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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE SIXTY-SEVENTH MEETING

Held at the Palais des Nations, Geneva,
on Monday, 25 July 1966, at 3 p.m.

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(12 p.)

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	Mr. BAL	Belgium
	Mr. de QUEIROZ DUARTE	Brazil
	Mr. ANGELOV	Bulgaria
	Mr. GOTLIEB	Canada
	Mr. RIHA	Czechoslovakia
	Mr. DELEAU	France
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	Mr. CHAMMAS	Lebanon
	Mr. TELLO MACIAS	Mexico
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	Mr. GLASER	Romania
	Mr. BLIX	Sweden
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Mr. KHALLAF	United Arab Republic
	Mr. DARWIN	United Kingdom of Great Britain and Northern Ireland
	Mr. GOLDBERG	United States of America
Representative of a specialized agency:		
	Mr. PERSIN	International Telecommunication Union
Representative of the International Atomic Energy Agency:		
	Mr. PISKAREV	
Secretariat:	Mr. STAVROPOULOS	Representative of the Secretary-General
	Miss CHEN	Secretary of the Sub-Committee

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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)

Mr. MOROZOV (Union of Soviet Socialist Republics) said that he wished to reply to comments made on article VI of his delegation's draft (A/AC.105/C.2/L.13). Article VI of the Soviet text had been drawn up in the light of paragraph 7 of the Declaration of Principles (General Assembly resolution 1962 (XVIII)), which had been a compromise. In the plenary Committee's discussion on the matter, the Soviet delegation had proposed, in document A/AC.105/L.2, that article 7 should state that all activities of any kind pertaining to the exploration and use of outer space should be carried out solely and exclusively by States. Many delegations, however, had insisted that in view of the conditions prevailing in certain countries activities in space could not be confined to the State. The question had then arisen of what should be done about international organizations, in the sense of organizations whose members were States. In order to arrive at a formula acceptable to the different groups, a compromise wording had been adopted, which was reflected in article VI of his delegation's draft. Now it seemed that that background was being disregarded and that an attempt was being made to go still further and grant such international organizations a special legal status. It was argued that obligations could not be placed on third parties which were not parties to the treaty. That was a generally recognized principle of international law with which he would not quarrel, but it was not a relevant criticism of the Soviet draft. Was it being suggested that the principles governing the activities of international organizations should be different from those governing the activities of individual States? If so, the position was untenable. A change in quantity did not mean a change in quality and the same principles applied to States as members of an organization as to States in their individual capacity. Furthermore, only a State could be party to an international treaty; although there were other views on that question, that was the practice followed with regard to treaties concluded under the auspices of the United Nations. In that connexion he agreed with the views put forward by the representative of Romania at the previous meeting. Since, therefore, States as individual parties and as members of international organizations were governed by the same principles, there was no conflict. They bore a double responsibility and must discharge it. The Soviet text should therefore create no difficulties.

(Mr. Morozov, USSR)

A question had been raised at the previous meeting which at the time had seemed purely linguistic. After consultations, however, he had reached the conclusion that the proposed amendment to the English text would make it no longer equivalent to the Russian. The term "entities" meant something vaguer than the Russian equivalent of "bodies corporate", which meant a group of persons or an organization duly recognized as such in accordance with national legislation. The situation was complicated by the fact that the English version of the Declaration of Principles used the same wording as the proposed amendment; but it might be incorrect. He would therefore request the Legal Counsel and the Secretariat to bring the translations into line with the Russian text of article V, and would withdraw his over-hasty acceptance of the amendment at the previous meeting.

Mr. DARWIN (United Kingdom) said that it was the general view in international law that international organizations were capable of rights and duties. They did from time to time enter into contractual documents, with one another and with States. That might not be the practice of all international organizations and there might be States which had never had occasion to enter into contractual documents with an international organization. But a survey of international practice generally would show that such organizations had rights and duties. That did not mean that international organizations were the same as States. In that connexion, he referred to the opinion of the International Court of Justice in the Reparations for Injuries case in 1959, which had expressly stated that an international organization, although not the same as a State, did enjoy rights and duties. As far as the treaty under discussion was concerned, it was not clear how it would operate if no provision was made for international organizations. For some purposes, it might be sufficient to regard an international organization as the sum of its member States. But it did not follow that all the States members of an organization would be parties to the treaty. The Soviet text of article VI imposed responsibility upon both the States and the international organizations, but if they exercised that responsibility in different ways, the meaning of the clause would be uncertain. The same applied with regard to the article on liability, where liability appeared to be imposed on both the international organization and the States without any indication of how it was to be divided among them or how it would be discharged in practice. There was a

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(Mr. Darwin, United Kingdom)

basic issue involved which was broader than the two specific aspects of responsibility and liability: the general position of international organizations in the regime governing activities in space and on celestial bodies must be clearly and appropriately laid down. His delegation therefore wished to propose the inclusion of an additional article on international organization (Working Paper No. 17).

In paragraph 1, the contents of the brackets had not been specified because the matters to which they referred had not yet been dealt with by the Sub-Committee. It would be seen, however, that the paragraph did not equate international organizations with States, since it expressly excluded the application to them of the articles concerning signature, ratification and accession by States. On the other hand, it did establish a procedure whereby international organizations could file a declaration with the depositary authority. If that step was taken by an international organization, the provisions of the treaty would apply to it, not on the basis that it was a State, but on the basis that it would participate in the regime governing outer space and the celestial bodies in a manner which was appropriate to that regime and which in substance and on technical grounds had been found appropriate for States. That was necessary for strictly practical reasons.

Paragraph 2 was designed to ensure that international organizations not only could but did become subject to the regime governing outer space and the celestial bodies. Paragraph 3 provided for the action to be taken by States parties to the treaty in cases where there was a delay before an international organization could carry out the procedure indicated in paragraph 1. How effective their action would be would depend on various factors, such as their number and their influence in the organization, but there was nothing in principle to prevent their accepting an obligation to take such steps as were open to them. It would not be contrary to the pacta tertiis rule, since there would be no attempt to impose upon international organizations directly and without their consent rights and obligations effective on them as an entity. There were two points in the wording to which the Committee's attention should be drawn. Firstly, the word "principles" was used rather than "provisions" because the provisions as such spoke only of "States". It was not the intention to suggest that the treaty applied to international organizations in some other way than to States. Secondly, the words "subject to reciprocity"

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(Mr. Darwin, United Kingdom)

had been included in order to ensure that States were not obliged to influence the work of international organizations in a certain way unless those organizations were receiving, by way of reciprocity, similar treatment.

Mr. GLASER (Romania) said that the text just introduced by the United Kingdom representative would have to be submitted to his Government for study, so that his comments on it at the present stage would be merely of a preliminary nature. In essence, the article appeared to say that if international organizations declared that they accepted the treaty, it would apply to them, but that if they did not, it would not. That in effect placed international organizations on the same footing as States, the fact that international organizations would not sign or ratify the treaty being of quite secondary importance. But it was not open to international organizations to decide whether or not international law applied to them, any more than it was open to individuals. At first sight, therefore, the United Kingdom text seemed to lead down a very dangerous path.

Mr. MOROZOV (Union of Soviet Socialist Republics) agreed with the representative of Romania. To his mind, the United Kingdom proposal could be rejected outright and not merely on a preliminary basis. The question was not a new one, similar proposals having been made during the discussions on the question of rescuing astronauts. The proposal was unacceptable because it would leave any international organization free, after the conclusion of the treaty, to do exactly as it chose until it declared itself willing to comply with the principles of the treaty - a treaty which was intended to be universal. It would, for example, be free to launch weapons of mass destruction into orbit until it declared that it would not do so. If an international organization chose to behave thus, parties to the treaty which were members of it would merely be required to "use their best endeavours" to ensure that it mended its ways. Such an approach could undermine the whole work of the Sub-Committee. From the legal standpoint, it was the old attempt to endow international organizations with the same rights as sovereign States parties to a treaty, despite assertions to the contrary. Practically speaking, nothing more was necessary in order to protect the interests of international organizations consisting of States, than was already contained in the draft treaty, since under its provisions, States would have not only obligations but also rights. It was true that an exception was made in that

international organizations were specifically given the right to engage in space activities, but the reason for that was the exceptional importance of such activities and the consequent need to stress the double responsibility of States which were members of such organizations.

Mr. Krishna RAO (India) said that the role of international organizations was a vexed question which the Sub-Committee would do well to approach in practical terms. Unlike the Soviet draft article VI, the new article proposed by the United Kingdom delegation created more difficulties than it solved. In the first place, it was not clear whether the term "international organization" in paragraph 1 referred to inter-governmental or non-governmental organizations. More seriously, he simply did not see that paragraphs 2 and 3 were applicable. How were States parties to "ensure" that any international organization to which they belonged would make the necessary declaration? Moreover, the question of reciprocity did not arise since it could not be translated into concrete terms. His greatest difficulty, however, was the distinction to be drawn between "the principles set out in this treaty" and "the provisions of this treaty". He preferred the latter formula.

Mr. VINCI (Italy) pointed out, in reply to critics of the United Kingdom proposal, that the practice of having international organizations become contracting parties to agreements already existed. However, it was true that the article as drafted could open loop-holes. For instance, if a State which was not party to the treaty but belonged to an international organization which was, it would be compelled to abide by the provisions of the treaty. There was also the possibility that countries not in a position to undertake national space activities individually might in future constitute regional organizations for that purpose.

Sir Kenneth BAILEY (Australia) agreed with the Soviet representative that nobody would wish to return to the rule that only States might conduct space activities when in fact international organizations were already doing so. He also agreed with the Romanian representative that the rules of international law did apply to international organizations. But it was quite another matter to say that the provisions of a specific international treaty between certain States applied to international organizations as such; that would depend on the terms of the treaty and the position of the international organization concerned.

(Sir Kenneth Bailey, Australia)

It was a practical as well as a juridical problem. Certain international organizations did exist under international agreements and did conduct space activities. Suppose that some such organization had eight member states, that two of them became parties to a treaty drafted in terms of article VI of the Soviet text, and that all eight were Members of the United Nations and, as such, parties to the General Assembly resolution containing the Declaration of Legal Principles: how could it be said that the two members parties to the treaty could bind the rest? How could the last sentence of article VI of the Soviet draft achieve its juridical objective in those circumstances in so far as it concerned all the other members of the international organization? How could it be said that those two members were able to affect the further result aimed at in that sentence by compelling the international organization to comply with the treaty?

In conclusion, he pointed out that the problem under discussion had already confronted the United Nations in dealing with those inter-governmental entities known as specialized agencies, and that there were well-known and effective precedents for precisely the solution indicated in the United Kingdom proposal.

Mr. HERNDL (Austria) thought that the Sub-Committee would do well to examine the problem in the limited context of article VI of the Soviet draft, which dealt with international responsibility. The United Kingdom proposal was broader in scope, bringing international organizations which conducted space activities within the framework of the treaty. Under the pacta tertiis rule of international law, however, international organizations could not be required to fulfil the obligations of treaties to which they were not parties. The Sub-Committee should, therefore, perhaps confine itself to the responsibility of States parties to the treaty who were also members of an international organization, and set aside the question of the responsibility of international organizations per se. The last sentence of article VI might then be drafted as follows:

> "When activities are carried on in outer space by an international organization, responsibility for compliance with this Treaty shall be borne in principle by the States parties to the Treaty participating in such organization, notwithstanding the responsibility of the international organization according to general rules of international law or according to specific treaties."

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Mr. BAL (Belgium) shared the doubts of other representatives as to whether article VI of the Soviet draft was sufficient, in view of the practical consideration that international organizations were already conducting space activities. The Sub-Committee should avoid doctrinal controversies such as the question whether, in international law, States could or could not be placed on a footing of equality with international organizations. As a practical approach to a complex problem, the United Kingdom proposal deserved the Sub-Committee's closest attention.

Mr. MOROZOV (Union of Soviet Socialist Republics) still felt that the Soviet draft offered the best solution.

Mr. DARWIN (United Kingdom) noted that the Soviet representative had suggested that the United Kingdom delegation was acting unwisely in reopening a compromise arrived at during the drafting of the Declaration of Legal Principles. But the context was quite different. In that instance, the United Nations had been drawing up rules of general international law which, by their very nature, were binding on international organizations and had acquired considerable vigour as a result of their unanimous adoption by the membership. By contrast, the Sub-Committee was at present engaged in drafting a contractual document which would include a procedure for signature and ratification. In the early months of its life, it was likely that by no means all the States entitled to accede would in fact do so. The question of the manner in which the legal text should become binding on international organizations thus stood in a completely different context from the one in which it had stood in the case of the General Assembly Declaration.

He thanked the Indian representative for his suggestion that the last sentence might be improved by substituting the word "provisions" for the word "principles".

The CHAIRMAN said that the discussion on article VI of the Soviet draft could now be considered closed and suggested that the Sub-Committee should take up article VII of that draft, on the question of liability.

Mr. GOLDBERG (United States of America) recalled that his delegation had no objection in principle to incorporating in the treaty a general declaration on the subject of liability, while recognizing that the Sub-Committee hoped to draft a detailed treaty on the subject under a different agenda item. In that spirit, his delegation could accept article VII, with some drafting changes. /...

Mr. MOROZOV (Union of Soviet Socialist Republics) confirmed that his delegation had put forward article VII without prejudice to any special agreement on the question of liability. He accepted the drafting changes proposed by the United States representative.

Mr. Krishna RAO (India) thanked the Soviet delegation for including a provision on the question of liability in its draft treaty, thus taking into account some of the very real fears expressed in the Sub-Committee.

He would welcome clarification of the term "internationally". If it meant "absolutely", it was entirely acceptable to his delegation. He was glad to hear that the Soviet delegation had no objection to the drafting of a separate instrument on the question of liability.

Mr. DARWIN (United Kingdom) said that obviously nothing in the treaty under discussion would be understood as prejudicing the manner in which the problems raised by the concepts of launching and procuring the launching of objects, absolute liability and limitation of liability should be resolved in the drafting of the convention on liability. The proposals which had been made in the discussion of articles VI and VII, including the question of international organizations, applied with equal force to article IX. Such proposals should be considered at the drafting stage.

Mr. DELEAU (France) said that the questions of liability and assistance were extremely complicated, and if any reference to them was included in the treaty under discussion, it should be very brief and simple and should merely establish the principle concerned. Any additional details might deal too rapidly with problems which had not yet been settled.

Mr. AOKI (Japan) wished to associate himself with the remarks made by the Indian representative concerning articles V, VII and IX of the USSR draft: those provisions were subject to specific conditions, which would be laid down in separate international documents.

Mr. RUDA (Argentina) said that his delegation supported article VII of the Soviet draft, on the understanding that it was based on the principle of objective liability and that the fault or negligence of the launching State would not be a necessary element of liability.

Sir Kenneth BAILEY (Australia) shared the Indian representative's view that the treaty text should make explicit its relation to other conventions to be drawn up subsequently on specific matters dealt with in the treaty.

He suggested that the words "each State" in the second line of article VII of the Soviet draft and in the third line of the United States proposed amendment (Working Paper No. 16) should read "each such State".

Mr. BAL (Belgium) associated himself with those delegations which favoured the clear acceptance of the idea that the insertion of general rules concerning liability in the treaty under consideration was without prejudice to the specific rules to be included in subsequent separate agreements on liability. His delegation welcomed the statements made by the United States and USSR representatives on that point.

Mr. CHAMMAS (Lebanon) said that his delegation accepted article VII, on the understanding that it was subject to more detailed and specific provisions to be laid down in a special instrument on liability. In its view, however, there was no need to insert an explicit reference to those provisions in article VII. Moreover, he doubted whether it was legally possible to refer in a treaty to an agreement which had not yet been concluded. It might be more appropriate simply to include in the Committee's report to the General Assembly a declaration stating that articles VII and IX were without prejudice to the agreements that would be concluded on liability and assistance.

Mr. TELLO MACIAS (Mexico) supported that suggestion.

Mr. CARVALHO SILOS (Brazil) said that his delegation accepted article VII of the Soviet draft, as amended by the United States, on the understanding that States were liable for damage caused by objects launched from their territory by non-governmental agencies or any entity.

Mr. GOLDBERG (United States of America) accepted the Australian amendment. He agreed with the Lebanese representative that a statement in the treaty itself making a provision of that treaty subject to an agreement which had not yet been negotiated would weaken the force of the provision. He thought that the matter could be handled by an understanding manifested in the record that the provision was without prejudice to the subsequent negotiation of a specific agreement on liability.

Sir Kenneth BAILEY (Australia) considered that it was quite possible to refer in one instrument to another, whether the latter existed or not, but that was not the only available procedure. While his delegation preferred a clear statement in the text of the treaty, it was not wedded to that opinion and thought that the matter should be explored at the working group stage.

Mr. PARTLI (Hungary) said that his delegation accepted article VII of the USSR draft, which was based on paragraph 8 of the Declaration and properly added a reference to celestial bodies. His delegation had prepared a revision of its draft convention on liability, and it hoped that, after the present task had been completed, rapid progress could be made in the drafting of that convention.

Mr. Krishna RAO (India) said that there were many instances in practice of treaties providing that particular details would be worked out in separate agreements. He was willing to consider other methods, however, and thought that the matter could be more profitably discussed by the Sub-Committee meeting as a working group.

Mr. CHAMMAS (Lebanon) did not consider it legally possible to make a treaty subject to a non-existent instrument. He agreed, however, that a recommendation for or commitment to subsequent negotiations could be adopted by using the expression "without prejudice to negotiations".

Mr. MOROZOV (Union of Soviet Socialist Republics) accepted the Australian amendment.

He agreed that it was difficult to refer to an instrument which had not yet been drawn up. The agreements on liability and assistance should take article VII as their starting point and should refer to it, not vice versa. He thought it unnecessary to insert a special statement in the treaty indicating that article VII would not prejudice the agreements to be concluded on liability; no such statement had been included in the Declaration when the identical provision had been adopted. The members appeared to be generally agreed on that point.

The CHAIRMAN suggested that as the members were in general agreement on article VII, it should be referred to the working group.

It was so decided.

The meeting rose at 6.5 p.m.