COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE
LEGAL SUB-COMMITTEE
Fifth Session
SUMMARY RECORD OF THE SIXTY-SEVENTH MEETING

Held at the Palais des Nations, Geneva,
on Monday, 25 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)

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he wished to reply to comments made on article VI of his delegation's draft (A/AC.105/C.2/L.13). Article VI of the Soviet text had been drawn up in the light of paragraph 7 of the Declaration of Principles (General Assembly resolution 1962 (XVIII)), which had been a compromise. In the plenary Committee's discussion on the matter, the Soviet delegation had proposed, in document A/AC.105/L.2, that article 7 should state that all activities of any kind pertaining to the exploration and use of outer space should be carried out solely and exclusively by States. Many delegations, however, had insisted that in view of the conditions prevailing in certain countries activities in space could not be confined to the State. The question had then arisen of what should be done about international organizations, in the sense of organizations whose members were States. In order to arrive at a formula acceptable to the different groups, a compromise wording had been adopted, which was reflected in article VI of his delegation's draft. Now it seemed that that background was being disregarded and that an attempt was being made to go still further and grant such international organizations a special legal status. It was argued that obligations could not be placed on third parties which were not parties to the treaty. That was a generally recognized principle of international law with which he would not quarrel, but it was not a relevant criticism of the Soviet draft. Was it being suggested that the principles governing the activities of international organizations should be different from those governing the activities of individual States? If so, the position was untenable. A change in quantity did not mean a change in quality and the same principles applied to States as members of an organization as to States in their individual capacity. Furthermore, only a State could be party to an international treaty; although there were other views on that question, that was the practice followed with regard to treaties concluded under the auspices of the United Nations. In that connexion he agreed with the views put forward by the representative of Romania at the previous meeting. Since, therefore, States as individual parties and as members of international organizations were governed by the same principles, there was no conflict. They bore a double responsibility and must discharge it. The Soviet text should therefore create no difficulties.
A question had been raised at the previous meeting which at the time had seemed purely linguistic. After consultations, however, he had reached the conclusion that the proposed amendment to the English text would make it no longer equivalent to the Russian. The term "entities" meant something vaguer than the Russian equivalent of "bodies corporate", which meant a group of persons or an organisation duly recognized as such in accordance with national legislation. The situation was complicated by the fact that the English version of the Declaration of Principles used the same wording as the proposed amendment; but it might be incorrect. He would therefore request the Legal Counsel and the Secretariat to bring the translation into line with the Russian text of article VI and would withdraw his over-hasty acceptance of the amendment at the previous meeting.

Mr. DAVIS (United Kingdom) said that it was the general view in international law that international organizations were capable of rights and duties. They did from time to time enter into contractual documents, with one another and with States. That might not be the practice of all international organizations and there might be States which had never had occasion to enter into contractual documents with an international organization. But a survey of international practice generally would show that such organizations had rights and duties. That did not mean that international organizations were the same as States. In that connexion, he referred to the opinion of the International Court of Justice in the Reparations for Injuries case in 1939, which had expressly stated that an international organization, although not the same as a State, did enjoy rights and duties. As far as the treaty under discussion was concerned, it was not clear how it would operate if no provision was made for international organizations. For some purposes, it might be sufficient to regard an international organization as the sum of its member States. But it did not follow that all the text of article VI imposed responsibility upon both the States and the international organization, but if they exercised that responsibility in different ways, the meaning of the clause would be uncertain. The same applied with regard to the article on liability, where liability appeared to be imposed on both the international organization and the States without any indication of how it was to be divided among them or how it would be discharged in practice. There was a basic issue involved which was broader than the two specific aspects of responsibility and liability: the general position of international organisations in the regime governing activities in space and on celestial bodies must be clearly and appropriately laid down. His delegation therefore wished to propose the inclusion of an additional article on international organization (Working Paper No. 17).

In paragraph 1, the contents of the brackets had not been specified because the matter to which they referred had not yet been dealt with by the Sub-Committee. It would be seen, however, that the paragraph did not equate international organizations with States, since it expressly excluded the application to them of the articles concerning signature, ratification and accession by States. On the other hand, it did establish a procedure whereby international organizations could file a declaration with the depositary authority. If that step was taken by an international organization, the provisions of the treaty would apply to it, not on the basis that it was a State, but on the basis that it would participate in the regime governing outer space and the celestial bodies in a manner which was appropriate to that regime and which in substance and on technical grounds had been found appropriate for States. That was necessary for strictly practical reasons.

Paragraph 2 was designed to ensure that international organizations not only could but did become subject to the regime governing outer space and the celestial bodies. Paragraph 3 provided for the action to be taken by States parties to the treaty in cases where there was a delay before an international organization could carry out the procedure indicated in paragraph 1. How effective their action would be would depend on various factors, such as their number and their influence in the organization, but there was nothing in principle to prevent their accepting an obligation to take such steps as were open to them. It would not be contrary to the *pacta tertiis* rule, since there would be no attempt to impose upon international organizations directly and without their consent rights and obligations effective on them as an entity. There were two points in the wording to which the Committee's attention should be drawn. Firstly, the word "principles" was used rather than "provisions" because the provisions as such spoke only of "States". It was not the intention to suggest that the treaty applied to international organizations in some other way than to States. Secondly, the words "subject to reciprocity"
international organizations were specifically given the right to engage in space activities, but the reason for that was the exceptional importance of such activities and the consequent need to stress the double responsibility of States which were members of such organizations.

Mr. Krishna Rao (India) said that the role of international organizations was a vexed question which the Sub-Committee would do well to approach in practical terms. Unlike the Soviet draft article VI, the new article proposed by the United Kingdom delegation created more difficulties than it solved. In the first place, it was not clear whether the term "international organization" in paragraph 1 referred to inter-governmental or non-governmental organizations. More seriously, he simply did not see that paragraphs 2 and 3 were applicable. How were States parties to "ensure" that any international organization to which they belonged would make the necessary declaration? Moreover, the question of reciprocity did not arise since it could not be translated into concrete terms. His greatest difficulty, however, was the distinction to be drawn between "the principles set out in this treaty" and "the provisions of this treaty". He preferred the latter formula.

Mr. Vincenzi (Italy) pointed out, in reply to critics of the United Kingdom proposal, that the practice of having international organizations become contracting parties to agreements already existed. However, it was true that the article as drafted could open loopholes. For instance, if a State which was not party to the treaty but belonged to an international organization which was, it would be compelled to abide by the provisions of the treaty. There was also the possibility that countries not in a position to undertake national space activities individually might in future constitute regional organizations for that purpose.

Sir Kenneth Bailey (Australia) agreed with the Soviet representative that nobody would wish to return to the rule that only States might conduct space activities when in fact international organizations were already doing so. He also agreed with the Romanian representative that the rules of international law did apply to international organizations. But it was quite another matter to say that the provisions of a specific international treaty between certain States applied to international organizations as such that would depend on the terms of the treaty and the position of the international organization concerned.
Mr. BAL (Belgium) shared the doubts of other representatives as to whether article VII of the Soviet draft was sufficient, in view of the practical consideration that international organizations were already conducting space activities. The Sub-Committee should avoid doctrinal controversies such as the question whether, in international law, States could or could not be placed on a footing of equality with international organizations. As a practical approach to a complex problem, the United Kingdom proposal deserved the Sub-Committee's closest attention.

Mr. KOROPIT (Union of Soviet Socialist Republics) still felt that the Soviet draft offered the best solution.

Mr. DARWIN (United Kingdom) noted that the Soviet representative had suggested that the United Kingdom delegation was acting unwisely in reopening a compromise arrived at during the drafting of the Declaration of Legal Principles. But the context was quite different. In that instance, the United Nations had been drawing up rules of general international law which, by their very nature, were binding on international organizations and had acquired considerable vigour as a result of their unanimous adoption by the membership. By contrast, the Sub-Committee was at present engaged in drafting a contractual document which would include a procedure for signature and ratification. In the early months of its life, it was likely that by no means all the States entitled to accede would in fact do so. The question of the manner in which the legal text should become binding on international organizations thus stood in a completely different context from the one in which it had stood in the case of the General Assembly Declaration.

He thanked the Indian representative for his suggestion that the last sentence might be improved by substituting the word "provisions" for the word "principles".

The CHAIRMAN said that the discussion on article VII of the Soviet draft could now be considered closed and suggested that the Sub-Committee should take up article VII of that draft, on the question of liability.

Mr. GOLDBERG (United States of America) recalled that his delegation had no objection in principle to incorporating in the treaty a general declaration on the subject of liability, while recognizing that the Sub-Committee hoped to draft a detailed treaty on the subject under a different agenda item. In that spirit, his delegation could accept article VII, with some drafting changes. /...
Mr. MOROZOV (Union of Soviet Socialist Republics) confirmed that his delegation had put forward article VII without prejudice to any special agreement on the question of liability. He accepted the drafting changes proposed by the United States representative.

Mr. Krishna Rao (India) thanked the Soviet delegation for including a provision on the question of liability in its draft treaty, thus taking into account some of the very real fears expressed in the Sub-Committee. He would welcome clarification of the term "internationally". If it meant "absolutely", it was entirely acceptable to his delegation. He was glad to hear that the Soviet delegation had no objection to the drafting of a separate instrument on the question of liability.

Mr. PURDITCH (United Kingdom) said that obviously nothing in the treaty under discussion would be understood as prejudicing the manner in which the problems raised by the concepts of launching and procuring the launching of objects, absolute liability and limitation of liability should be resolved in the drafting of the convention on liability. The proposals which had been made in the discussion of articles VI and VII, including the question of international organizations, applied with equal force to article IX. Such proposals should be considered at the drafting stage.

Mr. DELMAS (France) said that the questions of liability and assistance were extremely complicated, and if any reference to them was included in the treaty under discussion, it should be very brief and simple and should merely establish the principle concerned. Any additional details might deal too rapidly with problems which had not yet been settled.

Mr. AKE (Japan) wished to associate himself with the remarks made by the Indian representative concerning articles V, VII and IX of the USSR draft: those provisions were subject to specific conditions, which would be laid down in separate international documents.

Mr. RUTA (Argentina) said that his delegation supported article VII of the Soviet draft, on the understanding that it was based on the principle of objective liability and that the fault or negligence of the launching State would not be a necessary element of liability.
Sir Kenneth BAILEY (Australia) considered that it was quite possible to refer in one instrument to another, whether the latter existed or not, but that was not the only available procedure. While his delegation preferred a clear statement in the text of the treaty, it was not wedded to that opinion and thought that the matter should be explored at the working group stage.

Mr. PAPFII (Hungary) said that his delegation accepted article VII of the USSR draft, which was based on paragraph 3 of the Declaration and properly added a reference to celestial bodies. His delegation had prepared a revision of its draft convention on liability, and it hoped that, after the present task had been completed, rapid progress could be made in the drafting of that convention.

Mr. Krishna RAO (India) said that there were many instances in practice of treaties providing that particular details would be worked out in separate agreements. He was willing to consider other methods, however, and thought that the matter could be more profitably discussed by the Sub-Committee meeting as a working group.

Mr. CHAMMAR (Lebanon) did not consider it legally possible to make a treaty subject to a non-existent instrument. He agreed, however, that a recommendation for or commitment to subsequent negotiations could be adopted by using the expression "without prejudice to negotiations".

Mr. NEROZOV (Union of Soviet Socialist Republics) accepted the Australian amendment.

He agreed that it was difficult to refer to an instrument which had not yet been drawn up. The agreements on liability and assistance should take article VII as their starting point and should refer to it, not vice versa. He thought it unnecessary to insert a special statement in the treaty indicating that article VII would not prejudice the agreements to be concluded on liability, as such statement had been included in the Declaration when the identical provision had been adopted. The members appeared to be generally agreed on that point.

The CHAIRMAN suggested that as the members were in general agreement on article VII, it should be referred to the working group.

It was so decided.

The meeting rose at 6.5 p.m.