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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FORTY-FOURTH MEETING

Held at Headquarters, New York,
on Wednesday, 22 September 1965, at 4.10 p.m.

CONTENTS

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)

PRESENT:

Chairman:

Mr. LACHS

(Poland)

Members:

Mr. NACO

Albania

Mr. COCCA

Argentina

Sir Kenneth BAILEY

Australia

Mr. ZEMANEK

Austria

Mr. LITVINE

Belgium

Mr. de MEDICIS

Brazil

Mr. YANKOV

Bulgaria

Mr. TURNER

Canada

Mr. GOTMANOV

Czechoslovakia

Mr. LEMAITRE

France

Mr. USTOR

Hungary

Mr. SAJJAD)

Mr. MISHRA)

India

Mr. AMIRMOKRI

Iran

Mr. YAMAZAKI

Japan

Mr. CHAMMAS

Lebanon

Mr. FRANCOZ RIGALT

Mexico

Mr. TABITI

Morocco

Mr. WYZNER

Poland

Mr. GLASER

Romania

Mr. D. WILLIAMS

Sierra Leone

Mr. KELLBERG

Sweden

Mr. MOROZOV)

Mr. RYBAKOV)

Union of Soviet Socialist
Republics

Mr. IBRAHIM

United Arab Republic

Mr. DARWIN

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

Miss CHEN

Secretary of the Sub-Committee

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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)

The SECRETARY invited members of the Sub-Committee to comment on the proposals for article 1 on general duty.

Mr. MEYER (United States of America) said that although his delegation still had doubts concerning the need for an article defining general obligations, it had prepared a draft of article 1 with a view to expediting the work of the Sub-Committee. The United States proposal read as follows:

"Article 1

"Each Contracting Party undertakes, in accordance with the present Agreement:

(a) to regard astronauts as envoys of mankind in outer space and to render to them all possible assistance in the event of accident, distress, or emergency landing;

(b) to return promptly and safely to the launching State astronauts who make such a landing; and

(c) to return to the launching State space objects and component parts upon the furnishing of identifying data, if requested, prior to return."

It had become apparent at the previous meeting that unanimous agreement on some of the elements in the various proposals for article 1 was unlikely. With that in mind, his delegation had also prepared a working paper (WG.1/33), containing a draft of article 1, which reflected the different proposals and was suitable for inclusion in the Sub-Committee's report.

The bracketed portion of paragraph (a) was the wording favoured by the Soviet Union and appeared in paragraph 1 of the USSR draft article 1. The first bracketed paragraph (b) reproduced the language of paragraph 2 of the USSR draft and bracketed paragraphs (b) and (c) - corresponding to paragraphs (b) and (c) of the United States proposal - were included as an alternative to that paragraph.

All three paragraphs of the United States proposal were drafted in language drawn verbatim from paragraphs 7 and 9 of the Declaration of Legal Principles unanimously approved and adopted by the General Assembly in December 1963 (resolution 1962 (XVIII)). In his delegation's view, that approach was a sound one, since the article was general in character, anticipating and summarizing the

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(Mr. Meeker, United States)

main elements of the agreement. It was also his delegation's hope that the suggestion for the Sub-Committee's report would prove useful in reflecting the views of the Sub-Committee.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the United States proposal was an attempt to create the appearance of a possible agreement, but on the basis of that proposal such a possibility did not exist. There were already three drafts of article 1 and an attempt should be made to find the common denominator. The new United States proposal, on the other hand, did not focus on those elements acceptable to all but introduced an element which was quite unacceptable to his delegation.

At the previous meeting his delegation had stated that in a spirit of compromise it was prepared to accept the proposals put forward by Mexico and Argentina regarding the principles to be included in article 1. The fact that the United States had now introduced a new wording would seem to indicate that it was not prepared to accept those proposals. If that was the case, there was little chance of any agreement being reached. The United States proposal was an attempt to impose the return of astronauts and space objects not launched in accordance with the principles of the Declaration, and such a provision was completely unacceptable to his delegation.

The United States working paper (WG.1/33) also attempted to give the impression that the Sub-Committee was prepared to accept that document as a basis for article 1. Paragraph (b) of the paper reproduced part of the first USSR draft, but its contents were neutralized by the following two paragraphs taken from the new United States proposal. The Sub-Committee already had a comparative table in document A/AC.105/C.2/W.1/Rev.2 and the United States suggestion represented a step backward, in focussing attention on the divergences of opinion instead of bringing out points on which the Sub-Committee was likely to reach agreement.

Mr. FRANCOZ RIGALT (Mexico) said that the Sub-Committee had reached a deadlock on article 1 because it was confusing two different kinds of principles. There was general agreement that article 1 should refer to the general duty to render all possible assistance to astronauts in the event of accident, distress

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or emergency landing, but some delegations considered that the general duty should also include the duty to return astronauts and space objects. However, the problem was not merely whether the different duties should appear in separate articles, as in the USSR draft, or in a single article; it centered on the nature of the principles involved.

The principle of assistance was quite independent of the Declaration, because to render assistance in the event of accident, distress or emergency landing was a humanitarian undertaking. There was no need for a State to be concerned with what the astronaut was doing, or determine whether the space craft had been launched in accordance with the principles of the Declaration. The question of the duty to return was, however, subject to the obligations in the agreement to be concluded and, in the Soviet view, to the Declaration. If the Sub-Committee would allow that the two principles were entirely different, then agreement could be reached.

His delegation therefore suggested that the United States proposal should be accepted, but that, in order to meet the Soviet view, the following provision should be added: "The return of astronauts and space objects to the launching State shall be governed by provisions of the Agreement set forth hereinafter." Alternatively, paragraph 1 of the USSR draft could be adopted in place of paragraph (a) of the United States proposal, followed by paragraphs (b) and (c) of the United States proposal and the additional provision he had just formulated. Both solutions were in essence the same and both should satisfy the two sides.

If the additional provision was accepted, it would be possible to break the deadlock which threatened to delay the work of the Sub-Committee, since the Sub-Committee could approve the general principle of assistance, which was not subject to the Declaration, and then consider in subsequent articles - articles 5 and 6 - how the return of crews and space craft could be brought into line with that Declaration.

Mr. COCCA (Argentina) said that the principle set out in article 1, paragraph 1, of the Soviet draft must surely be acceptable to all: namely, that all possible assistance should be given to astronauts in the event of accidents. As the Mexican representative had pointed out, the obligation to help such

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(Mr. Cocca, Argentina)

astronauts would exist quite apart from the General Assembly's Declaration of Legal Principles, and was not subject to the Declaration. To agree on that basic principle would help forward the Committee's work and would not prejudice the positions of delegations on other questions.

Mr. TURNER (Canada) said that, as the Australian representative had pointed out at the previous meeting, the purpose of the draft submitted by the Australian and Canadian delegations had been merely to help the Committee to reach a consensus. His delegation had an open mind regarding the drafting of the article. He agreed with the representative of Argentina that it would be helpful to reach agreement on at least some points, even though others might require further consideration.

Mr. ZEMANEK (Austria) said that the Committee had already accepted the principle of assistance to astronauts in distress in its preliminary adoption of article 3. Article 3 was limited to the question of assistance; it had been felt that, in the case of the detailed regulations, the question of assistance and the question of return could be dealt with separately. Some delegations considered, apparently, that that was impossible in the case of a general principle such as was envisaged in article 1. There was no real difficulty in adopting the first part of the general principle, but on the question of return the same difficulties arose as had prevented agreement on article 5. The difficulty centred on the words "in accordance with the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space". As had already been pointed out, that proviso might present less difficulty if an adequate procedure could be established for the arbitration or settlement of disputes; the best course might therefore be to examine the possibilities of establishing such a procedure, before trying to reach agreement on the second part of article 1.

Mr. GLASER (Romania) said that there were various possible ways of approaching the introductory article of an agreement. It seemed to him that the purpose of such an article was to establish the basic principles which governed the detailed regulations set out in later articles.

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(Mr. Glaser, Romania)

He was not sure whether it would be useful, as the United States representative had suggested, to include conflicting proposals in the Sub-Committee's report to the Committee. It was usually better for a Committee to state in its report the points on which it agreed, and to leave the individual views of delegations for the summary records.

With regard to the Austrian representative's statement, it might well be true that agreement on the procedure for settling disputes would assist the solution of the problems now under discussion. However, the question of the machinery or authority for settling differences was not the same as the question of the principles on the basis of which differences would be settled. The tribunal, or arbitrating authority, would either have to work on the basis that all astronauts and objects were to be returned - even, for example, spies - or on the basis that the obligation to return referred only to launchings carried out in conformity with the General Assembly's Declaration of Legal Principles.

The problems in the way of an agreement were not, in his view, insuperable and it might be advisable to suspend the discussion of article 1 in order to allow time for an effort to reach a rapprochement.

Mr. FRANCOZ RIGALT (Mexico) said that on the settlement of disputes the Romanian representative had gone much further than the Austrian representative, raising questions which seemed to go beyond the Sub-Committee's terms of reference.

Mr. CHAMMAS (Lebanon) asked whether the sponsors of the various proposals could briefly tell the Sub-Committee what they considered to be the purpose of article 1. If they basically agreed on the article's purpose, then the problem would be simply one of drafting. If they did not, delegations would have a better idea of how to assist in overcoming the difficulty.

Mr. MEYER (United States of America) said that the purpose of article 1, as his delegation saw it, was not to settle every question which might arise in connexion with the agreement but to express the general principles underlying the agreement itself. Those principles, concerning assistance to and return of astronauts and space vehicles, were clearly set forth in points 7 and 9 of the Declaration of Legal Principles on which his delegation had relied in preparing the proposal it had submitted earlier in the meeting.

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Mr. MOROZOV (Union of Soviet Socialist Republics) said that article 1 of the USSR proposal was intended both to define the scope of the agreement and to lay down certain of its key principles. Subsequent articles spelled out those principles and specified how they were to be given effect. That was, indeed, the method employed in all international agreements.

Article 1, paragraph 1, of the USSR proposal stated the principle of unqualified assistance to crews of space ships. A subsequent provision specified that the crews were to be speedily returned if the launching had been in accordance with the Declaration of Legal Principles. He hoped that at least the basic principle of unconditional assistance to astronauts - the humanitarian nature of which had rightly been stressed - could be adopted at that session. A more difficult problem arose in the case, for example, of unmanned objects which had not been launched in accordance with the Declaration of Legal Principles. The USSR held that there should be no obligation on States to find and salvage such objects, and it would resist the attempts of the United States and other Western Powers to impose the opposite view, which was clearly at variance with the Declaration.

The only proper approach to the question was a realistic one which took into account actual developments in the world. The United States, however, was defending an unrealistic position, and if it could not agree to a more reasonable formula for article 1 the best course might be to proceed to other articles.

Mr. USTOR (Hungary) said that the Sub-Committee was faced with two conflicting interpretations of the Declaration of Legal Principles. One was based on a literal reading of the Declaration, and particularly of the statement that "States shall regard astronauts as envoys of mankind in outer space", which was taken to mean that astronauts were entitled to the privileges and immunities of diplomatic envoys, i.e. that they fell outside the jurisdiction of host States. In his view that interpretation was valid in the case of the peaceful use of outer space but would have absurd consequences in the contrary case. If the use of outer space did not pursue peaceful purposes - a very real possibility, as members were aware - then the situation would be different from what had been envisaged when the Declaration of Legal Principles had been adopted. The crews would simply be soldiers, or perhaps spies, and neither the objects nor the crews would be of the same nature as those contemplated in the Declaration.

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(Mr. Ustor, Hungary)

If the Declaration was interpreted logically, the obvious conclusion would be to draft an agreement applicable to cases where the launching was in accordance with the terms of the Declaration. The USSR draft was in fact a compromise, for it took a magnanimous view of crews sent into outer space in disregard of the terms of the Declaration and provided that they too should be given all possible assistance. But that magnanimity could not extend beyond the stage of initial assistance. The facts of the particular situation would have to be ascertained and the necessary conclusions drawn. That was the only logical approach, and it was taken in the USSR proposal alone.

After some discussion, the CHAIRMAN announced that the Sub-Committee would proceed at its next meeting to consider article 4, leaving open the possibility of reverting to article 1 at any future time.

The meeting rose at 6.5 p.m.