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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE SEVENTY-FIRST MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 August 1966, at 3 p.m.

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Interim report by the Chairman

Suspension of the session

PRESENT:

<u>Chairman:</u>	Mr. LACHS	(Poland)
<u>Members:</u>	Sir Kenneth BAILEY	Australia
	Mr. HERNDL	Austria
	Mr. BAL	Belgium
	Mr. de CARVALHO SILOS	Brazil
	Mr. ANGELOV	Bulgaria
	Mr. BEESLEY	Canada
	Mr. CEBIS	Czechoslovakia
	Mr. LEMAITRE	France
	Mr. PARTLI	Hungary
	Mr. Krishna RAO	India
	Mr. AZIMI	Iran
	Mr. VINCI	Italy
	Mr. YAMAZAKI	Japan
	Mr. TELLO MACIAS	Mexico
	Mr. DASHESEREN	Mongolia
	Mr. JAROSZEK	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

Representative of a specialized agency:

Mr. FERSIN	International Telecommunication Union
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PRESENT (continued):

Secretariat: Mr. STAVROPOULOS

Legal Counsel, Under-Secretary
for Legal Affairs

Miss CHEN

Secretary of the Sub-Committee

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; Working Papers Nos. 1-28; Working Group/L.1-L.9) (continued)

Mr. DARWIN (United Kingdom) said that the members of the Sub-Committee had recorded their unanimous wish that a solemn treaty obligation should be created, confirming with legal force that outer space, including the moon and celestial bodies, should be free for exploration and use for the benefit and in the interests of all countries, irrespective of the degree of their economic and scientific development. The Sub-Committee had also recorded that that high aim could be achieved only if the freedom of scientific investigation was protected by the treaty and reinforced by international co-operation.

Starting from those principles, the Sub-Committee had considered other specific principles and had embodied many of them in draft articles; it had established a rule of international law to the effect that the Parties would not place in orbit around the earth any objects carrying nuclear weapons or any other kind of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.

On certain important topics, however, the Sub-Committee had agreed upon the principles involved but not on how to apply them. Firstly, the principle of open access to all stations, installations, equipment and space vehicles on celestial bodies was accepted, but there was disagreement as to the timing of such access and, in particular, as to whether that was a matter for a specific further agreement in each case. Considerations of safety were obviously vital, but to insist, without any qualification or limitation, on prior specific agreement regarding the time of visits might frustrate the entire principle of open access.

Secondly, the Sub-Committee had agreed upon a principle to the effect that information relating to celestial bodies should be freely and fully disseminated to the public and the scientific community of the world. It was therefore surprising to hear the argument put forward that such information could not be given on an obligatory basis - the only way to make the principle fully effective.

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Thirdly, the Sub-Committee had agreed that, in order to ensure that celestial bodies were used for peaceful purposes, there must be some restriction on preparations for activities of a different kind; however, it had been unable to work out a precise statement of the principle. Military needs frequently led to important technological advances. The fact that a piece of equipment owed its origin to military development should not preclude its use for peaceful purposes foreseen by the treaty and apparent to all as peaceful purposes. Given more time and negotiation, agreement should be possible on that point.

Other proposals remained undecided. The USSR delegation had asked that the words "without discrimination of any kind" should be added to the provision that outer space was free for exploration and use by all States on the basis of equality. The United Kingdom delegation did not fully understand what those words meant in the context or why they were needed, but had accepted them in order to reach agreement. However, it could not accept the USSR proposal that States which provided facilities to another State for the observation of the flight of space objects should be obliged to extend the same facilities to all other parties to the treaty. That obligation would be laid on certain States, because of their geographical position, while the States whose objects were to be observed would be under no comparable obligation in connexion with other space activities and would not even have to inform the observing State of the functions of the space object under observation. Far from favouring international co-operation, that proposal appeared to give a prize to a State which refused all other States its co-operation in the observation of space objects.

Those States which conducted space activities through international organizations, and several other States as well, wished to ensure that such collective activities would receive the benefits and be subject to the obligations of the treaty. The draft articles were uncertain on that point. The last sentence in document Working Group/L.6, which was taken from article VI of the USSR draft (A/AC.105/C.2/L.13), originated from the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (General Assembly resolution 1962 (XVIII)) and was of uncertain effect in its present context. For that reason his delegation had assented in the Working Group to the adoption of the article in question subject to the outcome of further discussion on the

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question of international organizations. It maintained its proposal for an article on international organizations (Working Paper No. 17), but was willing to consider other proposals on the subject. It had been suggested that his delegation's proposal could lead to evasion of the treaty obligations by the creation of an international organization in bad faith; his delegation would accept an addition to its text designed to preclude such evasion, if that would make the draft article acceptable. He asked members of the Sub-Committee to give the problem of international organizations serious thought, with a view to further discussion at the next session; it was to be hoped that that session would begin in the near future, so that the Sub-Committee might complete the draft treaty.

Mr. BAL (Belgium) noted with satisfaction the progress which the Sub-Committee had made in its work in a few short weeks. His delegation particularly welcomed the acceptance of the article set forth in document Working Group/L.4, minus the words in parenthesis. The first two sentences of that text stated important rules which had waited a long time for approval in other bodies and whose inclusion in the treaty would meet the wishes of the General Assembly. The Sub-Committee had been able to agree without difficulty on the provision concerning the use of military personnel, but still had to resolve the question of the use of military equipment. It had been proposed that the use of military equipment on celestial bodies should be permitted under certain conditions, on the understanding that such use would conform to the general rule limiting activities to peaceful purposes. In practice it would be necessary to look for means of enforcing that rule which would meet the legitimate concern felt by all countries, large and small about the prospects of military use of space. That was no easy matter, but specific proposals had already been submitted regarding supervision by the international community of the performance of the treaty obligations.

Thus the United States proposals concerning free and unrestricted access and the provision of information on an obligatory basis deserved careful study by the Sub-Committee. Those two principles might have considerable practical significance in various sectors of space activity. As the United States representative had repeatedly pointed out, the various draft articles must be evaluated, not as separate texts, but in relation to the whole treaty.

His delegation had not opposed the acceptance of documents Working Group/L.1, L.2 and L.5. However, the article set forth in document Working Group/L.2 must not be construed as authorizing any country, large or small, to impose on another State its unilateral interpretation of the principles involved; a separate convention on the subject should be prepared as soon as possible, and in the meantime a formal clause should be drawn up either on the lines suggested by the Indian representative in Working Paper No. 2 or on the more general lines proposed by the Australian representative in Working Paper No. 25.

Document Working Group/L.7 used some terms which were not customary and others which were unknown in Belgian law; it was to be hoped that the Sub-Committee would study the text further and that every effort would be made to clarify its meaning as soon as discoveries and experiments made possible more clearly defined human relations in space matters. His delegation had taken note of the interpretation of the term "non-appropriation" advanced by several delegations - apparently without contradiction - as covering both the establishment of sovereignty and the creation of titles to property in private law.

Belgium was an active member of several international organizations engaging in space activities, and considered it highly important that the role of such organizations should be recognized in the treaty. His delegation subscribed to the text of document Working Group/L.6, provided that it was supplemented in due course by a clause on the lines suggested by various delegations and particularly by the United Kingdom representative.

The aim of the Sub-Committee's work was to avoid the transfer of old disputes to new regions. His delegation was grateful to those delegations which had actively contributed to the achievement of that aim: not only those of the United States and the USSR, which had submitted draft treaties, but also those such as the Brazilian and Japanese delegations which had submitted acceptable proposals.

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Mr. Krishna RAO (India) observed that the Sub-Committee had agreed upon nine draft articles. The draft article in document Working Group/L.1 was, in substance, taken from principle 7 of the General Assembly's Declaration of Legal Principles; that in document Working Group/L.2 from principle 8; that in document Working Group/L.3 from principles 1, 2 and 4; that in document Working Group/L.4 from General Assembly resolution 1884 (XVIII), operative paragraph 2 (a); and those in documents Working Group/L.5-L.9 from principles 9, 5, 3, 4 and 6 respectively. The acceptance of the nine principles of the Declaration as binding legal obligations in a treaty ratified by the space Powers would be an achievement. However, while the Sub-Committee had given legal form to the principles of the Declaration, it could not claim to have created clear-cut legal obligations which would benefit mankind.

The nine principles embodied in documents Working Group/L.1 to L.9 were acceptable to his delegation, but the existing texts suffered from some vital omissions which might make the treaty almost nugatory. His delegation could not accept, as it stood, the text of document Working Group/L.2 concerning liability for damage. The word "internationally" had not been explained, and would be acceptable to his delegation only if the Powers concerned made it clear that it meant "absolutely". His delegation could accept the new article proposed by Australia (Working Paper No. 25), which would apply both to the article in document Working Group/L.2 and to that in document Working Group/L.5 and Corr.1; pending the adoption of the Australian proposal, India maintained its amendment to those two articles.

His delegation accepted the text in document Working Group/L.3, subject to the necessary safeguards relating to freedom of scientific investigation.

As to document Working Group/L.4, his delegation felt very strongly that the whole treaty would be meaningless if the article in question failed to provide that outer space should be used exclusively for peaceful purposes and to prohibit the establishment of military bases, the testing of any type of weapons and the

(Mr. Krishna Rao, India)

conduct of military manoeuvres in outer space. The expression "outer space, including the moon and other celestial bodies", employed throughout the treaty, was not used in that draft article and the inference was that the treaty could be interpreted - contrary to what his delegation considered to be the customary law - as giving legal licence for the use of outer space for non-peaceful purposes. Incidentally, the Committee on the Peaceful Uses of Outer Space should consider changing its title to bring it into line with the title of the treaty.

So far as document Working Group/L.9 was concerned, he had no objection to the text but feared that the Sub-Committee's work was hampered by a lack of information on three questions which fell within the purview of the Scientific and Technical Sub-Committee. Firstly, there was the question of contamination, which had been before the Scientific and Technical Sub-Committee since 1962, but on which it had not taken any action. Secondly, there was the question of possible damage, which had not been discussed in the Scientific and Technical Sub-Committee or even placed on its agenda. Thirdly, there was the question of space communications, especially direct broadcasts. In 1964 the Scientific and Technical Sub-Committee had decided that COSPAR should direct the International Radio Consultative Committee (CCIR) to submit a report on the subject. CCIR had met in Oslo recently but had not touched on the subject at all; neither had the Scientific and Technical Sub-Committee at its meeting in April 1966. The Scientific and Technical Sub-Committee should therefore be asked to discuss those three very important subjects and make recommendations on them, so as to place the Legal Sub-Committee in a better position to draft the treaty.

Mr. HERNDL (Austria) welcomed the progress made in the Sub-Committee's work, which was attributable to the co-operation shown by all delegations and the goodwill of the leading space Powers. Although there were still some points in dispute, a large measure of agreement had been reached and he was optimistic about the possibility of signing a treaty in the near future. His Government would continue to do its best to bring that about and trusted that others would do the same.

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(Mr. Herndl, Austria)

As to the texts approved by the Working Group, he welcomed the adoption of a provision to the effect that neither outer space nor celestial bodies were subject to national appropriation (Working Group/L.7). However, the idea of non-appropriation was little vague; in that connexion his delegation shared the views of the Australian delegation, and might take occasion to raise the question again at a later stage. He also welcomed the adoption of the principle, stated in document Working Group/L.3, that activities in outer space and on celestial bodies were to be conducted in accordance with international law; that principle extended the field of application of international law and might thus contribute to its progressive development.

One of the key provisions in the treaty would be the undertaking by States not to station nuclear weapons in outer space or on celestial bodies (Working Group/L.4). It should be supplemented by a provision to the effect that not only celestial bodies but also outer space should be used exclusively for peaceful purposes. He hoped that such a provision would ultimately be inserted in the treaty, and associated himself in that connexion with the Indian representative's comments on that point. His delegation also welcomed the adoption of the articles concerning jurisdiction, non-contamination, liability for damage and assistance to astronauts (Working Group/L.1 and Corr.1, L.9, L.2, and L.5 and Corr.1, respectively). They should, however, be supplemented by an article stating that nothing in the treaty would affect those provisions of the two draft conventions, on assistance to astronauts and liability for damage, that had already been approved. Where the present text of the articles on assistance and liability departed from the principles stated in the two draft conventions, it should be amended.

As regards the questions which had been left open, his delegation considered that provision should be made in the treaty for international organizations either to accede to it or to share in the rights and obligations it created. In that connexion, the last sentence of the article in document Working Group/L.6 did not seem to achieve its purpose, for international organizations could not be based by a treaty concluded between third parties unless that was the wish of the organizations. It was in order to avoid confusion on that point that his delegation had put forward a compromise proposal in the Working Group.

Austria regretted the absence of agreement on the right of access to installations in outer space. If the rights of all States were to be safeguarded, such access must be guaranteed by the treaty and must not be too limited. However,

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it should be possible to agree on that point, for the differences of opinion were not wide. The same was true with regard to the proposal - chiefly designed to benefit the non-space Powers - that the space Powers should be required to provide information on their space activities, and in particular on the results of their exploration and scientific research in outer space; the principle of compulsory reporting had just been approved in connexion with assistance to astronauts (Working Group/L.5 and Corr.1). His delegation doubted whether it was feasible to provide, as proposed by one delegation (Working Paper No. 23/Corr.1), that any State granting other States facilities for observation of the flight of space objects should be required to extend the same facilities to any other State. The suggestion made by the United Arab Republic that machinery to deal generally with space questions should be established within the United Nations seemed to his delegation to deserve thorough study.

In drafting the treaty, the Sub-Committee had carefully kept as closely as possible to the language of the Declaration of Legal Principles (General Assembly resolution 1962 (XVIII)). That language, however, was not sacrosanct and the Sub-Committee was entitled to improve upon it. In that connexion he associated himself with the remarks made at the previous meeting by the representative of France. Whatever instrument was finally adopted should be clear and precise and should define as exactly as possible the obligations imposed on States. It must always be borne in mind that the result of the Sub-Committee's work would be a legal instrument creating specific obligations in international law.

Mr. DASHTSEREN (Mongolia) agreed with previous speakers that the Sub-Committee's discussions had been useful and that it had made some progress in drafting a treaty, including the adoption of a number of fundamental principles. Serious differences, however, still existed on certain points. On the first of those points, his delegation supported the Soviet proposal concerning the grant of equal conditions for observing the flight of space objects (Working Paper No. 23/Corr.1, paragraph II) as a corollary of the basic principle of equal co-operation by all States in the exploration of outer space, without dissemination of any kind, which had already been adopted (Working Group/L.3). Secondly, it was wholly acceptable to his delegation that information should be furnished on a voluntary basis. Naturally, all States were interested in obtaining as much information as possible, but States possession of such information were entitled to withhold it if they saw fit. Thirdly, his delegation considered that space stations

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and installations on celestial bodies should be open to representatives of other States, but that the timing of such visits should be agreed in advance. That was consistent with the provisions already adopted (Working Group/L.1 and Corr.1) under which States would retain jurisdiction over objects launched into outer space.

Fourthly, his delegation could not accept article 9 of the United States draft (A/AC.105/C.2/L.12), concerning the use of military equipment on celestial bodies; that text would, by implication, leave a loop-hole for non-peaceful activities. His delegation had no difficulty, however, in supporting the provision concerning the use of military personnel for peaceful purposes on celestial bodies (Working Group/L.6), for it was the practice in many countries to use military personnel for such purposes in peace-time. Fifthly, his delegation was fully satisfied with the wording of article VI of the Soviet draft (A/AC.105/C.2/L.13) concerning the role and responsibility of international organizations. It could not agree that certain sovereign States should be excluded from participation in the treaty - as they would be if the United States draft was adopted - while international organizations were placed on an equal footing with sovereign States for the purposes of such participation. Lastly, his delegation supported the proposal made by the United Arab Republic in Working Paper No. 19.

Mr. YAMAZAKI (Japan) noted with pleasure that considerable progress had been made by the Sub-Committee in drafting the treaty, including the adoption of provisions prohibiting the stationing of nuclear weapons and other weapons of mass destruction in outer space (Working Group/L.4), and the national appropriation of celestial bodies (Working Group/L.7). Japan welcomed the explicit provision to the effect that celestial bodies should be used exclusively for peaceful purposes (Working Group/L.6, second para.), although it still considered that the provision should be extended to include outer space as a whole. His delegation attached great importance to the provisions on reporting (A/AC.105/C.2/L.12, draft article 4) and open access (Working Paper No. 3) proposed by the United States delegation, and it regretted the fact that agreement had not been reached on those articles at the current session. In the hope of establishing some common ground between the United States and the USSR with regard to open access, his delegation had made a proposal (Working Paper No. 28) and was glad to find that the United States could support it. His delegation might wish to raise at a later session the question of the need to include in the treaty some provision for specific international

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(Mr. Yamazaki, Japan)

agreements on assistance to and return of astronauts and space object and on liability for damage. His delegation had expressed in the Working Group serious doubts as to whether the Soviet proposal concerning equal conditions for observing the flight of space objects was appropriate for inclusion in a multilateral treaty of a general character. Special problems such as the use of tracking stations could best be dealt with on a bilateral basis.

As to the article on non-contamination and potentially harmful activities (Working Group/L.9), his delegation was not convinced that the text, as adopted, covered the substance of the amendment (Working Paper No. 10, paragraph (1)) to the effect that States parties to the treaty should exercise maximum care for the preservation and conservation of the natural resources and environment of celestial bodies. It suspected that the space Powers had not accepted its amendment mainly because they feared that it might tie their hands in future activities on celestial bodies. In his delegation's view such fears were groundless, but in a spirit of co-operation it would not press the amendment. As to the proposal made by his delegation in Working Paper No. 11, which related to the third sentence of the article, Japan considered that the system of prior notice was very important in the case of those space activities which might cause harmful interference with the activities of other States. Furthermore, since the number of States participating in the exploration and use of outer space would certainly increase, it considered that the simplest and surest way of giving such prior notice was to inform the countries concerned of such activities through the Secretary-General of the United Nations. Those considerations had prompted the original amendment. In the Working Group his delegation had submitted, as a compromise, a revised proposal to the effect that such notice might be given directly to the other parties concerned, or alternatively to the Secretary-General of the United Nations; that revised proposal had dispensed with the cross-reference to article 4 of the United States draft (A/AC.105/C.2/L.12). Unfortunately, however, even that optional formula had not proved acceptable to the Soviet delegation. In the circumstances, his delegation would not press that proposal either.

Sir Kenneth BAILEY (Australia) said that the Sub-Committee, building on the firm basis of General Assembly resolutions 1884 (XVIII) and 1962 (XVIII) and of the draft treaties submitted by the two leading space Powers, had made real progress. Its achievement was twofold. Firstly, it had given the Declaration of Legal Principles contained in General Assembly resolution 1962 (XVIII) the form of a treaty without losing any of its substance. Moreover, by agreeing to incorporate the whole text of General Assembly resolution 1884 (XVIII) and thus to demilitarize the moon and celestial bodies, the Sub-Committee had set a milestone in outer space co-operation. Secondly, the Sub-Committee had added important new elements to those taken from the Declaration. They included the provisions on the reporting of phenomena which could constitute a danger to the life or health of astronauts (Working Group/L.5 and Corr.1) and on harmful contamination (Working Group/L.9). In fulfilment of the general objectives of the Declaration of Legal Principles, new undertakings concerning international scientific co-operation had been added in document Working Group/L.3.

However, much work remained to be done. There were some points which the Sub-Committee had not yet had sufficient time to discuss. They included the United Arab Republic proposal (Working Paper No. 19), which would clearly require thorough consideration, and the point raised by the representative of India in Working Papers Nos. 21 and 22, which the Australian delegation had taken up, offering an alternative solution in Working Paper No. 25. His delegation had no quarrel in principle with the provisions on liability (Working Group/L.2) and on assistance and return (Working Group/L.5). Work was already in progress on those subjects, however, and for that reason his delegation had some doubts regarding the feasibility of the Indian proposal (Working Paper No. 21, para. 1) that the concept of absolute liability should be embodied in the text. At earlier sessions the Sub-Committee had found that absolute liability was necessarily subject to limitations and qualifications if justice was to be achieved.

Working Paper No. 25 merely stated that the provisions of the treaty would be adopted without prejudice to the negotiation of future specific agreements on the peaceful uses of outer space. His delegation took that to mean, firstly, that the present provisions were not to be regarded as exhaustive and, secondly, that there would be a new attempt to conclude specific further agreements on the subjects in question.

The Australian delegation warmly welcomed the initiative taken by the United States delegation in its draft treaty with a view to placing greater emphasis on

(Sir Kenneth Bailey, Australia)

the concept that outer space was the concern of all countries and that space activities should be carried on for the benefit of all mankind. It supported the United States proposal regarding open access, the reporting of information and the demilitarization of the moon and other celestial bodies. The points of disagreement on some of those matters did not appear to be insurmountable and his delegation hoped that it would be possible to resolve them.

His delegation could not accept the present wording of paragraph II of the USSR proposal (Working Paper No. 23/Corr.1) to the effect that, if a country provided tracking facilities for one State, it must provide them on equal terms for any other State. The proposed obligation was so undefined that it was very likely to have the effect of deterring a State either from becoming a party to the treaty or from co-operating in the provision of tracking facilities. His delegation therefore felt that the proposal required further consideration.

The principle of the non-appropriation provision (Working Group/L.7), which had been adopted verbatim from the Declaration of Legal Principles, was of the greatest importance to mankind. Members must therefore agree in substance on the objectives to be sought and also ensure that their intentions were clearly expressed in the drafting. He agreed with the French delegation that the present text did not make it clear that outer space was not subject to national sovereignty and that no one could acquire property rights in outer space, including the moon and other celestial bodies, by use or occupation, or by any other means.

His delegation unreservedly accepted the principle embodied in the Declaration of Legal Principles and in the last sentence of document Working Group/L.6, namely, that "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". As the representative of the Soviet Union had pointed out, the adoption of that text in General Assembly resolution 1962 (XVIII) had represented a compromise. As a result, the smaller States had gained a clear recognition of their right to conduct space activities through an international organization and thus participate in the great space adventure of modern times. Of course, those States could not, by establishing an international organization and operating through it, disclaim responsibility for activities so conducted. Their chief interest was to ensure that the other part of

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(Sir Kenneth Bailey, Australia)

the provision in document Working Group/L.6 was effective in point of law, namely, that the international organization was also responsible, so that the enterprise was a genuinely collective one and member States did not face the possibility of having to bear international responsibility alone.

His delegation's difficulty with that provision was that, so far as the legal responsibilities of international organizations were concerned, the article could not by itself in law achieve what it purported to do in words. Parties to a multilateral treaty were competent to alter, as between themselves, the rules of general international law, but they were not competent to bind, by the mere force of their treaty itself, other subjects or objects of international law. Therefore, some other step had to be taken. The problem was not altogether new in the United Nations. It had been solved, for example, in respect of the privileges and immunities of the specialized agencies, by a procedure which enabled the agencies to assume rights and duties under conventions to which, in the legal sense, they were not parties. That was the method proposed by the United Kingdom representative in Working Paper No. 17, and the Australian delegation considered it to be sound in principle and based on valid United Nations experience.

The question of compliance by an international organization with the provisions of the treaty could of course be left entirely to the internal arrangements of the organization itself. If the responsibility of the individual members was retained, they would have the option either of ensuring, by action within the organization, compliance by the organization with the treaty, or of withdrawing from the organization if they could not do so, or of withdrawing from the treaty.

However, to impose the obligation solely on the States parties to the treaty who were members of the international organization and to leave everything else to the internal mechanism of the organization, would amount to a refusal to treat an international organization as a subject or object of international rights and duties. It would in fact recede from the provisions established in the Declaration of Legal Principles and his delegation would greatly deplore a solution along those lines.

Mr. de CARVALHO SILOS (Brazil) said that the Legal Sub-Committee had accomplished important work during the present session. It had established that outer space was not subject to appropriation by any State, entity or individual. It had set forth the principle that contamination of outer space and of the earth's

(Mr. de Carvalho Silos, Brazil)

environment should be avoided by appropriate measures and studies undertaken by States engaged in space activities. Another key principle which had been recognized was the idea of free access to all areas of celestial bodies. The recognition that States bore responsibility for their activities in outer space, whether such activities were carried on by Governments or by non-governmental organizations, was extremely important. That principle was linked to the notion that a State which launched an object into space was liable for damage caused by that object to the natural or juridical persons of another State party to the treaty.

Those principles, together with other provisions upon which agreement had been reached, provided a legal basis for future specific conventions on such vital and urgent matters as the international regulation of liabilities and of assistance to and return of astronauts.

The Committee had failed, however, to extend to outer space the principle of peaceful uses which, in accordance with the text approved by it, was applied only to the moon and other celestial bodies. In his delegation's view, that exclusion was contrary to the principles set forth in the relevant General Assembly resolutions and in the Declaration of Legal Principles. Moreover, it ran counter to the entire United Nations approach to the problem.

Like the representative of France, he reserved his delegation's position regarding the automatic application of the Charter of the United Nations and of international law to outer space and the celestial bodies.

He had already mentioned the need for maintaining an adequate balance between the rights and obligations of the space Powers and those of the non-space Powers. In dealing with the exploration and use of outer space, efforts should be made to avoid some of the developments that were taking place in relation to the uses of atomic energy. All nations shared its risks but very few profited from its benefits. His delegation had therefore been gratified by the inclusion, in the first paragraph of the draft that had been adopted of the words "irrespective of their stage of economic or scientific development". However, the inclusion of that expression in itself was not enough. In addition, the treaty should clearly state that the space Powers were under an obligation to provide information on their space activities to the other parties to the treaty and to the international community. With regard to the equal-rights clause on tracking facilities, the

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(Mr. de Carvalho Silos, Brazil)

treaty should state that the co-operation of the parties, although indispensable, should depend on bilateral agreements between the countries concerned.

His delegation regretted that agreement could not be reached on the inclusion in the treaty of a broad clause concerning the use of satellites for broadcast and television purposes. The great importance of television in modern life was recognized by everyone, and the Sub-Committee should set up rules to cover such transmissions.

The Sub-Committee's deliberations had clarified all the issues involved and had undoubtedly paved the way for final agreement on those points which were still pending.

Mr. GLASER (Romania) said that his delegation wished to state its position on three points.

The first related to the question whether the treaty should be open to all States or only to some States. It was included in the so-called final provisions which were usually regarded as forming part of the procedure governing the conclusion of treaties. Obviously, however, in the present instance, it was a matter which directly affected the very essence of the provisions to be drafted.

It was natural that all States should be able to participate in regulating the activities of States in outer space, including celestial bodies. Some articles on which agreement had been reached took that principle into account. For example, document Working Group/L.3 stated 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". That was quite proper. In addition, document Working Group/L.7 provided that "outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means". According to the terms of that article, it might be thought that that was true for all States. However, the wording of other articles was based on the idea that not all States could become parties to the treaty. Of course, if States did not wish to become parties, that was one thing; but to prevent them from doing so was another.

Document Working Group/L.1 stated that "A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object...." Did that mean that States which were not parties to the treaty would lose jurisdiction or control over objects which they launched?

(Mr. Glaser, Romania)

The same line of reasoning could be applied to documents Working Group/L.2; L.4, L.5, L.6, L.8 and L.9. The very nature of the regulations to which the Sub-Committee had committed itself had led it to disregard what continued to be a serious obstacle in the way of agreement.

The second point concerned the question of international organizations. The statement just made by the Australian representative provided convincing proof that the question, by its very nature, was not capable of being regulated in the treaty under consideration, that is, a treaty on the principles which must guide the activities of States in outer space. It was rather a question that should be dealt with in another treaty with which the Sub-Committee had also been entrusted - the treaty on liability for damage caused by vehicles or objects launched into outer space.

The third point related to the settlement of disputes that might arise regarding the interpretation and application of the provisions of the treaty. There, too, the positions of States were well known. The solution was quite simple. An optional protocol could be established and made available to those States which wished to accept the treaty. Depending on the circumstances, it would come within the compulsory jurisdiction of the International Court of Justice or any other competent international body.

Since the inception of international law, it had never been found necessary, in formulating substantive rules, to include provisions relating to possible disputes. It was not necessary to do so in the present case, and if anyone wished to submit to the compulsory jurisdiction of international courts, an optional protocol could provide that opportunity.

Mr. TELLO MACIAS (Mexico) considered that the nine articles drafted by the Working Group and approved in principle by the Sub-Committee represented a considerable step forward in the negotiations on the treaty. That step forward was due in great part to the co-operative attitude of the two countries which had proposed the draft treaties.

Of the articles adopted thus far, his delegation attached special importance to the one prohibiting the placing in orbit around the earth of any objects carrying nuclear weapons or any other kinds of weapons of mass destruction. He

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(Mr. Tello Macias, Mexico)

congratulated the delegations of the nuclear Powers which had taken part in the Committee's work on having accepted that all-important obligation and expressed the hope that the second paragraph of the article in question would be expanded to include outer space.

Another article worthy of special mention was the one which provided that outer space, including the moon and other celestial bodies, was not subject to national appropriation. In that connexion, his delegation felt that, before negotiations were concluded, the limit of the outer space over which a State could exercise its sovereignty should be clearly established and that, in order to prevent a repetition of what had happened in the case of territorial waters, it was essential to indicate exactly where outer space began.

His delegation believed that the article concerning the reporting of information by countries on their activities on celestial bodies would have to be broadened to include information on activities carried on in outer space. That would eliminate the differences between the articles on that subject proposed by the Soviet Union and the United States in their draft treaties, on the one hand, and the text adopted by the Working Group and contained in document Working Group/L.3, on the other.

As for the article relating to free access to installations on celestial bodies, the treaty should include a provision establishing the right to visit such installations, with the addition of a sentence making it clear that that right should in no way endanger the security of astronauts or the smooth operation of the installations.

His delegation did not believe that the operation of a multilateral treaty should depend on bilateral agreements, as proposed by the Soviet Union. It was impossible to know whether such agreements could be negotiated within a few hours or whether they would require weeks or months to conclude and consequently endanger the very life of the treaty.

He suggested that the Soviet Union and the United States might accept, as a compromise, a provision stating that the right to visit should be conditioned by the obligation to communicate the date of the proposed visit and the installations to be visited.

(Mr. Tello Macias, Mexico)

With regard to the article proposed by the Soviet Union concerning the equality of conditions to be granted to countries conducting activities in outer space, he recalled his statement in the Working Group that, although the obligations of countries like Mexico which did not carry out such activities were clearly defined in paragraph II of Working Paper No. 23/Corr.1, the corresponding obligations for space Powers were not. His delegation was therefore unable to state its position without knowing what obligations the space Powers were prepared to accept in the matter.

Mr. PARTLI (Hungary) said that his country, which for years past had been pressing for the conclusion of an international treaty to govern the activities of States in the exploration and use of outer space, had more cause for disappointment with the results achieved during the Sub-Committee's session than had the United States, which had apparently recognized the necessity for such a treaty only a few weeks before the opening of the session. Moreover, the draft put forward by the United States (A/AC.105/C.2/L.12) had been far from comprehensive, covering as it did only the exploration of the moon and other celestial bodies. Nevertheless, his delegation was gratified to note that the Sub-Committee had taken, in a relatively short time, a major step forward in the drafting of a constitution to govern space activities, and that the remaining differences of opinion had been so substantially reduced as to justify the hope that they could eventually be eliminated by compromise. The Soviet draft (A/AC.105/C.2/L.13), as the Hungarian delegation had pointed out, was in itself a compromise text, and most of the articles agreed upon in the Sub-Committee had been drawn from it, whereas almost all those on which no agreement could be reached were to be found in the United States draft.

With regard to the questions still unresolved, his delegation supported the USSR proposal (Working Paper No. 23/Corr.1) that the treaty should provide for access at an agreed time and on a reciprocal basis to installations and stations on celestial bodies. It could not accept the United States formula "at all times" (Working Paper No. 3); the Soviet representative had given convincing reasons why the timing of visits should be agreed in advance, and reciprocity was a normal requirement. On the question of the use of military equipment in space activities,

(Mr. Partli, Hungary)

the United States delegation had taken the same inconsistent position as on the question of peaceful use. The Hungarian delegation endorsed the Indian representative's remarks concerning document Working Group/L.4. The use of military personnel in space activities was an inescapable necessity under present conditions, but was acceptable only on condition that it was not intended to serve a military purpose. The USSR, in Working Paper No. 9/Corr.1, had amended its draft article IV accordingly.

The Sub-Committee was agreed that information on space activities should be provided to the Secretary-General of the United Nations; his delegation still felt, however, that such reporting should be on a voluntary basis. The principle of free consent should be upheld, and the Sub-Committee should avoid imposing any obligation which would encroach upon the sovereignty of States and which would consequently remain a dead letter. With regard to liability for damage, the adoption of document Working Group/L.6, which was based on article VI of the Soviet draft, laid a good foundation for future deliberations on the responsibility of international organizations in that connexion.

The second sentence in the first paragraph of article I of the Soviet draft (A/AC.105/C.2/L.13) was particularly important to the non-space Powers; it would make it possible for States, irrespective of their level of economic development, to participate in space activities, and would bar discrimination in an activity which was intended to benefit all mankind. He was confident that it would ultimately be accepted.

Hungary warmly supported the proposal of the United Arab Republic concerning space telecommunications (Working Paper No. 19). His delegation understood the doubt expressed by the French representative concerning the applicability of international law, including the United Nations Charter, to space activities; the conduct of certain States justified the fear that they would no more respect international law in space than they did on earth. The aggression perpetrated, on an ever-increasing scale, by the United States in Viet-Nam was violating the Geneva Agreements and other international conventions every day; that did not augur well for compliance with the new international agreement under discussion.

Mr. ANGELOV (Bulgaria) expressed gratification that agreement had been reached on nine articles of the draft treaty, but he warned the Sub-Committee not to underestimate the difficulties which lay ahead in reconciling the divergent views still held on various matters of substance.

The Bulgarian delegation attached great importance to the principles stated in the first paragraph of article I (Working Group/L.3), and particularly to the principle that the results achieved through space exploration and research were to benefit all mankind, not merely certain States or groups of States. It was satisfactory to find that principle stated in the operative part of the treaty and not merely in the preamble. While only the economically and scientifically advanced countries could afford the tremendous cost of space research, all other States should make what contribution they could to an activity of common interest to all. Furthermore, the space Powers should be careful to avoid any discrimination against one another; that, as his delegation saw it, was the purpose of the text proposed by the USSR in document Working Paper No. 23/Corr.1, paragraph II.

The space Powers had accepted the principle of free access to stations and installations on celestial bodies; of the texts proposed, his delegation preferred the Soviet version (Working Paper No. 23/Corr.1), which stipulated reciprocity and agreement with regard to the time of visits. That did not entail, as some representatives had contended, the subsequent conclusion of special bilateral agreements. It was merely a matter of recognizing the technical conditions in which a legal obligation could be complied with: i.e., in the case in point, the conditions in which the future inhabitants of celestial bodies would have to live and work.

The inclusion of a provision prohibiting the use of military equipment on celestial bodies would afford a firm guarantee of the use of those bodies for peaceful purposes only, and might be the means of averting future disaster. His delegation supported the principle that communication satellites should be used in accordance with the resolutions of the General Assembly and the purposes and principles of the Charter; the details relating to the application of that principle would be decided upon when the United Arab Republic proposal (Working Paper No. 19) came up for discussion.

(Mr. Angelov, Bulgaria)

He expressed the hope that during the interval before the Sub-Committee's next session all delegations would reappraise the various texts and amendments in a spirit of mutual understanding and realism, bearing in mind that the purpose of the treaty was not only to proclaim general principles but to define specific legal rights to be exercised, and obligations to be discharged, in good faith. The space Powers were playing a preponderant role not only in space but also in the preparation of the treaty, which already owed much of its structure and basic content to the Soviet draft. The treaty should be open to accession by all States without discrimination, in accordance with the principle of the universality of international law and that of the sovereign equality of States large and small, developed or developing.

Mr. JAROSZEK (Poland) observed that, although the Sub-Committee had made important progress by adopting the article banning weapons of mass destruction from celestial bodies and from orbit around the earth (Working Group/L.4), it had failed to reach agreement on the subject of placing military equipment on celestial bodies - a subject on which the position of the United States was patently inconsistent - or on the role of international organizations in space activities. It was to be hoped that further progress could be made soon, in order to improve the prospects for international co-operation and thus reduce the existing threats to peace.

Mr. AZIMI (Iran) pointed out that, although space exploration might be beneficial to the non-space Powers, it also exposed them to the danger of damage caused by experiments or by the return to space vehicles to earth. His delegation had always attached importance to the freedom of exploration and use of outer space and celestial bodies, and to the principle that such exploration and use should be for peaceful purposes. It therefore agreed in principle to the articles adopted, but it considered that some of them were open to improvement. For example, document Working Group/L.3 should include a sentence to the effect that: "The exploration and use of outer space, the moon and other celestial bodies shall be carried on for peaceful purposes." Document Working Group/L.4 should specify that: "Outer space, the moon and other celestial bodies should be used exclusively for peaceful purposes by the Parties to the Treaty." As he understood

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(Mr. Azimi, Iran)

it, those proposals had the implicit approval of the Indian and other delegations. Document Working Group/L.5 should specify, as first suggested by the Lebanese representative, that: "Astronauts, in the performance of their humanitarian peaceful tasks, shall be regarded as envoys of mankind." The last sentence of document Working Group/L.6 should be redrafted as a separate article defining the rights and duties of international organizations; without placing those organizations on an equal footing with States, some means should be found to bring them within the operation of the treaty. The last sentence in document Working Group/L.9 should state explicitly how the procedure for consultation would operate.

He expressed satisfaction with the progress achieved by the Sub-Committee and appreciation of the USSR and United States draft treaties, which had served as the basis of its work. He hoped that a comprehensive draft treaty would be completed at the next session.

The CHAIRMAN stressed that the ultimate purpose of the Sub-Committee's work should be to pave the way for peace and peaceful coexistence. The wise course would be to aim at the gradual development of legal principles and their later incorporation in treaties; meanwhile, specific practical problems could be dealt with in specific agreements. Outer space law would thus develop in two ways: from general principles to detailed arrangements and vice versa. The results of the session made an important contribution to that development.

INTERIM REPORT BY THE CHAIRMAN

The CHAIRMAN summarized the results of the Sub-Committee's discussions in the form of an interim report reading as follows:

"The Sub-Committee has held a total of fifteen meetings from 12 July to 4 August. During this period, it has established a Working Group which met from 27 July to 3 August. It has examined the draft treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space,

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(The Chairman)

the Moon and Other Celestial Bodies, proposed by the Soviet Union, and the Draft Treaty Governing the Exploration of the Moon and Other Celestial Bodies, proposed by the United States, as well as all proposals presented by members with respect to particular articles. Agreement has been reached on a series of articles, the texts of which are contained in the enclosed Working Group papers L.1 to L.9 (Annex I).

"However, no agreement has been reached on other draft articles and proposals. The issues involved in them will require further exchanges of views and discussion. The respective texts are contained in the Working Papers annexed to the summary records of today's meeting (Annex II).

"Under the circumstances, the Sub-Committee has decided to suspend its fifth session and reconvene at a date to be fixed by the Chairman in consultation with members of the Sub-Committee, which will be a time prior to or in the course of the twenty-first session of the General Assembly." He suggested that his summary should be accepted as the final act of the Sub-Committee's deliberations during the past three weeks.

It was so decided.

SUSPENSION OF THE SESSION

After the customary exchange of courtesies, the CHAIRMAN declared the fifth session of the Sub-Committee suspended.

The meeting rose at 6.40 p.m.

ANNEXES*

Annex I. Articles on which agreement has been reached

(Working Group papers L.1 to L.9)

/For the text, see document A/6431, annex III, appendix II

(Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 30).]

Annex II. Draft articles and proposals requiring further discussion
(Working Papers Nos. 3, 4, 6/Rev.1, 7/Corr.1, 8, 9/Corr.1, 17, 19, 21, 22, 23/Corr.1, 25, 26, 27 and 28)

/For the text, see document A/6431, annex III, appendix III

(Official Records of the General Assembly, Twenty-first Session, Annexes, agenda item 30).]

* Distributed provisionally as document A/AC.105/C.2/SR.71/Add.1, dated 1 September 1966.