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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE SIXTY-SIXTH MEETING

Held at the Palais des Nations, Geneva,
on Monday, 25 July 1966, at 10.30 a.m.

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PRESENT:

Chairman:

Mr. LACHS Poland

Members:

Mr. RUDA Argentina
Sir Kenneth BAILEY Australia
Mr. HERNDL Austria
Mr. BAL Belgium
Mr. de CARVALHO SILOS Brazil
Mr. ANGELOV Bulgaria
Mr. GOTLIEB Canada
Mr. RIHA 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. SIDI BABA Morocco
Mr. GLASER Romania
Mr. BLIX Sweden
Mr. MORCZOV Union of Soviet Socialist
Republics
Mr. KASSEM 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. PISAREV

Secretariat:

Mr. STAVROPOULOS Representative of the
Secretary-General
Miss CHEN Secretary of the Sub-Committee

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 invited the Sub-Committee to resume consideration of article IV of the Soviet draft and of articles 8 and 9 of the United States draft, which concerned objects carrying nuclear weapons or other weapons of mass destruction.

Mr. RUDA (Argentina) said that the two fundamental principles which should underlie the Treaty were that the exploration and use of outer space and celestial bodies should be for peaceful purposes and that all States should be free to participate. The first principle, on which article IV of the Soviet draft and article 9 of the United States draft were based, should have been stated in the first article of the treaty, since it was the essential point of General Assembly resolution 1962 (XVIII), which recognized "the common interest of all mankind in the progress of the exploration and use of outer space for peaceful purposes". The United States representative had indicated why that principle had not been extended to outer space, but the Argentine delegation had not been fully convinced by his explanations. On the other hand, it welcomed the fact that the first part of article IV of the Soviet text now appeared in the United States text: objects carrying nuclear weapons or other weapons of mass destruction were not to be placed in orbit around the earth. In order not to delay the Sub-Committee's work, he would support the latest version of the article, while still regretting that it did not expressly stipulate that outer space as a whole was to be used solely for peaceful purposes.

Mr. RIHA (Czechoslovakia) noted with satisfaction that the members of the Sub-Committee were agreed on one essential matter, namely, that placing in orbit around the earth any objects carrying nuclear weapons or other weapons of mass destruction and stationing them on celestial bodies should be forbidden. The United States text, however, left a number of points unclear. On the one hand, it prohibited "military bases and fortifications", whereas the expression "military installations" would be more general. On the other hand, according to the last sentence of the article, the use of military personnel and equipment for scientific research or any other peaceful purpose was not prohibited. As, however,

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(Mr. Riha, Czechoslovakia)

the use of military equipment might lead to violations of the principle on which the article was based, the use of such equipment on celestial bodies should not be authorized.

Mr. PARTLI (Hungary) said that he attached great importance to the question under consideration. Article IV of the Soviet draft was based on General Assembly resolution 1894 (XVIII), which solemnly called upon all States: "(a) to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kind of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner; (b) to refrain from causing, encouraging or in any way participating in the conduct of the foregoing activities". The exploration of outer space opened up magnificent prospects for mankind, but as space might also be used for military purposes, effective measures should be taken to avert that danger. Article IV of the Soviet draft would serve that purpose admirably. On the other hand, the last sentence of the new United States text (revised version of articles 8 and 9 could not be fully supported because it would authorize the use of military equipment. While such equipment might be used for peaceful purposes at the beginning, by its very nature it could at any time be used for acts of war. That assumption was not unfounded. It was sufficient to recall that the directors of the United States space research programmes had proposed that no distinction should be made between civilian and military space activities and that several United States devices carrying military equipment had secret objectives.

Furthermore, the Sub-Committee should define not only the notions of exploration and use, as the representative of France had requested, but also the notion of peaceful use. Some authorities in the United States understood "peaceful use" to mean non-aggressive rather than non-military use. It would be remembered that Mr. Goedhuis, an eminent jurist, had protested against the improper use of the term "non-aggressive", which was wrongly treated as identical with "peaceful". The United States delegation would render a useful service by making clear what it meant by "peaceful use". In order to demonstrate that the expression "military equipment" could appear in the draft treaty, it had referred to the Antarctic Treaty, which authorized the use of military personnel and equipment for peaceful or scientific purposes. A provision of that kind could

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(Mr. Partli, Hungary)

not, however, be automatically inserted in a treaty on the use of outer space and of the celestial bodies. The legal questions with which the two treaties were concerned could not be placed on an equal footing.

Mr. Krishna RAO (India) said that he had carefully studied Working Paper No. 6 and had found that the two space Powers had made concessions to each other in order to arrive at a joint text which took full account of their rights and interests. Only partial account had, however, been taken of the rights and interests of the non-space Powers, or rather of the developing countries. Those countries did have rights, it being specified in the first article that the exploration and use of outer space was to be for the benefit and in the interests of all countries. The space Powers had, to be sure, explicitly agreed to three important legal obligations, which were set forth in Working Paper No. 6, but in a sense that document ran counter to the whole history of the question in the United Nations. It was the space Powers which had conceived the idea, the absolutely fundamental idea, of using outer space solely for peaceful purposes. President Eisenhower had proposed to the United Nations in January 1957 that arrangements should be worked out to ensure the peaceful use of space, and in July of the same year Mr. Dulles had reiterated the point in the Sub-Committee on Disarmament. The Soviet Union had taken a similar stand at the same time. On several occasions in 1958, the leaders of both countries had stated that it was essential that space should not be used for military purposes. At the end of 1958, the General Assembly had included in its agenda an item entitled "Question of the peaceful use of outer space". On 28 November 1958, in resolution 1548 (XIII), it had recognized "the common interest of mankind in outer space and... that it is the common aim that outer space should be used for peaceful purposes only" and that it was desirable to "avoid the extension of present national rivalries into this new field". In 1959 the Ad Hoc Committee on the Peaceful Uses of Outer Space had stated in its report to the General Assembly that outer space was on conditions of equality freely available for exploration and use by all States and that that rule derived from a fundamental principle, namely, that space should be used solely for peaceful purposes. Reference might similarly be made to resolutions 1472 (XIV), 1721 (XVII), 1802 (XVII), 1884 (XVIII) and 1962 (XVIII) and to a resolution of the International Law Association entitled "State sovereignty and the legal status of outer space", in which the same principle was formulated. Soviet authors had expressed a similar idea. It was

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(Mr. Krishna Rao, India)

now a question of drawing up a treaty to govern the exploration and use of outer space, the moon and other celestial bodies. If it had merely been a treaty on celestial bodies, it would have been understandable why the authors of the two drafts under consideration only said that celestial bodies should be used exclusively for peaceful purposes (article IV of the Soviet draft and Working Paper No. 6 submitted by the United States). As, however, the treaty applied also to outer space, there might seem to be reason for concluding that outer space could be used for non-peaceful purposes. Because technology was neutral, it was possible to orbit military bases as well as scientific laboratories. That was the path to which things had come.

His delegation therefore proposed that articles 8 and 9 of the United States draft and article IV of the Soviet draft, and also Working Paper No. 6, should be amended as follows:

"It is confirmed that the Parties to the Treaty (or all Parties) undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, instal such weapons on celestial bodies, or station such weapons in outer space in any other manner.

"It is confirmed that the Parties to the Treaty (or all States) undertake to use outer space and the celestial bodies exclusively for peaceful purposes. The establishment of military bases and fortifications, the testing of any type of weapons, and the conduct of military manoeuvres on celestial bodies shall be forbidden. The use of military personnel for peaceful purposes is not prohibited."

By using the words "it is confirmed", he had thought to evoke the history of the question and, in particular, the Declaration contained in General Assembly resolution 1884 (XVIII), to which the space Powers had subscribed.

Mr. MOROZOV (Union of Soviet Socialist Republics) felt that the text proposed by the Soviet delegation at the meeting of 22 July (Working Paper No. 9) constituted a practical solution which the Sub-Committee could adopt forthwith. Except in regard to the use of military equipment, which had given rise to discussion, that text had the Sub-Committee's support. A number of questions would of course remain to be dealt with after the elaboration of the Treaty, particularly the use of outer space for exclusively peaceful purposes. The

(Mr. Morozov, USSR)

problem was in part solved by the ban on placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction. The Soviet Union like many other peaceful countries, was naturally in favour of a total ban on the use of outer space for military purposes.

The Committee must try to work out practical solutions and avoid being sidetracked into discussions of too general a nature. He did not, therefore, think it necessary to repeat the arguments which the USSR representative had already presented in the Disarmament Committee when that body had considered the question of a total ban on the use of outer space for military purposes. He expressed the hope that agreement could be reached on the new wording of article IV contained in Working Paper No. 9.

Mr. Krishna RAO (India) said that he too could refer to certain resolutions of the General Assembly and statements by members of the Sub-Committee which had not seemed to trouble any one. In any event, no reply had been given to the reasons he had advanced in favour of his proposal.

The Sub-Committee had not yet adopted a final text, and that was why he had proposed an amendment to Working Paper No. 6. The only reaction to his arguments was the position apparently taken by certain Powers which had decided to go so far and no further, while taking cognizance of his delegation's views.

Mr. CHAMMAS (Lebanon) said that the Sub-Committee had acted wisely in enlarging the scope of the draft treaty so as to include outer space, but it would apparently be difficult to get the agreement of all delegations on the inclusion of outer space in certain provisions of the treaty. The Indian representative's case had, to be sure, been very ably argued, but in view of the need to reach agreement, the time had come to adjourn the discussion on that particular item. Perhaps the question could be studied by a working group.

Mr. AZIMI (Iran) stressed that article IV of the Soviet draft, articles 8 and 9 of the United States draft, and Working Papers Nos. 6 and 9 mentioned the peaceful use of celestial bodies but not the peaceful use of outer space. They confined themselves to prohibiting the installation of nuclear weapons or weapons of mass destruction on celestial bodies. His delegation considered that the draft treaty should also stipulate that the exploration and use of outer space should serve only peaceful purposes.

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The CHAIRMAN said that the unresolved issues would be taken up again in the Working Group. He read out article 5 of the United States draft and the corresponding article IX of the Soviet draft and invited the Sub-Committee to begin discussion of them.

Mr. GOLDBERG (United States of America) said that the United States and Soviet drafts differed in their language but were both derived from paragraph 9 of the Declaration of Legal Principles. After a careful reading of the Soviet text, which was a little more detailed than that of the United States, he found it in essence acceptable, provided that the expression "they shall be enabled promptly to return" was replaced by the language of the Declaration: "safely and promptly returned".

Between the next paragraph of the Soviet text and article 5 of the United States text there were only differences of form, which could be settled in the Working Group. He would, however, propose the following addition to the paragraph in order to improve both texts:

"A State conducting activities in outer space, including the moon and other celestial bodies, shall promptly notify the Secretary-General of the United Nations of any information relating to the physical safety of astronauts."

Whatever differences might have come to light in other areas about the nature of reporting, it could not be disputed that astronauts were envoys of mankind and that all information concerning their physical safety should be made available. There should be unanimous agreement that any State acquiring information on the safety of astronauts ought to make it promptly available to those responsible for the safety of those courageous men and women.

As to the second paragraph of article IX of the Soviet draft and article 5 of the United States draft, there was no substantive disagreement between the two texts.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he still preferred the original text proposed by the Soviet Union in article IX, which he read out. There was no reason why he should not give favourable consideration, when it came to drafting, to the suggestion that that part of the Soviet text should

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(Mr. Morozov, USSR)

be brought into line with the terms of the Declaration. As to the second paragraph of the article, it was sufficiently clear: if the astronauts of one State party to the treaty rendered all possible assistance to the astronauts of another State party, it followed that the States to which the astronauts belonged would assume the corresponding obligations.

His delegation would in due course give its views on the new paragraph proposed by the United States representative. Its position would depend on the way in which all the clauses on the communication of information were drafted. In that regard, the United States proposal was not very clear, and it seemed difficult to define the scope of the obligations imposed by that additional text.

Mr. CHAIMAS (Lebanon) said that the Sub-Committee was in a sense being asked to make a distinction between the astronaut and the machine. His delegation was ready to accept the term "as envoys of mankind" in article IX of the Soviet draft, provided it was specified that the astronauts were engaged in peaceful activities, otherwise, they would only be the envoys of their own countries, sent for certain purposes. It so happened that thus far all the astronauts really had been envoys of mankind, but the exploration of space was still in its infancy, and no one knew what the future might hold. The term "envoys of mankind" could not therefore give rise to an obligation unless it was specified that the astronauts had been sent into space for peaceful purposes. The same applied to the last part of article IX of the Soviet draft, for it was clear that mutual assistance could not be requested unless the astronauts of both States were engaged in peaceful activities.

In raising those questions, he was not seeking to complicate the problem but rather to clarify the position. As the Indian representative had said, "technology is neutral". His delegation was ready to give more thorough study to the distinction between the human being and the machine.

Mr. Krishna RAO (India) thought the article in question would impose more obligations on non-space Powers than on space Powers, whatever the extent of their territory. His delegation had no serious objection to article IX of the Soviet text and the amendment proposed by the United States representative. The second paragraph, of which the Lebanese representative had spoken, applied only

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to space Powers. The first paragraph likewise did not give rise to any objections, for, even in the absence of international legal obligations, non-space Powers would render assistance to astronauts in distress. It should be noted, however, that the Committee had already been studying for three years the question of conventions governing assistance to astronauts and liability. His delegation would therefore like that article to specify that the provisions giving effect to the principle of assistance to astronauts were to be the subject of a separate legal instrument. That would be, in effect, an expression of hope that the three instruments would be completed at the same time.

Sir Kenneth BAILEY (Australia) associated himself with the remarks of the Indian representative. He approved of the provisions of article IX of the Soviet text with the amendments proposed by the United States representative. In his view, however, provisions of such a general character would not cover all the measures required for the safety of astronauts, the assistance to be rendered them, and their return. He accordingly suggested the addition at the end of article 5 of the United States draft and at the end of article IX of the USSR text, as amended, a sentence such as the following: "The provisions of this article are adopted without prejudice to the provisions of any special convention subsequently adopted with regard to the safety of astronauts." It was not necessary to go further and stipulate that the special convention on assistance to astronauts and their return should be ready at the same time as the treaty, the conclusion of which might thus be delayed. It would, however, be useful to indicate that the two instruments were related and that the general provisions of the treaty would in no way derogate from the provisions of any subsequent convention. His delegation would, if necessary, submit a text which could be studied by a working group.

Mr. GOLDBERG (United States of America) said that, in submitting his suggestions and observations, he had had no intention of prejudicing any further agreements. The question of a common declaration on that point and on the matter of liability could be discussed in a working group, for such a declaration might give rise to problems when other treaties were drawn up.

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The CHAIRMAN thought the Sub-Committee might defer consideration of article IX of the Soviet draft and article 5 of the United States draft and take up simultaneously article V of the Soviet draft and article 7 of the United States draft.

Mr. GOLDBERG (United States of America) noted that the two texts proposed were based on paragraph 7 of the Declaration of Legal Principles. The Soviet text, with a few changes, would be acceptable to his delegation. Those changes would be submitted to the Secretariat in writing.

He proposed the deletion of the words "it is" in the phrase "while it is in outer space or on a celestial body" in the English text of article V of the Soviet draft. The words "delivered to" in that part of the second sentence of article V which read "including objects delivered to or constructed on a celestial body" could be replaced by the word "landed". The words "shall not be affected" in that same sentence could be replaced by the words "is not affected".

Mr. GOTLIEB (Canada) thought the words "and over any personnel thereon" in article V might give rise to a slight ambiguity, since the jurisdiction and control of States would presumably apply not only to personnel occupying an object launched into outer space but also to any personnel stepping outside the object in space.

Mr. DELEAU (France) noted that no article in either of the two draft treaties contained provisions relating to terrestrial activities. The last sentence of article V of the Soviet draft, however, included a provision concerning the return to earth of objects launched into outer space. He wondered whether it was desirable to refer to the terrestrial effects of space exploration in certain cases and not in others.

Mr. VINCI (Italy) observed that a multilateral organization might eventually engage in space activities. He therefore proposed that the term "A State Party to the Treaty" at the beginning of article V of the Soviet draft should be replaced by the term "The Parties to the Treaty". That observation would apply to the whole of the Treaty.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he had no objection to the ideas expressed by the Canadian delegation. At the present time an astronaut could be launched into space only aboard a vehicle and the text of article V covered both the object launched into space and its crew, whether the
1. inside or outside the object.

The CHAIRMAN said he assumed that the discussion on that point had been completed and suggested that the Sub-Committee should take up article VI of the Soviet draft treaty; he noted that there was no corresponding provision in the United States draft treaty.

Mr. GOLDBERG (United States of America) observed that article VI of the Soviet draft was based on paragraph 5 of the Declaration of Legal Principles. With a few changes, his delegation would find that text acceptable.

The words "non-governmental bodies corporate" should be replaced by the words "non-governmental entities", since in United States jurisprudence the term "bodies corporate" implied a limitation. Also, the words "non-governmental entities" should be followed, as in the text of the Declaration of Legal Principles, by the words "and for assuring that national activities are carried on in conformity with the principles set forth in the present (Treaty)". It would also be necessary to decide at the drafting stage whether to use the words "in outer space or on celestial bodies" or the words "outer space including the moon and other celestial bodies".

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the expression translated into English as "non-governmental bodies corporate" did not give rise to any difficulties in Russian legal terminology. The translation of the Russian text could very well be corrected in the manner suggested by the United States representative. The question of the terms to be used with reference to outer space, the moon and other celestial bodies was simply one of drafting; in any case, celestial bodies necessarily included the moon. He had no objection to the United States representative's proposal concerning a sentence to be added after the words "non-governmental entities". He proposed, however, that the words "in conformity with the principles set forth in the present Treaty" should be replaced by the words "in conformity with the provisions of the present Treaty".

Mr. GOLDBERG (United States of America) accepted that suggestion by the representative of the Soviet Union.

Mr. DARWIN (United Kingdom) said that the question of international organizations was of direct interest to many delegations. Indeed, a majority of the Sub-Committee participated in a system of communications satellites established pursuant to an inter-governmental agreement. Undoubtedly, international

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(Mr. Darwin, United Kingdom)

organizations were engaging in space activities. At present those activities did not extend to the moon or other celestial bodies, but that possibility should be anticipated. It would be wrong to consider the relationship between international organizations and the treaty, as a whole solely in the context of international responsibility and liability. The treaty should make provision for international organizations and States pursuing space activities through an international organization. As a matter of simple justice, international organizations should not be bound by articles imposing obligations or governing their conduct unless they were entitled to the benefits provided in certain articles for those conducting space activities. In the context of article VI of the Soviet draft he saw some difficulty in automatically or indirectly binding international organizations without clearly ensuring that they would obtain effective benefits under the treaty. The point could be expressed in the form of a reservation about the last sentence of article VI, but it was in fact a general question which concerned many articles of the treaty, and could therefore be discussed at a later stage of the debate.

Mr. Krishna RAO (India) said that he was in agreement with article VI of the Soviet draft. The last sentence, however, was a little ambiguous and it would be well to clarify its meaning with respect to international organizations.

Mr. DELEAU (France) associated himself with the remarks of the United Kingdom representative regarding the place to be given to international organizations in the Treaty. It would be desirable, in fact, to have a fuller and better balanced text concerning international and inter-governmental organizations; that question could be examined at a later stage of the debate.

Sir Kenneth BAILEY (Australia) agreed with the United Kingdom and Indian representatives and considered, like the United States representative, that an individual provision relating to assistance to and return of astronauts might not be the best way of linking the provisions of the treaty with those of some special subsequent agreement dealing with that issue. It would be preferable to draft a fuller and more precise text on assistance and return.

His delegation endorsed the comments of the United Kingdom and French representatives regarding international organizations conducting space activities. Consideration of that question might be deferred, as there was no article dealing with international organizations generally.

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Mr. GLASER (Romania) said that the question of international organization gave rise to serious problems. As was known, the rules of international law did not explicitly refer to international organizations. Thus, the very foundations of international law were at issue. In the circumstances, great circumspection should be shown in discussing the question, as it might have repercussions on the position Governments chose to take regarding basic issues of international law.

Mr. GOTLIEB (Canada) said he did not believe it possible to impose obligations on third parties which were States unless they accepted such obligations. It might be appropriate to set forth in a declaration general principles covering international organizations as well as States, but in a treaty with binding provisions it did not seem possible to bind non-parties except to the extent that they accepted the provisions. Accordingly, the Sub-Committee should at the appropriate time give careful consideration to the question of international organizations.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the issue was very interesting and important and that he would explain at the next meeting the reasons behind the present wording of the Soviet text.

The meeting rose at 1 p.m.