

UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/C.105/C.2/SR.73
19 October 1966
ENGLISH
ORIGINAL: FRENCH

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE SEVENTY-THIRD MEETING

Held at Headquarters, New York,
on Friday, 16 September 1966, at 11.5 a.m.

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PRESENT:

Chairman:

Members:

Mr. LACHS	(Poland)
Mr. GOWLAND	Argentina
Sir Kenneth BAILEY	Australia
Mr. ZEMANEK	Austria
Mr. BAL	Belgium
Mr. de CARVALHO SILOS	Brazil
Mr. YANKOV	Bulgaria
Mr. TURNER	Canada
Mr. NEJEDLY	Czechoslovakia
Mr. DELEAU	France
Mr. PRANDLER	Hungary
Mr. JAIN	India
Mr. DABIRI	Iran
Mr. VINCI	Italy
Mr. HAMAZAKI	Japan
Mr. MAKKAWI	Lebanon
Mr. MEYER PICON	Mexico
Mr. CHULUUN BAATAR	Mongolia
Mr. CZAJKOWSKI	Poland
Mr. DIACONESCU)	Romania
Mr. BOTA)	
Mr. MOROZOV)	Union of Soviet Socialist
Mr. VCRONTISOV)	Republics
Mr. EL-KONY)	
Mr. EL-ARABY)	United Arab Republic
Mr. DARWIN	
	United Kingdom of Great Britain and Northern Ireland
Mr. GOLDBERG)	
Mr. MEEKER)	United States of America
Mr. KELLBERG	Sweden
Mr. STAVROPOULOS	Under-Secretary, Legal Counsel
Mr. SLOAN)	Secretaries of the
Miss CHEN)	Sub-Committee

Secretariat:

CONSIDERATION OF A TREATY GOVERNING THE EXPLORATION AND USE OF OUTER SPACE, THE MOON AND OTHER CELESTIAL BODIES (A/AC.105/C.2/L.12, L.13 and L.16; Working Papers Nos. 29-33) (continued)

Mr. GOLDBERG (United States of America) recalled that the Geneva session of the Legal Sub-Committee had been called on the initiative of the United States following the statement by President Johnson on 7 May 1966. In four weeks the Sub-Committee had achieved substantial results and had agreed upon eight treaty articles covering thirteen points. At the conclusion of the Geneva deliberations, the United States had believed that there remained only two questions of substance to be resolved, namely, open access to installations on celestial bodies, and the making of reports by space Powers concerning their activities on celestial bodies. When the Sub-Committee had resumed its fifth session at Headquarters, the United States had introduced two proposals for settling the questions outstanding (Working Papers Nos. 30 and 31). The first proposal (Working Paper No. 30) concerned open access to installations on celestial bodies. Article 6 originally proposed by the United States (A/AC.105/C.2/L.12) had called for access to installations "at all times". At the Geneva meetings, the Soviet delegation had stated its inability to accept that draft article, and that was why the United States had drafted the revised version of article 6 appearing in Working Paper No. 30, drawing upon constructive proposals advanced by the delegations of Japan and Italy. The new proposal omitted the phrase "at all times" and required that the representatives of States parties should give "reasonable advance notice of a projected visit in order that appropriate consultations may be held and that maximum precautions may be taken to assure safety and to avoid interference with normal operations in the facility to be visited". Moreover, such visits were to be effected "on a basis of reciprocity". The revised version had thus sought to resolve the principal objections raised by the Soviet Union with respect to open access. The second question to be settled had concerned the reporting of activities on a celestial body. Article 4 of the treaty originally proposed by the United States (A/AC.105/C.2/L.12) had called for a mandatory obligation to report promptly to the Secretary-General of the United Nations on the nature, conduct and location of such activities. In order to meet the objections raised by the Soviet Union, the United States had proposed a revised version of article 4 (Working Paper No. 31)

(Mr. Goldberg, United States)

under which States parties to the treaty would be bound "to the extent feasible and practicable" to submit reports either to the other parties to the treaty or to the Secretary-General. Some representatives had felt that the changes went too far and the delegation of the United Arab Republic had stated that reports should in any event be made to the Secretary-General, who should immediately disseminate them. The United States was prepared to accept that proposal. Unfortunately, the revised versions of articles 4 and 6 of the draft treaty submitted by the United States had evoked no favourable response from the Soviet delegation, which had seemed disinclined even to discuss those matters; moreover, it now took the position that it would not adopt the treaty unless it included the provision it had proposed on tracking facilities. It should be noted first that at Geneva no member of the Sub-Committee except the Soviet Union and certain eastern European countries had supported the Soviet proposal. Many members had said that it was a matter better left for bilateral negotiations or indicated that it had to be balanced with obligations as well as rights. The United States could not understand why the Soviet Union now regarded the tracking facilities proposal as the key point in the whole treaty. The question of arms control, and the need to translate into treaty form the elements of the Declaration of Legal Principles, were of far greater importance.

The United States delegation, like many others, could not accept the text of Working Paper No. 29 submitted by the Soviet Union (revised version of the article appearing in paragraph II of Working Paper No. 23). The proposal appeared to be for the benefit of the space Powers alone, for it would give a space Power the right to require of a non-space Power equivalent facilities in regard to tracking space objects if the non-space Power had previously granted facilities of that kind to another State. Thus, the State would be bound to accord tracking facilities without reference to any bilateral negotiations. As the Australian representative had pointed out, the principle reflected in the last sentence of the Soviet proposal ("by agreement between the two sides"), was applicable not only to the question of financing, but also to the basic question of granting tracking facilities. The granting of such facilities involved many questions which must be the subject of negotiation. Under the Soviet proposal, if State A had granted tracking facilities to State B, A must grant equal facilities to State C, apparently regardless of any terms or mutual consideration which formed the basis of the agreement between A

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(Mr. Goldberg, United States)

and B. Furthermore, the number of space Powers was growing constantly; thus, the Soviet proposal would place an unknown and indefinitely enlarging obligation on non-space Powers. The effect would be to discourage accession to a treaty which contained agreed elements of the highest importance. Moreover, the proposal put a premium on non-co-operation. The Soviet text did not require State A to offer tracking facilities to State B; only if State A had extended such facilities to a third party was it obliged to make the same facilities available to State B. Besides, a country having tracking facilities and using them exclusively for its own space programme would have no obligation at all towards other countries. In that way, a State that did not co-operate with others was placed in the strongest position to demand that States wishing to co-operate must extend every possible assistance to it. Finally, the installation of tracking facilities in the territory of a host country raised many technical and political questions which could only be dealt with bilaterally. The representatives of Australia, Belgium, Brazil, Canada, France, Italy, Japan, Lebanon, Mexico, Sweden and the United Kingdom had emphasized the unacceptability of the Soviet proposal.

Commenting on the Soviet proposal in Working Paper No. 32, he noted that the principle of the new draft article had originally been advanced by the Australian delegation in Working Paper No. 27 (A/AC.105/C.2/L.16). The idea of the Australian proposal had been that agreement on the treaty should not delay further work on such specific agreements as the convention on liability. Unfortunately, the Soviet proposal contained a limitation that might cause problems. It stated that countries might enter into future agreements concerning space activities "provided that such agreements do not conflict with the provisions of this Treaty". Those words could cause difficulty: for example, in negotiating the specific agreement on liability, any State could argue that a given proposal conflicted with the provisions of the general treaty, and unnecessary dispute could thus be generated. In the view of the United States, it should not be supposed that parties to the treaty would conclude subsequent agreements in conflict with that treaty. His delegation accordingly supported the Australian proposal in Working Paper No. 25.

The United States was disappointed that the Sub-Committee had not made further progress, but remained convinced that its work would ultimately be crowned with success.

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Mr. MOROZOV (Union of Soviet Socialist Republics) said that an attempt was again being made to distort the facts. For example, the United States had claimed that negotiations on a space treaty had been begun on its own initiative and had originated in a statement made by President Johnson on 7 May 1966. The fact was that as early as the first manned space flight in 1961, the Soviet Union had stressed the importance of international co-operation in the exploration and use of outer space; moreover, at the first session of the Legal Sub-Committee, in 1962, it had submitted a proposal aimed at regulating the space activities of States. It had also proposed that the Declaration of Legal Principles should be translated into contractual clauses which imposed legal, and not merely moral, obligations on States. Documentary evidence proved that it was the United States that, contrary to its assertions, had long opposed the drafting of an international agreement on outer space. Furthermore, it could be seen that the draft treaty submitted by the United States at Geneva was much more limited in scope than the instrument proposed by the Soviet Union. It should be pointed out that it was the Soviet draft that had enabled agreement to be reached at Geneva on nine articles. But for the opposition of the United States, the drafting of a space treaty could have been begun in 1963. It was therefore curious, to say the least, that the United States should now claim to have taken the initiative in the negotiation of that instrument.

The United States comments concerning the proposals presented at Geneva by the Soviet Union, particularly on equality of rights in connexion with the tracking of space objects, were equally at variance with the facts. It was difficult to follow the logic of the United States, which declared, on the one hand, that the question was not of great importance, and, on the other hand, that the adoption of the Soviet proposal might undermine international law. The contradiction could not be more flagrant. Even the opponents of the Soviet proposal had recognized its importance, and it was for that very reason that they had opposed it.

What actually was at issue? Simply the adoption of principles of international law which had long been recognized and had already been embodied in many international agreements. In order to understand the opposition of the United States, however, it must be noted that that country had concluded agreements with twenty-three countries enabling it to track with complete safety the objects it

(Mr. Morozov, USSR)

had launched into space from its territory. It was the United States which wanted, for political reasons, to prevent the Soviet Union from utilizing the facilities made available to the United States in those countries through the agreements it had signed. The United States would like an international space co-operation treaty which would permit a signatory State to gain advantages that would be denied to another signatory State; that treaty would require one party to furnish information on space activities which it had undertaken at great expense, while other parties, which would be able to utilize that information at no cost, could refuse to communicate the small amount of information in their possession and to grant certain parties tracking facilities. It was therefore the United States and the delegations supporting it that were proposing an inequitable treaty while professing a sincere desire to reach agreement. It was to be hoped that the delegations which had categorically dismissed the Soviet Union's proposals at the very outset of the resumed session would come to realize that the United States thesis was the erroneous one. As to the other provisions on which no agreement had been reached at Geneva, he presumed that they would be referred to the Committee on the Peaceful Uses of Outer Space, which would in turn refer them to the General Assembly, if it could not reach agreement on them. That was, unfortunately, the only way to make progress. The Soviet Union, for its part, earnestly hoped that an agreement would be reached.

Mr. VINCI (Italy) deplored the fact that the Sub-Committee had failed to achieve results as satisfactory as those attained during the first part of its session at Geneva. Nevertheless, his delegation was not discouraged and was determined to spare no effort to reach agreement.

It supported the United States proposal (working paper No. 31), which provided for the fullest possible exchange of information on space exploration and research; it was, in fact, a compromise text which, moreover, included certain proposals of the Italian delegation. In its revised form, the United States text was very close to the Soviet draft article on the same subject, and with a little goodwill the Sub-Committee should be able to reach early agreement on that point. His delegation also supported the United Arab Republic proposal in working paper No. 33, which stressed the essential role of the United Nations and the Secretary-General in the dissemination of all information on space research and exploration.

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(Mr. Vinci, Italy)

It withdrew the proposal it had made at Geneva concerning free access to installations on celestial bodies (working paper No. 26) and endorsed the new proposal of the United States (working paper No. 30), which had displayed a spirit of conciliation by incorporating the principles of advance notice, consultations between interested parties and reciprocity into the new text. On the other hand, it could not support the Soviet proposal for the granting of equal conditions for the tracking of space objects (working paper No. 29), since it did not seem desirable to impose a binding obligation of such broad and indefinite scope in a field in which the autonomy and freedom of every State party to the treaty, particularly those States which had not taken part in drafting it, should be safeguarded. The Soviet delegation had stated at Geneva that States should be allowed a certain freedom of decision with regard to the dissemination of information on space research and exploration; it ought therefore to be the first to call for the same freedom of decision in the conclusion of agreements embodying important obligations which involved more than just financial questions.

His delegation reserved the right to return later on to the Soviet delegation's proposals concerning the inclusion in the draft treaty of a new draft article (working paper No. 32) based on the same principles as those contained in the draft article proposed by the Australian delegation in working paper No. 25.

Sir Kenneth BAILEY (Australia) regretted that the Sub-Committee had not made greater progress in its work. With regard to working paper No. 29, he recalled that he had already rejected, in the Working Group, any proposal concerning the granting of equal rights in connexion with the tracking of space objects. The reason was not that Australia refused to co-operate with States conducting space activities but that the granting of tracking facilities presupposed agreement on financial problems, the size and site of the installations, the use of foreign staff and the like, all questions which could be settled only by bilateral agreement between the State furnishing the installations and the State requesting their use.

His delegation could accept the revised versions of articles 4 and 6 of the draft treaty proposed by the United States in working papers Nos. 31 and 30. It regretted that no agreement had been reached on those articles. As to working

(Sir Kenneth Bailey, Australia)

paper No. 32, he recognized that the Soviet text was very close to the Australian proposal contained in working paper No. 25, with the exception that the Soviet version would limit the right of parties to the treaty subsequently to conclude international agreements. The object of working paper No. 25 was simply to make clear that in concluding the treaty the authors of the working paper did not regard its terms as stating the whole of space law and did not exclude the possibility of working out further rules on individual items. In submitting its proposal, his delegation had recognized that questions could arise whether any further provisions were consistent with the treaty and, if not, what their effects would be, but the answers to such questions could be found in the general law. It was clear that there was no need for any special provision specifying procedures for amending the treaty and that no agreement concluded individually between parties to the treaty could alter their rights and duties in respect of other parties to the treaty. Unless otherwise prohibited, however, there was nothing to prevent two or more parties to the treaty from concluding agreements on the basis of the arrangements provided for in the treaty. For example, two or more parties could agree not to conduct a potentially harmful experiment without giving prior notice; they could also, contrary to the provisions of document L.5, agree to authorize the return of astronauts to a country other than the one in which their space vehicle had been registered. However, none of the variations which would be permitted under the general rules of law would be permitted under the terms of working paper No. 32. It was quite unnecessary to restrict the right of parties to conclude other individual agreements beyond what was provided by the general law. His delegation therefore preferred the proposal contained in working paper No. 25.

Mr. YAMAZAKI (Japan) said that his delegation attached great importance to free access to installations on the moon or other celestial bodies. He was prepared to support the United States proposals in working papers Nos. 30 and 31 - which incorporated proposals made by Japan and Italy in working papers Nos. 26 and 28 - if the majority of the Sub-Committee accepted them. On the other hand, he could not support the USSR proposal in working paper No. 29; the question of tracking facilities could best be settled through bilateral agreements. As to assistance to astronauts and liability of States in case of damage, his delegation reserved the right to revert at a later stage to working papers Nos. 21, 22, 25 and 32.

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Mr. BAL (Belgium) noted the spirit of conciliation and compromise in which the United States proposals in working papers Nos. 30 and 31 had been drafted and regretted all the more that the Soviet delegation's proposal in working paper No. 32 was only very slightly different from its previous proposal on the observation of space flights. His delegation was, however, glad that the USSR had emphasized the importance of the relationship between the general treaty now under study and the separate agreements which might be concluded on particular aspects of the exploration and use of outer space. It was, however, doubtful whether the Soviet proposal actually resolved the issue. His delegation had stated at Geneva that it would have difficulty in agreeing that the general terms of document Working Group/L.2 could be construed as authorizing any country, large or small, to impose on another State its own interpretation of the principles involved, thus settling unilaterally questions which by their very nature could be settled only in a separate convention, which should be prepared as soon as possible. In addition, although the Belgian delegation had been prepared to endorse that text, it had taken the view that a formal clause should be drawn up, on the lines of the Indian delegation's proposals in working papers Nos. 21 and 22, or, if necessary, on the Australian delegation's proposal in working paper No. 25.

The juridical weakness of the Soviet proposal now before the Sub-Committee (working paper No. 32), had already been criticized by several delegations, including those of Australia and the United States, with which his delegation agreed. The draft treaty under consideration posed a special problem; although it might serve as the corner-stone of positive space law, some of its provisions were couched in such general terms that it was essential for their exact scope to be defined as quickly as possible in separate conventions, which might be concluded at the same time. The Soviet proposal did not bring out the importance of such conventions enough, particularly concerning liability for damage resulting from the launching of space objects. Accordingly, his delegation could not support Working Paper No. 32; a clause should be adopted on the basis of the Indian proposals in Working Papers Nos. 21 and 22 or possibly of the Australian proposal in working paper No. 25.

Mr. CARVALHO SILOS (Brazil) said that he could not support the USSR proposal in working paper No. 29, which was hardly different from the text the Soviet delegation had submitted to the Sub-Committee at Geneva. The Brazilian delegation thought that the treaty should establish a fair balance between the rights and the duties of space and non-space Powers. That balance could be achieved only through bilateral agreements on the use of tracking stations.

His delegation supported the United States proposal in working paper No. 31, which met the need for compromise, although it would have preferred the original text. It also supported the proposal of the United Arab Republic in working paper No. 33 and the Australian proposal in working paper No. 25.

Mr. PRANDLER (Hungary) regretted that the Sub-Committee had been unable to reach agreement and attributed responsibility for this to the delegations which had chosen not to adopt a conciliatory attitude. The Sub-Committee had been led into a blind alley by political and moral, not legal, considerations. Some delegations would like to have all the benefits of space research without accepting obligations in return. That was why the USSR proposals in working papers Nos. 29 and 32 had encountered such heavy opposition, for they established a fair balance between the rights and duties of States. Those proposals should constitute the essential provisions of any agreement.

Mr. DELEAU (France) said that his delegation favoured the new proposals which clarified various aspects of the right of access to installations. In the matter of transmission of information, the procedures in the new text appeared to be adapted to the circumstances; as to the provision on observation of flights, it seemed essential that States should establish definite conditions for its application. The formula proposed by the USSR for particular agreements was too restrictive, and his delegation supported the Australian text. Lastly, he thanked the Chairman for his conduct of the deliberations, which he hoped would bear fruit at a later stage.

Mr. TURNER (Canada) regretted that no progress had been achieved at the present session, but thought that the agreement which had been reached at Geneva on nine important articles, particularly those concerning the prohibition of claims of sovereignty over celestial bodies, gave grounds for hope. The Canadian

(Mr. Turner, Canada)

delegation particularly deplored the fact that it had not been possible to reach any agreement on exchange of scientific and technical information; in view of the cost of space research, it was important to avoid any duplication of work. The United States proposal in working paper No. 31 seemed to represent an interesting compromise, as did the amendment of the United Arab Republic. Similarly, working paper No. 30, also submitted by the United States, should have made it possible to achieve some progress. The USSR proposal in working paper No. 29 mentioned an essential point; however, despite the changes the Soviet delegation had made in the text, the proposal was not reciprocal in nature. Generally speaking, it was more important than ever to work for the conclusion of an international treaty on the peaceful uses of outer space and celestial bodies.

Mr. YANKOV (Bulgaria) said that, after the positive results achieved at Geneva, his delegation had hoped that the second part of the session would end in an agreement on the major questions of international space law. One of the problems still outstanding, which might be settled, given goodwill and realism, was that of equal conditions for observing space vehicles. The Bulgarian delegation respected the various points of view expressed, but it could not support the conclusions put forward, and it regretted that the efforts made had been fruitless. The USSR proposal in working paper No. 29, which dealt with equality of access, should not exclude negotiations on the technical and practical details, so as to permit application of the most-favoured-nation clause. It must first be determined whether everyone was prepared to accept the principle of the equality of all States that pursued the same goal. Some had expressed the fear that that clause infringed the sovereignty of States; but that was more likely to occur in the case of limited treaties than in a general treaty. The negative attitude of several delegations was still the main obstacle to be overcome. Agreement was being prevented not by geographical considerations, for example, but by considerations relating to equality of conditions. The Bulgarian delegation thought that if there was agreement on the main questions, it would be easy to reach an understanding on the other new proposals (working papers Nos. 30 and 31) on free access and exchange of information, especially since they could not be dissociated from the question of reciprocity or from that of according tracking facilities on a basis of equality. Moreover, the difference between the proposal of the United Arab Republic in working paper No. 33

(Mr. Yankov, Bulgaria)

and that of the USSR in working paper No. 4 was not very great, and it should not be difficult to arrive at an agreement on that point. Finally, if the proposed treaty did not contain proposals relating to subsequent agreements, that omission should not prevent States from concluding bilateral agreements, on the understanding that none of those agreements must be contrary to the provisions of the treaty. The Bulgarian delegation had come to New York with the sincere desire to achieve a specific solution to unresolved problems, and, although that had proved impossible, it still hoped that all delegations would endeavour to reconcile their points of view. Lastly, he thanked the Chairman and the Secretariat staff for their efforts.

Mr. DARWIN (United Kingdom) observed that only the proposals in four new working papers had been considered. The United Kingdom delegation could not support the text of working paper No. 29, although several members had endorsed it. The United States proposal (working paper No. 30) represented considerable progress, since it provided for reasonable advance notice. The United Kingdom delegation thought that the proposals in working paper No. 31 submitted by the United States, and in working paper No. 33 submitted by the United Arab Republic were conciliatory, and it would accept whichever of them was approved by the Sub-Committee. He shared the Australian representative's view of the proposal in working paper No. 32, which had not been considered in detail. In conclusion, the United Kingdom delegation hoped that there could be more fruitful discussions in the future.

Mr. MEYER PICON (Mexico), speaking on behalf of the South American delegations and his own, congratulated the Chairman on his conduct of the debates, and expressed the hope that the deliberations would lead to the conclusion of a treaty.

Mr. VORONTSOV (Union of Soviet Socialist Republics) paid a tribute to the Chairman and thanked the Secretariat for its assistance to the Sub-Committee.

ADOPTION OF THE REPORT

The CHAIRMAN suggested that the Sub-Committee should adopt the report just circulated, which summarized the debates of the present session.

The report was adopted unanimously.

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CLOSURE OF THE SESSION

The CHAIRMAN deeply regretted that the fifth session was ending without any agreement on the complete text of the proposed treaty. However, an understanding had been reached on several important articles. It was to be hoped that the discussions would soon be crowned with success, in view of the need to conclude a treaty governing activities in outer space. It was essential that the gap between achievements and legal progress should not be widened further and that the resources of space should be placed at the service of all mankind.

He thanked all representatives for their kind words, as well as the Secretariat. He declared the session closed.

The meeting rose at 1.30 p.m.