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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE NINTH MEETING

held at the Palais des Nations, Geneva,  
on Tuesday, 12 June 1962, at 3.30 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)

Draft proposals by the USSR and the United States of America (A/AC.105/C.2/L.1, L.2, L.3 and L.4) (continued)

Mr. PATEY (France) said that he would define his delegation's attitude to the four draft proposals before the Sub-Committee. The question of the rescue of astronauts was treated both by the USSR proposal (A/AC.105/C.2/L.2) and by that of the United States (A/AC.105/C.2/L.3). The two proposals differed in content, but more particularly in procedure, the USSR proposing the preparation of a treaty and the United States a General Assembly resolution. The United States proposal doubtless held out the promise of more rapid results, while the method advocated by the USSR would have the advantage of conferring incontestably binding force on any regulation adopted. It was quite possible that with time the current enthusiasm about the achievements of astronauts might wane. When damage was caused by a space vehicle which made an emergency landing, the State in whose territory he landed might be tempted to treat the astronaut involved as a criminal, to arrest him and to impound the space vehicle. A General Assembly resolution might in such circumstances not be a legally operative instrument for ensuring different treatment.

The Italian representative had proposed a compromise: that a resolution should be adopted first and a treaty drafted afterwards. The French delegation would suggest that the preparation of a General Assembly resolution should be undertaken immediately, and at the same time work should be started on a draft treaty. If that procedure were adopted, the Sub-Committee would of course first have to discuss the two drafts in general, and his delegation would comment on both proposals. More particularly, article 7 of the USSR proposal would be very difficult for his delegation to accept. It was doubtful whether as large a group as the Sub-Committee could draft either a resolution or a treaty, or even a list of subjects which should be covered by a treaty. The task should be entrusted to a smaller working group. If such a group could be constituted at once, it might be able to report to the Sub-Committee during the current session; otherwise a new session might be arranged before the Committee on the Peaceful Uses of Outer Space met in August or September.

On the question of liability for damage caused by space vehicles, only the United States had submitted a concrete proposal (A/AC.105/C.2/L.4). The French delegation supported the procedure and the guiding principles proposed by the

United States, but thought that the matter should not be referred to experts without prior discussion. As in the case of the previous item, a small working group should be set up to study the matter. If that procedure were not adopted and if the draft proposals were to be discussed in detail in the Sub-Committee, his delegation would have more specific comments to make.

A declaration of principles such as that proposed by the USSR (A/AC.105/C.2/L.1) did not commend itself to his delegation, because it seemed to be unnecessary. He had previously referred to his country's reservations with regard to General Assembly resolution 1721 (XVI). He therefore had no fundamental objection to considering a document in which the basic principles of that resolution were reiterated in different form. Without endorsing the text proposed by the Soviet delegation, he would readily admit that principle 4 of the draft declaration was much closer to French thinking and more satisfactory than paragraph 1 (a) of resolution 1721A (XVI). The other principles of the Soviet draft, however, called for serious objections. There appeared to be no point in including principle 9, if agreement should be reached on the manner in which the problem of assistance to astronauts and space vehicles was to be dealt with. Principle 7 might be considered, if it implied no more than the idea that States should regulate the launching of space vehicles from their territory, perhaps by the issue of licences, in order to prevent ill-planned ventures. If, on the other hand, it was intended to prohibit all non-governmental activity, the idea would be quite inadmissible, for it would mean imposing attitudes held by some States on all and would interfere in the general policies of other countries.

Similarly, principle 6 raised serious difficulties. Conceivably, the desire not to obstruct the activities of another State might lead to consultations between two States engaged in the exploration of outer space, but the idea of requiring the consent of another State for space activities was quite unacceptable, and he was surprised at such a proposal coming from a State which was always greatly concerned about respect for sovereignty.

The reference to war propaganda in principle 5 and the use of satellites for the collection of intelligence in principle 8 was out of place in such a declaration. Disarmament problems were outside the competence of the Sub-Committee, whose task — laying the foundations of the law of outer space — was already vast

enough and should not be complicated by the introduction of extraneous matter. The French delegation had instructions not to take part in such discussions and to oppose consideration of those matters in the Sub-Committee. Should any proposal contrary to his Government's views be pressed to a vote, he would have to vote against it. He hoped that the USSR delegation would not maintain its text as submitted, because by doing so it would endanger the friendly co-operation by which the Sub-Committee's debates had been marked. Moreover, a declaration of principles depended not only on scientific progress but also on the problems to which those principles were to apply. He had already suggested the establishment of a list of legal questions from the answers to which one might build up the law of space and he hoped that the Sub-Committee would place on its next session's agenda an item concerning the preparation of such a list. In addition, an item might then be included concerning the principles which should govern the settlement of questions affecting the law of outer space. For the moment, he urgently appealed to the Soviet delegation to accept his suggestion that the Sub-Committee should concentrate on the two specific problems on which unanimous agreement might reasonably be hoped for: liability for damage caused by space vehicles and the return of astronauts and space vehicles.

Mr. CADIEUX (Canada), referring to the United States proposal on liability for space vehicle accidents, thought that a remarkable degree of unanimity had been achieved in the Sub-Committee on the treatment of that subject. Clearly, a working group would have to be set up to deal with so complex a problem. With regard to the constitution of such a group, he said his delegation would be glad to support any proposal which reflected the Sub-Committee's wishes. It would be helpful if the working group could be provided with specific guidelines for its work. Failing agreement on guiding principles, the working group would have to rely on the views stated in the Sub-Committee as reflected in the summary records. The Canadian delegation considered that the basic principle governing liability for space vehicle accidents was that the launching State should be responsible for injury to any foreign person, for loss of life and for damage to any foreign property resulting from the operation of space vehicles launched under its authority. The working group's task

would largely consist of the elaboration of that principle, with a view to its early practical application. Urgent problems concerning the development of outer space might arise very soon, and it would therefore be desirable if the working group could be set up immediately by the Sub-Committee and start work without delay.

With regard to the safe return of astronauts and space vehicles, there appeared to be only one important difference between the drafts submitted by the United States and the Soviet Union: article 7 of the Soviet draft required the launching State to give advance notice of each launching and placed in a special category space vehicles engaged in the collection of intelligence. Those matters came within the terms of reference of the Eighteen-Nation Committee on Disarmament rather than of the Legal Sub-Committee. If the relevant portion of article 7 of the Soviet proposal were referred to the Disarmament Committee, the Soviet Union and United States proposals would become largely identical, and the only remaining question would be one of procedure: whether the subject should be dealt with by a General Assembly resolution or by an international agreement. The adoption of a General Assembly resolution would have the great advantage of providing, with least delay, dramatic proof that useful progress was being made by the Sub-Committee in the development of outer space for the betterment of mankind.

Referring to the USSR draft declaration of basic principles, he said his delegation had reached the conclusion that there were many reasons why the Sub-Committee should consider such principles at the present stage. Technological advances were so rapid that the development of law might fall dangerously behind, if such principles were not carefully studied. One of the first questions to be considered by the Sub-Committee, as a body of legal experts, was whether the law should be formulated in a code or whether it should be evolved from case-law. Each of the two methods had its advantages, and he saw no reason why they should be mutually exclusive.

With regard to procedure, he said the Sub-Committee should not attempt to take up any subject which had been referred to another body. Thus, all military matters having a disarmament aspect should be placed before the Committee on Disarmament. In selecting items for consideration, the Sub-Committee should also be careful of the timing. Firstly, in the absence of sufficient scientific data, no attempt should be made to deal with a subject, nor should any point be taken up, if States

had not agreed on the policy decisions involved. Secondly, with regard to liability for damage caused by space vehicles, both conditions - the existence of scientific data and agreement on policy - were fulfilled, and the Sub-Committee could go ahead. Thirdly, the Sub-Committee should not engage in any legal study which would involve inventing legal principles in a vacuum, without reference to all related scientific, social, economic and policy considerations. In assessing the Soviet draft declaration of basic principles, the Sub-Committee would accordingly have to decide to what extent those principles were based on policy decisions taken in response to economic, scientific and social needs arising from technological developments in outer space.

Another general consideration which the Sub-Committee should bear in mind was that of the economic and social concepts underlying the Soviet draft declaration. Principle 7 of the declaration, for example, provided that all space activities should be carried out exclusively by States. Such a concept of the role of the State did not accord with the views of many other countries, including Canada, and while by their very nature activities in outer space would for some time have to be carried out by States or at least under the supervision of States, exceptions to that rule were already developing. Much help in the development of outer space had been given by non-governmental scientific unions and by private universities and companies. The satellite communications system, which would soon be put into operation, would have considerable commercial uses, and it would conflict with the principles accepted in many countries in which private enterprise flourished to prohibit private companies from sharing in that development to the full. In many countries governments had joined with private enterprise in promotion of outer space projects, albeit in such a way as to ensure that private enterprise was not free to operate on its own.

The last general consideration which he would place before the Sub-Committee concerned tactics and practicality. The States already engaged in the development of outer space had certain common requirements such as the preparation of an instrument for dealing with damage claims resulting from space vehicle accidents and the institution of arrangements acceptable to the world community for the safe return of space vehicles and their crews forced down in foreign territory. Other common needs would certainly soon be developed, and it was one of the important functions of the Sub-Committee to keep itself attuned to them and to find ways of meeting them.

The Soviet draft declaration, in its first four principles, appeared to be merely restating the contents of General Assembly resolution 1721A (XVI). A repetition of that kind in slightly different language served to weaken rather than to enhance the effectiveness of the principles concerned. The resolution was, of course, not exhaustive and would at an appropriate time have to be amplified and extended.

The references to war propaganda in principle 5 was clearly inappropriate in a declaration proposed for adoption by the Legal Sub-Committee. Principle 6 required an agreement between the States concerned before the implementation of any measures that might hinder the exploration and use of outer space for peaceful purposes. The clause was ambiguous. What for example was meant by "the countries concerned"? The clause also assumed that a policy decision on measures of co-operation had already been accepted by Governments, which, of course, was not the case. The subject was therefore not yet ripe for formulation as a legal principle.

Principle 7 was not acceptable, because as had already been pointed out, it conflicted with the social and economic concepts of many States. The issue of military intelligence, which was raised in principle 8, should be brought up in the Disarmament Committee, not in the Legal Sub-Committee. Principle 9, concerned a matter which was to be dealt with in a separate instrument and should not be included in a declaration of general principles. The Soviet proposal as it stood, did not lend itself readily to the approach which he had suggested for the all-important question of general principles.

Without in any way wishing to minimize the importance which the Sub-Committee should attach to the question of general principles, he thought the subject was certainly not one of immediate urgency. There was no need to provide mankind immediately with a legal code on outer space. To be effective, general principles would have to be evolved in response to needs. General Assembly resolution 1721 had answered the immediate need to define the status of outer space in connexion with outer space experiments. It would certainly be premature to refer the question of general principles to a working group, but there might well be compelling reasons for the Sub-Committee to discuss the matter further at its next session. In the meantime he would urge all members to bend their efforts to the achievement of useful progress. The discussion had advanced to a stage at which practical advantage could be taken of the spirit of co-operation which had made it possible for the Sub-Committee to meet.

Mr. SZTUCKI (Poland) said that the draft declaration proposed by the Soviet Union undeniably represented progress beyond General Assembly resolution 1721 (XVI). Covering a reasonably wide range of questions affecting the peaceful exploration and use of outer space, it reflected what appeared to be the common approach to the problems facing the Sub-Committee - not to aim at the elaboration of a systematic code but to take up concrete questions which were already of practical importance, or might become so in the near future.

It had been erroneously concluded that, because principles 1 to 4 of the draft declaration restated the second preambular paragraph and operative paragraph 1 of the General Assembly resolution, they were superfluous. It was encouraging that the representative of the United States had said, in the parent Committee, that in unanimously approving the resolution all Members of the United Nations had committed themselves to basic principles of the greatest significance [A/AC.105/PV.2, pages 13-15]. Nevertheless, whatever might be the individual position of States, a General Assembly resolution was a mere recommendation. Given the evident wish of States to be committed to the principles of the resolution, it would be a logical procedure of law-making to turn that recommendation into a formal legal commitment.

His delegation welcomed principles 5 to 9 of the draft declaration which amplified and stated in more specific terms basic principles already expressed in the Assembly resolution. It was most desirable that a constructive effort should be made to qualify the concept of freedom of exploration and use of outer space by States so that there would be no interference with the equal rights of others, and to establish some internationally recognized standards of conduct of States by drawing distinction between the kind of action that was allowed and the kind of action that was prohibited.

Some of the principles stated in the draft declaration had already begun to operate: for example, the relevance of the first clause of principle 6, calling for co-operation and mutual assistance as the duty of all States, had been clearly demonstrated by the successful work of the Scientific and Technical Sub-Committee as well as by bilateral arrangements.

It had been suggested that the draft declaration touched upon political matters, sometimes of a controversial nature, and hence beyond the Legal Sub-Committee's terms of reference. If views on some matters differed, then it was the task of the Sub-Committee to reconcile them. And since relations between States were



essentially political, it was hardly possible to escape that reality in legal discussions. In the progressive development of international law it was necessary, in speaking of the relations to be covered by legal rules, to touch repeatedly upon matters which at that stage fell only within the domain of politics. The fact that it was the Sub-Committee's task to draw up legal rules implied that all aspects and interests involved should be taken into account.

The problem for the Sub-Committee was whether it should agree, at least for questions of immediate practical importance, on some legally binding rules, taking into account the interests of all States, or whether all questions of policy in outer space should be left to the discretion of individual States regardless of the possible legitimate interests of others, a situation fraught with the risk of serious conflict. His delegation favoured the first alternative, and accordingly a declaration of principle; since the aim was therefore the establishment of commonly acceptable standards of conduct, it was its understanding that the draft submitted by the Soviet Union was a document on which negotiations could be based.

His delegation had already stated its preference for an international agreement on the rescue and return of astronauts and space vehicles, rather than a General Assembly resolution, and for something more than a mere proposal that people should render humanitarian assistance to others and return their property to them; with the exception of a clause concerning costs incurred, however, the United States proposal (A/AC.105/C.2/L.3) did not go beyond that. The Soviet proposal on the other hand (A/AC.105/C.2/L.2) prescribed the conduct of States in much more specific terms, not only with regard to the landing of foreign space vehicles on the territory of a State but also on the high seas which covered some 80 per cent of the earth's surface. In addition, it provided that foreign astronauts should be given the same care and assistance which a State would give to its own. The objections to article 7 of the Soviet draft agreement seemed ill-founded. It had been the United States which had first proposed in 1959 that suitable markings should be placed on space vehicles to permit their ready identification, particularly in the event of their return to earth. The reference in the Soviet proposal to the announcement of launchings and to identification marks had also been questioned. But he pointed out that if a State had no way of ascertaining to whom the vehicle in question belonged it could not be expected to return it "promptly" as stated in the United States proposal. A State might evade the return of a vehicle on the ground that its origin

could not be established and since, moreover, under the United States proposal there would be no legal obligation, the return of a space vehicle would remain entirely at the discretion of the State in actual possession of the vehicle - an ambiguous situation which should be avoided.

A like problem arose in connexion with the responsibility of States for injury and damage caused by space vehicles. To whom should a claim for compensation be presented if there was no indication whatsoever of the origin of the space vehicle which had caused the injury or damage? His delegation had already stated its readiness in principle to participate in discussion of the question: it appeared, however, that the members of the Sub-Committee held no strong views on how it should be settled or, for example, whether or not responsibility should be subject to the proof of fault or negligence or whether or not compensation should be limited in amount. Other complex problems might arise, for example in the case of joint launchings, especially if damage or injury was caused on the territory of a State where the launching site, in fact used by another State, was situated. It would therefore be preferable to appoint a working group to prepare a suitable draft agreement. In regard to the United States proposal (A/AC.105/C.2/L.4), his delegation thought that the guiding principles laid down in paragraph 3 were somewhat prejudicial to some of those questions which should be kept open and it would therefore reserve its position until they had been thoroughly discussed.

With regard to the appointment of an advisory panel of experts, his delegation considered that it would be more appropriate to constitute a working group of lawyers appointed by the Governments represented in the Sub-Committee. It would not be in keeping with the General Assembly resolution to transfer at the outset the task assigned to the Committee, and therefore to the Sub-Committee, to some other body.

The Sub-Committee was a negotiating body and the procedure agreed upon - to conduct its proceedings in such a way that agreement could be reached "without need for voting" - was by no means tantamount to the ready acceptance of proposals. The problem was how to reach agreement; he considered that negotiation was the right method. The favourable background against which the Sub-Committee had begun its work continued to prevail especially in view of the significant progress made by the Scientific and Technical Sub-Committee as well as in the bilateral talks between the Soviet Union and the United States on which a most encouraging joint communique

had just been issued. His delegation was sure that mutually acceptable solutions for all the questions before the Sub-Committee would be found.

Mr. GEORGIEV (Bulgaria) said that some speakers had apparently misinterpreted principles 6 and 7 of the Soviet draft declaration (A/AC.105/C.2/L.1). The intention of principle 6 was simply to formulate, in terms of the law of outer space at that stage of its development, an elementary and essential rule of general law which applied in all societies: that the free exercise of any activity in a society was governed by the legal rights of the other persons in that society. Applied to private property, the same basic principle meant that even in those countries where the greatest emphasis was placed on the rights of private property, those rights were qualified by the rights of other property owners. Whereas under every system, therefore, the national legislation contained provision for what might be termed a right of veto which could be exercised by the State to safeguard the interests of others, in the international field it should be the function of international organizations to limit the activities of States so that they did not harm the interests of other States. Without that basic principle no international agreement could be concluded.

Principle 7 of the draft declaration provided that all activities pertaining to the exploration and use of outer space should be carried out "solely and exclusively by States". One of the fundamental problems governing the development of law in the capitalist societies since the First World War had been that of limiting the influence of private capital and industry (especially of monopolies) when it conflicted with the interests of such societies and of the capitalist class itself. To exist, private industry had to observe certain basic economic laws, and capitalists were always the slaves of the economic conditions under which they lived. The same principle applied when, for example, in considering the action it should take in regard to the Common Market or assistance to the less-developed countries, the United States or one of the Western European countries had to decide how to reconcile the interests of the country and the interests of private industry. Principle 7 merely dealt objectively with the problem of limiting that conflict, which was always latent and sometimes became active.

The meeting rose at 5 p.m.