COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE
LEGAL SUB-COMMITTEE
Fifth Session
SUMMARY RECORD OF THE SIXTIETH MEETING
Held at the Palais des Nations, Geneva,
on Tuesday, 26 July 1966, at 3 p.m.

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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.2/62/L.12, L.13)
(continued)

The Delegate invited the Sub-Committee to take up article VIII of the Soviet draft corresponding to article 10 of the United States draft.

H. MOKUYEV (Union of Soviet Socialist Republics) said that even before the adoption of the Declaration of Legal Principles governing the activities of States in the exploration and use of outer space, the Soviet Union, in a draft put forward in 1958, had proposed in principle that "the implementation of any measures that might in any way hinder the exploration or use of outer space for peaceful purposes by other countries shall be permitted only after prior discussion of and agreement upon such measures between the countries concerned" (A/AC.105/L.2, § 6). The USSR had always been in favour of that principle, which now found expression in article VIII of its draft treaty (A/639). The first sentence of that article read as follows: "In the exploration and use of outer space, States Parties to the treaty shall be guided by the principle of co-operation and mutual assistance and shall consult all their activities in outer space, including research on celestial bodies, with due regard for the corresponding interests of other States." That idea seemed to be shared by the members of the Sub-Committee and was also expressed in the United States draft. The second sentence of article VIII which dealt with the necessity to avoid harmful contamination when conducting research on celestial bodies, could be brought into line with article 10 of the United States draft. He had no objection to that article, or to the United States amendment (Hearing Paper No. 16), which in substance would replace the word "contamination of celestial bodies" by the expression "contamination of outer space including celestial bodies." His delegation would study the second sentence of article VIII to take account of those texts. The sentence would then read as follows: "States Parties to the treaty shall conduct exploration and research in outer space, including the moon and other celestial bodies, in such a manner as to avoid harmful contamination as well as adverse changes in the
without saying that no consultation could take place without prior notification.
In his delegation's view, that went, which was to notify those concerned before
proceeding with any activity or experiment, was more effective than that proposed
by the Japanese delegation. Besides, as could be seen from the last articles of
the Soviet draft, the USSR was not prepared to accept the Secretary-General of the
United Nations with functions connected with the implementation of the treaty. The
information in question should neither be communicated directly to the Parties.

Nevertheless, to take into account certain proposals that had been made on the
subject, his delegation would agree that States Parties should voluntarily - that
condition must never be last eight or - submit to the Secretary-General and the
will scientific community information relating to the nature and conduct of the
activities referred to in article VIII of the Soviet draft. At the same time, the
provision of information concerning the potentially harmful effects of an activity
or experiment must certainly be compulsory, and that was what article VIII
stipulated. To make doubly certain, the article even specified that any State Party
having reason to believe that an activity or experiment planned by another
State might cause potentially harmful interference with peaceful space activities
could request consultations on the subject. Information concerning potentially harmful
experiments (article VIII) and the information referred to in another article of
the draft treaty must therefore be confined: communication to States of the
former should be compulsory, whereas the latter could be submitted to the Secretary-
General on a voluntary basis.

Thus, the idea underlying the Japanese amendment was expressed in article VIII
of the Soviet draft, and there seemed no need to modify the article.

Mr. YAMAZAKI (Japan) said that he would like first to explain the
amendment (Working Paper No. 10) proposed by his delegation to article 10 of
the United States draft. The two drafts under study emphasised the necessity to avoid
harmful contamination, and the United States draft provided for steps to avoid
adverse changes in the environment of the earth resulting from the return of
Mr. Goldberg (United States of America) welcomed the general agreement that the treaty should include a provision designed to avoid contamination of celestial bodies and adverse changes in the environment of the earth resulting from the return of extra-terrestrial matter and that the USSR representative was willing to include the essence of article 10 of the United States text in the draft treaty. The United States delegation, in its fully supported article VIII of the Soviet draft and considered that some of the amendments put forward by Japan might be included in it. It intended to submit a working paper in which it had tried to merge article 10 of its draft and article VIII of the Soviet draft. Knowledge of the questions dealt with in the two texts was still vague and they required scientific study. Consultations were being conducted on the subject, particularly through the COSPAR Consultative Group. Care must be taken, however, not to establish too rigid procedures, which might hinder research.

Mr. Monchay (Union of Soviet Socialist Republics) assured the representative of Japan that the Soviet Union was willing to provide for two types of information in the treaty. The first type would concern activities undertaken on celestial bodies and would be communicated voluntarily to the Secretary-General of the United Nations, the international scientific community and the public in general. The second type, which was dealt with in article VIII of the Soviet draft treaty, was of a special nature, different from that of the information to be supplied to the Secretary-General. Every State Party to the treaty would be obliged to transmit to other parties information on activities or experiments which might interfere with their own activities and undertake appropriate international consultations before proceeding with any such activity or experiment. The Soviet Union, however, was not prepared, for a number of reasons, to communicate such information to the Secretary-General. In the first place, it would reach the other parties for whom it was primarily intended, more quickly if it did not pass through the intermediary of the Secretary-General of the United Nations. Furthermore, for reasons of principle, the Soviet Union did not intend that the Secretary-General should be the depository for the treaty nor that he should be given functions which might be interpreted as playing a role
the amendment proposed by the Japanese delegation, which linked article VIII to article 6 of the United States draft, was not acceptable to his delegation. It was not possible to establish a link between the two texts since they dealt with two very different fields.

Mr. Ukrainian (Ukraine) noted that the last part of article VIII of the Soviet draft reproduced the last part of paragraph 4 of the Declaration of Legal Principles and that the condemnatory sentence contained an obligation to the effect that a State Party to the treaty, having reason to believe that an activity or undertaking might interfere with the activities of other States Parties, should undertake appropriate international consultations. Any State Party might also request consultations concerning any activity or experiment which might interfere with activities in the peaceful exploration and use of outer space and celestial bodies. He noted, however, that no obligation was placed on the State which undertook that activity or experiment. That State, therefore, might or might not concede to the request for consultation. He asked the Soviet representative to clarify the point.

Mr. Russian (Union of Soviet Socialist Republics) stated that the text being drafted was not a resolution or declaration, but a treaty having compulsory force and that it would therefore be compulsory to comply with the requests for which it provided. Article VIII offered, in a sense, a double guarantee. The obligation lay in the first place with the State which was going to undertake the activity which might interfere with the activities of other States. According to the second part, however, any other State might request consultations on those activities in the States wishing to undertake them had not communicated any intention concerning them. Any other interested State which had reason to believe that its interests might be impaired could therefore take the initiative in opening international consultations.

Mr. Canadian (Canada) considered that the principles dealt with in paragraph 6 of the Declaration on Legal Principles and article VIII of the Soviet text constituted one of the most important points in international law concerning...
Mr. Gillich (Canada) submitted for the Sub-Committee's consideration the text of a new article concerning space telecommunication (Working Paper H. 50), which read as follows:

"The Parties to the treaty, recognizing the enormous potentialities of space applications for communication purposes and more specifically for sound and television broadcasting, undertake to make use of such applications only in accordance with the resolutions of the General Assembly which condemn the use of information for hostile propaganda, and urge States to utilize them for promoting friendly relations among nations, based upon the purposes and principles of the Charter. In particular, they shall undertake to regulate at the world-wide level, direct broadcasting by artificial satellites, as regards both its technical and programmes contents aspects. They undertake to refrain from using communication satellites for direct broadcasting until such regulations are set by the competent international organizations."

The proposal was not a new one; the last paragraph of the Soviet draft treaty mentioned General Assembly resolution 110 (II), which was concerned with propaganda and friendly relations among nations. That resolution was also mentioned in the preamble to the Declaration of Legal Principles adopted by the General Assembly at its eighteenth session. His delegation therefore considered that those resolutions should be mentioned in a provision of the treaty which the Sub-Committee was considering. It was not only impossible to enter, in such a treaty, into the details of a problem which required scientific and technical studies, but it was necessary to include in it an article pointing to a possible solution. In his delegation's opinion, an International treaty on the question of space communication should be placed on the Legal Sub-Committee's agenda. The new article which the United Arab Republic was proposing drew attention to the potentialities of space applications for communication purposes; it provided for an undertaking by States Parties to make use of such applications in accordance with General Assembly resolutions 110 (III) and 1962 (VII); and it mentioned the extremely important problem of direct broadcasting from satellites, which was of considerable importance in the modern world. Failing the preparation of a binding legal instrument on the subject, States Parties would undertake to refrain from using communication satellites for direct broadcasting. There was
still time, in his delegation’s view, to devise solutions that would make space communications an effective instrument of international co-operation.

Mr. NICKEL (Union of Soviet Socialist Republics) drew attention to the progressive nature of the proposal just submitted by the representative of the United Arab Republic. The general principles on which it was based were fully in keeping with the spirit and objectives of the proposed treaty. Those principles were mentioned in the preamble to the Soviet draft treaty, and had been mentioned earlier in the draft declaration submitted by the Soviet Union in 1962. The Sub-Committee should give the United Arab Republic proposal careful consideration.

Mr. COHEN (United States of America) said that the implications of the United Arab Republic representative’s proposal deserved careful study. Telecommunication was an extremely important subject, and the Scientific and Technical Sub-Committee should give it the necessary attention. It might also be a subject for discussion in the Legal Sub-Committee.

Mr. JOSE LEANDRO SILVA (Brazil) said that his delegation endorsed the basic idea behind the United Arab Republic representative’s proposal. His delegation had long urged the necessity of regulating the use of outer space for communication purposes, especially for direct broadcasting by means of satellites. It reserved the right to take up the subject again at a later stage in the Sub-Committee’s work.

Mr. RAMACHANDRAN (India) associated his delegation with the basic principles underlying the proposal submitted by the representative of the United Arab Republic. A few necessary drafting changes could be made by the working group.

Mr. BROWN (United Kingdom) said that the United Arab Republic representative’s proposal was a very interesting one which went some way further than the last preceding paragraph of the Soviet draft treaty. In addition, it introduced certain complex elements which would require close examination before the scope of the remaining paragraphs could be fully appreciated. Thus the concept of hostilities propagation would need careful analysis before it could be regarded as a matter for an express obligation. Secondly, careful consideration should be given to the proposal that programmes content should be regulated at the world-wide level. That question should be examined in the light of the normal freedom of speech recognized in many countries, and of the measure of autonomy enjoyed by broadcasting entities under certain systems. The importance of such a study was emphasized by the fact that the last sentence in the United Arab Republic proposal would have the effect of preventing the use of communication satellites for direct broadcasting until all the technical questions involved had been studied and resolved. His delegation would make a careful study of the proposal.

Mr. VINCI (Italy) approved the principle underlying the draft article submitted by the representative of the United Arab Republic. The proposal was of the greatest interest and was in harmony with the objectives of the treaty under consideration. It should be carefully studied by each delegation and, in due course, examined in the light of the results of the Sub-Committee’s discussions.

Mr. SIKORA (Czechoslovakia) said that he had listened with interest to the proposal submitted by the representative of the United Arab Republic. Czechoslovakia had long been interested in space telecommunication programmes, and in the Scientific and Technical Sub-Committee two years previously his delegation had put forward the idea of elaborating the principles which should govern space communications. The idea had not been accepted at that time. His delegation hoped that the United Arab Republic representative’s proposal would lead to a thorough study of the problem. The Czechoslovak delegation would state its views at a later stage.

Mr. BELEY (France) said that his delegation was keenly interested in the proposal just submitted by the representative of the United Arab Republic. The proposal represented one of the technical aspects which should be dealt with in the draft treaty under consideration, and it showed the need to define very clearly the scope of the Sub-Committee’s negotiations. His delegation reserved the right to speak again on the subject.

Mr. TELLO VELAS (Mexico) said that his delegation supported the idea underlying the proposal just submitted by the representative of the United Arab Republic. He reserved the right to discuss the wording of the text at a later stage, but felt that there should be no objection in principle to the new draft article.
The Chairman said that the text of the proposal submitted by the representative of the United Arab Republic would be circulated as a working paper and discussed in the working group. If asked by the Sub-Committee to take up the question of the settlement of disputes, which was the subject of article 11 of the United States draft and article X of the Soviet draft.

Mr. Desirau (France) considered it essential that a multilateral treaty of that type should include a procedure for the binding settlement of disputes. The Soviet text, which referred only to a customary practice, was altogether insufficient in that respect, whereas the United States text, which recognized the competence of the International Court of Justice in the matter, was satisfactory. It might also be stated that the parties might agree on some other means of binding settlement.

Mr. Krasin (Union of Soviet Socialist Republics) said that, when the French representative specified what improvements he wished to be made, he himself would consider the possibility of amending the text of the Soviet draft article X in order to make it acceptable to all. However, there was no need to go so far as to mention in that article all the means for the settlement of disputes which were enumerated in the Charter of the United Nations.

He was also prepared to give favourable consideration to the proposal that disputes relating to the interpretation and application of the treaty should be referred to the International Court of Justice, subject to the consent of all parties concerned.

Mr. Danwin (United Kingdom) said that he agreed with the observations of the French representative and expressed his preference for the United States draft, which provided the assurance that a judgment binding on the parties could be obtained. However, his delegation would also be able to accept an alternative procedure which provided the same assurance and was equally satisfactory, if it had the support of the Sub-Committee.

Mr. Krishna Rao (India) recalled that in 1958, in connexion with the Conventions on the law of the sea, the States Parties to the Conventions had been given the option of signing or not signing a separate protocol; the same had been true of the Vienna Conventions of 1961 and 1963. India had accepted without reservation the jurisdiction of the International Court of Justice. In the case of the Vienna Convention it had signed the optional protocol but had refused to accept the provision which sought to compel the parties to have recourse to the Court at the desire of only one of them because it had feared that a number of States wishing to adhere to a convention might be prevented from doing so by that provision. In the present instance, the text of article X of the Soviet draft was not entirely satisfactory. His delegation could not, moreover, accept article 11 of the United States draft, which would give the International Court jurisdiction at the request of only one of the contracting parties.

Mr. Goldberg (United States of America), associating himself with the views expressed by the representatives of France and the United Kingdom, said that the United States draft aimed at establishing a definitive method of settling disputes, whether through reference to the International Court or through recourse to some other body which might be deemed appropriate.

Mr. Puris (Hungary) said that the Soviet draft, which proposed the diplomatic channel as the means of settling disputes, was suited to the existing situation and that there was no reason to doubt its efficacy. In accordance with that text two parties would agree, by means of diplomatic consultations, on the means of peaceful settlement appropriate to each case. Under article 11 of the United States draft, on the other hand, the International Court of Justice would have compulsory jurisdiction, a provision which a large number of States could not accept. Moreover, the Court itself, in its decision of 19 May 1955 in the Seminole case and earlier, with reference to the interpretation of the clauses of the peace treaties and to the case of the Anglo-Iranian Oil Company, had recognized that no sovereign State could be compelled, without its consent, to submit legal disputes in which it was involved to arbitration proceedings and that the consent of all parties constituted the foundation of the Court's jurisdiction. Article 36 of the Statute of the Court was, in fact, based on that principle.

Furthemore, the Court recognized that its jurisdiction was limited to cases where the declarations of the two parties coincided or, if that was not the case, that it could proceed on the basis of the more limited declaration.
The CHAIRMAN said that with the statement by the Argentine representative he took it that the Sub-Committee had completed its discussion of article X of the Soviet draft and that it could proceed to take up article XII of the Soviet draft and articles 13, 14, 15 and 16 of the United States draft.

Mr. NOVOCH (Union of Soviet Socialist Republics) said that although article XII of the Soviet draft appeared among those that were called the final clauses of the treaty, it should be regarded as one of the treaty's key provisions. Paragraph 1 of that article stipulated that the treaty was open to all States for signature. To take a different position, for political reasons having nothing to do with the United Nations Charter or with the purposes of the treaty, would be to jeopardize the constructive work which had been accomplished. While he respected the various points of view on that subject, he appealed to all delegations, in view of the exceptional importance and lofty objectives of the treaty in question, to put aside their usual objections.

Mr. GOLDEN (United States of America) said that the wording of article 12 of the United States draft was based on that used in United Nations treaties and resolutions. On the question of the way in which States were to be invited to accede to a treaty, there were differences of opinion which resulted from longstanding political situations. The United States position on that subject was well known, and he hoped that the Sub-Committee, after a brief exchange of views, would first settle the essential questions raised by the treaty before taking up the final clauses.

Mr. HRELA (Czechoslovakia) said that he supported the views of the representative of the USSR. His delegation could not accept the discriminatory provision in article 12 of the United States draft, which was contrary to the essential idea underlying the treaty, namely, that the exploration of outer space and celestial bodies should be conducted for the benefit of all mankind. All States should be able to access to that treaty.

Mr. BURRA (Argentina) said that he would like to reaffirm the traditional position of his country, namely, that the Argentine Government could not support a provision which might lead to a legal decision on a dispute without its having signified its agreement in advance in each particular case. Argentina had recognized the compulsory jurisdiction of the Court only in certain exceptional cases relating exclusively to humanitarian decisions.
Mr. Krishna RAO (India) said that, in his delegation's view, treaties should unquestionably be open to all States for signature. Any other arrangement would run counter to the concept of universality on which a great many of the provisions of the treaty were based - including those relating to international liability and the use of outer space for the benefit of all mankind - and would give rise to the problems which had been experienced in connection with disarmament. He recalled that the Moscow treaty banning nuclear weapons tests was open to all States for signature.

His delegation could not accept the Soviet proposal that the depositaries of the treaty should be certain Governments, presumably those of the USSR and the United States. The Secretary-General, who was the depositary of all treaties, should likewise be the depositary in that case, for such an arrangement would not but facilitate his activities in the matter in question.

He was aware that the application of his two proposals would give rise to problems in connection both with the discharge of the Secretary-General's functions and with the meaning of the words "all States", but he was sure that the General Assembly could readily solve them.

Mr. DAVIES (United Kingdom) said that, in his view, it would be advisable to reach agreement on the substantive clauses of the treaty before beginning consideration of the final clauses. Since the treaty was being drawn up under the auspices of the United Nations, the provisions of the United States draft seemed preferable.

Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that the opponents of his proposal that the treaty should be open to all States for signature had confined themselves to pointing out that the corresponding provisions of article 12 of the United States draft were based on General Assembly resolutions against which, moreover, his delegation and many other delegations had voted. His delegation considered that the question of determining which States should be parties to the treaty was a question of substance.

He was grateful to the representative of India for having approved the first part of article XI of the Soviet draft, but he could not agree that the General Assembly should be asked to define the words "all States". Circumstances being what they were, it would not be very difficult to guess what kind of decision the General Assembly would make. It was not for the General Assembly to rule on the issue - just as it had not been called upon to do so in the case of the Moscow treaty of 1959. The decision should be made by the Sub-Committee.

With regard to paragraph 2 of article XV, if the Secretary-General became the depositary for the treaty, he would have to ask the General Assembly which States could be parties to it, and that would in effect contradict the principle set forth in paragraph 1 of the article. In the Soviet delegation's view, the solution adopted in the Moscow treaty should be followed in that instance too. With regard to the comment by the representative of India that, under the Soviet draft, the depositaries of the treaty would be the United States and the United States, it should be noted that when the provisions concerning the depositaries of the agreement on assistance to astronauts had been considered, the Soviet delegation had implied that certain Asian countries could also be depositaries; once the principle that the depositaries would be States had been acknowledged, it would be easy enough to reach agreement on the choice of those States.

Mr. Krishna RAO (India) said that, unlike the Moscow treaty and the Antarctic treaty, which had been concluded between Governments, the treaty under discussion was to be concluded under United Nations auspices and, as such, should be deposited with the Secretary-General. With regard to the meaning of the words "all States", he himself, like the representative of the Soviet Union, had been fighting for a number of years for universality of membership in the United Nations. It was not for the Sub-Committee to define the words "all States"; in any case, a provision that the Secretary-General would be the depositary of the treaty would in no way be incompatible with the provision that the treaty should be open to all States for signature.

Mr. Gorovoy (USSR) said that the question of universality of membership in the United Nations went far beyond the framework of the treaty under discussion and that the effectiveness of the United Nations for the maintenance of international peace and security was in large measure dependent upon it. However, the principle...
of universality was not yet a fact, and the present situation, as well as the
effects committed in certain regards by the Secretariat, had to be borne in mind.
I wondered what the attitude of the Secretariat would be if, as in the United States
draft, the Secretary-General was to become the depository for a treaty to which all
States could become parties.

He therefore urged that paragraphs 1 and 2 of article XI of the Soviet draft
should be adopted, since the provisions in question were essential if the treaty
was to be an international instrument binding upon all States Parties to it.

The CHAIRMAN suggested that the Sub-Committee should complete its
discussion of the articles under consideration the following morning and not begin
consideration of the preamble at that stage. The working group would then begin
its consideration of the draft treaty article by article.