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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FIFTY-THIRD MEETING

Held at Headquarters, New York
on Thursday, 30 September 1965, at 11.5 a.m.

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PRESENT:

Chairman:	Mr. LACHS	(Poland)
Members:	Mr. COCCA	Argentina
	Sir Kenneth BAILEY	Australia
	Mr. ZEMANEK	Austria
	Mr. LITVINE	Belgium
	Mr. de MEDICIS	Brazil
	Mr. DIMITROV	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 AGUIRRE	Mexico
	Mr. WYZNER	Poland
	Mr. GLASER	Romania
	Mr. KELIBERG	Sweden
	Mr. RYBAKOV	Union of Soviet Socialist Republics
	Mr. IBRAHIM	United Arab Republic
	Mr. DARWIN	United Kingdom of Great Britain and Northern Ireland
	Mr. SOHIER	United States of America
Secretariat:	Mr. SCHACTER	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 invited the Sub-Committee to continue its consideration of the question of the apportionment of liability where two or more States participated in a launching. At the previous meeting the representative of Australia had proposed an amendment to article II, paragraph 3, of the United States proposal; and the Belgian representative expressed the view that that amendment assumed a limitation of financial liability, and only mentioned one of the cases, "injury", which might give rise to liability.

Sir Kenneth BAILEY (Australia) said that he was prepared to amend his text along the lines suggested by the representative of Belgium and to replace the word "injury" - which was merely one type of damage and might, contrary to his delegation's intention, have been interpreted as limiting the definition of damage - by either "damage", or "claim"; he would indicate the actual word at a later stage.

Mr. GIASER (Romania), while recognizing that the Australian text was clearer than many others, agreed that the language relating to damages needed unification. It would be useful to add a further sub-paragraph defining the relations between co-debtor States where the presenting State claimed compensation from only one of the various jointly and severally liable States. That State would be obliged to pay, and if the agreements it had concluded with the other States liable did not entitle it to claim against them, the convention should give it the right to claim reimbursement of the amount it had paid in excess of its share of the total amount of compensation.

Mr. SOHIER (United States of America) pointed out that the second sentence of the Australian amendment did not provide for a limitation on the amount of compensation comparable to the limitation specified in article IX of the United States proposal. Whatever amount was fixed in article IX, the provisions of article II, paragraph 3, would remain valid. As to the question of claims against co-debtors, there was nothing in the United States proposal which would prevent interested States from concluding appropriate agreements among themselves outside the framerowk of the convention.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that he was not opposed to the principle of the joint and several liability of States participating in a joint enterprise being reflected in the convention. The presenting State must be able to demand full or partial compensation for the damage either from all the respondent States or from any one of them. If it did not receive compensation for the total amount of the damages, it should be able to claim the balance of the compensation from the other respondent States. The latter would remain debtors until the total amount of compensation had been paid. His delegation agreed with the representative of Romania on the question of claims against co-debtors.

Mr. USTOR (Hungary) said that if it was decided to use the words "jointly and severally", it should be ensured that they meant the same thing to all parties.

Moreover, under the United States proposal to which the Australian amendment had been submitted, there could be two presenting States for a single claim and also two creditors, one of which might be a State and the other an international organization. The Sub-Committee should consider those possibilities.

The CHAIRMAN pointed out that the Sub-Committee would discuss the question of international organizations at a later stage, and that for the moment it was only considering the case of two or more launching States.

Mr. LITVINE (Belgium) said that the first part of the Australian amendment provided that the presenting State could claim the total amount of damages. However, the second part referred to a reduction of the amount. This drafting of the text was not very satisfactory, and prejudged the question of a limitation of liability.

Mr. DARWIN (United Kingdom) said that the joint liability arrangements should not be defined in technical terms which were understood differently in different countries; a brief account of how the system would work was preferable; the United States proposal appeared to be the clearest. The presenting State must be able to proceed on the basis of a clear definition of the respondent State, and it must be able to recover the total amount of the damages. The question of the apportionment of liability between respondent States did not concern presenting States, which the convention was intended to protect. Perhaps the

(Mr. Darwin, United Kingdom)

possibility of claims by one respondent State held liable against other States liable might be mentioned without, however, providing in detail for them. In any case, his delegation felt that every possible effort should be made to avoid overburdening the text of the convention with provisions which were the internal affair of respondents some of whom were liable.

The representative of Hungary had asked whether provision should be made in the convention for the case of various presenting States proceeding against various respondent States. In his own view it followed clearly from article VIII of the Hungarian proposal that a claim for the same damage could be submitted both by the presenting State and by other States having nationals resident in the presenting State. However, it would be difficult to draft a provision of that kind; it was impossible to provide for every specific case. The Sub-Committee should limit itself to laying down principles in the convention; the practical details could only be resolved by the establishment of a satisfactory procedure for settling disputes.

Sir Kenneth BAILEY (Australia) said that he wished to deal with the comments which several representatives had made on the Australian amendment. He would reply first of all to the Belgian delegation. Under the Australian amendment to the United States draft, the amount of compensation, whether agreed on (by mutual agreement between the parties or as a result of an arbitration procedure) or otherwise established (by a judicial decision, for example) could be either equal to or less than the total amount of damages claimed by the presenting State. The possibility existed that the convention would specify a limit to that total amount, but the question whether it would or would not do so was in no way anticipated by the text.

In reply to the Romanian delegation's comments, he pointed out that States and, possibly, international organizations capable of co-operating in a joint enterprise in outer space would generally do so within the framework of a prior agreement. In that agreement they would no doubt take care to indicate the respective liability of each party under the terms of the convention. It seemed preferable, therefore, to leave it to the parties to decide on the apportionment of liability.

Nevertheless, the convention might, without going into detail, say that if one of the launching States liable to pay compensation for damage had paid the full

(Sir Kenneth Bailey, Australia)

amount of such compensation, it would have the right of recovery against its co-respondents, it being understood of course that such a provision would be subject to and overridden by any agreement that might have been concluded between the participants which would have priority.

With regard to the question raised by the representative of Hungary, it was true that the main purpose of the Convention was to protect the rights of claimants. It might no doubt be possible to specify that the respondent State would not be under an obligation to pay the amount of compensation twice over even if there were two claimants, but that seemed to be already implied by the present text.

Lastly, the Soviet delegation had wondered whether a presenting State which had not been able to obtain compensation from one of the respondent States would have the right to demand satisfaction from another. That right was adequately secured by the expression: "the presenting State may proceed against any or all such States individually or jointly...".

Mr. USTOR (Hungary), replying to a question by the representative of Australia, said that his own text was designed to be as simple as possible, and therefore did not make explicit mention of all possibilities. A more detailed text such as that of the United States and Australia might, if it did not provide for all possible cases, appear to exclude deliberately what it omitted.

Mr. GLASER (Romania) thanked the delegations of the United States and Australia for having declared their readiness to give consideration to his comments. A convention designed to deal with a very complex situation should try to cover the greatest possible number of specific cases. For example, it was quite possible that several States might be justified in claiming damages in connexion with a single launching. The object launched into outer space might in the course of its flight cause damage in the air space of two States and then cause surface damage by falling in a third State: there would thus be three incidents which would be the subject of separate claims. In addition, by exploding on the ground, the object might cause a disaster that would affect two or more small neighbouring States, a situation which, legally speaking, would not be necessarily connected with the

(Mr. Glaser, Romania)

first. If the convention was to be clear enough to provide an effective system of regulations, thought must be given in advance to all those possibilities.

Mr. COCCA (Argentina) expressed regret that the text proposed by Australia spoke only of launching States and did not mention international organizations. Moreover, the amendment did not make it clear whether the presenting State would be required - as was prescribed by the domestic laws of certain countries - to decide once for all, at the very outset of the claims procedure, to which of the liable party or parties it wished to present its claim, or if, on the contrary, it would retain the right to change the list of respondents when the outcome of the first proceedings was known.

Mr. KINGSTONE (Canada) observed that the United States draft implicitly recognized the existence of the problems raised by the representative of Romania, since it indicated that a space object might cause several kinds of damage in the course of the same flight. However, any provisions which might be included in the convention in that connexion would be concerned rather with the question of a limitation of the amount of liability, and on that point the comments of the representative of Romania would certainly have to be taken into account.

Mr. SOHIER (United States of America) said that if he understood rightly, the Argentine delegation wished to limit the possibility of a claimant's modifying, in the course of a single proceeding, the list of respondents from which it was claiming compensation. The United States delegation shared that concern and would be prepared to make its text more specific in that respect.

With regard to the problem raised by the Romanian delegation - that of the apportionment of liability among several co-participants in an outer-space enterprise - the solution proposed had been the inclusion either of a safeguard clause to the effect that nothing in the convention would prejudice the relationship established by prior agreement between the co-respondents, or of a provision which would confer on such prior agreements a certain official validity within the framework of the convention itself. Both those proposals had merit, and the United States delegation would study them carefully.

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Mr. LEMAITRE (France) expressed doubt whether it would be possible to provide for a system of absolute joint and several liability so long as the list of States and organizations capable of being held liable had not been established. He also wondered whether it was quite equitable to place States whose territory was used for launching on the same footing with States owning space objects or States exercising control over their trajectory. For astronomical reasons, launching sites were much more frequently chosen in certain regions of the world than in others. No doubt there would generally be a special agreement between the State whose territory served as a launching site and its co-participants in the space undertaking. However, it would be dangerous if such special agreements were always drafted as exceptions to the general convention; it would be better if they could be based on that instrument. To that end it might be possible, once the list of States and organizations liable had been drawn up, to establish an order of priority among them. That would make possible a system whereby, to the greatest extent possible, any future proceeding would oppose one claimant to one respondent, the latter retaining the right to be assisted by its co-participants under the special agreement in force between them.

Mr. ROSSI-ARNAUD (Italy) associated himself with the comments of the representative of France.

Mr. GLASER (Romania) said that the idea of drawing up a list of States which might be liable on the basis of a definite order of priority was an excellent one. The Romanian delegation considered that absolute priority should attach to the State in whose territory the launching had been carried out. There were two considerations in favour of that choice. The first, was of a practical nature: although it might be difficult to determine who, for example, had launched the space object or provided the equipment for it, it was much easier to ascertain where the space object had been launched, since a launching could not take place without a certain infra-structure (launching ramps, ground installations, etc.). The second consideration was one of principle. Territory was an element closely linked with State sovereignty. Where one State agreed to allow another to use its territory for launching a space object it was by that very fact assuming a certain liability.

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Moreover, as it would no doubt have secured guarantees, duly set out in an agreement concluded with the State carrying out the launching, it would hardly run the risk of having to pay compensation.

The CHAIRMAN, summing up the discussion, said that the members of the Sub-Committee were in agreement on the following principles: in cases where two or more launching States would be liable to pay compensation - (a) a claimant State or States might proceed against any or all such States; (b) the claim might be presented individually or jointly for the total amount of damages; (c) the claimant State must decide upon the respondent State when it started proceedings; (d) the amount recoverable from any respondent State should be reduced to the extent of any compensation already received from any other respondent State; (e) the aggregate amounts of compensation paid should not exceed the amount which would be payable if only one State were liable; (f) a general provision should be included in the Convention to the effect that a State which had paid compensation should have the right to an action for recourse against other States which were jointly liable; in that connextion the specific provisions of conventions between such States concerning their joint space activities should be taken into account. Furthermore, the provisions relating to the foregoing points should be drafted in such a way as not to prejudge the question of the possible limitation of the total amount to be claimed. Two further points needed clarification: the question of joint plaintiffs and co-respondents, and the establishment of an order of priority as between possible respondents in order to clarify the decisive criteria on the subject.

Sir Kenneth BAILEY (Australia) said that, in connexion with item (c), his delegation's amendment to the United States draft had been intended to give the wording of the draft the greatest possible flexibility. The Australian delegation therefore reserved its position concerning suggestions that would have the effect of limiting the scope of that item by specifying that the claimant State could only choose the respondent at the beginning of the proceedings, without any possibility of modifying that choice later. It had been his impression, moreover, that that had also been the opinion of the Argentine representative.

Mr. COCCA (Argentine) confirmed that interpretation. He said that if the respondent chosen failed to pay, the claimant should be entitled to proceed against the others.

Mr. SOHIER (United States of America) said that the inclusion, in the first sentence of article II, paragraph 3, of the United States draft, as amended by Australia, of the words "the total amount of damages" had been intended to eliminate the possibility that the claimant State might initiate proceedings against a respondent State for a certain amount at a certain time, and then, somewhat later, initiate further proceedings against another State for a different amount, and so on. The reason why the wording of the paragraph had not been made more precise was to maintain a certain amount of flexibility.

The CHAIRMAN suggested the following provisional wording for item (c): "once a course of action was taken individually or jointly, this should not preclude modification of the proceedings either by the addition or the withdrawal of the proceedings against individual respondent States".

Mr. SOHIER (United States of America) said that he reserved the right to study further the wording suggested by the Chairman.

The CHAIRMAN stressed that that text did not refer to the amount of the damages but to the possibility of initiating proceedings against respondent States or withdrawing them at any time during the proceedings. He proposed that the text should be adopted on the understanding that its wording was provisional.

It was so decided.

The CHAIRMAN drew the Sub-Committee's attention to article 6 of the Belgian draft, article VII of the Hungarian draft and article III (paragraph 3) of the United States draft.

Mr. LITVINE (Belgium) said that he had understood that that subject had been thoroughly discussed at the preceding meeting.

Mr. SOHIER (United States of America) said that the topic now to be discussed was apparently the liability of States when an international organization of which those States were members took part in the launching of an object into

(Mr. Sohier, United States)

into outer space. There was no intention of returning to the question of the status of the international organization, which had indeed been examined the day before.

Mr. GLASER (Romania) asked for clarification of article III (paragraph 1) of the United States draft. He wished to know whether an international organization which had taken part in space launchings which had caused damage would be liable for that damage only if it had signed the declaration referred to in that article, or whether the Convention should serve only to reduce the number of cases in which the organization would be liable and to limit the scope of that liability. In his view, an international organization was fully liable for damage which, had it not taken part, might not have occurred. To assume that the international organization could only be the object of proceedings for damages if it had signed a certain declaration would be to falsify the situation. In principle, the party which had caused damage should make amends for it. Therefore, the Romanian delegation preferred the Hungarian draft.

Mr. SOHIER (United States of America) said that the problem did not seem to be very different from the one that would arise where the liability was attributable to States which were not parties to the Convention.

The CHAIRMAN pointed out that the three drafts before the Sub-Committee looked at the problem from different angles. If the Sub-Committee thought that the possibilities for discussing the matter had been exhausted, it might perhaps interrupt the discussion and give the authors of the drafts some time for reflection in the light, in each case, of the principles which the Sub-Committee had just agreed upon.

Mr. GLASER (Romania) said that the United States representative did not appear to see any difference in principle between the obligations of an international, governmental or non-governmental, organization and those incumbent upon States. Yet, in the one case it was a question of an entity devoid of sovereignty, and in the other of sovereign States, and that could not fail to create appreciable differences.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that the problem had in large measure already been discussed at the previous meeting. As a result of that discussion, it was his impression that the question at issue was whether or not international organizations could be parties to the Convention. Some members had interpreted the Soviet delegation's position as meaning that international organizations could not be parties. That was not the case. The Soviet position was much more precise and had been formulated differently. It might be summarized by saying that States had different legal systems and looked upon the activities of international organizations differently. The fact was, as several delegations had observed, that international organizations had been parties to many individual treaties. It might be noted, however, that in the majority of cases, those treaties either had a limited number of parties or were strictly regional in scope. In no case had an international organization been party to a general multilateral treaty or to a treaty of common interest to all States. It had also happened that agreements entered into between States had imposed certain obligations on international organizations even though the organizations had not been parties to those agreements. Thus, several conventions could be cited where international organizations were depositaries of the conventions although they were not parties to them. One example was the 1954 Hague Convention and Protocol for the protection of Cultural Property in the Event of Armed Conflict, of which UNESCO was the depositary. Apart from those legal considerations, there was also a more practical consideration. For an international organization to be bound by the provisions of a convention, the majority of the members of that organization must be parties to the convention. It was difficult to see how an international organization could be party to an agreement when the majority of the States of which it was made up had not felt able to become parties. Furthermore, those States could not consent to being bound by the provisions of that agreement solely because the international organization was a party to it.

The meeting rose at 1 p.m.