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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE
LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE SEVENTH MEETING
held at the Palais des Nations, Geneva,
on Thursday, 7 June 1962, at 3.20 p.m.

Chairman:

Mr. LACHS (Poland)

Secretary:

Mr. SCHACHTER

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CONSIDERATION OF LEGAL PROBLEMS ARISING FROM THE EXPLORATION AND USE OF OUTER SPACE (item 3 of the agenda) (continued)

General debate (continued)

Mr. GLAZER (Observer for the International Telecommunication Union), speaking at the invitation of the Chairman, said that in its budget and staff ITU, compared with other space-age organizations, was perhaps microcosmic; the objects of its constitutional authority were, however, truly macrocosmic. It was the world's general agent for the allocation of radio frequencies, a function vital for the exploration of outer space and the exploitation of space technology. It was not surprising, therefore, that the first international rules of law applicable specifically to outer space activities governed agreements for radio frequencies negotiated in 1959, when frequency-allocations for newly-designated space radio communication services, conditions for their use, and provisions for radio-astronomy surveys had been inserted in the ITU Radio Regulations. Though technically modest in scope, those agreements were a landmark in human affairs, and the co-operation which had produced them gave hope that greater questions of outer space might be settled successfully within the United Nations.

Resolution 1721 (XVI), part D, assigned to ITU a share in the great common endeavour. Certain of its provisions declared the continuing statutory applications of the Union. In accordance with the reporting requirements of part D, paragraph 5, a report for the United Nations had been prepared by ITU and circulated to delegations, but as an interim technical report it did not call for lengthy comment.

The action taken at the 1959 ITU Conferences showed that the term "international law" within the meaning of the resolution must include conventional telecommunication law. Only a few provisions in ITU treaty instruments identified, by specific definitions and terms of application, telecommunication in and for outer space or, for radioastronomy, telecommunication from celestial sources. Most of the provisions of those instruments were restatements of international rights and obligations defined through almost a century of treaty-making purely within terrestrial terms of reference. The fact that the Telecommunication Convention reproduced officially by ITU filled 188 pages and the Radio Regulations and Additional Radio Regulations 641 pages indicated a dilemma which supported the comment by the representative of France that not all

rules of international law could apply to outer space, and was in turn compounded by a legal discipline demanding a wide grasp of intricate and elusive concepts of space telecommunication technique.

The International Telecommunication Union was aware that purely technical decisions on space-age telecommunication requirements might have legal consequences outside its constitutional competence. Hence the practical necessity of active co-operation with other international organizations - chiefly the United Nations, now striving to project the rule of law into the space dimension. In discharging space age tasks, ITU would welcome encouragement and support from the United Nations, and especially from the Committee.

Mr. TUNKIN (Union of Soviet Socialist Republics) said that in his first statement he had set forth his delegation's views on the sort of questions the Sub-Committee should study. Since then the Soviet delegation had submitted a declaration of the basic principles governing the activities of States pertaining to the exploration and use of outer space (A/AC.105/C.2/L.1), and a draft international agreement on the rescue of astronauts and spaceships making emergency landings (A/AC.105/C.2/L.2).

Agreement on a common approach to the important legal problems which confronted States in the space age would establish favourable conditions for further progress, and facilitate international co-operation in the exploration of outer space for peaceful purposes. Its absence might lead to disputes and misunderstandings and might even constitute a grave danger to international peace. An omen of success was the declaration by the two "space" States of their intention to co-operate in the exploration and use of outer space for peaceful purposes. In February 1962 Mr. Khrushchev had sent a message to President Kennedy saying that the combined efforts of their countries in exploring outer space would contribute to the development of science and would be joyfully received by all peoples who wished science to be used for the benefit of mankind. In his reply President Kennedy had endorsed those opinions.

A further stage in the preparation of international co-operation in outer space had been reached when messages had been exchanged between Mr. Khrushchev and President Kennedy in March 1962. Mr. Khrushchev had then drawn attention to the need for international co-operation, particularly in the drafting of legal provisions, including an international agreement on the rescue of astronauts and spaceships making emergency landings.

A crucial international problem would be prohibition of the use of outer space for military purposes. The USSR had put forward proposals with that aim in 1957/58, but outer space had not yet been declared neutral. The Eighteen-Nation Disarmament Conference was that very day studying a Soviet draft treaty on general and complete disarmament under strict international control, containing provisions for the demilitarization of outer space. The United States representative had said realistically that a decision on that matter could be reached only as part of controlled disarmament. He agreed that prohibition of the use of outer space for military purposes did not come within the competence of the Sub-Committee, which should concentrate on other important matters.

A good point of departure would be the provisions of resolution 1721 (XVI), Part A. The Soviet delegation held the principles of that resolution in high esteem and hoped that outer space law would develop from them. Part A confirmed the generally-accepted principle that States must be guided by international law in all their relations, on land and water, in the air and in outer space. It would be wrong, however, to consider that the resolution resolved all legal issues that arose at the outset of the mastery of outer space, or established all the principles which had to be established if outer space were to be used for the best purposes. No one would disagree that its provisions should be expanded and made more specific. It was also of importance that the proposed draft declaration was intended to become an international treaty.

With those considerations in mind the Sub-Committee should, as one of its first tasks, prepare a declaration of basic principles governing the activities of States in the exploration and use of outer space. That declaration would greatly further mutual understanding and trust, and facilitate international co-operation. In it States would solemnly declare that outer space would be used for the benefit of mankind.

The Soviet delegation considered that the Sub-Committee should not draw up a comprehensive code of space law but should rather concentrate on stating general basic principles. Mankind's knowledge and experience of outer space were too limited for detailed regulations.

In its declaration the Soviet Union proposed as a tenet of international law that no State could claim sovereignty over outer space or celestial bodies,

and reaffirmed that they were free for exploration and use by all States. The Soviet Union regarded its success in outer space as an achievement not only of the Soviet people but of all mankind, and reaffirmed its support of the principle contained in resolution 1721 (XVI), which should be given the force of an international treaty and therefore were contained in the draft declaration submitted by its delegation.

A declaration by the Sub-Committee could also include principles, not contained in resolution 1721 (XVI), on the practical approach to exploration and use of outer space. It should state that the use of artificial satellites for the collection of intelligence information in the territory of foreign States was incompatible with the objectives of mankind in its conquest of outer space. Espionage, no matter how it was carried out, was interference in the domestic affairs of another State and a contravention of the United Nations Charter, which bound countries to maintain good neighbourly relations. Reaffirmation by the Sub-Committee of the illegality of cosmic espionage would encourage fruitful co-operation in the exploration of outer space.

Another important need was to ensure that scientific and technological advances, such as communication satellites, were used exclusively for the betterment of mankind. His delegation therefore proposed that there should be an agreement providing that outer space was not to be used for propagating war, national or racial hatred, or enmity between nations. If no such agreement were reached, the whole system of long distance communication by means of artificial satellites would be jeopardized.

In capitalist countries radio corporations intended to explore outer space on their own account. If they could do as they wished, private capitalistic competition would displace international co-operation. His delegation therefore considered that all exploration and use of outer space should be carried out solely and exclusively by States.

The conquest of outer space raised another important problem, the solution of which would do much to further international co-operation. He regretted that the United States Government had not, despite criticism, stopped such experiments as the scattering of copper needles and high-altitude nuclear explosions, the effects of which might impede the use of outer space by other countries and be extremely dangerous. Co-operation in outer space was the duty of all States,

and it was therefore quite clear that actions by a State which might hinder the use of outer space for peaceful purposes were intolerable. The Soviet draft declaration therefore provided that actions which might hinder the exploration or use of outer space for peaceful purposes by other countries could be permitted only by agreement between the countries concerned.

A declaration of basic principles might also provide that States retained sovereign rights over objects launched by them into space, and that all States should render all possible assistance to space-ships and crews making emergency landings on their territory or on the high seas, and return spaceships, satellites and capsules to the launching State.

The USSR draft declaration would thus solve the problems raised by present practical activities in the exploration and use of outer space, and further international co-operation.

In earlier discussions it had been proposed that the Sub-Committee should draw up an international agreement on the rescue of astronauts and spaceships making emergency landings. The United States representative had held that it should limit itself to drafting a General Assembly resolution. International rescue agreements usually, however, had the form of treaties, and the USSR delegation saw no reason why a different method should be adopted for outer space. It therefore proposed an international agreement which would oblige States to render assistance to the crews of spaceships which had met with accident and to rescue astronauts making emergency landings. At the first meeting the United States representative had said that the principles of assistance to astronauts were sufficiently clear and simple and there was therefore no need for an international agreement. The representative of Italy, concurring, had related that many States had co-operated in the rescue of the dirigible Italia.

There was no doubt that all countries were ready to help space-men in distress; but flights in outer space raised many legal problems that did not arise in the air or on the sea. He did not accept the objection that a considerable time had to elapse before international agreements came into force. The 1944 Chicago Convention on Civil Aviation, for example, contained clear and extremely succinct agreements on the aid to be given to pilots in distress; although the Soviet Union was not a party to that Convention, it had signed

many similar bilateral agreements. It was quite possible to draw up an agreement laying down the basic obligations and rights of States in that matter. Later the Sub-Committee could if necessary consider detailed legal appendices to such an agreement.

In its draft international agreement, therefore, his delegation proposed that a contracting State on whose territory astronauts made emergency landings should take all possible steps to rescue and help them. It further proposed that if astronauts made an emergency descent on the high seas, contracting States would on request by the launching State join it in a search.

The agreement also obliged States to return satellites, spaceships and capsules found on its territory if they had identification marks showing their national origin and if the launching State had officially announced their launching. Space vehicles carrying devices for purposes of espionage in the territory of another State would, however, not be returned.

Those were the main provisions of the agreement which the Sub-Committee should draft as one of its main tasks, but which would not claim much of its time

He had no objection in principle to the suggestion made by the United States representative that the Sub-Committee should discuss the liability of States for damage or injuries caused by space vehicles.

Differences of views among members should not lead them to despair. The Soviet delegation was willing to consider any constructive amendments to its drafts. International co-operation in the exploration and use of outer space, including the settlement of their legal problems, was not only desirable and useful but also necessary if there was to be peace between States.

Mr. MEEKER (United States of America) said that his delegation had come to the Sub-Committee believing that general agreement might be reached on some constructive practical solutions for the legal problems of outer space. It was committed to work in accordance with the desire expressed by the Chairman of the Committee in March 1962 that discussions should be conducted in such a way that agreement could be reached without a vote. The Soviet Union appeared, from its introduction of formal proposals, to have given up that aim at a rather early date. Its proposals were plainly not agreed proposals, and were known by its delegation to be totally unacceptable to the United States. The unilateral introduction at that stage of controversial political proposals open to serious objections disappointed the United States delegation.

The proposed declaration of basic principles was not directed towards the practical solution of any specific problems, but was a broadside of political grapeshot. There was great doubt whether the Legal Sub-Committee could properly debate a draft which was essentially a political document covering a series of matters on which there was no agreement among governments even in principle.

The first four paragraphs of the draft declaration seemed to cover ground already worked over by the General Assembly; they did not appear to add any new ideas; and they were cast in somewhat different terms so as to raise doubt whether they were meant to amend the statements of principle already unanimously adopted by the Assembly. They would therefore only introduce confusion in what had so far been an area of clarity.

Paragraph 5 began with a statement which appeared to be drawn from the preamble of resolution 1721 (XVI); but again the language was somewhat different and his delegation questioned the statement for the reasons he had given. The second part of paragraph 5 was indeed surprising. Members would recall the events of 25 May 1962, when the Disarmament Committee had taken up in plenary meeting a draft declaration on war propaganda stemming from a proposal put forward by the USSR, carefully negotiated in the Committee of the Whole, and approved by all the participants. When the plenary meeting came to consider how the public announcement of the agreed declaration should be handled, the representative of the Soviet Union had said that the Governments of the Soviet Union and of the United States had already approved the proposal and that he therefore needed no further instructions from his Government. When the declaration was reported to the plenary Committee on 29 May for final action, the representative of the Soviet Union, acting on instructions from his Government, had read a statement which repudiated the Soviet agreement to the declaration. In view of that very recent history there would be no useful purpose in discussing war propaganda in the Sub-Committee, which should devote its time to more meaningful and constructive efforts.

Paragraph 6 of the Soviet draft declaration, by requiring preliminary discussion and agreement between the countries concerned before "the implementation of any measures that might in any way hinder the exploration or use of outer space for peaceful purposes by other countries", introduced the veto into outer

space work. Presumably, under that provision, no State could carry out a space project if objections were raised by one or more other countries that might consider themselves "concerned". His delegation was opposed to any such veto.

The provision of paragraph 6 for consultation on dangers from contamination or interference resulting from outer space projects seemed much less effective than the action already taken by the Committee on Space Research (COSPAR), which had established in April 1962 a consultative committee to study problems of contamination and interference and to discuss and advise on specific projects. In the view of the United States, the COSPAR action was intelligent and constructive and its consultative committee should work well. The reference to discussion in paragraph 6 would not add to the COSPAR arrangements and could only lead to confusion.

Paragraph 7 purported to limit the exploration and use of outer space solely to national States, a restriction which seemed unwarranted and unwise and would be opposed by his delegation. It was so drafted as to exclude space activities by international and inter-governmental organizations formed for space research, of which at least one already existed. So far, individual States had engaged in space exploration, and two or more States had sometimes co-operated in launchings. It was clearly for the State or States concerned to choose how they should conduct their outer space programmes.

The rather roundabout language employed in paragraph 8 was apparently designed to put into effect some kind of prohibition under the guise of a general principle. International law imposed no prohibition on the observation of the earth from outer space, which was peaceful and did not interfere with other activities on earth or in space. It might be performed by astronauts as explorers and scientists, by TIROS satellites for humanitarian public services relating to weather prediction, and by other means for such purposes as resource surveys, engineering and development projects, and the mapping of remote areas. For example, his delegation considered that the observations made by Major Titov from the Vostok II, and indeed any other observation which the USSR might be conducting in outer space, were peaceful and that Major Titov's military status and the intent of his observations were irrelevant.

The United States Government had repeatedly made clear its deep commitment to the goal of reserving outer space for exclusively peaceful purposes. It had proposed in stage I of its outline treaty on disarmament of 18 April 1962 /ENDC/30 and Corr.17 that States should agree to co-operate in the peaceful use of outer space and undertake not to place in orbit weapons of mass destruction. It had also proposed that the production, stock-piling, and testing of boosters for space vehicles should be subject to agreed limitations. Without the effective measures of verification and control which had been proposed for those, as for the other measures of disarmament, meaningful disarmament in outer space was impossible. For all those reasons the United States was entirely opposed to paragraph 8.

Paragraph 9 dealt with assistance to space vehicles and crews and their return, which in the view of his delegation should be covered in a separate declaration. It did not believe that action for assistance and return should be delayed for the drafting, signature, ratification and entry into force of a treaty or international agreement. The applicable principles were clear and should be readily agreed by Governments for incorporation in a simple declaration.

His delegation was opposed to the second Soviet proposal, calling for an international agreement on assistance and return. Its article 7 contained some provisions which were probably not workable and others which were open to objection, such as those relating to identification marks and official announcements, and on the collection of intelligence information.

If the two drafts submitted by the Soviet Union were pressed to a vote, the United States delegation would vote against them. It continued to hope, however, that the Sub-Committee could agree on practical measures contributing to the work of the United Nations on peaceful uses of outer space.

The United States delegation had for some time been consulting with other delegations, including that of the Soviet Union, in order to reach general agreement. It considered that the Sub-Committee could usefully concentrate on two subjects: assistance to and return of space vehicles and personnel; and liability for space-vehicle accidents. In the absence of agreement with the delegation of the Soviet Union during the consultations so far held, and having regard to the Soviet proposals, the United States saw no reason to withhold its own proposals, on which informal discussions had been held with a number of

delegations. It would therefore present two draft resolutions, the first dealing with assistance and return (A/AC.105/C.2/L.3) and the second with liability for space vehicle accidents (A/AC.105/C.2/L.4), which it commended to the Sub-Committee for adoption.

Mr. TUNKIN (Union of Soviet Socialist Republics) expressed his delegation's deep regret that its proposals had not been duly considered by the United States. It would comment later on the statement of the United States representative in great detail.

There was no basis for the allegation by the United States representative that the Soviet delegation had abandoned the procedure adopted by the Committee at its March session, whereby the Sub-Committee was to reach agreement without the need for voting. His delegation had in fact suggested to the United States the joint submission of the draft declaration of principles and the draft international agreement on the rescue of astronauts and spaceships. The United States delegation had, however, declined to discuss such a possibility. Moreover, the procedure adopted by the Committee did not mean that a delegation had no right to submit proposals without the prior agreement of all other delegations; it meant that proposals should be submitted and discussed, and the agreed solutions found without resorting to a vote.

It was true, as the United States representative had said, that paragraphs 1 to 4 of the draft declaration of principles repeated to a large extent the principles stated in resolution 1721 (XVI), expanding some. There was, however, an important difference. It was suggested that the declaration of principles should be signed and have the force of an international agreement. The United States innuendo that the language of the General Assembly resolution had been changed in the draft declaration so as to raise a doubt whether it was intended to amend the statements of principle unanimously adopted by the Assembly was unfounded and improper.

On the mention of war propaganda in paragraph 5, he would not restate the views expressed in the Disarmament Committee by Mr. Zorin, which were well-known [ENDC/PV.44].

It was hard to see how paragraph 6 could be interpreted as an attempt to introduce a veto. As a space Power the Soviet Union could hardly suggest a veto on any other power which did not yet take part in space research. The paragraph might, of course, be amended, but that needed a desire to reach agreement.

Paragraph 7, providing that space activities should be carried out exclusively by States, was intended to exclude private enterprise and not groups of States.

The United States had stated its attitude towards paragraph 8. Espionage was undesirable and could not be confused with the gathering of scientific data. There was no intention of prohibiting scientific research which helped human progress; but espionage was a different thing. His delegation repeated its regret at the statement of the United States delegation, which contained unfounded accusations and unfortunately showed no desire to co-operate.

Mr. RAO (India) noted that the delegations of the United States and the Soviet Union had both submitted proposals on the rescue of astronauts and space-ships in distress. Reference had been made to multilateral or bilateral agreements concerning air and sea rescue. If the Secretariat could furnish the Sub-Committee with the text of those agreements, it would assist appreciation of the form and substance of the United States and Soviet Union proposals. Meanwhile he would earnestly plead with those delegations not to take a firm stand at so early a stage, and to maintain a flexible attitude towards questions in which other Powers were at least equally interested.

The CHAIRMAN replied that delegations could receive from the Secretariat at least some of the information requested by the representative of India.

Mr. AMBROSINI (Italy) said that, as he was not a pragmatist, he would have welcomed a list of basic principles on which the new branch of law could be founded. The list submitted by the representative of the USSR seemed, however, incomplete: in particular it contained no reference to demarcation between the atmosphere and outer space, or to the banning of outer space for military purposes.

The USSR representative had quoted him as opposed to an international treaty on the rescue of astronauts and spaceships. He did not contest the need for an international convention. All he had meant was that, until the Sub-Committee had time to draft a suitable convention, a draft resolution should be submitted to the General Assembly. As yet, there was no general convention on assistance and rescue even in civil aviation, a considerably older branch of science than outer space. In earlier discussions the appointment of a committee of experts had been suggested; such a committee might be instructed to draft a convention on the rescue and salvage of space vehicles.

The meeting rose at 5 p.m.