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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE SIXTY-NINTH MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 27 July 1966, at 10.30 a.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)
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PRESENT:Chairman:Members:

Mr. LACHS	(Poland)
Sir Kenneth BAILLY	Australia
Mr. HERNDL	Austria
Mr. BAL	Belgium
Mr. de CARVALHO SILOS	Brazil
Mr. ANGELOV	Bulgaria
Mr. GOTLIEB	Canada
Mr. RIHA	Czechoslovakia
Mr. DELEAU	France
Mr. PARTLI	Hungary
Mr. Krishna RAO	India
Mr. AZIMI	Iran
Mr. VINCI	Italy
Mr. YAMAZAKI	Japan
Mr. CHAMMAS	Lebanon
Mr. TELLO MACIAS	Mexico
Mr. DASHTSEREN	Mongolia
Mr. KAJDY	Poland
Mr. GLASER	Romania
Mr. BLIX	Sweden
Mr. MOROZOV	Union of Soviet Socialist Republics
Mr. KASSEM	United Arab Republic
Mr. DARWIN	United Kingdom of Great Britain and Northern Ireland
Mr. GOLDBERG	United States of America
Mr. STAVROPOULOS	Legal Counsel, Under-Secretary for Legal Affairs
Miss CHEN	Secretary of the Sub-Committee

Secretariat:

CONSIDERATION OF A TREATY GOVERNING THE EXPLORATION AND USE OF OUTER SPACE, THE MOON AND OTHER CELESTIAL BODIES (A/AC.105/C.2/L.12, L.13) (continued)

The CHAIRMAN invited the members of the Sub-Committee to continue their discussion of article XI of the USSR draft (A/AC.105/C.2/L.13) and the corresponding articles (12, 13, 14, 17 and 18) of the United States draft (A/AC.105/C.2/L.12).

Mr. DASHTSEREN (Mongolia) said that his country had had a long experience as a victim of discrimination in the matter of participation in international organizations and international instruments, and was very deeply concerned about that question. His delegation had made it clear in the general debate that it could not agree to the exclusion of any State from participation in the treaty. Article 12 of the United States draft would introduce an element of discrimination against some States - an unsound practice which was inconsistent with the United Nations Charter and its principle of universality, and which should have been abandoned long ago. Moreover the exclusion of a number of countries from participation in the treaty would conflict with the spirit and the very essence of that instrument, which was intended to make outer space, the moon and other celestial bodies a setting for free and peaceful co-operation among all States.

Under article I of the treaty, which he understood the Sub-Committee to have adopted, the exploration and use of outer space were the province of all mankind; the United States draft article 1 provided that "Celestial bodies are free for exploration and use by all States on a basis of equality and in accordance with international law." It would be absurd if the treaty which laid down those provisions was not open to all States.

The CHAIRMAN invited the Sub-Committee to consider articles 15 and 16 of the United States draft.

Mr. GOLDBERG (United States of America) suggested that those articles should be discussed in the working group.

Mr. MOROZOV (Union of Soviet Socialist Republics) considered that the final articles were an integral part of the treaty, and as proper a subject for discussion as the substantive provisions.

Although there was nothing in the USSR draft on the lines of the United States draft articles 15 and 16, his delegation was prepared to give favourable

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(Mr. Morozov, USSR)

consideration to the inclusion of those provisions in the treaty after the wording had been examined by the working group. The United States draft article 15 was, in principle, acceptable to his delegation, and the principle stated in article 16 was to be found in a number of multilateral agreements. However, his delegation's position on those two articles would depend on a favourable response to its proposal that the treaty should be deposited, not with the Secretary-General of the United Nations, but with certain Governments that would be designated as depositaries. If that proposal was adopted, the two references in article 16 to the Secretary-General of the United Nations should be replaced by references to the Depositary Governments.

Mr. GLASER (Romania) said that the principle underlying the United States draft article 15 was uncontestable: no State should be bound without its consent. The complex situation created by such a provision, with some States bound by an amended agreement and others by an original agreement, was endurable when the agreement dealt with technical questions. That, however, did not apply to a treaty concerning the principles which were to govern the activities of States in outer space. It was not desirable that a majority of Contracting Parties should be able, in their relations with one another, to substitute new rules for some of the basic principles to be included in that treaty.

As to article 16, there were two courses open to the Sub-Committee in drafting the treaty. If the treaty was to create new law, the provision for withdrawal made in the United States draft article might be acceptable. If, on the other hand, the purpose of the treaty was to state principles which were already part of international law, and apply them to the space activities of States, withdrawal was out of the question.

Mr. BLIX (Sweden) said that his delegation was largely in agreement with the Romanian representative with regard to article 15, under which it would be possible for amendments to come into force without the support of the space Powers.

Article 16, however, presented less of a problem: if the treaty contained principles which already constituted international law, a State that withdrew from the treaty would continue to be bound by those principles while ceasing to be bound by such principles of the treaty as were new.

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The CHAIRMAN invited the Sub-Committee to consider article XII of the USSR draft and article 19 of the United States draft.

Mr. MOROZOV (Union of Soviet Socialist Republics) urged the adoption of the USSR draft article XII.

Mr. DELLEAU (France) observed that the Sub-Committee had succeeded fairly quickly in combining the main provisions of the two texts before it into a single text. The next step should be to consider the legal significance of the unified text and its variants and to make it reflect the concerns of those countries which looked forward to sharing, not necessarily in the exploration and use of outer space and celestial bodies, but at any rate in the results of those activities. It was understandable that some delegations wished to arrive at a draft treaty as soon as possible. It might not be possible to draw up detailed rules immediately, but care must be taken not to give binding force to mutually inconsistent principles.

The Sub-Committee must take a clear and unequivocal position on the following questions of principle: (1) the scope of application of the treaty (outer space and/or celestial bodies, with or without the earth and its atmosphere); (2) the activities covered by the treaty (scientific exploration and/or use); (3) the idea of freedom and the necessary limitations thereon, particularly in relation to the principle of the interests of mankind; (4) sovereignty and the somewhat obscure related idea of non-appropriation; (5) the reference to international law, with particular stress on the United Nations Charter; (6) the rights and obligations of inter-governmental organizations engaging in space activities; (7) non-militarization; and (8) the advisability of a procedure for the settlement of disputes. A clear position on those questions of principle would make other problems easier to solve. The Sub-Committee, in its anxiety to avoid complications, must beware of producing a text which would be an agreement in appearance only, beset with divergent or conflicting reservations, and which States might be reluctant to sign.

As to the first question of principle - the scope of application of the treaty - his delegation was grateful to the United States delegation for its consent to widen that scope, and welcomed the Sub-Committee's decision to establish rules for both space and celestial bodies. On question (2) - the activities covered by the treaty - his delegation had no theoretical preference as to whether the treaty

(Mr. Deleau, France)

should be limited to scientific exploration or should also deal with use. In some respects it might be wiser for the time being to deal with scientific exploration alone, but on the other hand the use of outer space had already begun. The Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (General Assembly resolution 1962 (XVIII)) did not refer expressly to scientific research. Such research included both exploration and experiment. The former presented no great legal difficulty, but experiment was another matter. It was generally agreed that freedom of scientific research could not be regarded as justifying experiments which would have a semi-permanent or permanent effect on the territory of a State other than the State conducting them. Likewise, freedom of use must not be allowed to have semi-permanent or permanent effects on the territory of States other than the user State, without their permission. Some uses of outer space - for meteorological purposes, for sea and air navigation, and for direct broadcasting of radio and television programmes - were already a reality. On the last-mentioned subject, the new article proposed by the United Arab Republic (working paper No. 19) deserved serious consideration.

On question (3), his remarks on the possible consequences of experiment and use demonstrated the need to reconcile freedom with the common interests of mankind. That could be done only by establishing very general principles which, on the one hand, would grant States and international organizations the widest possible facilities to engage in useful space activities and, on the other hand, would assure other States that their vital interests would not be jeopardized and that they would share to the fullest possible extent, under equitable conditions, in the benefits derived from those activities.

The CHAIRMAN observed that the Sub-Committee had completed the first reading of the texts before it. He suggested that it should continue its work as a working group.

It was so agreed.

The meeting rose at 11.30 a.m.