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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE SEVENTIETH MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 August 1966, at 3.50 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/L.12, L.13) (continued)

The CHAIRMAN announced that the members of the Working Group had reached agreement on a number of articles of the draft treaty; those articles appeared in the working papers numbered L.1 to L.9, which were before the Sub-Committee. However, agreement had not been reached on a good many articles, and in the circumstances the Working Group had not considered the text of the preamble.

Mr. MOROZOV (Union of Soviet Socialist Republics) noted that agreement had been reached on an appreciable number of highly important provisions and he thanked the delegations which had supported in the Working Group a number of provisions of the Soviet draft. He wished also to confirm officially his delegation's position on a number of questions. In particular, he very much hoped that the draft treaty would provide for the granting to States parties of equal facilities for observing the flight of space objects. In other words, as indicated in part II of Working Paper No. 23, submitted by his delegation, if a State granted certain facilities for the observation of space objects launched by another State party, it should grant the same facilities to all other parties. Also, it was important that the parties should agree in advance on the dates on which visits to stations, installations, equipment and space vessels on celestial bodies would be permitted and that the right to make such visits should be granted on a basis of reciprocity. That condition was particularly stressed in Working Paper No. 2, which his delegation had put before the Sub-Committee, and it should give effect to the principle that stations and equipment on celestial bodies should be open to representatives of other States engaged in activities on such bodies. Any text which provided for the right to visit without specifying the manner of its exercise was unacceptable.

His delegation also thought, as it had stated in Working Paper No. 4, that any State engaging in activities on celestial bodies should, of its own accord, inform the Secretary-General of the United Nations, the public and the international scientific community of the nature and operation of those activities, as also the places in which they were conducted. It was willing to accept the addition to that text of the provision proposed by the delegation of the United Arab Republic in

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Working Paper No. 7/Corr.1, for it was of the opinion that the text of the obligations laid down in the draft treaty should be as precise as possible, so that it could not subsequently give rise to differing interpretations.

With regard to the provisions of article IV of the Soviet draft and article 9 of the United States draft, his delegation considered that the use of military personnel was permissible in peaceful research, but it could not agree to the use of military equipment on celestial bodies, even on the pretext of carrying out scientific research or other peaceful undertakings, for that might result in activities which would run directly counter to the principle of the use of celestial bodies exclusively for peaceful purposes.

His delegation was also unable to accept any addition to article VI of its draft treaty, concerning the responsibility of international organizations. As it had stipulated at the end of that article, when activities were carried on in outer space by international organizations, responsibility for compliance with the treaty was to be borne both by the international organization in question and by the States parties. The USSR was categorically opposed to the idea that international organizations should not be responsible for their activities in space unless they had made a declaration to that effect; moreover, it could not agree that such organizations should be placed on a footing of equality with parties to the treaty, which were sovereign States. Members would recall in that connexion the compromise reached when the draft Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space had been prepared.

On the other hand, his delegation supported that part of the United Arab Republic proposal which stressed the need to use information media to promote the establishment of friendly relations among peoples.

In conclusion, he referred to the progress already achieved and expressed the hope that the Sub-Committee in its further work would be able to reach complete agreement on the provisions of the draft treaty.

Mr. GOLDBERG (United States of America), while regretting that the Sub-Committee had not succeeded in completing the draft treaty, observed that a large area of agreement had resulted from the session's work. He was happy

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(Mr. Goldberg, United States)

to note that all members had displayed a spirit of co-operation and he thanked all those who had supported the key provisions of the United States draft, for in the opinion of his delegation the problem of extending the rule of law to outer space at a time when man would soon be able to land on the moon was a pressing one.

Agreement had been reached on the following points: (1) The exploration and use of outer space should be for the benefit of all mankind; (2) outer space could be freely explored and used by all States on a basis of equality and all areas of celestial bodies should be freely accessible; (3) freedom of scientific research in outer space and international co-operation to that end should be assured; (4) outer space could not be subject to any claims of sovereignty or national appropriation; (5) the moon and other celestial bodies would be used exclusively for peaceful purposes; (6) the role of international law and of the United Nations Charter in man's future activities in space should be determined; (7) all States would have the unconditional obligation to help astronauts in distress and ensure their safe return to their countries, and to communicate information relating to their health or safety; (8) the treaty would contain provisions on liability, jurisdiction, contamination and activities likely to interfere with the activities of other States parties, ownership and return of space vehicles and responsibility of persons and international organizations; (9) the provisions of General Assembly resolution 1884 (XVIII) would be incorporated into the draft treaty. That last point was particularly important: in providing that States parties should solemnly undertake not to place weapons of mass destruction in outer space or on celestial bodies the Sub-Committee was helping to prevent the arms race from spreading to outer space.

However, significant differences on certain provisions of the draft had still to be reconciled. His delegation, wishing to negotiate in good faith, had agreed early in the session that the scope of the treaty should be enlarged to cover the whole of outer space, including the moon and other celestial bodies. In doing so, it had endorsed one of the fundamental provisions of the Soviet draft. Unfortunately, the USSR had not accepted all the key points in the United States draft, and so far there had been no agreement on the means of reporting information on or access to facilities and installations on celestial bodies.

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(Mr. Goldberg, United States)

The first of those questions was of paramount importance; if it was agreed that space activities should be carried on for the benefit of all mankind, that there should be freedom of scientific exploration and that access to all areas of celestial bodies should be assured, it followed that States engaging in activities on such bodies should inform the other States of those activities and make their findings available to the public and to the international scientific community. To provide otherwise would be to go against the purposes of the treaty and to deny to the non-space Powers the benefits of research undertaken on celestial bodies. Only a provision obliging the parties to furnish the information in question would enable all countries to have access to what was, in the language of the draft, "the province of all mankind". Only such a provision would give assurance that in their space activities States were pursuing exclusively peaceful ends. In that connexion his delegation accepted the proposal of the United Arab Republic that the United Nations should undertake to ensure the dissemination of information relating to space activities as soon as it was received. The main point, however, was whether such information was to be transmitted to the Secretary-General as an obligation or voluntarily. If the latter, the purpose of the treaty would not be served. If it was agreed to supply information, then obviously the parties to the treaty should be under an obligation to do so.

The second question outstanding concerned access to installations on celestial bodies. The United States delegation had stressed from the outset of the Sub-Committee's work that it considered freedom of access - which included freedom of exploration and the publication of the results of space activities - to be of fundamental importance. It was essential that a treaty on the peaceful uses of outer space should contain a provision giving any other State free access to all areas, stations, installations, equipment and space vehicles on celestial bodies. That was a corollary to the article on international co-operation by which the rest of the world could be assured that the moon was being used only for peaceful

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purposes. If the objection raised by the USSR representative was indeed related to safety, the Japanese representative's suggestion could be readily incorporated in the draft treaty. The United States delegation therefore reaffirmed the proposal it had made in Working Paper No. 3 with respect to the text of article 6 of its draft treaty.

Free access constituted a basic principle, which was not dependent upon agreement other than the treaty itself. If the United States had had any intention of using the equipment on a celestial body for other than peaceful purposes, why would it be advocating with such determination an "equal access" clause? The revision proposed in Working Paper No. 6 took account of what had been discussed and agreed upon in the Sub-Committee. Equipment used in outer space had, in many cases, been developed through military research; that was the case, in particular, with respect to the rockets carrying astronauts: that could not, however, be said to constitute a violation of the principle of the peaceful use of outer space. Nevertheless, the proposed article would effectively proscribe the placing on the moon of a rocket armed with a nuclear warhead, because such equipment would obviously not be being used for scientific research. The United States proposal, therefore, would not impair the peaceful use provision, and the treaty article on free access would guarantee that no equipment on the moon would be used for non-peaceful purposes. In that area it was important to be very precise, and the term "installation" proposed by the USSR representative was far too vague. The pertinent article of the United States draft treaty, on the other hand, defined that term by mentioning bases and fortifications.

In regard to free access, the USSR representative had asked why objections had been raised to the use of the word "reciprocity". Access should not be conditional, and the notion of prior agreement implied a sort of veto on it. Representatives of a State party to the treaty conducting activities on celestial bodies should have the right of access to the stations, installations, equipment and space vehicles of another State party on a celestial body, regardless of whether the second State had ever claimed or exercised a right of access itself; however, if the first State had denied access to representatives of the second State, then the latter was not required on the principle of reciprocity to grant access to representatives of the

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(Mr. Goldberg, United States)

first State. That was a well-established principle of law, and that was why the United States delegation thought that no mention of reciprocity was needed. The United States was however prepared to include in its text the words "on the basis of reciprocity", if the above-mentioned interpretation was universally shared and if the other provisions in the article were consistent with the idea of reciprocity.

It should not be forgotten that activity in outer space and on celestial bodies concerned mankind and not a single State. That was why it had been agreed that there should be free access to all areas of celestial bodies and freedom of scientific investigation; furthermore, the exploration and use of outer space should be for the benefit and in the interest of all mankind. If those basic principles were applied, the problems encountered in the conclusion of such a treaty would be solved, because those concepts did not permit substantive qualifications on the obligation of States to inform the world what they were doing on celestial bodies and to permit free access to their installations and equipment on such bodies. He urged those delegations which had not agreed to the United States proposal to review their position in the light of the explanations he had given.

Mr. MOROZOV (Union of Soviet Socialist Republics) considered that the United States representative had not confined himself to explaining his position. He had given the impression that the Soviet Union had not shown the necessary spirit of understanding, and that that had prevented agreement on a number of questions. The USSR delegation protested vigorously against that argument, the object of which was to make it responsible for the present state of affairs.

It was obvious that the majority of the delegations in the Sub-Committee had adopted a much broader perspective than had the United States of America on the questions which should be dealt with in the draft treaty and which were dealt with in the USSR text. First, the USSR had considered that a good many of the treaty provisions should apply not only to celestial bodies but to the whole of outer space; secondly, it had proposed the inclusion of an article by which the parties to the treaty would engage not to put into orbit around the earth any object carrying nuclear weapons or other types of weapons of mass destruction. In those circumstances, the Soviet Union could not be held responsible for the lack of

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(Mr. Morozov, USSR)

agreement. He strongly emphasized that his delegation had adopted in principle all the provisions relating to the basic articles of the treaty in the rare cases where such provisions did not appear in its text and that it had adopted certain ideas contained in the suggestions of the United States delegation. The latter, however, asked not only that the Soviet Union should accept these ideas, but that it should accept them exactly as formulated. Some of those concepts might be acceptable in themselves, but the wording was not satisfactory.

The United States representative had mentioned the example of rockets carrying astronauts. That was an obvious case. Certainly military equipment used exclusively for military purposes should not be sent to the moon; but that question could not be linked up with the question of setting a date by mutual agreement for visiting space vehicles on celestial bodies.

The Soviet Union recognized the general principle of free access. The United States delegation, however, had been unable to suggest a practical method for applying the principle of free access to space vehicles. The USSR delegation was prepared to examine any arguments which might be submitted in a more precise form at a later stage. It objected, however, to a unilateral appeal on the part of the United States. It pointed out that it had adopted a great many of the provisions of the United States draft and it invited the United States delegation and the other delegations to consider in their turn the proposals it had submitted.

Mr. VINCI (Italy) said he was glad that the text of article 1 as approved by the Working Group employed the wording of the Soviet draft, which stated that: "The exploration and use of outer space shall be carried out for the benefit and in the interests of all countries and shall be the province of all mankind." That article also contained another important idea, namely that "outer space, including the moon and other celestial bodies, shall be free for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law, and there shall be free access to all regions

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(Mr. Vinci, Italy)

of celestial bodies". Finally, it laid down the following rule: "There shall be freedom of scientific investigation in outer space, including the moon and other celestial bodies, and States shall facilitate and encourage international co-operation in such investigation." In his delegation's opinion, those principles and the principles included in article 2, which forbade placing nuclear weapons in outer space or using military equipment or erecting military installations on the moon and other celestial bodies, could be effectively applied only on fulfilment of two conditions: first, States parties to the treaty must be under an obligation to make known the results of their activity to the public and the international community; if they failed to do so of their own accord, as proposed by the USSR representative, those articles would lose much of their significance. Secondly, representatives of the parties must have free access to space vehicles, installation, stations and equipment. If that obligation were hedged about with conditions of possibly controversial interpretation, the basic purpose of the treaty might not be attained. In that connexion, the Italian delegation submitted a proposal which might be examined at the Sub-Committee's next meeting. The text was as follows:

"All States engaged in activities in outer space, including the moon and celestial bodies, shall grant free, immediate access to representatives of all Parties to the Treaty to their stations, installations, equipment and space vessels, on the understanding that the time of the visit should not imperil the lives of the personnel and the functioning of the installations involved."

He pointed out that the first part of his proposal included the idea of reciprocity, while the second part met the arguments which his own delegation, among others, had put forward regarding the time chosen for visits.

The treaty should contain a clause strictly regulating the settlement of disputes arising out of its application. The Soviet representative's proposal that space Powers should grant equal conditions to all States would be tantamount to granting privileges to a third State which was not a party to a special agreement between two States, without any reciprocity on its part, and thus might discourage some countries from co-operating among themselves by means of bilateral agreements.

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(Mr. Vinci, Italy)

The treaty should take account of the present and future role of international organizations in space activities; it should not, however, place those organizations on the same footing as the States parties to the treaty. In that connexion, his delegation wished to submit the following proposal for consideration when the Sub-Committee reconvened:

"The States Parties which conduct space activities through international organizations undertake that those activities will fully comply with the provisions of the Treaty.

"A declaration to this effect may be transmitted by such an organization to the depositary authority."

He pointed out that the States parties were referred to in the first line of the proposal and that an undertaking was being requested of them.

He hoped that the logical conclusions would be drawn from the main concepts on which agreement had been reached, so that the scope of the agreed provisions would not be weakened.

Mr. OSMAN (United Arab Republic) submitted a draft resolution to the Sub-Committee (A/AC.105/C.2/L.5). He recalled at the 62nd meeting the head of his delegation had stated that it seemed desirable for the Sub-Committee to adopt as an annex to the treaty a resolution recommending that the General Assembly should consider establishing an institution within the framework of the United Nations to deal with peaceful activities in outer space. He had added that the possibility of institutionalizing certain forms of co-operation should be examined in order to ensure real equality of all countries. Since the Sub-Committee would be unable to complete its drafting of the treaty at the present session, he himself felt that it would be premature to ask it to consider his delegation's proposal at the present stage; the delegations and the competent authorities of the various Governments should be given ample time to consider the matter, which could be discussed at the next session of the Sub-Committee or of the Committee itself. He would merely point out that the operative part of the United Arab Republic draft resolution was more or less procedural and request that the text of the resolution should be included in the document dealing with the work of the present session. He regretted that the session had not achieved the anticipated results and, particularly, that it had not been possible to formulate the basic

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(Mr. Osman, United Arab Republic)

principle that outer space should be used for peaceful purposes only. He hoped that the treaty would help to safeguard the legitimate interests of mankind and of the small countries and to ensure the equality of all States.

Mr. BLIX (Sweden) said that he wished to comment on two questions, which were as yet unresolved, namely, the dissemination of information on space activities and the role of international organizations. With regard to the first question, two States in particular were in a position to provide information, and it was therefore desirable that they should make the maximum amount of information available as a matter of legal obligation. Sweden would have liked to see the proposal contained in the United Arab Republic working paper (No.7/Corr.1) combined with the United States proposal, so that a space Power would be obliged to report its findings both in space and on celestial bodies. If it was found impossible to persuade the space Powers to assume such an obligation, his delegation would support the United States text, which would obligate States to report only on their space activities on celestial bodies. With regard to the Soviet proposal contained in Working Paper No. 4, which stated that any State engaged in activities on celestial bodies would, on a voluntary basis, inform the Secretary-General of the United Nations of the nature, conduct and location of its activities, he noted that it did not refer to the need to make the findings public and that it did not impose any substantial obligation.

With regard to the second unresolved question, namely, the role of international organizations engaged in space activities, the Working Group had approved an article, the last sentence of which read:

"When activities are carried on in outer space, including the moon and other celestial bodies, by an international organization, responsibility for compliance with this Treaty shall be borne both by the international organization and by the States Parties to the Treaty participating in such organization."

His delegation had reservations about that sentence, which dealt with the duties of international organizations engaged in space activities and of States which were members of those organizations and parties to the treaty, but not with the question of their rights. The Soviet representative had explained to the

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(Mr. Blix, Sweden)

Working Group that his country had made a major concession when it had accepted the principle set forth in the Declaration of Legal Principles that international organizations could engage in space activities and have responsibilities deriving from those activities; he had also expressed regret that those organizations now appeared to be even more ambitious and wished to be treated like States parties. His delegation felt that if the Soviet Union was thus in favour of permitting international organizations to engage in space activities and of assigning them certain duties but not certain rights, its generosity was rather limited. He would welcome further clarification on that point. Sweden, which was a small country, was most likely to carry out space activities jointly with other States, through an international organization; it already belonged to an international space research organization - hence its interest in the provisions of the treaty relating to international organizations.

Therefore, if it became a party to a treaty which included the final sentence in document Working Group/L.6, Sweden would undertake to ensure that an international space research organization of which it was a member would comply with the treaty, be guided by the principle of co-operation and mutual assistance in space, show regard for the appropriate interests of other States, report to the Secretary-General of the United Nations on its activities, allow the representatives of other States to visit its space vehicles and refrain from placing nuclear weapons in orbit or on a celestial body. In the event that other members of the organization were not parties to the treaty and that Sweden could not ensure that the organization complied with the treaty, it would have to withdraw from the organization. It was essential to include a very strict provision making States parties responsible for ensuring that any international organization of which they were members complied with the treaty, so that they could not, as members of the organization, escape the obligations they assumed under the treaty.

An adequate solution had not yet been found to a rather theoretical problem, namely the responsibility which international organizations themselves would bear for compliance with the provisions of the treaty. He welcomed the fact that the United Kingdom delegation was ready to consider ways of improving the approach which it had proposed in Working Paper No. 17, under which international

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(Mr. Blix, Sweden)

organizations would be able to make a declaration that they undertook to comply with the treaty. The States parties could also assume responsibility for ensuring not only that the international organization complied with the treaty but also that it made a formal declaration to that effect.

His delegation did not think that the rights granted to States under the treaty could apply in an identical manner to an international organization; an international organization could not, for example, have jurisdiction over an object launched into space or over its personnel. However, it would be inconceivable that an organization set up by States parties to the treaty, which had undertaken to ensure that the organization complied with the treaty, should not be entitled, for example, to the right of free exploration, mutual assistance and co-operation and the right to visit space vehicles.

While his delegation did not wish to submit a concrete proposal in that regard, it would like its views to be considered with a view to reaching an agreement which would be acceptable to all.

Mr. GOTLIEB (Canada) said he was gratified that the Sub-Committee had reached agreement on nine substantive articles, in particular on the principle of non-appropriation, whether public or private, of celestial bodies, the need for space activities to be carried out in the interests of all countries, the prohibition of the orbiting of nuclear weapons and of the use of celestial bodies for military purposes, non-contamination, assistance to astronauts, responsibility of States for the freedom of scientific investigation, and jurisdiction and control. The two principal space Powers had shown a spirit of conciliation, making it possible to broaden the original proposals on a number of points. That spirit should facilitate the consideration of other aspects of the treaty, particularly the question of free access to the space installations of other States. In that connexion, although his delegation had some difficulty in accepting the Soviet proposal, which made free access dependent on a further agreement between the parties, it appreciated the fact that the main consideration had been the safety of astronauts. It hoped that a text could be prepared which took that into account; in that connexion, the suggestion advanced by the Italian delegation could be taken as a basis for agreement.

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(Mr. Gotlieb, Canada)

It was also to be hoped that the space Powers would be able to bring closer together their respective views on reporting to the United Nations and the scientific community regarding space activities. It had been recognized that States would be obliged to provide information concerning the health of astronauts; that was a first step. The publication of information should be compulsory.

The provision in the Soviet draft regarding tracking stations imposed unequal obligations, which were incompatible with the principle of reciprocity: a State that was not co-operating with others could enjoy certain rights without having any obligations, whereas co-operating States would assume a heavy burden.

His delegation was gratified at the fact that the right of States to carry on space activities through international organizations was recognized; those organizations should, like the States parties, be liable for their activities.

Finally, it was to be hoped that, before the session ended, the Sub-Committee would be able to consider the possibility of extending to outer space as a whole the obligations concerning the peaceful uses of the moon and other celestial bodies.

Mr. LEMAITRE (France) said that agreement seemed to have been reached on the three important principles of non-sovereignty, the prohibition of militarization, and international co-operation in the interests of peace and of mankind. However, it would be desirable to harmonize the terminology and simplify the texts. His delegation was not altogether satisfied with the wording of the provisions relating to non-sovereignty, and it had reservations about the advisability of referring in the draft treaty to international law and the United Nations Charter, which might not be applicable to space activities for long.

Apart from the three principles to which he had referred, the rules to be agreed upon should make allowance for the changes which would be made necessary by scientific progress and human relations. Thus, his delegation had expressed reservations regarding the inclusion of the word "use" since it was very difficult to cover exploration and use to the same degree at the present time. The conference which would have to give final consideration to the treaty should draw up recommendations rather than strict legal provisions. However, consideration could also be given to the inclusion of a provision binding on all signatories

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(Mr. Lemaitre, France)

to the effect that international commitments should be negotiated as soon as possible with a view to establishing rules which could be applied with the least possible difficulty and which covered the following points: reconciliation of the concept of freedom and the various criteria for restricting that freedom; negotiations on potentially harmful activities and on measures for preventing them; the exercise of jurisdiction; responsibility, taking into account the actual role of each participant where there was more than one; assistance to persons and the return of persons and objects, it being understood that commitments which were difficult to fulfil for technical or moral reasons should not be entered into; the registration of objects; the dissemination of information on the results of space activities; visits to installations or objects which were no longer on earth, taking particular account of the safety factor; the priority to be given to certain types of exploration and use; the direct broadcasting of programmes; and the consequences on earth of activities in space.

With regard to inter-governmental organizations, his delegation felt that they should have rights as well as obligations; in that connexion, it found the United Kingdom proposal and the Swedish representative's statement to be of interest.

The CHAIRMAN announced that he would make some suggestions on the Sub-Committee's future work at the next meeting.

Mr. MOROZOV (Union of Soviet Socialist Republics) thanked the Chairman and the Secretariat on behalf of his delegation.

The meeting rose at 6.10 p.m.