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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE SIXTY-SECOND MEETING

Held at the Palais des Nations, Geneva,  
on Tuesday, 19 July 1966, at 3 p.m.

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Mr. M. LACHS

(Poland)

Representative of the  
Secretary-General:

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Secretary of the Sub Committee:

Miss K. CHEN

CONSIDERATION OF A TREATY GOVERNING THE EXPLORATION AND USE OF OUTER SPACE, THE MOON AND OTHER CELESTIAL BODIES (continued)

Mr. KHALAF (United Arab Republic) expressed the hope that the Sub-Committee's work would help to further human progress, world peace and disarmament and referred in that connexion to the ban on atomic tests in outer space contained in the Moscow Treaty of 1963 and the appeal to refrain from placing in outer space any objects carrying nuclear weapons or any other kinds of weapons of mass destruction contained in General Assembly resolution 1884 (XVIII).

In trying to formulate space law, the Committee had at first been obliged to draw on existing law, but it should now begin to lay a more solid basis and consider the introduction of new legal rules, taking care to avoid the weaknesses of classical international law. With regard to the relationship between international law and space law and what the latter might borrow from the former, his delegation's attitude would be very flexible. The proposed treaty should cover both outer space and the moon and other celestial bodies, in order to preserve the spirit of human solidarity which must govern the exploration and use of space. The treaty should be based on certain fundamental principles. Firstly, space law in general and the treaty in particular should serve the interests of all mankind and of all States whatever their level of economic, social or scientific development. It was therefore gratifying to note that article I of the Soviet draft was based on that principle and that both drafts forbade the national appropriation of celestial bodies. A corollary of that principle was the need for international co-operation, which was dealt with in articles 3 and 4 of the United States draft, and the need to ensure that the exploration and use of outer space caused no harm to mankind or to other States, for which provision was made in both drafts, in the form of a recommendation to avoid contamination.

Secondly, the proposed treaty must be based on the rule of law and peace. Any resort to force, violence or aggression must therefore be excluded. It followed that space law must be drawn up by all Powers, whether they were space Powers or not, and he therefore welcomed the fact that the United States and the Soviet Union had recognized the competence of the United Nations with regard to their respective drafts. Another principle was that outer space and celestial bodies should be used for peaceful purposes only and his delegation would urge that it be given legal form.

(Mr. Khalaf, United Arab Republic)

It was to be regretted that the two drafts provided for the non-militarization of the moon and other celestial bodies but not for that of outer space. On the other hand, it was satisfactory to note that the United States and Soviet drafts tried to deal with the possible causes of conflict or rivalry between space Powers.

In order to make the proposed treaty positive and dynamic, international co-operation in the field must be institutionalized. To that end, efforts could be made to speed up the holding of an international conference on the peaceful uses of outer space, the principle of which had been accepted by the Committee. It was also desirable that the Sub-Committee should adopt as an annex to the draft treaty a resolution recommending that the General Assembly should consider the establishment of an agency for space activities within the framework of the United Nations.

The proposed treaty touched on a number of related questions and in that connexion his delegation considered that work should continue on the treaties concerning liability for damages and assistance to astronauts. With regard to the question of space communications, thought would have to be given to an agreement to regulate television or radio programmes in order to ensure that they did not harm friendly relations among peoples.

Mr. GOTTLIEB (Canada) said that his delegation's principal objective was to promote peaceful co-operation in and the peaceful use of outer space, through the establishment of the rule of law in outer space. More and more countries were engaging in space activities, and Canada, which had benefited from other countries' co-operation, particularly with respect to its second satellite, Alouette II, appreciated the importance of establishing a legal order in space. The landing of manned space craft on celestial bodies would give rise to a series of practical problems of jurisdiction, scientific co-operation and responsibility and would raise the question of the rules that should govern space programmes and activities.

A treaty establishing an international legal order in outer space would be a logical complement to General Assembly resolutions 1721 (XVI) and 1962 (XVIII), which had laid down the basic legal principles applicable to space. It would also be a welcome addition to two arms control measures: the partial nuclear test-ban treaty of 5 August 1963, which forbade nuclear testing in certain environments,

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(Mr. Gotlieb, Canada)

including outer space, and General Assembly resolution 1884 (XVIII), in which States Members of the United Nations had undertaken to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner. The time had now come to draw up a formal treaty stating the legal principles applicable to outer space and taking into account the new ideas contained in the drafts before the Sub-Committee and in the statements made to it.

It would be noted that both drafts would prohibit the installation on celestial bodies of nuclear weapons and other weapons of mass destruction, the establishment of military bases and installations and the holding of weapon tests and military manoeuvres. To adopt articles 8 and 9 of the United States draft or article IV of the Soviet draft, therefore, would amount to assuming a solemn undertaking to refrain from any act which might give a new dimension to the arms race.

His delegation had listened carefully to the various comments made by the representatives of other Member States on the two draft treaties. It had been suggested that the United States draft would establish a regime applicable to celestial bodies whereas the Soviet draft converted into treaty form the legal principles stated in the General Assembly resolution. In addition, there was a difference in scope - the Soviet draft covered more space, so to speak, than the United States draft, which, however, covered more ground and broke new ground in relation to such matters as the exchange of information, international scientific co-operation, free access to celestial bodies and contamination. The Soviet draft contained clauses based on the United Nations resolutions concerning national liability for damage done by space craft, assistance to astronauts and the return of satellites, whereas the United States draft did not refer to those matters. His delegation, like many others, would welcome a widening of the provisions of the two drafts.

His delegation considered it most important to conclude treaties on State responsibility and on assistance to and return of astronauts and space craft. It welcomed Mr. Goldberg's statement that the United States would be prepared to include provisions to that effect in its draft treaty. Any controversial questions arising in this connexion should not, however, divert the Sub-Committee from its principal task, which was to draw up a treaty designed to ensure that outer space and celestial bodies were used exclusively for peaceful purposes. But in view of

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(Mr. Gottlieb, Canada)

the increase in space exploration and the growing possibility of accidents, the basic rules governing liability for damage caused by objects launched into space should be established as soon as possible.

He was not yet able to take a final position on the two drafts. They had marked similarities and the Sub-Committee, without confining itself to their provisions, might study the points on which there was agreement. A careful analysis of the similarities might lead to an early agreement on a variety of matters on which there was a common approach despite differences of terminology and presentation. The Sub-Committee would then be in a better position to determine the significance of the points which were not covered by the drafts or the articles adopted.

During its consideration of the matter it would also have to make decisions on various technical and juridical matters. It would have to ensure, for example, that any obligations created, however broad in scope, were sufficiently specific from the legal standpoint and that various provisions of the treaty were consistent with one another. Moreover, the use of such terms as "sovereignty", "appropriation", "occupation", "jurisdiction" and "claim" should be examined carefully.

If the Sub-Committee were to proceed to try to reach agreement on the areas of similarity, it would then be in a position to look at the differences or distinctions between the drafts in a concrete rather than in a general way. The Canadian delegation believed that process would show that some of the differences of approach might well be of a less significant nature than might appear at the moment.

Mr. JAROSZEK (Poland) said that while efforts were being made to create space law, the necessity for which had become apparent when the first Sputnik went into orbit, on earth the law was being violated by the ruthless war waged by the United States in Viet-Nam.

The first steps taken by the Committee in 1962 and 1963 to accomplish its task had produced some results, including the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, adopted unanimously by the General Assembly on 13 December 1963. Although that Declaration constituted only a framework for detailed rules to be worked out, it confirmed that international law, including the United Nations Charter, applied wherever the activities of States might extend. However, that Declaration, valuable as it was,

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(Mr. Jaroszek, Poland)

was not enough; it was essential that the principles it contained should be embodied in a treaty, and the Soviet draft was an excellent basis for the preparation of such a document.

It was important that the exploration and use of outer space should be for peaceful purposes only, in accordance with the preamble to General Assembly resolution 1721 (XVI), confirmed by the Declaration of Legal Principles. The arms race and the conflicts which took place on earth were bound to affect space, and every effort should therefore be made to limit the arms race wherever possible. Taking steps towards the peaceful use of outer space would not relieve States of the obligation to stop the arms race on earth through general and complete disarmament, which remained the ultimate goal. The Soviet draft contributed to the achievement of that goal, especially article IV, which would eliminate celestial bodies from the armaments race, article VIII, which dealt with the problem of international co-operation and mutual assistance, and article I, which stated the principle that the use of outer space and celestial bodies should be for the benefit of all countries and sought to exclude all monopoly and discrimination in that field. The sad experiences of the colonial period and the attempts which some States were making even now to impose their will on small countries fighting for their right to self-determination must not be forgotten. A treaty on the exploration and use of outer space should establish rules equally binding on all States.

His delegation thought that a good basis existed for agreement on that important issue, and the Sub-Committee should begin as soon as possible to draw up the articles of the treaty, and at its next session should pursue its work on the two draft conventions on assistance and liability.

Mr. de CARVALHO SILOS (Brazil) said that his delegation would state its views on the substantive matters raised by some representatives at the appropriate time. At present it would limit itself to the general principles which should govern the elaboration of the treaty. That treaty was of the utmost interest for all countries; it should be concluded before man reached the celestial bodies and should take into account the needs of mankind as a whole, and not only the particular interests of the space Powers. In his Government's view, space exploration and use should be carried out in the interests of all countries irrespective of their degree of scientific advancement or of the extent of their participation in space exploration. The treaty should also reflect most of the

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(Mr. de Carvalho Silos, Brazil)

principles stated in General Assembly resolutions 1962 (XVIII) and 1884 (XVIII). His delegation would at the appropriate time explain its position on the question of the automatic extension of international law, including the United Nations Charter, to outer space and celestial bodies - a question which should be approached with care. It also thought that there should be some kind of international scrutiny of the use of outer space for the purpose of telecommunications and the transmission of television programmes. Lastly, it attached great importance to the inclusion in the treaty of general provisions concerning liability for damage caused by the launching of objects into space, independently of the international convention which the Sub-Committee proposed to draw up and which it should consider further at the appropriate time.

Mr. GOMEZ ROBLEDO (Mexico) said that, although he had suggested that the general debate should be closed as soon as possible so that detailed discussion of the first agenda item might begin, he would like to give his country's position in broad outline. He considered that the drafts submitted by the USSR and the United States should serve as the basis for the discussion and should be considered concurrently. The proposed treaty offered an opportunity to prove that law did not always lag behind events and to take the initiative in codifying the principles to govern the activities of States in the exploration and use of space; thus, a repetition of the ominous arms race, which was the source of so much woe for mankind, would be averted. The law, admittedly, could not operate in a vacuum, but, as in the great moments of history, it could have a creative function. Moreover, one could hope that if States became accustomed to peaceful collaboration in outer space, general and complete disarmament, first realized in space, would one day become a reality on earth. His delegation was convinced, therefore, of the need to seize that opportunity to adopt a legal instrument which would prevent certain strategists from turning space into a testing ground for ever more deadly weapons. The proposed treaty accordingly should not be limited to the moon and other celestial bodies; it should apply especially to outer space and more particularly to the space around the earth, as laid down in General Assembly resolution 1884 (XVIII) and reaffirmed by the Declaration of Legal Principles (resolution 1962 (XVIII)).

The Committee should also be guided in its work by the 1959 Antarctic Treaty, which was based on tried and universally accepted principles.

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Mr. DASHTSEREN (Mongolia) said that his delegation had always supported the idea of an international agreement on the general principles governing the activities of States in the exploration and use of outer space, and in 1962, at the Sub-Committee's first session, had favoured the adoption of a declaration on those lines proposed by the USSR and the incorporation of those principles in a legally binding document. It had always supported the idea of a codification of legal principles, because it did not wish to see repeated outside the earth the history of colonial regimes arbitrarily established in newly discovered territories, the consequences of which were still being experienced in certain parts of the world, particularly in Viet-Nam, where the United States was engaged in aggression.

Now that the time had come to work out an international agreement, prompt action was essential, not only because the legal aspect of the problem might hamper scientific and technical progress but also because such progress would depend on the correct solution of the legal problem. Moreover, the members of the Committee were all of the opinion that the question was urgent. His delegation preferred the Soviet draft treaty (A/AC.105/C.2/L.13), which, in its opinion, was more comprehensive and thorough and should be taken as the basis for the Sub-Committee's work. It attached particular importance to the provisions of articles I and II of that draft, which stated that all countries without distinction should benefit from the exploration of outer space.

Regarding the United States draft (A/AC.105/32), his delegation supported the points which were identical with those of the Soviet draft; however, it could not accept some of its provisions, which would restrict the participation of States in the agreement. He would express his delegation's views on that and other points at a later stage. The Sub-Committee was provided with a firm basis for the accomplishment of its task in the Declaration of Legal Principles, the Moscow Treaty of 1963 (ENDC/100/Rev.1), and General Assembly resolution 1888 (XVIII). It could thus draw up an international treaty establishing conditions under which all mankind could participate in the exploration and use of space.

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Mr. AZIMI (Iran) said that he was happy to note that the draft treaty submitted by the United States (A/AC.105/32 and Corr.1) and the draft treaty submitted by the Soviet Union (A/AC.105/C.2/L.13) had many features in common. It was true that the United States text dealt with the exploration of the moon and other celestial bodies whereas the Soviet text also dealt with outer space, but that difference between the two texts did not create any insurmountable difficulty.

If the Sub-Committee wished to succeed in its task, it must keep constantly in mind the principle of freedom to make peaceful use of outer space and of celestial bodies. That principle was embodied in the announcement made by President Johnson on 7 May and was also set forth in explicit form in the two draft treaties before the Sub-Committee. In view of the extremely rapid progress being made in space technology, it was important to reach agreement at once regarding the peaceful exploration and use of outer space and celestial bodies. The various countries must do everything in their power to work out a draft treaty based on the resolutions adopted on the subject by the General Assembly. His delegation considered that, before making a detailed examination of the United States and Soviet drafts or of any other paper, the Sub-Committee should first decide whether the aim was to prepare a text setting forth only general principles or whether it would be better to draw up a detailed text covering all aspects of the question. As the Indian representative had pointed out, it would seem inappropriate to confine the discussion to any one text at the present stage; it would be better to try to work out a complete text to which the Sub-Committee could give unanimous support. With that end in view it would be desirable to examine those articles of the United States and Soviet drafts which contained common points, and then to consider those articles which appeared in only one of the two texts; the text thus arrived at would then be supplemented by further proposals submitted by members of the Sub-Committee. The adoption of a document put together in that way would undoubtedly mark a great step forward in international understanding and co-operation.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that, before the draft treaty was examined article by article, the general objective aimed at and the first item on the agenda of the present session should be clearly defined.

As was demonstrated by the documents before the Sub-Committee and the statements which had been made, it would be undesirable to consider only the legal regulation of activities conducted on celestial bodies. The proposed treaty should also deal with outer space in general; an overwhelming majority of representatives took that view. They considered that the problem of regulating the activities of States in outer space could not be ignored, and it would indeed be difficult to prohibit the stationing of nuclear weapons on celestial bodies without mentioning the question of placing them in orbit around the earth. That point had been put very eloquently by the representatives of a number of African, Asian and Latin American countries. The Soviet Union, for its part, would do its utmost to bring about an agreement on a draft treaty covering the activities of States in the exploration and use of outer space, the moon and other celestial bodies.

It was encouraging to note that the discussions in the Sub-Committee had been constructive and that the atmosphere had been conducive to co-operation. The next step was to translate words into action and to complete the difficult task of drawing up an international agreement.

The Soviet Union was still in favour of the text which it had proposed in document A/6352, and considered that text to be in keeping with the principles of the Declaration adopted by the General Assembly. The text also contained a number of basic provisions which, moreover, were echoed in the draft treaty submitted by the United States. In a spirit of co-operation, the Soviet delegation was prepared to consider the possibility of including, in the draft treaty to be prepared by the Sub-Committee, provisions which did not appear in the Soviet text, including certain points from the United States draft. As several speakers had pointed out, there were not many such provisions. Furthermore, that did not mean that other delegations could not contribute to the preparation of the draft treaty. The Soviet delegation, for its part, would submit in due course such revisions and additions as it thought necessary.

Mr. GOLDBERG (United States of America) thanked the many representatives who had congratulated the United States Government on the launching of Gemini 10. The activities of the United States astronauts and of those sent into space by the Soviet Union demonstrated the timeliness of the Sub-Committee's task.

(Mr. Goldberg, United States)

The general debate had proved very significant and fruitful. In the deliberations which were about to begin, the United States delegation would be ready to examine the details of the treaty which was to be drawn up and recommended to the General Assembly; it was also prepared to take into consideration the views of the Soviet Union and the views of other representatives as to the scope of the treaty which was to be jointly worked out, together with other questions not covered in the United States draft. He welcomed the spirit of co-operation which the Soviet Union representative and other members of the Sub-Committee had shown. He hoped the Sub-Committee would be able to work out a common text which would draw upon the Soviet and United States drafts and which could be accepted by all and recommended to the General Assembly.

Mr. CERNIK (Czechoslovakia) again suggested that the Sub-Committee should base its work on the draft treaty submitted by the Soviet Union. That text, as had been pointed out, dealt not only with the moon and other celestial bodies but also with outer space, and the general debate had shown that that approach was supported by the majority of representatives. As to the content of the treaty, the Soviet draft mentioned certain questions which were unfortunately missing from the United States draft. He might mention, in particular, the obligation of the parties to the treaty not to place in orbit around the earth any objects carrying nuclear weapons or other weapons of mass destruction; liability for damage; and the definition of international responsibility in connexion with the activities of States or of international organizations in outer space. The majority of representatives had stressed the urgency of settling those questions as soon as possible. Furthermore, much of the wording used in the Soviet draft corresponded to the text of the Declaration adopted by the General Assembly. The adoption of the Soviet draft as the basic document would not preclude the submission and examination of other proposals, which would be discussed along with the Soviet text; in that way it would certainly be possible to arrive at an acceptable text.

The CHAIRMAN declared the general debate closed. At the next meeting he would propose, taking into account the suggestions which had been made, a procedure for the detailed consideration of the matters before the Sub-Committee.

The meeting rose at 5.10 p.m.