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THE EVOLUTION OF THE OUTER SPACE TREATY†

BY PAUL G. DEMBLING†† AND DANIEL M. ARONS†††

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I. INTRODUCTION

AN ANNOUNCEMENT was made on 8 December 1966, that agreement had been achieved among the members of the twenty-eight nation United Nations Outer Space Committee on the text of a treaty establishing principles governing the activities of states in the exploration and

† This article contains some material concerning the Treaty which appeared previously in the *Journal*, prior to the United States' ratification. Added to this are the developments which have occurred since United States' ratification.

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The opinions expressed in this article are solely those of the writers and are not intended to represent the views of any agency or organization with which they may be connected.

use of outer space, the moon, and other celestial bodies.¹ Approval of the Treaty was recommended unanimously by the Political Committee of the General Assembly on 17 December 1966.² Two days later, the Treaty was endorsed by a unanimous vote of the General Assembly.³ Regardless of the total number of States which may sign and ratify the Treaty,⁴ a remarkable endeavor of great significance to international law and politics has reached fruition. Nations often in conflict with one another and adhering to widely divergent political philosophies have agreed on the first Treaty of general applicability governing activity in outer space.⁵

The principles set forth in the Treaty had been advanced previously in the form of General Assembly resolutions, analogous international agreements, domestic legislation, statements by government officials, articles by scholars in the field and other expressions of views. However, agreement on the Treaty was primarily the product of the labors of the twenty-eight member Legal Subcommittee of the United Nations General Assembly's Committee on the Peaceful Uses of Outer Space during the Subcommittee's Fifth Session held in Geneva from 12 July to 4 August 1966, and in New York from 12 to 16 September 1966. The few issues requiring resolution subsequent to the conclusion of the Fifth Session were the subject of various bilateral negotiations and other discussions held during the Twenty-First Session of the General Assembly. Agreement was obtained on those issues shortly before the 8 December announcement that agreement on the Treaty as a whole had been reached.

This paper will first consider briefly the expressions of views, international agreements and other events prior to the Fifth Session, which are pertinent to the establishment of principles governing exploration and use of outer space and celestial bodies. The critical events immediately prior to the Fifth Session will be summarized. Considerable attention will then be devoted to the two draft treaties introduced at the outset of the Fifth Session, and the discussions and amendments of those drafts which culminated in the agreed upon text which was announced, in final form, on 8 December 1966.

II. PRIOR CONSIDERATION OF OUTER SPACE AND CELESTIAL BODIES

A. Principles Applicable To Celestial Bodies

Although the scope of the Treaty as eventually agreed upon includes both outer space and celestial bodies, an important aspect of the deliberations leading to agreement on the Treaty is the extent to which the nations

¹ Agreement on the treaty was announced in the United States through a statement by President Lyndon B. Johnson. U.S./U.N. Press Release 5011, reprinted in 2 PRESIDENTIAL DOCUMENTS 1781 (1966); 55 DEP'T STATE BULL. 952 (1966); N.Y. Times, 9 Dec. 1966, at 1, col. 8.

² Washington Post, 18 Dec. 1966, at A-1, col. 7.

³ Washington Post, 20 Dec. 1966, at A-9, col. 1.

⁴ As of this writing, 79 States have signed the Treaty and 5 States have deposited instruments of ratification.

⁵ The Treaty is officially entitled "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies," and is annexed to a resolution of the General Assembly. U.N. Doc. A/C.1/L.396 (1966). The text of the treaty is reproduced in 33 J. AIR L. & COM. 132 (1967).

and individuals involved were concerned, for the first time, with the formulation of realistic principles which might govern activity on celestial bodies in addition to, but as distinct from, outer space.⁶ This consideration of celestial bodies was based upon a body of thought and action that preceded the Fifth Session of the Legal Subcommittee. Even prior to 1960, a considerable amount of commentary existed on the question of "whether it is possible for a terrestrial nation-state to acquire sovereignty over all or part of a natural celestial body, and what would be required under existing law to make such a claim legally valid."⁷ Analogies were drawn to the manner in which nations had previously sought to exert legal claims to sovereignty over portions of the earth's surface, e.g., through discovery, occupation, annexation and contiguity.⁸ Considerable discussion arose over the legal effect of the reported striking of the moon by an early Soviet satellite carrying the Soviet flag.⁹ However, the Soviet Union did not seek to exert any claim of sovereignty based upon this occurrence.

Although writers regarded the legal principles derived from exploration of the earth's surface as potentially applicable to exploration of celestial bodies, they did not consider such applicability to be desirable. The suggestion was made that "both public and private groups . . . work towards formulating standards and procedures that will guarantee access by all to these resources on equitable terms and prevent interference by one State with the scientific programs of another."¹⁰ As early as 1959, the American Bar Association passed a resolution declaring "that in the common interest of mankind . . . celestial bodies should not be subject to exclusive appropriation."¹¹ A similar concern was evidenced at the official level. The United Nations Ad Hoc Committee on the Peaceful Uses of Outer Space, created by the General Assembly in 1959, took the position in its report that "serious problems could arise if States claimed, on one ground or another, exclusive rights over all or part of a celestial body," and suggested that "some form of international administration over celestial bodies might be adopted."¹² In an address before the General Assembly in September 1960, President Eisenhower proposed that:

⁶ A portion of the material in Sections II and III of this paper also appears in Dembling and Arons, *The United Nations Celestial Bodies Convention*, 32 J. AIR L. & COM. 535 (1966).

⁷ Lipson and Katzenbach, *Report to the National Aeronautics and Space Administration on the Law of Outer Space*, A.B.A. FOUND. 22(a) (1960).

⁸ *Id.* See also McDougal and Lipson, *Perspectives for a Law of Outer Space*, 52 AM. J. INT'L L. 407 (1958); Finch, *Terrestrial Claims to Celestial Bodies*, paper presented to the SECOND COLLOQUIUM ON THE LAW OF OUTER SPACE, XTH ANNUAL CONG. INT'L ASTRONAUTICAL FED., London, 4 Sept. 1959.

⁹ Menter, *Astronautical Law*, Thesis No. 86, Industrial College of the Armed Forces (May 1959), reproduced in SYMPOSIUM ON THE LEGAL PROBLEMS OF SPACE EXPLORATION, SEN. DOC. No. 26, 87th Cong., 1st Sess. 372 (1961).

¹⁰ Lipson and Katzenbach, *supra* note 7, at 24. See also Wilcox, *International Cooperation in the Use of Outer Space*, 40 DEP'T STATE BULL. 339 (1959), McDougal *et. al.*, *The Enjoyment and Acquisition of Resources in Outer Space*, 111 U. PA. L. REV. 521 (1963).

¹¹ Lipson and Katzenbach, *id.*

¹² Report of the Ad Hoc Committee on the Peaceful Uses of Outer Space, U.N. Doc. A 4141/25 (1959). For discussions of the Ad Hoc Committee, see Jessup and Taubenfeld, *The Ad Hoc Committee on the Peaceful Uses of Outer Space*, in 53 AM. J. INT'L L. 877 (1959); *United Nations Establishes Committee on Peaceful Uses of Outer Space*, 40 DEP'T STATE BULL. 24 (1959); Aaronson, *Ad Hoc Committee on the Peaceful Uses of Outer Space*, 227 LAW TIMES 17 (1959).

1. We agree that celestial bodies are not subject to national appropriation by any claims of sovereignty.
2. We agree that the nations of the world shall not engage in warlike activities on these bodies.
3. We agree, subject to verification, that no nation will put into orbit or station in outer space weapons of mass destruction. All launchings of spacecraft shall be verified by the United Nations.¹³

However, as the Ad Hoc Committee had previously concluded:

While scientific programmes envisaged relatively early exploration of celestial bodies, human settlement and extensive exploitation of resources were not likely in the near future. For this reason, the Committee believed that problems relating to the settlement and exploitation of celestial bodies did not require priority treatment.¹⁴

Thus, since the formation of the present Committee on the Peaceful Uses of Outer Space in 1960, attention has been directed primarily to problems associated with the launching of spacecraft, their revolving in earth orbit, and their return to earth. The proceedings of the Fifth Session of the Legal Subcommittee, however, reveal a greatly increased concern with the need to provide legal principles governing the exploration and use of the moon and other celestial bodies, in addition to outer space.

Agreement on the principle of freedom of exploration of celestial bodies is not devoid of analogous legal precedent. As the Ad Hoc Committee on the Peaceful Uses of Outer Space noted in its report (in 1959), during the International Geophysical Year, 1957-58, and subsequently,

countries throughout the world proceeded on the premise of the permissibility of the launching and flight of the space vehicles which were launched, regardless of the territory they 'passed over' during the course of their flight through outer space. The committee . . . believes that, with this practice, there may have been initiated the recognition or establishment of a generally accepted rule to the effect that, in principle, outer space is, on conditions of equality, freely available for exploration and use by all in accordance with existing or future international law and agreements.¹⁵

If one includes principles applicable to the exploration of celestial bodies under those pertaining to the exploration of outer space generally, the practice developed during the International Geophysical Year and further developed by subsequent space flights would support the view that, as a principle of customary international law, anything outside the earth's atmosphere, except an item launched from earth, is not subject to claim of national sovereignty.

B. Analogies To Other Treaties

An obvious precedent for an international convention governing activities in outer space and on celestial bodies is the Treaty concerning Antarc-

¹³ Address by President Dwight D. Eisenhower to the U.N. General Assembly, 10 Sept. 1960, 43 DEP'T STATE BULL. 554 (1960).

¹⁴ Report of the Ad Hoc Committee, *supra* note 12, at 25.

¹⁵ *Id.* at 23.

tica.¹⁶ Indeed, the draft conventions tabled by the United States and the Soviet Union at the Fifth Session of the Legal Subcommittee, contain provisions quite obviously based upon analogous provisions in that Treaty. Article I provides that Antarctica shall be used only for peaceful purposes.¹⁷ Article II provides for freedom of scientific investigation in Antarctica and cooperation in that regard.¹⁸ Article III provides for exchange of scientific information and personnel.¹⁹ Article IV, paragraph 2, prohibits nations from making additional claims of sovereignty, although it does not require renunciation of existing claims.²⁰

Another treaty which affords some precedent to agreement on the use of outer space and celestial bodies for peaceful purposes is the Nuclear Test Ban Treaty.²¹ Article I provides, in part, as follows:

1. Each of the Parties to this Treaty undertakes to prohibit, to prevent, and not to carry out any nuclear weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control:

(a) in the atmosphere, beyond its limits, including outer space; or underwater, including territorial waters or high seas; or

(b) in any other environment if such explosion causes radioactive debris to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted²²

¹⁶ The Antarctic Treaty signed at Washington on 1 Dec. 1959, by the seven Antarctic sector States (Argentina, Australia, Chile, France, New Zealand, Norway and the United Kingdom) and Belgium, Japan, Union of South Africa, the Soviet Union, and the United States. The history of the multiple claims to various portions of Antarctica, as well as the assertions of national interests is fully considered in P. JESSUP & H. TAUBENFELD, *CONTROLS FOR OUTER SPACE AND THE ANTARCTIC ANALOGY* (1959). See also Lissitzyn, *The American Position on Outer Space and Antarctica*, 53 AM. J. INT'L L. 126 (1959).

¹⁷ Article I provides:

1. Antarctica shall be used for peaceful purposes only. There shall be prohibited, *inter alia*, any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons.

2. The present Treaty shall not prevent the use of military personnel or equipment for scientific research or any other peaceful purpose.

¹⁸ Article II provides:

Freedom of scientific investigation in Antarctica and cooperation toward that end, as applied during the International Geophysical Year, shall continue, subject to the provisions of the present Treaty.

¹⁹ Article III provides:

1. In order to promote international cooperation in scientific investigation in Antarctica, as provided for in Article II of the present Treaty, the contracting parties agree that, to the greatest extent feasible and practicable:

(a) information regarding plans for scientific programs in Antarctica shall be exchanged to permit maximum economy and efficiency of operations.

(b) scientific personnel shall be exchanged in Antarctica between expeditions and stations.

(c) scientific observations and results from Antarctica shall be exchanged and made freely available.

2. In implementing this Article, every encouragement shall be given to the establishment of cooperative working relations with those Specialized Agencies of the United Nations and other international organizations having a scientific or technical interest in Antarctica.

²⁰ Article IV, Paragraph 2, provides:

No acts or activities taking place while the present Treaty is in force shall constitute a basis for asserting, supporting, or denying a claim to territorial sovereignty in Antarctica or create any rights of sovereignty in Antarctica. No new claim, or enlargement of an existing claim, to territorial sovereignty shall be asserted while the present Treaty is in force.

²¹ Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water, signed in Moscow, 5 Aug. 1963, reproduced in 49 DEP'T STATE BULL. 239 (1963).

²² Article I, Paragraph 2, provides:

Each of the parties to this Treaty undertakes furthermore to refrain from causing, encouraging, or in any way participating in, the carrying out of any nuclear weapon test explosion, or any other nuclear explosion, anywhere which would not take place in any of the environments described, or has the effect referred to, in paragraph 1 of this Article.

Whether one regards the moon and other celestial bodies as included in "outer space," as referred to in subparagraph (a), or "in any other environment," as referred to in subparagraph (b), nuclear explosions are effectively prohibited from being carried out on celestial bodies. Thus, the negotiation and drafting of principles providing for the peaceful exploration and use of outer space and celestial bodies proceeded from the standpoint that an activity of immense military significance had already been banned.

C. *Prior Activity In The United Nations*

Although the Fifth Session of the Legal Subcommittee provided the first opportunity for intensive examination, in the United Nations, of principles governing the exploration and use of outer space and celestial bodies, it was not the first time that the U.N. had ever considered this matter.²³ At the first meeting of the present Committee on the Peaceful Uses of Outer Space in November-December 1961, the nations represented agreed on a draft resolution, originally proposed by the United States, which, as adopted by the General Assembly on 20 December 1961, *inter alia*, commended to States for their guidance in the exploration and use of outer space the following principles:

(a) International law, including the Charter of the United Nations, applies to outer space and celestial bodies;

(b) Outer space and celestial bodies are free for exploration and use by all States in conformity with international law and are not subject to national appropriation.²⁴

Proposed elaborations of, and additions to, the principles stated in Resolution 1721 were further discussed during the First and Second Sessions of the Legal Subcommittee in 1962 and 1963.²⁵ This discussion of "basic principles," together with discussions of draft conventions and resolutions covering assistance to, and return of, astronauts and space vehicles, and of liability for damages caused by space vehicles, led to the unanimous adoption by the General Assembly, on 13 December 1963, of Resolution 1962 (XVIII) entitled *Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space*.²⁶ Repeating

²³ See Report of the Ad Hoc Committee, *supra*, notes 12 and 14.

²⁴ G. A. Res. 1721 (XVI). On the United States position, Ambassador Adlai E. Stevenson made the following statement in General Assembly Committee I (Political and Security) on 4 Dec. 1961:

Freedom of space and celestial bodies, like freedom of the seas, will serve the interest of all nations.

Outer space and celestial bodies are free for exploration and use by all states in conformity with international law and are not subject to national appropriation by claim of sovereignty or otherwise. 46 DEP'T STATE BULL. 180, 181 (1962).

See also address by Harlan Cleveland, Assistant Secretary of State for International Organization Affairs, 22 Oct. 1961, St. Louis University, reproduced in 45 DEP'T STATE BULL. 796, 800 (1961).

²⁵ See Dembling and Arons, *Space Law and the United Nations: The Work of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space*, 32 J. AIR L. & COM. 329, 331 (1966).

²⁶ U.N. Doc. A/C.1/L.331 and CORR. 1 (1963). For the full text, see 49 DEP'T STATE BULL. 1012 (1963).

what had already been covered in Resolution 1721, the *Declaration*, in paragraphs 2 and 3, provides:

Outer space and celestial bodies are free for exploration and use by all States on a basis of equality and in accordance with international law.

Outer space and celestial bodies are not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.

Although the *Declaration*, like other General Assembly resolutions, does not have the contractually binding characteristics of a treaty, the *Declaration* does reflect a certain international understanding of the principles which ought to govern the exploration and use of outer space and celestial bodies and, therefore, provides evidence of the customary international law in that regard. Thus, over two and one-half years prior to the Fifth Session, a general consensus had been obtained among the nations involved in space exploration that outer space and celestial bodies should be governed by the principles of international law and free for peaceful exploration and use without being subject to claims of national sovereignty.

During its previous four sessions, particularly the Third and Fourth Sessions in 1964 and 1965, the Legal Subcommittee had been primarily concerned with the relatively narrow subjects of assistance to and return of astronauts and space objects and liability for damages caused by space vehicles. By the close of the Fourth Session in October 1965, agreement had been virtually achieved on a draft convention covering the former subject, and considerable progress had been made on the latter.²⁷ However, the activities of the Legal Subcommittee were not limited to these two subjects. Under the mandate governing its activities during the Fifth Session, the Subcommittee was not only "urged" by the General Assembly to prepare draft international agreements on "assistance and return" and "liability" but also "to give consideration to incorporating in international agreement form, in the future as appropriate, legal principles governing the activities of States in the exploration and use of outer space."²⁸ The consideration by the Legal Subcommittee of the draft conventions on exploration and use of outer space and celestial bodies came within this last part of its mandate.

III. EVENTS GIVING RISE TO FIFTH SESSION

That a sense of urgency had developed concerning the need for an international agreement on the exploration of the moon and other celestial bodies was made clear in a statement by President Lyndon B. Johnson on 7 May 1966. He emphasized the need to "take action now . . . to insure that explorations of the moon and other celestial bodies will be for peaceful purposes only" and "to be sure that our astronauts and those of other nations can freely conduct scientific investigations of the moon."²⁹ The President suggested a treaty containing the following elements:

²⁷ See Dembling and Arons, *supra* note 25 at 349, 371.

²⁸ G. A. Res. 2130 (XX), 21 Dec. 1965, Art. I.

²⁹ For full text, see 54 DEP'T STATE BULL. 900 (1966).

1. The moon and other celestial bodies should be free for exploration and use by all countries. No country should be permitted to advance a claim of sovereignty.
2. There should be freedom of scientific investigation, and all countries should cooperate in scientific activities relating to celestial bodies.
3. Studies should be made to avoid harmful contamination.
4. Astronauts of one country should give any necessary help to astronauts of another country.
5. No country should be permitted to station weapons of mass destruction on a celestial body. Weapons tests and military maneuvers should be forbidden.

Two days after the president made his statement, United States Ambassador to the United Nations Arthur J. Goldberg addressed a letter to Dr. Kurt Waldheim of Austria, the Chairman of the Committee on the Peaceful Uses of Outer Space, requesting an early convening of the Legal Subcommittee to consider the treaty proposed by President Johnson.³⁰ On 30 May 1966, Soviet Ambassador Fedorenko transmitted to the Secretary-General of the United Nations a letter from Mr. A. A. Gromyko, Minister for Foreign Affairs of the U.S.S.R., requesting the inclusion of an item on the agenda for the 21st Session of the General Assembly entitled "Conclusion of an International Agreement on Legal Principles Governing the Activities of States in the Exploration and Conquest of the Moon and Other Celestial Bodies."³¹ In his letter, Mr. Gromyko suggested that such an international agreement be based on four principles, which appeared to be quite similar to the principles stated by President Johnson.³²

On 16 June Ambassador Goldberg addressed a letter to the Chairman of the Committee on the Peaceful Uses of Outer Space tabling the United States' proposed draft "Treaty Governing the Exploration of the Moon and Other Celestial Bodies."³³ On the same day, Mr. Platon Morozov, Acting Permanent Representative of the U.S.S.R., transmitted to the Secretary-General, for inclusion in the agenda of the Twenty-First Session,

³⁰ *Id.* at 900-01.

³¹ U.N. Doc. A/6341 (1966).

³² Mr. Gromyko stated his proposal as follows:

1. The moon and other celestial bodies should be open for exploration and use by all States, without discrimination of any kind. All States enjoy freedom of scientific research in regard to the moon and other celestial bodies on equal terms and in accordance with the fundamental principles of international law.

2. The moon and other celestial bodies should be used by all States exclusively for peaceful purposes. No military bases or installations of any kind, including facilities for nuclear and other weapons of mass destruction of any type, should be established on the moon or other celestial bodies.

3. The exploration and use of the moon and other celestial bodies shall be carried on for the good and in the interest of all mankind; the moon and other celestial bodies shall not be subject to appropriation or territorial claims of any kind.

4. In the exploration of the moon and other celestial bodies, States shall be guided by the principles of cooperation and mutual aid and shall carry out their activities with due regard for the relevant interests of other States and with a view to the maintenance of international peace and security.

³³ U.N. Doc. A/AC.105/32 (1966). The text of the United States draft is reproduced in *Report of the Legal Subcommittee on the Work of Its Fifth Session (12 July - 4 Aug. and 12-16 Sept., 1966) to the Committee on the Peaceful Uses of Outer Space*, U.N. Doc. No. A/AC.105/35, Annex I at 6-9 (1966) [hereinafter referred to as "Report of Legal Subcommittee"], also in 55 DEP'T STATE BULL. 61 (1966).

the Soviet proposed draft "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, the Moon and Other Celestial Bodies."³⁴ Up to this point, the Soviet Union had desired that consideration of these proposals await the start of the Twenty-First Session of the General Assembly. However, in diplomatic discussions on 17 June, the Soviets reversed their position and even suggested that the Legal Subcommittee convene prior to 12 July,³⁵ the date proposed by the United States. During the following week, agreement was reached that 12 July would be the date on which formal consideration would commence and that the meeting would be held at Geneva, the date being the preference of the United States, and the place being the preference of the Soviet Union.³⁶

IV. THE FIFTH SESSION OF THE LEGAL SUBCOMMITTEE

A. General Scope And Purpose Of The Treaty

During the first few days of the Geneva portion of the Fifth Session, the various delegations discussed the urgent need for the Treaty, whether its scope should be limited to activities on celestial bodies or should include outer space as well, and whether its provisions should state general principles or should provide specific rules for the conduct of activity in outer space and on celestial bodies.³⁷ There was a belief that a treaty regulating the conduct of States on celestial bodies should be agreed upon as soon as possible. It was apparent that the delegations regarded the prospect of manned lunar landings by both the United States and the Soviet Union as necessitating regulation before such landings. As one delegate stated, "prompt action was essential, not only because the legal aspects of the problem might hamper scientific and technical progress, but also because such progress would depend on the correct solution of the legal problem."³⁸ While celestial bodies are as yet practically untouched by man,³⁹ there was a particular desire to prohibit the use of celestial bodies, if not outer space as well, for military purposes. As "the arms race and the conflicts which took place on earth were bound to affect space . . . every effort should therefore be made to limit the arms race wherever possible."⁴⁰ In this regard, there was also general agreement that a critical need existed to include a provision banning nuclear weapons and other weapons of mass destruction from outer space.⁴¹

³⁴ U.N. Doc. A/6352 (1966). The text of the Soviet draft is reproduced in ANNEX I of the *Report of the Legal Subcommittee* at 12-16.

³⁵ *Washington Post*, 18 June 1966, at A-1, col. 7.

³⁶ *N.Y. Times*, 23 June 1966.

³⁷ All twenty-eight members of the Legal Subcommittee were present. They are: Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chad, Czechoslovakia, France, Hungary, India, Iran, Italy, Japan, Lebanon, Mexico, Mongolia, Morocco, Poland, Rumania, Sierra Leone, Sweden, United Arab Republic, U.S.S.R., United Kingdom, and the United States.

³⁸ Statement of the Mongolian delegate in U.N. Doc. A/AC.105/C.2/SR. 62 at 9. The discussions which took place at the formal meetings were summarized and published in the form of *Summary Reports* [hereinafter cited as *SUM. REP.*].

³⁹ The moon has been struck by man made objects.

⁴⁰ Statement of the Polish delegate in *SUM. REP.* 62 at 7.

⁴¹ See statement of the Czech delegate in *SUM. REP.* 58 at 7.

The belief that agreement must be reached as soon as possible affected the matter of whether the agreement should be limited to a statement of general principles or whether it should establish more specific regulation of space activity. As noted above, previous sessions of the Legal Subcommittee had devoted considerable attention to the detailed draft treaties on assistance to and return of astronauts and space vehicles and liability for damages caused by space vehicles. Various delegations expressed a desire that the Subcommittee continue its work on these drafts during the Fifth Session, and were not satisfied with the inclusion of general provisions on those subjects as items in a treaty as broad as those suggested by the United States and the Soviet drafts.⁴² However, the Subcommittee was interested in obtaining "maximum results in a minimum time" and believed it "should limit itself strictly to settling essential and urgent issues."⁴³

Most of the delegations felt that the principles set forth in the United States and Soviet drafts were "a starting point and would be applied in practice later—in particular in the field of liability and the return of astronauts. It was therefore essential to define and codify now the largest number of points of agreement . . ."⁴⁴ As stated by Mr. Platon Morozov, the head of the Soviet delegation to the Fifth Session, and later agreed to by the members of the Subcommittee, the inclusion in the Treaty of two broadly phrased articles on assistance and return and liability respectively "was not intended to prejudice the efforts already being made in the Subcommittee to conclude a special agreement on those matters."⁴⁵

A further matter to which considerable discussion was devoted during the general debate was whether the Treaty should establish rules governing activity on celestial bodies or should include all of outer space as well. The most obvious difference between the Soviet and United States drafts was that the Soviet draft would have applied to celestial bodies *and* outer space while the United States draft would have applied only to celestial bodies. As expected, the delegate from the Soviet Union and the representatives from Communist bloc countries of Eastern Europe advocated the Soviet version.⁴⁶ In addition, however, several delegations from non-aligned and pro-Western nations supported the Soviet position on this matter. Cogent arguments were advanced to the effect that the implementation of several of the proposed treaty articles would be extremely difficult, if not impossible, should the scope of the Treaty be limited to activities on celestial bodies to the exclusion of outer space.⁴⁷

In view of the various statements made concerning the scope of the

⁴² See statements by the Swedish delegate in SUM. REP. 59 at 4, the Indian delegate in SUM. REP. 57 at 18, the Austrian delegate in SUM. REP. 58 at 3, the Italian delegate in SUM. REP. 58 at 4, and the Lebanese delegate in SUM. REP. 58 at 7.

⁴³ Statement by the Belgian delegate in SUM. REP. 61 at 7.

⁴⁴ Statement by the Canadian delegate in SUM. REP. 68 at 10.

⁴⁵ SUM. REP. 57 at 13.

⁴⁶ See statements by the Soviet delegate, SUM. REP. 62 at 11; the Rumanian delegate, SUM. REP. 61 at 5; the Bulgarian delegate, SUM. REP. 61 at 2; and the Hungarian delegate, SUM. REP. 59 at 3.

⁴⁷ See statements by the Indian delegate, SUM. REP. 63 at 3; the Austrian delegate, SUM. REP. 58 at 3; the Japanese delegate, SUM. REP. 58 at 6; the French delegate, SUM. REP. 57 at 16; and the Mexican delegate, SUM. REP. 62 at 8.

treaty, the United States delegation recognized that a consensus had been reached on the broad proposition that "the Treaty should not be limited to celestial bodies alone but should include outer space along the lines of the U.S.S.R. draft" and agreed to work towards the conclusion of such a treaty.⁴⁶ In return, the Soviet delegate stated that his delegation was prepared "to consider the possibility of including, in the draft treaty to be prepared by the Subcommittee, provision which did not appear in the Soviet text, including certain points from the United States' draft."⁴⁸ The Soviet delegate was referring particularly to the provisions in the United States draft that provided for reporting of scientific information and free access to all areas of celestial bodies. As a comparison of the Soviet and United States drafts readily indicates, there were not many substantive points of difference between the Soviet and United States positions on the matters sought to be covered.

Thus, even before the Subcommittee began its article by article analysis of the respective drafts, a reasonable amount of agreement existed between the two major space powers, and among all the members of the Subcommittee, on the general scope and purpose of the Treaty. The remainder of the discussions during the Fifth Session concerned specific matters to be covered in the Treaty.

B. Outer Space, Including The Moon And Other Celestial Bodies Shall Be Free For Exploration And Use For The Benefit Of All, Shall Not Be Subject To Claims Of Sovereignty, And Shall Be Governed In Accordance With International Law.

The Preamble and Articles I, II and III of the Treaty state broad principles which, from the outset of discussion, were generally acceptable to the members of the Subcommittee and provoked little disagreement as to wording. The texts of these provisions were taken almost entirely from the Preamble and Articles I, II and III of the Soviet draft. The same general principles appeared in Articles 1, 2, 3 and 6 of the United States draft, but were stated differently. The first three articles of the Treaty, as eventually approved, are, in large part, a codification of paragraphs 1 through 4 of the *Declaration of Legal Principles*, and are analogous to certain principles set forth in the Antarctic Treaty. Thus agreement on the text of these provisions without much debate was not surprising.

Despite general agreement on the principles stated in these provisions, a few differences of opinion were voiced during the Geneva portion of the Session prior to agreement on a final text. Article I, Paragraph 2, of the Treaty provides that the benefits of the exploration and use of outer space, including the moon and other celestial bodies, shall accrue to all countries "irrespective of their degree of economic or scientific development." The implied reference to the developing countries appeared initially in the Preamble to the Soviet draft. However, the delegations from those

⁴⁶ SUM. REP. 63 at 2. The head of the United States delegation was Ambassador Arthur J. Goldberg, permanent representative of the United States to the United Nations.

⁴⁸ SUM. REP. 62 at 11.

countries took the position that such language should be included as a part of the binding treaty commitment,⁵⁰ and it was ultimately agreed that such language should be included in the Treaty.

A related concept appears in the second paragraph of Article I which provides, in part, for exploration and use of outer space and celestial bodies "without discrimination of any kind" and "on a basis of equality." The United States delegate suggested that the phrase "without discrimination of any kind" appeared redundant. He argued that the expression "on the basis of equality," derived from Paragraph 2 of the *Declaration of Legal Principles*, adequately covered the subject, and the addition of "without discrimination of any kind" in the Soviet draft was not necessary.⁵¹ However, supporters of the Soviet draft insisted that this explicit nondiscrimination language corresponds to a most favored nation clause which is necessary to assure cooperation among nations in space exploration. While the words "on a basis of equality" may convey the same thought, it was argued that the main consideration was not de facto equality, but rather the absence of discrimination between States.⁵² In view of the arguments made in favor of specific inclusion of this nondiscrimination language, the United States delegate withdrew his objection, and later fully endorsed the agreed upon language of Article I in stating that this provision, together with others, "make[s] clear the intent of the Treaty that outer space and celestial bodies are open not just to the big powers or the first arrivals but shall be available to all, both now and in the future. This principle is a strong safeguard for the interests of those states which have, at the present time, little or no active space program of their own."⁵³

Article VI of the United States draft and Article I of the Soviet draft provided for free access to all areas (in the case of the former) or all regions (in the case of the latter) of celestial bodies. The last phrase of the second paragraph of Article I of the Treaty provides that "there shall be free access to all areas of celestial bodies." It might appear, from a comparison of this phrase with the comparable provision in the United States draft, that the United States version had proved acceptable to the Subcommittee. However, this provision must be read in the light of

⁵⁰ See statements by the Czech delegate, SUM. REP. 64 at 4; the United Arab Republic delegate, SUM. REP. 65 at 7; the Indian delegate, SUM. REP. 65 at 8; the Brazilian delegate, SUM. REP. 63 at 9; and the Hungarian delegate, SUM. REP. 71 at 22.

⁵¹ SUM. REP. 63 at 5.

⁵² Statements of the Hungarian delegate, SUM. REP. 64 at 3; and the Rumanian delegate, SUM. REP. 63 at 7.

⁵³ Statement by Ambassador Arthur J. Goldberg before General Assembly Committee I (Political and Security), 17 Dec. 1966, reprinted in 56 DEP'T STATE BULL. 78, 81 (1967). During the hearings held by the Senate Foreign Relations Committee prior to Senate approval of the Treaty, Senators J. William Fulbright and Albert Gore questioned Ambassador Goldberg on the possibility that Article I would require the United States to make its communications satellites, including those for defense communications, available for the benefit of all countries. Ambassador Goldberg replied, in effect, that Article I is a statement of general goals, and that separate international agreements would be required to cover the use of particular satellites. *Hearings on Executive D, Before the Senate Comm. on Foreign Relations*, 90th Cong., 1st Sess., "Treaty on Outer Space," at 31-37, 7 & 13 March and 12 April (1967). [hereinafter referred to as *Senate Hearings*]. Based on this explanation, the Committee stated in its Report that "It is the understanding of the Committee on Foreign Relations that nothing in Article I, paragraph 1, of the Treaty diminishes or alters the right of the United States to determine how it shares the benefits and results of its space activities." "Treaty on Outer Space," S. EXEC. DOC. No. 8, 90th Cong., 1st Sess. 4 (1967).

Article XII, which provides that "All stations, installations, equipment and space vehicles shall be open to representatives of other States Parties to the Treaty on a basis of reciprocity." The "free access" provision of Article I should therefore be read to mean that there shall be free access at all times to all areas of outer space and celestial bodies, except as provided in Article XII. The deliberations leading to Article XII, including possible meanings of "reciprocity," will be discussed *infra*.

Article I, Paragraph 1, of the Treaty, as well as other provisions, applies to the "use" of outer space and celestial bodies as well as to the "exploration" thereof. Although there was some difference of opinion over the meaning of the word "use," as distinguished from "exploration," it appeared that most of the delegations agreed with the French delegate that "use" means exploitation. The French delegate cited existing "uses" of outer space for meteorological research and telecommunications, and potential use of the moon, *e.g.*, for the extraction of minerals.⁵⁴ Since the analogous provisions of the *Declaration of Legal Principles* apply to "use" as well as to "exploration," there was no disagreement that the scope of the Treaty should include "use" of outer space and celestial bodies, even though potential uses of outer space and celestial bodies can be foreseen only to a limited extent at present.

The text of Article II, which prohibits national appropriation of outer space and celestial bodies, provoked only a few minutes of debate. The wording of the second sentence of Article 1 of the United States draft and the wording of Article II of the Soviet draft are almost identical. Agreement was reached on the final text when the Soviet delegate concurred in a suggestion by the United States delegate that the words "and celestial bodies" in the Soviet draft be replaced by the words "including the moon and other celestial bodies" and another minor drafting change.⁵⁵ Although there was some later criticism of the use of the word "appropriation" for possible vagueness,⁵⁶ the Soviet delegate had indicated, at a prior stage of the discussions, that the term referred to the ban on assertion of national claims by way of any human activity in outer space or on the moon or other celestial bodies.⁵⁷ As explained by Ambassador Goldberg to the Political Committee of the General Assembly, Article II, by banning national appropriation of outer space and celestial bodies, reinforces the free access language in Article I.⁵⁸ If an individual nation cannot claim sovereignty to any particular area of outer space or of a celestial body, it cannot deny access to that area. However, as stated above, there may be a limitation on "free access" imposed by Article XII depending on the meaning that one attaches to the use of the term "reciprocity" in Article XII.

Article III, by making international law, including the Charter of the

⁵⁴ SUM. REP. 63 at 8. See also SUM. REP. 69 at 5.

⁵⁵ SUM. REP. 64 at 10.

⁵⁶ Statements of the Austrian delegate in SUM. REP. 71 at 10, and the Australian delegate in SUM. REP. 71 at 15.

⁵⁷ SUM. REP. 63 at 10.

⁵⁸ Statement by Ambassador Goldberg, *supra* note 53, at 80.

United Nations, applicable to outer space and celestial bodies, further reinforces Article I. Indeed, there is considerable overlap between Article III and the second paragraph of Article I which assures the availability of outer space and celestial bodies "for exploration and use by all States without discrimination of any kind, on a basis of equality and in accordance with international law . . ." Except for minor drafting changes, Article III was taken verbatim from Article III of the Soviet draft, which is merely a restatement of Paragraph 4 of the *Declaration of Legal Principles*. Although Article 1 of the United States draft also contained a reference to the applicability of international law, formal discussion in the Subcommittee of the substance of Article III ended momentarily after it began, when the United States delegate stated that the Soviet text was acceptable to his delegation.⁵⁹

There could hardly be any dispute over the theoretical application of international law to outer space and celestial bodies in view of the relative absence of specific rules of law in this area. However, Article III is important in itself if viewed in the light of the consensus reached earlier, that this Treaty is intended to establish basic principles applicable to conduct in outer space and on celestial bodies. By virtue of Article III, as Ambassador Goldberg later stated before the Political Committee, "As man steps into the void of outer space, he will depend for his survival not only on his amazing technology but also on this other gift which is no less precious: the rule of law among nations."⁶⁰ One may wonder what are the principles of international law applicable to outer space and celestial bodies, aside from those that might be derived from the United Nations Charter. Although various analogies may be suggested (*e.g.*, rules governing freedom of the seas), the principal thrust of Article III is to establish the applicability of rules of law to activity in outer space and on celestial bodies, as distinct from each nation unto itself. The text of Article III, along with the texts of Articles I and II, was accepted by the Working Group of the Legal Subcommittee on 29 July 1966.⁶¹

*C. No Weapons Of Mass Destruction Shall Be Placed In Orbit Or On
Celestial Bodies, Or Stationed In Outer Space In Any Other Manner;
Celestial Bodies Shall Be Used Exclusively For Peaceful Purposes*

Article IV of the Treaty constitutes, as President Johnson stated, "the most important arms control development since the 1963 treaty banning nuclear testing in the atmosphere, in space and under water."⁶² Ambassador Goldberg explained to the Political Committee of the General Assembly that:

This article restricts military activities in two ways:
First, it contains an undertaking not to place in orbit around the earth,

⁵⁹ SUM. REP. 64 at 10.

⁶⁰ Statement by Ambassador Goldberg, *supra* note 53, at 79.

⁶¹ The text of Article I was accepted as Working Group/L.3; Article II was accepted as Working Group/L.7; and Article III as Working Group/L.8; these documents are in *Report of the Legal Subcommittee*, ANNEX II at 4, 8, and 9 respectively.

⁶² N.Y. Times, 9 Dec. 1966, at 1, col. 8.

install on the moon or any other celestial body, or otherwise station in outer space, nuclear or any other weapon of mass destruction.

Second, it limits the use of the moon and other celestial bodies exclusively to peaceful purposes and expressly prohibits their use for establishing military bases, installations or fortifications, testing weapons of any kind, or conducting military maneuvers.⁶³

Article IV is taken from Articles 8 and 9 of the United States draft. Both the United States and Soviet drafts reflect principles previously agreed upon in the Nuclear Test Ban Treaty, and United Nations Resolution 1884 (XVIII), adopted by the General Assembly by acclamation on 17 October 1963.⁶⁴ In addition, the last sentence of Article 9 of the United States draft, which provided for the use of military personnel, facilities, or equipment for peaceful purposes, is quite similar to Article I, Paragraph 2, of the Antarctic Treaty.⁶⁵ Ambassador Goldberg explained to the Legal Subcommittee that:

As in the exploration of the Antarctic, man could not have penetrated outer space and survived in that hostile environment unless he had been able to draw upon the benefits of all research, civilian or military, involving both personnel and equipment. For any country engaging in space activity, military personnel, facilities and equipment played an indispensable role and would continue to be an essential part of future space programs.⁶⁶

Except for two differences of opinion, to be discussed below, agreement on the final text of Article IV was reached towards the conclusion of the Geneva portion of the Session on the basis of acceptance by the United States delegation of the language of the first sentence of Article IV of the Soviet draft, and acceptance by the Soviet delegation of the United States desire to include provision for the use of military personnel for peaceful purposes.⁶⁷

It is noteworthy that the prohibition contained in the first paragraph of Article IV applies to both outer space and celestial bodies, while the prohibition contained in the second paragraph of the article applies to celestial bodies only. Several of the delegations questioned the propriety of excluding outer space from the coverage of the second paragraph, the implication being that outer space may be used for nonpeaceful purposes.⁶⁸ However, it is a well-known fact that both the United States and the Soviet Union have already launched satellites into outer space for military purposes, and examination of a ban on such satellites would have raised controversial issues presently within the purview of disarmament negotiations.

⁶³ Statement by Ambassador Goldberg, *supra* note 53, at 80.

⁶⁴ G. A. Res. 1884 (XVIII) "2. Solemnly calls upon all States: (a) To refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner. (b) To refrain from causing, encouraging, or in any way participating in the conduct of the foregoing activities."

⁶⁵ Article I, paragraph 2, of the Antarctic Treaty is quoted, *supra* note 17.

⁶⁶ SUM. REP. 65 at 9.

⁶⁷ Working Group/L.4, accepted by the Working Group on 29 July 1966, in *Report of the Legal Subcommittee*, Annex II at 5.

⁶⁸ See statements by the Indian delegate, SUM. REP. 66 at 6; the Iranian delegate, SUM. REP. 66 at 7; the Austrian delegate, SUM. REP. 71 at 10; the Japanese delegate, SUM. REP. 71 at 12; the Brazilian delegate, SUM. REP. 71 at 17; and the Mexican delegate, SUM. REP. 71 at 19.

The text of Article IV as agreed upon was conceded to be the most practical solution from the standpoint of expeditious conclusion of a treaty on outer space. As the Soviet delegate stated, "A number of questions would, of course, remain to be dealt with after the elaboration of the Treaty, particularly the use of outer space for exclusively peaceful purposes."⁶⁹ In the interim, one might conclude that any military use of outer space must be restricted to nonaggressive purposes in view of Article III, which makes applicable international law including the Charter of the United Nations.

At the conclusion of the Geneva portion of the Session, two matters had not been resolved with respect to Article IV. The United States had previously revised and consolidated Articles 8 and 9 of its draft and tabled a single, two-paragraph article quite similar to Article IV of the Soviet draft. The second paragraph of the revised United States article read as follows:

The moon and other celestial bodies shall be used exclusively for peaceful purposes. The establishment of military bases and fortifications, the testing of any type of weapons, and the conduct of military maneuvers shall be forbidden. The present Treaty does not prohibit the use of any types of personnel or equipment for scientific research or any other peaceful purpose.⁷⁰

The Soviet Union desired, however, to include the word "installations" between "military bases" and "fortifications," and to ban the use of "military equipment" on celestial bodies.

Concerning the use of the term "installations," the Soviet delegate did not articulate any reason for his delegation's insistence on the inclusion of that word, except for the possibility that the words "bases" and "fortifications," in Russian translation, do not adequately describe all of the possible structures that might be erected for military use on celestial bodies.⁷¹ The United States delegate argued that the term "installation" is too vague,⁷² possibly viewing "bases" and "fortifications" as terms denoting use of a facility for military purposes, while "installations" might be construed to apply to a facility used for peaceful purposes but constructed or inhabited by military personnel.

A more important point of disagreement was whether military equipment may be used on celestial bodies. Notwithstanding the analogy in Article I, Paragraph 2, of the Antarctic Treaty, the Soviet delegate argued that "if the use of military equipment in outer space was allowed, the essence of the treaty would be distorted and a loophole would be created for evading one of its most fundamental provisions."⁷³ The United States

⁶⁹ SUM. REP. 66 at 6.

⁷⁰ Working Paper No. 6/Rev. 1, 1 August 1966, in *Report of the Legal Subcommittee*, ANNEX III at 4.

⁷¹ SUM. REP. 65 at 10. See also a statement by the Czech delegate in SUM. REP. 66 at 3.

⁷² SUM. REP. 70 at 6.

⁷³ SUM. REP. 65 at 11. The Soviet position was supported by the other delegations from Communist states, e.g., Bulgaria, whose delegate stated that "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." SUM. REP. 71 at 23. Also see statement by the Hungarian delegate, SUM. REP. 71 at 21.

position was that "Equipment used in outer space had, in many cases, been developed through military research; that was the case, in particular, with respect to the rockets carrying astronauts; that could not, however, be said to constitute a violation of the principle of the peaceful uses of outer space."⁷⁴ The British delegate added that "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."⁷⁵

As a reading of the second paragraph of Article IV indicates, the United States and its supporters eventually agreed to accept the use of the term "installations," while the Soviet Union and its supporters agreed to the inclusion of a provision which would not ban the use of military equipment on celestial bodies. Emphasis on the purpose for which a piece of military equipment is to be used on a celestial body, as stressed by the United States delegate, is reflected in the last sentence of Article IV. Thus, aside from the first paragraph of Article IV, the placement of a weapon or other item of military equipment of any description on a celestial body would appear to be prohibited unless it can be demonstrated that the item of military equipment will be devoted solely to the peaceful exploration or use of the celestial body. Agreement on the final text of Article IV was not reached until after the close of the New York portion of the Session in the course of compromising the few outstanding differences which stood at that time as a barrier to announcement of the agreement on the treaty.

D. Assistance And Return Of Astronauts And Space Vehicles; Notification Of Dangerous Phenomena In Outer Space Or On Celestial Bodies.

Article V of the Treaty contains two distinct though related principles. The first two paragraphs set forth the principle of assistance to and return of astronauts, a subject which had been discussed in considerable detail during previous sessions of the Legal Subcommittee.⁷⁶ The text of the first two paragraphs of the Article was taken almost verbatim from Article IX of the Soviet draft which restated Paragraph 9 of the *Declaration of Legal Principles*. Although the principles of assistance and return are contained in Article 5 of the United States draft, the United States delegate acceded to the Soviet version subject to minor drafting changes.⁷⁷ The third paragraph of Article V is derived from a proposal made by the United States during the Geneva portion of the Session as follows:

A State conducting activities in outer space, including the moon and other celestial bodies, shall promptly notify the Secretary-General of the United Nations of any information relating to the physical safety of astronauts.⁷⁸

In the Working Group, this proposal was revised to require notification

⁷⁴ SUM. REP. 70 at 6.

⁷⁵ SUM. REP. 71 at 5.

⁷⁶ For commentary on the Legal Subcommittee's work on assistance and return, see Dembling and Arons, *supra* note 25.

⁷⁷ SUM. REP. 66 at 8.

⁷⁸ *Id.*

of either the other parties to the Treaty or the Secretary-General. It is noteworthy that the third paragraph of Article V constitutes a mandatory reporting obligation which the Soviet Union accepted. As discussed in connection with Article XI, the Soviet delegation rigorously adhered to its position that the reporting of activities in outer space and on celestial bodies generally should be only on a voluntary basis. As a result of the Soviet view, Article XI is ambiguous, as distinguished from the comparatively unequivocal obligation imposed on parties to the Treaty by the third paragraph of Article V.

The principles of assistance to astronauts in distress and their return to the launching State or other State of registry were already accepted by the members of the Legal Subcommittee as constituting humanitarian obligations. Thus, there was little discussion beyond that noted above, and the text of Article IV was accepted by the Working Group shortly before the close of the Geneva portion of the Session.⁷⁹ As mentioned above, however, several delegations had expressed the desire that the Subcommittee continue progress towards the conclusion of detailed treaties on assistance and return liability, and that the Treaty under discussion should not prejudice the efforts undertaken with respect to those other treaties. Thus, in connection with Article V, the Indian and Australian delegates proposed the inclusion of another paragraph which would have specifically provided that the provisions of Article V are adopted without prejudice to the provisions of any subsequent treaty applicable to the matter of assistance and return of astronauts.⁸⁰ This proposal was adopted in the form of a paragraph included in the General Assembly Resolution which commended the Treaty, adopted on 19 December 1966.⁸¹ Paragraph 4(a) of the Resolution constituted a request by the General Assembly that the Committee on the Peaceful Uses of Outer Space continue its work on the elaboration of agreements on assistance to and return of astronauts and space vehicles, and on liability for damages caused by the launching of objects into outer space.

E. Parties Shall Bear International Responsibility For National Activities In Outer Space.

Article VI of the Treaty assures that the parties cannot escape their international obligations under the treaty by virtue of the fact that activity in outer space or on celestial bodies is conducted through the medium of nongovernmental entities or international organizations. Perhaps the most important of the three sentences from the standpoint of domestic concern is the second, which states that the activities of nongovernmental entities in outer space and on celestial bodies shall require authorization and continuing supervision by the State concerned. The obvious example of activity covered by the second sentence is that of the Communications Satellite Corporation, a nongovernmental entity whose activities are

⁷⁹ Working Group/L.5 and CORR. 1, 1 Aug. 1966, in *Report of the Legal Subcommittee*. ANNEX II at 6.

⁸⁰ SUM. REP. 66 at 10.

⁸¹ U.N. Doc. A/RES./2222 (XXI) (1966).

authorized and regulated by United States federal agencies pursuant to federal statutes and regulations. However, while no one would doubt the need for governmental control over space activity at its present stage, the second sentence of Article VI would prohibit, as a matter of treaty obligation, strictly private, unregulated activity in outer space or on celestial bodies even at a time when such private activity becomes most common-place. Although the terms "authorization" and "continuing supervision" are open to different interpretations, it would appear that Article VI requires a certain minimum of licensing and enforced adherence to government-imposed regulations.

Article VI was taken almost verbatim from Article VI of the Soviet draft, which was in turn based on Paragraph 5 of the *Declaration of Legal Principles*. The United States draft contained no comparable provision but the United States delegate readily acceded to the Soviet version subject to changing the term "nongovernmental bodies corporate" to "nongovernmental entities," the word "corporate" not being adequately descriptive.⁸² When the Soviet delegate accepted this minor change, debate ended on the first two sentences of Article VI. A more difficult question was posed by the third sentence, which purports to make international organizations responsible for compliance with the Treaty with respect to activities conducted in outer space or on celestial bodies by these organizations. Although Paragraph 5 of the *Declaration of Legal Principles* contains a similar provision, it is not necessary for the purposes of a General Assembly resolution to provide a mechanism for creating contractually binding obligations between various states or groups of states. However, the restatement of Paragraph 5 of the *Declaration* as a treaty provision raised such questions as: whether international organizations should be permitted to become parties to the Treaty, whether they should be permitted to incur treaty obligations as entities independent of their member states which are parties to the Treaty, whether members of an international organization which are not parties to the Treaty could become indirectly bound to the Treaty obligations by virtue of their membership in an organization which has become a party to the Treaty, and other questions of like import. The debate which developed out of consideration of the last sentence of Article VI led to the adoption of Article XIII, which specifically provides for the treatment of international intergovernmental organizations under the Treaty.⁸³ However, the last sentence of Article VI was retained even though it contained no provision for international organizations to become parties to the Treaty. The Soviet delegation was categorically opposed to any provision which would exempt international organizations from responsibility for their activities in outer space and yet was unwilling to accept a provision which would place such organizations on an equal footing with the States Parties to the Treaty.⁸⁴

⁸² SUM. REP. 66 at 12.

⁸³ Presumably, activity by international nongovernmental organizations will be subject to the first two sentences of Article VI providing for responsibility, authorization and supervision by the states concerned.

⁸⁴ SUM. REP. 70 at 3.

Since the Soviet delegation refused to consider any modifications to the last sentence of Article VI, the gap in coverage remained but was resolved in part by Article XIII. Article VI together with Article XIII appear to require States which are parties to the Treaty, when they conduct activities through an international organization, to use their best efforts to secure compliance by the international organization with the obligations set forth in the Treaty. Such compliance could be readily obtained if the organization is comprised entirely of parties to the Treaty, or such parties at least hold the balance of power in the organization. However, if States Parties to the Treaty do not have sufficient power to determine the conduct of the international organization in question, Articles VI and XIII might be construed to require such parties to disassociate themselves from activity of the organization which is violative of the Treaty, or to resign entirely from the organization.

When it appeared to the various delegations during the Geneva portion of the Session that there was little possibility of obtaining agreement on any modifications to the last sentence of Article VI, this Article was accepted in the form in which it appears in the Treaty.⁸⁵ Resolution of the status of international organizations was a subject of further discussions during the New York portion of the Session and thereafter.

F. Parties To The Treaty That Launch Or Procure The Launching Of Objects Into Outer Space Shall Be Liable For Damages.

Article VII concerning liability was also taken almost verbatim from an article of the Soviet draft, in this case Article VII. The Soviet draft was based on Paragraph 8 of the *Declaration of Legal Principles*. Although the United States draft contained no similar provision, the United States delegate readily agreed to the inclusion of Article VII of the Soviet draft, subject to minor drafting changes.⁸⁶ The United States delegate, along with others, recognized that the Legal Subcommittee was in the process of drafting a detailed treaty on liability, but no objection was raised to the mere inclusion of an article stating the general principle in the present Treaty on outer space and celestial bodies. As the French delegate stated:

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.⁸⁷

On this basis, agreement was reached shortly before the close of the Geneva portion of the Session on the inclusion of Article VII of the Soviet draft with minor modifications.⁸⁸

The subject of international liability for damage caused by space vehicles is indeed one involving a multitude of problems, discussed elsewhere by

⁸⁵ Working Group/L.6, 1 Aug. 1966, in *Report of the Legal Subcommittee*, ANNEX II at 7.

⁸⁶ SUM. REP. 67 at 9.

⁸⁷ SUM. REP. 67 at 10.

⁸⁸ Working Group/L.2, 28 July 1966, in *Report of the Legal Subcommittee*, ANNEX II at 3.

the authors in connection with the work of the Legal Subcommittee on the draft conventions on liability.⁸⁹ Since Article VII of the Treaty is essentially a repetition of Paragraph 8 of the *Declaration of Legal Principles*, these problems were hardly touched upon during the Fifth Session in the course of discussion on liability. However, the Indian delegate questioned the meaning of the word "internationally," as used to modify "liable," and stated that the article would only be acceptable if "internationally" meant "absolutely."⁹⁰ But other delegations noted that the concept of "absolute liability" was still being refined in discussions of the detailed draft treaties on liability and doubted the feasibility of embodying the concept of absolute liability in the text of Article VII. As the Australian delegate noted, "At earlier sessions the Subcommittee had found that absolute liability was necessarily subject to limitations and qualifications if justice was to be achieved."⁹¹

A number of delegations supported the view of the Indian delegate that the word "internationally" as used in Article VII is ambiguous if it does not mean "absolutely." For this reason, several delegations proposed to include a sentence, in Article VII, or elsewhere in the Treaty, making express reference to the conclusion of a detailed treaty on liability, in the same manner as suggested in connection with Article V, on assistance and return, discussed above.⁹² In rebuttal, the Lebanese delegate raised doubts that it is legally possible to refer in a treaty to an agreement which had not yet been concluded. The argument was ended when the United States delegate concurred in the Lebanese delegate's view, stating that the force of Article VII might be weakened if a specific reference to an agreement not yet negotiated were included in the present Treaty.⁹³ The Soviet delegate then added his opinion that a special statement referring to the agreements to be concluded on liability would not be necessary.⁹⁴ As noted above in connection with the discussion of Article V on assistance and return, Paragraph 4 (a) of the General Assembly Resolution commending the Treaty requests the Legal Subcommittee to continue its work on the elaboration of agreements on liability and assistance and return.⁹⁵ It was hoped that this paragraph of the Resolution would alleviate the fears of some of the delegations that Articles V and VII would prejudice the work of the Legal Subcommittee on the other treaties.

G. Jurisdiction And Control Over Personnel And Objects Are Not Affected By Their Presence In Outer Space Or On Celestial Bodies.

Article VIII of the Treaty consists of three sentences, two of which state general rules concerning control and ownership of personnel and objects while in outer space and on celestial bodies. The third sentence

⁸⁹ Dembling and Arons, *supra* note 25.

⁹⁰ SUM. REP. 67 at 10; SUM. REP. 71 at 8.

⁹¹ SUM. REP. 71 at 14.

⁹² Belgium, SUM. REP. 67 at 11; Australia, SUM. REP. 67 at 11.

⁹³ SUM. REP. 67 at 11.

⁹⁴ *Id.* at 12.

⁹⁵ U.N. Doc. A/RES./2222 (XXI) (1966).

imposes an obligation upon parties to the Treaty to return found objects to the party to the Treaty on whose registry they are carried. The State of registry is required to furnish identifying data if so requested. The third sentence, in providing for the return of space objects, can be regarded as a companion provision to Article V which provides for the assistance and return of astronauts. The return of space vehicles to the State of registry has been considered by the Legal Subcommittee in previous sessions as a part of a treaty that, if adopted, would regulate the assistance and return of astronauts.⁹⁶

Article VIII was taken from Article V of the Soviet draft which virtually repeated Paragraph 7 of the *Declaration of Legal Principles*. Article 7 of the United States draft was a similar provision but was concerned with control of persons and ownership of objects only on celestial bodies. Also, the United States version did not contain a provision for the return of objects. However, the United States delegate readily acceded to the Soviet version, applicable to both outer space and celestial bodies, subject to a few minor drafting changes. The most noticeable change was the substitution of the word "landed" for "delivered to" in the second sentence.⁹⁷ Agreement on the final text of Article VIII was reached one week before the close of the Geneva portion of the Session, prior to agreement on the final text of any other article.⁹⁸

H. Parties To The Treaty Shall Avoid Harmful Contamination Of Outer Space, Celestial Bodies, And The Environment Of Earth, And Shall Consult With Other Parties Regarding Potentially Harmful Experiments.

As stated by a leading proponent of the Treaty as an instrument of international cooperation, Article IX is "a provision which is designed to protect outer space and the celestial bodies from contamination and pollution and to protect the legitimate programmes of States from undue interference."⁹⁹

Article IX was taken from Article VIII of the Soviet draft and Article 10 of the United States draft. The Soviet version was in turn a reiteration of Paragraph 6 of the *Declaration of Legal Principles*. Article IX of the Treaty closely follows the text of the Soviet version. However, the Soviet Union agreed to add specific language making the provision applicable to celestial bodies in addition to outer space, and agreed to add the provision of the United States draft prohibiting parties to the Treaty from conducting experiments which might cause adverse changes in the environment of earth.¹⁰⁰

The first sentence of Article IX restates the principle of international

⁹⁶ Dembling and Arons, *supra* note 25, at 338.

⁹⁷ SUM. REP. 66 at 11.

⁹⁸ Working Group/L.1 and CORR. 1, 27 July 1966, in *Report of the Legal Subcommittee, ANNEX II* at 2.

⁹⁹ *International Cooperation from the U.N. Viewpoint*, at 4; Speech by Dr. Kurt Waldheim before the 13th Annual Meeting of the American Astronautical Society, Dallas, Texas (1967). Dr. Waldheim is the Chairman of the Committee on the Peaceful Uses of Outer Space.

¹⁰⁰ SUM. REP. 68 at 3, 4.

cooperation in the exploration and use of outer space and celestial bodies for the benefit of all mankind enunciated in the Preamble and Articles I and III of the Treaty. However, Article IX lays stress upon a particular element of such international cooperation which is, as stated by the Canadian delegate, "that States should conduct their activities in outer space with due regard for the corresponding interests of other States."¹⁰¹ The remaining sentences in Article IX implement this principle of "due regard" for the interests of other States.

The second sentence combines the second sentence of Article VIII of the Soviet draft and Article 10 of the United States draft. By virtue of this provision, parties to the Treaty must conduct their activities in such a manner so as to avoid the harmful contamination of outer space or celestial bodies and adverse changes in the environment of earth. The third and fourth sentences establish the procedure of international consultations as the method of enforcing the obligations stated in the first two sentences. The third sentence imposes a mandatory obligation upon a party planning a potentially harmful experiment to consult with other parties. Most significantly, the fourth sentence provides each party with the right to request consultations concerning a potentially harmful activity or experiment planned by another State in outer space or on a celestial body.

The Japanese delegation proposed to add language which would have required parties planning potentially harmful experiments to report such planned experiments to the Secretary-General of the United Nations before undertaking them.¹⁰² The Soviet delegate, however, disapproved of this suggestion, stating that the essential information would be communicated more quickly to the other parties to the Treaty if the Secretary-General were not utilized as an intermediary. In addition, and more important, he regarded the Japanese suggestion to be in conflict with the position of the Soviet Union that the Secretary-General not play a role in the application of the Treaty by States.¹⁰³ Although the Soviet delegate, after much debate, agreed to Article XI, which provides for the reporting of activities in outer space and celestial bodies to the Secretary-General, he drew a sharp distinction between the mandatory consultations in advance of the event, under Article IX, and what he regarded as voluntary reporting after the event, under Article XI.¹⁰⁴ The Soviet view of the proposed Japanese amendment to Article IX is consistent with the acceptance by the Soviet delegation of the third paragraph of Article V. That paragraph requires the reporting of phenomena considered hazardous to astronauts either to the other parties to the Treaty or the Secretary-General. In view of the unequivocal refusal of the Soviet delegation to accept any provision requiring mandatory reporting to the Secretary-General, the Japanese proposal was dropped and agreement was reached

¹⁰¹ *Id.* at 10.

¹⁰² *Id.* at 5-6.

¹⁰³ *Id.* at 7-8.

¹⁰⁴ *Id.* at 8. The Soviet delegate was supported by the Bulgarian delegate, *Id.* at 8.

on the text of Article IX, including the mandatory provisions for consultations of potentially harmful experiments, shortly before the close of the Geneva portion of the Session.¹⁰⁵

I. Parties To The Treaty Shall Consider Requests By Other Parties To Be Afforded An Opportunity To Observe The Flight Of Space Objects Launched By Those States; The Nature Of The Opportunity Afforded Shall Be Determined By Agreement Between The Parties Concerned

Article X of the Treaty pertains principally to the establishment and use of tracking facilities by parties to the Treaty on the territory of other parties. Although there is little in the available published material reflecting discussions on this matter, protracted disagreement among delegations, particularly between the United States and Soviet delegations, proved to be a major stumbling block to agreement on the Treaty as a whole. Ambassador Goldberg stated to the Senate Foreign Relations Committee, "This is a provision that gave us a great deal of trouble. It required long negotiation to come out as it did."¹⁰⁶

The genesis of the provision is in the second sentence of Article I of the Soviet draft which provided that "The parties to the Treaty undertake to accord equal conditions to States engaged in the exploration of outer space." No comparable provision appeared in the United States draft. Essentially, the Soviet Union was seeking the inclusion of a most-favored nation clause with respect to the availability of tracking facilities. Mr. Morozov, the head of the Soviet delegation, explained that this sentence in the Soviet draft "meant that if State A permitted State B to build a tracking station on its territory, State C, which was pursuing the same peaceful aims in space, should be given the opportunity to build a similar station on A's territory. The provision, of course, would not affect the similar right of State A to refuse to grant such privileges to either State B or State C."¹⁰⁷ Although the Soviet position received some adverse comment during the Geneva portion of the Session,¹⁰⁸ there appears to have been little thought that the Soviet delegation would insist on such a provision to the point of jeopardizing agreement on other provisions. However, towards the close of the Geneva portion of the Session, the Soviet delegation introduced a working paper which sought to clarify the meaning of the second sentence of Article I of its draft, and made clear Soviet insistence for a mandatory most-favored nation provision on the availability of tracking facilities.¹⁰⁹

When the New York portion of the Session opened, the United States delegation and its supporters strongly opposed the Soviet proposal. Indeed,

¹⁰⁵ Working Group/L.9, 2 Aug. 1966, in *Report of the Legal Subcommittee*, ANNEX II at 10.

¹⁰⁶ *Senate Hearings*, *supra* note 53, at 43.

¹⁰⁷ SUM. REP. 63 at 6.

¹⁰⁸ See statements by the Brazilian delegate, SUM. REP. 63 at 9; the United Kingdom delegate, SUM. REP. 63 at 9; and the United States delegate, SUM. REP. 63 at 10.

¹⁰⁹ Working Paper No. 23/CORR. 1, 29 July 1966, in *Report of the Legal Subcommittee*, ANNEX III at 12; SUM. REP. 70 at 2.

it appeared that success or failure of the negotiations would depend on whether an accommodation could be reached on the availability of tracking facilities to parties to the Treaty. Ambassador Goldberg stated that "The United States could not understand why the Soviet Union now regarded the tracking facilities proposal as the key point of 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."¹¹⁰

The United States delegate explained that his delegation could not accept the Soviet proposal since it

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 the tracking of 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 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 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-cooperation. 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 programs would have no obligation at all towards other countries. In that way, a State that did not cooperate with others was placed in the strongest position to demand that States wishing to cooperate 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.¹¹¹

The United States was supported in opposition to the Soviet proposal by Australia, Austria, Belgium, Brazil, Canada, France, Italy, Japan, Lebanon, Mexico, Sweden, and the United Kingdom.¹¹²

Notwithstanding the strenuous objections of the United States and its supporters, the Soviet Union tabled a revised working paper which reiterated its earlier position, but stated in a second paragraph that any expenses incurred by a party to the Treaty in rendering assistance to another party for the purpose of observing the flight of space objects would be reimbursed by the party receiving the assistance.¹¹³ The Hungarian and Bulgarian delegations supported the Soviet working paper.¹¹⁴ From a state-

¹¹⁰ SUM. REP. 73 at 4.

¹¹¹ *Id.* at 4-5.

¹¹² See statements by the United Kingdom delegate, SUM. REP. 71 at 5; the Austrian delegate, SUM. REP. 71 at 11; the Japanese delegate, SUM. REP. 71 at 13; the Australian delegate, SUM. REP. 71 at 15; the Brazilian delegate, SUM. REP. 71 at 17-18.

¹¹³ Working Paper No. 29, 13 Sept. 1966, in *Report of the Legal Subcommittee*, ANNEX IV at 2.

¹¹⁴ SUM. REP. 71 at 21 (Hungary); SUM. REP. 73 at 12 (Bulgaria).

ment by the Soviet delegate, it was apparent that the Soviet Union wished to use the Treaty as a vehicle to place itself in a more equal position vis-à-vis the United States in the acquisition of a world-wide tracking network.¹¹⁵ The effect of the most-favored nation provision regarding the use of tracking facilities would be to require any party to the Treaty, which permitted its territory to be used for tracking facilities by the United States or France, for example, to afford the Soviet Union the same right.

The New York portion of the Fifth Session adjourned without an accommodation on the use of tracking facilities and, for a time, it appeared that agreement on the Treaty as a whole would be postponed indefinitely. However, extensive bilateral negotiations continued to be held between the United States, the Soviet Union, and other States, particularly those which have already granted tracking facilities to the United States.¹¹⁶ Agreement was reached on the text of Article X shortly before the entire Treaty was approved by the General Assembly. Although the most-favored nation principle sponsored by the Soviet Union was included in the Treaty, the disagreement was resolved essentially in favor of the United States' position. Parties to the Treaty which afford tracking facilities to other parties are only obligated to "consider on a basis of equality any requests by other States Parties to the Treaty to be afforded an opportunity to observe the flight of space objects launched by those States." However, as Ambassador Goldberg stated before the General Assembly's Political Committee:

It is quite clear from the text of the Article . . . that there must be agreement between the parties concerned for the establishment of a tracking facility. The Article as thus revised recognizes that the elements of mutual benefit and acceptability are natural and necessary parts of the decision whether to enter into an agreement concerning such a facility, and it properly incorporated the principle that such State which is asked to cooperate has the right to consider its legitimate interests in reaching its decision.¹¹⁷

Since this interpretation remained unchallenged, it appears that the Soviet Union essentially acceded to the United States position.

J. Parties To The Treaty Shall Agree To Inform The Secretary-General Of The United Nations As Well As The Public And The International Scientific Community, To The Greatest Extent Feasible And Practicable, Of The Nature, Conduct, Locations And Results Of Such Activities.

Article XI of the Treaty, a provision for reporting of activities in outer space and on celestial bodies, originated with Article 4 of the United States draft. The United States initially took the position that parties to the Treaty should be under a mandatory obligation to "promptly provide the Secretary-General of the United Nations with a descriptive report of the

¹¹⁵ SUM. REP. 73 at 6-7.

¹¹⁶ See Ambassador Goldberg's statement in *Senate Hearings*, *supra* note 53, at 154-55.

¹¹⁷ Statement by Ambassador Goldberg, *supra* note 53, at 82.

nature, conduct and locations" of activities on celestial bodies and "make the findings of such activities freely available to the public and the international scientific community." The Soviet Union had no comparable provision in its draft. But shortly after the Geneva portion of the Session opened, the Soviet delegation readily acceded to the United States view, at least to the extent that there should be some provision in the Treaty for reporting and disseminating information. However, the Soviet proposal was that the reporting of activities on celestial bodies should be a voluntary matter on the part of the States concerned:

A State conducting activities on celestial bodies will, on a voluntary basis, inform the Secretary-General of the United Nations and also the public and the international scientific community of the nature, conduct and locations of such activities.¹¹⁸

The Soviet delegation relied on the precedent established by General Assembly Resolution 1721 (XVI), 1961, which, *inter alia*, provided for the exchange of information relating to space activities on a voluntary basis.¹¹⁹ But, as the Canadian delegate suggested, although Resolution 1721 (XVI) established a precedent with respect to the principle of reporting, it did not create a treaty obligation, and therefore did not preclude the establishment of a mandatory requirement for the dissemination of scientific and technical information to the entire world.¹²⁰

As expected, debate during the Geneva portion of the Session took the form of argument over whether reporting of activities in outer space and on celestial bodies should be mandatory or voluntary. In supporting the United States position, the Australian delegate argued that obligatory reporting of activities on celestial bodies is a "logical corollary to provisions already agreed upon in substance which called for freedom of scientific investigation in outer space and on celestial bodies, and for international cooperation in such investigation. If cooperation among nations were to be sought, full exchange of information would be necessary as a matter of treaty obligation."¹²¹ Indeed, the United States and its supporters were seeking to embody in treaty form a principle that had already become a hallmark of the United States space program: a requirement that there be full dissemination of scientific and technical information for peaceful purposes.¹²²

¹¹⁸ Working Paper No. 4, 21 July 1966, in *Report of the Legal Subcommittee*, ANNEX III at 3.

¹¹⁹ Statement of the Soviet delegate, SUM. REP. 64 at 12.

¹²⁰ SUM. REP. 65 at 4.

¹²¹ SUM. REP. 65 at 7. The Italian delegate made essentially the same argument, SUM. REP. 70 at 9.

¹²² National Aeronautics and Space Act of 1958, § 102(c), as amended, 42 U.S.C. 2451(c) provides that:

The aeronautical and space activities of the United States shall be conducted so as to contribute materially to one or more of the following objectives:

(1) The expansion of human knowledge of phenomena in the atmosphere and space; . . .

(7) Cooperation by the United States with other nations and groups of nations in work done pursuant to this Act and in the peaceful application of the results thereof

Section 203(a)(3) of the same Act, 42 U.S.C. 2473(a)(3), requires the National Aeronautics and Space Administration to ". . . provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof."

The Soviet Union continued to oppose any provision for mandatory reporting, however, and efforts at compromise were thus generated. Towards the close of the Geneva portion of the Session, the United Arab Republic [U.A.R.] submitted a working paper which essentially retained the Soviet proposal for voluntary reporting in the first paragraph, but added a second paragraph providing that "All information shall be promptly submitted, preferably in advance or at the carrying out of these activities or immediately after." A third paragraph provided that

The United Nations should be prepared to disseminate these [sic] information immediately and effectively after receiving the said information which has to be ample and in detail for the benefit of the general public and the international scientific community.¹²³

Although one might seek to interpret the second paragraph of the U.A.R. proposal as a mandatory reporting provision, a fair reading of the first two paragraphs together would seem to indicate that the U.A.R. was suggesting that the parties to the Treaty would agree to report voluntarily on their activities, but if a party chooses to report on a particular activity, it must do so promptly. At least the Soviet Union appears to have regarded the U.A.R. draft as preserving reporting only on a voluntary basis, for the Soviet delegation accepted the U.A.R. draft.¹²⁴ However, the United States delegation agreed to the U.A.R. draft only to the extent that it provided that "The United Nations should undertake to ensure the dissemination of information as soon as it was received."¹²⁵ The agreement thus reached resulted, with changes in wording, in the last sentence of Article XI of the Treaty: "On receiving the said information the Secretary-General of the United Nations should be prepared to disseminate it immediately and effectively."¹²⁶

At the outset of the New York portion of the Session, agreement had still not been achieved on a general reporting provision.¹²⁷ In order to meet the objections raised by the Soviet Union, the United States proposed a revised version of its Article 4 which did not obligate the parties to report on their activities in outer space and on celestial bodies without exception.¹²⁸ The key language of the new United States proposal was

¹²³ Working Paper No. 7/CORR. 1, 27 July 1966, in *Report of the Legal Subcommittee*, ANNEX III at 5.

¹²⁴ SUM. REP. 70 at 3.

¹²⁵ *Id.* at 5.

¹²⁶ One might question the legality of the last sentence of Article X as an attempt by states which are parties to a multilateral treaty to impose an obligation on an international organization which is not a party. However, the United Nations had already undertaken certain activities in the exchange of information relating to outer space matters pursuant to prior General Assembly resolutions such as 1721 (XVI), 20 December 1966, and 2130 (XX), 21 December 1965. And, it might be argued that in endorsing the Outer Space Treaty by resolution on 19 December 1966, the General Assembly was impliedly undertaking to carry out any obligations sought to be imposed upon it consistent with its prior resolutions. As a practical matter, the Secretary-General would hardly decline to abide by the intent of the last sentence of Article XI.

¹²⁷ It should be noted, in this connection, that agreement had already been achieved on mandatory reporting provisions with respect to two specific subject matters. Pursuant to Article V, phenomena discovered in outer space or on celestial bodies which might endanger the life or health of astronauts must be reported to the other parties to the Treaty or to the Secretary-General. The duty of parties, which plan potentially harmful experiments, to consult with other parties, pursuant to Article IX, implies the duty to report on those experiments.

that the parties to the Treaty, "to the extent feasible and practicable, will promptly submit reports to the other Parties to the Treaty, The Secretary-General of the United Nations, and to the international scientific community." (Emphasis added.) The U.A.R. revised its proposal to accord with the United States revision.¹²⁹ The phrase "to the extent feasible and practicable" is identical to that used in the analogous reporting provision in the Antarctic Treaty, and the text finally agreed upon for Article XI of the Outer Space Treaty closely parallels the language of Article III of the Antarctic Treaty.¹³⁰

With the introduction of the revision of Article 4 of the United States draft, little difference remained between the United States and Soviet positions. As the Italian delegate added, "[W]ith a little goodwill the Subcommittee should be able to reach early agreement"¹³¹ on a reporting provision. However, the Soviet Union and its supporters conditioned final agreement on this and other provisions upon a resolution of the dispute over the availability of tracking facilities.¹³² Thus, agreement on the final text of Article XI was not achieved until the parties finally agreed upon the substance of Article X.

*K. Stations, Installations, And Space Vehicles On The Moon And Other
Celestial Bodies Shall Be Open To Representatives Of Parties On
A Basis Of Reciprocity. Representatives Shall Give Reasonable
Advance Notice In Order That Consultations May Be Held,
Safety Precautions Taken And Interference With
Operations Avoided.*

Article XII of the Treaty is another provision which reflects a compromise of United States and Soviet positions. Article 6 of the United States draft initially provided that

All areas of celestial bodies, including all stations, installations, equipment and space vehicles on celestial bodies, shall be open at all times to representatives of other States conducting activities on celestial bodies.¹³³

The Soviet draft did not contain a comparable provision although one might regard the second paragraph of Article I of the Soviet draft as overlapping Article 6 of the United States draft, at least to the extent that the Soviet version provided that "there shall be free access to all regions of celestial bodies." As discussed in connection with Article I of the

¹²⁸ Working Paper No. 31, 13 Sept. 1966, in *Report of the Legal Subcommittee*, ANNEX IV at 4. See also the statement by the United States delegate in SUM. REP. 73 at 3.

¹²⁹ Working Paper No. 33, 14 Sept. 1966, in *Report of the Legal Subcommittee*, ANNEX IV at 6.

¹³⁰ Article XI of the Outer Space Treaty begins: "In order to promote international cooperation in the peaceful exploration of outer space . . ." Article III of the Antarctic Treaty begins "In order to promote international cooperation in scientific investigation in Antarctica . . ."

¹³¹ SUM. REP. 73 at 7.

¹³² See statement of the Bulgarian delegate, SUM. REP. 73 at 12.

¹³³ Article 6 of the United States draft was based on Article VII, Paragraph 3, of the Antarctic Treaty which provides:

"All areas of Antarctica, including all stations, installations, and equipment within those areas and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica shall be open at all times to inspection by any observers designated [by the Contracting Parties]."

Treaty, the Soviet Article I related more to the broad principle of freedom of scientific investigation on celestial bodies which was eventually covered by Article I of the Treaty. As the Soviet delegate explained, the geographical idea of "areas of celestial bodies" was on a somewhat different plane from "stations, installations, equipment and space vehicles."¹³⁴

At the outset of the Geneva portion of the Session, the Soviet delegation accepted Article 6 of the United States draft subject to deletion of the words "all areas of celestial bodies, including," the deletion of "at all times," and the addition of the phrase: "on the basis of reciprocity under the conditions that the time of the visit is to be agreed between the parties concerned."¹³⁵ In a revision of Article 6 of its draft, the United States delegation accepted the Soviet suggestion that the initial phrase be deleted, but did not agree to the other proposed amendments.¹³⁶ Ambassador Goldberg stated that "The deletion of the words 'at all times' and the addition of a requirement that the time of visits would have to be agreed upon would frustrate the right of access." He added that no difficulties had been experienced in carrying out the purposes of Article VII, Paragraph 3, of the Antarctic Treaty, on which Article 6 of the United States draft was based.¹³⁷ The Soviet delegate responded that the Soviet Union fully accepted the principle of open access stated in Paragraph 6 of the United States draft, and the proposed Soviet amendments were merely drafting changes to clarify the intent of the parties.¹³⁸

Notwithstanding the Soviet delegate's statement to the effect that the Soviet amendments were merely drafting changes, there remained an important substantive difference between the United States and Soviet views on the right of access to stations, etc., on celestial bodies.¹³⁹ The United States was seeking a treaty provision providing for an unlimited right of access. The Soviet Union, while accepting the principle of open access, was seeking to impose conditions upon the ability of individual nations to exercise that right.

With respect to the Soviet suggestion that the phrase "at all times" be deleted, the Soviet delegate explained that his delegation did not consider that a right of access to stations, etc., should be so absolute as to permit access to the point of endangering the lives of astronauts or interfering with the normal operations.¹⁴⁰ This idea caught favor with certain delegations who ordinarily supported the United States position on other matters. The Japanese delegation proposed an amendment to Article 6 of the United States draft that retained the phrase "at all times," but also added a sen-

¹³⁴ SUM. REP. 63 at 4.

¹³⁵ *Id.* at 4-5. The Soviet amendments were later included as paragraph 4 of an amended Article I of the Soviet draft. Working Paper No. 23/CORR. 1., 29 July 1966, in *Report of the Legal Subcommittee*, ANNEX III at 12.

¹³⁶ Working Paper No. 3, 21 July 1966, in *Report of the Legal Subcommittee*, ANNEX III at 2.

¹³⁷ SUM. REP. 63 at 6.

¹³⁸ *Id.*

¹³⁹ As a matter of minor significance, the Indian delegate suggested that a reference to "outer space" be included in Article 6 of the United States draft on the supposition that platforms will be constructed in space. SUM. REP. 64 at 7. It appears, however, that this suggestion was not taken seriously by other delegations.

¹⁴⁰ SUM. REP. 64 at 9, 10.

tence providing that "representatives shall take maximum precaution not to interfere with the normal operation of activities therein."¹⁴¹ The Italian delegation also proposed an amendment to Article 6 which would have deleted the phrase "at all times" and conditioned the right to "free, immediate access" to stations, etc., "on the understanding that the time of the visit should not imperil the lives of the personnel and the functioning of the installations involved."¹⁴²

Although there was general agreement that Article 6 of the United States draft should be modified to permit denial of access to a prospective visitor if the visit would be untimely, the Soviet suggestion that the right of access should be on a basis of "reciprocity" provoked considerable discussion. A refusal to permit a visitor to enter a station for reasons of untimeliness need not necessarily be regarded as a refusal to permit entry under any circumstances. The suggested inclusion of the "reciprocity" language, however, suggested to several delegations that if a particular nation, which controls a station on a celestial body, has no desire to inspect the stations, installations, etc., of other nations, it is under no obligation to permit visitors from other stations to enter its own stations, unless bilateral agreements provide otherwise.¹⁴³ Moreover, there was a fear on the part of nations having only very small space programs, or no space program at all, that conditions of reciprocity would only benefit the space powers. States having no station, installation, etc., on a celestial body would not be entitled to visit a station controlled by another State. Or, would "reciprocity" be so narrowly construed as to mean that if State A has one station and State B has five stations on a celestial body, State A could be barred from visiting four of the five stations controlled by State B?¹⁴⁴ The confusion was compounded by the failure of the Soviet delegation to provide an adequate definition of "reciprocity" after having gone on record as being in favor of "open access."

After much discussion over the meaning of reciprocity, the United States delegate restated his nation's position as follows:

Access should not be conditional, and the notion of prior agreement implied a sort of veto on it. Representatives of a State Party to the Treaty conducting activities on celestial bodies should have the right of access to the stations, installations, equipment and space vehicles of another State party on a celestial body, regardless of whether the second State had ever claimed or exercised a right of access itself; however, if the first State had denied access to representatives of the second State then the latter was not required on the principle of reciprocity to grant access to representatives of the first State. That was a well-established principle of law, and that was why the United States delegation thought that no mention of reciprocity was needed. The United States was however prepared to include in its text 'on the basis

¹⁴¹ Working Paper No. 28, 4 Aug. 1966, in *Report of the Legal Subcommittee*, ANNEX III at 16. See SUM. REP. 64 at 8.

¹⁴² Working Paper No. 26, 3 Aug. 1966, in *Report of the Legal Subcommittee*, ANNEX III at 14. See SUM. REP. 70 at 9.

¹⁴³ See statements by the Australian delegate, SUM. REP. 63 at 8; the Mexican delegate, SUM. REP. 63 at 8; the United Kingdom delegate, SUM. REP. 63 at 9.

¹⁴⁴ See statements by the Italian delegate, SUM. REP. 64 at 5; and the Canadian delegate, SUM. REP. 64 at 7.

of reciprocity,' if the above-mentioned interpretation was universally shared and if the other provisions in the article were consistent with the idea of reciprocity.¹⁴⁵

Thus, by the end of the Geneva portion of the Session, the United States had acceded to including "reciprocity" language in the treaty provision covering access to stations, etc., subject to certain interpretive caveats.¹⁴⁶

By the opening of the New York portion of the Session, the only remaining issue with respect to Article 6 of the United States draft involved the desire of many of the Subcommittee members to include limitations on the right of access in consideration of safety precautions and non-interference with ordinary operations of stations, installations, etc. The issue was whether to condition the right of access upon prior agreement as to timeliness, or whether the right of access should be unqualified, but some language included to require that prospective visitors consider such factors as the safety of astronauts before insisting upon a right of entry. The United Kingdom and Mexico favored the latter approach,¹⁴⁷ which was also the view of the Japanese delegation in its proposed amendment to Article 6 of the Soviet draft.¹⁴⁸ Hungary and Bulgaria, in support of the Soviet position, would not accept the "at all times" language of Article 6 of the United States draft.¹⁴⁹ The issue was resolved when the United States introduced a revised version of Article 6 which omitted the phrase "at all times," and added the language that was eventually adopted as the second sentence of Article XII of the Treaty.¹⁵⁰ Agreement was rapidly achieved on the text of the United States version.¹⁵¹ But since the Soviet delegation and its supporters refused to agree to any formal adoption of additional treaty supporters refused to agree to any formal adoption of additional treaty articles until agreement had been attained on the matter of availability of

¹⁴⁵ SUM. REP. 70 at 6-7.

¹⁴⁶ Ambassador Goldberg has made clear in subsequent statements that the agreement of the United States to include the phrase "on the basis of reciprocity" in Article XII is based upon the understanding apparently reached that the right of access by one state is not conditioned upon whether a second state wishes to exercise its right of access. See Ambassador Goldberg's statement, *supra* note 53, at 80; and his statement before the Senate Foreign Relations Committee in *Senate Hearings, supra* note 53, at 152.

¹⁴⁷ SUM. REP. 71 at 4, 20.

¹⁴⁸ See SUM. REP. 71 at 12.

¹⁴⁹ *Id.* at 21, 23.

¹⁵⁰ Working Paper No. 30, 12 Sept. 1966, in *Report of the Legal Subcommittee, ANNEX IV* at 3. As Ambassador Goldberg later stated before the Senate Foreign Relations Committee:

On reflection it seemed clear that the inspection provisions of the Antarctic Treaty from which our access language was drawn were not in all respects appropriate for the Outer Space Treaty. This was especially true in view of the far greater difficulties and hazards of lunar exploration in contrast to Antarctic exploration—the extreme importance of unimpaired oxygen supply, the need for careful conservation of life-supporting systems, and the difficulty of surface travel. We would not want to receive a visit from the Soviets or any other party if that visit would jeopardize the lives of our astronauts. We also bore in mind the practical fact that for the foreseeable future it would be immensely difficult to engage in forbidden activities on the moon without detection. *Senate Hearings, supra* note 53, at 153.

¹⁵¹ Consistent with Ambassador Goldberg's statements regarding the United States agreement to include the phrase "on the basis of reciprocity" in Article XII, he has also stated that the United States' agreement to include the second sentence of Article XII is predicated on the understanding that the requirement for reasonable advance notice of a projected visit, in order that appropriate consultations be held and precautions taken, is not to be taken as a right in the state whose facility is being visited to veto the visit. See Ambassador Goldberg's statement, *supra* note 53, at 81; and his statement before the Senate Foreign Relations Committee, *Senate Hearings, supra* note 53, at 153.

tracking facilities,¹⁵² final agreement by the Subcommittee on the text of Article XII was reached at about the same time as agreement was obtained on Article X of the Treaty.

L. *The Provisions Of The Treaty Shall Apply To Parties Whether Acting Singly, Jointly With Other States, Or Within The Framework Of International Inter-Governmental Organizations. Practical Questions Shall Be Resolved By Parties Either With The Appropriate International Organization Or With One Or More States Members Of That International Organization, Which Are Parties To This Treaty.*

The first twelve articles of the Outer Space Treaty more or less prescribe general rules governing the conduct of parties to the Treaty. Article XIII does not provide any additional rules governing such conduct, but rather seeks to establish the applicability of the substantive principles to actions by the parties whether taken singly, jointly, or within the framework of international organizations. To a degree, the relationship of international organizations to the Treaty is covered by the third sentence of Article VI, which was taken from Article VI of the Soviet draft, which, in turn, is a reflection of Paragraph 5 of the *Declaration of Legal Principles*. The third sentence of Article VI provides that when activities are undertaken in outer space or on celestial bodies by an international organization, responsibility for compliance with the Treaty shall be borne by both the international organization and the participants in the organization who are also parties to the Treaty. While this provision was considered adequate as an expression of principles included in a General Assembly Resolution, several delegations regarded it inadequate as a contractually binding document establishing rights and duties among the parties.

The delegations dissatisfied with Article VI of the Soviet draft represented nations whose space activity is presently being carried out within the framework of international organizations, such as the European Space Research Organization, or nations involved with other States in joint activity. Those nations, particularly the United Kingdom, France, Belgium, Sweden, and Australia, believed that the Soviet version left unclear the status of an international organization vis-à-vis States Parties to the Treaty and also appeared to deny the benefits of the Treaty to international organizations while requiring them to assume the burdens.¹⁵³ In response to the suggestion that international organizations as separate entities be permitted to become parties to the Treaty, the Soviet delegation insisted that under international law only a State may become a party to a treaty, and that its proposal merely imposed the provisions of the Treaty on the States Parties to it even when acting within the framework of an international organization.¹⁵⁴

The British delegate, relying on an opinion by the International Court

¹⁵² See statement by the Bulgarian delegate, SUM. REP. 73 at 12.

¹⁵³ See the statement by the United Kingdom delegate, SUM. REP. 66 at 13.

¹⁵⁴ SUM. REP. 67 at 3.

of Justice,¹⁵⁵ argued that since an international organization as an entity may assume rights and duties under international law, it might be possible for the purposes of the Treaty to regard the organization as the sum of its members. With that in mind, he introduced a proposed new article which would establish a procedure whereby an international organization might legally subject itself to the provisions of the Treaty without becoming a party to it.¹⁵⁶ Under the British proposal, an international organization conducting activities in outer space or on celestial bodies would file a declaration with a depositary authority that it accepts and undertakes to comply with all of the provisions of the Treaty except the articles concerning signature, ratification and accession by parties. States which are parties to the Treaty would be obligated to use their best efforts to "ensure" that such a declaration is filed by international organizations of which they are members and which conduct space activities. Prior to the time that a declaration is filed, parties to the Treaty that are members of the organization would take steps to assure that the organization complies with the "principles" of the Treaty.¹⁵⁷

Although the United Kingdom proposal received significant support, notably from Belgium, France, Australia, and Sweden, the United States did not intervene actively in favor of it during the debates notwithstanding strenuous objections by the Soviet Union and its supporters. The Soviet delegate rejected the British proposal out of hand as an attempt to endow international organizations with the same status as States Parties to the Treaty. Moreover, the Soviet delegate viewed the British proposal as a vehicle to permit parties to escape their obligations under the Treaty by conducting their activities in outer space through the framework of an international organization prior to the time that the organization files a declaration with a depositary authority.¹⁵⁸ The Italian delegate envisioned the same loophole and also questioned the method by which a State not a party to the Treaty but belonging to an international organization which was a party, could be compelled to abide by the provisions of the Treaty.¹⁵⁹ The Indian delegate had difficulty in understanding how States Parties to the Treaty would "ensure" that any international organization to which they belonged would make the necessary declarations, particularly where the States Parties to the Treaty are minority members of the organization.¹⁶⁰ And while the Soviet delegation regarded the British proposal as tantamount to making international organizations parties to the Treaty, the Austrian delegation took the converse position that such organizations would not be parties, but as non-parties they could not be required to fulfill their obligations under the Treaty.¹⁶¹

¹⁵⁵ The United Kingdom delegate relied on the *Reparations Case*, [1949] I.C.J. 174 stating that the United Nations, as an entity, may be considered liable in connection with reparations for damages suffered in the service of the United Nations. This advisory opinion by the Court is reprinted in 43 AM. J. INT'L L. 589 (1949).

¹⁵⁶ Working Paper No. 17, 25 July 1966, in *Report of the Legal Subcommittee*, ANNEX III at 8.

¹⁵⁷ The British delegate's explanation of his delegation's proposal appears in SUM. REP. 67 at 5.

¹⁵⁸ SUM. REP. 67 at 6.

¹⁵⁹ *Id.* at 7.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*, at 8.

In view of the opposition, the United Kingdom delegation agreed to the inclusion of the third sentence of Article VI of the Soviet draft subject to the outcome of further discussion on the merits of the British proposal.¹⁶² Considerable sentiment in favor of including a separate article on international organizations was voiced by Sweden, France, Belgium, Australia, and Iran.¹⁶³ The comments made were to the effect that there ought to be a way by which international organizations could assume rights and responsibilities under the Treaty without becoming parties, and that the practical problems involved in the relationships between States Parties to the Treaty and the international organizations of which they are members should be viewed as internal matters within the organizations.

Article XIII is the result of these discussions. It does not provide a mechanism whereby international organizations can become, for all practical purposes, parties to the Treaty. But it does provide that the provisions of the Treaty shall apply to space activities carried out by parties to the Treaty within the framework of international intergovernmental organizations.¹⁶⁴ The matter of how they will be made to apply in individual situations is an internal matter to be resolved between the States Parties to the Treaty and the international organizations of which they are members.

M. Miscellaneous Matters.

A word should be said here about settlement of disputes. The Treaty does not include a provision for recourse to a court, arbitral tribunal, or some other procedure for resolution of disputes arising between parties to the Treaty over matters covered therein. However, both the United States and Soviet drafts contained proposed articles on settlement of disputes. Article 11 of the United States draft provided for recourse to the International Court of Justice for a decision. Article X of the Soviet draft provided merely that "the States Parties concerned shall immediately consult together with a view to their settlement." Previous sessions of the Legal Subcommittee on the draft assistance and return and liability conventions had revealed an inability on the part of the United States and Soviet delegations to compromise their differences on this matter.¹⁶⁵ In the interest of expediting agreement on the Treaty as a whole, neither the United States nor the Soviet delegations pressed for inclusion of a specific provision covering resolution of disputes, and little time during the debates was devoted to it. In the absence of a provision on this subject, disputes between parties over applications or interpretations of provisions of the Treaty may be resolved in accordance with any method agreed upon by the parties, subject, of course, to any limitations imposed by other applicable international agreements binding upon the parties to the dispute.¹⁶⁶

¹⁶² SUM. REP. 71 at 5-6.

¹⁶³ SUM. REP. 70 at 12-13 (Sweden), SUM. REP. 70 at 15 (France), SUM. REP. 71 at 7 (Belgium), SUM. REP. 71 at 16 (Australia), SUM. REP. 71 at 25 (Iran).

¹⁶⁴ With respect to international nongovernmental organizations, see note 83 *supra*.

¹⁶⁵ See Dembling and Arons, *supra* note 25, at 356.

¹⁶⁶ The Rumanian delegate suggested that an optional protocol be established with regard to settlement of disputes which might permit individual parties to invoke the compulsory jurisdiction of the International Court of Justice. SUM. REP. 71 at 19.

The only remaining provision which involved controversy is contained in the first sentence of the first paragraph of Article XIV. That sentence provides that the Treaty shall be open to all States for signature. This was the position advocated by the Soviet Union in its draft. The United States, in Article 12 of its draft, proposed that the Treaty

be open for signature by States Members of the United Nations or of any of the specialized agencies or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a party.

The United States formulation would have probably excluded certain non-United Nations members from being permitted to become parties to the Treaty, notably Communist China and East Germany.

The United States delegate, supported by the United Kingdom, explained that the formulation advocated by the United States was consistent with that used in other United Nations treaties and resolutions.¹⁶⁷ However, as explained by the Rumanian delegate in support of the Soviet position, none of the other Treaty provisions purported to discriminate between nations; and many of the provisions appealed to all States to participate in regulating the activities of States in outer space and on celestial bodies in the interest of all mankind.¹⁶⁸ The United States agreed to the Soviet formulation "because of exceptional circumstances favoring a very broad geographical coverage for the Space Treaty," but subject to the understanding that accession to the Treaty by a regime or entity not recognized by the United States does not, without more, amount to recognition of that regime or entity by the United States.¹⁶⁹

Little need to be said about the remaining provisions of the Treaty. There was some debate over what agency would constitute the depositary authority. Article 13 of the United States draft provided that instruments of ratification, approval or accession shall be deposited with the Secretary-General of the United Nations. The Soviet draft, in Article XI, provided for such instruments to be deposited with governments to be designated. The Soviet delegate explained that his delegation's position on this matter was consistent with its position on the issue of whether "all States" or only those permitted by the United Nations should be permitted to sign the Treaty. He argued that if the Secretary-General were to become the depositary for the Treaty, the Secretary-General would have to ask the General Assembly which States could be parties to it, thereby contradicting the "all States" principle set forth in the first paragraph of Article XI of the Soviet draft.¹⁷⁰ This argument appears to have been persuasive since paragraph 2, as well as paragraph 1, of Article XIV, reflects the Soviet position. The governments designated as the depositary authorities are the Soviet Union, the United Kingdom and the United States.

The remainder of Article XIV concerns the mechanics and legal effect

¹⁶⁷ SUM. REP. 68 at 17.

¹⁶⁸ SUM. REP. 71 at 18.

¹⁶⁹ Statement by Ambassador Goldberg, *supra* note 53, at 82.

¹⁷⁰ SUM. REP. 68 at 19.

of ratification and deposit of instruments of ratification and accession. Paragraph 3 provides that the Treaty shall enter into force upon the deposit of instruments of ratification by five governments including the depositary governments. According to paragraph 4, ratification or accession by a State subsequent to the entry into force of the Treaty shall be effective with the deposit of the instrument of ratification or accession. Paragraph 5 requires the depositary governments to notify all signatory and acceding States of the dates of signatures, deposits of instruments of ratification, etc. Paragraph 6 provides that the Treaty shall be registered pursuant to Article 102 of the Charter of the United Nations.¹⁷¹

Article XV permits any State Party to the Treaty to propose amendments. For an amendment to be binding upon a party, that State must accept the amendment and, in any event, an amendment does not enter into force until it has been accepted by a majority of the States Parties to the Treaty.

Article XVI provides that any party may withdraw from the Treaty by giving written notice thereof, to the depositary governments, the withdrawal to take effect one year from the date of receipt of the notification. However, since no notice may be given until at least one year has elapsed after the Treaty has entered into force, no withdrawal can take place until at least two years from the date the Treaty entered into force.

Article XVII specifies that the Chinese, English, French, Russian, and Spanish texts of the Treaty are equally authentic, and that the texts shall be deposited in the archives of the depositary governments, which shall then transmit certified copies to the signatory and acceding States.

V. CONCLUSION.

As stated at the outset of this paper, the Treaty was approved by the United Nations General Assembly by acclamation on 19 December 1966. The Treaty was opened for signature in Washington, London and Moscow on 27 January 1967. Sixty nations signed the Treaty on that date including the United States, the Soviet Union and the United Kingdom. Advice and consent to ratification of the Treaty was given without a negative vote by the United States Senate on 25 April 1967. The Treaty was approved by the Presidium of the Supreme Soviet of the Soviet Union on May 18 of the same year.¹⁷²

With the Treaty having been signed and ratified by the two major space powers, as well as many other nations, the activities of human beings in outer space and on celestial bodies have been subjected to a regime of law. It is true, as President Johnson stated in transmitting the Treaty to the

¹⁷¹ Article 102 provides "1. Every treaty and every international agreement entered into by any member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

"2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement with any organ of the United Nations."

¹⁷² As of this writing, instruments of ratification have not yet been deposited by the United States and the U.S.S.R.

Senate for ratification, that "In the diplomacy of space, as in the technology of space, it is essential always that interim achievements not be mistaken for final success."¹⁷³ In establishing certain general principles, the Treaty leaves much to interpretation by the parties. The specific details with respect to such matters as inspection of installations on celestial bodies, the availability of tracking facilities, and consulting over potentially harmful experiments are left to further arrangements to be worked out between the States concerned. Nevertheless, the Treaty reflects a broad international consensus that outer space and celestial bodies are to be free for exploration and use for the benefit of all mankind; that the principles of international law are applicable thereto; that celestial bodies are to be devoted exclusively to peaceful purposes, and weapons of mass destruction are to be banned from outer space; that assistance is to be rendered to astronauts; that States are to be held internationally responsible for their activities in outer space, and held liable for damages caused thereby; that ownership of objects is not changed by their presence in outer space and on celestial bodies; that harmful contamination of the environment of earth, outer space, and celestial bodies shall be avoided; that information gathered from activities in outer space and on celestial bodies is to be broadly disseminated; and that stations, installations, etc., on celestial bodies are to be open for inspection.

In establishing these principles in treaty form, the parties are now contractually obligated to carry out their activities in outer space and on celestial bodies in accordance with accepted norms and goals validated in a legal form significantly more binding upon the parties than the United Nations resolutions and utterances of individual nations that preceded the Treaty. As President Johnson stated in his message to the Senate, "The future leaves no option. Responsible men push forward in the exploration of space, near and far. Their voyages must be made in peace for purposes of peace on earth. This Treaty is a step—a first step, but a long step—toward assuring the peace essential for the longer journey."¹⁷⁴

¹⁷³ 3 PRESIDENTIAL DOCUMENTS 198 (1967).

¹⁷⁴ *Id.* at 199.