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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FORTY-THIRD MEETING

Held at Headquarters, New York,  
on Wednesday, 22 September 1965, at 12.5 p.m.

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astronauts and space craft (A/AC.105/21; A/AC.105/C.2/W.1/Rev.2)  
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PRESENT:

Chairman:

Mr. LACHS (Poland)

Members:

Mr. CCCCA Argentina

Sir Kenneth BAILEY Australia

Mr. ZEMANEK Austria

Mr. LITVINE Belgium

Mr. de MEDICIS Brazil

Mr. YANKOV Bulgaria

Mr. TURNER Canada

Mr. PRUSA Czechoslovakia

Mr. LEMAITRE France

Mr. USTOR Hungary

Mr. SAJJAD India

Mr. ZITO Italy

Mr. YAMAZAKI Japan

Mr. FRANCOZ RIGALT Mexico

Mr. TABITI Morocco

Mr. GLASER Romania

Mr. D. 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

Representative of a specialized agency:

Mr. FITZGERALD International Civil Aviation  
Organization

Secretariat:

Mr. SCHACHTER 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) (continued)

Mr. FRANCOZ RIGALT (Mexico) put two proposals to the Sub-Committee, which took into account the remarks made by various delegations at the preceding meeting on the subject of article 1, paragraph 1, of the draft agreement. Firstly, the Sub-Committee could provisionally approve the general principle stated in article 1, paragraph 1, namely that each Contracting State should, in accordance with the provisions of the agreement, render all possible assistance to the crews of space ships in the event of accident, distress or emergency landing, employing to that end every means at its disposal. That general principle was reflected in the Soviet draft, in the United States draft and in the proposal by Australia and Canada and it should be possible to approve it without much difficulty. Since, however, the three drafts before the Sub-Committee were worded differently, it would no doubt be desirable for the Sub-Committee to set up a small drafting group which would try to find a satisfactory wording on the basis of the three texts proposed.

Secondly, since there had been some objection to article 1, paragraph 2, of the Soviet draft because of possible difficulties of interpretation, he proposed three ways of settling that ticklish point. The first possibility would be to decide to consider paragraph 2 at the same time as article 4 of the United States draft, which dealt with the settlement of disputes. If that solution were not adopted, the Sub-Committee could accept the principle of paragraph 2 but state it in the preamble rather than in the operative part of the agreement. The third and in his view the best solution would be to add a third paragraph to article 1. As the discussion had shown, the principal objection to article 1, paragraph 2, of the Soviet draft was that it was not one State, acting unilaterally, which should decide whether the launching of a space ship had been in accordance with the Declaration of Legal Principles contained in General Assembly resolution 1962 (XVIII). That objection was a valid one. Yet the States concerned - in other words, the launching State and the State required to render assistance - should be able to agree to set up an arbitration organ which would decide its own procedure and would rule on whether the launching had in fact been in accordance with the Declaration of Legal Principles. If that organ failed in its task, the

(Mr. Francoz Rigalt, Mexico)

States in question could agree either to bring their dispute before the International Court of Justice or to settle it in any other way.

Mr. CCCCA (Argentina) said that the discussion at the preceding meeting on article 1, paragraph 1, of the draft agreement had shown that all the delegations took a somewhat similar position and indicated that the members of the Sub-Committee should be able to agree on a text acceptable to all. As far as the Soviet draft was concerned, it seemed that the only objections to article 1, paragraph 1, related to the last part of that paragraph. His delegation therefore proposed two changes. The first would be to replace the words "Each Contracting State", at the beginning of the paragraph, by the words "Each Contracting Party". The wording would thus be consistent with that already approved both for the preamble and for certain articles. The second change, which differed from the Lebanese amendment, would be to delete the phrase starting with the words "including electronic and optical equipment" and replace it by the following phrase: "including the most modern and efficient means placed at their disposal by the progress of technology".

That change was not merely stylistic; it was motivated by substantive considerations. The science of the jurist was not very different from that of the legislator. They both had to draw up instruments of a lasting character. The instruments should therefore not contain provisions which might be of only transitory relevance. The USSR representative had said that the aim of the enumeration in article 1, paragraph 1, of the Soviet draft was to make States better able to co-operate in the performance of a humanitarian task. His delegation shared that view but thought that such an enumeration constituted in fact a limitation, since the technical means mentioned would no doubt be obsolete some day. It therefore proposed the more flexible and more logical wording, which fitted better into the body of the draft.

Mr. MOROZOV (Union of Soviet Socialist Republics) accepted provisionally the changes proposed by the representative of Argentina, not because he was convinced that the means of assistance could not be enumerated - the enumeration could in fact be left in square brackets until the second reading - but because he hoped thus to facilitate agreement on article 1, paragraph 1, of the Soviet text.

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(Mr. Morozov, USSR)

Moreover, as the representatives of Argentina and Mexico had pointed out, the principle stated in that paragraph corresponded to certain provisions in article 2 of the United States text. There was therefore nothing to prevent the Sub-Committee from taking an immediate decision on that paragraph, without prejudice to acceptance on the second reading, if a majority of its members so desired, of the wording proposed by the Argentine representative for the enumeration of the means of assistance.

The question of the correlation between article 1 and other articles would arise in connexion with virtually every article in the draft and could be settled at the second reading. Although he stressed the need for the draft to include article 1, paragraph 2, of the Soviet text, he would agree to the suggestion of the Mexican and Argentine representatives that the Sub-Committee should postpone discussion of the rest of article 1 and go on to consider other articles on which agreement had not yet been reached, provided that a decision was taken immediately on article 1, paragraph 1.

Sir Kenneth BAILEY (Australia) said he believed that the Soviet proposal that detailed discussion of article 1 should be deferred for the time being and that other outstanding articles should be taken up could help to advance the Sub-Committee's work, as could also the Mexican proposal that a drafting group should be established to seek a satisfactory wording for article 1. Thus the Committee could either go on with its work immediately, taking up other articles, or set up a group to draft article 1.

The Australian-Canadian proposal had not been intended as a new and separate draft, but as a working group paper designed to facilitate agreement. The USSR and United States drafts, on the other hand, were Committee documents. The Australian and Canadian delegations would not like their text to hamper the Sub-Committee in any way in reaching an agreement; it contained important points of substance, but the spirit in which it had been submitted should be borne in mind.

The Sub-Committee's mandate was to draft an international agreement based on the principles contained in the Declaration, in so far as they related, on the one hand, to assistance to astronauts and space craft and their return to the

(Sir Kenneth Bailey, Australia)

launching State and, on the other hand, to liability for damage which might be caused. The Declaration was not a formal legal document, but it nevertheless represented a deliberate and unanimous expression of the wishes of all Members of the United Nations, and the Sub-Committee must be guided by it in preparing its draft. Any attempt to establish different regulations for assistance and for return was therefore contrary to the spirit of the Declaration.

Article 1, paragraph 1, actually covered the same ground as the new article 3 which had recently been adopted on a provisional basis, and there was no reason to have two different provisions on the same subject. In their proposal, Australia and Canada had sought to mention all the principles in general terms, leaving the details to be spelled out later. They did not insist on their own text, however, and they felt sure that agreement could be reached on article 1 taking into account both the Declaration and the provisionally agreed text of article 3.

Mr. MOROZOV (Union of Soviet Socialist Republics) said he was afraid that the representative of Australia had misunderstood the Soviet delegation's position. His delegation was in no way suggesting that the Sub-Committee should suspend its consideration of article 1, paragraph 1, without taking any decision on it. It had merely accepted, in a spirit of compromise, the proposal of Mexico, supported by Argentina, that the Sub-Committee should agree immediately, on a provisional basis, on certain principles to be included in article 1. Those principles had been clearly stated by the representative of Mexico and amended by the Argentine representative, and the Soviet delegation accepted them. Once the inclusion of those principles in article 1 had been agreed upon, the definitive drafting of the article could begin.

The Australian delegation appeared to think, on the other hand, that the intention was to take up other articles, deferring the discussion of article 1 until later. That would be a return to the position taken the day before by Australia and the United States, and would mean starting the whole discussion again from the beginning. If some delegations thus wished to call in question the agreement which appeared to have been reached during the private conversations held before the meeting, they would bear responsibility for thus prolonging the debate.

(Mr. Morozov, USSR)

If, on the other hand, the Australian delegation and the Sub-Committee as a whole agreed to the Mexican proposal, he suggested that, instead of entrusting the drafting of paragraph 1 to a small group, the Sub-Committee should undertake that task itself, and perform it as the discussion proceeded. Texts prepared by committees of limited membership invariably required second consideration when they went back to the plenary body, and time was thus lost instead of gained.

Mr. FRANCOZ RIGALT (Mexico) thought that the principal requirement was to agree on the general principles to be incorporated in article 1. The exact form to be given them was of little importance; that strictly subordinate task of drafting could and should be entrusted to a small group.

If, as the Soviet delegation proposed, the Sub-Committee itself undertook the final drafting of paragraph 1, there was a serious danger that it would find it impossible to reach agreement without agreeing also on paragraph 2, and the whole advantage of the division of the work would be lost.

The Mexican delegation therefore repeated its proposal, which was that the Sub-Committee should first agree on the principles to be incorporated in article 1, paragraph 1, and then entrust the task of drafting the paragraph to a small group appointed by the Chairman. The Sub-Committee would meanwhile continue to seek agreement on paragraph 2, with the understanding that, if necessary, the results reached on that paragraph could be harmonized with the text of paragraph 1 prepared by the working group.

Sir Kenneth BAILEY (Australia) said that, on the question of the procedure to be followed, his delegation's position differed very little from that of the Soviet delegation. As far as the drafting of article 1, paragraph 1, was concerned, it seemed that the best course would be for the Sub-Committee to transform itself into a plenary working group of the whole, as it had done the year before. As a general rule, agreements reached in a plenary body were firmer than agreements which might be reached by groups that were too small.

Mr. SAJJAD (India) observed that the purpose of article 1 of the agreement was to lay down the general obligations of the contracting parties, obligations to which all the other articles would refer implicitly. It was therefore essential to make it clear, in the introductory article, that the space

(Mr. Sajjad, India)

craft and space objects to which the agreement referred were those launched for peaceful purposes. That followed logically from General Assembly resolution 1962 (XVIII) which was the very basis of the proposed agreement and which stated, in paragraph 1, that the exploration and use of outer space was to be carried on for the benefit and in the interests of all mankind. Such an objective obviously presupposed peaceful intentions, and that idea should be expressly stated in article 1 of the agreement.

The CHAIRMAN recalled that the Sub-Committee had decided, at the outset of its work, that all its members should have an opportunity to participate in discussions on substance and on form. He would therefore not wish to take responsibility, as requested by the Mexican delegation, for appointing a small committee to be entrusted with the drafting of paragraph 1. It would be better for the plenary Sub-Committee to undertake that type of work as in 1964.

Mr. FRANCOZ RIGALT (Mexico) said that, in his view, the plenary Sub-Committee should concentrate on the basic principles rather than occupy itself with drafting. Nevertheless, if necessary, the Mexican delegation could participate, in the plenary meetings, like other delegations in the drafting of article 1, paragraph 1.

The meeting rose at 1.15 p.m.