UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/AC.105/C.2/SR.42
30 November 1965
ENGLISH
ORIGINAL: FRENCH

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FORTY-SECOND MEETING

Held at Headquarters, New York,
on Tuesday, 21 September 1965, at 11 a.m.

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Members:	Mr. COCCA	Argentina
	Mr. McKEOWN	Australia
	Mr. ZEMANEK	Austria
	Mr. LITVINE	Belgium
	Mr. de MEDICIS	Brazil
	Mr. YANKOV	Bulgaria
	Mr. KINGSTONE	Canada
	Mr. PRUSA	Czechoslovakia
	Mr. DELEAU	France
	Mr. USTOR	Hungary
	Mr. SAJJAD	India
	Mr. ROSSI ARNAUD	Italy
	Mr. YAMAZAKI	Japan
	Mr. FRANCOZ RIGALT	Mexico
	Mr. DASHTSEREN	Mongolia
	Mr. TABITI	Morocco
	Mr. WYZNER	Poland
	Mr. GLASER	Romania
	Mr. WILLIAMS	Sierra Leone
	Mr. KELLBERG	Sweden
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Mr. IBRAHIM	United Arab Republic
	Mr. SINCLAIR	United Kingdom of Great Britain and Northern Ireland
	Mr. MEEKER	United States of America
Secretariat:	Mr. SCHACHTER	Secretary of the Sub-Committee, Director, General Legal Division

CONSIDERATION OF THE DRAFT AGREEMENT ON ASSISTANCE TO AND RETURN OF ASTRONAUTS AND SPACE CRAFT (A/AC.105/21; A/AC.105/C.2/W.1/Rev.2)

The CHAIRMAN stated that the Sub-Committee had before it three proposals concerning assistance to and return of astronauts and space craft: a revised draft agreement submitted by the USSR (A/AC.105/C.2/L.2/Rev.2), a draft international agreement submitted by the United States (A/AC.105/C.2/L.9) and a proposal submitted by Australia and Canada (WG.1/17/Rev.1); as well as several proposed amendments to those texts. At the previous session, the Working Group had been able to reach preliminary agreement on several parts of the text, namely the preamble, article 2, article 3 and part of article 6. He suggested that the Sub-Committee should leave those articles on one side for the time being and consider those on which agreement had not yet been reached in order to discuss the substance and, if possible, work out a satisfactory text. The articles thus drafted could then be rearranged with those previously adopted to form a coherent whole, while those on which divergencies of opinion still existed would be referred to the following session.

Mr. MOROZOV (Union of Soviet Socialist Republics) supported the Chairman's suggestion, on the understanding that in the case of article 6, on which only partial agreement had been reached, the passages still in dispute would be considered on the same basis as the other articles.

Mr. FRANCOZ RIGALT (Mexico) regretted that, in spite of the efforts of the Working Group, the Sub-Committee did not have before it a single basic text drawn up on generally accepted principles, but that it must, on the contrary, work on three separate proposals with regard to which there was no agreement either on the numbering of the articles or on the fundamental principles. In attempting to combine those three texts, which differed fundamentally, the Sub-Committee was undertaking a drafting task which did not properly belong to it. It would seem preferable to seek agreement on general principles first of all and, once that was achieved, to leave it to the Secretariat or to a drafting committee to prepare a text which would then be referred to the Sub-Committee for revision. The present procedure was both too difficult and too slow.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he understood the Mexican delegation's perplexity in the face of the difficulties involved in the procedure suggested by the Chairman, but he thought that the Sub-Committee had already gone too far in that direction to draw back. The method adopted had, moreover, not been unproductive since agreement had already been reached on several articles. Experience proved that when complex questions were involved, drafting, far from being a purely technical task, often brought out nuances the legal or political meaning of which went right to the heart of the question. The appointment of a drafting committee would speed up the work in appearance only, since any text which it adopted would have to be reviewed at a plenary meeting in order to ensure that it corresponded fully with the principles previously adopted.

His delegation, further, would like to make it clear that, as it did not wish to refer to its Government on each point, for that would prejudice the continuity of the work, it would only be able to adopt each article provisionally and would reserve the right to approve or reject the text as a whole.

Mr. ZEMANEK (Austria) saw no advantage in resuming the discussion of principles on which the Sub-Committee had dwelt at length. The sooner the Sub-Committee made a start on the real work of drafting, the more chance there would be of making some progress.

Mr. FRANCOZ RIGALT (Mexico) said that he would not insist on his point of view being accepted; he would wait until the result of the debate proved him right or wrong.

The CHAIRMAN referred to the comparative table of the three proposals under discussion (A/AC.105/C.2/W.1/Rev.2) and invited the Sub-Committee to consider article 1, paragraph 1, of the USSR proposal with regard both to the conception on which it was based and the wording, and also the corresponding sections of the two other texts.

Mr. MOROZOV (Union of Soviet Socialist Republics) stated that article 1, paragraph 1, of the USSR text, the beginning of paragraph 1 of article 2 of the United States draft and article 1, paragraph 1, of the Australian and Canadian

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proposal were close enough to each other to allow of hope of a rapid agreement. He proposed that the USSR text should be taken as a basis for discussion. With regard to the assistance to be rendered to the crews of spaceships, that text contained a list of the means to be employed which, in the view of some delegations, seemed to be superfluous or even dangerously restrictive. He made it clear that, on the contrary, the list was purely for purposes of illustration, as was borne out by the words: "every means at its disposal, including,", etc. Granted that, all moral and legal considerations appeared to be in favour of the adoption of the USSR text.

As for article 1, paragraph 2, there was unfortunately no equivalent in either of the other two texts under consideration. It therefore had the purely technical advantage of not competing with any other draft provision. Its essential importance, however, was to define the limits of the obligations imposed by the Agreement on the Contracting Parties with regard to international co-operation. It followed, in fact, from that paragraph that the obligations laid down, apart from those relating to saving the crews, would only apply to spaceships launched in accordance with the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, contained in General Assembly resolution 1962 (XVIII). That was a fundamental principle, to which article 5 also referred, and it was therefore important to state it at the first opportunity. To omit it, as some delegations wished, would result in a State being compelled to fulfil the obligations laid down by the Agreement even in the case of a space craft launched with intentions hostile to its own interests. To try in that way to impose an unconditional obligation to ensure the return of crews and to foster international co-operation in the conduct of operations to find and salvage spaceships even when they had not been launched in accordance with the General Assembly's Declaration would introduce into the Agreement provisions which no sovereign State would be able to accept. The principle in question was, moreover, in perfect accordance with the principles of international law and of the Charter of the United Nations.

The United States delegation had claimed that the adoption of that principle would be tantamount to making the execution of the Convention a matter for the unilateral judgement of any given State. That objection, which would be a

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very serious one if it had any foundation, was in reality incorrect. In fact, it related not to the exact definition of the obligations of States, which the USSR tried to establish, but to the difficulty of determining the facts to which that definition applied. One could no more refuse to define an obligation by arguing that there were difficulties in its practical application than one could refrain, in criminal law, from defining a crime on the pretext that it might be difficult to prove that it had been committed.

Further, once that principle had been established, the question of knowing whether any given launching was in accordance with the 1963 Declaration was not a matter for subjective interpretation. It was a question of facts, and those facts were susceptible of proof by means of an impartial and objective analysis; the method to be used in that analysis could, as in the case of any other international convention, be made clear when the Sub-Committee came to study the part of the Agreement relating to the procedure for settling disputes.

Thus, therefore, of the two proposals under consideration, one openly recognized the difficulties which would arise in determining whether any given launching was or was not in accordance with the 1963 Declaration; the other, on the other hand, laid on States the absolute obligation to return space objects to the launching State, even if the launching resulted from acts hostile to those States; it was clear that the decision should be in favour of the first text.

The same reasons made the wording of the proposal submitted by Australia and Canada unacceptable. There was a further objection to that text, namely that it anticipated already in article 1 questions such as the return of space objects, which would be better dealt with in detail in other articles.

In conclusion, he proposed that, taking the USSR text as a base, the Sub-Committee should at once adopt article 1, paragraph 1, on which there was no serious divergence of views, and that it should then proceed to consider article 1, paragraph 2, postponing until later consideration of those parts of the Australian and Canadian text which related to the return of space objects.

Mr. CCCCA (Argentina) emphasized that assistance to astronauts was a duty which should be made quite clear in the wording of the article on the general obligations regarding such assistance. It would therefore be desirable to delete from article 1, paragraph 1, of the USSR draft the words "... including

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electronic and optical equipment, means of communication and rescue facilities of various kinds". Such an enumeration was of a restrictive character and would be a negation of the general nature of the principle of assistance.

Although the United States draft and that of Australia and Canada also contained the fundamental idea that every possible assistance should be given to astronauts, nevertheless he preferred the USSR draft, since it specified the cases in which assistance should be rendered.

Lastly, the Argentine delegation felt that it would be advisable to use the phrase "Each Contracting Party" rather than "Each Contracting State".

Mr. FRANCOZ RIGALT (Mexico) said he preferred the wording of article 1, paragraph 1, of the USSR draft to the corresponding paragraph in the United States draft and the Australian-Canadian proposal. Nevertheless, he also considered that the phrase beginning with the words "including electronic and optical equipment, etc. ..." contained an enumeration that was of no value and diminished the force of the general principle of assistance as laid down in the article.

The principle set out in article 1, paragraph 2, of the USSR draft also appeared in the preamble to that draft and in articles 5 and 6. It would therefore be logical for that principle to appear along with the three common obligations contained in those three articles. On that subject, however, he wished to call the attention of the Sub-Committee to the significance which the Declaration of Legal Principles might have, in particular principle 9, according to which "States shall regard astronauts as envoys of mankind in outer space, and shall render to them all possible assistance in the event of accident, distress, or emergency landing on the territory of a foreign State or on the high seas." If that principle were incorporated in article 1, paragraph 2, of the draft convention, the question would arise whether it would be compatible with the principle of indemnification, which was admissible in maritime law and laws governing the air in the case of damage incurred as a result of assistance rendered. The inclusion of principle 9 in paragraph 2, particularly if interpreted in a wider sense, would have the result of eliminating the possibility of such an indemnification and assistance would thus become an exclusively humanitarian obligation.

In view of these observations, the Mexican delegation felt that the USSR draft as a whole was acceptable.

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Mr. DELEAU (France) said that the general obligation to assist had been formulated in a very satisfactory manner in the Australian-Canadian draft, which had the additional merit of distinguishing between two very different questions, namely the obligation of assistance to the crew, and the obligation to help in the recovery and return of space craft.

Article 1, paragraph 1, of the project contained the term "Each Contracting Party" which was more satisfactory than the words "Each Contracting State", and after having established the necessity of rendering assistance to the personnel, using every appropriate means, it provided for their return by offering a choice of wording, including that recommended by the French delegation ("and facilitate their return"), which would achieve the required objective.

Paragraph 2 of the Australian-Canadian draft dealing with restitution indicated the carrying out of obligations which would be defined later, and it was therefore worth retaining.

With regard to the draft submitted by the USSR, the French delegation considered that the principle of obligation of assistance was set forth sufficiently clearly in the words "shall ... render all possible assistance". There was no need to add a restrictive enumeration which would only lead to difficulties in interpretation.

With reference to paragraph 2 of the USSR draft, reference was made to the Declaration of Legal Principles, which only showed intent and was not a text that set up formal legal obligations.

Mr. LITVINE (Belgium) said he shared the views expressed by the representative of France.

Mr. SINCLAIR (United Kingdom) said that article 1 of the draft Convention was supposed to set forth in general terms obligations which were defined elsewhere. For that reason the United Kingdom delegation preferred the Australian-Canadian draft, which summarized briefly the general obligations imposed upon the Contracting Parties. That draft made appropriate mention of the obligation of assistance, the obligation to ensure the prompt return of the personnel and, as a preliminary, the obligation to ensure the return of space objects.

With regard to the USSR draft, the United Kingdom delegation once more expressed the fear that the words "... in accordance with the Declaration of Legal

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(Mr. Sinclair, United Kingdom)

Principles governing the activities of States in the exploration and use of outer space", which appeared in article 1 and elsewhere of the USSR draft, might lead to subjective interpretations by the Contracting Parties.

Mr. WYZNER (Poland) said that, since article 1 aimed at setting forth general obligations, there was no need to include in it, as the Australian-Canadian draft did, provisions relating to the return of the personnel of space craft and to the return of space objects, as that matter was dealt with in articles 5 and 6. For the same reason the Polish delegation could not agree with the Lebanese amendment to insert in article 1, paragraph 1, of the USSR draft, after the words "or emergency landing" the words "and shall facilitate their earliest possible return to their own country".

With regard to the second Lebanese amendment, which suggested the deletion in paragraph 1 of the words beginning with "to this end" and ending with "various kinds", the USSR draft was based on principle 9 of the Declaration of Principles, and amplified it in a very felicitous manner. The meaning of the words "including electronic equipment ... and facilities of various kinds" was quite clear. Far from being restrictive, the enumeration had the advantage of giving participating States some interesting indications as to what should be understood by the words "to render assistance".

Mr. ZENANEK (Austria) noted that there were no great differences of opinion on the principle of the general obligation contained in article 1. The only point which was really likely to lead to controversy was paragraph 2 of the USSR draft, which some delegations feared might lead to subjective interpretations. That, however, was a question which it should be possible to decide when studying the article relating to the settlement of disputes. He proposed, therefore, that article 1, paragraph 2, of the USSR draft should be studied, together with the article referring to the settlement of disputes, either immediately or at a later date.

Mr. GLASER (Romania) observed that some delegations preferred the expression "Contracting Party" to "Contracting State". The problem was linked with the decision to be taken on whether international organizations would be allowed to become parties to the Convention.

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(Mr. Glaser, Romania)

With regard to the objections to the words "including electronic... equipment" in article 1, paragraph 1, of the USSR proposal, his delegation considered that it would be practical to give examples of the general obligation to render assistance. A list was not necessarily exhaustive and in order for that to be clearly evident he proposed that the word "including" should be replaced by the words "such as" or "for example".

Many objections had also been raised concerning article 1, paragraph 2, of the USSR proposal. The meaning of that text was that the launchings to be protected were those conforming to the legal principles contained in General Assembly resolution 1962 (XVIII). There could be no question of affording the protection provided for in the Agreement to launchings which would run counter to the interests and principles embodied in that Declaration. Some delegations had voiced fears that adoption of article 1, paragraph 1, of the USSR proposal might create a possibility of subjective interpretation of the Convention. He drew the attention of those delegations to certain texts agreed to by their Governments, particularly the Declaration of Legal Principles itself which also contained proposals, especially principles 1 and 4, that were subjective.

Moreover, he was surprised that the United States delegation should have such fears concerning article 1, paragraph 2, of the USSR proposal, for had not the United States Government included in its declaration of acceptance of the compulsory jurisdiction of the International Court of Justice the famous "Connally" clause, which was certainly subjective, under which the United States agreed to submit itself to the compulsory jurisdiction of the Court except in respect of disputes within its domestic jurisdiction as determined by the United States Government. It should also not be forgotten that the United States was a co-author of the Moscow Treaty of 5 August 1963 banning nuclear weapons tests in the atmosphere, in outer space and under water, article IV of which provided that "Each party shall in exercising its national sovereignty have the right to withdraw from this Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country." That too was a very subjective clause. His delegation therefore hoped that those delegations which were opposing the retention of article 1, paragraph 2,

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of the USSR proposal would ask themselves whether their fears concerning the wording were justified and that they would seek a solution which would enable the Sub-Committee to make progress in its work.

Mr. de MEDICIS (Brazil) considered that the differences between the various wordings proposed for article 1, paragraph 1, were only drafting differences and not substantive differences; however, he preferred the proposal of Australia and Canada which did not contain the enumeration given in the Soviet text. It was his impression that the Sub-Committee had agreed the year before to use the expression "Contracting Party".

Mr. PRUSA (Czechoslovakia) saw no objection to further discussion of article 1, as it formed the basic framework of the draft. All the members of the Sub-Committee appeared to agree on the need to define the obligations as comprehensively as possible. In his view the Soviet text best satisfied that requirement and respected the principles of the Declaration. The text proposed by Australia and Canada was too restrictive and too vague, particularly in its use of the words "appropriate means". While the Soviet text enumerated means, that was not in order to restrict the scope of the assistance, but, on the contrary, to stress that the assistance should be rendered with all possible means, including the most modern means, of which a few were given as examples.

Mr. MEEKER (United States of America) said that, in his view, article 1 was merely a sort of summary of the principal obligations to be assumed by the Contracting Parties. It had been pointed out that the subject of article 1, paragraph 2, of the Australian-Canadian proposal was dealt with again elsewhere, particularly in articles 5 and 6; the same was true of paragraph 1 of article 1. Article 1 was therefore not absolutely essential and the Sub-Committee was not furthering its work by discussing it. It might be advisable to consider some other articles first and then revert to article 1 later, when a decision could be taken, in full knowledge, as to its usefulness. The present difficulties could thus be avoided.

Mr. MOROZOV (Union of Soviet Socialist Republics) regretted that the United States representative saw in the discussion of principle on article 1 merely a difference regarding drafting and that he had proposed that other articles

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should be discussed first, even contemplating the possibility of deleting article 1 entirely. He would have understood that suggestion if it had concerned only the Australian-Canadian draft, but it could in no circumstance apply to the Soviet text, which was a key provision that defined the very principle of assistance.

He thanked the representatives of Argentina, Mexico, Romania, Poland and Czechoslovakia, who had, in general, supported the wording of article 1, paragraph 1, of the USSR proposal, and, in particular, the delegations of Romania and Poland, which had gone further and had supported the USSR position on paragraph 2. The representative of Mexico had also expressed approval of the principle embodied in paragraph 2 of the Soviet text.

In order not to waste time, the Sub-Committee might now agree on the wording of article 1, paragraph 1, using the USSR text. The latter gave a precise definition of the obligation to render assistance, whereas the United States text could be interpreted as authorizing the State concerned not to fulfil that obligation immediately and allowing it to delay matters on the pretext that it might receive a contrary request from the launching State. The question of international organizations responsible for launching space craft might be dealt with in other articles. He recognized that the discussion on paragraph 2 might prove longer, although he hoped that the Sub-Committee would also be able to find a wording for that paragraph based on the USSR proposal. In any case, he wished to express his complete disagreement with the objection raised by the United Kingdom representative.

He was prepared, if that was the desire of the majority of delegations, to accept the first of the Lebanese amendments which called for the deletion of the listing of means of assistance; his delegation still thought that the listing only strengthened the obligation to render assistance, but it would not insist on its retention. On the other hand, it could not accept the other two Lebanese amendments in any circumstances, since they concerned an extremely important principle on which the whole approach to the agreement depended.

The United States delegation had proposed that further discussion of article 1 should be postponed and had refused to discuss the question of principle which it contained. That showed, in his delegation's view, that the United States was maintaining a position which was contrary to the spirit of the Declaration. That would not facilitate achievement by the Sub-Committee of the objectives set by the General Assembly.

Mr. MEEKER (United States of America) expressed surprise at the USSR representative's statement.

His delegation considered that article 1, paragraph 2, of the Soviet text restricted the obligation stated in paragraph 1, since it stipulated that the Contracting State should make certain that the space craft had been launched in accordance with the provisions of the Declaration. Principles 7 and 9 of the Declaration did not include any conditions or restrictions making their application dependent on the subjective interpretation of a State. The Sub-Committee should seek to advance international space law, using the Declaration as a starting point, and not to retard it. Far from adopting an attitude contrary to the spirit of the Declaration, his delegation was basing itself on that Declaration and was trying to prevent any restriction of its scope.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he regretted that the United States representative had wrongly interpreted the position of the USSR. He had said that article 1, paragraph 2, of the Soviet text was not consistent with the Declaration, but he had carefully refrained from mentioning paragraph 1, where the Soviet text was quite clearly the most extensive of the three and the one which went the furthest in giving the most favourable interpretation of the Declaration. Article 1, paragraph 2, did not refer to crews, but to space objects; and it was quite logical that it should refer only to space objects launched for purposes which were in accordance with the Declaration. Failure to make that clear would mean, for example, requiring a State on whose territory an unexploded shell had fallen to return that shell to the country which had fired it. His country had some fears on that score which were borne out by facts.

However, he did not wish to raise disturbing matters which were, moreover, more within the competence of the Geneva Disarmament Commission and the First Committee.

The CHAIRMAN summed up the debate and indicated the position reached in the discussion of article 1.

The meeting rose at 1.20 p.m.