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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE FIFTY-EIGHTH MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 July 1966, at 3 p.m.

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CONSIDERATION OF A TREATY GOVERNING THE EXPLORATION AND USE OF OUTER SPACE, THE MOON AND OTHER CELESTIAL BODIES (continued)

Mr. ZEMANEK (Austria) welcomed the submission of draft treaties by the two space Powers; their initiative met the need, urged by his delegation as early as 1962, to give the Legal Sub-Committee's activities a broader scope. In reply to two statements made at the previous meeting, he observed that international obligations derived not only from treaties but also - as indicated in Article 38 of the Statute of the International Court of Justice - from custom and the general principles of law recognized by civilized nations. That applied to General Assembly resolution 1962 (XVIII), but he nevertheless considered it desirable that a treaty should be concluded in order to render the principles stated in that resolution more precise.

The Soviet draft treaty (A/6352) repeated, by and large, the contents of resolution 1962 (XVIII), to which his delegation had subscribed. However, the principles of the resolution seemed somewhat inappropriate for incorporation as obligations in a treaty. Thus article VI of the Soviet text, which corresponded to principle 5 of the Assembly Declaration and provided that "responsibility for compliance with this Treaty shall be borne both by the international organization and by the States Parties to the Treaty", was contrary to the pacta tertiis rule; nowhere in the draft was there a clause permitting an international organization to become a Party to the Treaty.

Similarly, it was doubtful that the beginning of the Soviet draft, article IX, which repeated principle 9 of the Assembly Declaration and stated that "States Parties to the Treaty shall regard astronauts as envoys of mankind in outer space ...", could give rise to a legal obligation; it would first be necessary to determine whether the word "envoys" was to bear its normal meaning under international law, and to consider whether States which were not space Powers should not have a hand in the way astronauts were launched into space.

The United States draft treaty drew upon the Declaration of Principles embodied in resolution 1962 (XVIII) but also, to a considerable extent, upon the Antarctic Treaty of 1959. Furthermore its scope was limited to the moon and other celestial bodies. The text should go further and should regulate not only the exploration of the moon and other celestial bodies but also their use; that would obviate any contradiction between the terms "non-appropriation" and "use".

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(Mr. Zemanek, Austria)

Again, the United States draft left out the question of liability and dealt with assistance only in a very general way. In that connexion, he hoped that the Sub-Committee could speedily finish its work on the drafts concerning those two questions, so that the relevant instruments might enter into force at about the same time as the treaty now being considered.

The Soviet and United States texts were very similar except that the former included provisions from resolution 1962 (XVIII) which did not appear in the latter, whereas the United States text included provisions drawn from the Antarctic Treaty which were not found in the Soviet text. However, the last clause in the Soviet draft article I ("there shall be free access to all regions of celestial bodies") did something to narrow the gap between the two texts. The Soviet draft article IV, which provided that "The Parties to the Treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or other weapons of mass destruction and not to station such weapons on celestial bodies or otherwise to station them in outer space", had a wider scope than the United States draft article 8, which stated that "... no State shall station on or near a celestial body any nuclear weapons or other weapons of mass destruction"; but the two texts were not irreconcilable.

Mr. VINCI (Italy) agreed with the Indian and Austrian representatives that, at its present session, the Sub-Committee should try to draft the final texts of the international agreements on liability for damage caused by objects launched into outer space and on assistance to and return of astronauts and space vehicles. He reminded the Sub-Committee of the principles regarding the exploration and peaceful use of outer space and celestial bodies set forth in General Assembly resolution 1721 A (XVI), namely: "(a) International law, including the Charter of the United Nations, 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". Those principles had been incorporated in the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (General Assembly resolution 1962 (XVIII)) and in resolution 1963 (XVIII), which recommended "that consideration should be given to incorporating in international agreement

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(Mr. Vinci, Italy)

nature, conduct and locations of activities on celestial bodies. Moreover, article 3 and article 4, clause (b), of the United States draft treaty stated one of the major principles to be asserted: namely, the need for international co-operation and the need to make freely available the results of research in space. Perhaps, therefore, a new phase of international co-operation might begin, under United Nations auspices, in matters concerning outer space.

Mr. AOKI (Japan) agreed with the United Kingdom representative that the Committee's task was to undertake detailed negotiations on the principles governing mankind's space activities. The differences between the draft treaties submitted by the representatives of the United States and the Soviet Union were not irreconcilable. Both texts were based more or less on the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, adopted by the General Assembly in 1963. In view of the urgency of the matter, his delegation approved the procedure suggested by the Chairman and was ready to consider the two draft treaties article by article. Firstly, it was glad to find in the two draft treaties many similar provisions relating to freedom and equality in the exploration and use of celestial bodies, the application of international law, the prohibition on placing in orbit nuclear weapons or other weapons of mass destruction and the prohibition of military activities. Secondly, the scope of the treaty should be extended, so far as possible, to the whole of outer space. Thirdly, although all space activities should admittedly be undertaken for peaceful purposes, his delegation realized that a treaty should be drawn up as soon as possible and it could therefore accept the provisions of the two draft treaties dealing with peaceful uses solely in respect of the moon and other celestial bodies. Fourthly, information about space activities should be made public and there should be free access to installations, equipment and space vehicles on celestial bodies. Fifthly, there should be freedom of scientific investigation and international co-operation in activities concerning the moon, other celestial bodies and outer space. In that connexion his delegation welcomed the United States text, which provided that a State conducting activities on a celestial body should provide the Secretary-General of the United Nations with a report on those activities and make the findings of such activities freely available

to the public and the international scientific community. Lastly, his delegation suggested that the natural environment of celestial bodies should be preserved so far as possible in the condition it was in before the beginning of exploration. The provisions designed to prevent the contamination of celestial bodies should be expanded and elaborated.

Mr. CERNIK (Czechoslovakia) said that the discussions which had taken place in the Legal Sub-Committee three or four years previously had confirmed the importance of the legal principles governing the activities of States in the exploration and use of outer space, the moon and other celestial bodies. As a result of those discussions, a number of basic documents had been drawn up and General Assembly resolution 1962 (XVIII) contained a Declaration which constituted a basic first step in the formulation of a new body of international law. It was regrettable, however, that the consideration of certain proposals, relating in particular to the legal regulation of questions connected with the return of astronauts and space vehicles and the assistance to be given them in case of distress, had not progressed more rapidly.

Mankind was striving to achieve general and complete disarmament on earth, and it therefore seemed logical to seek to prevent the use of outer space and celestial bodies for military purposes. That question had already been taken up in a number of documents, in particular the Moscow Treaty of 1963 and General Assembly resolution 1884 (XVIII).

The Soviet proposal that the question under discussion should be included in the agenda of the General Assembly's twenty-first session was merely a logical sequel to the Soviet Government's efforts to bring about the conclusion of an international treaty on the peaceful use of outer space. The Soviet text conformed to the generally accepted rules of international law; it provided for regulation of the use of the whole of outer space and was not limited, as was the United States draft treaty, to the moon and other celestial bodies. The Committee should therefore take the Soviet text as a basis for discussion.

Mr. CHAMMAS (Lebanon) said that an agreement on the draft treaties submitted by the Soviet Union and the United States would definitely pave the way for an agreement on the two subjects before the Legal Sub-Committee.

His delegation shared the concern expressed by the representatives of India, Austria and Italy. Nevertheless, the adoption of a draft treaty would surely make it possible to reach an agreement on the return of astronauts and space vehicles in distress and on liability for damage caused by objects placed in orbit in outer space.

The Italian representative had made a specific and useful proposal concerning the way in which international organizations could benefit from the draft treaty. His delegation felt bound to support the provision of the Soviet draft treaty prohibiting the stationing of weapons of mass destruction in outer space. In any case, the differences in scope between the two draft treaties should present no insurmountable difficulty.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the statements made by the representatives of France, the United Kingdom, Czechoslovakia, Austria, Italy, Japan and Lebanon helped to create a climate in which the Sub-Committee should be able to make fairly rapid progress in its work, and that there had been no serious criticism of the Soviet draft treaty.

With regard to the Austrian representative's remarks concerning, in particular, article VI of the Soviet draft treaty, the text of that article did not provide that an international organization might become a party to the Treaty. Only States could be parties to an international treaty. The provisions of article VI sought to make it clear that the responsibility for such activities as an international organization might carry on in space would be borne not only by that organization but also by the States Parties to the Treaty. That did not mean that international organizations were being placed, from a legal point of view, on the same footing as States Parties to the Treaty. The Governments members of the international organizations would be responsible for the organizations' activities. That was a very important principle; moreover it had been discussed at length in the process of drafting the Declaration embodied in General Assembly resolution 1962 (XVIII). No State Party to the Treaty must be allowed to evade its responsibilities when it acted as a member of an international organization.

As to the Austrian representative's comments on the wording of article IX, the Soviet Union delegation considered that it was logical to state in that article

that "States Parties to the Treaty shall regard astronauts as envoys of mankind in outer space". His delegation was, however, prepared to consider another form of words provided that it did not complicate the text of the draft treaty. In his opinion, the expression used in the article served to justify the legal obligations it laid down.

Mr. GOLDBERG (United States of America) said that the USSR representative had raised a question of procedure by proposing that the Soviet text should be used as a basis for discussion. It would, of course, be necessary for the Sub-Committee to settle its own order of business. The first item on the agenda concerned a draft treaty on the exploration and use of outer space, the moon and other celestial bodies. Since two draft texts had been submitted on that subject, the normal procedure would be for the Sub-Committee to begin by examining both of them. It would be noted that the two texts had many features in common, although they were different in scope. In any event, the preparation of a draft treaty was the task of all members of the Sub-Committee; the United States had proposed a text solely as an aid in attaining the common objective, and not in order to dictate to the Sub-Committee. His country's desire was that negotiations should be conducted in good faith, under the guidance of the Chairman, so as to arrive at an agreed common text which could be submitted to the General Assembly. Since all members of the Sub-Committee believed it was desirable to prepare a draft treaty as quickly as possible, it would not expedite matters to become involved at the very outset, in a discussion as to whether the United States text or the Soviet text should be used as a basis. It would be better to proceed to a substantive discussion and examine the two texts, especially since other suggestions would undoubtedly be made in the course of debate. The common understanding that would be reached would necessarily reflect in large measure the resolutions which had already been adopted on the subject, not only by the Sub-Committee but also by the United Nations.

Mr. MOROZOV (Union of Soviet Socialist Republics) thought that, before proceeding to consider the proposal which his delegation had made at the previous meeting, the Sub-Committee should hear those representatives who had not yet spoken in the general debate. However, he did not understand why the United

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States representative appeared to believe that the USSR, in proposing that the Soviet text should be taken as a basis for discussion, was seeking to dictate to the Sub-Committee. The Soviet delegation had no wish to impose its views on anyone, and no delegation anxious to demonstrate its good intentions would resort to such tactics at an international meeting. The Soviet proposal was not prompted by political motives; it was based exclusively on practical considerations. The agenda item under discussion concerned a draft treaty on the exploration and use of outer space, the moon and other celestial bodies. It was evident from a mere comparison of the titles of the two texts before the Sub-Committee that the Soviet draft ("Draft Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, the Moon and Other Celestial Bodies") was broader in scope than that of the United States ("Draft Treaty Governing the Exploration of the Moon and Other Celestial Bodies"). In any event the Soviet delegation was prepared to examine all the provisions of the United States draft treaty, and it noted with satisfaction that the United States representative had said that he, for his part, was willing to discuss the Soviet text. However, all members would have to show goodwill.

Mr. Krishna RAO (India) observed that two texts concerning a draft treaty had been submitted within a few days of each other and that the Sub-Committee had been convened at very short notice to discuss them. In the circumstances, the normal procedure would be to study the two texts simultaneously. It would be difficult to concentrate on only one of those texts. Moreover the United States and the USSR were agreed on many provisions which in some regards were not acceptable to the Indian delegation. The fact that the former two countries agreed on a particular approach did not mean that other countries must subscribe to their opinion. It was quite possible that a third text would emerge by the end of the general debate. India was very interested in the inclusion of some provision for liability, and the United States and the USSR took the same view.

At the present stage it would be desirable to discuss the two proposed texts together, with a proviso that, if a third text was introduced later by a country or group of countries, it would be examined along with the other two. His delegation therefore proposed that the Sub-Committee should postpone any further debate on how to proceed.

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Mr. GOLDBERG (United States of America) said that he had no intention of initiating a procedural debate. However, a procedural motion had been made and the United States delegation had wished to express its views, lest its silence should be deemed to imply consent to that motion. With that stipulation, he entirely agreed with the Indian representative's comments.

The CHAIRMAN suggested that the Sub-Committee should continue the general debate and, on its completion, decide on the procedure to be followed in dealing with the agenda.

It was so decided.

The meeting rose at 5.5 p.m.