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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE SIXTY-THIRD MEETING

Held at the Palais des Nations, Geneva, on
Wednesday, 20 July 1966, at 3 p.m.

CONTENTS

Consideration of a treaty governing the exploration and use of outer
space, the moon and other celestial bodies (A/AC.105/C.2/L.12, L.13)
(continued)

Chairman:

Mr. M. LACHS (Poland)

Representative of the
Secretary General:

Mr. C. STAVROPOULOS

Secretary of the Sub-Committee:

Mlle. K. CHEN

CONSIDERATION OF A TREATY GOVERNING THE EXPLORATION AND USE OF OUTER SPACE, THE MOON AND OTHER CELESTIAL BODIES (A/AC.105/C.2/L.12, L.13) (continued)

The CHAIRMAN suggested that the Sub-Committee should consider the draft treaties submitted by the United States and the USSR respectively (A/AC.105/C.2/L.12, L.13) article by article, comparing their provisions and agreeing on a single unified text. The Sub-Committee might later meet as a working group of the whole to draft the articles on which agreement had been reached.

It was so decided.

Mr. GOLDBERG (United States of America) said that in the general debate there had appeared to be a consensus on two propositions. The first was that the treaty should not be limited to celestial bodies alone but should include outer space along the lines of the USSR draft; the second, that the treaty should include provisions along the lines of the United States draft on the following matters: freedom of scientific investigation; reporting to the Secretary-General of the United Nations concerning the activities of celestial bodies and, more generally, concerning information relating to the physical safety of astronauts while in outer space; free access at all times to all areas of celestial bodies and to installations on them; the avoidance of contamination of celestial bodies from the earth, and the avoidance of adverse changes in the earth's environment resulting from the return of extraterrestrial matter. His delegation would conduct its participation in the present discussion in the light of that consensus. It would work towards the conclusion of a treaty on outer space embracing both propositions as well as elements referred to by other members of the Sub-Committee.

Mr. Krishna RAO (India) commended the United States delegation for taking into consideration the consensus expressed in the general debate that the treaty should encompass outer space, and the USSR delegation for having included outer space, the moon and other celestial bodies in its draft treaty. He thought that the formula "outer space, the moon and other celestial bodies" was preferable to "outer space, including the moon and other celestial bodies".

The CHAIRMAN invited members to consider article I of the USSR draft treaty and the comparable provisions of the United States draft - article 1, first sentence, and article 2, 3 and 6.

Mr. KOROZOV (Union of Soviet Socialist Republics) said that, as he had stated the arguments for the USSR draft in the general debate, he would at the present stage merely observe that the provisions of article I took account of the United Nations Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space and other General Assembly resolutions.

In view of the statement just made by the United States representative, he took it that he did not have to justify the broad conception of the scope of the treaty adopted in the USSR draft, which touched on a number of questions concerning the activity of States in outer space and laid down principles which should become compulsory legal rules governing the conduct of States.

His delegation was prepared to include article 2 of the United States draft in the first article of the treaty. The substance of article 3 of the United States draft was fully covered by article III and the first sentence of article VIII of the USSR draft. However, he was prepared, without committing himself as to the precise wording, to consider the possibility of including in the first article of the treaty - if the majority in the Sub-Committee so wished - the proposition in article 3 of the United States draft concerning international co-operation in scientific investigations. The first article of the treaty might also include the ideas expressed in article 6 of the United States draft. However, it would be better not to mix the geographical idea of "areas of celestial bodies" with "stations, installations, equipment, and space vehicles", which were on a somewhat different plane. In any event, the principle that all areas of celestial bodies should be open was already included in article I of the USSR draft. He therefore suggested that the words "all areas of celestial bodies, including" should be deleted from article 6 of the United States draft. His delegation was prepared to agree to the inclusion of the remainder of article 6 as a separate paragraph in the first article of the treaty, with certain amendments, namely, that the words "at all times" should be deleted and the following phrase added: "on the basis of reciprocity under the condition that the time of the visit is to be agreed between

the parties concerned". There was no need to explain the insertion of a reference to reciprocity, since that general principle of international law was the only basis on which sound relations among States could be established. The reason for deleting "at all times" was that even on earth it was customary for friendly visits to be preceded by agreement between the guest and the host, and in the extremely difficult conditions of outer space such a rule was especially important from the viewpoint of the safety of personnel in space vehicles and installations. As amended, the paragraph laid down the principle of reciprocal visits and provided a practical procedure for implementing that principle in the way which would best promote observance of the treaty obligation.

Mr. CHAMMAS (Lebanon) suggested that the words "peaceful uses" should be included in the title of the treaty. He would like to know the precise meaning of the first paragraph, second sentence, of article I of the USSR draft.

The CHAIRMAN suggested that the Sub-Committee might defer consideration of the title and preamble until it had dealt with the body of the treaty.

Mr. GOLDBERG (United States of America) shared the Lebanese representative's concern about the meaning of the first paragraph, second sentence, of article I of the USSR draft. That new concept, which was not in the Declaration, might impose obligations that States could not properly assume, particularly as the words "equal conditions" were broad and sweeping. In the second paragraph of article I of the USSR draft, the words "without discrimination of any kind" seemed to be redundant: the straightforward expression "on the basis of equality", derived from the Declaration, adequately covered the subject.

In the light of the USSR representative's comments concerning articles 2 and 3 of the United States draft, he suggested that the two articles might be combined to read: "There shall be freedom of scientific investigation in outer space and on celestial bodies and States shall facilitate and encourage such investigation."

He accepted the USSR representative's proposal that the opening words of article 6 of the United States draft should be deleted. Regarding the USSR representative's other amendments to article 6, while there could be no objection to

(Mr. Goldberg, United States)

the general idea of reciprocity since the concept of the whole treaty was one of reciprocal rights and obligations, he thought that a specific condition of reciprocity was really unnecessary because under international law treaty obligations were interdependent. Furthermore, the deletion of the words "at all times" and the addition of a requirement that the time for visits would have to be agreed upon would frustrate the right of access, which was certainly not the USSR representative's intention. Article 6 of the United States draft had been drawn from article VII, paragraph 3, of the Antarctic Treaty. That provision had not caused any problem to any country involved: there had been no allegations that the particular time selected for visits had not been convenient, and access had been granted.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the title of the USSR draft had been taken from the title of the Declaration. He agreed with the Chairman's suggestion that the title should be considered at a later stage, particularly as titles did not have independent meaning and the interpretation of a treaty should be based essentially on the content of its provisions.

The second sentence of article I of the USSR draft was based on his country's traditional position that the exploration of outer space should be carried out in the interests of all mankind. That sentence meant that if State A permitted State B to build a tracking station on its territory, State C, which was pursuing the same peaceful aims in space, should be given the opportunity to build a similar station on A's territory. The provision, of course, would not affect the sovereign right of State A to refuse to grant such privileges to either State B or State C.

His delegation's amendments to article 6 of the United States draft were merely drafting changes which would ensure the observance of the treaty obligation laid down in that article. He stressed that his delegation had accepted fully the principle of open access stated in article 6. Any attempt to make a mockery of that principle in setting the time for visits would be a clear violation of the treaty. His country approached its obligation under the treaty with a high sense of responsibility, and it wanted the obligation in question to be one which could be effectively implemented and observed in practice. Therefore, it could not agree that a space vehicle must open its doors at any time, without regard to the

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(Mr. Morozov, USSR)

measures that might have to be taken to ensure the safety of the crew and the normal operation of installations. Unquestionably, the time of the visit must be agreed upon between the parties. If the United States representative went so far as to deny the importance and necessity of that condition, then a further exchange of views on the matter would be difficult, for it was technically impossible to put into effect the procedure which that representative had urged.

Mr. GLASER (Romania) thought that the phrase "without discrimination of any kind" in article I of the USSR draft was not redundant. Even if, as had been contended, the words "on a basis of equality" covered the same ground, it would be preferable to prohibit discrimination explicitly. Moreover, in some circumstances, the main consideration was not de facto equality, which might be impossible to achieve, but rather the absence of discrimination between States.

Mr. Krishna RAO (India) said that the space Powers appeared to agree on three provisions: firstly, that outer space, the moon and other celestial bodies should be free for exploration and use by all States on a basis of equality and in accordance with international law; secondly, that outer space and celestial bodies should not be subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means; and thirdly, that there should be freedom of scientific investigation in outer space and on celestial bodies, and that the parties to the treaty should undertake to accord equal rights without discrimination of any kind to States engaged in such scientific investigation.

He wondered whether the first sentence of article I of the USSR draft might perhaps be transferred to the preamble, since it did not seem to lay down a legal obligation. The word "conditions" in the second sentence of that article should be replaced by "rights", because the principle of equal rights, flowing from Article 2 (1) and (2) of the United Nations Charter, required States to act in good faith and with due regard for the rights of other States. Regarding the USSR amendments to article 6 of the United States draft, he saw no need for a reference to reciprocity.

Sir Kenneth BAILEY (Australia) felt that it would be unfortunate if the emphasis on the need to facilitate and encourage international scientific co-operation - which was to be found in article 3 of the United States draft - were to be lost in the process of amalgamating the texts.

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(Sir Kenneth Bailey, Australia)

On the subject of reciprocity, he noted that article VII of the Antarctic Treaty, to which the United States representative had referred, embodied the element of reciprocity, without specifically using that term. However, it provided for reciprocity between the contracting parties, whereas article 6 of the United States text seemed to apply to representatives of other States, whether parties to the treaty or not. That point might be worth exploring with a view to further accommodating the different viewpoints.

Mr. GOMEZ ROBLEDO (Mexico), referring to the Soviet proposal to redraft article 6 of the United States text, said that he appreciated the Soviet Union's justifiable concern for the safety of its astronauts but feared that if freedom of access were made subject to the conclusion of bilateral agreements between the parties directly concerned, the conclusion of a multilateral treaty might be considerably delayed.

Mr. DUBREAU (France) observed that it was most important to clarify the scope of the treaty. It was quite clear that the treaty was to apply both to celestial bodies and to outer space, but what type of activity was it to regulate? The texts referred to exploration and "use". Did the latter term imply use for exploration purposes, such as the launching of satellites, or did it mean use in the sense of exploitation, which would involve far more complex issues? Space, of course, was already being used for meteorological research and telecommunications, but in the case of celestial bodies it was hard at present to conceive of utilizing the moon, say, for the extraction of minerals. It was important for all States, and not only those engaged in space exploration, to know exactly what was meant by the term "use". The word was, of course, to be found in the Declaration of Principles, but the latter was by no means exhaustive and should not preclude further textual improvements.

Mr. RUDA (Argentina) considered that the first article of the treaty should be drafted in simple, straightforward terms and state that the exploration and use of outer space and celestial bodies should be for peaceful purposes and open to all States. The central idea that exploration and use should be open was embodied in the first articles of both the United States and the Soviet drafts

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(Mr. Ruda, Argentina)

which, with some minor amendments could probably be amalgamated. However the concept of peaceful purposes did not appear until much later and, feeling that it should be stated at the very outset, he suggested that the first article of the draft treaty might read: "Outer space, including the moon and other celestial bodies, shall be open for exploration and use for peaceful purposes by all States, without any discrimination, on a basis of equality and in conformity with international law."

He, too, regretted the loss of emphasis on international co-operation in the combined text and hoped that it could be restored.

Mr. CARVALHO SILOS (Brazil) said that he was unable to support the suggestion made by the representative of India. He felt that it was necessary to retain the first sentence of the first article in both the United States and USSR drafts, though the wording of the Soviet text should first be made clearer. However, Brazil could not accept the second sentence of the first article in the USSR text, as it appeared to qualify and limit the principle stated in the first sentence.

Mr. DARWIN (United Kingdom) said that he had some difficulty in understanding the phrase "the province of all mankind" in the first sentence of article I of the Soviet text. It would be useful to know what legal meaning was to be attributed to it in the present context.

With regard to the question of reciprocity, he observed that reciprocity could be of two types: one whereby each State had the right to take the initiative in seeking access to a station on a celestial body, as provided in the treaty, and another whereby a State must grant a similar right to others only if it itself wished to conduct inspections. In the second of the two cases a State would be free to choose whether its stations were open or closed. While the latter was probably not the intention of the Soviet Union, it would be advisable to ascertain which type of reciprocity the Soviet representative had in mind.

The provision contained in the second sentence of article I of the USSR text, concerning equal conditions, seemed very wide-ranging and might place onerous obligations on States. For example, would a State launching a satellite for one country be obliged to provide an unlimited number of launchers and launching opportunities for all other States party to the Treaty if so requested?

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Mr. GOLDBERG (United States of America) said, in reply to the representatives of Australia and Argentina, that he had not intended to omit the reference to international co-operation in his attempt to combine articles 2 and 3. To remedy the omission, he would be willing to include the phrase "encourage international co-operation in such investigation" in his proposed text.

With regard to the Antarctic Treaty, he noted that in article IX it contained a qualification, whereby the right to appoint representatives was accorded to contracting parties engaged in research activity. He felt - although he wished to study that treaty in greater detail - that that concept had been introduced into the text proposed by the United States, but broadened, so as to extend beyond the contracting parties to all States conducting activities on celestial bodies.

As for the equal conditions clause, he felt that it could be interpreted even more widely than had been suggested by the representative of the United Kingdom. It could even be construed as meaning that a State had to accord conditions equal to those which it itself enjoyed in its own operations. The point therefore needed clarification.

Mr. MOROZOV (Union of Soviet Socialist Republics), replying to some of the comments that had been made on the USSR draft, observed that the Australian representative's reference to the Antarctic Treaty did nothing to clarify the controversial points contained in the text proposed by the United States. One could not automatically apply conditions which were appropriate to one set of circumstances to an entirely different situation. It was true that outer space, like Antarctica, could be considered a no man's land, but there the similarity ended.

He felt that the Soviet text covered the very interesting point raised by the representative of France. It was not possible to say everything in one article and he believed that adequate clarification was to be found in article II of the USSR draft, which specified that outer space and celestial bodies should not be subject to national appropriation by means of use or occupation, or by any other means. In other words no human activity on the moon or any other celestial body could be taken as justification for national appropriation. Needless to say, a treaty could deal only with the problems arising at the current stage of human evolution, and future developments would give rise to new problems requiring subsequent solution. But

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(Mr. Morozov, USSR)

it would be unwise to look too far ahead and to attempt to prescribe rules for situations on which it was impossible to form adequate judgement at the present stage.

With regard to the comments made by the representative of Argentina, he was sure that his point was covered in the Soviet text, and wished to draw attention to article III in particular.

He was very much afraid that if there were a large number of proposals calling for unnecessary structural changes in the draft, the Sub-Committee's task would be greatly complicated. To attempt, at that early stage, to counter the existing drafts with an indefinite number of rival proposals, which were not motivated by serious differences of principle, could only create added difficulties.

Mr. RUDA (Argentina) wished, in view of the comments made by the Soviet representative concerning the status of Antarctica, to draw attention to his delegation's earlier comments on the statement by the United States representative.

Mr. Krishna Rao (India), replying to the representative of Brazil, explained that he had not suggested that the first sentence of article 1 of the United States draft should be transferred to the preamble. Nor had he made any such suggestion with regard to the first sentence of article I of the Soviet draft. He had merely expressed some doubt as to whether it dealt with a specific legal obligation and, therefore, whether its inclusion in the body of the text was warranted.

Mr. CHAMMAS (Lebanon) expressed support for the Argentine proposal that the Sub-Committee should, for the time being, concentrate on drafting an acceptable first article stating basic principles and omitting controversial questions that could be embodied in subsequent articles, after further discussion. The second part of the USSR's draft article I, for example, would give rise to no objection. His delegation would therefore propose that the first article of the treaty should read: "Outer space, the moon and all other celestial bodies shall be free for exploration and peaceful use of all States without discrimination of any kind for the benefit and in the interest of all countries, on a basis of equality and in accordance with international law."

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Mr. MOROZOV (Union of Soviet Socialist Republics) complained that his appeal to avoid a proliferation of proposals seemed to have gone unheeded. The representative of Lebanon had now proposed a new draft article 1 which appeared to eliminate a provision to which the USSR attached great importance.

The text of the draft treaty had to be arrived at by agreement. While all representatives were entitled to submit their own proposals, he had an equal right to find them appropriate or inappropriate, and he could not approve of the proposal that had just been made.

Mr. CHAMMAS (Lebanon) explained that he had not intended to exclude the provision which the USSR considered essential. It could have been incorporated into the treaty at some other point after it had been properly debated. He had merely suggested that the Sub-Committee should not be a slave to the order of the articles or of their contents.

The CHAIRMAN proposed that the Sub-Committee should continue its general exchange of views on the two drafts, article by article, until it had completed its first reading, and then establish a working group.

It was so agreed.

The meeting rose at 6.15 p.m.

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