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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Sixth Session

SUMMARY RECORD OF THE SEVENTY-FIFTH (OPENING) MEETING

held at the Palais des Nations, Geneva,
on Monday, 19 June 1967, at 3.15 p.m.

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and
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PRESENT:

<u>Chairman:</u>	Mr. WIZNER	(Poland)
<u>Members:</u>	Mr. COCCA	Argentina
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	Mr. ZEMANEK	Austria
	Mr. BAL	Belgium
	Mr. SOUZA e SILVA	Brazil
	Mr. ANGUELOV	Bulgaria
	Mr. PICK	Canada
	Mr. RIHA	Czechoslovakia
	Mr. RENOARD	France
	Mr. HARASZTI	Hungary
	Mr. KRISHNA RAO	India
	Mr. AZIMI	Iran
	Mr. AMBROSINI	Italy
	Mr. OTSUKI	Japan
	Mr. CHAMMAS	Lebanon
	Mr. DAMDINDORJ	Mongolia
	Mr. BEREZOWSKI	Poland
	Mr. COGEANU	Romania
	Mr. PIRADOV	Union of Soviet Socialist Republics
	Mr. OSMAN	United Arab Republic
	Miss GUTTERIDGE	United Kingdom of Great Britain and Northern Ireland
	Mr. REIS	United States of America
	Mr. LINTON	Sweden

Representatives of specialized agencies:

Mr. MILDE	International Civil Aviation Organization
Mr. DAVID	International Telecommunication Union

Secretariat:

Mr. WATTLES	Deputy Director, Codification Division
Miss SMEN	Secretary of the Sub-Committee

STATEMENT BY THE CHAIRMAN and
ORGANIZATION OF WORK

The CHAIRMAN opened the first meeting of the sixth session by welcoming the members of the Sub-Committee. He said that he hoped the work would proceed in the same spirit of co-operation and understanding as had prevailed at the other sessions and that he regarded his election as a tribute to his country and to his predecessor.

By its very nature, outer space was a logical arena for co-operation in spite of the many technical and military problems it raised. International law had always had as its primary object the reconciliation of divergent and often conflicting interests. At the same time, human ingenuity had created forces whose control was indispensable and urgently necessary and the Sub-Committee would have to attempt to devise specific rules applicable to the law of outer space. It was encouraging to see that the Sub-Committee's deliberations had led to the adoption by the General Assembly of resolution 2222 (XXI) to which was annexed the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, a Treaty that had so far been signed by more than 30 countries.

The growing scope of activities in outer space and the remarkable achievements in the fields of communications, meteorology, navigation and medical and biological research - to name but a few - made it urgent to codify questions of liability for damage caused by the launching of objects into outer space. It was therefore only natural that a draft agreement on liability for damage should be an item on the agenda. Again, the tragic death of several astronauts had shown that space exploration was not without its dangers and that there was need for all the assistance that the international community could provide. It was therefore logical that there should also be an agenda item on the drafting of an agreement on assistance to and return of astronauts and space vehicles.

The Legal Sub-Committee had also been asked in resolution 2222 (XXI) to consider questions relative to the definition of outer space and the utilization of outer space and celestial bodies, including the various implications of space communications. On those matters it would be able to benefit from the advice of the Scientific and Technical Sub-Committee.

The provisional agenda, which reflected the tasks assigned to the Sub-Committee under General Assembly resolution 2222 (XXI), did not lay down any priorities for the consideration of the various items. The Sub-Committee would therefore have to take a decision on that point, and on the possible establishment of working groups to consider the two draft agreements proposed. It would also have to be borne in mind that, in view of the calendar of conferences at the Geneva Office, the Sub-Committee would only be able to hold one meeting a day.

Inasmuch as the provisional agenda had been determined by the General Assembly and by the Committee on the Peaceful Uses of Outer Space, he suggested that the Sub-Committee should adopt it.

It was so decided.

Mr. WATTLES (Secretariat) said that he wished to convey the regrets of the Legal Counsel, who had to remain at Headquarters, at not being able to attend the meetings of the Sub-Committee until the latter part of the session.

The CHAIRMAN suggested that the Sub-Committee should now decide on the order of priority of the various agenda items and on the question of establishing working groups.

Mr. REIS (United States of America) pointed out that the work of the Sub-Committee's fifth session had ended in a magnificent achievement, namely the signature in early 1967 of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. That rapid success showed that whenever the Sub-Committee lent its best efforts to serving the general welfare it was possible to find common ground for agreement.

The Treaty signed on 27 January 1967 was a milestone in the progressive development of international law. It should reduce the danger of conflict and promote world-wide co-operation in the newest area of human activity. The record also showed that the development of international law was possible even in the midst of serious divergencies of international policy. The task of the present session should be to go forward by building upon the principles laid down in the Treaty.

One question in particular deserved thorough consideration - liability for damage caused by the launching of objects into outer space. As the number of space launchings increased, accidents could unfortunately be expected to occur. The new Treaty recognized that parties injured as a result of launchings should have appropriate remedies.

It would be recalled that at the fifth session of the Sub-Committee in July 1966 a number of delegations had emphasized that the need to draft two agreements, dealing respectively with liability and assistance to astronauts, should not be lost sight of. Indeed, the representative of India had suggested that the Treaty on Outer Space should enter into force at the same time as the detailed agreements on liability and assistance to astronauts, and although that link had not in the end been provided, the members of the Sub-Committee generally recognized the merits of that emphasis. Moreover the General Assembly, in resolution 2222 (XXI), had requested that the Committee on the Peaceful Uses of Outer Space should "continue its work on the elaboration of an agreement on liability ... and an agreement on assistance to and return of astronauts".

At the last session of the full Committee, the delegations of India, Lebanon, Belgium, France and the United Kingdom had expressed the view that progress in working out an agreement on liability had been too slow, and the representative of the USSR, after stating that the question of assistance to and return of astronauts should be one of the first to be considered, had immediately gone on to say that work should also be continued on the elaboration of an agreement on liability. Lastly, the provisional agenda for the present session of the Legal Sub-Committee (A/AC.105/C.2/L.17 and Corr.1) mentioned the question of liability first, and that was in keeping with the priorities suggested by resolution 2222 (XXI).

At the first session of the Legal Sub-Committee the United States delegation had put forward a number of basic principles which it believed should be included in an agreement on liability for space vehicle accidents (A/5181, annex III, section D), and in 1963 and 1964 Belgium and Hungary had also introduced proposals on the same question. At an appropriate time the United States delegation would submit a new draft for consideration by the Sub-Committee.

The United States delegation was also prepared - in the words of resolution 2222 (XXI) - "to begin at the same time the study of questions relative to the definition of outer space and the utilization of outer space and celestial bodies". It felt that, while much technical information was required for consideration of the question of definition, legal considerations predominated in the study of that topic. On the other hand, in the matter of the utilization of outer space, technical considerations would be of paramount importance at the outset.

He noted that the French delegation also felt it necessary to stress the distinction between item 4(a) (The definition of outer space) and (b) (The utilization of outer space and celestial bodies, including the various implications of space communications) of the agenda. At the forty-eighth meeting of the Committee the representative of France had said that discussion on the question of definition should begin in the Legal Sub-Committee and continue in the Scientific and Technical Sub-Committee, while on the question of utilization the Legal Sub-Committee should simply open the discussion with a general debate designed to state the problem clearly without attempting to seek formal conclusions.

In view of the heavy workload before the Sub-Committee the United States delegation was sorry to learn that the Sub-Committee could hold only one meeting a day. It asked the Chairman and the Secretary of the Sub-Committee to ascertain what possibilities there were for more frequent meetings. That was all the more necessary as some delegations, which had been guided by an estimate made by the Chairman of the Outer Space Committee, would only be able to remain in Geneva for three weeks.

Mr. WATTLES (Secretariat) recalled that, when the Sub-Committee had decided to hold its session at Geneva, it had been informed of the circumstances under which it would have to work. The matter would be raised with the Geneva Office, but he doubted whether anything could be done. In any event, if the Sub-Committee did decide to meet more than once a day, it would have to resign itself to doing so without interpreters and outside the Palais des Nations.

The CHAIRMAN promised that he too would endeavour to assist the Sub-Committee. He wished to draw the United States representative's attention to the fact that the Secretary-General had stated in his note to the members of the Sub-Committee that the meetings would last from three to four weeks.

Mr. PIRADOV (Union of Soviet Socialist Republics), referring to the question of the order in which the agenda items should be dealt with, said that, in the opinion of his delegation, the item concerning assistance to astronauts should be given priority. The accidents that had recently occurred in the United States and the USSR gave added urgency to that item. Nevertheless, his delegation did not deny the importance of the problem of liability for damage caused by objects launched into outer space.

Mr. RENOUARD (France) said that his delegation saw no difficulty in giving priority to either item 2 (Draft agreement on liability for damages caused by objects launched into outer space) or item 3 (Draft agreement on assistance to and return of astronauts and space vehicles). However, he wished to point out the importance which, in his delegation's view, should be attached to agenda item 4. While it was true that the Legal Sub-Committee could do no more than state the problem and refer it to the Scientific and Technical Sub-Committee, that did not mean that the item should be considered hurriedly. His delegation would therefore like it to be dealt with not towards the end of the session, but half-way through the second week.

Mr. COCCA (Argentina) said that, in order to determine whether item 2 should be considered before item 3 or vice versa, it might be a good idea to consider which of the proposed draft agreements would more quickly secure the widest acceptance. The Sub-Committee would then have to approach the problem in its entirety. It had a clear duty to do so, for man's penetration of outer space must take place under the rule of law. On the other hand, in view of the very many technical problems involved in the consideration of agenda item 4, there was no doubt that the various competent organs would often have to be consulted. In particular, the International Telecommunication Union would have to provide information on the frequencies used by the numerous artificial satellites and indicate the stage at which saturation might occur. Again, the United Nations Educational, Scientific and Cultural Organization would have a say in any question concerning the cultural aspects of the utilization of outer space.

The legal work done by the United Nations in the field of outer space had greatly helped to bridge the gap between law and technology in that field. What was more, the January 1967 treaty had an exemplary character in that it actually anticipated technical or political events, and that was probably the first time such a thing had happened. However, one could not but feel somewhat uneasy at the extent of the responsibilities that had thus been assumed. The Legal Sub-Committee must in its future work never allow itself to forget that the principles it had already laid down entailed the following consequences.

First, the international community from now on possessed a written law of outer space which, for reasons of time and procedure, was not yet positive law valid for all legal systems, but was nonetheless valid for every inhabitant of the globe considered independently of such systems.

Secondly, the international community had recognized the existence of a new subject of international law, namely, mankind itself, and had created a jus humanitatis.

Thirdly, the international community had, in the person of the astronauts appointed envoys of mankind in outer space.

Fourthly, the international community had endowed that new subject of international law - mankind - with the vastest common property (res communis humanitatis) which the human mind could at present conceive of, namely, outer space itself, including the Moon and the other celestial bodies.

Those four basic facts and the responsibilities they implied must at no time be lost sight of.

Mr. KRISHNA RAO (India) expressed surprise that the order in which the agenda items should be discussed could give rise to debate. The two draft agreements before the Sub-Committee were of equal importance, and there was no reason why they should not be examined simultaneously by two working groups established for that purpose. He hoped that the United States and Soviet Union representatives would agree to that idea. Until the two draft agreements had been finalized and adopted, articles V, VI and VII of the Treaty on Outer Space, the articles relating to assistance and liability would remain a dead letter.

The Treaty on Outer Space, however encouraging, did not entirely satisfy his delegation, which would have liked it to include provisions guaranteeing the use of outer space for non-military purposes.

Mr. AMBROSINI (Italy) said he was afraid that the Sub-Committee would be unable to complete its agenda, which was complex and clearly over-loaded: it had too little time and its session was taking place at a time of year that was not very favourable. While there was some hope of early results on the question of liability, on which much work had already been done, it would be idle to suppose that the item on questions relating to the definition of outer space and the utilization of outer space and celestial bodies could be examined quickly. They would have to be studied without undue haste and with great care if the decisions that might be reached regarding them were to be of practical benefit to mankind. The definition of outer space was a difficult task, which would require the Sub-Committee to consult the Scientific and Technical Sub-Committee and base itself on practical rather than

theoretical considerations. So far as the question of the utilization of outer space and celestial bodies was concerned, the time had come to consider regulating it in order to obviate risks of friction and mutual interference; the need for action in that field was underlined by the orbiting of communication satellites.

Increasing use would no doubt be made of outer space, and it was already clear that the problem was essentially a practical one. It might even be necessary to consider the creation of a separate body to supervise the implementation of measures adopted to regulate outer space activities. In view of the complexity of those questions, he hoped that the Sub-Committee could look to the Chairman for guidance and enlightenment.

The CHAIRMAN agreed that the Sub-Committee was meeting at a bad time of year; unfortunately, the date chosen had been the only one possible. It would clearly be desirable in future for the necessary arrangements to be made longer in advance, in order that more suitable dates might be chosen.

Mr. RIHA (Czechoslovakia) observed that the two matters referred to in agenda items 2 and 3 were not new to the Sub-Committee, which had dealt with them in the past. There was no doubt that most countries were vitally interested in the solution of the problems to be settled in the two draft agreements. If one of them had to be given priority, it would be preferable, in view of the tragic events which had cost the lives of astronauts of two space powers, if progress could first be made on the draft agreement on assistance (agenda item 3). As to agenda item 4, his delegation was prepared to co-operate fully in the drafting of any new texts which might be considered necessary.

Miss GUTTERIDGE (United Kingdom) said that it would certainly be useful to focus efforts on the items which were most likely to produce positive results. Moreover, that was what the Sub-Committee had done before, when it had set aside all the other matters it had had in hand - namely the two draft agreements on the agenda for the current session - and had concentrated on its consideration of the Treaty on Outer Space.

The draft agreement on assistance had already been discussed at length and therefore it might be possible to devote less time to it.

While all the legal issues involved in the draft agreement on liability had been examined, there was as yet no agreement on a unified text. Therefore most of the

time available should be devoted to that question in the hope that the Sub-Committee could produce a satisfactory and detailed draft which would define and develop the very general provisions in article VI of the Treaty.

By giving priority to the question of liability, she was, of course, not ignoring the importance of the other items on the agenda, but she thought it was unlikely that the Sub-Committee could arrive at a satisfactory definition of the limits of outer space at the present session. The Sub-Committee had to consider for what purpose a definition of outer space was needed. It would have to consider the various definitions which had already been suggested; some of the definitions which her delegation had examined seemed to be based on criteria which required consideration from the scientific point of view, for which the assistance of the Scientific and Technical Sub-Committee would be needed. Agenda item 4 (b), on the utilization of outer space and celestial bodies, was also a scientific and technical issue which, after a preliminary discussion in the Sub-Committee, would probably have to be referred to the Scientific and Technical Sub-Committee.

Mr. OSMAN (United Arab Republic) recalled that the question of priorities had caused problems on several occasions in the past. Accordingly, it would perhaps be advisable to follow the procedure used in 1965 and to suspend the meeting for a few minutes. That would enable delegations to settle the problem by informal consultations.

Mr. PICK (Canada) pointed out that since the Sub-Committee could only have one meeting a day, it was important for its work to go forward as quickly as possible. The best solution might be to take up the draft agreement on assistance to and return of astronauts and space vehicles first, for, in view of the tragic accidents which had occurred recently, that issue seemed more pressing than agenda item 2. Furthermore, it would probably raise less problems than the question of liability which, in Canada for example, was covered by very complex and differing provisions in the two legal systems of the country. However, his delegation had no strong feelings on the matter and it was prepared to agree to a suspension of the meeting.

Mr. OTSUKA (Japan) supported the proposal of the representative of the United Arab Republic. He would therefore postpone the statement which he had been about to make.

Mr. BAL (Belgium) said that his delegation, which had submitted a draft convention on liability some time previously, was particularly interested in the order in which items would be taken up.

There were two possible formulas: either the Sub-Committee could take up the draft agreement on liability first, or it could consider that draft agreement concurrently with the draft agreement on assistance to astronauts and space vehicles. While his delegation was flexible on the matter, it thought that it would be difficult to say in advance exactly how long the discussion on each of the items would last. However, they should both be given adequate attention so that substantial progress could be made in both fields. The fact that both questions were mentioned in the same paragraph of General Assembly resolution 2222 (XXI), which thus showed that the Assembly attached equal importance to them, was, moreover, consistent with practical considerations.

His delegation in no way disputed the importance of the draft agreement on assistance to and return of astronauts and space vehicles, and deplored the tragic accidents which had recently occurred. However, in view of the progress of space technology, the simple probabilities indicated that the risk of accident would inevitably increase. In any case, the question of assistance to astronauts should not be given more importance than that of liability for damage. Moreover, it must be borne in mind that the provisions of the 1967 Treaty were rather vague. It was necessary to define the norms required for separate conventions. In practice, it should also be possible to take account of the wishes of the French delegation.

In conclusion, he hoped that a solution might be found and that his comments would be taken into account during the consultations proposed by the representative of the United Arab Republic.

The meeting was suspended at 4.50 p.m. and resumed at 5.10 p.m.

The CHAIRMAN said that, as a result of the consultations just held, the following arrangement had been arrived at. The next three meetings would be devoted to the draft agreement on assistance (agenda item 3) and the following three meetings to the draft agreement on liability (agenda item 2). The Sub-Committee would then revert to the draft agreement on assistance for three further meetings and thereafter to the draft agreement on liability for three meetings. Two working groups would be established, one for each of the draft agreements. However, the

working groups would begin their work only after agenda items 2 and 3 had been discussed by the plenary Sub-Committee.

When it had concluded its consideration of those items, the Sub-Committee would then hold a general discussion on agenda item 4, for a maximum of three meetings, during which delegations would have to bear in mind the possibility that certain matters would have to be referred to the Scientific and Technical Sub-Committee. Once it had concluded its consideration of agenda item 4, the Sub-Committee would revert to agenda items 2 and 3 alternatively until the end of its session.

He suggested that the Sub-Committee should adopt the arrangement he had outlined which seemed to be acceptable to all.

It was so decided.

The meeting rose at 5.15 p.m.