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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Third Session (First Part)

Summary records of the 29th to 37th meetings
held at the Palais des Nations, Geneva,
from 9 to 26 March 1964

<u>Chairman:</u>	Mr. LACHS	(Poland)
<u>Secretary to the</u> <u>Sub-Committee:</u>	Mr. SCHACHTER	

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TWENTY-NINTH MEETING

Monday, 9 March 1964, at 3.25 p.m.

STATEMENT BY THE CHAIRMAN

The CHAIRMAN declared the third session of the Sub-Committee open.

On 13 December 1963 the General Assembly of the United Nations had adopted a Declaration of Legal Principles governing the Activities of States in the Exploration and Use of Outer Space. The nature and significance of the Declaration could not be underestimated. The part played by the Legal Sub-Committee in the elaboration of those principles should be stressed, for many useful and constructive proposals made by its members had found expression in the Declaration. The principles adopted by the General Assembly, while not covering all the field and leaving out some of the suggestions made in the Sub-Committee, would be of great importance for the future work of that body. Having reached that stage, the Sub-Committee ought to proceed further. There was no reason for relaxing efforts. As to the work of its current session, the Sub-Committee's terms of reference were laid down in General Assembly resolution 1963 (XVIII). As a first step, the Sub-Committee must therefore decide how to proceed with its work.

ADMISSION OF AN OBSERVER OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO)

The CHAIRMAN announced that ICAO had asked to be represented by an observer at the Sub-Committee's meetings, with the same status as the other specialized agencies. He suggested that the Sub-Committee should accede to that request.

It was so decided.

ORGANIZATION OF WORK

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the three questions before the Sub-Committee, which were set out in part I of General Assembly resolution 1963 (XVIII), were the following: consideration of incorporating in international agreement form legal principles governing the activities of States in the exploration and use of outer space; the preparation of a draft agreement on assistance to and return of astronauts and space vehicles; and the preparation of an international agreement on liability for damage caused by objects launched into outer space. The Sub-Committee's best course would be to begin with a general debate, which should not be too protracted. The reasons for doing so were obvious. After the adoption of the Declaration of Legal Principles, the Sub-Committee had reached a new stage in its work where reflection was necessary. Secondly, in paragraph 2 of

part I of resolution 1963 (XVIII), the General Assembly requested the Committee to study and report on legal problems which might arise in the exploration and use of outer space; it was obvious that an exchange of views was the most appropriate way of meeting that request. Thirdly, as the Sub-Committee was the only United Nations body dealing with the legal problems of outer space, it should not restrict its work to the consideration of draft agreements but should deal with the whole field of the law of outer space; the views expressed in the debate would undoubtedly be of value in the development of that law.

Mr. MEUKER (United States of America) pointed out that in part I, paragraph 1 of resolution 1963 (XVIII) the General Assembly recommended that consideration should be given to incorporating in international agreement form, in the future as appropriate, legal principles governing the activities of States in the exploration and use of outer space. It had adopted that resolution immediately after the adoption of resolution 1962 (XVIII) embodying the Declaration of Legal Principles on the same subject. In using the words "in the future as appropriate", the General Assembly had obviously wished to make clear that it was not asking the Committee to undertake immediately the preparation of an international agreement embodying those principles. On the other hand, in paragraph 2 of part I of resolution 1963 (XVIII), the General Assembly requested the Committee "in particular to arrange for the prompt preparation of draft international agreements on liability for damage caused by objects launched into outer space and on assistance to and return of astronauts and space vehicles". The General Assembly clearly wished those two subjects to be given first priority. The Sub-Committee should start work immediately on draft international agreements on those two subjects and endeavour to finish them by the end of the session. Other questions could be taken up later, possibly in a general debate, to which a meeting or two at the end of the session might be devoted.

Mr. BEIYI (Hungary) said that, although great progress had already been made towards the development of a law of outer space and towards the use of outer space for the benefit of mankind, much remained to be done. At the present time, it was of supreme importance to regulate the use and exploration of outer space, firstly to ensure that it would be used in the interest of the peoples of the world, and secondly because any confusion about the law relating to outer space would impede exploration. Both the USSR and the United States were to be congratulated on their achievements in the exploration of outer space and all countries must welcome the fact that the agree-

between the two countries concerning the exploration of outer space, the main outlines of which had been drawn at the time of the meeting of the two Sub-Committees of the Committee on the Peaceful Uses of Outer Space held at Geneva in May 1962, was beginning to be implemented. Man was making rapid progress towards the mastery of outer space, and Hungary hoped that that mastery and the knowledge of outer space would steadily be extended in the interest of international peace and for the common good of the world as a whole. It would co-operate to the utmost in achieving those purposes and in solving the difficulties which must inevitably arise.

Regarding the organization of work, he felt that in adopting the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (resolution 1962 (XVIII)), the General Assembly had set the United Nations on the path towards the codification of the law of outer space. The next step was to prepare international agreements which were binding on and acceptable to all countries. The preparation of an international agreement embodying the principles set out in the Declaration was of primary importance, for the Declaration in General Assembly resolution 1962 (XVIII) was only a recommendation and therefore not binding. Such an agreement would help to solve the legal problems relating to relations between States in matters of outer space. Having drafted that agreement, the Sub-Committee should prepare draft agreements on liability for damage and on assistance to and return of astronauts and space vehicles.

He agreed with the USSR representative that a general debate on all questions on the Sub-Committee's agenda was not only useful but necessary.

Sir Kenneth BAILEY (Australia) drew attention to part I, paragraph 3, of General Assembly resolution 1963 (XVIII), which requested the Committee on the Peaceful Uses of Outer Space to report to the General Assembly at its nineteenth session on the results achieved in preparing the agreements on liability for damage and on assistance to and return of astronauts and space vehicles. The General Assembly obviously attached primary importance to the preparation of those two draft agreements, and if the Sub-Committee was to make the best use of its time it should begin by preparing those drafts. The Sub-Committee already had before it two draft texts submitted by the United States (A/AC.105/C.2/L.8 and A/AC.105/C.2/L.9) and a Working Paper (A/AC.105/C.2/L.7) submitted by the Belgian delegation on liability for damage caused by space devices, and he understood that further proposals were expected. A sensible mode of procedure would be to ask the delegations submitting

proposals to explain the general principles on which the proposals were based. Two or three meetings could be devoted to a discussion of the principles, and the Sub-Committee could then set up working groups to consider the texts. His delegation hoped that the Sub-Committee would complete its work on the two agreements in time to take up the question of preparing an international agreement embodying the legal principles in the Declaration (General Assembly resolution 1962 (XVIII)). As the United States representative had pointed out, however, the General Assembly wished that question to be taken up only "as appropriate", which in the Australian delegation view meant after the work on the other two draft agreements had been concluded. If any time was left at the end of the session, a few days might be devoted to a general debate - which would certainly be useful - and to consideration of the question of preparing an agreement on legal principles. The primary consideration, however, was that the Committee should be able to report progress on the liability and assistance agreements to the nineteenth session of the General Assembly.

Mr. SILOS (Brazil) said that, while his delegation had no inflexible position on the procedural question, he would like to point out that the declaration of principles in resolution 1962 (XVIII) had been adopted by the General Assembly with important reservations on the part of certain States, including Brazil. It was essential that the Sub-Committee should study those principles and revise them in order to prevent their becoming unduly rigid.

Mr. KRISHNA RAO (India) expressed the view that a general debate before the discussion on the two draft agreements would prove useful in the work on those two drafts but that it should not be allowed to interfere with that work. He therefore suggested that the general debate should be limited to two or three days.

Miss GUTTERIDGE (United Kingdom) supported the United States and Australian representatives and urged the Sub-Committee to begin by working on the preparation of the two draft international agreements. That work would constitute the best means of building upon the legal framework of the principles set forth in resolution 1962 (XVIII). The two drafts would deal not with purely technical or procedural matters but with two important aspects of outer space law. The Sub-Committee's success in those matters would constitute a significant contribution to the progress of space law as a whole and to co-operation between States.

Mr. LIEVINE (Belgium) felt that it was not possible to interpret the General Assembly resolutions otherwise than had been done by the representative of Australia.

Mr. GLASER (Romania) expressed his delegation's satisfaction that the Sub-Committee was embarking on its work with greater prospects of success than when it had last met at Geneva, in 1962.

The General Assembly had stressed the basic importance of the legal principles governing the activities of States in the exploration and use of outer space by placing its recommendation for the formulation of international agreements on those principles in part I, paragraph 1 of resolution 1963 (XVIII), while its request for the preparation of draft agreements on two specific questions had been relegated to paragraph 2. It was therefore clear that the question of the legal principles could not be subordinated to those two questions. It would be logical, moreover, to discuss principles before details, for otherwise decisions regarding details might prove inconsistent with the principles ultimately adopted.

There was also a practical objection to the general debate being held at the end of the session: the Sub-Committee might find that the discussion of the two draft agreements had taken all its time and that it had no time left for a discussion of the general principles.

He suggested that the Chairman should consult delegations informally in order to work out a procedure acceptable to all.

Mr. GOLEMANOV (Bulgaria) urged the desirability of carrying the work already begun on general principles one stage further by drawing up a binding international agreement on the subject. He felt that if the procedure suggested by the United States Delegation were adopted, the Sub-Committee might find itself neglecting that task - which was the more important one - in order to deal with the two special questions of liability and assistance.

On the principle, therefore, of dealing with the more important problem first, he supported the USSR proposal with regard to procedure.

Mr. AEBROSINI (Italy) said that Italy, like several other States, had a codified system of law which was based on general principles. There was, however, no list of general principles of law laid down by legislation: they were formulated by legal writers who extracted them from the law of the land as a whole.

He felt

For those reasons, he considered that, in accordance with the United States proposal, the Sub-Committee should deal first with the draft agreements on assistance and liability, and defer the debate on general principles until it had completed its consideration of the two drafts.

Mr. CALDERON FUIG (Mexico) said that it was clear from the very terms of paragraph 1 of part I, of resolution 1963 (XVIII) that the General Assembly did not consider that the time had come to incorporate the general principles of outer space law in international agreement form. Clearly that time would not come until the two space Powers were in agreement on the subject.

Meanwhile, as was indicated in the next two operative paragraphs, it was a matter of immediate practical interest to all States that draft instruments should be drawn up on the questions of liability and assistance. Those questions could arise at any moment for States other than the two space Powers, and the Committee had been given a clear mandate to deal with them promptly.

Mr. CSIECKI (Poland) supported the proposal for a general debate to precede the discussion of the draft agreements on two specific questions. A general debate on legal principles would shed light on those two questions.

Mr. MARSCHIK (Austria) suggested that the two proposals on procedure might be reconciled by the following formula: the Sub-Committee would, for a certain time, place both the general debate and the discussion of the two draft agreements on its agenda, on the understanding that at each meeting, after the list of speakers in the general debate had been exhausted, the Sub-Committee would immediately take up the other two items.

Mr. ZAV (Czechoslovakia) supported the proposal for a general debate, in the course of which members could deal also with the specific questions of liability and assistance.

Mr. SILOS (Brazil) supported the suggestion of the Austrian representative, pointing out that that procedure had been used successfully in the First Committee of the General Assembly.

The CHAIRMAN suggested that there should be a short recess for consultation.
The meeting was suspended at 4.55 p.m. and resumed at 6.10 p.m.

The CHAIRMAN said that the following suggestion had emerged from the informal discussions held during the recess: during the next two days, priority should be given to the general debate; at the meetings held on those days, any time over from the general debate would be available to speakers wishing to introduce drafts or to make preliminary statements on the other items - assistance and liability. On the following two days the position would be reversed: priority would be given to those two items, but any time not absorbed by them would be made available to members who had been unable to speak in the general debate on the first two days.

During the second week, the Sub-Committee's entire time would be devoted to the discussion of the draft agreements on assistance and liability. He hoped that by the end of the preliminary discussion in the first week the Sub-Committee would be in a position to make arrangements for working groups to consider those two questions.

If there were no objections, he would consider that the Sub-Committee agreed to the proposed organization of work.

It was so agreed.

In reply to a question by Mr. RAE (Canada), the CHAIRMAN said that, if the Sub-Committee so wished, a time-limit could be set for closing the list of speakers in the general debate.

Mr. AMBROSINI (Italy) suggested that no such time-limit should be set, since it was difficult to determine in advance which representatives would wish to speak in the general debate.

The CHAIRMAN said that, if there were no objections, he would consider that the Sub-Committee agreed to that suggestion, on the understanding that the general debate would in no event continue beyond the end of the current week.

It was so agreed.

The meeting rose at 6.30 p.m.

THIRTIETH MEETING

Tuesday, 10 March 1964, at 10.50 a.m.

INTERNATIONAL CO-OPERATION IN THE PEACEFUL USES OF OUTER SPACE: GENERAL DEBATE

Mr. KHLESTOV (Union of Soviet Socialist Republics) said that, thanks to the conclusion of the Moscow Test Ban Treaty, the unanimous adoption by the General Assembly of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (resolution 1962 (XVIII)) and the understanding arrived at by the USSR and the United States regarding the non-launching of objects with nuclear weapons on board, the Sub-Committee was meeting in an atmosphere of reduced international tension. The Sub-Committee, which had been largely responsible for working out the principles in the Declaration, should take advantage of the propitious circumstances and press forward with its work.

The world had embarked upon an age of headlong technological advance. In the past year, the USSR had established new records for manned orbital flight, and the profession of astronaut was no longer an exclusively masculine one. At the same time the USSR had continued its exploration of the upper atmosphere and space with the Kosmos series of unmanned satellites. Another outstanding achievement of the past year had been the successful launching of the manoeuvrable satellite Polyot 1. That was an achievement whose importance could hardly be exaggerated, for without manoeuvrable vehicles it was difficult to envisage the setting up of orbital space stations and all the other complex operations required to send manned spaceships to the planets and bring them back. Finally, the USSR had recently succeeded in launching two satellites - Elektron 1 and 2 - into different orbits with one and the same rocket; their function would be to facilitate the study of radiation at great heights in connexion with the protection of astronauts. Thus the USSR had done much to pave the way for man's next steps into space. The United States, too, had lately achieved substantial successes in that field.

There was now a solid practical basis for the exploration of space; the world was witnessing a constant expansion of space activities, and the launching of various kinds of space vehicle had become an everyday occurrence. It was therefore imperative that international legal norms to regulate outer space activities should be codified and adopted without delay. As many representatives had stressed, space flight must not be allowed to develop in a legal vacuum. Even in the absence of formal legal agreements, States should be guided by the principles of international law and the provisions of the United Nations Charter, and it was no accident that the General Assembly had recognized in resolution 1721 (XVI) that those principles and provisions should be extended to outer space and celestial bodies. Just as international law had been extended to keep pace with the development of sea and air travel, so must man's exploration of space be brought under proper legal control. The USSR had from the beginning of the space age urged a study of such matters; in 1962, Mr. Khrushchev had sent a letter to the late President Kennedy suggesting that the time was ripe for the USSR and the United States to seek a common approach to the problems of the space age, and in June of that year the USSR had placed before the Legal Sub-Committee its "draft declaration of the basic principles governing the activities of States pertaining to the exploration and use of outer space", which had been thoroughly discussed by the Sub-Committee. Those discussions had not been in vain, for they had culminated in the unanimous adoption by the General Assembly of the Declaration of Legal Principles - an international event of the first importance and a major step in the right direction.

With the Declaration adopted, the Sub-Committee had concluded a first and important phase of its work. Crucial though it was, the adoption of the Declaration was only a beginning; the next step, as almost all representatives seemed to agree, was to incorporate the principles of the Declaration in an international agreement or treaty whose provisions would be binding on all parties. The Declaration, itself the fruit of compromise, constituted an

excellent basis on which to begin the elaboration of such a document. There was every reason to hope that in the propitious atmosphere now prevailing, the Sub-Committee would be able to make a successful start on that task and on the others set forth in part I of resolution 1963 (XVIII), at the present session.

The conclusion of a treaty governing the use and exploration of outer space was an urgent necessity indeed, but its provisions must be based on reality if it was to be effective. In drafting such a treaty, therefore, the Sub-Committee must necessarily draw on the experience of those States which had experience of outer space activities. That did not mean, however, that only the States which were directly involved in the exploration and use of outer space should participate in the drafting of the treaty, as some representatives had maintained. The number of States actively engaging in space activities was bound to grow and it could not be a matter of indifference to any State if outer space was allowed to become a further source of international tension rather than a new opportunity for human co-operation.

Mankind had reached a stage where there was no longer any alternative to the peaceful settlement of disputes through negotiation. It was imperative that the use and exploration of outer space should be formally governed by international law, for the alternative was anarchy and rising international tension which could only lead to disaster. What happened in space was of profound concern to the whole of mankind, as was universally recognized by States and by public opinion all over the world. The Inter-Parliamentary Union, for example, had recently recommended the adoption of an international agreement governing the use of outer space. It went without saying that not all space questions were yet ripe for definite legal formulation. Of course, it would be naive to think that it was possible immediately, at the present session of the Sub-Committee, to work out an international agreement governing all aspects of the activities of States in outer space; but it would be no less unfounded and wrong to postpone indefinitely the development of such an agreement. The sooner States

worked out an international agreement on principles for their activities in outer space, the better it would be for the cause of co-operation among them. The Sub-Committee could and should take the first steps towards drafting such a treaty at its present session.

The unanimous adoption of the Declaration showed that there was already a sound basis for such an initiative. There remained certain divergences of views but realistic and patient discussion would surely show the way to a solution.

As far as the agreements on rescue and return of cosmonauts were concerned, the Soviet delegation believed that now, after the adoption of the Declaration, the Sub-Committee should - parallel with the development of an international agreement on the legal principles for the activities of States in outer space - work on the preparation of the texts of those two agreements. The Soviet delegation was ready to participate actively in that work.

Mr. ZAK (Czechoslovakia) observed that the Legal Sub-Committee was meeting in a different atmosphere from that of previous years, owing to the adoption by the General Assembly of resolution 1962 (XVIII), without which no fruitful work would have been possible. Nevertheless, the Declaration of Legal Principles contained in that resolution did not include all the principles which it was desirable and necessary to lay down and some of the principles it did include were formulated in somewhat general terms. As it had stated in the First Committee of the General Assembly, his delegation considered the Declaration of Legal Principles to be a happy compromise.

The Czechoslovak delegation was convinced that while progressing towards a solution of the main problems it would be possible not only to draw up legal principles governing the activities of States in the exploration and use of outer space but to include in the Declaration other principles which would form a basis for a code in connexion with outer space. The task involved was part of a vast complex of codification of international law. In his delegation's view the first binding instrument was the Moscow Treaty imposing a partial ban on nuclear tests, which had been accepted by the great majority of States. That

Treaty had led to a relaxation of international tension and had eliminated a number of political problems which had hindered agreement between States in connexion with space activities.

Another important and relevant document was General Assembly resolution 1884 (XVIII), relating to the question of general and complete disarmament, which called upon all States to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction. That resolution had been adopted by the General Assembly after the USSR and the United States had agreed to comply with its terms, thus manifesting a desire to contribute to the elimination of the danger of nuclear war in outer space.

Lastly, General Assembly resolution 1963 (XVIII) defined the tasks to be carried out by the Committee on the Peaceful Uses of Outer Space and by its Legal Sub-Committee and its Scientific and Technical Sub-Committee. The tasks before the Sub-Committee included the establishment of binding norms in space law. Many of the difficulties which in the past had prevented the Legal Sub-Committee from achieving positive results had been partly eliminated.

The recommendation in part I, paragraph 1, of General Assembly resolution 1963 (XVIII) was of particular importance. Paragraphs 2 and 3 also laid down specific tasks for the Sub-Committee. During the past two years various proposals had been made before the Sub-Committee, and at the present session further proposals had been made by the United States and by the Union of Soviet Socialist Republics. Other delegations would no doubt have proposals to make and his delegation urged that due attention should be given to the tasks outlined in part I, paragraph 2, of the resolution as a preliminary to drawing up an international agreement in accordance with paragraph 1.

The Czechoslovak delegation would do its utmost to make a useful contribution to the work of the session.

Mr. PARTLI (Hungary) observed that one of the difficulties of drawing up an international agreement on the legal principles governing the exploration and use of outer space was that it involved the solution of problems concerning which the natural sciences had so far been unable to provide appropriate solutions.

General Assembly resolution 1962 (XVIII) endorsed the principle that the exploration and use of outer space must be carried on in accordance with international law. The main principles having already been adopted by the General Assembly, the Legal Sub-Committee should concentrate its attention on the next step. The need for detailed regulations was emphasized in part I, paragraphs 1 and 2, of General Assembly resolution 1963 (XVIII). The General Assembly's decision that the rules of international law should extend to outer space should be regarded only as a first step.

The exploration of outer space was a new area of human activity, which called for regulation and the adoption of legal principles. In that connexion, his delegation considered that the following points should be borne in mind: firstly, the doctrine of the free use of outer space; secondly, the principle of the security of States; thirdly, equality of rights in connexion with space activities. The Committee on the Peaceful Uses of Outer Space had expressed concern about the possible results of space experiments and had urged that the peaceful exploration of outer space should not be hindered in any way. The principle of the free exploration of space was linked with that of the security of States. That apparent contradiction could only be settled by negotiation and not by means of unilateral acts based on the arbitrary interpretation of freedom of sovereignty. International co-operation would be theoretically more desirable and more effective in practice. The phrase "freedom of space" could not be interpreted as a sanction for espionage activities in outer space. Such espionage would be opposed to international law, which the General Assembly had declared to be applicable to outer space. His delegation considered that that view was implied in General Assembly resolution 1962 (XVIII).

He reiterated his delegation's conviction that the basic legal principles governing activities in outer space should be laid down in an international agreement having binding force.

DRAFT INTERNATIONAL AGREEMENT ON ASSISTANCE TO AND RETURN OF ASTRONAUTS AND SPACE VEHICLES (A/AC.105/C.2/L.9).

Mr. MEEKER (United States of America) drew attention to the United States delegation's draft international agreement (A/AC.105/C.2/L.9). An agreement of such a character could help to foster international co-operation in the peaceful uses of outer space by the development of agreed standards and procedures for dealing with every kind of eventuality. His delegation felt that there was general humanitarian concern with regard to assistance to and return of astronauts who landed in places far from where their landing had been planned. Probably all Members of the United Nations would agree that one of the first standards to be considered should be one establishing a duty of States to lend all possible assistance to astronauts in need of assistance.

Secondly, the draft agreement was designed to facilitate the return of space vehicles or parts of space vehicles. There was a shared scientific interest in the return of such objects. Scientists might be able, from the examination of the returned vehicles or parts of vehicles, to learn more about space science and engineering. If a project had somehow miscarried, an examination of the vehicle or parts of it might provide clues with regard to what had gone wrong.

He reviewed the various articles of the draft agreement and drew attention to particular points. The opening sentence of article 2, paragraph 1, was designed to make it quite clear that the primary responsibility in the situation referred to rested with the State of registry or international organization responsible for launching. If that authority wished to deal with the situation unaided, there would be no obligation on other contracting Parties to conduct search and rescue operations.

The provision embodied in article 2, paragraph 2, was based on article 25 of the Chicago Convention on Civil Aviation. Article 3, paragraph 2, was based on the last sentence of paragraph 7 of the Declaration of General Principles set forth in General Assembly resolution 1962 (XVIII). Article 3 of the United States text phrased the obligation a little more broadly with a view to including

international organizations engaged in activities in outer space. With reference to paragraph 2, he pointed out that the obligation to return objects launched into outer space would arise only upon the request being made by the State of registry or the international organization concerned.

Those three articles set forth the substantive obligations which in the view of the United States delegation should be included in an agreement on assistance and return.

The remaining articles were such as were frequently included in international agreements.

The procedure outlined in article 7 as to what States might become parties had been approved by the General Assembly for use in treaties prepared under United Nations auspices.

With regard to article 9, he observed that, unlike many other treaties, the draft agreement did not specify that there must be a substantial number of ratifications before it could enter into force. The United States considered that the agreement might come into force as soon as any two countries were prepared to adhere to it.

His delegation had submitted the draft agreement to provide ideas concerning the elements which might properly be included in an agreement on the subject of assistance and return. It would listen with interest to the comments and suggestions of other delegations.

The meeting rose at 12.35 p.m.

THIRTY-FIRST MEETING

Wednesday, 11 March 1964, at 10.50 a.m.

INTERNATIONAL CO-OPERATION IN THE PEACEFUL USES OF OUTER SPACE. GENERAL DEBATE
(continued)

Mr. OSIECKI (Poland) agreed with previous speakers that the unanimous adoption by the General Assembly of the Declaration of Legal Principles (resolution 1962 (XVIII)) represented an indisputable success for the United Nations, provided it was regarded as no more than a first step towards drawing up the law of outer space. His delegation had worked hard to resolve the divergences of views which had stood in the way of agreement and was happy that an acceptable compromise had been arrived at.

Logic was of prime importance in the development of law in any field, including that of outer space; the method most appropriate to such development was deductive - to proceed from clear and unambiguous general principles to the codification of detailed rules. Experience had shown that legal instruments arrived at in such a manner had the merit of durability. Of course, circumstances sometimes made it necessary to abandon theoretical procedures in order to meet more urgent requirements; such was the case with regard to the question of international agreements on liability for damage and assistance to astronauts. The Sub-Committee was discussing those questions before arriving at a sufficiently precise definition of the principal norms of outer space law, as a result of which it had immediately encountered the first difficulty: the principle of universality, which must certainly be recognized as applicable.

In discussing the Declaration of Legal Principles, delegations had repeatedly pointed out that it was far from complete, for it failed to take into account certain principles, such as the need to prohibit war propaganda. There was now a double task facing the Sub-Committee: to improve and add to the principles in the Declaration, and to cast them in a more effective form. His delegation was far from questioning the Declaration's importance and it welcomed the statements of the USSR and United States Governments on the binding nature of that document. Nevertheless, it would prefer to see the principles in question take the form of a convention covering every aspect of the law of outer space.

The work had been well begun, but that was no reason to stop half-way. In the interests of more rapid progress, therefore, and if there was no other solution, his delegation was ready to discuss simultaneously both the detailed agreements on liability for damage and assistance to astronauts and the drafting of a comprehensive convention. Any progress in the field of outer space was of great importance for the whole of humanity; and the pace of technological development was such that the Sub-Committee must accelerate its efforts in order to create the most propitious conditions for further activities in that field.

Mr. DASHTSEREN (Mongolia) said that the period which had elapsed since the Sub-Committee's last session was marked by both technical and legal achievements. From the outset, Mongolia had strongly supported proposals that outer space activities should be regulated in the interests of all States and it therefore welcomed the General Assembly's unanimous adoption of the Declaration of Legal Principles. His delegation attached particular importance to operative paragraphs 1 and 9; although not itself a launching state, Mongolia would give every assistance to astronauts, the envoys of mankind, should the need arise.

The agreement between the USSR and the United States on the principles which should govern States' activities in outer space was a happy occasion which would doubtless open the way to further progress. That agreement had been preceded by other outstanding events, such as the conclusion of the test-ban treaty and the unanimous adoption of General Assembly resolution 1884 (XVIII) calling on all States to refrain from launching objects carrying nuclear weapons.

firmly resolved to be guided by the principles set out in the Declaration. It was not only the socialist countries which were in favour of international instruments which would bind Governments; the International Parliamentary Union had endorsed the idea in 1963. He accordingly urged the Sub-Committee to start on its task of drafting international instruments even if it was unable to complete that task.

He wished to submit for the Sub-Committee's consideration a number of ideas in respect of the principles on which any international instrument should be based. Firstly, cosmic law must ensure the maintenance of peace; that was indeed the essence of the Sub-Committee's task and had been recognized in the Declaration in resolution 1962 (XVIII), but it could bear repetition. It should accordingly be constantly borne in mind in the discussion of any proposals before the Sub-Committee. The second principle should be the universality of cosmic law. In his view, it would be contrary to the essence of the law governing the activities of States in outer space, as indeed it was in respect of international law generally, to discriminate against a few States. The principles should be acceptable to all States and the obligations arising from them acceptable to, and accepted by, all States. Paragraphs 4 and 9 of General Assembly resolution 1962 (XVIII) indeed postulated universality. Thirdly, the concept of the sovereign equality of States was fundamental to all international law and to the law which was beginning to be established with respect to outer space. While activities in outer space were at present the prerogative of only a few States, all States were likely to be affected by such activities and the time would come when many, if not all, States would be able to participate in them.

Mr. OGISO (Japan) expressed his delegation's satisfaction at the adoption of the Declaration of Legal Principles (General Assembly resolution 1962 (XVIII)), which constituted a major step towards establishing law and order in space, and paid a particular tribute to the United States and the USSR, whose continued mutual co-operation was indispensable to further success. The Declaration had been clearly understood to be neither final nor complete, and his delegation had voted for it with two specific reservations.

Firstly, his delegation considered that the Declaration should be expanded as early as possible to include the principle that the utilization of space should be restricted to peaceful purposes. Most delegations presumably favoured that principle in substance, but preferred to wait until the international climate had improved to the point where its application would be a matter of mutual trust; the recent trend of international events indicated, however, that the time was not far off when all Members would be able to agree on the adoption of that and other outstanding legal principles governing activities in outer space.

The second reservation concerned the need for space Powers to register and notify every launching. There was nothing in international law at present obliging States to return space vehicles which might have landed in their territory, and if such an obligation was to be established it was essential to maintain the balance of interests between launching and non-launching States. Two conditions were conceivable to attain such a balance of interests: firstly, every launching State must assume liability for damage caused by objects launched into outer

activities in outer space which would be in accordance with the United Nations Charter and would contribute to the consolidation of friendly relations between States. To that end an agreement on legal principles should be concluded and should come into force in the near future. Such an agreement would strengthen mutual understanding and confidence between States and lay the foundation for international co-operation in the exploration and peaceful use of outer space.

Turning to the United States draft international agreement on assistance to and return of astronauts and objects launched into outer space (A/AC.105/C.2/L.9), he said that article 7 was not acceptable to his delegation because it discriminated against a number of States. Such an agreement, which was universal and humanitarian in character, should be open to signature by all States. Article 7 was a manifestation of the cold war; it would not help to reinforce confidence and co-operation between States and it was inconsistent with the spirit and letter of the Charter. It was the expression of an outdated conception of the relations between States.

Article 4, too, was unacceptable to his delegation. The position of the socialist countries with regard to the jurisdiction of the International Court of Justice was well known.

His delegation also had serious doubts with regard to article 2 and article 3. Thorough study should be given to the question of whether States and international organizations should be placed on an equal footing.

His delegation supported the revised

With regard to article 1, he observed that presumably the notification of the Secretary-General was intended for situations in which the State of registry or responsible international organization was not known or in which some other contracting party did not wish to deal direct with the State of registry. His delegation considered that it would be preferable for the Secretary-General to be informed in all cases, in addition to the State of registry or responsible international organization. That would reduce the number of options, thereby limiting the risk of confusion, and at the same time ensure that the United Nations took an immediate interest in the rescue of astronauts or the return of objects launched into outer space that had returned to earth.

With regard to article 4, he urged that there should be a procedure for settling disputes over, for example, expenses incurred in finding or returning objects launched into outer space or parts thereof that had returned to earth. There might also be disputes regarding the ownership of objects that had returned to earth. Perhaps some arbitration procedure similar to that proposed in the United States draft convention concerning liability (A/AC.105/C.2/L.8) could be worked out, or if that were considered unnecessary the article should at least provide for some less formal means of settling disputes prior to reference to the International Court of Justice.

Mr. LEEKER (United States of America) submitted his delegation's draft convention concerning liability for damage caused by the launching of objects into outer space (A/AC.105/C.2/L.8), the aim of which was to provide agreed standards and procedures for the presentation of claims that might arise from damage caused by outer space activities. Thus the international community would have some

Article II set forth the basic principles of liability which the United States thought appropriate. First, the State of registry would be liable and undertake to pay compensation for damage caused by the launching of an object into outer space. Second, liability would arise from damage on the earth, in air space, and in outer space caused by such launchings. Third, liability would arise equally from damage caused by apparatus or equipment used in the course of launchings; the United States text made a State of registry liable for attempted as well as for successful launching.

Article III, paragraph 1, stated the fundamental principle that liability should be absolute; that was that an injured party would not have to prove negligence on the part of launching authorities. Two exceptions to that principle were spelled out in that article. First, paragraph 1 of that article was designed to cover the possibility of gross negligence; for example, although a State of registry had given warning of its intention of launching an object into space, during the limited period while the object and the booster were in transit an aircraft might be flown directly into the path of the space object. That could be regarded as negligence sufficiently serious to lead to the conclusion that the State of registry should not be fully liable or perhaps not liable at all, for any damage caused. A further exception to the principle of absolute liability was referred to in paragraph 2, dealing with collision of space objects. Such collisions were extremely unlikely, but if one should occur, it would be meaningless to say that each State of registry should be absolutely liable for damage caused to the other's space object.

Article IV set forth the procedure for

THIRTY-SECOND MEETING

Thursday, 12 March 1964 at 3.15 p.m.

DRAFT INTERNATIONAL AGREEMENTS ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE AND ON ASSISTANCE TO AND RETURN OF ASTRONAUTS AND SPACE VEHICLES (A/AC.105/C.2/L.2/Rev.1, A/AC.105/C.2/L.7, A/AC.105/C.2/L.8, A/AC.105/C.2/L.9
(Continued)

Mr. DELEAU (France), speaking on a point of order, expressed concern at the delay in the appearance of the French versions of the Sub-Committee's documents. At a later stage of the proceedings, delays of that kind might lead to the adjournment of meetings in order to enable representatives to study the documents in all the working languages.

Mr. SCHACHTER (Secretary to the Sub-Committee) expressed regret at the delay and said that he would take up the matter with the competent authorities.

Mr. KHLESTOV

proposal provided that if the life of astronauts was in danger, assistance should be given to them before the space device itself was attended to. Another consequence of the same humanitarian conception was the provision in article 7 to the effect that the assistance to be furnished by one contracting State to another astronauts must in no way differ from the assistance furnished to its own.

Another guiding principle of the Soviet draft was the emphasis on the respect due to the principles of contemporary international law set forth in the United Nations Charter, and in particular to the principle of the sovereignty of States. Thus, while it was the duty of a State on whose territory a spaceship made a forced landing to lend every possible assistance to its crew, the principle of sovereignty meant that search and rescue operations must primarily be the responsibility of that State. If that State found that, for purposes of such search and assistance, it needed technical information and equipment which it did not possess, it was required to request the assistance of the launching State. That solution combined in a balanced manner the respect due to the principles of humanity and to the sovereignty of the State concerned. Those were the provisions which were new in comparison with the old text. Those provisions developed further the idea of respect for the Sovereignty of States.

Difficulties would arise in the event of its being necessary to search for astronauts on the high seas, since the legal régime of the high seas was very different from that of the territory of States. Article 2 of the 1958 Convention on the High Seas specified that the high seas were open to all nations. Accordingly, article 4 of the Soviet Union draft, dealing with

difference, because the principle itself had been laid down by the General Assembly in operative paragraphs 7 and 9 of resolution 1962 (XVIII), which appeared to say almost everything that was needed on the matter. In resolution 1963 (XVII), however, the General Assembly had expressly requested the Committee to arrange for the prompt preparation of a draft agreement on the subject of assistance and return. It was a matter of putting into international agreement form one of the legal principles stated in the Declaration. Many decisions would have to be taken both on questions of principle and on matters of detail. It was, in the first place, essential to clarify the concept of the "State of registry" which the Declaration of Principles employed without either definition or context. Another matter that required clarification was the manner in which the duty of assistance and return was to be organized in the case of astronauts who made an emergency alighting on the high seas. Moreover, the relative role of the State of registry and what might be called the State of location would have to be more precisely determined.

Those and similar questions were answered in greater or lesser degree by both the Soviet Union and the United States proposals. As the United States proposal, being the later document, had had the full advantage of the discussions that had led to the adoption of resolutions 1962 (XVIII) and 1963 (XVIII), it might perhaps be the more appropriate text for the Sub-Committee to work upon, although it seemed to require both elaboration and clarification in some respects. In particular, a provision was needed, along the lines proposed by the Soviet Union, for the reimbursement by the State of registry of the expenses incurred in the return of a space object. It was also necessary to include provisions covering compensation for damage caused in

inclined to favour a provision in the convention itself specifying clearly the basis on which compensation would be paid in preference to leaving that matter to be determined by national law, except in so far as the damage was suffered by a national of the launching State.

With regard to the provision that gross negligence on the part of the claimant could diminish or expunge the obligation to pay compensation, his delegation felt that the term "gross negligence" was capable of being misconstrued and that it should be replaced by the words "wilful and reckless conduct".

Article 9, which embodied the concept of limitation of liability, raised two main problems: whether the State of registry should be permitted to have its absolute liability limited and, if so, what should be the limit of that liability. His delegation looked forward to hearing the views of other delegations on both those difficult questions before considering them further.

Mr. LITVINE (Belgium) said that the document submitted by his delegation (A/AC.105/C.2/L.7) was merely a working paper on the subject of liability. The Sub-Committee should not lose sight of the work which had been done on the subject by international and national organizations, such as the International Law Association, the Inter-American Bar Association, the Davies Memorial Institute of International Studies, the International Institute of Space Law (Dr. Hersczeg, Mr. Howford, Professor Korovin, Dr. E

non-governmental entities and international organizations: it was difficult to see which body would be legally responsible in any specific case; second, the USSR draft provided that in the event of astronauts making an emergency landing, the State in which they landed should employ every means at its disposal, including electronic and optical means of communication and rescue facilities; he wondered why there was no equivalent provision in the United States draft; third, the United States draft lacked another provision which was to be found in the USSR draft, namely, that the assistance to be furnished by one contracting State to another should in no way differ from the assistance which could be furnished to its own astronauts - article 2 of the United States draft merely specified that a State should take all possible steps to assist or rescue such personnel, without specifying the nature or extent of those steps; fourth, there was no clear agreement about notification by the launching State. Both drafts provided that in the case of accident or emergency landing of astronauts, the launching State should be notified, but the USSR draft made the return of the spacecraft dependent on three conditions: it should have identification marks; the launching State should have officially announced the launching; and only craft which had been launched for peaceful purposes should be returned. The USSR draft made no mention of the return of vehicles carrying devices for the collection of intelligence information, which was understandable. The United States draft, on the other hand, provided for the return of all vehicles unconditionally. He endorsed the comments made by the Canadian representative regarding article 2 of the United States draft.

There were a number of other points which might give rise to difficulties. A non

launching site was to be recognized as an international facility if the United Nations Committee on the Peaceful Uses of Outer Space so recommended; that it would be the responsibility of the country in which it was located, that the host Government was to make arrangements with user nations for the provision through voluntary agreement of funds or equipment or both, that the operating costs were to be apportioned among the users on an equitable basis, and that the host State would be responsible for the management and operation of the range; but no specific provisions had been adopted. In the event of a programme sponsored by the United Nations, similar difficulties with regard to notification by the host country and return to the host country might arise, particularly when the State of registry and the host country were not the same. As there was every probability that such programmes would be launched in the future, those points should be cleared up before they gave rise to difficulties.

Mr. CAMPORA (Argentina) said that the Sub-Committee now had before it three main legal questions: the consideration of the possibility of incorporating the principles of the Declaration contained in General Assembly resolution 1963 (XVIII) in an agreement, and the drafting of agreements on liability and assistance. It was clear from the wording of resolution 1963 (XVIII), part I, paragraph 2, that the General Assembly wished to give priority to the draft agreements on liability and assistance.

He wanted, however, to take the opportunity of commenting briefly on the question of an international agreement incorporating the principles of the Declaration. While the Declaration was an important step forward, the text did not cover all the legal problems which arose in connexion with outer

INTERNATIONAL CO-OPERATION IN THE PEACEFUL USES OF OUTER SPACE: GENERAL DEBATE
(continued)

Mr. AMBROSINI (Italy) said that the statement he had made at the opening meeting appeared to have been misinterpreted by some delegations. When he had said that a discussion of general principles might prove time-consuming, he had not meant that it would be a waste of time. On the contrary, general legal principles, which were a guiding light for all jurists, were worthy of the utmost respect.

The adoption of the Declaration of Legal Principles (General Assembly resolution 1962 (XVIII)) had been a historic act in the development of the law of outer space. It laid down three fundamental principles: firstly, that outer space should be a res communis accessible to all; secondly, that outer space and celestial bodies should not be subject to national appropriation; thirdly, that the exploration and use of outer space should be carried on in accordance with international law including the Charter of the United Nations. All the legal problems arising in connexion with outer space could be solved by applying those three principles.

The Declaration was not, however, entirely satisfactory. It lacked the legal force of an international instrument and was weaker than the resolution adopted by the Sub-Committee in 1961, which had affirmed that all international law should apply to outer space. As the Belgian representative had pointed out, however, much work had been done in the

The Sub-Committee's second task was to consider incorporating in international agreement form legal principles governing the activities of States in the exploration and use of outer space. In the view of his delegation, that was only a special aspect of the first task he had already mentioned. Great efforts had been put into the preparation of the Declaration of Legal Principles, but no one could deny that it was limited in scope. His delegation had pointed out, at the 1342nd meeting of the First Committee of the General Assembly, that the Declaration was inadequate and had expressed the hope that a better and more complete set of principles could be adopted in the near future. The Declaration was only one step on the long road to the formulation of the law of outer space. There was room for considerable improvement, both in form and substance. The form decided upon by the General Assembly was an international agreement; as to substance, it was the Sub-Committee's duty to define, expand and complete the contents of the present Declaration.

Although the Sub-Committee had been able to adopt certain basic principles, it had a long way to go before establishing a system of law covering activities in outer space. That system must be based on the common interest of mankind and not on any selfish national interest. It must also be based on fruitful co-operation and must fit into the United Nations framework. Finally, it must be firmly based on the principles of peace, justice and equality. If the law of outer space was not to lag behind developments, the Declaration of Legal Principles must be improved and included in an international agreement.

Thirdly, the Sub-Committee had been asked to prepare agreements on assistance and liability, for which drafts had already

A glance at the questions which would arise showed the value of the late Mr. Jacques Patey's proposal that a list of the legal problems which arose in connexion with the exploration and peaceful use of outer space should be drawn up.

Mr. HAKIM (Lebanon), speaking of the Sub-Committee's programme of work, recalled that at the eighteenth session of the General Assembly, his delegation had expressed satisfaction in the First Committee at the progress made by the United Nations in the promotion of international co-operation in outer space. In the legal field, the outstanding event had been the adoption by the General Assembly of the Declaration of Legal Principles in resolution 1962 (XVIII), which was an important step forward.

In the debate in the General Assembly, however, his delegation had drawn attention to a serious shortcoming of the Declaration, namely, the absence of a general principle restricting the use of outer space to peaceful purposes. His delegation deplored the fact that the Committee on the Peaceful Uses of Outer Space had not seen fit to recommend such a principle to the General Assembly. The first principle, however, namely that the exploration and use of outer space should be carried on for the benefit of mankind, could not be conceived except in the context of the promotion of peaceful activities and, therefore, of the prohibition of military activities in outer space. Accordingly, his delegation would continue to press for the formulation of a general legal principle to that effect.

It was clear from the foregoing that his delegation did not consider the Declaration entirely satisfactory; it needed to be completed and improved.

THIRTY-THIRD MEETING

Friday, 13 March 1964, at 11 a.m.

DRAFT INTERNATIONAL AGREEMENTS ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE AND ON ASSISTANCE TO AND RETURN OF ASTRONAUTS AND SPACE VEHICLES (A/AC.105/C.2/L.2/Rev.1, A/AC.105/C.2/L.7, A/AC.105/C.2/L.8, A/AC.105/C.2/L.9)
(continued)

Miss GUTTERIDGE (United Kingdom) observed that the two draft agreements on assistance and return (A/AC.105/C.2/L.2/Rev.1 and A/AC.105/C.2/L.9) had a number of features in common. In certain respects the differences were only differences of wording and arrangement; after discussion in the Working Group one or the other might be preferred, or it might prove possible to combine two similar provisions. She would, not, however, go into those detailed drafting points for the time being.

The intention expressed in the preambles of both drafts was evidently the same, but her delegation felt that there should be a reference - as there was in the United States

search by several contracting Parties might be the most appropriate method unless the State of registry wished to conduct the search alone. In that connexion her delegation associated itself with the reservation that had been expressed regarding the reference to Antarctica.

Her delegation preferred the language used in article 3 of the United States draft to that of article 9 of the USSR draft, since it reflected more closely the language used in the last sentence of General Assembly resolution 1962 (XVIII).

Article 10 of the USSR draft had no counterpart in the United States draft. Her delegation felt that it would be useful to include a provision under which the expenses of returning to the State of registry objects launched into outer space, or parts thereof, would be reimbursed, but it did not consider that such reimbursement would be equally appropriate in the case of expenses arising from the carrying out of the humanitarian obligations of the agreement.

Her delegation would like a provision to be included for the settlement of any disputes arising from the interpretation or application of the agreement. While not, of course, ruling out recourse to the International Court of Justice in the last resort, it considered that it would be preferable for the contracting parties first to seek settlement of such disputes by other peaceful means of their own choice. It therefore felt that article 4 of the United States draft might be reformulated.

Mr. KELLBERG (Sweden), referring to the United States draft agreement, (A/AC.105/C.2/L.9), said that his delegation felt there should be a clause covering the question of expenses, particularly in the case of rescue operations undertaken by private bodies or involving loss of life among the rescuers. His delegation entirely agreed that expenses for the rescue of spacecraft crews should not have to be reimbursed, though in some instances it might be difficult to draw the line between costs for rescuing the crew and for salvaging the craft. The Swedish delegation agreed with the Australian delegation on the question of attachment of craft as security for costs.

With regard to the problem of prohibited areas, every State must have the right to refuse representatives of a foreign State entry to areas which were of military importance or otherwise vital to the security of the State. Moreover, it should be at the discretion of the State on whose territory the object had landed to lay down conditions in each case for the admission of another country's rescue staff.

With regard to article 4, Sweden was and always had been a staunch supporter of the judicial settlement of legal disputes, through arbitration or through the International Court of Justice, and was in favour of the article, perhaps with some additions. Nevertheless, recognizing that some delegations might have difficulty in accepting the article as it stood, his delegation would be prepared to consider a re-wording, possibly on the lines of article 11 of the Antarctica Treaty. There might perhaps be an optional protocol regarding compulsory settlement of disputes.

