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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FORTY-EIGHTH MEETING

Held at Headquarters, New York
on Monday, 27 September 1965, at 3.20 p.m.

CONTENTS

65-30507

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PRESENT:

Chairman:	Mr. LACHS	(Poland)
Members:	Mr. CCCCA	Argentina
	Sir Kenneth BAILEY	Australia
	Mr. ZEMANEK	Austria
	Mr. LITVINE	Belgium
	Mr. de MEDICIS	Brazil
	Mr. YANKOV	Bulgaria
	Mr. KINGSTONE	Canada
	Mr. DOUBANGAR	Chad
	Mr. GOTMANOV	Czechoslovakia
	Mr. LEMAITRE	France
	Mr. USTOR	Hungary
	Mr. SAJJAD	India
	Mr. AMIRMOKRI	Iran
	Mr. ROSSI-ARNAUD	Italy
	Mr. YAMAZAKI	Japan
	Miss TABBARA	Lebanon
	Mr. FRANCOZ RIGALT	Mexico
	Mr. DASHTSEREN	Mongolia
	Mr. TABITI	Morocco
	Mr. WYZNER	Poland
	Mr. BOTA	Romania
	Mr. WILLIAMS	Sierra Leone
	Mr. KELLBERG	Sweden
	Mr. RYBAKOV	Union of Soviet Socialist Republics
	Mr. SINCIAIR	United Kingdom of Great Britain and Northern Ireland
	Mr. SCHIER	United States of America
Secretariat:	Mr. SCHACHTER	Director, General Legal Division
	Miss CHEN	Secretary of the Committee

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CONSIDERATION OF THE DRAFT AGREEMENT ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (A/AC.105/19, A/AC.105/21; A/AC.105/C.2/W.2/Rev.2; A/AC.105/C.2/L.8/Rev.3 and A/AC.105/C.2/L.10/Rev.1)

The CHAIRMAN invited the Sub-Committee to begin consideration of the draft agreement on liability, in accordance with the decision taken at the previous meeting. He announced that the United States and Hungarian delegations had submitted revised versions of their proposals and that the Secretariat would prepare a new synoptic table containing those revised proposals and the original Belgian proposal in time for the next meeting. Members would recall that at the previous session the Sub-Committee had completed a first reading of the three draft proposals, confining itself to a general analysis of the main problems involved. The issues that had been discussed by the Sub-Committee were listed in annex IV of the Sub-Committee's report (A/AC.105/21), which also contained the views of individual members. Members' views were also reflected in a number of amendments contained in annex II of the Sub-Committee's earlier report (A/AC.105/19), and the delegations concerned would now have to decide whether, in the light of the new draft proposals, they wished to maintain those amendments.

Mr. SOHIER (United States of America), introducing the revised United States proposal (A/AC.105/C.2/L.8/Rev.3), said that his delegation was disappointed at the lack of progress on the draft agreement on assistance and return and that it hoped that more substantial progress would be made on the draft agreement on liability. His delegation considered that the Sub-Committee should attempt to reach some kind of consensus on the main issues before proceeding to a consideration of the actual drafting of the agreement. Such issues included the question of the nature of the liability, the question of which State was liable, the treatment of international organizations, the manner of settling claims, the settlement of disputes, the amount of liability and various procedural matters.

At the close of the previous session his delegation had submitted a revised version of its original draft, which reflected many of the proposed amendments. Since that time, it had been able to give further consideration to the views expressed in the discussions and had sought to incorporate additional compromises and improvements in its new revised proposal, which he hoped would prove useful in

(Mr. Sohier, United States)

expediting the Sub-Committee's work. Referring to the definition of a launching State in article I (c), he said that that definition had not been changed but that the explanation on page 42 of the report (A/AC.105/21/Add.2) of the words "which launches or procures the launching" was not exactly what his delegation had intended. The issue was whether a minimal participation in a joint outer space programme - where, for example, a State had one technical observer at a launching site or was responsible for a single experiment in a space craft - was the kind of participation which should bring a State within the definition of a launching State and make it liable for damages. His delegation felt that it should be something more substantial than that. The report stated that where State A furnished a space object to State B and State B conducted the launching from its own territory, only State B would be a launching State in terms of the United States proposal and that therefore State A would not be liable. That was not, however, his delegation's view. In the United States-Italian joint San Marco project, for example, the most recent launching had taken place in the United States but the launching team was Italian, and future launchings were to take place from platforms in the ocean, supplied and paid for by the United States, but with space vehicles made and paid for by Italy. Both countries would therefore be launching States within the meaning of the United States draft. It might be useful if, in future reports, views could be attributed to individual delegations. It was not clear whether the example in the report was the result of a lack of clarity in his delegation's explanation of its position or whether it was meant to illustrate another delegation's interpretation of the United States draft. He wished to emphasize that the United States was a firm believer in the concept of public national responsibility for space activities.

With regard to article II, no changes had been made in the drafting of paragraph 1. The rule of absolute liability should be unmistakably clear and simple and there should be no mitigation or exclusion for acts of God. Paragraph 3 of that article, though unchanged in meaning, had been substantially redrafted because his delegation had felt that it was better to avoid the ambiguous term "joint and several liability". Paragraph 4 was also unchanged but it might be useful for him to indicate what his delegation had in mind in that particular provision. It was designed to ensure uniformity in the determination of damages by

(Mr. Sohier, United States)

reference to international law, the rules of which had been worked out by decisions of arbitral tribunals and by international practice. Where circumstances were unprecedented and the principles of international law were insufficient, then the guiding principles should be those of equity and justice. In determining the amount of compensation to be paid for personal injury in international law and practice, it was customary to take into account the nature and extent of the bodily injury, loss of earnings and so on. In death claims, it was proper to take into account the amount which the deceased would probably have contributed to members of his family, the value of his personal services and the mental suffering sustained by members of his family. In calculating compensation for the destruction of and damage to property, account should be taken of the cost of the property, the date of acquisition, subsequent improvements and repairs, the fair market value of the property, the difference between the value of the property before and after damage and the loss of the use of the property.

His delegation had deleted paragraph 2 of article III of the previous draft because that provision had no real effect and had proved a source of confusion to many members of the Sub-Committee. The amendments to paragraph 4 of article IV were intended to clarify the interpretation of the time during which a claim had to be presented. In article VII, on the settlement of claims, his delegation felt that it was important to provide for a procedure which did not depend on the later agreement of the parties concerned regarding the means of settlement.

Mr. USTOR (Hungary), introducing his delegation's revised proposal (A/AC 105/C.2/L.10/Rev.1), said that many of the changes in the proposal had been made as a result of the advice, the criticisms and the formal and informal amendments advanced by various members of the Sub-Committee at the previous session, and he wished to express his delegation's gratitude to those members.

There was no change in the text of the preamble but the substantive provisions were now divided into chapters, headed by titles. The usefulness of chapter titles was well brought out by a comparison of the two Vienna Conventions on diplomatic and consular relations. The addition of the words "or other impairment of health" to article I, paragraph 1, had been made in accordance with an amendment proposed by India, on the ground that injury was not the only cause of impairment of health.

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(Mr. Ustor, Hungary)

An important new element of the draft was the exclusion of nuclear damage from the field of application of the convention, as proposed by the Soviet delegation. It was not intended to suggest that a State should not be responsible for nuclear damage but it might be more convenient to settle the problems connected with nuclear damage in a separate convention on the lines of other similar international instruments. That would have the advantage of facilitating agreement on the setting of limits on liability in the convention under consideration.

The words "under this Convention" had been added to article II, paragraph 1, because of the proposed exclusion of nuclear damage from the field of application of the convention. The concluding words of paragraph 2 of that article had been changed as the result of an observation by the Austrian representative. The provision as drafted was now intended to exclude the possibility that the liable State could evade liability through a special legislative act. Such an act would in any case be evidence of bad faith and its validity could be questioned under international law.

After article II, the articles had been rearranged in a more logical order. Article IV, previously article V, dealt on a broader basis than before with the problems which might arise from a collision. The improvements in the text were based on suggestions received from the delegations of Italy and Austria. Article V, previously article IV, provided for absolute liability, as proposed by the Lebanese representative, without, however, using the controversial qualifying words but defining instead the scope of liability. In article VI, formerly article VII, the obligation of two or more liable parties towards the claimant State was called "joint and several", as proposed by the Indian delegation. That meant that the claimant could pursue its claim against each of its debtors jointly and severally and that neither or none of the debtors could defend itself with what in Roman law was called exceptio ordinis, a defence based on the idea that the creditor had to sue his debtors in a certain order. Article VIII was a simplified version of article IX of the previous draft and articles X and XI remained unchanged. The change in the text of article IX was based on an amendment proposed by the Bulgarian delegation and article XII was based on an amendment submitted by the Soviet Union. There were no substantial changes in the final clauses.

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(Mr. Ustor, Hungary)

His delegation did not contend that the revised draft was perfect. It had been submitted only as an improved version of the previous proposal and one which reflected an earnest endeavour to meet the wishes of many members of the Sub-Committee, with a view to arriving at a generally acceptable compromise text. He would only request that if any delegations objected to one or another part of the Hungarian text, they should at the same time put forward an alternative solution that they would prefer.

Mr. FRANCOZ RIGALT (Mexico) said that there were three points on which all the drafts before the Sub-Committee seemed to him to be unsatisfactory. The first point concerned the scope of the agreement. In his view, it was a mistake to try to define the scope of the agreement in terms of the legal status of persons who suffered damage. Article V of the revised United States proposal (A/AC.105/C.2/L.8/Rev.3) laid down that a State would not be liable under the convention for damage suffered by its own nationals. That implied that the convention would be applicable to non-nationals residing in the launching State, but not to the nationals of that State, which seem anomalous. Article VIII of the Hungarian proposal specifically provided that a State could present claims in respect of damage suffered by its citizens even if the damage was suffered abroad; that meant, in effect, applying domestic law abroad. In his view, the convention should apply simply to damage caused in the territory of one contracting State by a space vehicle registered in another contracting State. A similar definition was found in article 23 of the Rome Convention of 1952 on damage caused by foreign aircraft to third parties on the surface. The convention should also exclude military and police vehicles, in line with article 26 of the Rome Convention. Many difficulties could thus be avoided: the convention would apply to anyone who suffered damage in a particular territory, whatever his nationality.

It might be said that his proposal involved obligatory international registration, but that was not the case. No such obligatory registration existed in the case of aircraft for example. All that was required was an agreement that space vehicles should bear symbols indicating nationality.

The second point concerned the type of damage to be covered. All three drafts would cover damage caused in the air and outer space as well as that caused on the ground. He considered that the convention should cover only damage caused on the

(Mr. Francoz Rigalt, Mexico)

ground, either as a result of the falling of space vehicles or their parts or as a result of a collision. The question of liability for damage caused in the air or outer space raised many complicated issues; thus, liability for damage on the ground would be absolute, whereas liability for damage caused in outer space would have to be based on presumed fault. If the convention was to deal with both damage on the ground and damage in the air and outer space, it would probably have to be divided into two parts; alternatively, each article would have to contain rules for damage on the ground, on the one hand, and rules governing damage in the air or outer space, on the other. The problem also arose of the distinction between air space and outer space. The best solution was to restrict the convention to damage caused on the ground.

There was also no need to bring in the question of nuclear damage. The fact that nuclear energy might be used by a space vehicle did not justify having special provisions for nuclear-powered vehicles.

Lastly, there was the question of a quantitative limitation of liability. None of the proposals resolved that question, which was nevertheless of great importance. It was essential to place a limit on the amount of liability; there must be a limit in respect of each person involved and of each incident, the limit depending on the category of incident.

The United States proposal in article II, paragraph 4, that compensation should be determined in accordance with international law, justice and equity, was not satisfactory since international law did not give any precise rules for such calculations.

Mr. LITVINE (Belgium) said he found it difficult to agree with the arguments of the Mexican representative. The three points which he had raised were all important ones. With regard to the first point, he thought that it would be very difficult, in an international agreement, to provide for claims against a State by its own nationals. In discussing his second point, the Mexican representative had raised the question of the frontier between air space and outer space. In his own view, that was an unreal problem. In any case, the Belgian proposal would cover all damage caused by a space device, in whatever environment.

On the question of quantitative limitation, Belgium remained unconvinced of the desirability of a limit. He noted that in the Hungarian and United States proposals, though they provided for a limit, the figure was left blank. He also

(Mr. Litvine, Belgium)

noted the Mexican representative's observations about the need to fix a limit in respect of each person and incident. If the principle of a limitation was included, it would be necessary to provide for some mechanism for applying the limitation in particular cases.

The revised Hungarian draft provided, in article I, that the provisions of the convention would not apply to nuclear damage. The exclusion of nuclear damage seemed unfortunate if it implied that there would be no liability for damage of that nature.

Mr. ZEMANEK (Austria) said that the Mexican representative, if he had understood him correctly, had suggested that the provisions of the convention should extend to nationals of the launching State. That question had been discussed at some length at the previous session. A convention dealing with international liability must surely exclude claims by nationals against their own State. Nor could he agree with the Mexican representative's argument that the question of a boundary between air space and outer space would arise unless the scope of the convention was limited to damage caused on the ground. Article IV, paragraph 1, of the Hungarian draft, for example, referred simply to damage done to a "space object"; thus the question of defining the environment did not arise.

With regard to the question of nuclear damage, without taking a position on the Hungarian text, he must disagree with the Mexican representative's suggestion that the fact that nuclear power was used by a vehicle did not justify special provisions. A convention was, in fact, in preparation concerning damage caused by nuclear ships. The Mexican representative had also criticized the provision in the United States proposal that the amount of compensation was to be determined in accordance with principles of international law, justice and equity; he had not, however, suggested any other principles in accordance with which the amount could be determined. His delegation was not a particular advocate of a limitation of liability, but it would be difficult for the Sub-Committee to fix a limit without advice from the Scientific Sub-Committee concerning the amount of damage which might be caused by a space ship. It might therefore be useful to seek such advice.

He was not quite clear regarding the intention of the reference in article III of the Hungarian draft to articles IV and V. He was also unsure of the meaning of the expression "natural disaster"; he wondered whether it was the same as "an act of God".

(Mr. Zemanek, Austria)

The question of "joint and several" liability had been discussed at length at the previous session. His delegation had made a full study of the concept in various systems of law and had become convinced that the only satisfactory course, since there were no exactly equivalent terms in different languages, would be to avoid terms such as "joint and several liability" and "solidarity" and to spell out exactly what was intended. In that connexion, he did not fully understand what was meant by article VII of the Hungarian draft, which provided that obligations towards States suffering damage, where liability rested with an international organization, would be met "by the international organization and by its member States jointly and severally". He wondered if the Hungarian representative could clarify that point further. As the text stood, it would seem to mean that a country claiming damages against the United Nations - say, Belgium in connexion with the Congo operation - could present a claim against any individual Member of the United Nations - say, Hungary.

Mr. RYBAKOV (Union of Soviet Socialist Republics) welcomed the appearance of two revised drafts, which augured well for the Sub-Committee's progress. The discussion so far had shown that there was a strong desire on the part of members to work out satisfactory legal provisions on the intricate question of liability for damage connected with space flights. The matter was particularly complex because the different systems of law in the world treated liability for damage in a great variety of ways, while international law and practice in the matter was far from complete. For those very reasons, however, the Sub-Committee's task was most worthwhile.

The best approach was to define the principles which should underlie the convention. The basic text in that regard must clearly be the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (General Assembly resolution 1962 (XVIII)), which not only laid down specific provisions relating to the question of liability but also set the framework within which the various detailed legal questions should be worked out. Item 5 of the Declaration established the fundamental principle that States bore international responsibility for all national activities in outer space, regardless of the executing agency. The proper understanding of that principle

(Mr. Rybakov, USSR)

would determine much of the content and wording of the convention. The same item provided that responsibility for the space activities of international organizations was to be borne by the particular organization as well as by the States participating in it. All activities in outer space, according to item 5, must be carried out in conformity with the principles of the Declaration. Item 8 specified that all States involved in the launching of a space object were liable for any damage it caused. That provision was intended to safeguard the interests of those outside the launching State who might suffer injury as a result of the space activity.

His comments on the revised drafts just introduced would at that stage be purely preliminary. The Hungarian draft (A/AC.105/C.2/L.10/Rev.1) took account of a number of suggestions made at the previous session and various points of international legal doctrine. It had the over-all effect of enjoining States to take all possible measures of precaution in the launching of space objects. It took into account the interests of States suffering damage or injury and it formulated very successfully the **respcnsibility** of States and international organizations. It accurately took account of the thorny problems of frontiers in space and nuclear damage. It correctly approached the question of settlement of disputes, basing itself on the sovereignty and equality of States and on international practice. It also provided for universal accession to the convention and the equal treatment of contracting States. In sum, the Hungarian draft relied upon and suitably developed the Declaration of Legal Principles and offered an excellent basis for productive work towards a convention.

The United States revised draft (A/AC.105/C.2/L.8/Rev.3) also took account of some of the suggestions of members, and he welcomed that fact. Nevertheless, it still provided for limited accession to the instrument and for an unsatisfactory procedure for the settlement of disputes. He regretted that the United States, despite the wishes expressed by the majority in the Sub-Committee, had maintained its earlier provision, raising the controversial issue of the jurisdiction of the International Court of Justice. Furthermore, in the United States draft,

(Mr. Rybakov, USSR)

international organizations were placed on the same footing as States. In practice, it was difficult to compel States to assume obligations towards any international organizations, let alone towards those which did not even exist. Another doubtful provision of the United States draft stipulated that States participating in a launching were liable for damage incurred in their own territories. Where several States took part in a launching, compensation for damage done to any of them should be regulated by an agreement among themselves. The idea of absolute responsibility for damage was also improperly set forth in the United States draft. His delegation would of course study the draft thoroughly, together with the other drafts before the Sub-Committee, to see to what extent they included and adequately developed the basic principles which should be at the basis of the convention. If the Sub-Committee bore those cardinal principles in mind, it would surely make good progress in its task.

Mr. USTOR (Hungary), replying to some of the comments on his delegation's draft, asked the Mexican representative to consider the hypothetical situation in which an object launched by the United States did damage to two cities lying on either side of the Mexican-United States border, injuring nationals of both countries. He wondered whether the Mexican representative could offer an alternative to article VIII of the Hungarian draft which would suitably cover that situation.

To the Belgian representative he pointed out that the exclusion of nuclear damage did not imply that the launching State should be free of responsibility, but that the problem should be dealt with in a separate instrument, as the Austrian representative had suggested.

In reply to the Austrian representative, he observed that the meaning of "natural disaster" was identical with that of the familiar vis major or force majeure. Regarding the expression "joint and several liability", it would seem desirable to provide an explanation in the text itself, and perhaps his delegation could find suitable language in collaboration with the United States delegation. He believed that the notion of joint and several responsibility must be referred to in article VII and that it was equitable for respondent as well as for claimant

(Mr. Ustor, Hungary)

States. It would, in effect, induce member countries of organizations which were potential respondents to agree beforehand on the sharing of liability. Thus, if the United Nations intended to launch a space ship, its Members would insist that it should establish a system of liability in advance; if that was done, article VII would not have inequitable consequences either for the Organization or for its Members.

Mr. FRANCOZ RIGALT (Mexico), replying to comments on his proposals, said that he was not convinced by the Belgian representative's arguments against the principle of limited liability. That principle was particularly important for countries associated with the launchings of other countries. For example, assuming that a United States object crashed as a result of misinformation from a United States-directed tracking station in Mexico, the country in which the damage was done could lay a claim against the United States and Mexico - or against the United States, which could then proceed against mexico - and in the end Mexico would have to pay all or part of the compensation. If the amount was large and the principle of unlimited liability was applied, Mexico would find itself in a most difficult position. Launchings were, in fact, such complicated affairs that an incorrect weather report from a country, or some other seemingly minor factor, could contribute to a space accident. Since it was agreed that responsibility was absolute, then unlimited liability could spell financial disaster for a small country.

He explained to the Austrian representative that, since the convention could apply only to damage caused by the launching State in some other State, there was no reason for it to cover nationals, aliens or property in the launching State. They were subject to the relevant domestic law of that State. The Austrian representative had also asserted that there was no need to define boundaries in space. That was not so, for the United States draft referred to "damage on the earth, in air space, or in outer space" (article II) and the Hungarian draft referred to damage "caused in outer space, in the atmosphere or on the ground" (article I). The Austrian representative had also, quite rightly, referred to a pending convention on damage caused by nuclear ships. That did not mean, however, that there was a general maritime law on such damage, and it would not therefore seem appropriate to single out nuclear damage for special mention.

(Mr. Francoz Rigalt, Mexico)

In reply to the Hungarian representative, he observed that his proposal regarding the field of application of the convention was essentially the same as article 23 of the Rome Convention. It seemed the simplest and most workable solution. As to the case of an accident affecting neighbouring cities on either side of a frontier, the residents concerned would be nationals of different countries and fall into two separate legal categories. If one of the ccuntries was the launching State, then the convention would apply only to the other country and its residents.

The meeting rose at 5.50 p.m.