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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE
LEGAL SUB-COMMITTEE
SUMMARY RECORD OF THE FIFTH MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 5 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. EL-ERIAN (United Arab Republic) said that progress in international co-operation must keep pace with scientific and technical advancement, and the Legal Sub-Committee could help it to do so. The Sub-Committee was fortunate to be undertaking its vital work in an atmosphere of co-operation and in accordance with the far-reaching principles unanimously adopted by the General Assembly. The General Assembly's expectations had been more than justified by the general debate, which was defining the Sub-Committee's task.

At the present stage the Sub-Committee should make a general survey of the field and identify the legal problems. It should not try to develop a code at once but should proceed gradually and give priority to concrete, practical problems. General agreement had been expressed on the choice of assistance to astronauts and space vehicles, and the liability of States for damage. He urged a broad approach to those problems, and quoted the warning of Jessup and Taubenfeld in "Controls for Outer Space and the Antartic Analogy":

"It is necessary to guard against being carried away by alluring prophecies which suggest the necessity of discussing with a sense of urgency imaginary problems of a whole universe infected with the rivalries of Powers which are still actually earth-bound. Yet, even though the problems themselves are not imminent, consideration of them may be urgent, either to prevent their seeds from sprouting or to provide the proper climate in which they are to develop."

His delegation would give careful attention to the proposal made by the USSR representative at the first meeting, and by the Czechoslovak representative at the second meeting, that a declaration of principles should be adopted to guide States in the exploration and use of outer space. At the same time it should bear in mind that, as the United Kingdom representative had said, before a final position was taken a fuller statement of the scope and intent of the declarations would be needed.

Previous speakers had raised a number of legal points which helped to identify the Committee's problems. The Italian representative had referred to the need for a demarcation between the atmosphere and outer space. The French and Argentine delegations had referred to the problem of preventing contamination of space and celestial bodies, and of liability for damage caused thereby. The French

representative had also mentioned the need for means of identifying space vehicles and their parts. The United States representative had urged that State liability for damage caused by space vehicles should be absolute; the Italian representative had spoken of establishing a limit. Existing analogous limits to compensation for nuclear damage had, however, been set with private corporations in mind; liability for damage caused by space vehicles was expected to fall only on States, as it would be a matter of state responsibility.

He had been gratified to hear many speakers stress the importance of ensuring that outer space was used for peaceful purposes only. The United States representative had also mentioned the beneficial effect that the Sub-Committee's work might have on that of the Eighteen-Nation Committee on Disarmament. Speaking at the fortieth meeting of that Committee, the head of the delegation of the United Arab Republic had referred to a joint resolution on the peaceful uses of outer space which had been presented to the General Assembly by the delegations of Burma, India and the United Arab Republic in 1958 (A/C.1/L.224), and had expressed the hope that outer space would be spared the evils of the arms race and that the United Nations Charter would be expanded to cover that very vital territory of human endeavour; the sooner that was done the better, in order to avoid the intricacies which would inevitably result from any further delay. He had gone on to say that it was gratifying that both the Soviet Union and the United States draft treaties contained many similar provisions in stage I relating to prohibition of weapons of mass destruction and to peaceful co-operation in outer space (ENDC/PV.40, page 18).

He trusted that the work of the Sub-Committee would be conducted in a spirit of co-operation and in a constructive and practical manner, and that it would initiate the development of a new branch of international law.

In conclusion, he recalled what Professor Jessup had written concerning international co-operation and outer space:

"... Through a long stretch of history States have evolved a variety of devices for co-operative and administrative activities wherever it seemed to them desirable to have a joint rather than a single nation regime. The motivations have been as various as the forms - political, economic, technical, ideological, humanitarian. In recent years a still stronger motivation - human survival - has been added. The need and the incentive have never been greater than now. Steadily the trend on the face of the

earth has been towards organized multi-national action in the common interest. There will be no reversal of that trend as man moves on into outer space."

Mr. NAKAJIMA (Japan) said that the basic thought underlying the proposals already put forward for the consideration of practical problems seemed to be that any attempt at a comprehensive codification of the law of outer space, or at a settlement of such fundamental questions as the site of its frontier, was neither practical nor desirable at the existing stage of knowledge and development. His delegation shared that opinion; in view of the limited amount of time available at the current session, it believed that it would be appropriate for the Sub-Committee to deal with concrete legal questions in turn, as soon as the progress of activities in outer space and advances in science and technology urgently required their settlement.

If, however, human activities in outer space were left completely unregulated, an accumulation of undesirable faits accomplis and the consequent growth of customary international law might well obstruct future efforts to establish a rational regime for outer space. Serious and constant thought must therefore be given to the need for regulations to ensure that activities in outer space were conducted peacefully and openly, in an orderly manner, for the benefit of all mankind.

The principles set forth in General Assembly resolution 1721 (XVI) provided a useful starting point for the Sub-Committee's efforts in that direction. While the first - that international law, including the United Nations Charter, applied to outer space and celestial bodies - needed further elaboration and clarification, it at least required that activities in outer space should be conducted in accordance with the principle of refraining from the threat or use of force, and with that of sovereign equality, both enunciated in article 2 of the Charter. The benefits derived from space activities, including scientific and other information, should therefore be extended to allow all States, irrespective of the stage of their economic or scientific development, to enjoy them on an equal footing.

In compliance with the second principle - that outer space and celestial bodies were free for exploration and use by all States in conformity with international law - an effective regime should be established for outer space as early as possible, to ensure that it was used only for peaceful purposes. The regime established for Antarctica deserved attentive study as an excellent precedent. It was hoped that the Disarmament Committee, which was studying matter within the context of disarmament, would find a satisfactory solution as quickly as possible.

The second principle reflected a general recognition among United Nations Members that outer space was res communis omnium. No space activity by any State should be regarded as ground for a claim to territorial sovereignty in outer space or a celestial body.

The pursuit of those objectives, which the United Nations should commence soon, involved many scientific, technical, and also political problems, and called for the use of caution and prudence by all concerned. The members of the Legal Sub-Committee, whose sole interest was law and order, should be careful to avoid injecting any element of earthly conflict into the discussion. If a peaceful and co-operative spirit could not be maintained in the meeting room, there could be no hope of a peaceful and co-operative regime in the space above the earth.

Mr. MISHA (Albania) stressed the need for frank and earnest international co-operation in solving the many important problems before the Sub-Committee. The representative of the United States, both in the parent Committee and in the Sub-Committee, had constantly proclaimed his country's peaceful intentions and its wish to collaborate. His words were at variance, however, with the actions of the United States Government in launching espionage satellites, contaminating outer space with a belt of copper needles, and carrying out high-altitude nuclear tests. The Albanian delegation therefore strongly supported the statement by the Government of the USSR which had been read at the previous meeting. The United States Government's experiments flagrantly violated the principles of the United Nations Charter and of the General Assembly's resolutions on which the work of the Sub-Committee and the parent Committee was based; they were a crime against science and humanity, and acts of aggression. The Sub-Committee could not close its eyes to that situation. It would be ludicrous to discuss liability for damage by space vehicles while ignoring that, as a result of high-altitude nuclear explosions, such vehicles would return to earth contaminated, and the space flights for peaceful purposes which the Sub-Committee was called upon to regulate would prove difficult if not impossible to carry out.

The questions for which the Sub-Committee should find an answer included prohibition of experiments which would impair the study of outer space by other States; prohibition of the use of telecommunications in outer space for warlike propaganda, social agitation, or incitement to hatred between the nations; a treaty for assistance to cosmonauts and the return to the country of origin of space equipment

and space vehicles with their crews; and, in particular, a declaration of the general principles of space law.

In its desire to contribute to the Sub-Committee's work, his delegation would support any proposal to prohibit the exploration and use of outer space for military purposes.

Mr. ZEMANEK (Austria) said he intended to concentrate on the concrete legal problems of the Sub-Committee's work. Some speakers had said it was inadvisable to draft a "space code", since the law should follow the facts. He could not accept that reasoning, because he did not believe that theft had to be committed before rules protecting property could be established. He agreed that a selective approach was called for, because certain legal problems of space still caused political difficulties; but he wondered whether the selective approach suggested by the space Powers was the only alternative to a "space code", and whether it would not better befit the Sub-Committee's terms of reference to examine the problems presented by space flight and establish a list of priorities to be treated at the present and future meetings.

Objections that the available scientific data were insufficient for such an overall examination were irrelevant. It would be precisely the task of the Sub-Committee to exclude from its list of priorities subjects on which the scientific data were insufficient.

On many subjects, indeed, data were not lacking. For example, resolution 1721 (XVI) stated that international law, including the United Nations Charter, applied to celestial bodies and that those were not subject to national appropriation. That was only a negative statement on the legal status of, for instance, the moon. It was not known which part of international law applied to the moon; in his opinion none did. That the moon was not subject to national appropriation implied that it could be used by all nations. International law, however, nowhere defined the status of a res communis omnium. The two existing res communes omnium in international law, the high seas and Antarctica, were regulated by specific statutes which could only by analogy - and the dangers of analogy in international law were well known - be applied to celestial bodies.

So far, therefore, there were no rules governing the common use of celestial bodies; but he did not think more scientific data were needed before some rules could be established. A start could be made with a few fundamental principles, which could be developed as experience grew and more data became available. He did not insist,

nor even suggest, that that subject be treated immediately. He chose it merely for example, as one which should and could be regulated in accordance with available data.

He doubted neither the importance of the subjects suggested for treatment by the space Powers, nor the urgency of their regulation. He only doubted the value of an unsystematic and eclectic approach. It might well be that, after the Sub-Committee had thoroughly examined the legal problems presented by space-flight and had based a list of priorities on that examination, the two suggested subjects would emerge at the top of the list. In that case, however, the Sub-Committee would also have a considered plan for its future work and would no longer depend on ad hoc inspiration.

Mr. MISUR (Hungary) said that world opinion was becoming increasingly responsive to co-operation between countries with different social systems. Two months earlier a postage stamp had been issued in his country depicting the world's first three astronauts: Gagarin, Titov and Glean. The Hungarian postal authorities had asked collectors why it had sold so well. The one reason common to all the replies was that it expressed the idea of peaceful international co-operation in the conquest of outer space. The Sub-Committee must fulfil the expectations of the people by making constructive proposals.

His delegation fully agreed that conditions were not yet ripe for the enactment of a general code of space law, and therefore considered that the Sub-Committee should concentrate on practical problems. As the representative of France had suggested, the most important legal problems relating to space exploration should be catalogued. The list might include the drafting of an international agreement on the rescue of astronauts and space vehicles in distress. The idea of such an agreement had been mentioned in the letter which the Premier of the Soviet Union had sent to the President of the United States of America.

It would also be useful if the Sub-Committee adopted a policy on liability for damage caused by space vehicles. The subject was so complex that a preparatory committee would have to be set up by the Sub-Committee, from among its members. The Sub-Committee was the best placed of all United Nations bodies, and was empowered by its terms of reference, to decide on the composition of a preparatory committee.

It had been said that the Sub-Committee should express its opinions on the rescue of astronauts and space vehicles by drafting a General Assembly resolution rather than an international treaty. The Hungarian delegation favoured an international treaty because space vehicles could cause tremendous damage, particularly in densely-

populated countries like Hungary, and because Hungary had to admit that it was not a great Power and had not sufficient economic and technical resources for effective defence against damage by space vehicles. There should also be an international treaty on the rescue of astronauts and space vehicles.

Both the proposed treaties would prescribe the action to be taken by countries after an accident. The Sub-Committee should also suggest laws to prevent accidents, basing them on principles regulating the activities of countries in outer space. One of those principles might be that in no circumstances might experiments prevent other countries from using outer space for peaceful purposes. The effects of high-altitude nuclear explosions were so dangerous that the Sub-Committee should state that experiments likely to complicate the study of the cosmos by other countries should not be undertaken unless sanctioned by a competent international body.

Harmful experiments might be prevented if the Sub-Committee gave a clear definition of the word "free" in sub-paragraph (b) of the first operative paragraph of resolution 1721A (XVI). Litigation might be avoided if it were declared that outer space was not to be used for military propaganda purposes, and that the word "free" in no way entitled countries to use outer space for espionage.

The development of basic principles might also be useful for future codification of space law. It was recognized that the law had not kept pace with scientific developments in outer space. Lawyers should work to bridge that gap; the Sub-Committee should organize and guide their work.

The meeting rose at 4.20 p.m.