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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Twelfth Session

PROVISIONAL SUMMARY RECORD OF THE ONE HUNDRED AND NINETY-EIGHTH MEETING

Held at Headquarters, New York,
on Wednesday, 4 April 1973, at 11.40 a.m.

Chairman: Mr. WYZNER Poland

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GENERAL EXCHANGE OF VIEWS (continued)

Mr. HULINSKY (Czechoslovakia) said that his country had always favoured the development of international co-operation in the exploration and peaceful uses of outer space. Czechoslovak scientists and experts had, in particular, participated in the Intercosmos joint space research programme involving various socialist States. In addition, Czechoslovakia attached great importance to the preparation of legal instruments which would provide the groundwork for new space projects and for the development of peaceful space activities for the benefit of all peoples.

His delegation welcomed the considerable progress made by the Sub-Committee in preparing the draft treaty relating to the moon. It should be possible at the present session to overcome the remaining difficulties. With regard, firstly, to the question of whether the projected treaty should apply solely to the moon, or deal also with other celestial bodies, both the need for specialization and the fact that the draft was essentially based on experience in exploration of the moon militated in favour of limiting its scope to the moon. At the same time, however, it was likely that future space activities involving other planets in the solar system would be of a similar nature to lunar exploration activities. For that reason, it seemed sensible to retain the suggestion made at the Sub-Committee's previous session, namely, that all reference to "other celestial bodies" should be deleted from the draft treaty and that a general provision should be included which would provide that the treaty would apply provisionally to other celestial bodies until such time as specific instruments, or instruments which covered specific groups of celestial bodies, were concluded. Following the adoption of new instruments dealing with celestial bodies in general, or with some of them in particular, the moon treaty would then play only a subsidiary role in relation to matters which such instruments did not cover in specific terms, or in relation to States Parties to the moon treaty which had not accepted those other instruments.

More complex from the point of the view of theory was the question whether the provisions of the treaty should apply only to activities carried out on the moon - both its surface and its subsurface - or whether they should also deal with circumlunar space. The delimitation of various zones was at present giving rise to difficulties: the most striking case in that respect was that of the limits between

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(Mr. Hulinsky, Czechoslovakia)

outer space and the earth's atmosphere. Nevertheless, it seemed obvious that activities carried out in the immediate neighbourhood of the moon could not be completely separated from activities carried out on the moon itself. It would seem justified to include circumlunar space, not in all provisions in which the expression had been used at the previous session, but only in certain specific provisions, such as article VII of the draft. The task of precisely delimiting circumlunar space was certainly a difficult one, but did not seem to be vital. It should, furthermore, be pointed out that in the relatively near future space flights would become so complex that it would be no less difficult to define the objectives of the missions involved than to establish limits in space. At all events, the projected treaty would not close the door to further elaboration in the future, although it would nevertheless meet present needs in the exploration and the uses of outer space.

While due note should be taken of efforts which had been made to establish an international régime for the orderly exploitation of the resources of the moon and other celestial bodies, his delegation felt that it would be premature to attempt to solve the problems involved in the question of natural resources. Outer space activities were at present essentially matters of scientific research, and would remain so for a long time to come: the effective exploitation of possible resources found belonged for the moment to the field of fiction.

Ideas relating to the exploitation of resources had obviously been derived from current discussions on the legal régime governing the sea-bed, without taking into consideration the essential differences between the two areas. The discussion in the Sea-Bed Committee proved that it was becoming increasingly difficult to put those ideas into effect because of differences of view between various groups of States, which were providing entirely different interpretations for identical concepts. In order to promote the elaboration of a draft moon treaty, the relevant provisions of article X should be drafted in the most general way possible, and the question of a régime governing the future exploitation of the resources of the moon should be discussed by the Legal Sub-Committee at a later stage.

Czechoslovakia believed, as did most Member States, that space exploration should be carried out in the interest of the whole of mankind, in accordance with the 1967 Outer Space Treaty. Nevertheless, countries which were exploring outer

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(Mr. Hulinsky, Czechoslovakia)

space, the moon and other celestial bodies should be able to use reasonable quantities of the resources which they discovered to further the purposes of their missions. In addition, it should be recognized that, while achievements in space opened up new prospects for all of mankind, it was the States which were carrying out exploration activities which had, individually or collectively, to meet the costs of such activities. Whatever matters remained unresolved with regard to the moon treaty, the Sub-Committee's efforts seemed near completion, and his delegation was convinced that a full text could be presented to the twenty-eighth session of the General Assembly.

His delegation also wished to make a contribution to the preparation of a draft convention on registration of objects launched into space. Even if there had been less progress on that text than on the draft moon treaty, the proposals submitted - with commendable motives - by the United States, as well as those submitted by Canada and France, could be regarded as providing a useful basis for further discussion. His delegation believed that in drafting the legal provisions for the registration of space objects the Sub-Committee could draw on experience in registration of ships and aircraft; but it must reach a solution primarily on the basis of existing practice in the voluntary notification of data concerning the launching of space objects. Furthermore, States should maintain national registers in which objects launched by intergovernmental organizations would be recorded, in addition to certain basic information referred to in the treaty. It would be the task of States to establish such registers and to determine what their contents would be.

Among the other items on the Sub-Committee's agenda his delegation attached particular importance to the implications of space communications. That question had become topical since the USSR had submitted a draft convention on direct broadcasting satellites at the twenty-seventh session of the General Assembly, but for years international organizations, both intergovernmental and non-governmental, had been interested in it. The Legal Sub-Committee should begin by considering specific rules of international law governing the activities of States in that field with a view to the conclusion of an international agreement.

Mr. CAPOTORTI (Italy) welcomed the substantial progress that had been made during the present session on the draft treaty relating to the moon and hoped that the Sub-Committee could make similar progress in discussing the question of registration. The method of conducting unofficial negotiations parallel with the discussions in the Working Group had proved fruitful and it was to be hoped that the outstanding difficulties could be overcome.

Any doubts which might have arisen about the value of the draft treaty relating to the moon, in view of the existence of the 1967 Treaty on Outer Space, had now been dispelled. It now seemed useful to introduce clarifications with regard to the 1967 Treaty and to take into account not only the interests of the space Powers but also those of other States. The proposed treaty concerned all States in that it dealt with the exploitation of future resources. Modern technological progress was so rapid that it would soon become possible to exploit the resources of the moon and hence international regulations governing such exploitation should be prepared at once. The idea that those resources formed the common heritage of mankind was undoubtedly valid. However, since only experience would show whether that idea had other implications, his delegation proposed that it should be limited to lunar resources. Lunar resources should not be assimilated hastily to the resources of the sea, for there were profound differences between the two.

There were still, however, some difficulties to be resolved: in particular, the scope of the proposed treaty, article X, and articles IV and VI, with regard to the notification of activities undertaken in space and the communication of the results obtained. The United Kingdom proposal seemed to constitute a valuable basis for discussion of the latter point and it was to be hoped that agreement would be forthcoming on the time when notifications should be made; the best solution was that they should be made as soon as possible. The outstanding problems were not unsurmountable provided each country was ready to make the necessary concessions.

With regard to the question of registration, he was glad that the debate had entered a new phase with the submission of the United States proposal. It showed that a consensus had emerged on the value of a convention on the subject and made it possible to institute a real dialogue. He hoped that during the informal consultations the sponsors of the Franco-Canadian draft and the United States draft could bring their viewpoints closer together.

DRAFT CONVENTION ON THE REGISTRATION OF OBJECTS LAUNCHED INTO SPACE FOR THE
EXPLORATION OR USE OF OUTER SPACE (continued)

Mr. CHARVET (France) said that the representative of Canada had given a clear and complete explanation of the Franco-Canadian draft on the registration of space objects. His delegation would therefore merely recall the reasons why France had already in 1968 brought that matter to the attention of the Legal Sub-Committee, having always been deeply interested in its legal aspects. France sought to provide for space objects, besides the compulsory United Nations registration, a national registration, as a kind of passport which conferred on them a genuine nationality. For that reason, it preferred the term "State of registry" to that of "launching State". Without registration, it would seem impossible to envisage the proper implementation of such texts as the 1968 Agreement on the Return of Objects Launched into Outer Space or the 1972 Convention on International Liability for Damage Caused by Space Objects. Without registration, disputes would quickly arise whenever there was any attempt to recover fragments or establish liability. Furthermore, simple registration could not suffice in the case, already envisaged in the near future, of placing in orbit recoverable space objects or reusable space shuttles travelling like aircraft in inner as well as outer space. Such progress in astronautics, which was going to give rise to new safety problems for air traffic in atmospheric space, should be subject to regulation in order to avoid accidents; the new provisions would apply both to space objects and to aircraft which should both be registered. International legislation was therefore essential and more and more States were realizing that truth.

He stressed that only registration would allow a legal link to be established between the State responsible for the space object and the object itself and to determine with certainty the responsibility for the space object with regard to international law. If there were several launching States, one of them would be designated as responsible. With registration, the space object and any personnel on board were subject to a juridical régime and the State of registry possessed powers of jurisdiction and control over the object. The affixing of a registration number appearing in the national register would also facilitate identification and would satisfactorily supplement the 1968 and 1972 Conventions.

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(Mr. Charvet, France)

A Convention providing for registration in a national register would certainly be very useful in cases where the space object caused damage but it would also provide States, directly and equally, with sufficient information on space activities likely to interfere with their national sovereignty, as, for example, remote sensing and satellite broadcasting. That was a good example of the interdependence between the various aspects of space law.

Two points in the Franco-Canadian proposal deserved special attention, namely, the marking of space objects - which alone gave a State suffering damage the irrefutable material evidence on which to base a claim for compensation - and the national register which must be established by a single State and confer a single nationality. In the case of a joint launching by several States, there would be a joint register but a single State would be designated by the others as empowered to deal with formalities and their legal consequences. Such a formula would avoid repeating the somewhat confused concept of the launching State defined in the 1972 Convention on Liability. A satellite belonging jointly to several States would be included in a joint register but the participating States would designate one from among them for the purposes of the material act of registration.

Without minimizing the differences existing between the two drafts before the Legal Sub-Committee, his delegation was glad that all delegations were able to participate in the discussion and hoped that the Sub-Committee could successfully conclude, in a spirit of compromise, the drafting of the two conventions on the agenda and submit both for the approval of the Committee on Outer Space.

ORGANIZATION OF WORK

The CHAIRMAN announced that the Sub-Committee had agreed that the representative of Austria should be the Chairman of Working Group II on the draft convention on registration. He proposed that Working Group II should begin its work that afternoon and that the next plenary session of the Legal Sub-Committee should take place on Friday morning, 6 April.

It was so decided.

The meeting rose at 11.40 a.m.