

UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/AC.105/C.2/SR.47
30 November 1965

ORIGINAL: ENGLISH

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FORTY-SEVENTH MEETING

Held at Headquarters, New York,
on Friday, 24 September 1965, at 3.55 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:

<u>Chairman:</u>	Mr. LACHS	(Poland)
<u>Members:</u>	Mr. NACO	Albania
	Mr. COCCA	Argentina
	Sir Kenneth BAILEY	Australia
	Mr. ZEMANEK	Austria
	Mr. LITVINE	Belgium
	Mr. de MEDICIS	Brazil
	Mr. KINGSTONE	Canada
	Mr. DOUEANGAR	Chad
	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. TABITI	Morocco
	Mr. WALEWSKI	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. SOHIER	United States of America
<u>Secretariat:</u>	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 SPACE CRAFT (A/AC.105/21; A/AC.105/C.2/W.1/Rev.2) (continued)

The CHAIRMAN invited the Sub-Committee to continue its consideration of article 5, concerning the duty to return personnel.

Mr. KINGSTONE (Canada) said that the reference in article 5 of the USSR proposal to the Declaration of Legal Principles raised at least two important legal questions which were related to the terms of reference of the Committee on the Peaceful Uses of Outer Space. The first question was the following: had it been the intention of the General Assembly that the general principles set out in the Declaration should be incorporated in the substantive part of specific conventions concerning outer space? It seemed clear that the Assembly had not so intended. The Declaration was largely couched in general terms and avoided entering into detail on specific questions. An attempt to incorporate such general principles in a convention by reference, and to make its provisions subject to them, would tend to blur its concrete objectives. It was clear that the Assembly had intended the principles as a set of guidelines, to be taken into account in the drafting of rules on specific matters, but not having themselves the character of treaty provisions.

The second question was whether, irrespective of the answer to the first question, in attempting to incorporate the Declaration's principles by reference in a convention, there might be a danger of, in effect, modifying the general principles. The reference to the Declaration in article 5 of the USSR draft, for example, seemed to presuppose that the Declaration established particular conditions for the launching of space craft. That was not the case: the Declaration merely laid down general guidelines for the activities of States. The Declaration did contain one rather specific statement concerning the duty to return astronauts, but it was not qualified in any way, whereas the wording of the USSR draft article seemed to imply that the reference to the Declaration was intended to make the return of astronauts subject to certain conditions. The question arose whether that wording did not constitute a substantial amendment to the Legal Principles.

Thus it seemed to him dangerous, from a legal point of view, to try to make the provisions of the agreement subject to the Legal Principles as a whole. The Sub-Committee's task was limited specifically to the drafting of an agreement on assistance to and return of astronauts and space craft. The Legal Principles

/...

(Mr. Kingstone, Canada)

provided the context of the agreement, which was to establish detailed provisions on specific subjects. It was for that reason that the United States proposal and the working draft submitted by Australia and Canada contained a reference to the Declaration in their preamble.

Mr. PRUSA (Czechoslovakia) said that he remained convinced of the need for a reference to the Declaration of Legal Principles in article 5, as in certain other articles. The objections to such a reference were of two kinds. Firstly, there was the argument that no limitation was placed on the duty to return astronauts in the relevant paragraph of the Declaration, and that it was not admissible to add a qualification in the corresponding part of an agreement. However, as the Canadian representative had rightly said, the Declaration was designed to give the outline and provide the framework for future legislation. The principles were stated in broad terms in the Declaration, which did not go into the details of their application. Clearly, therefore, an agreement could include detailed conditions which were not contained in the Declaration itself. Moreover, the Declaration must be read as a whole, and it was wrong to stress some of the principles while ignoring others.

The second type of objection was based on the fact that, from a legal standpoint, a General Assembly resolution had only the force of a recommendation. It seemed to him, however, that there might be some exceptions to that rule. Firstly, a General Assembly resolution could contain elements which in fact constituted rules of international law. The reference to international law and to the Charter of the United Nations in operative paragraph 4 of the Declaration was an example. The principle of international liability for damage also was not dependent on the General Assembly resolution, but imposed an obligation which would exist quite apart from the latter. Thus, any reference to the Declaration was, in part at least, a reference to generally recognized principles of international law.

Another possible exception had been mentioned on a previous occasion by the representative of Australia, who had pointed out that the Declaration, in part, might attest to the practice of States and serve as a source of international law. It was certainly a very valuable document from a legal point of view, and should not be ignored in the drafting of a convention dealing with the same subject.

(Mr. Prusa, Czechoslovakia)

Another consideration to be borne in mind was the fact that, following the adoption of the Declaration, the Governments of the United States and the Soviet Union had formally declared that they considered themselves bound by its principles. The legal consequences of such unilateral declarations were a subject on which there was no unanimity among jurists, but it could surely not be said that the United States and the Soviet Union were legally free to violate the principles of the Declaration.

The Declaration, which had been the result of protracted discussions, had been regarded at the time as a document of the greatest importance and as one of the greatest achievements arrived at during 1963, the year of relative relaxation of international tensions. It had lost nothing from its value since then. Finally, he did not believe it could be argued that a reference to the Declaration in a convention would affect the legal status of the Declaration itself.

Mr. GLASER (Romania) said that there appeared to be general agreement that it was a humanitarian duty to rescue any astronaut in distress. There were two views, however, on the question whether every astronaut must be returned to his country. In time of war, States were not obliged to return prisoners of war until the end of hostilities, and in time of peace spies could be held, tried and punished. Accordingly, the USSR draft of article 5 made the return of the crew of a space ship subject to the condition that the launching was in accordance with the Declaration of Legal Principles, i.e. principles governing the peaceful use of outer space. The other two drafts implied that the personnel should be returned regardless of the nature of their mission. If that was the intention of the sponsors of those texts, they should make it perfectly clear in their wording. Failure to settle that point in the agreement would only perpetuate an omission in the Declaration; it was only because the latter did not say in so many words that it was astronauts on peaceful missions that should be safely and promptly returned that two conflicting interpretations could be advanced.

The Canadian representative desired the reference to peaceful use to appear only in the preamble to the agreement. But it was obviously in the body of the agreement that the matter should be dealt with, for it was there that the precise duties of States were defined. If the agreement was to be workable it must be entirely clear on the question of peaceful use.

(Mr. Glaser, Romania)

The Canadian representative considered it dangerous to refer to the Declaration in the articles of the agreement. But it would be far more dangerous not to do so. There was nothing, moreover, to prevent the Sub-Committee from referring to the Declaration, or to any other document or principle, if it saw fit. Furthermore, article 5 of the USSR draft did not modify the Declaration, as the Canadian representative had suggested, for the notion of peaceful use was implicit in the Declaration and a part of the Sub-Committee's mandate. Any extension of the agreement to cover uses of outer space other than peaceful ones would exceed that mandate and would raise questions which came within the competence of other bodies of the United Nations. In his view, it was the Sub-Committee's duty to settle the issue of peaceful use and to do so in the clearest and most direct manner possible.

Mr. CHAMMAS (Lebanon) said that the Sub-Committee appeared to be making no progress. It would have to confront the issue of peaceful use squarely and recognize that if any other use of outer space was contemplated there could be no hope of further progress in drafting the agreement. The Sub-Committee might usefully bear in mind the title of General Assembly resolution 1963 (XVIII), which was "International co-operation in the peaceful uses of outer space". In that co-operation it was of course the Powers directly concerned that had to make the major effort. The smaller countries, having no immediate prospects of using outer space, could only offer their advice and assistance.

The problems to which the agreement might give rise were difficult enough without the issue being further complicated by vagueness on the central issue of peaceful use. It was clear that a procedure for settling disputes would have to be worked out to deal with claims of espionage or military use, or with counter-claims of illegal detention of astronauts. The Sub-Committee should resolve the question of peaceful use in the spirit of the Declaration and move on to consideration of the practical aspects of the agreement. It might be of assistance if members of the Sub-Committee were to state what future situations they believed the agreement should cover.

Sir Kenneth BAILEY (Australia) said that the limitation proposed in article 5 of the USSR draft was altogether unsuitable for inclusion in a legal document. It had been said that unanimity should apply in the case of rescue

/...

(Sir Kenneth Bailey, Australia)

but that return should be governed by the provisions of the Declaration of Legal Principles. Thus the fate of an astronaut would hang on a lawyers' debate as to whether or not a launching had been in conformity with criteria which the entire Sub-Committee knew were general and imprecise and must inevitably lead to the widest divergence of opinion. His delegation held the Declaration to be simply a set of guidelines to be followed in the general field of the peaceful uses of outer space. As such, and even though it might serve in part as a source of international law based on the practice of States, the Declaration could not be used as a test of the legal right of an astronaut to be returned to his country. For example, it was very clear that, however admirable their intention, principle 1, principle 4 and the first sentence of principle 6 of the Declaration were open to a great variety of interpretations.

His delegation considered that, since the Declaration as a whole did not suggest that different régimes should apply to rescue and to return, the principle to be applied was magnanimity all the way home.

Mr. FRANCOZ RIGALT (Mexico) said that the Sub-Committee had two main objectives which should not be confused: first, to agree on the principles which should govern the agreement; secondly, to determine in what form they should be incorporated in the agreement. He regarded the following three principles as basic: (1) the exploration and use of outer space must be carried out for the benefit of all mankind; (2) the activities of States in the exploration and use of outer space must be carried on in accordance with international law, including the Charter, in the interest of maintaining international peace and security and promoting international co-operation and understanding; (3) in the exploration and use of outer space, States must be guided by the principle of co-operation and mutual assistance and have due regard for the interests of other States. All other principles derived from those three, and the Sub-Committee could hardly fail to agree with them. Principle (1) implied that aid should be given to the crews of space ships having met with accidents, which was a simple matter of respect for human life. As to principle (2), space flights, must obviously be for peaceful purposes, and any other object should be rejected. Principle (3) was fundamental, since no agreement could be possible without international co-operation.

(Mr. Francoz Rigalt, Mexico)

The next question was how to include the principles in the Agreement. They had been expressed in different ways in the three drafts which were before the Sub-Committee. The United States and the Australian-Canadian drafts referred to the principles in the preamble, where they would not be binding, whereas the text proposed by the USSR referred in articles 1, 5 and 6 to General Assembly resolution 1962 (XVIII). In his view, the principles were of greater value than the resolution itself, because they were clear and reasonable while the resolution was vague and difficult to interpret. The principles formed, in fact, part of international law. If they could be incorporated in the text and the references to the resolution could be removed, the objections would be overcome. In articles 1, 5 and 6 of the USSR proposal, therefore, the words "in accordance with the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space" should be replaced by some phrase such as "with the aim of using outer space for peaceful purposes". If there was not agreement on that principle, it would be idle for the Committee to continue its work.

Mr. USTOR (Hungary) said that the Sub-Committee was still confronted with the problem of interpreting General Assembly resolution 1962 (XVIII). That resolution should be interpreted in the context of international law in order to see how the legal principles in the Declaration changed customary international law.

Under contemporary international law, if a soldier with hostile intent intruded into the territory of a foreign State, he had to face the consequences under the law of that State. Military forces were conventionally classified according to their means of movement. Unfortunately, however, a new branch of the military seemed to be developing. If preferential treatment were given to certain hostile military forces because they travelled, not on horseback, in motor vehicles or in aircraft, but by space ship, there would be undue discrimination against other military forces. He agreed with the Australian representative that it would be a difficult matter to decide whether an astronaut in distress who entered a foreign country was an innocent envoy or a spy, but the same could be said of a soldier on horseback or a military pilot, who entered foreign territory.

(Mr. Ustor, Hungary)

The conclusion was clear; the legal principles in resolution 1962 (XVIII) did not change international law to mean that a man was a spy if he arrived by horse, motor vehicle or aircraft but not if he arrived by space ship.

Mr. LEMAITRE (France) said that there were legal reasons why the text of the draft agreement should not simply refer to General Assembly resolution 1962 (XVIII). The Declaration did not create a juridical rule. The discussion had revealed wide differences in the interpretation of its provisions, so that a reference to it would be merely a reference to those different interpretations. Furthermore, it would be difficult to refer only to parts of it, since individual paragraphs sometimes included several ideas and the text was not drafted in legal style. Furthermore, the interpretation of general formulae would call for subjective judgement, and hence for an arbitration procedure, which would have to be very rapid, because a man's liberty or life might be at stake. A simple reference to resolution 1962 (XVIII) was therefore not acceptable. The suggestion just put forward by the Mexican representative was a possible solution to the difficulty, provided that a suitable arbitration procedure could be devised.

A more conventional method might also be possible. If the Sub-Committee agreed that exceptions must be provided for, an article could be included stating that all or part of the agreement applied only to certain categories of persons. That method would be very difficult to apply, however, because of the dangers inherent in definitions. The text must be precise enough to cover specific cases, but general enough to allow for developments in space technology. Most space ships would be launched by certain States, and most crew members would be military personnel; they should not be excluded from the benefits of the agreement simply because they fell into those categories. There would also be marginal cases. For example, space ships would soon be used for broadcasting purposes and no doubt material considered truthful by the sender would be called propaganda by other States. If that method was considered, therefore, long study would be required.

Space law should establish specific rules only when essential, because new laws should not modify general principles of international law. Military personnel constituting space crews should not be given special advantages, but they should not be excluded from the agreement, or treated less favourably than other military personnel, who might soon be travelling as passengers in the same space ship.

/...

(Mr. Lemaitre, France)

The agreement should avoid giving the impression that activities in space were outside the scope of other international conventions.

In conclusion, he drew attention to the French draft of article 5, which was both simple and general, and avoided placing too much responsibility on the State where the space ship landed or giving exceptional advantages to the crew.

Mr. COCCA (Argentina) emphasized that the Sub-Committee must use as its starting point the basic principles of space law: the rule of law, the further development of space law, mutual co-operation and assistance, the sovereign equality of States and freedom to adopt a new rule of law. Those principles were implicit in the relevant General Assembly resolutions and the documents before the Sub-Committee. In considering the problem from the single aspect of peaceful co-operation, the Sub-Committee should not be afraid to include them in the draft agreement. That reasoning had prompted Argentina, Lebanon and Mexico to submit document A/AC.105/WG.I/36.

His delegation considered the reference to the Declaration in the USSR draft inappropriate because of the disparate interpretations of the Declaration and its very broad scope. Such a reference also raised the question whether General Assembly resolutions were binding or not.

He suggested that instead of referring to the Declaration, the text should specify in each article the principles to be observed. Each principle should be clearly worded and not refer to another international instrument.

The meeting rose at 6.15 p.m.