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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE FIFTY-NINTH MEETING

Held at the Palais des Nations, Geneva
on Thursday, 14 July 1966, at 3 p.m.

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space, the moon and other celestial bodies (continued)

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

Mr. BENYI (Hungary) said that at previous sessions of the Legal Sub-Committee his delegation had consistently argued the need to sum up in a multilateral convention the basic legal principles governing activities in outer space, i.e., the rules for the exploration and use of outer space, the moon and other celestial bodies. Proof of the correctness of that stand could be seen in the fact that no significant progress had been made in the drafting of treaties on liability for damage and on assistance to and return of astronauts, despite all the efforts that had been made by many countries, including his own.

The tasks facing the Sub-Committee at its present session were of paramount importance. The inclusion in an international agreement of the legal principles he had mentioned would help to create a corpus of space law and might remove the difficulties the Sub-Committee had encountered so far. The Sub-Committee would firmly establish that all exploration of outer space was in the interest of mankind as a whole and should be devoted exclusively to the cause of peace.

Nevertheless, while concentrating its efforts on the demilitarization of outer space, the Sub-Committee could not help being aware of grave events which were today endangering international peace. The world was witnessing the violation of other agreements which had been concluded at Geneva. The violation of those agreements and of the principle pacta sunt servanda might prove an obstacle to the conclusion of a new Geneva agreement for the exclusively peaceful exploration and use of outer space.

A comparison of the United States and Soviet drafts now before the Sub-Committee revealed marked differences in the scope of their provisions. His delegation would give full support to the Soviet draft which sought to regulate the exploration and use of outer space as a whole, including the moon and other celestial bodies. The proposed international agreements should not be limited in scope to the celestial bodies only, because the exploration of those bodies was necessarily preceded by orbital and sub-orbital activities which needed to be regulated. To start with regulations for the exploration and use of celestial bodies would be like building a house from the roof down. While the success of the Luna and Surveyor projects had underlined the need for mandatory regulation

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(Mr. Benyi, Hungary)

of activities which were aimed at the establishment of operational stations on the lunar surface, since such stations could be used for military or for purely peaceful and scientific purposes, nevertheless such regulation was inseparable from the legal regulation of all phases of activity in outer space.

The Soviet draft was the logical outcome of what had been done by the United Nations so far. It constituted a further contractual development of the principles stated in General Assembly resolutions 1721 (XVI), 1962 (XVIII) and 1963 (XVIII), and should be taken as a basis for the new law of outer space.

Mr. KELLBERG (Sweden) said that he would offer some general comments only, as his Government had not had enough time for a careful study of the two drafts which he hoped the Sub-Committee would study concurrently.

In his view, the merit of the United States draft was that its precise language would facilitate interpretation, although some points would need further clarification. Some of its provisions, e.g., articles 1, 4, 8, 9 and 10, were extremely important to all nations, whether space Powers or not, and should therefore figure prominently in any treaty on the exploration of outer space. The remaining articles were not of such immediate concern to a small country such as Sweden. The draft as a whole should be widened in scope to cover outer space generally and not only the moon and other celestial bodies.

The USSR draft offered some very valuable additions to the basic provisions of General Assembly resolutions 1884 (XVIII) and 1962 (XVIII). It covered a wide range of problems, some of which the Sub-Committee had so far been unable to solve. That indicated that interpretation was difficult and would necessitate a very careful analysis of the exact meaning of each article and he hoped that the Sub-Committee would begin such an analysis soon.

Apart from a draft treaty on the exploration and use of outer space, the moon and other celestial bodies, the Sub-Committee had the task of completing its work on the draft agreement on liability for damage caused by objects launched into outer space, with which it had dealt on a priority basis. Because of the growing number of such objects, the question of liability for damage was one of increasing urgency and he hoped that the Sub-Committee would tackle it with determination.

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Sir Kenneth BAILEY (Australia) noted first the present utility of preparing a treaty in this field. The starting point of the two draft treaties before the Sub-Committee was General Assembly resolution 1962 (XVIII), unanimously accepted as a statement of the principles by which States should be guided in the exploration and use of outer space. There were, however, different views as to the place of such a resolution of the General Assembly in the creation and development of international law. Probably no delegation would claim that by virtue of its adoption by the General Assembly a resolution ipso facto became part of international law. Certainly the delegation of Australia did not. The representative of the United States had referred to the well-known statement of his distinguished predecessor Mr. Stevenson to the effect that the United States regarded the Declaration of Legal Principles as a statement of accepted international law by which all had agreed to be bound. But different views had been expressed even in the Sub-Committee, as for instance by the delegation of France, with regard to the binding character of the principles contained in the Declaration. That being so, and given the pace of contemporary development, it was highly desirable that the terms of resolution 1962 (XVIII) should now be given binding legal form in an instrument that would automatically become, for the parties, one of the sources of international law. Such an undertaking would also afford an opportunity to make improvements in the text of the resolution itself, considered as a definitive statement of legal obligation. For example, in a number of places the expression "outer space" by implication included "celestial bodies", while sometimes it plainly did not; the point should be clarified in any legal revision.

In the second place, there were three broad differences between the texts submitted by the United States and the Soviet Union. Generally speaking the United States text was limited in its application to celestial bodies, whereas the Soviet text applied also, with some important exceptions, to the exploration and use of outer space. He welcomed the United States representative's statement that in the view of his delegation the two texts were basically reconcilable. His own delegation believed that unless there were substantial reasons for not applying the provisions of the proposed draft treaty to outer space generally, it would be valuable in most instances to do so. There might, however, be difficulties of a technical or practical order in making this extension. Questions of liability

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for damage, for instance, might be of greater significance in relation to outer space generally than in relation to celestial bodies; and in the limited time available for the session it might prove impracticable to agree on a sufficiently detailed text for the purposes of the wider text. The best should not be allowed to become the enemy of the good.

The second main difference was that the Soviet text largely reproduced resolution 1962 (XVIII) and added little of substance to it, whereas the United States text offered a number of new provisions in accordance with the spirit of that resolution. He had particularly in mind articles 2,3,4 and 6, dealing with such matters as scientific investigation, dissemination of information through the United Nations and otherwise, and freedom of access to installations on celestial bodies.

Thirdly, the Soviet text included the provisions of resolution 1962 (XVIII) concerning both liability and international organizations, whereas the United States text did not. Those provisions had been the subject of much discussion at earlier sessions of the Sub-Committee; while the declaratory form in which they were couched was clearly inadequate for inclusion in a definitive statement of legal rights and obligations, the Sub-Committee in earlier sessions had found the task of drafting them in the form of legal obligations a difficult one. In particular, the Australian delegation thought it unsatisfactory to rely on any narrow or static view of the legal capacity or personality of international organizations. That was one of the fields in which international law was developing rapidly, and the pertinent articles of the Soviet draft would call for close examination.

The meeting rose at 6.20 p.m.