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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE SIXTY-FOURTH MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 21 July 1966, at 3 p.m.

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Mr. LACHS Poland

Members:

Mr. RUDA Argentina

Sir Kenneth BAILEY Australia

Mr. HERNDL Austria

Mr. FAL Belgium

Mr. de CARVALHO SILOS Brazil

Mr. ANGELOV Bulgaria

Mr. GOTLIEB Canada

Mr. CERNIK Czechoslovakia

Mr. DELEAU France

Mr. PARTLI Hungary

Mr. Krishna RAO India

Mr. AZIMI Iran

Mr. VINCI Italy

Mr. YAMAZAKI Japan

Mr. CHAMMAS Lebanon

Mr. TELLO MACIAS Mexico

Mr. DASHTSEREN Mongolia

Mr. GLASER Romania

Mr. KELLEBERG Sweden

Mr. MEROZOV Union of Soviet Socialist
Republics

Mr. KHALLAF United Arab Republic

Mr. DARWIN United Kingdom of Great
Britain and Northern
Ireland

Mr. GOLDBERG United States of America

Representative of the International Atomic Energy Agency:

Mr. PISKAREV

Secretariat:

Mr. STAVROPOULOS Representative of the
Secretary General

Miss CHEN Secretary of the Sub-Committee

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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)

Mr. PARTLI (Hungary) thanked the Chairman for suggesting a procedure which had been unanimously accepted and expressed satisfaction that agreement had been reached on article I of the Soviet draft (A/AC.105/C.2/L.13), modified by certain provisions of the United States draft (A/AC.105/C.2/L.12).

However, his delegation shared the fears expressed by the Soviet representative concerning the Sub-Committee's method of work. It did not seem possible to draft different versions of the treaty at the same time without confusion, and there was a danger of losing sight of the essential elements. His delegation felt that the draft should be the result of collective work; in addition, the various delegations must work in the same direction. In the present case, that meant that the text proposed by the Soviet and United States representatives should be accepted as a basis of discussion for the first article, and that the other provisions should be considered later. A proposal lost none of its importance by appearing not in the first article but in the articles following; the essential thing was that the treaty should contain all the elements which were judged essential by delegations.

Article I of the Soviet draft corresponded to paragraphs 1 and 2 of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space; it expanded paragraph 1 of the Declaration by mentioning "the interests of all countries". His delegation attached great importance to the second sentence of the first paragraph of article I of the Soviet draft, which corresponded to the most-favoured-nation clause and was decisive for the development of co-operation in the exploration of outer space. That clause also corresponded to the formula "on a basis of equality" in paragraph 2 of the Declaration of legal principles, while being more categorical and eliminating all possibility of discrimination. The second paragraph of article I of the Soviet draft comprised a provision which expressed the res omnium communis character of outer space and celestial bodies. The negative aspect of the freedom of outer space - i.e., the obligation of States to avail themselves of the freedom to explore space only to the extent that it did not infringe the interests of other States - meant refraining from certain activities, and an unequivocal statement on that point was given in the second paragraph of article I of the Soviet draft. That

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(Mr. Partli, Hungary)

article was satisfactorily complemented by articles 1, 2, 3 and 6 of the United States draft. The part of article 6 of the United States draft to the effect that States carrying on activities in outer space had access to stations and installations set up by other States on celestial bodies could also be approved, but agreement would have to be reached on the question of reciprocity and on the timing of access.

As far as the second sentence of the first paragraph of article I of the Soviet draft was concerned, and article 6 of the United States draft, it seemed that equal conditions were ensured not to other Contracting Parties but to States in general. It would perhaps be preferable to redraft the sentence as follows: "The Parties to the Treaty undertake to accord equal conditions to Contracting States engaged in the exploration of outer space."

Mr. CERNIK (Czechoslovakia) considered that the procedure adopted was satisfactory. Some representatives had expressed doubts as to the appropriateness of the expression "without discrimination of any kind" in the second paragraph of the Soviet text. The exclusion of all discrimination was an essential condition of equality, and for that reason the original text of the Soviet draft should be kept.

With regard to article 6 of the United States text, he noted that the principle of reciprocity should be clearly stated and that adoption of the Soviet amendment would clarify the meaning of the principle by indicating the exact bonds which existed between the various States. In the diplomatic sphere, it was a rule that there should be prior agreement regarding freedom of access and visits, and there was no reason why the rule should not apply to outer space.

Mr. VINCI (Italy) felt that the first article should be a general introduction to the treaty and embody the fundamental principles which inspired the exploration and peaceful use of outer space, the moon and other celestial bodies. The provisions of that article should contain positive rules and outline the objectives and the main principles of the treaty itself. The exercise of the rights of different States and the freedom of use and exploration of outer space should be dealt with in later provisions, as was the case in all multilateral treaties. The first article of the treaty should therefore combine article I of the Soviet draft and articles 1, 2, 3 and 6 of the United States draft.

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(Mr. Vinci, Italy)

His delegation agreed with the Indian representative that the first part of the first paragraph of article I of the Soviet draft would be better placed in the preamble. In that way, the first sentence of article I of the Soviet draft would constitute an attempt to adapt international law to new realities and perhaps constitute a point of departure for future agreements. As for the second sentence of the first paragraph of article I of the Soviet draft, it would be preferable to draft it in the following terms: "The Parties to the Treaty recognize that each Contracting Party has the right to carry out the exploration and the peaceful use of outer space, of the moon and other celestial bodies, and undertake to encourage and facilitate the exercise of these rights without discrimination in accordance with international law and the Charter of the United Nations."

His delegation welcomed the changes proposed by the United States representative in articles 2 and 3 of his draft treaty (working paper No. 1) because the new draft would keep the expression "shall facilitate and encourage international co-operation in such investigation". It would also be noted with satisfaction that the Soviet delegation had accepted in principle article 6 of the United States draft. On the other hand, some of the amendments proposed by the Soviet representative were not convincing, and his delegation had some reservations regarding the expression "reciprocity". The Sub-Committee must be careful not to draft a text which could later give rise to conflicting interpretations. In the first place, conditions of reciprocity would exist only for the countries which had actually conducted space activities. Secondly, there might be difficulties of interpretation: for example, supposing that one multilateral organization had put a station on the moon, while the space Powers had installed four or five stations, according to the principle of reciprocity the multilateral organization could be authorized to visit only one of those stations. Therefore, if the Sub-Committee was to follow the spirit of the principles adopted by the General Assembly, free access should be allowed at any time. The visits must not, of course, be of such a kind as to endanger the lives of personnel involved in experiments or the success of operations. It should therefore be specified that access to stations, installations, equipment and space vehicles would be allowed at all times on the understanding that the visits would not endanger life or interfere with operations, and that the country or multilateral organization initiating visits would accept responsibility for any damage.

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Mr. DELEAU (France) said that the reference to conformity with international law in both the Soviet and the United States texts was perhaps not as clear as it seemed a priori, for if international law was based on sovereignty, how could one act within that law if the principle was proclaimed that there was no sovereignty in space and on celestial bodies? In addition, the occasional references to the United Nations Charter were perhaps not entirely convincing; the Charter did not rule out the existence of arms so long as general disarmament had not been achieved, and it provided for and even codified the right of self-defence. Yet some articles of the draft treaty excluded arms in space and on celestial bodies. It would therefore be advisable to determine which principles of international law were meant when international law in general was mentioned.

Article I of the Soviet draft and article 6 of the United States draft provided for equal conditions in co-operation among space Powers. It would be desirable to lay down the conditions on which non-space Powers would have access to the results of the exploration of outer space and celestial bodies.

The open access provided for in article 6 of the United States draft concerned installations in space and on celestial bodies and did not apply to installations on earth, i.e., launching or observation installations. There again, there was a difference of concept between the terrestrial part and the purely space part of space law.

He agreed with the Italian representative that it would be better to place the reference to exploration and use for the benefit of mankind in the preamble to the treaty.

Mr. GOTLIEB (Canada) found a lack of clarity as to the intended meaning and implication of the phrase "on the basis of reciprocity" contained in the USSR draft article VI to which the representatives of Czechoslovakia and Italy had referred. He wondered what that phrase was meant to add to the nature of the obligations provided for in article 6. The whole scheme of the multilateral treaty which the Committee was to draft was based on the principle that all parties would have equal duties and responsibilities, as well as correspondingly equal rights. Equality before the law was implicit in any general multilateral instrument of that nature, and the notion of reciprocity seemed to be inherent in the draft treaty. Under the general principles of international law, any State which was affected by the refusal of another State to grant access could, on the basis of the principle of reciprocity, suspend its obligations to allow access, as

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(Mr. Gotlieb, Canada)

evidenced by the International Law Commission's draft article on the Law of Treaties. Apart from the lack of clarity as to the meaning of the term "reciprocity", its inclusion might give rise to a negative inference of non-applicability in other instances. Lastly, his delegation was not certain that the principle of reciprocity would be fully met in respect of article I of the Soviet draft. A State which granted some scientific co-operation would have to grant it to the entire world, whereas a State which made no arrangements for co-operation would appear to be under no obligation to grant such co-operation to third States. His delegation was uncertain as to the precise scope of article I of the Soviet draft, particularly with regard to the principle of reciprocity.

Mr. Krishna RAO (India) said that he was rather troubled by the expression "Contracting States" proposed by the Hungarian representative for the text of article I of the Soviet draft. It seemed that article I was to be a broad proposition, and that a provision according equal conditions to Contracting States would be connected with the article regarding the States to which the treaty would be open for signature or ratification. If all States could become parties to the treaty, it would be justifiable to speak of "Contracting States", but if accession was restricted to States Members of the United Nations or members of the specialized agencies, it was difficult to see how equal conditions could be accorded only to Contracting States. It would be better to wait and see what form the article on accession to the treaty would take.

Regarding the revision of article 6 of the United States draft in working paper No. 3, it might perhaps be desirable to refer in that article to outer space as well as to celestial bodies, since platforms might be constructed in space.

Mr. CHAMMAS (Lebanon) said that although article 6 mainly concerned the space Powers and potential space Powers, his delegation would endeavour to help the representatives of the countries concerned to reach an agreement. He recalled that the text of article 6 proposed at the preceding meeting by the Soviet representative, namely, "All stations, installations, equipment, and space vehicles on celestial bodies shall be open to representatives of other States conducting activities on celestial bodies on the basis of reciprocity under

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(Mr. Chammas, Lebanon)

the condition that the time of the visit is to be agreed between the parties concerned", was essentially based on the principle of reciprocity and on the necessity of agreeing on the time of visits. He wondered, first, whether the revised text of article 6 of the United States draft provided for reciprocity. As the parties to the treaty, under that article, would have to permit free access to their space installations, they would automatically be denied the benefit of such a right if they did not grant it to the other parties. The notion of reciprocity was thus inherent in article 6 of the United States draft. Furthermore, he did not agree with the interpretation which the Italian representative had given to the word "reciprocity": legally, the application of the principle of reciprocity could not be made to vary according to the number of vehicles which one of the parties - an international organization, for example - sent into space. On the matter of visits, the Soviet draft provided that they would be agreed upon beforehand, while the United States draft, based on the Antarctic Treaty, provided that stations, installations, equipment and vehicles on celestial bodies would be open "at all times". However, the difficulties that had arisen on that point might perhaps be overcome if an attempt was made to establish the specific procedures for fixing the time of visits.

Mr. YAMAZAKI (Japan) said that his delegation attached great importance to article 6 of the United States draft, the provisions of which were indispensable if the peaceful use of celestial bodies was to be secured. He shared the doubts of the representatives of Italy, Canada and Lebanon concerning the Soviet amendment. On the other hand, he well understood that, as the Soviet representative had said, untimely visits might endanger human life or interfere with essential scientific investigations. He accordingly suggested that the following sentence should be added at the end of article 6 of the United States draft: "Such representatives shall take maximum precautions not to interfere with the normal operation of activities therein."

Mr. VINCI (Italy), referring to the Lebanese representative's statement, explained that he had not given an interpretation to the word "reciprocity". He had simply drawn attention to an interpretation which could be given to that word in the future. To avoid conflicting interpretations, it would be better not to go beyond the idea that the notion of reciprocity was inherent in all international treaties.

Mr. de CARVALHO SILOS (Brazil) recalled his comments at the preceding meeting concerning the first article of the two drafts and suggested that the United States text and the first sentence of the Soviet text should be combined. The words "and shall be the province of all mankind" in the Soviet text might be replaced by the words "irrespective of the state of their scientific development". His delegation considered that the treaty should reflect the balance between the space Powers and the non-space Powers.

Mr. MOROZOV (Union of Soviet Socialist Republics) pointed out that the first sentence of article I of the Soviet draft, which some delegations would like to place in the preamble, appeared in paragraph 1 - not the preamble - of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. He thought that was a way of stressing the principle of equality between space and non-space Powers, to which the Brazilian representative had just referred, and of showing clearly that the space achievements of the various countries were those of all mankind. Moreover, there was no reason to replace the words "and shall be the province of all mankind" by the words "irrespective of the state of their scientific development", for that would establish a division between the scientifically developed countries and the less developed countries and weaken the text.

The Soviet text was entirely clear concerning the principle of reciprocity. Reciprocity should be understood in the traditional sense of the word in international law.

He objected to the expression "at all times" (article 6 of the United States draft), which seemed to him physically difficult to apply, and asked that visits should be subject to the conditions laid down in the Soviet text. On the other hand, he agreed to the first part of the text of the United States article.

Mr. TELLO MACIAS (Mexico) said that he understood the concern of the USSR to ensure the safety of its astronauts and installations. He wondered whether the prior agreement required for visits was to take the form of an annex to the treaty, laying down rules to govern all future visits, or whether there would be a separate agreement for each visit. In the former case, the rules governing visits would apply to all parties engaging in space activities; in the latter case, the agreement would be of a bilateral nature.

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Mr. MOROZOV (Union of Soviet Socialist Republics) said that he did not have in mind the conclusion of a supplementary agreement of a formal legal character; it would be a matter simply of agreeing on the date for a visit, to suit the convenience of the host Government and the visitor. That was why the USSR was requesting the deletion of the words "at all times".

Mr. TELLO MACIAS (Mexico) took note of the Soviet Union representative's explanation.

The CHAIRMAN invited the Sub-Committee to take up article II of the Soviet draft treaty; he pointed out that it differed slightly from the second sentence of the United States draft article 1, which related only to celestial bodies.

Mr. GOLDBERG (United States of America) said that, taking into account the decision taken at the previous meeting, he could accept the Soviet text if the words "and celestial bodies" were replaced by the words "including the moon and other celestial bodies" and the words "shall not be subject" by the words "is not subject".

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he had no objection to those changes.

Mr. CHAMMAS (Lebanon) hoped that henceforth there would be no objection to the use of the expression "outer space, including the moon and other celestial bodies".

The CHAIRMAN thought that the choice between the expression "and celestial bodies" and the expression "including the moon and other celestial bodies" was a question of drafting, which the Sub-Committee need not take up at that stage.

Article II of the Soviet draft treaty, as amended, was adopted.

The CHAIRMAN invited the Sub-Committee to consider article III of the Soviet draft treaty.

Mr. GOLDBERG (United States of America) said that, while the United States draft article 1 referred to international law, the Soviet text adhered closely to the Declaration of Legal Principles adopted by the General Assembly. That text was therefore acceptable to his delegation.

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Mr. Krishna RAO (India) pointed out that operative paragraph 4 of the Declaration of Legal Principles read: "The activities of States in the exploration and use of outer space shall be carried on in accordance with international law...." The Soviet draft article III, on the other hand, read: "The Parties to the Treaty shall carry on activities... in accordance with...." It was natural that any treaty should contain obligations which were binding only on the parties, but he wondered what effect the provision would have in relation to the General Assembly resolution.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that, although the Soviet draft was based on the Declaration of Legal Principles adopted by the General Assembly, it took into account the fact that a multilateral international agreement must embody legal provisions of a binding nature. The obligations assumed under a multilateral treaty were assumed only by the parties; the provisions of the treaty could, however, serve as legal standards for the behaviour of States which were not parties. In that connexion he pointed out that accession to the treaty was provided for in article XI of the Soviet text.

Mr. Krishna RAO (India) said that he was willing that the question what States might become parties to the treaty should be examined in conjunction with the Soviet draft article XI; until then he could not subscribe either to the formula "all States" or to the formula "States Parties to the Treaty".

Article III of the Soviet draft treaty was adopted.

The CHAIRMAN invited the Sub-Committee to take up article 4 of the United States draft treaty.

Mr. GOLDBERG (United States of America) said that the principle of openness, which was reflected in the United States draft treaty, was an essential feature for a treaty designed to promote international peace and co-operation. The United States draft treaty applied the concept of openness by three means: international co-operation in scientific investigations concerning celestial bodies (article 3); freedom of access to stations, installations, equipment and space vehicles (article 6); and the obligation to provide the Secretary-General of the United Nations with a descriptive report of the nature and conduct of activities on a celestial body and to make the findings of space activities freely

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(Mr. Goldberg, United States)

available to the public and the international scientific community (article 4). Prompt reporting to the Secretary-General on space activities would help to assure the international community of the peaceful nature of the activities concerned, and would promote the distribution of information relating to the safety of astronauts. The idea expressed in paragraph 9 of the Declaration of Legal Principles - namely, that astronauts were envoys of mankind - would thus be taken into account. The United Nations had played an important role in the development of outer space institutions, and the Secretary-General was in a position to ensure the impartial distribution of scientific information.

The United States draft article 4 was also designed to ensure the publication of the data gathered on space activities, for the information of the public and of scientists throughout the world. Freedom of information was the prerequisite for the advance of scientific knowledge and achievement.

Mr. MOROZOV (Union of Soviet Socialist Republics) observed that the question of the dissemination of information on space activities had often been raised in United Nations bodies, and that an international conference on the uses of outer space was to be held very shortly. General Assembly resolution 1721 (XVI) had requested the Committee on the Peaceful Uses of Outer Space "To provide for the exchange of such information relating to outer space activities as Governments may supply on a voluntary basis, supplementing but not duplicating existing technical and scientific exchanges". Exchanges of scientific information had already taken place not only through the United Nations but also through national and international scientific organizations such as COSPAR. At its twentieth session, the General Assembly had adopted resolution 2150 (XX) concerning international co-operation in the peaceful uses of outer space; in that resolution it had noted with appreciation that a number of Member States had, on a voluntary basis, co-operated extensively with the programme of the Committee on the Peaceful Uses of Outer Space by providing information on space activities, and it had urged other Member States to do the same.

He wished to emphasize in that connexion how important it was that information on space activities should be provided voluntarily. For that reason, although he supported the principle underlying the United States draft article 4, he proposed

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(Mr. Morozov, USSR)

that a provision reading as follows should be added to the Soviet draft article III: "A State conducting activities on celestial bodies will, on a voluntary basis, inform the Secretary-General of the United Nations and also the public and the international scientific community of the nature, conduct and locations of such activities." Alternatively, that provision could take the form of a separate article.

Mr. Krishna Rao (India) expressed appreciation of the United States text and of the new provision proposed by the Soviet representative. Since the United States had agreed that the treaty should apply to outer space, it should consider amending article 4 to include activities in outer space as well as those on celestial bodies. The article might also include the idea, expressed in General Assembly resolution 1721 B (XVI), of registering launchings with the United Nations.

It was disappointing that the treaty did not go as far as many developed countries had wished as regards the role of an international organization concerned with space activities, but the future United Nations conference on the uses of outer space might perhaps be in a position to study that question.

Mr. YAMAZAKI (Japan) said that he too considered the question of the reporting extremely important. He presumed that article 4, clause (a), of the United States draft treaty was based on General Assembly resolution 1721 (XVI), which called upon "States launching objects into orbit or beyond to furnish information promptly to the Committee on the Peaceful Uses of Outer Space, through the Secretary-General, for the registration of launchings". The effort of the United States to make it obligatory to report to the Secretary-General of the United Nations on space experiments was an advance on the previous practice of supplying such information only on a voluntary basis.

The provisions of resolution 1721 (XVI) applied to the moon and other celestial bodies as well as to outer space, and the members of the Sub-Committee seemed to be agreed that the treaty should have the broadest possible scope. The application of the article in question should therefore be extended to outer space. The legal obligation to report space activities to the Secretary-General might be made to apply to the launching of all space objects, whatever their destination.

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(Mr. Yamazaki, Japan)

As to the timing of reports to the Secretary-General on space activities, he referred the Sub-Committee to article VII of the Antarctic Treaty, which provided that: "Each Contracting Party shall, at the time when the present Treaty enters into force for it, inform the other Contracting Parties, and thereafter shall give them notice in advance, of...." His delegation would like to see a similar system of prior notice established for space activities as a whole. Despite the technical difficulties and security problems involved, such a system would be particularly useful in cases where one State might interfere with the activities of other States. In that connexion his delegation attached great importance to the Soviet draft article VIII, which provided for international consultations before any activity or experiment was undertaken that might have harmful effects. But a State whose interests were threatened by the space activities of another State could not be informed of those activities unless the latter State gave notice of them in advance to the Secretary-General of the United Nations, as indicated in the United States draft article 4. He therefore reserved the right to submit an amendment on those lines to the Soviet draft article VIII.

Mr. CHAMMAS (Lebanon) associated himself with the remarks made by the representative of India. Countries which did not yet participate in space exploration were perhaps not in a position to judge what information should be given out, but steps should be taken to ensure that they were kept fully abreast of space activities.

The meeting rose at 6 p.m.

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