Security: Secret
Secret: Space Law

Tab 102

18 March 1966

Colonel F. Ned Hand
Office of Special Projects (SAFSP)
El Segundo, California

Dear Ned:

Your proposed presentation has been reviewed with much interest; I consider it to be an excellent piece of work.

You may wish to consider the following items, which resulted from the combined comments of this office and those of Colonel Marshall Sanders:

1. We believe that the date on page 17, line 5, should read 17 April 63 - instead of 13 April 1964.

2. Presumably, the reference to NIMBUS "meteor" on page 17, line 14, should read NIMBUS meteorological satellites.

3. We recommend deletion of the last sentence of page 16. This comment, regarding the intelligence collection potential of artificial satellites, does not appear to be directly pertinent to your main theme, may generate provocative discussion, and seems to detract from the tone of Mr. Meeker's position on observation from outer space - which commences on page 17.

We took the liberty of also clearing your presentation with both OSD/PA and SAFOI. OSD/PA, in turn, obtained clearance from the State Department. Changes indicated on pages 1, 24, 26, 37, 43, 45, 46, and 47 resulted from the combined OSD/PA-State Department review. We understand that you and Mr. Gaither, of State, have already discussed these items.

We appreciate the opportunity to comment on your paper. This very professional effort will be a welcome addition to our file on Space Law.

Sincerely,

PAUL E. WORTHMAN
Colonel, USAF

1. To discuss and understand fully the implications of U. N. activities in the field of space law, one must have a general familiarity with the status of space law as it existed prior to U. N. action. Prior to 4 October 1957 (the date of Russia's first sputnik and the first successful satellite), there was no real need to distinguish between air law and space law. The question of national sovereignty in air law was rather succinctly covered in the Chicago Convention, and I quote: "The contracting states recognize that every state has complete and exclusive sovereignty over the airspace above its territory." Missing from the Chicago Convention was any definition of airspace and not until the technological progress of states brought their activities up ~~into shall we say satellite zone~~ was there any need to worry about a definition ~~of airspace~~.

2. Interestingly enough, the Soviets relying in part upon the Chicago Convention, which incidently they have never signed, asserted the usque ad coelum theory, i.e., sovereignty to an unlimited heighth, in support of their criticism of the meteorological balloons launched by the U. S. in 1956.[1] However,

---

[1] P 688, Crane, Soviet Attitude Toward International Space Law, American Journal of International Law; P 2040, Senate Doc No. 26, 87th Cong, First Sess.

with the success of Sputnik I which violated the sovereignty of every nation over which it flew if the usque ad coelum theory was applicable, the Soviet writers looked for a new theory which would legitimize the flight of a sputnik and at the same time make illegal the so-called space espionage. The evolution of the Soviet thinking on this point is beyond the scope of the present discussion but those who are interested might read Mr. Robert D. Crane's article, "Soviet Attitude Toward International Space Law," in the July 1962 issue of the American Journal of International Law.

3. Perhaps one should not be too critical of the dilemma of the Soviet legal scholars in attempting to adapt legal theory to a dynamically developing space technology fraught with all sorts of very serious political overtones. If you will forgive me for philosophizing, I think this period in which the scholars endeavored to cope with the new problems of the space age is illustrative of the basic principle that a law does not develop in a vacuum. One can theorize and anticipate, but a body of law does not really begin to develop until there are real problems requiring current solution which must be resolved against conflicting desires of individuals and nations and the political fabric of the times.

The U. S. also had some difficulty at this time in adjusting its thinking to the new space age. The presentation of Mr. Loftus Becker, Legal Advisor to the Department of State, before the special Senate Committee on Space and Astronautics on 14 May 1958, illustrates the position of at least our Department of State. Before I quote Mr. Becker, it will perhaps add to the understanding of the quotation to know that Sputnik was launched as part of the activities of the International Geophysical Year.

"b. Implications of the International Geophysical Year

"There is another misconception with respect to the rights of the United States in this sphere that I should like to correct. I have several times seen it stated that we do not have any right to protest or take any action with respect to satellites because of the events relating to the International Geophysical Year. Now, the facts are these:

"The arrangements with respect to the International Geophysical Year were not made on an intergovernmental basis. They were arrangements made between scientific bodies in a private capacity. It is true that certain governments, including the Soviet Union and the United States,

announced in advance that during the International Geophysical Year they intended to place objects in orbit around the earth. And it was also stated in connection with these announcements that the purpose of these satellites would be for scientific investigation. No nation protested these announcements.

"It follows, therefore, that the only conclusion that can be reached with respect to the arrangements regarding the International Geophysical Year is that there is an implied agreement that, for the period of the International Geophysical Year, it is permissible to put into orbit satellites designed for scientific purposes. Once the year is over, rights in this field will have to be determined by whatever agreement may be reached with respect to such objects.

"c. Is There Any Agreed Upper Limit of Sovereignty?

"The next question of international law which I would like to mention is the position of the United States regarding its sovereignty upwards. There are those who have argued that the sovereignty of the United States ends with the outer limits of the atmosphere and that space outside the atmosphere is either free to all or should possibly be conceded to be

within the sovereignty of one or another international organization.

"The United States Government has not recognized any top or upper limit to its sovereignty. This position has been taken entirely aside from article 51 of the United Nations Charter and any limitations that may be inherent in that, such as "armed attack."

"It is true that, in such international agreements as the Chicago Convention of 1944, the parties thereto recognize that each of them 'has complete and exclusive sovereignty of the airspace above its territory.' But it is important to note that there is nowhere in the Chicago Convention of 1944 or other international agreements comparable thereto any definition of what is meant by the term 'airspace.'

"I do not wish to take, nor has the State Department ever officially taken, a definitive position as to how this term 'airspace' should be defined. I think it important to note, however, that one of the suggestions that has been made in this regard is that the airspace should be defined to include that portion of space above the earth in which there is any

atmosphere. I am informed that astronomically the earth's atmosphere extends 10,000 miles above its surface.

"It follows that it would be perfectly rational for us to maintain that under the Chicago Convention the sovereignty of the United States extends 10,000 miles from the surface of the earth, an area which would comprehend the area in which all of the satellites up to this point have entered. At any rate, that type of definition would afford us enough elbowroom for discussion.

"Furthermore, although the United States, in its domestic law as well as agreements such as the Chicago Convention, has plainly asserted its complete and exclusive sovereignty over the airspace above its territory, at no time have we conceded that we have no rights in the higher regions of space. One rationale for this position which seems to me self-sufficient was that the United States had no need to define its position with respect to what rights, if any, it might possess outside the earth's atmosphere until such time as mankind has demonstrated a capability of existing outside the atmosphere.

"Even after such a capability is demonstrated, there will be no imperative requirement in international law that the United States make any claims of sovereignty in order to protect its rights."

"A very apt analogy is afforded by the Antarctic. #. . .#"

. . . . . .

"As in the situation with respect to Antarctica, this should not be interpreted as any concession of any kind whatsoever on the part of the United States that its activities have not given it certain rights in space which, in turn, could be relied upon as the basis of a claim of sovereignty."[2]

4. Such was the state of space law prior to the actions of the U. N. Before going into a detailed chronology of the activities of the U. N. and at the risk of perhaps putting the cart before the horse, I think it important to note the official U. S. position on the legal effect of U. N. general resolutions in space matters. I quote from the statement U. S. Ambassador Stevenson gave on 2 December 1963:

"I should like to say a few words about the character and status which the United States considers the principles

[2] Pp 400 - 40 , Senate Doc No. 26, 87th Cong, First Sess. .

contained in this declaration will have once the draft resolution has been adopted by the General Assembly, as we hope, without dissent. In the view of the United States, the operative paragraphs of the draft resolution contained legal principles which the General Assembly, in adopting the resolution, would declare should guide States in the exploration and use of outer space. We believe these legal principles reflect international law as it is accepted by the Members of the United Nations. The United States, for its part, intends to respect these principles. We hope that the conduct which the resolution commends to nations in the exploration of outer space will become the practice of all nations."[3]

5. As far as I know, the first action taken by the U. N. on the outer space question was G. A. Resolution 1348 (XIII), 13 Dec 1958. It:

"1. Establishes an ad hoc Committee on the Peaceful Uses of Outer Space composed of the representatives of Argentina, Australia, Belgium, Brazil, Canada, Czechoslovakia, France, India, Iran, Italy, Japan, Mexico, Poland, Sweden, the Union of Soviet Socialist Republics, the United Arab Republic, the

[3] P 235, 236, Senate Doc No. 56, 89th Cong, First Sess.

United Kingdom of Great Britain and Northern Ireland and the United States of America, and requests it to report to the General Assembly at its fourteenth session on the following:

"(a) The activities and resources of the United Nations, of its specialized agencies and of other international bodies relating to the peaceful uses of outer space;

"(b) The area of international co-operation and programmes in the peaceful uses of outer space which could appropriately be undertaken under United Nations auspices to the benefit of States irrespective of the state of their economic or scientific development, taking into account the following proposals, inter alia:

"(i) Continuation on a permanent basis of the outer space research now being carried on within the framework of the International Geophysical Year;

"(ii) Organization of the mutual exchange and dissemination of information on outer space research;

"(iii) Co-ordination of national research programmes for the study of outer space, and the rendering of all possible assistance and help towards their realization;

"(c) The future organization arrangements to facilitate international co-operation in this field within the framework of the United Nations;

"(d) The nature of legal problems which may arise in the carrying out of programmes to explore outer space."[4]

6. This ad hoc committee met during the period 6 May to 25 June 1959. Of particular significance was that the committee was boycotted by Czechoslovakia, Poland, and the U. S. S. R. The committee, however, submitted a report dated 25 June 1959 specifically covering each of the tasks assigned by the General Assembly in the establishing resolution. Of particular interest to lawyers was their report on possible legal problems in connection with outer space activities. They listed 6 problems susceptible of priority treatment. These are:

a. Question of freedom of outer space for exploration and use.

b. Liability for injury or damage caused by space vehicles.

c. Allocation of radio frequencies.

d. Avoidance of interference between space vehicles and aircraft.

---

[4] Pp 88-89, Senate Doc No. 18, 88th Cong, First Sess.

e. Identification and registration of space vehicles and coordination of launchings.

f. Re-entry and landing of space vehicles.

They then listed 5 other problems that required consideration. They are:

a. Question of determining where outer space begins.

b. Protection of public health and safety; safeguards against contamination of air from outer space.

c. Questions relating to exploration of celestial bodies.

d. Avoidance of interference among space vehicles.

e. Miscellaneous other questions, such as meteorological activities that might require international measures to insure maximum effectiveness.

7. The next significant action of the U. N. was the establishment of a committee on the peaceful uses of outer space. This was done by G. A. Resolution 1472 (XIV), 12 December 1959. The original committee, composed of 24 countries, i.e., Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia

France, Hungary, India, Iran, Italy, Japan, Lebanon, Mexico, Poland, Romania, Sweden, U. S. S. R., U. A. R., Great Britain, and the U. S. A., was instructed:

"(a) To review, as appropriate, the area of international co-operation, and to study practical and feasible means for giving effect to programmes in the peaceful uses of outer space which could appropriately be undertaken under United Nations auspices, including, inter alia:

"(i) Assistance for the continuation on a permanent basis of the research on outer space carried on within the framework of the International Geophysical Year;

"(ii) Organization of the mutual exchange and dissemination of information on outer space research;

"(iii) Encouragement of national research programmes for the study of outer space, and the rendering of all possible assistance and help towards their realization;

"(b) To study the nature of legal problems which may arise from the exploration of outer space."

---

[5] P161, Senate Doc No. 18, 88th Cong, First Sess.

8. Some difficulty was experienced in persuading Russia to participate in the activities of this committee, and during 1960 the U. S. pursued bilateral discussions with the Soviet Union in an effort to bring about the first session of the committee. Eventually, the committee met on 27 November 1961 and although the U. S. S. R. had threatened to boycott the committee, the U. S. S. R. did in fact participate. A brief report was forwarded to the General Assembly listing the officers elected and the representatives of States who spoke at the meeting.

9. The U. S. position on the use of outer space was included in a draft resolution which the U. S. with the cosponsorship of Australia, Canada, and Italy submitted to the General Assembly on 2 December 1961. This resolution was debated in the Political and Security Committee of the G. A. In the course of the debate the U. S. was able to secure the cosponsorship of all the members of the U. N. Committee on the Peaceful Uses of Outer Space, including the U. S. S. R., and it was adopted unanimously by the General Assembly on 20 December 1961 as G. A. Resolution 1721 (XVI);[6] in some respects we might refer to it as the Magna Carta of Space. It added Chad, Mongolia, Morocco, and Sierra Leone to the Outer Space Committee, and provided in pertinent part:

[6] Pp 40 - 42, Rpt by the Pres to Cong for the Year 1961, "U. S. Participation in the U. N."

"1. Commends to States for their guidance in the exploration and use of outer space the following principles:

"(a) International law, including the United Nations Charter, applies to outer space and celestial bodies;

"(b) Outer space and celestial bodies are free for exploration and use by all States in conformity with international law, and are not subject to national appropriation;

"2. Invites the Committee on the Peaceful Uses of Outer Space to study and report on the legal problems which may arise from the exploration and use of outer space."[7]

This resolution also called upon States to register with the Secretary General the launching of objects into orbit or beyond.

10. After G. A. Resolution 1721, the U. N. Committee on the Peaceful Uses of Outer Space organized and got down to serious business; it divided itself into 2 subcommittees: one technical and the other legal. The Legal Subcommittee was chaired by Dr. Manfred Lachs of Poland. The 2 subcommittees convened at

---

[7] P 226, Senate Doc No. 18, 88th Cong, First Sess.

Geneva on 28 May 1962. The work of the Technical Subcommittee is a separate matter that I will not attempt to cover in this discussion because I believe that we here are primarily concerned in the work of the Legal Subcommittee. For clearer understanding, it should be kept in mind that the Legal Subcommittee has divided its work into 3 general categories: The first is the establishment of general principles governing the use of outer space; the second has been the establishment of rules governing the assistance to astronauts, and the return of astronauts and space objects found outside the territory of the launching state; and the last has been the establishment of rules covering international liability for damages occurring in connection with or as a result of space launches.

11. The U. S. S. R. submitted a draft covering a Declaration of Legal Principles. Some of the more significant points advanced by the Russians in their draft were:

"a. The use of outer space for propagating war, national, or racial hatred, or enmity between nations shall be prohibited.

"b. The implementation of any measures that might in any way hinder the exploration or use of outer space for peaceful purposes by other countries should be permitted only after

prior discussion of and agreement upon such measures between the countries concerned.

"c. The use of artificial satellites for the collection of intelligence information in the territory of foreign states is incompatible with the objectives of mankind in its conquest of outer space.

"d. All activities of any kind pertaining to the exploration and use of outer space should be solely and exclusively by states."

12. The U. S. position on these points might be summarized by saying that the war propaganda, racial hatred, etc., were essentially propaganda and were of such general character as not to be appropriate for an international agreement. The prohibition of dangerous experiments would perhaps be commendable, but the U. S. objected to any rule which would give any other country a right of veto of its space activities. Limiting space activities to States was in the opinion of capitalistic countries generally not quite compatible with our concept of free enterprise and a little too much like foisting communistic concepts of operations upon the new regime of space. [The question of the use of artificial satellites for the collection of intelligence information is of important political significance.] Delete

13. The U. S. position on this subject of observation in and from space was covered by Mr. Leonard C. Meeker, the deputy Legal Advisor and now Legal Advisor, U. S. Department of State, in a talk that he gave at the Institute of Air and Space Law, McGill University, Montreal, Canada, 17 April 1964. Mr. Meeker pointed to G. A. Resolution 1721 wherein it stated that "outer space and celestial bodies are free for exploration and use by all states in conformity with international law and are not subject to national appropriation," and concluded "that observation from space comes within the freedom which the General Assembly has recognized in this statement of principle." Mr. Meeker outlined in some detail the many purposes for which observation of the earth from outer space might be undertaken. He began with the weather satellites, discussed the plans for the Nimbus meteor satellites. He described the plans of the world meteorological organization to prepare a report on arrangements to advance the state of atmosphere science and technology and to expand weather forecasting capability in the light of new space techniques. Mr. Meeker pointed out that observation of the earth may take many forms. Most broadly understood such observation means the acquisition of data about the earth from outer space by many means, whether optical -- by means of photography -- or through the use of other systems of perception

which can give data about the earth and its immediate environment. He emphasized that it was his intention "to give principle attention to optical observation by photographic means." Mr. Meeker stated that satellites carrying photographic and other observation equipment should in the near future be able to detect promptly forest fires and other large scale fires, that observation satellites would be useful in measuring the extent of snow on the ground which would be helpful for the purpose of estimating potential water supplies for irrigation purposes. Similar use of satellite photography would be useful in connection with ice fields, ice bergs, devastation wrought by insects, and would be helpful in the field of earth measurement particularly in the mapping of remote and inaccessible areas. He discussed the use of observation to promote international security. On this point, he stated:

> "Another important potential use of observation in space is the possibility of acquiring information about military preparations, and thus help in maintaining international peace and security. One of the great problems in today's world is the uncertainty generated by the secret development, testing, and deployment of national armaments and by the

lack of information on military preparations within closed societies. . . if in fact a nation is not preparing surprise attack, observations from space could help us to know this and thereby increase confidence in world security which might otherwise be subject to added and unnecessary doubts.

"We in the United States believe that openness serves the cause of peace. In arms control and disarmament negotiations, the Soviet Union has recognized, at least in principle, the need for verification and inspection, but it continues to resist Western efforts to secure adequate verification and inspection arrangements. The Soviet Union has so far seemed to pla e a higher premium on maintaining its policy of secrecy than it does on reaching agreement on steps to ensure a peaceful world.

"Observations from space may in time provide support of arms control and disarmament arrangements, although they could not eliminate the need for ground inspection. Of perhaps greater significance at the present time, however, is the fact that the progress of science, to which the Soviet Union itself has made dramatic contributions, decrees that we are all to

live in an increasingly open world. The Soviet Union's attitude up to this time toward verification and inspection is inconsistent with this trend as it is with the achievement of arms control and disarmament.

"It is obvious from any discussion of observation in space that there is no workable dividing line between military and non-military uses. Weather satellites are of significance to the armed forces just as they are important to civilian populations. Similarly, heat-sensing devices aboard earth satellites might be developed to detect not only the heat from forest fires but also the heat generated in the launching of ballistic missiles.

"In respect of the impossibility of separating decisively the military and non-military applications, observation of the earth from space is not different from other uses of space. A navigational satellite can guide a war vessel as well as a merchant ship. A communications satellite can serve a military establishment as well as civilian communities. The instruments which guide a space vehicle on a scientific mission may also guide a space vehicle on a military mission. American

and Russian astronauts have been members of national armed forces, but this has afforded no reason to challenge their activities.

"The fact that observation satellites clearly have military as well as scientific and commercial applications can provide no basis for objection to observation satellites. International law imposes no restrictions on observation from outside the limits of national jurisdiction. Observation from outer space, like observation from the high seas or from airspace above the high seas, is consistent with international law.

"In saying what I have this morning, I should not wish to create any impression that the United States is unconcerned over a possible extension of the arms race into outer space. For several years the United States has consistently adhered to the view that outer space should only be useful for peaceful -- that is, non-aggressive and beneficial -- purposes. However, pending the achievement of disarmament agreements, the test of any space activity cannot be whether it is military or nonmilitary, but whether it is consistent with the United Nations Charter and other obligations of international law.

"Even in the absence of comprehensive disarmament agreements, the nations of the world are not precluded from taking meaningful measures of arms control and disarmament in space. On the contrary, there are some things that can be done immediately to prevent an extension of the arms race into space. In the first place, a prohibition could be agreed and carried into effect to halt the testing of nuclear weapons in outer space as well as in other environments. The United States continues to bend its efforts to this end."

As an aside, we should note the Nuclear Test Ban Treaty and G. A. Resolution 1884 (XVIII) banning the orbiting of weapons of mass destruction. Continuing with the quotation from Mr. Meeker:

"In the second place, nations can refrain from placing weapons of mass destruction in outer space. Even though it is now feasible to do so, the United States has no intention of placing such weapons in orbit unless compelled to do so by actions of the Soviet Union. While disarmament negotiations continue for the actual elimination of nuclear weapons and the means of delivering them it is important to do everything now that can be done to avoid an arms race in

outer space, for it is clearly easier not to arm an environment that has never been armed than to disarm one that has been armed. It is the earnest hope of the United States that the Soviet Union will likewise refrain from taking steps to extend the arms race into space."

14. Referring again to the May 1962 meeting of the Legal Subcommittee -- the U. S. S. R. submitted a proposal on liability for space accidents. I will cover the significant developments in the areas of liability and assistance and return in connection with the 3rd meeting and will not go into them now.

15. The main committee on Peaceful Uses of Outer Space reported to the General Assembly under date of 27 September 1962. The report included the work of the Legal Subcommittee, just discussed.

16. The next meeting of the Legal Subcommittee was in New York during the period 16 April - 3 May 1963. I had the privilege of being a part of the U. S. delegation and I have attended all subsequent meetings of the Legal Subcommittee in this capacity. The Soviets, in the course of the meeting, submitted a revised draft on general principles and it contained the same objection noted

before, i. e., war propaganda, states only activity in space, veto on activities that might cause interference and satellite reconnaisance. Considered in connection with the General Principles was a United Arab Republic draft code for international cooperation in the Peaceful Uses of Outer Space, and drafts of the U. S. and the U. K.

17. The assistance and return draft remained the same. Belgium submitted a working paper on liability. With respect to the General Principles, the Soviets remained firm on their 4 controversial points and a new controversy developed, i.e., the form that the declaration of principles should take. The U. S. proposed that the declarat' n of principles should be in the form of a General Assembly resolution similar to 1721 while the U. S. S. R. insisted upon a formal treaty. You will recall that I read a statement by Ambassador Stevenson to the effect that the U. S. accorded a General Assembly resolution unanimously passed, as substantial evidence at least of the accepted international law on the subject covered. Of great interest is the grave concern with which the Soviet bloc views the possibility that U. N. General Assembly resolutions might be binding international law.

tended to improve the political climate for negotiation which was further improved by the passage by acclamation of U. N. General Assembly Resolution 1884 (XVIII), 17 October 1963, calling upon States to refrain from orbiting nuclear weapons[9] or any other weapons of mass destruction,

20. The upshot was that the main committee drafted its own "Declaration of Legal Principles Governing the Activities of States in the Exploration and Uses of Outer Space." The draft cleared the main committee, was debated in the Political and Security Committee, and although certain countries expressed reservations the General Assembly unanimously passed it and it became General Assembly Resolution 1962 (XVIII) dated 24 December 1963. It provides:

"1. The exploration and use of outer space shall be carried on for the benefit and in the interests of all mankind.

"2. Outer space and celestial bodies are free for exploration and use by all States on a basis of equality and in accordance with international law.

"3. Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use

[9] P 233, Senate Doc No. 56, 89th Cong, First Sess.

or occupation, or by any other means.

"4. The activities of States in the exploration and use of outer space shall be carried on in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding.

"5. States bear international responsibility for national activities in outer space, whether carried on by governmental agencies or by non-governmental entities, and for assuring that national activities are carried on in conformity with the principles set forth in the present Declaration. The activities of non-governmental entities in outer space shall require authorization and continuing supervision by the State concerned. When activities are carried on in outer space by an international organization, responsibility for compliance with the principles set forth in this Declaration shall be borne by the international organization and by the States participating in it.

"6. In the exploration and use of outer space, States shall

be guided by the principle of co-operation and mutual assistance and shall conduct all their activities in outer space with due regard for corresponding interests of other States. If a State has reason to believe that an outer space activity or experiment planned by it or its nations would cause potentially harmful interference with activities of other States in the peaceful exploration and use of outer space, it shall undertake appropriate international consultations before proceeding with any such activity or experiment. A State which has reason to believe that an outer space activity or experiment planned by another State would cause potentially harmful interference with activities in the peaceful exploration and use of outer space may request consultation concerning the activity or experiment.

"7. The State on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and any personnel thereon, while in outer space. Ownership of objects launched into outer space, and of their component parts, is not affected by their passage through outer space or by their return to the earth. Such objects or component parts found beyond the limits of the State of registry

shall be returned to that State, which shall furnish identifying data upon request prior to return.

"8. Each State which launches or procures the launching of an object into outer space, and each State from whose territory or facility an object is launched, is internationally liable for damage to a foreign State or to its natural or juridical persons by such object or its component parts on the earth, in air space, or in outer space.

"9. States shall regard astronauts as envoys of mankind in outer space, and shall render to them all possible assistance in the event of accident, distress, or emergency landing on the territory of a foreign State or on the high seas. Astronauts who make such a landing shall be safely and promptly returned to the State of registry of their space vehicle."

21. Note that with respect to the controversial questions that had defied resolution during the April - May 1963 meeting of the Legal Subcommittee, this resolution was:

a. Actually a resolution rather than the treaty demanded by the Russians.

b. With respect to the war propaganda, etc., position of the Russians, it contained a recital (recalling its Resolution 110 (II) of 3 November 1947) which condemns propaganda and lies to provoke and encourage any threat to the peace, etc.

c. With respect to the Russian demand of a right of veto of potentially harmful space activities of other countries, it required only consultation.

d. With respect to the demand on the part of the Russians that activities in states be limited to states only, it provided that states shall bar international responsibility for actions of Governmental and other agencies.

e. There was no mention of the so-called space espionage, the prohibition of which had been demanded by the Russians.

22. There was an accompanying resolution, i.e., 1963 (XVIII) dated 24 December 1963, which:

"1. Recommends 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.

"2. Requests the Committee on the Peaceful Uses of Outer Space to continue to study and report on legal problems which may arise in the exploration and use of outer space, and 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 and return of astronauts and space vehicles.

"3. Further requests 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 these two agreements."

23. The language recommending that consideration be given to incorporating the principles in international agreement form can perhaps be regarded as the compromise which lead the Russians to accept the general principles in the form of General Assembly resolution. The request for the prompt preparation of draft international agreements on liability and on assistance and return was the agenda for the meeting of the Legal Subcommittee at Geneva in March 1964, or at least so the Western nations contended. The bloc again raised the question of putting the general principles in

treaty form, and after some controversy the agreed agenda was:

a. A general debate:

b. A draft international agreement on assistance and return; and

c. A draft international agreement on liability.

24. In the discussions at Geneva on assistance and return, the Subcommittee considered the U. S. and U. S. S. R. drafts. Certain areas of disagreement were isolated; these were:

a. The extent of the responsibility of the territorial state to search for, rescue, return, etc.

b. The responsibility of the launching state to pay the expenses for the return of space objects. This controversy did not extend to the return of personnel.

c. The responsibility of the territorial state to seek assistance if the rescue operation were beyond its capability.

d. The right of the territorial state to maintain the security of its own territory.

e. The status of Antarctica.

f. Exclusive versus cooperative search on the high seas.

g. Registration of the launch.

h. The settlement of disputes, i.e., the role of the International Court of Justice. On this last point, the U. S. had proposed making the International Court of Justice the final arbiter on disputes but the communist countries objected to giving the International Court of Justice any authority unless the parties to the disputes consented to the referral to the I.C.J.

25. In the face of these areas of disagreement, the Canadians and Australians endeavored to draft a compromise draft on assistance and return that would be acceptable, but they were unsuccessful. In the discussions on liability it was quite apparent that agreement was a long way off, although in general the discussions centered essentially about legal problems as contrasted to the more political type that had been involved in assistance and return. The Subcommittee considered a U. S. draft, a Hungarian draft, and a Belgian working paper. Some of the more significant matters involved were:

(i) The U. S. proposed absolute liability with provision that there should be no liability for that part of the damage caused by willful or reckless act or omission on the part of the presenting state or

parties it represents. (ii) The Hungarian draft proposed absolute liability for damage if the launch was for an illegal purpose. Otherwise, fault liability only for damage in outer space. If damage occurred on the ground or in the atmosphere, exemption from liability only if there was willful act or gross negligence on the part of the injured state, or if the damage was the result of natural disaster.

26. Interestingly enough, both the U. S. and Hungarian drafts proposed a ceiling on liability. (Neither stated an amount.) This was bitterly opposed by India and other nonlaunching states.

27. There was considerable controversy between U. S. S. R. and ELDO members, specifically Britain and Australia, over the position of international launching organizations. The U. S. S. R. objected to giving any status to international organizations, and contended that the injured party should look directly to the participating nations in addition to the international organizations.

28. As an aside, there was a great deal of confusion over joint liability. And it was a matter of some embarrassment that we, Western lawyers, had a little difficulty in coming up with a definition.

that would be understandable to the Eastern lawyers.

29. The U. S. had proposed a state-of-registry concept in which a nation could accept liability by being the nation to formally register it regardless of the ownership or the participation of other nations in the launch. The communist group made a very spirited objection to this in which they likened it to the law of the sea and the flying of the Panamanian flag.

30. The meeting in Geneva was considered as the first part of the 3rd session of the Legal Subcommittee. When the Legal Subcommittee reconvened in New York in October 1964, the meeting was designated as the 2nd part of the 3rd session. The agenda continued to be largely devoted to the drafting of conventions on assistance and return, on liability.

31. Significant points on assistance and return were that:

a. The U. S. S. R. proposed that the obligation to return space objects and astronauts should be conditional on the launch's having been carried out in accordance with the Declaration of Legal Principles set forth in U. N. General Assembly Resolution 1962 (XVIII) of 13 December 1963.

b. Japan continued to suggest, as it had in the first part of the 3rd session, that the return of space objects be dependent upon the announcement of the launching and the registration of the object with the U. N.

c. The U. S. S. R. wanted a requirement that the assistance rendered to a foreign astronaut be the same as that which a country would render its own.

32. It was generally agreed that a state returning an astronaut and space object should be reimbursed for all of its expenses where the return was at the request of the launching state. Some felt that there should be a reimbursement for the expenses of the recovery of a space object even though the launching state made no request. Some states suggested that the expenses of locating astronauts should be reimbursed pointing out that the rescue would be for the benefit of a very few and comparatively wealthy states.

33. The U. S. S. R. proposed that the launching state should have the direction and control of rescue forces supplied by other states.

34. Although there was general agreement that international organizations should be liable for their activities, there was a complete divergence of opinion between the Soviet bloc and the Western delegations on the status of international organizations in the agreement, the Soviet bloc refusing to agree to permitting international organizations to be parties to the agreement. A very controversial point involved what states would be eligible to be parties to the convention. The U. S. proposed that state members of the U. N. and other states especially invited by the General Assembly could be parties. The U. S. S. R. on the other hand together with the entire communist bloc proposed that all states could be parties. This, of course, was the procedure followed in the nuclear test ban. The controversial aspect is that the all-states doctrine includes states such as East Germany and communist China.

35. There was a proposal that the assistance and return and liability agreements be linked and entered into simultaneously. Under this procedure, a state would have no obligation to the launching states under the assistance and return convention unless the launching state had ratified the liability convention.

36. In the discussions on liability the Subcommittee worked with drafts proposed by Belgium, United States, and Hungary. The matters remaining undecided could be divided into substantive matters and procedural matters. For example, some time was spent on whether the agreements should follow the Anglo-American approach to treaties and include definitions or the continental concept which eliminates, or at least limits, the definitions. Italy proposed that there should be one treaty for the two subjects, in other words, a part "A" covering assistance and return and a part "B" covering liability, with a common preamble and common clauses covering definitions, settlement of disputes, eligibility of states, and other final provisions.

37. One of the problems is the designation of the states that would be responsible for damages. In this connection, the U. S. had included as a responsible state the state which "procures the launching" and had defined it as the state defraying the cost of the launch. This concept, however, was far from settled and there were many proposals for amendments which were intertwined with the problems of notification, registration, status of international organizations, and the procedures for handling joint launches.

38. On the question of the scope of liability, most delegations agreed that the launching state should be liable for damage. All, however, had their "buts" and these caused considerable disagreement over the question of exceptions. The U. S. draft contemplated exception or diminution of damages only if the damage resulted from the willful or reckless acts or omissions on the part of the presenting state or the injured party. Italy favored absolute liability for accidents on the ground only and suggested a presumption of common fault for accidents in outer space. Austria favored absolute liability but tended to agree with Hungary on liability for fault regarding accidents in outer space. Hungary urged full liability without exceptions where a state had been exercising an unlawful activity in outer space.

39. On the question of measure of damages, the U. S. formula was that principles of international law, justice, and equity would determine the compensation. Belgium proposed that the national law of the injured party should determine. Several delegations preferred a unified and self-contained set of legal principles. Others preferred the traditional conflict of law rules. On the question of damages, France suggested a broad definition embracing the types of damage covered under the agreement to include physical damage and

damage caused by contamination of the atmosphere by nuclear devices and damage to natural and juridical persons. There were also views related to the problems such as delayed or instant damages, and direct and indirect damages.

40. As in assistance and return, the same controversy between East and West existed over the status of international organizations. Bear in mind that several of the Western nations are members of ELDO (European Launcher Development Organization), and ELDO is endeavoring to establish some accommodation so that the international organization can assume the liability and either absolve or limit the individual liability of its members.

41. Related to the problem on international organizations was the liability of states' joint undertakings. Hungary, speaking for the bloc, urged that liability should rest with all the states participating in a common undertaking. Several of the Western states suggested some limits.

42. On the question of the procedures for the presentation of claims, there was discussion on whether an injured party should be able to simultaneously pursue remedies under the convention, local law, or any other treaty.

43. On the question of the statute of limitation, the U. S. draft proposed a one-year period to run from the date that the accident occurred or the date on which the facts of the claim became known. Italy suggested five years. India proposed ten years.

44. There was some discussion on the limits of liability. Both the U. S. and Hungarian drafts suggested a limitation but did not cite specific dollar figures. France, Japan, Argentina, and India opposed any monetary limitation. The Soviet bloc, United Kingdom, Canada, and Italy supported such a limitation. Other countries reserved judgment depending upon the amount of the limitation.

45. On the question of the settlement of disputes, the U. S. draft proposed resort to the International Court of Justice; the bloc countries adamantly refused to concede any compulsory jurisdiction to the I.C.J. and suggested that disputes be settled by the traditional methods of diplomatic negotiation.

46. With respect to damage suffered by the nationals of the launching state, the U. S. proposed that the convention should not cover liability of a state for damages suffered by its own nations. The Hungarian proposal was substantially the same. Belgium proposed that liability be determined in accordance with the provisions of the

national law of the injured party.

47 Of interest is that the U. S. S. R. suggested that a claim for compensation should not constitute grounds for sequestration of space vehicles.

48. The question of currency in which claims were to be paid also entered the discussions. United Kingdom proposed that payments should be in currency convertible readily and without loss of value in the currency used by the presenting state.

49. There was also a discussion on who should bear the expenses of procedures to enforce the treaty. The U. S. proposed that the expenses should be shared equally by the parties. Belgium suggested that the allocation be left for a determination by the commission.

50. Such then was the status of the 2 drafts as of the close of the 2nd part of the 3rd session of the Legal Subcommittee. In general, there were some grounds for optimism on assistance and return, the stumbling blocks being political but not regarded as insurmountable. On the question of liability, it was obvious that much work in the technical legal sense needed to be done before agreement could be reached. It might be said with some accuracy that a cautious

optimism on an early draft agreement on assistance and return was warranted.

51. However, the optimism on the assistance and return was apparently overtaken by world events and the meeting of the 4th session of the Subcommittee for the period 20 September - 1 October 1965 was somewhat discouraging. About the most that can be said for this meeting was that there was an exchange of views. The bloc reactivated many of its old arguments against space espionage and ~~effectively~~ used them as -- I guess I might say -- an excuse for not moving any closer to an agreement. Little of new significance was said and for all practical purposes the Legal Subcommittee stands at about the position it was at the end of the 3rd session in October 1964.

52. Some comments as to how the delegations to the Legal Subcommittee are made up and function might be of interest. First, you might like to know about the composition of the U. S. delegation. It has been headed for all of the meetings by Mr. Leonard C. Meeker, the present Legal Advisor to the Department of State. He is supported by advisors from his office, the State Department's Office of U. N. Political Affairs, the State Department's Office of Soviet Union Affairs, and from the U. S. Mission to the U. N. in New York. In addition, there are representatives from the General Counsel's office of the National Aeronautics and Space Administration, and I was there from the Department of Defense. Many of the other delegations, particularly those from the smaller countries, are composed of personnel from their permanent offices at U. N. Headquarters. Australia has for the most part been represented by Sir Kenneth Bailey, formerly Solicitor General of Australia, presently Australian High Commissioner to Canada, an old friend of Professor Goldie's (it being my understanding that at Professor Goldie's wedding Sir Kenneth gave the bride away). Austria was represented by Dr. Karl Zemanek, Professor of Vienna University. Belgium was represented by Professor Max Litvine, who prepared the Belgian working paper on liability. Czechoslovakia was represented by

Professor Jiri Hajek, who was Czechoslovakia's permanent representative to the U. N. Hungary was represented by Dr. Endre Ustor, who carried the rank of Ambassador and was head of the International Law Department of the Ministry for Foreign Affairs. Poland was represented by Professor Manfred Lachs, the Chairman of the Committee who carried the rank of Ambassador and was Advisor to the Minister of Foreign Affairs. Romania's representative was Professor Edwin Glaser, the Chief Legal Advisor to the Ministry of Foreign Affairs. The U. S. S. R. was represented by Ambassador P. D. Morozov, who interestingly enough was backed up by A. S. Piradov, Professor of International Law, Academy of Science of the U. S. S. R. The United Kingdom representative was Mr. I. M. Sinclair, Counsellor and Legal Advisor to the U. K. Mission to the U. N. In the past, the U. K. has at times been represented by Miss Joyce Gutteridge. The delegates are all capable individuals, most of them are lawyers and some of them have achieved real eminence in the profession. It is important to understand, however, that with perhaps a few exceptions, delegate is free agent and his freedom of action is carefully ~~curtailed by detailed~~ instructions from the State Department or Foreign Office of his Government. ~~In this respect, it is reasonable to assume that the delegates and the advisors are~~

in turn backed by additional advisors and even supervisors in their respective capitals. There are few off-the-cuff remarks; in general, the remarks are obvious quotes from the carefully worded position papers with which the delegates come armed. Much is done away from the formal conference; luncheons, dinners, and receptions are apt to be work arenas for the practicing delegates.

53. The U. N. Secretariat provides administrative support. The Legal Subcommittee has, in the time I have been associated with it, been the particular responsibility of Mr. Oscar Schachter, Director of the General Legal Division, Office of Legal Affairs, U. N. The Secretariat provides simultaneous translation, copies of documents in all of the necessary languages, and takes care of the other housekeeping chores such as providing conference rooms, etc. The workaday schedules call generally for a 3-hour session in the morning (10:00 a.m. to 1:00 p.m.) and at times an afternoon session from 3:00 to 6:00. Unfortunately these conference sessions are just the part of the "work iceberg" visible to the public. Many other hours are spent in bilateral consultations with other delegations and conferences with officials of their own Governments - and the interminable reporting. The U. S. delegation was backed up at all times by a staff in the State Department and it was necessary to keep them completely informed so that they could secure

Governmental approval for new positions, changes to old positions, or proposed answers to questions that might have arisen in the course of debate. Generally speaking, a delegate's day runs from about 8:00 a.m. until about 10:00 p.m.; however, it is quite a fascinating experience. And speaking as a former politician back in Michigan, I found very little difference in the fundamental concept of operations between the U. N. deliberative committee and the old Macomb County Board of Supervisors or the Legislature of the State of Michigan.