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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FORTY-NINTH MEETING

Held at Headquarters, New York,
on Tuesday, 28 September 1965, at 11.35 a.m.

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PRESENT:

Chairman:	Mr. LACHS	(Poland)
Members:	Mr. COCCA	Argentina
	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. ROSSI-ARNAUD	Italy
	Mr. YAMAZAKI	Japan
	Miss TABBARA	Lebanon
	Mr. FRANCOZ RIGALT	Mexico
	Mr. DASHTSEREN	Mongolia
	Mr. TABITI	Morocco
	Mr. WYZNER	Poland
	Mr. GLASER	Romania
	Mr. WILLIAMS	Sierra Leone
	Mr. RYBAKOV	Union of Soviet Socialist Republics
	Mr. DARWIN	United Kingdom of Great Britain and Northern Ireland
	Mr. SOHIER	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.105/21; A/AC.105/C.2/L.8/Rev.3 and L.10/Rev.1; A/AC.105/C.2/W.2/Rev.3) (continued)

The CHAIRMAN suggested that the Sub-Committee should temporarily defer consideration of the question of definitions and deal with those issues which had given rise to differences of opinion. He invited delegations to direct their comments to the issues themselves rather than to the relevant articles in the various drafts. The first question to be resolved was that of the field of application of the convention and exemptions from its provisions.

Mr. LITVINE (Belgium) stressed that a reading of the entire draft often clarified the meaning, and particularly the scope, of a particular article which had been taken out of context for purposes of the synoptic presentation.

Mr. SOHIER (United States of America) noted that there was agreement on the need to adopt the principle that liability existed regardless of where the damage was caused and on the types of objects or activities governed by the convention.

With regard to the more controversial question of nuclear damage, the Hungarian draft provided that the convention should not apply to nuclear damage resulting from the nuclear reactor of space objects. However, if the two types of damage were dealt with separately, the proposed convention would have to be supplemented by another convention dealing specifically with nuclear damage. The question also arose what would happen in certain hypothetical cases, such as where a nuclear reactor was used to launch a space object which returned to earth causing both nuclear and non-nuclear damage, it being apparent that, though a nuclear reactor had been used as the means of propulsion, the damage caused by the space object would not necessarily be nuclear damage. Moreover, even if a nuclear reactor had been used as the means of propulsion, the damage it caused was not necessarily nuclear damage.

There was a further possibility of disagreement with regard to nationals of the launching State, who were specifically excluded from the application of the convention in the Belgian and United States drafts but not in the Hungarian draft.

His delegation would like the representative of Hungary to explain his position on those different points.

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Mr. RYBAKOV (Union of Soviet Socialist Republics) pointed out that the members of the Sub-Committee had similar and in some cases identical views on several points.

For example, it was agreed that the provisions of the convention should apply to damage caused in outer space, in the air or on the ground. The difficulty of drawing a distinction between outer space and air space argued in favour of defining the field of application of the convention as broadly as possible. Of course, the Committee was dealing with what was still a largely unexplored area of international law and legal difficulties were bound to arise in the future, but the important thing was to establish the principle of liability now and to provide in the convention a practical solution of the specific problems arising from space activities.

There also appeared to be complete agreement among delegations with regard to objects which had not reached outer space.

Similarly, the authors of the drafts and those who had spoken in the debate agreed that nationals of the launching State should be excluded from the application of the convention; his delegation supported that position.

His delegation also felt that the convention should not apply to damage caused in the territory of the launching State, even to aliens. That would be in keeping with a universal principle of international law - scrupulously applied in Soviet law - namely, that aliens present in the territory of a State should be treated there on an equal footing with the nationals of the State in question.

A final issue on which there should be unanimous agreement was that of nuclear damage caused by the nuclear reactors of space objects. In that regard, his delegation shared the views of the Hungarian and other delegations that such damage should be excluded from the application of the convention. In adopting that course, the Sub-Committee would be acting in accordance with established practice, in which nuclear damage was dealt with in such separate international agreements as the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy, the 1962 Brussels Convention on the Liability of Operators of Nuclear Ships and the 1963 Vienna Convention on Civil Liability for Nuclear Damage. Moreover, leaving aside a field in which legal practice differed as between States would serve to widen the area of agreement in the Committee, which would thus be better able to carry out its task of regulating activities in outer space in the spirit of General Assembly resolution 1962 (XVIII).

The CHAIRMAN noted that the Sub-Committee had three separate issues to deal with. First of all, it had to consider the "dimensional" aspect of the convention, i.e. whether liability should extend to damage caused on earth, in the air and in outer space. Secondly, it had to specify the nature of the damage covered by the convention. Finally, it had to decide who could benefit from the latter's provisions.

With regard to the "dimensional" aspect, he would suggest that the Sub-Committee should agree in principle that the provisions of the convention would apply to damage caused on earth on the globe, in the air and in outer space.

It was so decided.

The CHAIRMAN next invited the members of the Sub-Committee to discuss the nature of the damage covered by the convention.

Mr. USTOR (Hungary) said that, since he was not an expert in nuclear matters, he would not be able to give the United States representative the explanation which the latter had requested. The Sub-Committee should confine itself for the present to the question of whether damage caused by nuclear reactors should be considered at the same time as other types of damage or separately.

Mr. ZEMANEK (Austria) expressed the view that the exclusion of nuclear damage from the field of application of the convention presented two advantages and one disadvantage. The first advantage was that if a limit was set to the amount of compensation which the State liable for the damage would have to pay, the limit could be fixed more easily if nuclear damage was excluded from consideration. Moreover, since damage caused by a nuclear reactor might be of an entirely different nature from damage caused in other ways (the latter probably being instantaneous, while damage caused by a nuclear reactor might conceivably not become apparent until much later), it would unquestionably be advantageous for it to be dealt with by a separate convention. Although, as the Mexican representative had observed, the existence of two conventions would certainly be inconvenient, he was nevertheless inclined to favour the Hungarian draft provisionally until he heard other arguments.

Mr. SOHIER (United States of America) recalled that the Austrian representative had proposed on the previous day that questions of a technical nature should be referred to the Scientific and Technical Sub-Committee for its opinion. Nuclear damage might or might not completely disproportionate to that caused in other ways. That was a question which jurists were not qualified to decide. In any case, however, with regard to the Hungarian draft, he wondered whether it was not inconsistent to exclude damage caused by nuclear reactors from the field of application of the convention while mentioning, in the first paragraph of article I, "other impairment of health", which might be attributable to reactors.

The Soviet representative had rightly drawn attention to the fact that a number of international agreements dealt with questions of liability for nuclear damage in separate conventions. Whatever solution the Sub-Committee adopted in the present case, there was one overriding consideration: damage of any kind must be covered adequately, whether in the same convention or in two separate conventions.

Mr. ROSSI-ARNAUD (Italy) said that he had also been struck by the possible implications of the expression "other impairment of health". Moreover, he wondered whether, in view of the rapid evolution of space technology, and particularly of the possibility suggested by the Mexican representative that space propulsion technique based almost entirely on nuclear reactors would be perfected very shortly, the convention would not be rendered meaningless if the question of damage caused by nuclear reactors was excluded from its field of application. The Sub-Committee should therefore study the problem thoroughly from the technical point of view before taking a decision which might have far-reaching effects.

Mr. LITVINE (Belgium) said that his delegation would be prepared to reconsider its standpoint on the question of the limitation of liability after receiving further information on the extent of the limitation envisaged by the United States and Hungarian delegations. It was at that point that the problem was closely connected with that of nuclear damage. However, that did not mean that nuclear damage should be excluded from the field of application of the convention. On the contrary, provided that the question of possible limitation of liability was settled, it might be appropriate to include in the convention an

(Mr. Litvine, Belgium)

article fixing different limits to liability for nuclear damage from those envisaged for damage caused by the falling of space vehicles. For, if the Sub-Committee excluded nuclear damage from the field of application of the convention, its work might prove to be of limited value.

Mr. COCCA (Argentina) said that while the Sub-Committee was considering whether nuclear damage should be the subject of a separate instrument, it should not lose sight of the fact that it was trying to prepare the first convention ever drawn up with regard to liability for damage caused by the launching of objects into outer space. All questions concerning liability for nuclear damage had hitherto been the subject of separate conventions. While the multiplicity of such international instruments would unquestionably present a problem of codification, that was a minor inconvenience in the light of the need to provide for legal regulation in the matter of nuclear damage. Indirect damage and damage which might become apparent over an extended period of time would have to be taken into account. That problem should be the subject of a separate article, and the question of whether nuclear damage should be excluded from the field of application of the convention should not be settled in the article under discussion.

Mr. SOHIER (United States of America) said that the Sub-Committee did not possess the technical information required for proper consideration of the Hungarian proposal. Hence, it would be preferable to ask the Scientific and Technical Sub-Committee for its opinion on the matter instead of operating on assumptions which might not be valid.

Mr. RYBAKOV (Union of Soviet Socialist Republics) noted that several delegations had emphasized that certain questions of a scientific and technical nature had to be answered before it could be decided whether liability for nuclear damage resulting from the nuclear reactors of space objects should be included in the convention's field of application. Instead of attempting to solve those problems themselves, the members of the Sub-Committee should deal with the questions raised by General Assembly resolution 1962 (XVIII), which deserved all their attention. It should be possible to ask the Scientific and Technical Sub-Committee's opinion on certain points. However, it did not seem appropriate

(Mr. Rybakov, USSR)

to entrust that matter to the Chairman. Furthermore, each delegation was free to make inquiries of the Scientific and Technical Sub-Committee or of such specialized agencies as the International Atomic Energy Agency, which was particularly well qualified to provide pertinent answers.

The CHAIRMAN suggested that considering the question of nuclear damage should be deferred without prejudging the solution that would ultimately be found.

It was so decided.

The CHAIRMAN invited the members of the Sub-Committee to consider the question of which persons could benefit from the provisions of the convention.

Mr. USTOR (Hungary) observed that article VIII of the Hungarian draft, which defined the claimant and the beneficiary of the claim, had been drafted in so far as possible, in keeping with the generally recognized standards of international law. Thus, while the applicant State was, of course, primarily concerned with safeguarding the rights of its own nationals, it could not disregard damage suffered by aliens in the territory.

The Belgian draft provided that a State could claim compensation if its nationals or permanent residents had suffered damage. However, that protection should not be extended to persons permanently resident in the applicant State who had suffered damage abroad. A parallel might be drawn with the position of the inhabitants of a country whose currency was not freely convertible, all of whom were subject to the same foreign exchange regulations, whether they were nationals or aliens.

The CHAIRMAN recalled that the Italian delegation had submitted an amendment to article V of the United States draft.

Mr. ZEMANEK (Austria) agreed with the representative of Hungary that, under international law, a State had the right to claim compensation for damage caused to its own nationals wherever they were. For that reason, a purely territorial clause, like that proposed by Belgium and contained in the Italian amendment was unacceptable to his delegation; such a clause would, moreover, be contrary to international law. For example, the launching State could decide arbitrarily that its own nationals would receive no compensation for damage

(Mr. Zemanek, Austria)

caused by an accident. Nothing in international law could prevent it from taking such action. On the other hand, the rules of international law would apply to aliens residing in that country, since the State of which they were nationals would be able to claim compensation through the diplomatic channel.

He could understand to some extent the approach favoured by the Hungarian delegation: a State in whose territory damage had occurred should be compensated, and it was obliged to protect persons present in its territory. However, it might happen that an alien who was a national of a State not party to the convention suffered damage in the territory of a signatory State in which he was resident.

A rather odd situation would result: the State in whose territory the damage had occurred would claim compensation for a national of a State not party to the convention.

He felt that the Hungarian proposal went too far for it would enable the applicant State to claim compensation from the launching State for a national of the launching State permanently resident in the territory of the State which had suffered the damage. The wording of that article would have to be reviewed.

Mr. LITVINE (Belgium) agreed that the scope of the Hungarian draft was somewhat too broad. The Belgian draft, on the other hand, was based on provisions which were not new and were to be found in the Rome Convention on damage caused to third parties on the surface.

Mr. USTOR (Hungary) said that the Austrian representative had clearly understood the implications of article VIII of the Hungarian draft which did in fact cover the case of a national of the launching State resident in the applicant State. However, he would agree to improve the wording.

Mr. LEMAITRE (France) said that if the convention made no departure from what already existed, there would be no reason to have a convention. Three separate elements should be defined: the right to compensation, the claimant, and the conditions of payment and transfer.

It was obvious that the convention should not apply to nationals of the launching State, perhaps with the sole exception - which would be difficult to word - of those who were no longer domiciled in the territory of that State.

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(Mr. Lemaitre, France)

It would be difficult, as the Austrian representative had said, to abandon the existing principles of diplomatic protection with regard to aliens resident in the territory of the launching State. However, it might be possible to ensure that the convention would not apply to such aliens and at the same time maintain the principle of diplomatic protection.

If aliens resident in the territory of the State in which the accident had occurred were nationals of the launching State, they should not be protected by the convention unless they had ceased to be domiciled in any sense in the launching State. If they were not nationals of the launching State, they should be treated as nationals of the State in whose territory the accident had occurred, and that State should submit all claims to the launching State, contrary to the generally accepted standards of international law.

If it was desired to make provision in the convention for the very special case of nationals of a Contracting State who had suffered damage in the territory of a non-signatory State, then the traditional rule of international law under which each State represented its own nationals should be applied.

The CHAIRMAN pointed out that procedural matters would be considered at a later stage. For the moment, the discussion was concerned with defining in principle the categories of persons who were to be excluded from the field of application of the convention. Although opinions differed on the matter, it should be possible to find a basis for agreement, since no delegation was advocating a "pure" solution. As the members of the Sub-Committee had reached agreement at least on the "dimensional" field of application, they were already in a position to proceed, perhaps jointly, to the consideration of a text on that point.

The meeting rose at 1 p.m.