

UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/AC.105/C.2/SR.45
30 November 1965
ENGLISH
ORIGINAL: FRENCH

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FORTY-FIFTH MEETING

Held at Headquarters, New York,
on Thursday, 23 September 1965, at 11 a.m.

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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. PRUSA Czechoslovakia

Mr. LEMAITRE France

Mr. USTOR Hungary

Mr. SAJJAD India

Mr. AMIRMCKRI Iran

Mr. ROSSI ARNAUD Italy

Mr. YAMAZAKI Japan

Mr. CHAMMAS Lebanon

Mr. FRANCOZ RIGALT Mexico

Mr. DASHTSEREN Mongolia

Mr. WALEWSKI Poland

Mr. GLASER Romania

Mr. WILLIAMS Sierra Leone

Mr. KELLBERG Sweden

Mr. MORCZOV Union of Soviet Socialist
Republics

Mr. IBRAHIM United Arab Republic

Mr. SINCLAIR)
Mr. DARWIN) 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

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

Article 4. Assistance outside the territory of a Contracting State

Mr. MOROZOV (Union of Soviet Socialist Republics) said that it was his impression that the first sentence of article 4 of the Soviet draft text was as a whole acceptable to all members of the Sub-Committee. Furthermore that provision agreed, by and large, with the corresponding provisions of the other draft texts, and there was therefore every reason to think that it could be incorporated in article 4 in a form to be agreed on by the Sub-Committee.

That was not the case with the second sentence of the Soviet draft text, which had met with many objections; some delegations considered it impossible, inter alia for military reasons, to leave the direction of search and rescue operations to the State which had announced the launching. However, those delegations considered it essential for the launching State to take part in the rescue operations because, in most cases, that State would be in the best position to decide on the quickest and most efficient method of rescuing the astronauts. He therefore thought that it should be possible to agree on a text which would take those delegations' objections into account. To that end, he proposed to amend the second sentence of the Soviet draft article 4 to read as follows: "These operations shall be conducted in such a way as to ensure rapid rescue and to this end the State which announced the launching shall undertake general co-ordination of the rescue operations. These operations shall be carried out in accordance with the recommendations and technical advice of the State which announced the launching."

Sir Kenneth BAILEY (Australia) recalled that it had been decided to replace the word "sovereignty" in the Soviet draft article by the word "jurisdiction". Some Governments assumed responsibilities in connexion with territories under their administration, without thereby exercising sovereignty over those territories. He hoped the USSR representative would agree to the use of the word "jurisdiction".

The CHAIRMAN said that matters of drafting would be discussed later.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he was prepared to accept the term "jurisdiction" and thus to make article 4 consistent with article 2, on which agreement had already been reached.

Mr. CHAMMAS (Lebanon) approved the first sentence of the Soviet draft text, with the amendment proposed by the Australian representative, and the second sentence, which the new Soviet text amended in substance by setting an essential humanitarian aim: namely, to ensure the rapid rescue of astronauts. Without co-ordination, a rescue operation had little chance of success. It was equally clear that the launching State was in possession of the bulk of the technical data required for the success of such an operation. His delegation had no views on the third sentence of the new Soviet text; that sentence raised complex technical questions which could be better assessed by those members of the Sub-Committee who were experts.

Mr. TURNER (Canada) noted that the new Soviet text no longer included a reference to forced alighting on sea or land; he wondered whether those terms had been omitted on purpose. He hoped that that was not the case, and that the USSR representative would agree to their reinsertion in the text.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that that was merely a matter of drafting and not of disagreement on substance. He would be willing to examine it when the Sub-Committee dealt with drafting questions.

Mr. LITVINE (Belgium) asked the USSR representative to explain the difference between the "general co-ordination" of rescue operations and their "direction" - the term used in the original Soviet draft.

Mr. MOROZOV (Union of Soviet Socialist Republics) repeated that his delegation had proposed the two new sentences for article 4 in a spirit of compromise, taking into account the objections lodged by some representatives to the effect that a State could not give direct orders to persons who were under another State's jurisdiction. The new Soviet proposal eliminated that difficulty, inasmuch as the term "general co-ordination" meant something quite different from "direction" or "giving direct orders".

He thanked the Lebanese representative for accepting the new Soviet text and for emphasizing that the need for rapid rescue was the primary objective, to which all other considerations must be subordinated. Nevertheless, he still felt that that objective would best be served by entrusting the direction of operations to the launching State, which was the most competent from the technical point of view. However, since the aim was to draft an international agreement, his delegation had sought to take account of the various points of view, and its original text had been weakened as a result.

Mr. LITVINE (Belgium) thought that there might perhaps be a drafting problem, but understood the USSR representative's intention and agreed to his new text.

Mr. DARWIN (United Kingdom) considered that, with regard to the method of conducting search and rescue operations, the best wording was that of Canada and Australia, which referred to "close and continuing co-operation with the launching State".

Mr. MEEKER (United States of America) said that the matter involved a problem of relations between the agencies of several sovereign States. He too felt that the wording proposed by Canada and Australia in that connexion was particularly sound, and suggested that the Sub-Committee should consider a text stressing the idea of close and continuing co-operation, the need to ensure rapid rescue, and the fact that the launching State was in the best position to make recommendations and give technical advice. He therefore proposed the following wording: "If information is received or it is discovered that personnel of a space craft have suffered accident, are in distress or have made an emergency landing, on the high seas or in any other place not under the jurisdiction of any State, and the launching State is not in a position immediately to undertake effective search and rescue operations, such operations shall be conducted, in close and continuing co-operation with the launching State, by those Contracting Parties which are in a position to do so. The operations shall be conducted in a manner designed to assure speedy rescue and taking account of requests and technical advice from the State which announced the launching."

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Mr. COCCA (Argentina) found the Soviet text acceptable but did not consider that it would be inconsistent with the spirit of that text to emphasize the need for close and continuing co-operation with the launching State.

In addition it would be necessary to specify what was meant by "announcing a launching"; that expression might cover a great variety of concepts, from official notification (in its specific scope under international law) to the much vaguer idea of mere publication.

Mr. MOROZOV (Union of Soviet Socialist Republics) observed that, in amending the text proposed by the Soviet delegation, the United States delegation had injected two new elements which considerably weakened its application.

Firstly, the new text left the State conducting the rescue operations free to disregard the advice of the launching State (for that was what the euphemism "taking account of" really meant). Thus the State which had carried out the launching, and to which the space craft belonged, would have a much smaller role in the search and rescue operations than would the State which happened to be conducting those operations. That was too much of a paradox, and the Soviet Union, which considered that it had made enough concessions, refused to follow the United States in that direction. The text adopted should make it impossible for the launching State's recommendations and technical advice to be rejected, and should provide that those recommendations and that advice should be not only taken into account, but effectively followed in the conduct of operations.

Secondly, the conditional clause in the United States text - "If... the launching State is not in a position immediately to undertake effective search and rescue operations" - was far less specific than the Soviet text in reflecting the humanitarian obligation to ensure immediate rescue. Even in an emergency, the State in a position to carry out the operations might feel obliged to wait until the launching State declared officially that it was unable to do so. Such a situation would be contrary to the most fundamental principles of the proposed agreement.

The introduction of those two new elements made the text proposed by the United States completely unacceptable.

Mr. CHAMMAS (Lebanon), for his part, thought that there were three essential elements in the United States proposal: speed in the operations, co-ordination of effort, and the need to take account of the technical advice of the launching State. However, he preferred to withhold comment until the text had been circulated.

Mr. ROSSI ARNAUD (Italy) observed that there was no unbridgeable gap between the Soviet text, under which the rescue operations would be carried out in accordance with the recommendations and technical advice of the launching State, and the United States version, which simply provided that such recommendations and advice should be taken into account. Perhaps the two positions might be reconciled by replacing the two rival formulae by the phrase "utilizing the recommendations..." etc.

Mr. YANKOV (Bulgaria) considered that the United States text tended to blur the definition of relations between the launching State and the State carrying out the rescue operations. In that field, in which innovation followed innovation and each space ship had its own technical specifications, any move to overlook the technical recommendations of the launching State might well jeopardize the success of the rescue operations. Efficiency and speed in such operations could not be ensured by generalities such as the idea of close and continuing co-operation. The operations must be conducted in accordance with the technical recommendations of the launching State.

Mr. FRANCOZ RIGALT (Mexico) considered that, on the main point at issue - namely, how the rescue operations were to be conducted - the Soviet formula, which provided that they should be carried out in accordance with the technical recommendations of the launching State, was both logical and natural, and deserved the Sub-Committee's support.

Where such operations were concerned, the first consideration must be to ensure the speedy rescue of the astronaut and the space ship. That was a practical task, in which economic or political considerations could have only a very secondary place. If they kept the discussion on the political plane, delegations would go against the principles of General Assembly resolution 1962 (XVIII), which envisaged international co-operation for peaceful purposes; furthermore, it must

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(Mr. Francoz Rigalt, Mexico)

not be forgotten that the article in question was concerned with forced alighting on the high seas or in any other place not under the jurisdiction of any State. In those circumstances national susceptibilities, which would be understandable if the incident occurred in the territory of a Contracting State, would really be out of place, and it was inconceivable that the only State in possession of all the necessary technical data should be denied the right to direct, by its recommendations, the course of the rescue operations, when nobody would contest its right to undertake the whole operation if it was in a position to do so.

Moreover, in replacing the idea of directing operations by that of making technical recommendations, the Soviet delegation had shown a distinctly conciliatory attitude, and there was no longer any major difficulty in the way of accepting its text.

His delegation, for its part, would firmly support the Soviet proposal.

Mr. de MEDICIS (Brazil) regarded the USSR representative's proposal as an important step towards a compromise. However, the phrase "in accordance with" unequivocally meant that the means of rescue employed would be placed under the control of the launching State. His delegation therefore preferred the formula "in close and continuing co-operation with the Launching State", as used in the Australian and Canadian text. He also supported the Italian representative's proposal that the two rival formulae should be replaced by the phrase "utilizing the recommendations and technical advice", etc. Article 4 did not appear to give rise to any very thorny problems, and the members of the Sub-Committee should be able to reach agreement on a compromise wording without undue difficulty. However, his own delegation reserved the right to speak on that article again when it had had an opportunity to study the written texts of the various proposals just made.

Sir Kenneth BAILEY (Australia) observed that all members of the Sub-Committee were in agreement in considering that the aim of article 4 must be to provide the most efficient and rapid means of searching for and rescuing astronauts in distress, either on the high seas or in any other place. It remained to decide what arrangements should be made to that end. It was very clear that, in the case in point, it was not for the launching State alone to carry out search and rescue operations. Such other Contracting Parties as were in a position to do so had a

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(Sir Kenneth Bailey, Australia)

duty to take part in those operations. The question was, however, on what plane to place the relations between the launching State and those other Contracting Parties. The USSR representative had attempted to find a formula which could be accepted by all the members of the Sub-Committee. He was grateful to that representative for his efforts, but did not think that the aim had been achieved. If a State was legally bound to follow the recommendations and advice of another state, it was definitely a matter of taking orders. The letter had changed, but the spirit remained the same. His delegation therefore preferred to keep to the text proposed by Canada and Australia, while accepting the suggestion of the United States representative who, in order to bring out the idea of "close co-operation", stressed the necessity of assuring speedy rescue, "taking account of requests and technical advice from the State which announced the launching".

Mr. LEMAITRE (France) said that, so far as the drafting was concerned, his delegation would favour the simplest and shortest text. Furthermore, his delegation considered that, in drafting article 4, such expressions as "operations shall be directed" or "shall undertake general co-ordination" should be avoided, since they seemed to imply, if not direct orders, at least enforced recommendations. His delegation consequently supported the formula "taking account of recommendations, etc....", which had two points in its favour. Firstly, the speed factor might come into play. It was essential that the State best placed to take immediate rescue measures should be able to do so without waiting for directives from another State. Next, it might happen that that same State would have to choose between the lives of the astronauts and those of, say, the crew of the merchant ships or warships which it had sent to the scene of the accident. It was for that State alone to make such a choice.

Lastly, it should be remembered that the phrase "the State which announced the launching" was only a provisional definition, which should not be allowed to prejudge the question whether a State must announce a launching or not.

Mr. PRUSA (Czechoslovakia) considered that, in order to attain the objectives of the agreement, it was essential that the States required to render assistance should comply with the recommendations and advice supplied by the launching State. It was important not to lose sight of the very close relations

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(Mr. Prusa, Czechoslovakia)

between, on the one hand, the launching State and, on the other, the crew of the space ship and the space ship itself. In all probability the crew would be composed of nationals of that State and the space ship would be its property. Furthermore Australia and Canada, in article 6, paragraph (7), of their proposal, had provided that the expenses incurred by a Contracting Party in respect of the recovery or the return of a space object should be reimbursed by the State to which the object was returned. In those circumstances it was hard to imagine the launching State being bound to pay such expenses without having had an opportunity to make recommendations or to give advice on how the rescue operations should be carried out.

The United States text and that submitted by Australia and Canada did, it was true, recognize the need for co-operation; but the launching State must be able to find in article 4 a genuine guarantee of such co-operation. Article 4 must therefore be so worded that the State required to render assistance could not consider its obligations fulfilled by, say, merely contacting the launching State. However, the proposal submitted by Australia and Canada, and still more that submitted by the United States, tended to weaken considerably the obligation laid on that State. Yet there was a great deal at stake, for it was a matter of coming to the assistance of the astronauts as speedily and safely as possible. In his view, the new Soviet proposal best satisfied that criterion, and at the same time took into account the suggestions made by members of the Sub-Committee. Thus the replacement of the words "These operations shall be directed" by the formula "shall undertake general co-ordination" ruled out any idea of encroachment by the launching State on the sovereignty of other States. The wording of the new Soviet proposal should dispel any apprehensions aroused by the original text.

The meeting rose at 12.45 p.m.