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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FORTY-SIXTH MEETING

Held at Headquarters, New York,  
on Thursday, 23 September 1965, at 4.55 p.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. AMIRMOKRI Iran

Mr. ROSSI-ARNAUD Italy

Mr. YAMAZAKI Japan

Mr. CHAMMAS Lebanon

Mr. FRANCOZ RIGALT Mexico

Mr. DASHTSEREN Mongolia

Mr. TABITI Morocco

Mr. WALEWSKI Poland

Mr. GLASER Romania

Mr. WILLIAMS Sierra Leone

Mr. KELIBERG Sweden

Mr. MOROZOV 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

Secretariat:

Mr. SCHACHTER Director, General Legal  
Division

Miss CHEN Secretary of the Committee

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

The CHAIRMAN suggested that, if there were no further comments on article 4, the Sub-Committee should turn to consideration of article 5 on the duty to return personnel.

Mr. MOROZOV (Union of Soviet Socialist Republics), introducing the Soviet draft article 5, said that the provision concerning the duty to return personnel was one of the most important in the agreement. His delegation had already explained in detail during the debate on article 1 why the USSR considered it essential that the duty to return astronauts should be subject to the condition that their spacecraft was launched in accordance with the Declaration of Legal Principles. His delegation could not accept the provisions of the United States proposal and the proposal submitted by Australia and Canada, because it considered that a State could not be forced to return the crews of spacecraft launched for hostile purposes.

It had been asserted that it would be difficult to determine whether or not a spacecraft had been launched in accordance with the Declaration of Legal Principles. He wished to emphasize, however, that the actual definition of the obligation in question could not be influenced by the difficulty or ease of determining the facts. His delegation believed that the definition in the Soviet draft was sufficiently clear and precise and that it came within the framework of the Declaration, which in turn was based on fundamental principles of the Charter of the United Nations. The adoption of such a formula would contribute to the development of international law in the new and important field of outer space and would be consonant with the Sub-Committee's humanitarian task of drawing up the present agreement.

Mr. MEEKER (United States of America) said that he wished to repeat that, in his delegation's view, the obligation to return the personnel of spacecraft should be an unqualified and unconditional obligation. No restrictions were placed on that obligation in item 9 of the Declaration and his delegation considered that article 5 should be modelled on the formula already approved in the Declaration.

Under the terms of the USSR draft, the State on whose territory the astronauts landed would have to decide whether or not the spacecraft had been launched in

(Mr. Meeker, United States)

accordance with the Declaration of Legal Principles and whether or not it should return the astronauts. However, reliance should not be placed on the subjective judgement of any particular State and astronauts should be returned without question to the launching State.

Mr. YANKOV (Bulgaria) said that it was perfectly clear that the principles set forth in the Declaration were meant to relate to the exploration and use of outer space for peaceful purposes. Although there was no specific reference to peaceful purposes in item 9 of the Declaration, that item had to be read in the context of the Declaration as a whole and the phrase "envoys of mankind" could not be interpreted as covering astronauts engaged in military activities which were a threat to world peace. The United States representative had repeatedly raised the question of subjective judgement but, if that line of argument was pursued, the entire Declaration could be interpreted subjectively. The very title of the parent Committee - the Committee on the Peaceful Uses of Outer Space - indicated that the Sub-Committee's task was to formulate legislation on the peaceful uses of outer space and not to deal with problems relating to military spacecraft or manned orbital laboratories.

It was entirely consistent with the principles of the Declaration that Contracting States should have the general duty and legal obligation to facilitate the earliest possible return of the personnel of spacecraft launched in accordance with those principles, and his delegation was astonished at the suggestion that that obligation should be made unconditional. As had been pointed out several times, it was not possible to suggest that a State had a legal obligation to return the personnel of a spacecraft which had been engaged in military activities against that State and which was a threat to peace. It was abundantly clear from the Declaration that peaceful co-operation and the peaceful uses of outer space were the very purpose of legislation to govern the activities of States in the exploration and use of outer space; to attach a condition such as that proposed by the Soviet Union to the duty of a State to return astronauts could not therefore be to prejudice co-operation between States in such activities.

Mr. FRANCOZ RIGALT (MEXICO) said that the provisions under discussion were the key to the success or failure of the agreement as a whole. The main

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point at issue was whether or not a State could unilaterally decide whether the launching of a particular spacecraft had been in accordance with the Declaration of Legal Principles.

On the assumption that the Soviet draft article 5 truly reflected the spirit of that Declaration, he proposed that the article should also provide for the establishment of an arbitration commission made up of the States parties to the dispute to determine, in the event of controversy, whether the launching of a spacecraft whose crew was to be returned had been in accordance with the Declaration. It was reasonable to expect that the State in which the accident, distress or emergency landing occurred should, first of all, guarantee the safety of the astronauts and the inviolability of the spacecraft and immediately notify the launching State, and the Secretary-General of the United Nations, supplying evidence in support of its assertion that the launching had not been in accordance with the Declaration. The two States could then consult together and attempt to settle the question on the basis of the evidence submitted. If they were unsuccessful, a tripartite arbitration commission could be established, perhaps in collaboration with the United Nations, and a majority vote could settle the issue and determine whether the State detaining the astronauts should return them.

He hoped that that proposal would go some way towards meeting the objections of both sides and warned that if each delegation refused to modify its position and did not show greater goodwill and a greater desire for international co-operation, there was little hope that the Sub-Committee would be able to complete its task successfully.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the United States based its position regarding article 5 on the wording of item 9 of the Declaration of Legal Principles. Item 9, however, could not be read in isolation from the remainder of the Declaration. It was clear from the Declaration as a whole, and particularly from the preamble and item 1, that the astronauts referred to in item 9 were participants in space flights having peaceful purposes and not in flights the aims of which were hostile to any given State. Indeed, the Committee on the Peaceful Uses of Outer Space could not, by virtue of its terms of reference and its very name, adopt provisions covering non-peaceful missions in outer space. That was the work of the disarmament and political committees of the United Nations. The draft agreement under consideration must therefore be confined to the case of peaceful space flights.

(Mr. Morozov, USSR)

It would be contrary to the United Nations Charter, the Declaration of Legal Principles and the generally accepted rules of international law to demand that a State on whose territory a military device had fallen should return that device to the launching country. Similarly, it was impossible to demand the unconditional return of the personnel of a spacecraft launched contrary to the terms of the Declaration. It was ironical that the United States, which refused to accept the humanitarian terms of article 1, paragraph 1, as proposed by the USSR, should insist on the return of all astronauts, regardless of the nature of their mission, "promptly and safely" to the launching State.

Several representatives had referred to the need for provisions on the settlement of disputes to be included in the draft agreement. He for one did not think that such provisions should be incorporated in article 5, which dealt with the specific question of the return of personnel. The settlement of disputes was a matter which related to the whole of the agreement and should be taken up at the appropriate time.

In conclusion, he deplored the attempts of certain delegations to give the draft agreement a different content from that of the Declaration of Legal Principles. If those delegations persisted in their attempts, they would have to shoulder the responsibility for the Sub-Committee's failure in its present endeavour, an endeavour of great importance for the development of international law. His delegation was of course prepared to continue co-operating patiently with others in an effort to draft a suitable agreement, but that would require a more realistic attitude on the part of certain delegations.

Mr. FRANCOZ RIGALT (Mexico) said that while he agreed with the USSR representative that provisions on the settlement of disputes would best be incorporated elsewhere than in article 5 of the Soviet draft, it was a fact that that draft contained no such provisions and article 5 was the best place in the circumstances. His proposal provided at least a partial solution to a central problem which the Soviet proposal left untouched. If the USSR delegation were to put forward a better solution, perhaps by submitting a separate article on the settlement of disputes, his own proposal might become unnecessary.

Although he found the Soviet text of article 5 acceptable, he disagreed with the Soviet representative's explanation of it. In international law as in

(Mr. Francoz Rigalt, Mexico)

domestic or private law, obligations were established on a reciprocal basis. However, in article 5 in the USSR proposal as now drafted, there was no reciprocal basis for the determination of whether or not a launching had been in accordance with the Declaration of Legal Principles. The Soviet representative had mentioned the case of astronauts on non-peaceful missions, but another possibility must be considered, that of astronauts on a peaceful mission who were detained for the purpose of obtaining technical or other information. The host State might falsely claim that the launching had not been in accordance with the Declaration and that it was therefore entitled to hold the spacecraft's personnel. Under the terms of the Soviet draft, the launching State would have no legal remedy, whereas his proposal would protect the interests of both States concerned.

Mr. MOROZCV (Union of Soviet Socialist Republics) said that he was glad that the Mexican representative agreed with him on the main point - that the return of spacecraft personnel should be contingent on whether or not the launching had been in accordance with the Declaration. As to the case of unjust detention of personnel, no real difference of opinion existed. Many speakers had noted the need for an article on the settlement of disputes, and when that question formally came up for consideration his delegation would state its views. However, the matter under consideration at the moment was article 5, and the principle stated in it, like the other principles in the draft agreement, must be clearly and precisely defined. The vital question of compliance with the Declaration could not be disposed of in an article on the settlement of disputes but only in the pertinent substantive provisions of the agreement.

The meeting rose at 6.10 p.m.