

VERBATIM RECORD OF THE ONE HUNDRED AND SECOND MEETING

Held on Tuesday, 7 September 1971, at 10.30 a.m.

<u>Chairman:</u>	Mr. WALDHEIM	(Austria)
later,	Mr. DIACONESCU	(Romania)

## CONSIDERATION OF REPORTS (continued):

## (b) REPORT OF THE LEGAL SUB-COMMITTEE (A/AC.105/94)

The CHAIRMAN: In conformity with the procedure I suggested last week, we shall now begin our discussion of the questions put to the parent Committee by the Legal Sub-Committee -- that is, the convention on liability, and the priority to be given to the items before that Sub-Committee.

On the first question -- the convention on liability -- it will be recalled that I asked delegations to submit suggestions to the Rapporteur of this Committee. He informs me that he has received some suggestions, and I would ask delegations that have not already done so to submit to him in writing any suggestions they may have.

I shall now call on those representatives who wish to speak on the convention on liability.

Mr. MIKUCKI (Poland): Mr. Chairman, since this is the first time I have taken the floor during this session, on behalf of the Polish delegation I wish to express my satisfaction at seeing you preside over our proceedings with your usual skill and competence. We hope that this session of the Committee, which has met in an auspicious and business-like atmosphere, will produce fruitful results for consideration by the next session of the General Assembly.

Among the achievements of the United Nations programme in the outer space field, the draft convention on liability contained in the report of the Legal Sub-Committee (A/AC.105/94) deserves, in our opinion, high praise. Like most of the members of the Committee that have presented their views in the course of the general debate, we should like to express our deep satisfaction at the successful conclusion, after many years of arduous efforts and negotiations, reached at the last session of the Legal Sub-Committee.

Any international treaty, especially of a multilateral, universal character, is of necessity a product of compromise. The whole history of the United Nations programme for the codification and progressive development of international law does not provide any example of a treaty, agreement or convention which would equally and fully satisfy all the members of the international community. Therefore the measure of utility and of success of a new treaty lies in the answer to the question of whether it elaborates further the norms of international law to the benefit of the great majority of States and how wide its application may be; for even the most ambitious and far-reaching treaty will remain largely a dead letter if it does not command the support of and eventually ratification or accession by a large number of parties, including, in the field of outer space, the space Powers.

My delegation, speaking for one of the non-space countries, rests assured that the liability convention as worked out by the Legal Sub-Committee fully meets the conditions measuring the usefulness and success of a new and important juridical document. Let me mention just a few reasons for our views on the matter. First, all the instances of damage caused by a space object to property of non-space States or to their citizens are covered by a system of absolute liability. Second, no limit whatsoever is introduced in the draft convention on the amount to be paid to the victim, a fact which is welcomed by

(Mr. Mikucki, Poland)

the Polish delegation. Third, the right to prompt and complete reparation to the victim is fully established, regardless of whether the launching authority is a State or international organization. Fourth, the provisions of the draft stipulate an effective procedure for the settlement of claims, with a mechanism excluding any unnecessary delay or partiality in rendering the decisions or awards of the claims commission.

Those are some of the reasons which prompt us to believe that the convention, although not perfect, will indeed be a positive step in the right direction. Frankly, we have been somewhat surprised by the attitude of one or two speakers who seem to advocate an "everything or nothing" attitude. I am sure that my Government, for one, would not like to find itself in the very awkward position of arguing at some future time in the claims commission that the convention provides for a suitable compensation to be paid to it as a result of an accident and being told, as a counter-argument, that the Polish representative in the Committee on Outer Space had maintained that the convention did not create any legal obligations to the launching State.

The United Nations is an organization searching for the best solutions from the realistic point of view. As the representative of Belgium, Mr. Vranken, has reminded us, diplomacy is the art of the possible. My delegation believes, therefore, that, among all possible solutions which could command the meaningful support of the Members of the United Nations, those embodied in the draft convention submitted by the Legal Sub-Committee are really the most acceptable.

Turning now to the question of priorities for the future work of the Legal Sub-Committee, I should like to congratulate the Sub-Committee and in particular the delegations of Argentina and France, authors of the original proposal, on elaborating a very practical and timely outline for the future work of the Sub-Committee.

(Mr. Mikucki, Poland)

Problems facing it are both urgent and complex and they may require no less time and energy than the question of liability.

I have followed with attention the comments on the question of priority made by the members of the Committee during the general debate. At the top of the list of questions singled out by various delegations there are those relating to the peaceful exploration of the moon. We do support the choice made by the majority, especially the proposal presented by Poland and Argentina to the Legal Sub-Committee requesting an early examination of questions relating to the moon. At this juncture we wish to welcome the valuable initiative taken by the Soviet Union in presenting a draft treaty concerning the moon for inclusion in the agenda of the next session of the General Assembly. Taking into account the recent achievements of Apollo 15 and Lunokhod 1 -- on which we warmly congratulate the United States and the Soviet Union -- one must reach the conclusion that the legal aspects of man's activities and other questions concerning the moon are ripe for close scrutiny and treaty regulation.

Among the topics on which emphasis was placed for consideration at the next session of the Sub-Committee was the various implications of space communications. In view of the rapid developments in that field, as reviewed in the reports of the Working Group on Direct Broadcast Satellites and the specialized agencies concerned, we believe that this matter should also be accorded priority in the Legal Sub-Committee's work. In doing so, we would be complying with a specific request of the General Assembly, which in its resolution 2733 A (XXV), recommended that

"... the Committee on the Peaceful Uses of Outer Space should study through its Legal Sub-Committee, giving priority to the convention on liability, the work carried out by the Working Group on Direct Broadcast Satellites, under the item on the implications of space communications".

My remarks on this matter are not, of course, to minimize the significance of the other topics mentioned in the report of the Sub-Committee which also deserve the careful examination of that body of eminent jurists and diplomats.

Those were the remarks which my delegation wished to make in connexion with the report of the Legal Sub-Committee.

The CHAIRMAN: As representatives know the Rapporteur has been good enough to prepare a draft of this Committee's report to the General Assembly. I do not think it would be useful to discuss that draft now, because I know that some delegations intend to make reservations. We received some over the week-end from a few delegations, and I am not sure whether others wish to put forward their points of view today. Since no delegation -- other than the Polish delegation -- has indicated its desire to speak today, I wonder whether it would not be best to ask our Rapporteur to continue working on the draft until tomorrow so that those delegations wishing to make reservations can get into touch with him and have those reservations included in the record. We proceeded in this way in the past and, I am happy to say, it always worked for the common good.

I am informed by the Rapporteur that he wishes to speak in this connexion, so I now call on him.

Mr. SOUZA E SILVA (Brazil), Rapporteur: Since the Chairman has mentioned the procedure relating to the report, I wish to state that it is my intention to present it along the lines used in previous years. So far as the section on the Legal Sub-Committee -- and especially the convention on liability -- is concerned, at this point the draft report to be submitted to the Committee can reflect only the tendencies expressed during the general debate. I have received only one concrete suggestion by the three delegations which have expressed reservations to the convention, and I shall include those reservations in the report, more or less as drafted by those delegations. I shall also mention the qualifications to the convention made by other delegations.

I am still awaiting the Committee's decision, therefore, as to whether the report should contain a clear endorsement of the convention to be submitted to the First Committee of the General Assembly.

The CHAIRMAN: I thank the Rapporteur for his clarifications.

If there is no objection by delegations to my proposal, I shall take if that the Committee accepts this procedure.

Mr. VRANKEN (Belgium) (interpretation from French): The Belgian delegation has no objection to that procedure; but we should like to ask when the draft text will be made available to all delegations. Will it be possible at that time for us to react in respect of the reservations -- not to eliminate them but so as to clarify the position of other delegations? In the final analysis, everything will depend on the way in which the reservations are formulated and on the positions that various delegations will take. If this is not possible, it would be very difficult for the Belgian delegation to accept the text because it is important for us to know whether there will be a majority in favour of the draft. We have also heard from the various statements made last year that some delegations gave a certain interpretation to the text. For those reasons my delegation wishes to reserve its right to give its own interpretation -- as other delegations will no doubt wish to do -- to the proposed text.

Mr. SOUZA E SILVA (Brazil), Rapporteur: The representative of Belgium will have no problem in making his reservation or his reaction known, because the text is the same as that included in the report of the Legal Sub-Committee to the parent Committee.

If at this point I have not circulated a written text to the members of the Committee it is because today's meeting was scheduled to discuss the convention itself. It would have been premature, therefore, to place any text before representatives before a discussion on the subject had taken place.

Mr. VRANKEN (Belgium): I should like to concentrate, of course, on the draft convention on liability. I do so because, as I have already indicated a few minutes ago, certain delegations have wished to interpret article 12 of the draft, in particular, on what has been generally qualified as applicable law.

Certain delegations have maintained that this text covers nothing but a void. May I be allowed today to fill that void.

In the first place, as you well know, this article is composed of three ideas: the first is a reference to international law; the second, a reference to justice and equity, and the third, a reference to the purposes of the article, commonly called in law restitutio integrum of the status quo ante. The basis of this article is international law itself, and as I said, certain delegations seemingly felt that international law does not provide for anything at all.

That is not quite so. In international law there is a fundamental rule, one which has been accepted by all States: namely, the law that any damage caused by any States should be compensated for. This is a fundamental rule which has not been rejected by any State; this theoretical provision is confirmed by international jurisprudence, and I shall take the liberty of mentioning the most important case on this subject, which was the Chorzow case. There were two decisions in that case: the first on 26 July 1927, on the competence of the Court, and the other, the final decision, on 13 September 1928. I quote the following passage from the first decision:

"It is a principle of international law that the violation of a commitment involves an obligation to compensate in an appropriate form". In the final decision we find the following passage:

"The essential principle which flows out of the very concept of an illicit act and which seems to flow out of international practise itself -- specifically, the jurisprudence of arbitral tribunals -- is that the compensation must as far as possible erase all the consequences of the illegal act and restore the status which would have existed had the act not occurred."

(Mr. Vranken, Belgium)

This idea of the Chorzow Case was confirmed in the decision on the requisitioning of Norwegian ships which was pronounced by the Arbitration Court of The Hague in 1922. Moreover, we were told that this reference to international law was vague and that total indemnization was not confirmed. In my intervention last week I had said that that was doubtless so, but not because there is no rule of international law, but rather because there is a difference between national legal systems. It would be necessary to change national systems in order to achieve an international rule of law. In this regard I should like nevertheless to point out that my delegation, for one, in this perspective, will always be at a disadvantage, because under Belgian law the restitutio in integrum is the most important of all national laws. Only French national law gives it more emphasis than Belgian law; but that is the only national law which does. As you perhaps know, Belgian law, just like French law, too, contains a concept which does not exist in other legal systems and which we in Belgium call moral damage.

I should not be asked here to give a definition of moral damage, for that would be quite impossible. An example of such moral damage would be the hardship sustained by a lady who has lost her husband. I know that it is not always a hardship, but it is a kind of damage which is recognized by Belgian and French law. Therefore, to try to define the extent of compensation under international law is an impossible task, and we shall never succeed in doing so through any written and formal rule. But I repeat that the principle as such is part of international law, it is confirmed by jurisprudence, and I can even say that as a matter of doctrine there is only one author who has challenged this principle -- only one, I repeat, and he was in fact a philosopher -- Hans Kelsen. But he was the only one. Therefore, in view of such unanimity of opinion, both in doctrine and in practise, international jurisprudence cannot, I believe, claim that there is no rule in international law.

(Mr. Vranken, Belgium)

There was also a long discussion in the Legal Sub-Committee regarding the lucrum cessans concept. I do not wish to quote any decisions or judgements at this time, but suffice it to say that there is a vast body of law on that concept. I shall mention only three cases, which I was able to find over the week-end. Those who are well versed in international law will be able to find these decisions in the library of the United Nations. They are the Wimbledon, Alabama and Cape Horn Pigeon cases. In one of those decisions we find the following, very short passage:

(spoke in English)

"The lucrum cessans must be direct fruit of the contract and not too remote or speculative."

(continued in French)

That means that, as such, a lucrum cessans is part of the damage and should therefore be compensated for.

The second reference in our article is, as you know, to equity and justice. As representative of a State of the European continent, I can say that it is certain that equity as such is not part of our juridical code. But it is equally certain that one of the sources of law in my country is equity, and when there is no formal rule the judge has the right to refer to equity and justice.

The authors of international law, on the other hand, are practically unanimous in abstaining from any discussion of the rule that compensation should be provided for damage; but they are also in agreement when they say that with regard to the amount of compensation there may not be any unanimity perhaps, but that at that time the international judge should refer to justice and equity.

(Mr. Vranken, Belgium)

Article XII has not invented anything in that regard. For those jurists who may not be satisfied, either by a reference to international law or to justice and equity, it must be said that in any case article XII is supplemented by the statement of the purpose of that article, because it is said very clearly that the purpose is the restoration of the status which had existed before the damage was inflicted. I think that with these three elements an effort was made to try to achieve a maximum of what is achievable.

There are two other points which I should like to raise and which are part of the statement made in the general debate. May I be permitted to offer some criticism of this position in my capacity as a jurist. The first point was that we were told here of the lex loci delicti commissi. On this point, I can say the following. What is a jurist expected to do when an accident has taken place, for example, on the high seas, or above the high seas, or in the polar regions? These two zones jointly account for approximately one-half of the planet. Secondly, what law will be applicable if the accident happens in outer space itself? I cannot give an answer. Furthermore, we were told that for a certain parliaments it will be difficult to accept article XII, and that the difficulty is that a foreign law will be applicable.

On the one hand, we hear that the lex loci should be applied, and on the other hand we are told that it is difficult to apply a foreign law. Of course, here there is a contradiction in terminis.

The conclusion of my intervention is quite simple. I refuse to accept the interpretation of article XII which would tend to say that the text which was proposed by the Legal Sub-Committee does not have as its purpose the total compensation which would cover the total damage. In the view of the Belgian delegation, this article is based on the present international law. It is clear -- it could not in fact be made clearer -- and I do not think that the organization which was set up to settle the disputes would be in a position to ignore not only the juridical, the legal obligation which flows out of this article, but also the moral and political obligation which underlies this text.

The CHAIRMAN (interpretation from French): As no one else wishes to offer any comments, we shall follow the course outlined this morning by Ambassador Waldheim. The Rapporteur will submit to us the text of the draft report of our Committee, which we shall consider at a later meeting.

There is another matter before us, the question of priorities.

Mr. LEE (Canada): Without repeating everything that was said on this matter in the general debate, I should like to take the opportunity to remind delegations that we had expressed a view in favour of the Sub-Committee considering next matters relating to the registration of objects launched into space. We indicated that we would be prepared to circulate a draft convention on this subject for consideration by the Legal Sub-Committee.

I know, after listening to the general debate, that there were expressions of view on one other matter in particular which should perhaps be given priority. It may well be that in fact the decision might be taken by this Committee that the two matters be given priority by the Sub-Committee without necessarily giving one first priority and one second priority, because the Sub-Committee does meet for a considerable length of time and may well be able to consider and find sufficient direction from us in suggesting several items out of the list of approximately, I believe, six items that they had submitted to us. But in any event, we would strongly recommend that the Legal Sub-Committee turn its specific attention to the question of registration of space objects, a subject which has been considered by the Scientific and Technical Sub-Committee. It is really time now, in our view, for the Legal Sub-Committee to take a serious look at the subject.

Mr. VALLARTA (Mexico) (interpretation from Spanish): My delegation fully agrees with the views expressed by the representative of Canada that the time normally available to the Legal Sub-Committee will enable it to examine several items at the same time. My delegation also agrees that despite circumstances the item on the registration of objects launched into outer space is of the utmost importance and we feel it should be taken up in the general debate. As we pointed out earlier, we have reasons for supporting this priority. There is already an agreement on the rescue of astronauts and the recovery of objects launched into outer space. We hope that the treaty on liability will soon be approved and will enter into force. My delegation believes that these two international instruments would be much more effective if there were a registration of objects launched into outer space.

Mr. DEJAMMET (France) (interpretation from French): My delegation has already expressed its views in the course of the general debate on this question of priorities. However, we have just heard further statements and specific proposals made by the representative of Canada and supported by the representative of Mexico. My delegation fully agrees that the question of the registration of objects launched into outer space should be given high priority. We know that the delegation of Canada has made substantive proposals on this point. The French delegation also introduced a working paper on this subject. We therefore believe that this question is riper for consideration than some countries had thought and that it would not be wrong to give this question our immediate attention.

However, in general terms, we think that the completion of our work, which we hope will be definitive on the convention on liability, makes it all the more incumbent upon us to define the field of the application of this convention. It is the long standing view of my delegation, which is shared by other delegations, that we should define the object of our work and clearly define the field of application of space law. This view was submitted in the draft recommendations of the French and Argentine delegations and was included in the report of the Legal Sub-Committee at its June session. We therefore believe that if an order of priority is to be drawn up these two items which I have just touched upon, namely, the question of the definition of outer space and the question of the registration of space objects, should be at the head of the list.

(Mr. Dejammet, France)

We know that there are other important questions and that is the reason why we should set up a priority, although to do so may appear to be an arduous task. Therefore, I wonder whether it would not be advisable to consider now as a possible solution the idea that sufficient time could be scheduled at this session, at the General Assembly, for the examination next year of each one of the important questions which would appear on the list that we are going to draw up this year.

Accordingly, to sum up I can only repeat the preferences of the French delegation concerning the establishment of a list of priorities. The draft recommendation submitted by Argentina and France contains a certain number of important questions. We have just listed the items that we think should be included at the top of that list, that is to say, the definition of outer space and the registration of space objects. But we would not like to put in the shadow the other important questions which appear on that list and those which might be suggested by other delegations when the Committee meets again. That is why, while confirming our preference for the order that I have just suggested, the French delegation would hope that at least sufficient time could be scheduled this year for the consideration of the various important items which might be recommended by our Committee at this session for consideration at the next session.

Mr. HULINSKY (Czechoslovakia): With respect to the question of establishing further priorities, my delegation stated at the 80th meeting of the Committee on the Peaceful Uses of Outer Space in January 1970 that we favoured the inclusion of the question of the definition of the utilization of outer space, the question of principles governing man's activities on the surface of the moon and other celestial bodies and, last but not least, the question of the utility of the elaboration of the legal principles on which the creation and functioning of space communication should be based.

(Mr. Hulinsky, Czechoslovakia)

Given the new developments that have recently taken place and taking into consideration the achievements in the exploration of our natural satellite, we are happy to support the high priority proposed for the international treaty concerning the moon. The Soviet initiative offers a more detailed legal framework than now exists for man's activity in the lunar environment. The basic objective ought to be the internationalization of the moon.

Mr. PIRADOV (Union of Soviet Socialist Republics) (interpretation from Russian): We have heard many very interesting statements regarding priorities. I think that basically everything that has been said is in keeping with the spirit of the work of our Committee and in keeping with the substance of the agenda items. I am particularly pleased by such an approach and my delegation would certainly support a proposal to consider as a priority item the exploration of the moon. A draft has been submitted by the Soviet Union for consideration by the twenty-sixth session. Then we have the question of direct broadcast satellites and the question of the registration of space objects. Those, of course, are the most basic problems. Many delegations were quite right in drawing attention to this, and this includes the delegation of Canada and other delegations as well.



(Mr. Piradov, USSR)

If we approach this problem with this set of priorities, I believe that we would certainly fulfil our task and would certainly deal with matters which are of priority significance.

The CHAIRMAN (interpretation from French): The discussion today, and in fact also the general debate which took place last week, indicate that some delegations prefer certain subjects and that other delegations have other preferences. Today we heard the proposal of the representative of Canada and the representative of Mexico, who suggested that priority be given to two items: registration and that of the moon.

If the Committee agrees, we could ask our Rapporteur to prepare a draft text on this question.

Mr. REIS (United States of America): Mr. Chairman, the United States delegation would like to support the proposal you have just made.

Mr. PRAT GAY (Argentina) (interpretation from Spanish): The delegation of Argentina is very ready to support your proposal, Mr. Chairman, supported by the representative of the United States, provided that when we come to deal with the part relating to man's activities on the moon, it would indicate clearly that questions of a legal nature applicable to materials would be covered by the motion submitted jointly by the delegations of Poland and Argentina.

The CHAIRMAN (interpretation from French): If there are no other comments, I think that the proposal of the representative of Argentina is approved by all members of the Committee and in that case we shall break off the discussion for the time being, until we receive the report from the Rapporteur.

Mr. LEE (Canada): I should like to make a short statement on a matter which was raised earlier this morning and which I should have in fact made prior to my statement on registration; it deals with the Liability Convention.

My delegation, unfortunately, does not agree with a number of the views which were expressed in the interesting statement on the Liability Convention which was made earlier this morning by the representative of Belgium. We listened very carefully and attentively to his statement and indeed found it interesting, but we should like to record our reservations and to indicate that we hope to reply to some of the observations that were made in that interesting statement at a later period of time. It will probably not be in this Committee but it will certainly be in the General Assembly.

Mr. SKALA (Sweden): May I also be permitted to comment on the statement made by the representative of Belgium this morning. We also listened with the greatest interest to that statement which again showed the astonishing erudition of Mr. Vranken which we have learned to admire during the course of our long discussions of this subject.

May I say only at this time that we will of course study his statement with the greatest attention. We should be very glad if we could concur in the observations he has made. For the time being we may not be quite convinced that Swedish erudition will come to the same conclusions, but we will not enter into the subject matter of this question. I wish only to record again that we made a reservation in the course of our general statement and I hope that this will be recorded also in the draft report before us.

Mr. REIS (United States of America): It had not been the intention of the United States delegation to speak this morning, but I am constrained at least to do so very briefly in view of the observation made by the representative of Canada to whom I should, in the most polite and friendly fashion, like to take the

(Mr. Reis, United States)

liberty of informing that the United States delegation too will wish on the occasion of the debate on this Convention in the General Assembly to have something to say about it. We had hoped not to have to do so here in view of the shortness of the time available. Frankly, this is a feeling which does not arise from an excess of humility but from a certain understanding of things as they are, that people are rather tired of hearing what we have to say about the Liability Convention. Nevertheless, I am constrained to say that some of the remarks, particularly with regard to the issue of applicable law which we have heard during these last two or three days have been rather curious. There was one representative who first attacked the concept of international law; when, to borrow a term from Mr. Vranken, he had accomplished the "murder" of that phenomenon, he turned his attention to equity which he dispatched with like efficiency and then fortunately, somehow, perhaps feeling a certain timidity, he did not try to kill off justice as well. I may say that perhaps I look upon this matter unduly from the point of view of the advocate, but were I to represent a country whose citizens had been injured or, unhappily, killed by an accident of the character with which the Outer Space Liability Convention deals, I would be only too pleased to take and to argue -- and I believe successfully argue -- a case based upon the trinity of concepts embodied in the phrase "international law, justice and equity".

We have for a very long time sought to make this point. Indeed aspects of this formula were presented by the United States as early as 1963 and I may say of course that while our opinion is no better than anyone else's, our devotion to this formula seems to me entirely compatible with the notion of what we have been trying to get all along as the result of a Convention, which is some reasonably effective prospect of the prompt payment of just compensation.

(Mr. Reis, United States)

I should also like to say that I think the accomplishments of the Legal Sub-Committee in Geneva, particularly in connexion with the rather late introduction into the preamble of the General Assembly language concerning this question of fair compensation, have not been adequately taken into account. We think that is of great importance; we think it is a matter of the legislative history of the Liability Convention, and any tribunal considering the matter would wish to take due account of that fact. And I must say that I do have some little question as to the motivation which gives rise to the murder of this particular trinity -- if I may say so without undue frivolity. I think the opinion must be -- and I believe this is quite universal, no matter what point of view one might take about the Liability Convention -- that the Liability Convention is likely to be for a very long time the best instrument a country, a Government, can have for seeking the payment of full compensation -- to use the terms of the treaty itself; and the peculiar kind of masochism which is visible in attacks on the concept of full compensation, that concept having just been adopted by the General Assembly last year, seems to my delegation difficult to understand.

As I said, during the course of the General Assembly the United States will wish to revert to this question in far more detail and with far more clarity, because we shall wish to see to it that it is generally understood -- and I think that is the case -- that the convention in fact does offer the prospect of the payment of full compensation without delay.

The CHAIRMAN (interpretation from French): As no one else wishes to speak, the comments made by the representatives of Canada, Sweden and the United States will appear in the verbatim record.

I believe that the draft convention will be sent to the General Assembly together with all the reservations made by certain delegations and, at the same time, including the comments made by the representatives of Canada, Sweden, the United States and, of course, Belgium.

As regards the second question, that of priorities, if I am not mistaken the Committee agrees with the proposal that was made. As that seems to be the case we can now adjourn and meet again this afternoon at 3 p.m.

The meeting rose at 11.55 a.m.