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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE THIRTEENTH MEETING

held at the Palais des Nations, Geneva,
on Monday, 18 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)

Draft proposals by the USSR, the United States of America and India (A/AC.105/C.2/L.1, L.2, L.3, L.4, L.5 and Corr. 1) (continued)

Mr. GLASER (Roumania) said that, in stating his delegation's views on the draft proposals, he would not at that stage enter into detail, nor would he refer to the compromise proposal submitted by India (A/AC.105/C.2/L.5).

The main proposal before the Sub-Committee was the draft declaration of basic principles submitted by the Soviet Union (A/AC.105/C.2/L.1). Before consideration could be given to any specific question, such as assistance to and return of space vehicles and personnel, or liability for space vehicle accidents, Governments should know the basic principles of international law which would govern inter-State relations in the matter of the exploration and use of outer space. While it would be premature, in view of the lack of sufficient experience in the field, to codify the international law relating to specific questions, it was not too soon to lay down the basic principles. It would be impossible, for example, to wait, before declaring that the use of outer space for aggressive purposes should be prohibited, for ten or twenty years during which such aggression was carried on. It would therefore be timely, not to codify the basic principles, but to state them clearly in a formal declaration.

Doubts had been raised as to the Sub-Committee's competence; it had been suggested that the prohibition of aggression, for example, was more properly a topic to be discussed in the Eighteen-Nation Disarmament Committee. Yet it was not impossible that that Committee would fail to reach any conclusion on the matter. In any event, the ban on aggression did not come within the context of disarmament; rather it was the subject of a rule of general international law which was, moreover, enshrined in the United Nations Charter. The Sub-Committee was not expected to frame new rules, but to apply existing rules to outer space. He could not accept the argument that political and legal aspects should be separated, and that before the Sub-Committee could act some other body should take a political decision. The Sub-Committee was composed of acknowledged specialists sitting, not as experts but as representatives of sovereign States, Members of the United Nations, and therefore competent to establish principles of international law. It was evident that the question of the Sub-Committee's

competence had been raised as a pretext by those who opposed the very idea of the draft declaration proposed by the Soviet Union; all the delegations opposing the declaration had prefaced their comments with criticism of the validity of the principles contained in the draft. In objecting to specific provisions of the draft declaration, the representatives of Australia and the United States, for example, had admitted their competence to discuss the substance of those provisions. There was a difference in law between competence to discuss the question, and approval of or opposition to the subject itself. It would be most regrettable if the Sub-Committee did not recognize the necessity of adopting a draft declaration of principles. The Soviet text was a basis for discussion only, and did not have to be adopted as it stood. The basic concept was, however, sound and entirely justified.

It had been objected that the opening paragraphs of the draft declaration closely resembled the preambular paragraphs of General Assembly resolution 1721A (XVI), which had been adopted unanimously. The United States, as one of the sponsors of the resolution, could hardly oppose the principles proclaimed therein. The discrepancies which had been noted between those passages of the draft declaration and the text of the resolution were a matter of detail and it would be possible to amend the Soviet text if it should prove on examination that the terms used in the General Assembly resolution were superior. The opponents of the paragraphs had, however, merely stated that they were redundant and had not proposed their detailed study. The reiteration of a principle in more than one legal document could never be said to weaken the principle, as the opponents of the paragraphs seemed to argue: on the contrary, repetitions strengthened the principle. The General Assembly resolution was merely a recommendation and not binding in international law; much greater force would be given to the principles it contained by their formal re-affirmation in a declaration accepted by States.

Paragraph 9 of the draft declaration had also been declared unnecessary, since it related to assistance to and return of astronauts and space vehicles, the subject of proposals both by the Soviet Union (A/AC.105/C.2/L.2) and the United States (A/AC.105/C.2/L.3). In municipal law, however, a principle stated in the Constitution of the country was also commonly the subject of specific regulations. If it was argued that the practice could not be extended to international law, it

should be recalled that the question of the freedom "to seek, receive and impart information" which formed the subject of article 19 of the Universal Declaration of Human Rights had been under consideration by the Third Committee of the General Assembly as the subject of a draft international instrument, the adoption of which would in no way invalidate article 19, which remained the basis for any future action. Opposition to paragraph 9 of the draft declaration therefore merely indicated opposition to the whole concept of the declaration.

The representative of the United States had criticized paragraph 5 on the grounds that the subject of war propaganda was under discussion in the Eighteen-Nation Disarmament Committee: in that connexion, it would suffice to refer to amendments proposed by the United States in that Committee to proposals made by another delegation. There would seem no possible reason to object to the inclusion in a draft declaration, of the generally accepted principle that outer space should not be used for war propaganda.

Paragraph 8 had aroused opposition on the grounds that outer space should be free for scientific research by all nations, which was undoubtedly true. It was, however, equally obvious that the use of outer space for purposes of espionage was inadmissible. The possibility that in practice, difficulties might perhaps arise in distinguishing between a satellite used for scientific research and one used for spying did not concern the Sub-Committee, and should not deter it from stating the principle enunciated in paragraph 8. Although the 1958 United Nations Conference on the Law of the Sea had been unable to define the limit of the territorial sea, it had not hesitated to adopt separate conventions relating to the territorial sea and to the high seas. He would not dwell further on the opposition expressed by some members of the Sub-Committee to the whole of the draft declaration proposed by a great world Power which had inaugurated the space era. It would be most regrettable if the Sub-Committee concluded its proceedings without accepting at least the concept that a declaration of general principles should be drawn up, perhaps by the Sub-Committee itself, perhaps by a subsidiary group it would set up.

The fact that both the great Powers conducting experiments in space had submitted proposals concerning the rescue of astronauts and space vehicles making emergency landings had shown the need for action by the Sub-Committee on

that subject. The United States proposed (A/AC.105/C.2/L.3) a resolution to be adopted by the General Assembly. His delegation considered it necessary that an international agreement such as that proposed by the Soviet Union (A/AC.105/C.2/L.2) should regulate the obligations of a State in that connexion.

In document A/AC.105/C.2/L.4, the United States had proposed that the Sub-Committee should set up an advisory panel to prepare a draft international agreement on liability for space vehicle accidents. Before a working group could begin work on drafting such an agreement, however, the guiding principles should be clearly defined. His delegation was, for example, opposed to the inclusion of the principle in paragraph 3 (e) of the United States proposal that the International Court of Justice should have jurisdiction in the absence of agreement between the States concerned upon another means of settlement. It was well known that the United States itself did not always adhere to that principle: in its declaration under Article 36 (2) of the Statute of the Court it had expressly reserved the right to decide itself in what circumstances the Court would have jurisdiction. Only after further consideration by the Sub-Committee should the guiding principles proposed by the United States be referred to a working group.

Mr. KINGSTONE (Canada) said the Sub-Committee's deliberations had reached the stage at which it might be helpful to summarize the results of the meetings, with the object of outlining the possible areas of agreement. His delegation was in no way making a proposal but wished merely to suggest, for the Chairman's consideration, what were the threads of agreement and how they might best be woven together into a useful project.

The danger of personal injury, loss of life or property damage as a result of space vehicle accidents was becoming ever more imminent as more and more space vehicles were launched. The Sub-Committee was unanimous in agreeing that the associated legal question of liability for accidents should be studied by a working group.

The statements made in the Sub-Committee, as supplemented by informed consultations with other delegations, had led his delegation to believe that it was possible to agree on the referral of the question of liability to a working group, with instructions to prepare a draft international agreement. The group would consist of representatives of the States members of the Sub-Committee, and

so would reflect the composition of the Legal Sub-Committee itself: it would have no terms of reference other than directions to consult the views of the members as expressed in the summary records of the Sub-Committee. His delegation thought that the membership of the working group could be quickly settled once it had been decided to appoint such a group.

The Sub-Committee clearly held the opinion that the question of general principles was important. At the same time, the view seemed to be that the subject would require much more study and that in those circumstances more detailed consideration should be left until a later meeting.

The question of assistance to and return of space vehicles and their crews was of much greater immediacy. Unfortunately, the area of agreement on that subject had not as yet become sufficiently clear to enable the subject to be referred to a working group. It was, however, the hope of his delegation that the Sub-Committee would be in a position to take up the subject again in the very near future.

The difference in approach to the question of assistance to and return of space vehicles and personnel raised the important issue whether it was so serious as to hamper progress in regard to the question of liability for space vehicle accidents.

His delegation hoped that the Chairman would use his good offices to enable the Sub-Committee to make useful progress in the area in which agreement had been reached - liability for space vehicle accidents - and to leave until later further consideration of the very important subject of assistance and return. If the Chairman, after further consultations, was able to announce that it was the sense of the Sub-Committee that the question of liability for space vehicle accidents should be referred at the current session to a working group, on the basis indicated by the Sub-Committee itself, the Sub-Committee would have made a significant step forward, and notice would be served on the world that swift and appropriate action was being taken to provide a solid basis for compensating for any loss or damage that might occur as the result of space vehicle accidents.

Mr. LITVINE (Belgium) endorsed the views expressed by the representative of Canada. He hoped that the conclusions resulting from the Sub-Committee's deliberations would be practical and would provide for continued study, and that eventually rules of law could be drafted.

Mr. PETREN (Sweden) said that, if it was not to experience total frustration, the Sub-Committee should take at least one step forward in the short time still at its disposal. On the draft declaration of basic principles and on the question of assistance to and return of space vehicles and their crews, opinions were so sharply divided that those topics could not as yet be referred to a working group. There was insufficient time remaining for the Sub-Committee to engage in the further exchange of views and the detailed discussion of those questions which would be necessary. The only positive result which could be achieved would, therefore, be the setting up of a working group to study the subject of liability for space vehicle accidents. It was true, as the representative of Romania had said, that certain difficulties existed in regard to the question of the jurisdiction of the International Court, but they were well known and could be discussed by a working group without any need for fresh technical data. He would suggest, therefore, that the working group in question could be established at the current session and begin its work in the autumn of 1962.

Although the two other topics were not ripe for consideration by a working group, they might, after further discussion in the Sub-Committee, be referred to a working group later.

Mr. MEEKER (United States of America) said that the Sub-Committee's discussions, like those of the parent Committee in New York, showed that there was a general consensus on the desirability of giving early attention to the question of liability for space vehicle accidents and to the preparation of an international agreement on the subject, as was natural in view of the interest of the question to all countries. His Government had thought that a group of experts to study the question of liability should be selected by the Secretary-General of the United Nations, with due regard for the appropriate representation of the various areas of the world. It continued to think that method of constituting the working group would be the best. In deference to the views of some other delegations, however, it was prepared to accept a working group composed of representatives of countries selected by the Sub-Committee and patterned on the composition of the Sub-Committee and its parent Committee.

It had also been the hope of the United States delegation that the Sub-Committee could provide some guidance for the group of experts as to the content of the international agreement which it would be asked to prepare. It had accordingly included, in paragraph 3 of its draft resolution (A/AC.105/C.2/L.4), a series of ideas along those lines. It had been much interested in the observations made on them during the Sub-Committee's debate and again, while still believing that some guidance would be desirable, it was prepared to agree to the omission of the ideas in question from the terms of reference of the group to be appointed by the Sub-Committee to study the subject of liability for space vehicle accidents.

His delegation had also hoped that the Sub-Committee would agree at the current session to recommend to the General Assembly a draft resolution on assistance to and return of astronauts and space vehicles. It appeared from the discussions, however, that there was not yet the measure of agreement necessary to proceed with the topic at the moment. His delegation would not, therefore, press its draft resolution and was prepared to continue consideration of assistance and return at a future meeting.

The United States delegation was in agreement with the assessment of the situation made by the representative of Canada and was prepared to accept his suggestions for concluding the present phase of the Sub-Committee's work.

Miss GUTTERIDGE (United Kingdom) said that her delegation also agreed with the Canadian representative's assessment. If the Sub-Committee could agree that the subject of liability for space vehicle accidents should be referred to a working group on the basis he had indicated, it would have made its first step towards substantial progress. The Canadian representative's suggestion reflected the greatest possible measure of agreement that could be reached at the moment.

Mr. PATEY (France) said that the Canadian representative had realistically summed up the results obtained. His delegation regretted the disappearance of the idea that the Sub-Committee should provide guidance for the proposed group of experts. It would have liked to speak in detail on that point, particularly on the question of liability in the case of international launchings, and it reserved the right to do so if the working party were set up. With regard to the statement of principles, his delegation considered the matter a very important one, with which it was not possible to deal adequately at the current session.

He supported the Canadian representative's views with regard to assistance to and return of space vehicles and personnel.

Mr. AMBROSINI (Italy) agreed with the Canadian representative's suggestions.

Mr. NAKAJIMA (Japan) also supported the Canadian representative's suggestions. The proposal for a working group to deal with the question of liability for space vehicle accidents was a constructive one, on which agreement could probably be reached. His delegation would express its views on the substance of that question in the working group.

His delegation supported the following three principles in the United States proposal (A/AC.105/C.2/L.4): first, that the launching State or States or the international organization concerned should assume an absolute liability for space vehicle accidents; secondly, that the question should be dealt with as one of State responsibility; and thirdly, the acceptance of the jurisdiction of the International Court of Justice to adjudicate disputes relating to the interpretation or application of the international treaty on liability. With regard to the third principle, he suggested that the working group might wish to study the advisability of providing for a special arbitral tribunal to settle disputes concerning the amount of compensation payable by the launching State or international organization and disputes on other appropriate matters.

With regard to the question of general principles to govern the activities of States in the exploration and use of outer space and to the question of assistance to and return of space vehicles and their personnel, he said there appeared to be no reasonable basis on which the Sub-Committee could proceed to an immediate or early conclusion, since arguments had not yet been exhausted and every possible attempt to improve the draft proposals had not been made. While it was agreed that principles were needed to govern outer space activities, opinions differed about how and when they should be developed. The Soviet Union's draft declaration provided a good starting point, but contained some controversial elements. Besides, a declaration would hardly be meaningful it it failed to lay down such essential principles as those that all the information and data obtained from outer space activities should be made available to all States, that the use of outer space was reserved for peaceful purposes and that nuclear weapons testing in outer space

was prohibited. The last two of these essential principles were being considered in another forum within the context of disarmament and the best course would therefore be to await the outcome of discussions in that forum for a time.

With regard to the question of assistance to and return of space vehicles and their personnel, his delegation believed that it was not sufficient merely to establish an obligation for such return on member States, but that consideration should also be given to the type of co-operation required on the part of the launching State and to the conditions that would have to be fulfilled in order to facilitate the prompt return of vehicles and crew.

Although his delegation had no intention of minimizing the importance and urgency of settling the question of general principles and that of assistance and return, it believed that all the points he had raised should be given further study and that, at that late stage in the session, it would be wise for the Sub-Committee to proceed along the lines suggested by the Canadian representative.

Mr. CAMPORA (Argentina) said that the Canadian representative's suggestions were of particular importance for the States which had not yet launched space vehicles and for which the question of international liability might arise. His delegation would therefore support those suggestions. He hoped that, if the suggestions were adopted, Latin America would be represented in the working group. His delegation regretted, however, that the Sub-Committee had not succeeded in agreeing to provide the working group with certain guiding principles.

So far as liability for space accidents was concerned, his delegation considere that the relevant agreement should be worked out on the basis of the principles of objective liability. Secondly, for the purpose of the settlement of disputes arising out of accidents caused by space vehicles, the International Court of Justic should be accepted as competent only in cases where both parties consented thereto.

With regard to a general declaration of principles, his delegation considered that the subject required more detailed study and should be given very careful consideration at a subsequent session.

Mr. GARCIA de SOUZA (Brazil) said that his delegation favoured the study of the basic principles that should govern the exploration and use of outer space by States. It had stated during the general debate that those basic principles should result from an elaboration of Part A of General Assembly resolution 1721 (XVI and should, for instance, include its second preambular paragraph. The debate had

shown, however, that further study of the matter was needed, though it was not possible to carry the study further at that stage in the Sub-Committee's proceedings. While agreeing with the Canadian representative's suggestion that the question should be left for a subsequent session, he would recommend that it should be taken up as soon as possible.

The proposals submitted by the United States and the Soviet Union concerning assistance to and return of space vehicles both contained constructive ideas, but it had unfortunately not been possible to reconcile the two points of view. In the circumstances his delegation agreed with the Canadian representative's suggestion that consideration of the subject should be postponed until there was better prospect of agreement.

With regard to liability for space vehicle accidents there seemed to be a reasonable basis of agreement, although not, unfortunately, on guiding principles for the proposed working group; his delegation would like further study to be given to the guiding principles proposed by the United States delegation (A/AC.105/C.2/L.4) particularly that referred to in paragraph 3 (b) of that proposal.

With regard to the settlement of disputes, he would support recourse to the International Court of Justice, but thought that settlement by arbitration or by other means for the international settlement of disputes should also be envisaged. His delegation supported the Canadian representative's suggestion that a working group should be appointed to prepare a draft international agreement.

Mr. COOK (Australia) said that there was a broad measure of agreement on the principle of liability for space vehicle accidents, thanks to the two concessions made by the United States representative. What was needed now was the elaboration of a detailed agreement, for which the establishment of a working group appeared to be the most convenient method. While such a working group would not be bound by formal directives, it should consult the summary records and official documents of the Sub-Committee's session. There was nothing new in his suggestion; he believed that the Canadian representative had been right in supposing that to be the general view of the Sub-Committee. Such a view was not surprising, because the great majority would be entitled to defined rights under an agreement on liability, while those who would assume defined responsibilities under an agreement had indicated their willingness to do so.

There was fundamental disagreement on the question of assistance to and return of space vehicles and personnel. Moreover, it was a disagreement between the two States which stood to gain the most from agreement. In those circumstances, his delegation could see no point in establishing a working group.

There was also considerable disagreement on the question of basic principles. In his delegation's opinion, many of the principles set forth in the Soviet Union draft declaration (A/AC.105/C.2/L.1) fell outside the Sub-Committee's terms of reference. That was apparently not the view of certain other delegations; he noted, however, that at the 7th meeting the representative of the USSR had agreed that prohibition of the use of outer space for military purposes did not come within the competence of the Sub-Committee. In those circumstances, his delegation supported the Canadian representative's view that, rather than set up a working group, the subject should be given more study by the Sub-Committee at a later date.

Mr. LYNCH-SHYLLON (Sierre Leone) said that the question of liability for space vehicle accidents was of particular importance to countries not engaged in launching space vehicles, for they were potential victims of a space vehicle mishap. His delegation would therefore support the Canadian suggestion to refer that question to a working group, and hoped that such a step would lead to progress in areas of present disagreement.

The meeting rose at 5.10 p.m.