of paragraphs 8 and 9 of the United Arab Republic draft. It had recognized, however, that there were differences of view concerning paragraphs 5 and 9 of the Soviet draft, and that agreement would have to be reached on the manner of formulating the agreed principles.

The Soviet delegation had included a provision concerning liability in its revised draft declaration of basic principles (A/AC.105/C.2/L.6) and the United States delegation had made it clear that it did not object to the idea of a multilateral agreement on the question of assistance to space vehicles, an idea which his own delegation had always endorsed. Therefore, on the two questions of assistance and liability there had also been some progress.

It was regrettable that no agreement had been reached on the one principle which his delegation had hoped would be universally accepted - the principle

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(Mr. Chakravarty, India)

that outer space should be used solely for peaceful purposes. Many delegations had expressed support for that principle which was of such importance that, in the absence of general agreement on it, agreement on the other principles would not suffice. He hoped that further discussions would lead to its acceptance by all and that the remaining differences in the Sub-Committee might be resolved.

On the question of the form in which the general principles should be expressed, his delegation maintained the view that they should be embodied in a solemn declaration to be adopted by the General Assembly.

With regard to the form and content of the Sub-Committee's report, the primary requirement was that it should enable the Committee on the Peaceful Uses of Outer Space to take full advantage of the Sub-Committee's work with a view to further constructive action. However, it was necessary to strike a balance between what was desirable and what was feasible. Following the discussions which had taken place both in the Sub-Committee and outside it, and taking into account all relevant factors, including the time factor, his delegation believed that the formula suggested by the Chairman (A/AC.105/C.2/SR.27, page 3) was the most practical one and should be adopted. The statement which the Chairman had proposed for inclusion in the report, together with the record of the Sub-Committee's proceedings, would provide a clear picture and would, he hoped, prove an important milestone in the formulation of a space law.

Mr. PRUSA (Czechoslovakia) said that a wide and useful exchange of views had taken place during the session. His delegation was glad to note that some progress had been made and that there had been some rapprochement on certain questions. The submission by the Soviet delegation of a revised text of its draft declaration of basic principles had been a constructive measure and the Sub-Committee had rightly focused attention on that text (A/AC.105/C.2/L.6), as it incorporated a number of points suggested by other delegations.

Nevertheless, the progress made during the session should not be regarded in an unrealistic light. It would be wrong to regard as generally accepted principles on which there were substantial differences of concept and on which, in fact, there was no agreement.

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(Mr. Prusa, Czechoslovakia)

There had been no general agreement on such fundamental principles as the freedom and equal right of all States to explore and use outer space. Agreement on the meaning of freedom and equal rights in that context was essential. Some States understood that freedom to be unlimited and claimed the right of espionage in outer space and the right to carry out experiments which precluded or endangered the activities of other States in outer space. They therefore obviously refused to accept liability for damages caused by their activities. In contrast, the majority of States, including his own, considered that freedom to be limited, to the extent that the activities of one country should not endanger those of others in outer space and should be to the benefit of mankind. There was also a substantial divergence of views as to whether not only States but also private organizations could enjoy those freedoms and rights.

Some countries held that States could not be held responsible for damage which occurred in outer space, but only for that caused on land, in the air or on the sea. The question of liability for damage in those environments appeared to be covered, in some measure, by the existing legal norms, but the question of liability for damage caused in outer space had not yet been regulated and was clearly within the Sub-Committee's terms of reference. Absolute freedom in outer space would mean freedom for a State to carry out espionage there. Moreover, the same State might invoke the right to recover the vehicle used for such espionage from States against which the espionage was directed.

The interrelation of the various principles considered was therefore obvious and it was clear that there could be no agreement on a set of basic principles or on the questions of liability or assistance to and return of space vehicles unless agreement on the fundamental principle was reached.

The Sub-Committee must bear those facts in mind in drawing up its report which should give the General Assembly an objective picture of the results of the session. In the circumstances it would be difficult to prepare a detailed report and his delegation therefore favoured a short text which would include the summary records of the Sub-Committee's debates.

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Miss GUTTERIDGE (United Kingdom) said that her delegation had hoped for more progress during the session but had been encouraged by the many constructive suggestions which had been made. It believed that a majority of delegations would have been able to agree upon basic principles to supplement and expand those contained in General Assembly resolution 1721 (XVI), without necessarily regarding any set of principles they agreed upon as exhaustive or definitive. Her delegation hoped that further contacts and exchanges of views would produce an even wider area of agreement and that no delegation would consider its own proposals as sacrosanct or incapable of change and development. No such claim was made by her delegation in respect of document A/C.1/879.

Useful discussions had taken place on the questions of assistance to and return of astronauts and space vehicles and liability for space vehicle accidents. Those questions were ripe for further consideration which would be assisted by the draft on liability submitted by the Belgian delegation (A/AC.105/C.2/L.7). Her delegation appreciated the Chairman's efforts to ensure that the session produced constructive and fruitful results.

Mr. MEEKER (United States of America) said that the discussion during the session had gone further into the substance of many questions than at any time previously. Some issues had been clarified and virtual agreement had been reached in a number of cases, while in others differences had been narrowed. It was generally recognized, however, that wide divergencies remained on a relatively small number of issues.

The situation therefore contrasted very favourably with that which had existed at the close of the first session, when there had merely been a consensus on the need for an agreement on liability and for some international expression of view concerning assistance to and return of space vehicles and their personnel.

The consensus now extended over a much larger area. A formal agreement on assistance and return was now recognized as appropriate and the Sub-Committee agreed on the desirability, and even largely on the contents, of a declaration of basic principles to guide States in their exploration and use of outer space.

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(Mr. Meeker, United States)

Specifically, there was a consensus on the freedom of outer space for exploration and use by all States, on a basis of equality and in accordance with international law; on the immunity of celestial bodies from national appropriation; on the applicability of international law, including the United Nations Charter, to relations among States in outer space; on retention by the launching authority of jurisdiction over and ownership of space vehicles; on assistance to astronauts in distress and return of space vehicles and their personnel, and on liability for injury or damage caused by space vehicle accidents.

The clarification of viewpoints and the narrowing of differences which had taken place was illustrated by the fact that a number of delegations, including his own, had endorsed the idea of appropriate international consultation on problems of interference and contamination in outer space and of providing for discussion of particular proposed projects.

While no one could expect the international community to impose the tenets of a single economic and social system on outer space and restrict activities there to Governments alone, the debates had disclosed a widely shared recognition of the fact that Governments bore responsibility and were accountable for national space activities.

His delegation wished to place on record the fact that the basic ideas in the draft code submitted by the United Arab Republic (A/AC.105/L.6) represented propositions to which the United States Government had been committed from the beginning of the space age.

The session had therefore had many positive aspects. However, optimum use had not been made of the opportunity afforded by the meetings and the Sub-Committee had failed to prepare agreed texts for ultimate adoption by the General Assembly in appropriate form. For the Sub-Committee to succeed in completing its task, all its members should be prepared to engage in the give and take of international discourse and to make adjustments in their positions in order to achieve a consensus. They should not insist on satisfaction of all their original demands before agreeing on a particular instrument, or insist that the instrument be in a particular form before agreeing on any progress or

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(Mr. Meeker, United States)

on further work in other areas such as the practical questions of liability and assistance and return.

Although the normal practice of United Nations bodies was to dispose by voting of issues which could not otherwise be resolved, the Organization's bodies concerned with outer space had agreed that it would be their aim to conduct their work in such a way as to reach agreement without need for voting. His delegation supported that aim and, until the present, the Sub-Committee had sought to abide by it, most members having made special efforts to arrive at agreed conclusions without voting. It was necessary that such efforts should be made by all. Failure to make them would present the Sub-Committee with an attempt to import the veto into a forum in which it had never been intended to operate and where the Members of the United Nations had not agreed to accept it.

It had sometimes been contended that there were only two space Powers and that satisfaction of all the positions of both was essential if any progress was to be made. His delegation did not believe that the United Nations would accept such a view. Questions of outer space law were of deep concern to all Members of the Organization - whether in their capacity as members of the international community, or as present or future participants in man's venture into space. His country could not allow its interest or effort to falter or permit itself to be discouraged by any temporary lack of progress. With intelligence, patience and goodwill, the international community would succeed in ordering its efforts in space so as to benefit all mankind.

Mr. TIMERBAEV (Union of Soviet Socialist Republics) said that if, as appeared to be the case, the United States delegation was casting doubt on the continued application of the principle that action could be taken by the Sub-Committee only with the unanimous approval of its members, serious difficulties would inevitably arise in connexion with the future work of the Sub-Committee. The success achieved by the latter in carrying out its mandate would depend upon the willingness of all delegations to accept the principle of equality of rights and on their refraining from any attempt to impose the will of one country upon another.

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(Mr. Timerbaev, USSR)

From the beginning of the Sub-Committee's session, the Soviet Union had made every effort to promote the speedy achievement of agreement on basic principles to govern the activities of States in outer space. Its revised draft Declaration of basic principles (A/AC.105/C.2/L.6) had taken into account many of the views expressed by other delegations and many of the provisions contained in the other texts submitted by the United Arab Republic, the United Kingdom and the United States. Provision had been made for the possibility of States engaging in activities in outer space collectively and a new paragraph had been included on responsibility for damage resulting from space activities. The efforts made by the Soviet Union with a view to reaching agreement on basic principles had been the subject of favourable comment in many statements. The Soviet Union had been inspired by the desire to establish the rule of law in outer space as soon as possible, to define the basis for the relationships between States in the conquest of outer space and thus help to strengthen and expand international co-operation in the exploration of outer space for peaceful purposes. If there was to be co-operation between States in scientific and technical matters, it was essential for basic legal provisions to be established governing activities in outer space and for States engaging in space activities to assume firm international obligations. Under the Sub-Committee's terms of reference, its efforts should be directed towards the formulation of those obligations.

The Soviet delegation therefore considered that a declaration of basic principles should be drawn up, having the force of an international treaty. The important question of the type of instrument in which the principles would be embodied was closely linked with the question of its substance and was not, as some had maintained, a minor issue that could be dealt with at some later stage. The Sub-Committee would not have fulfilled its mandate until it had reached agreement on the question of form.

The position of the United States delegation on that question was a source of disappointment to the Soviet Union. At the previous session of the Sub-Committee in Geneva, the United States delegation had considered it premature even to discuss basic legal principles to govern activities in outer space. Since then, under pressure from world public opinion, the United States had been forced to

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(Mr. Timerbaev, USSR)

modify that indefensible position and had submitted a draft declaration of principles in the form of a General Assembly resolution (A/C.1/881). There had, however, been no real change in the United States position, since that country was still unwilling for States to assume international obligations in the conquest of outer space and responsibility for their actions and still refused to agree to the establishment of the rule of law in outer space. The United States claimed that it was easier to adopt a General Assembly resolution than to conclude an international agreement. It was true that it was always easier to create the illusion of progress than actually to make real progress. In his delegation's view, it was not the Sub-Committee's task to polish off some easy assignment but to perform the necessary though perhaps difficult work of laying the foundations of outer space law. The argument that the adoption of an international agreement would involve the delay of ratification by States had no merit, since it would be possible to establish a procedure which would permit the rapid entry into force of such an agreement.

There were two approaches to the question of the form in which the declaration of basic principles should be cast: one sought the rule of law in outer space, the other - anarchy. The Soviet Union and many other members of the Sub-Committee favoured the first approach and thought that the declaration to be adopted should set out not only the rights but also the obligations of States in the exploration and use of outer space, together with safeguards against abuses. The United States delegation, however, felt that the declaration should comprise only the "area of agreement", i.e. the principles relating to the rights of States, declaring that there was no agreement on the principles relating to obligations. That approach could have serious consequences, since the declaration might subsequently be interpreted to mean that any activities not specifically mentioned in it were legitimate. The Soviet Union was willing to assume its obligations but the United States, from its position in the Sub-Committee, seemingly was not.

With regard to the proposition that it was unlawful for States to implement any measures that might in any way hinder the exploration or use of outer space for peaceful purposes by other countries, he said that the principle that there must be agreement on activities affecting the interests of other countries was

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widely recognized in international law, witness the many bilateral and other agreements concerning the regime of international waters. That principle should also be embodied in a law of outer space. The consultative group of COSPAR, although useful as machinery for consultation, could not achieve the desired result. States should be obliged to reach agreement on space experiments which might have harmful effects, and unilateral activities which might hinder the exploration or use of outer space for peaceful purposes should be prohibited.

The United States delegation had not even mentioned many important issues which had been raised in the Sub-Committee, such as the question of the prohibition of the use of artificial satellites for the collection of intelligence information and the inadmissibility of the use of outer space for propagating war, national or racial hatred or enmity between nations. However, the question of the use of outer space communication systems had already become pressing and affected all peoples throughout the world. It was closely linked with the work of the Sub-Committee and should be covered in any declaration of principles. The possibility of the unscrupulous use of artificial satellites had been described by the Brazilian representative (A/AC.105/C.2/SR.24). All attempts to reconcile the collection of intelligence information by artificial satellites with the principles of international law were completely unfounded. Espionage in any environment was inadmissible and it was prohibited by every system of national law.

Since outer space belonged to all mankind, activities in outer space should be carried out in the interests of all countries. Only States fully cognizant of their responsibilities should be allowed to engage in space activities; to give private companies a free hand in outer space could lead to chaos and anarchy. It had been said that the activities of the American private communications satellite corporation would be subject to Government supervision. It could be seen, however, from the United States Communications Satellite Act (1962) that in fact such supervision would not restrict the proposed corporation's activities. Concern had been expressed in the United States Congress about the establishment of the corporation which, it had rightly been said, would be usurping the sovereign rights of States.

The Soviet Union had always maintained that outer space should be used solely for peaceful purposes. On 15 March 1958, shortly after the launching of the first

(Mr. Timerbaev, USSR)

artificial satellite, the Soviet Union had submitted a proposal for the banning of the use of cosmic space for military purposes and for the elimination of foreign military bases on the territories of other countries. The Soviet Union draft treaty on general and complete disarmament (ENDC/2) specified that the peaceful use of outer space should be one of the objectives of the first stage of disarmament. The Soviet Union adopted a realistic approach to the question and considered that the problem of the prohibition of the military use of outer space could be solved only in the context of disarmament.

The Sub-Committee had been hampered in its task of promoting the progressive development of an outer space law by the unconstructive position adopted by the United States delegation, which had unfortunately made no effort to find mutually acceptable solutions. Yet success could only be achieved if efforts were made by all concerned. It was to be hoped that the results of the Sub-Committee's discussions would be studied carefully and would lead to conclusions in the interests of all mankind, which would make it possible to establish a legal basis for the further development of international co-operation in the use of outer space for peaceful purposes. The Soviet delegation appealed to all members of the Sub-Committee to make every effort to find a solution to that urgent problem.

In conclusion, he paid a tribute to the Chairman for his conduct of the Sub-Committee's deliberations.

Mr. FAHMY (United Arab Republic) paid a tribute to the efforts of the Chairman to assist the Sub-Committee in arriving at a generally acceptable solution. The session had been the first occasion on which a large number of delegations had participated in the discussion of the law of outer space. It was clear that considerable importance was attached to that subject. New ideas had been put forward and the approach generally had been constructive. The need to proceed cautiously had been recognized.

His delegation had been gratified by the support which its draft code (A/AC.105/L.6) had received from a number of representatives, as it believed that acceptance of the principle stated in paragraph 1 of that text was necessary for progress towards the adoption of other principles.

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(Mr. Fahmy, UAR)

His delegation had observed a rapprochement of the positions of the two space Powers. It had also welcomed the draft declaration submitted by the United Kingdom delegation and the other constructive ideas put forward by various delegations. In that connexion, consideration should be given not only to the written proposals but also to the various oral suggestions.

He had nothing to add to the remarkable summation of the work of the session by the Indian representative. His delegation was hopeful that in the near future further progress would be achieved.

Mr. LEMAITRE (France) assured the Sub-Committee that his delegation would participate in any effort to achieve a synthesis of views on the legal regulation of outer space. He hoped that progress would be made at the Sub-Committee's next session.

ADOPTION OF THE REPORT

The CHAIRMAN drew the attention of members to the draft report of the Legal Sub-Committee on the work of its second session.

In reply to a question from Mr. MEEKER (United States of America), the CHAIRMAN explained that section III entitled "Summary of results" would indicate that the Chairman had made a statement summarizing the results of the Sub-Committee's work during the session and would then set out the revised summary now before the Sub-Committee.

In reply to a question from Mr. CHAKRAVARTY (India), the CHAIRMAN said that a statement would be added at the end of the draft report to the effect that the summary records of the meetings formed part of the report.

The CHAIRMAN said that, in the absence of objection, the draft report would be considered adopted.

It was so decided.

CLOSURE OF THE SESSION

Mr. TREMBLAY (Canada) and Mr. MOLEROV (Bulgaria) expressed their gratitude to the Chairman for the able and wise manner in which he had presided over the second session of the Sub-Committee.

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The CHAIRMAN thanked the members of the Sub-Committee for the co-operation they had given him. The achievements of the second session had been all too meagre. Although the Sub-Committee had undoubtedly made some progress, he deeply regretted that much more had not been accomplished. Law must not be permitted to lag behind technological progress: all the great technological achievements had to be translated into the language of law and to find their proper reflection in international understanding and agreement, for there was a close connexion between highly abstruse theoretical ideas, their technological implementation and the effect they would have on international relations. Technological developments in outer space should add a new chapter to the present corpus juris gentium. In the face of that great challenge, the Sub-Committee should spare no effort to reach definite and constructive decisions. It was only at the very beginning of the road, however, and time was pressing. The gap between the achievements of science and the progress of legal arrangements in outer space was constantly widening. There was also an interdependence between actions and decisions on earth, in the air and on the sea and those in outer space: the laws of life dictated that men must coexist in every sphere. Hence, there was an urgent need for a legal framework which would bar privilege and discrimination from outer space and promote co-operation in its exploration and use for the benefit of mankind. He urged the members of the Sub-Committee to give further serious thought to the possibility of reaching agreement.

The meeting rose at 1.50 p.m.