

UNITED NATIONS

GENERAL  
ASSEMBLY



Distr.  
GENERAL

A/AS.105/C.2/SR.78  
14 November 1967

Original: ENGLISH

---

COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE  
LEGAL SUB-COMMITTEE

Sixth Session

SUMMARY RECORD OF THE SEVENTY-EIGHTH MEETING

held at the Palais des Nations, Geneva,  
on Monday, 26 June 1967, at 10.55 a.m.

CONTENTS:

Draft agreement on liability for damage caused by objects  
launched into outer space (agenda item 2) (continued)

EE.67-23639  
67-25032

Present:

<u>Chairman:</u>	Mr. WYZNER	(Poland)
<u>Members:</u>	Mr. COCCA	Argentina
	Mr. O'DONOVAN	Australia
	Mr. HERNDL	Austria
	Mr. BAL	Belgium
	Mr. KOSTOV	Bulgaria
	Mr. PICK	Canada
	Mr. RIHA	Czechoslovakia
	Mr. RENUARD	France
	Mr. HARASZTI	Hungary
	Mr. KRISHA RAO	India
	Mr. AMBROSINI	Italy
	Mr. OTSUKA	Japan
	Mr. DAMDINDORJ	Mongolia
	Mr. BEREZOWSKI	Poland
	Mr. GOGEANU	Romania
	Mr. COLE	Sierra Leone
	Mr. LINTON	Sweden
	Mr. PIRADOV	Union of Soviet Socialist Republics
	Mr. SIRRY	United Arab Republic
	Miss GUTTERIDGE	United Kingdom of Great Britain and Northern Ireland
	Mr. REIS	United States of America
<u>Representative of a specialized agency:</u>	Mr. MILDE	International Civil Aviation Organization
<u>Secretariat:</u>	Miss CHEN	Secretary of the Sub-Committee

DRAFT AGREEMENT ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/21 and Add.1 and 2; A/AC.105/29; A/AC.105/C.2/L.19, A/AC.105/C.2/L.20, A/AC.105/C.2/L.22, A/AC.105/C.2/L.24) (continued)

Mr. BAL (Belgium) said that his delegation had decided to submit to the Sub-Committee a new revision of its proposal of 14 October 1964.<sup>1/</sup> The new revision included a number of changes, most of which had been suggested by the remarks of other delegations and by the exchanges of views that had taken place in the Sub-Committee since 1964. He wished to draw attention to the following principal modifications.

[First, the Belgian proposal now bore the title: "Convention on the unification of certain rules governing liability for damage caused by space devices to third parties on the surface of the earth and to aircraft in flight". The purpose of that change was to make it clear that the liability in question was for damage caused to third parties on land and to aircraft in flight, thereby implicitly excluding liability for any damage which space devices might cause to one another.] In that respect, the new Belgian text conformed to the principles enunciated in article II, paragraph 3, of the latest United States proposal (A/AC.105/C.2/L.19). It also conformed to the course adopted in the drafting of the Rome Conventions of 1933 and 1952 on compensation for damage caused by aircraft to third parties, where damage caused by collisions between aircraft had been excluded and dealt with in a separate draft convention in accordance with different rules. A comparable distinction obtained in the field with which the Sub-Committee was now dealing. His delegation recognized, of course, that its ideas on that point differed from those embodied in the revised Hungarian draft (A/AC.105/C.2/L.10/Rev.1), especially articles I and V as understood by his delegation.

Secondly, the preamble had been amended in one respect: the reference to the "Declaration of Legal Principles" embodied in General Assembly resolution 1962 (XVIII) had been replaced by a reference to the new Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies which had been signed on 27 January 1967. In that respect the Belgian proposal resembled that of the United States.]

---

<sup>1/</sup> Subsequently issued as document A/AC.105/C.2/L.7/Rev.3.

Thirdly, article 1(c) of the former Belgian proposal, which dealt with the circumstances in which liability for compensation should cease to exist, had also been amended. The amendment took into account the wording of article II(2) of the new United States proposal, and also the very pertinent observations which the Indian representative had made at the 77th meeting.

Fourthly, article 2 of the new Belgian proposal, the definition of the concept of "damage" had been considerably altered. His delegation found it hard to accept the criteria proposed in article IV of the new United States draft. If a precise instrument was to be drafted, it was desirable - if not necessary - that the notion of "damage" should be definable in terms of some given municipal system, preferably the law of the injured party. Members would note however, that the possibility of recourse to applicable principles of international law had also been envisaged, but only in a supplementary capacity.

The definition of "space devices" in the same article had also been slightly amended, so as to take account of certain definitions suggested in the revised Australian-Canadian proposal concerning assistance to and return of astronauts and space objects (A/AC.105/C.2/L.20). He trusted that the new definition would satisfy the Argentine representative, to whose remarks at the 77th meeting his delegation had listened with attention. Use of the word "vehicle" had been deliberately avoided as being insufficiently general: the objects covered by the proposed convention might not necessarily correspond to the general concept of "vehicle".

The definition of the term "launching state" in the fourth paragraph of the new article 2 had also been considerably amended, with the result that if it proved impossible to determine by what state or states a launching had been carried out, the applicant state would be able to claim from the state whose territory had been used for the launching.

Fifthly, as would be seen when the proposal was distributed, his delegation reserved its position with regard to the wording of article 3, for which the text of 1964 had been provisionally retained. His delegation's position on the problems of the limitation of responsibility and the apportionment of damages was still under consideration.

Sixthly, article 4 had been modified in three respects. The first change was designed to complete sub-paragraph (a) by providing expressly for cases in which there were no diplomatic relations between the applicant state and the state which was

liable. That change was based on article VI (3) of the revised United States draft. Again sub-paragraph (b) had been changed in such a way that recourse to the courts or administrative organs of the respondent State ruled out the possibility of a claim for compensation under the provisions of the Convention. His delegation's position on that point was similar to that embodied in the revised United States draft, especially in article IX. As to sub-paragraph (c), his delegation might be prepared to agree that the proposed Arbitration Commission should be able, in certain circumstances, to rule ex aequo et bono. The Belgian delegation's position on that point would depend on exchanges of views concerning other provisions with a direct or indirect bearing on the same problem and also on the views that would be expressed in the Sub-Committee on article IV of the United States draft and article 2 of the new Belgian proposal.

Lastly, the references to international organizations in article 5 of the Belgian draft had been deleted. The importance which his delegation attached to those organizations was well-known; however it had seemed preferable to deal with the question in a single article, namely article 6, which provided that accession by an international organization to the proposed convention would entail the assumption of all the relevant obligations arising therefrom. In that connexion, his delegation had been particularly interested in the provisions of article 7 of the Australian-Canadian working paper.]

So far as the problem of liability was concerned, his delegation was not a priori proposed to the idea of limited liability, the limit must, however, be consistent with the basic objectives of the Convention, and machinery for the apportionment of damages must be created. He noted that, in the United States and Hungarian proposals, which were based on the principle of limitation of liability, there was still no figure for the ceiling. Until a complete and precise proposal on that point had been submitted by the countries in favour of limited liability, his delegation would feel bound to defend its own proposal, which did not provide for such limitation.

Miss GUTTERIDGE (United Kingdom) expressed the hope that in spite of the complex legal questions involved in the draft convention concerning liability for damage caused by the launching of objects into outer space, the Sub-Committee would make substantial progress at its current session. In the words of the preamble to the revised United States proposal the Sub-Committee's aim should be "to establish a uniform rule of liability and a simple and expeditious procedure governing financial compensation for damage". Its starting-point must be article VII of the Treaty of 1967. It must be recognized, however, that the formulation of detailed provisions to give

effect to that article would not be easy. One difficulty arose from the fact that space activities were increasingly likely to be co-operative ventures, engaged in by two or more States either in their individual capacities or as members of international organizations. In such circumstances, it would be necessary to determine against whom any international claim that might arise should be presented.

One solution, attractive at first sight, was that the claim should be presented to the State on whose registry the object launched into outer space was carried. However, the Treaty on outer space, while referring in article VIII to the State on whose registry the object launched was carried, made no provision for international registration of space objects; and, in the case of co-operative ventures, it might be difficult to determine which State should be regarded as the State of registry. Another apparently simple solution was that in every case claims should be presented to the State from whose territory the object had been launched. However, as the Argentine representative had pointed out, a small State in a particularly favourable geographical situation might make its territory available for the launching of a space object while taking no other part in the co-operative venture. In such circumstances, it would clearly be inequitable to make the "territorial" State the sole respondent.

The difficulty had been recognized when article VII of the Treaty on outer space had been drafted. That article clearly envisaged that, in the case of co-operative ventures, more than one State might be liable, and therefore made separate references to the State that "launched or procured the launching" and the State "from whose territory or facility the object was launched". It was not clear, however, what was meant by the procurement of a launching. The definition of "launching State" in article I(c) of the revised United States proposal attempted to clarify the question by substituting for the ambiguous concept of "procuring" that of "active and substantial participation". The latter concept was, however, subjective, as the United States representative had recognized. It appeared that further clarification might be necessary and that the Sub-Committee should discuss the meaning of active and substantial participation, and consider whether that criterion would be satisfied if, for example, one State merely made available to another State technical assistance in connexion with a launching.

If it was accepted that there could be more than one respondent State, the further question of the apportionment of liability arose. Article III of the revised United States proposal envisaged that States engaged in a co-operative venture could determine in advance the proportionate shares of any financial liability which might arise, and that presenting States should be obliged to take such apportionment into account when presenting their claims. While some of the provisions of the proposed article could perhaps be clarified - it was not clear, for instance, what was meant by the words "another launching State which may be involved" in the second paragraph - her delegation felt that the new draft of article III deserved the most careful study, especially as it might help to solve the problem raised by the Argentine representative, to which she had already referred.

In view of the fact that a growing number of States were conducting their space activities as members of international organizations, a further important question was whether such organizations or only their States members should be liable for damage caused by their activities. Article VI of the Treaty on outer space gave a partial answer by providing that when activities were carried on in outer space by an international organization, responsibility for compliance with the Treaty should be borne both by the international organization and by the States parties to the Treaty participating in the organization. That principle was reflected in article V of the new United States draft, under which claims for damage could be presented to an international organization, but if within a stated time limit the organization failed to pay the compensation that might be awarded, each of its members which was a party to the convention should be liable for such compensation in proportionate shares, which could be determined in advance.

The limitation of liability in amount was another important and difficult problem. As no international claim had yet arisen out of damage caused by objects launched into outer space, the probable magnitudes of such damage were difficult to assess. Existing precedents in other conventions on liability were of little assistance because the circumstances were very different. If the Sub-Committee thought that there should be a limitation of liability in amount, as envisaged in article VIII of the revised United States proposal, it might be useful to obtain a technical and scientific estimate of the extent of the damage likely to be caused in certain foreseeable circumstances, for example, if a satellite on re-entry were to strike a heavily populated area.

Another difficult but not insurmountable problem was that of the criteria by which the measure of damages should be determined. Article IV of the revised United States proposal envisaged that compensation should be determined in accordance with principles of international law, justice and equity. However, a number of delegations had found difficulty in accepting those criteria, and had pointed out that national parliaments would be unlikely to accept an international convention regarding liability which contained no clear criteria relating to the measure of payable damages. Her delegation had an open mind on the matter, but thought that, before coming to any conclusion, the Sub-Committee should give careful consideration to the suggestion put forward by the Australian representative at an earlier meeting, namely, that some guidance might be found in the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Mr. RIHA (Czechoslovakia) said that the difficulties facing the Sub-Committee resulted both from the wide scope of the question of liability and from the fact that often conflicting concepts from different legal systems had necessarily come under discussion. For example, while article IV of the United States proposal (A/AC.105/C.2/L.19) concerning the amount of compensation a State should be liable to pay under the convention reflected the Anglo-American legal system, article II of the revised Hungarian proposal (A/AC.105/C.2/L.10/Rev.1) was based on the continental system of international private law under which that amount would be governed by the law of the launching State.

As to the question of objective or absolute liability, he could not agree that it would be negated if there were exemptions. It was normal both in municipal and international law for exemptions to exist, however, if the launching State was exercising an unlawful activity liability must not be limited. It was also logical that damage caused by a launching State in its own territory, or to its own nationals, should be governed by the national law of that State. It was important, too, to take into account, the places where damage might occur whether on the territory of a State, including its air space and territorial waters, or on the high seas, or in outer space, as well as the fact that such damage might be caused to aircraft, ships, or other space vehicles.

His delegation believed that in effect it would be States that would be the bearers of liability and that when more than one respondent State was concerned, the claim must be directed against all respondents equally. The concept of joint and several



liability should not oblige the presenting State to take into account different measures of participation and possibly different degrees of liability, which should be settled by the respondents among themselves. Moreover, only States could raise claims for damages since they alone were entitled to act on behalf of physical and legal persons and it was therefore logical that claims could be presented only through the diplomatic channel.

He agreed that there should be a time limit for the presentation of claims, which should begin to run from the time at which the presenting State ascertained the facts justifying a claim; the presenting State should not be bound to justify the inconsequential delay between the occurrence of the damage and its ascertainment. He felt that the question of the limitation of compensation required further study since there was no experience on which a valid decision could be based. In any case, the payment of compensation would be affected by relevant currency conventions and normal international practice and, therefore, the condition that compensation must be convertible, as suggested in the United States proposal, did not seem appropriate.

Under the United States proposal a claims commission would be established with two entirely different tasks: first, to take measures to settle a claim if the parties concerned did not reach agreement within a given period of time and secondly, to settle disputes concerning the interpretation and application of the convention. As proposed, the commission's powers would seem to be too far-reaching. Moreover, his delegation had reservations about the principle of the compulsory jurisdiction of the International Court of Justice and would prefer disputes to be settled by the parties themselves. It had a similar position concerning article XIII of the United States proposal, which was unacceptable as it stood.

Mr. RENOARD (France) said that, in view of the great complexity of the problem of liability, especially when it related to outer space, a field about which very little was known, the Sub-Committee should try not to view the issue in a fragmentary or relative fashion, and seek the simplest possible solutions based on the one hand on the concept of responsibility for risk and, on the other, on the usual rules of international law.

It was important first of all to decide whether liability in space matters should be based on the concept of fault (faute), as in normal cases of civil liability, or on the concept of liability without fault based on the theory of risk (risque). It would seem difficult to determine fault. If, for example, a space vehicle placed on

a single orbit, and presumably very precisely controlled, crashed and caused damage, then it might be considered that there was a clear and assessable fault. However, the question was not so easy since in other cases, at the present stage of space technology, it would be virtually impossible to prove fault in the event of damage. Therefore, liability must be based on the theory of risk, namely that the fact of the accident itself determined liability and that the person benefiting from the space vehicle concerned was liable.

Liability based upon risk necessarily covered all damages resulting from space activities. The question could be studied in more detail after the Sub-Committee had taken up the question of the utilization of space. It was indeed important to define "space vehicle" and "damage" as comprehensively as possible. Damage caused by any space activity, and not merely that caused by the launching or the flight of vehicles, must be considered since it would directly result from action by a launching State.

Liability based upon risk also implied unlimited cover for all damages caused by space activities. It was only under the concept of fault that a State could claim exoneration because of force majeure or lack of entitlement to exoneration because of gross negligence (faute lourde). In addition, at the present stage of space technology, it was impossible to evaluate what an appropriate ceiling for compensation could be. The fixing of a ceiling would probably only be admissible if it related to a very large sum.

There were other urgent problems, in particular the question of defining which party was liable, what law should be applied and how disputes would be settled. Here again, solutions must be as clear and simple as possible. While it was relatively easy to define which entities were internationally liable for damage, it was much more difficult to decide how to apportion liability among a number of entities. Indeed, on the first point the Treaty on Outer Space clearly provided that States and international organizations must be considered internationally liable. International inter-governmental organizations in particular were governed by international law and must therefore be able to be both applicants and respondents in the matter of liability. Consequently, if an international organization initiated space activity, claims for liability would have to be addressed to it direct and only subsidiarily to its members according to their participation in the organization.

Apportioning liability would moreover be more difficult if one or more States or organizations participated in a space venture. In that connexion, article VII of the Treaty on Outer Space was rather ambiguous and the Sub-Committee should endeavour to clarify and develop it. [In his delegation's view, if more than one entity was involved, liability must be borne by the one benefiting from the activity concerned. That was not the case, in particular for a State which merely allowed its territory to be used for launchings. To recognize the contrary might lead some States in ideal geographical positions to refuse to make their territory available and thus impede progress in the development of international co-operation in space. The entity which procured a launching should be made liable for any damages caused by the space activity in question. If more than one entity was involved then the risks must be apportioned between them in advance and the applicant State would present its claim to the State designated as having main responsibility for the launching.]

[With regard to the assessment of damages, the simplest method would be to apply the law applicable in the place where the accident occurred or that of the victim when the accident occurred in a place not subject to national jurisdiction. Lastly, his delegation favoured the establishment of an effective system for the compulsory settlement of disputes in accordance with international practice. Some kind of ad hoc arbitration commission, composed of an equal number of technicians and lawyers, would perhaps be the most appropriate solution. However, such a procedure should not prevent States from settling disputes between themselves. Moreover, claims procedures under ordinary law in States found liable must remain available concurrently with those introduced by the convention.]

Mr. GOGEANU (Romania) said that, in view of the advances made in science and technology and the increasing use of space vehicles for research, it was a matter of legitimate concern for all States that there should be an agreement on liability for damage caused by the launching of objects into outer space. Such an agreement would make for greater confidence and co-operation among States at present engaged in space research and those contemplating it for the future. It was encouraging to note that all the members of the Sub-Committee were seeking agreement by the most direct means possible, and they had been greatly assisted in their efforts by the proposals of the delegations of Hungary, the United States and Belgium.

The Romanian delegation, which regarded the Treaty on Outer Space of 27 January 1967 as the cornerstone for the Sub-Committee's activities, wished to raise certain questions of principle. [First of all it considered that, in the general interest, liability should be absolute in keeping with the principle that anyone causing damage should make reparation. The adoption of that principle would also have practical advantages in that it would eliminate ambiguity and give States a keener sense of responsibility. Secondly, as to the scope of the agreement, the Romanian delegation felt that treaties of a universal nature should be open for signature by all States without discrimination. Past experience had shown that all States should have an opportunity to make their contribution within the framework of a given treaty rather than independently. That was a principle of foreign policy consistently upheld by the Romanian Government and confirmed in practice in international relations.

With regard to the settlement of disputes arising out of the application of the agreement, Romania considered that a compulsory international jurisdiction would violate the important principle of State sovereignty. The inclusion of such a provision in the agreement would therefore give rise to serious objections.

Mr. PICK (Canada) said that his delegation was concerned over the complexity of the problems to be dealt with and the slow progress made at previous sessions. It might be better to adopt a less perfectionist but more realistic approach in seeking an agreement on liability. He would suggest that any definition of damage should be as simple as possible and that broad indefinite notions should be avoided. Any mention of the concept of moral, exemplary or punitive damages would make it difficult for the agreement to be ratified by the States most active in space research. It would be a mistake to exclude a definition of nuclear damage in view of the probability that nuclear energy would be used increasingly for the operation of space vehicles; however such a definition should not be too detailed.

It seemed to be generally agreed that there should be some limitation on liability. The problem lay mainly in determining what ceiling should be set. Since no solution had been suggested, the Sub-Committee might once again seek the advice of the Scientific and Technical Sub-Committee, which, in turn, could consult the International Atomic Energy Agency on the matter. There was as yet no general agreement on how liability should be apportioned. However, that was a secondary issue and it was to be hoped that the Sub-Committee would not spend too much time discussing technical details.

On the subject of absolute liability his delegation had some difficulty in accepting the wording of parts of the United States proposal (A/AC.105/C.2/L.19), particularly that concerning the concepts incorporated in article II of the United States draft. The Sub-Committee should be careful about introducing inadvertently the notion of contributory negligence into a system which was basically that of absolute liability. He also had reservations concerning article V of the Hungarian proposal (A/AC.105/C.2/L.10/Rev.1) and would like some clarification as to the meaning of the expression "unlawful purposes" and how such purposes should be determined.

He disagreed with the representative of India, who appeared to divide the world into two separate camps, one comprising the United States and the USSR and the other comprising all other States, which would presumably be claimants. The division seemed unrealistic in that it failed to reflect the present state of scientific advancement or to take account of future developments. A number of States were conducting activities in outer space. Canada, for example, had launched two scientific satellites and was particularly interested in the use of satellites for communication. It was also agreed that international organizations should bear liability for damage caused by space launchings. The Sub-Committee should therefore try to keep pace with advances in technology and even to anticipate them, since the agreement it was considering would have to be valid for many years to come.

There were two issues on which Canada had less certain views. A large number of criteria had been advanced for defining the concept of "launching State". It might be advisable to reconsider the concept of the State of registry of the space object or vehicle concerned. [Consideration might even be given to the possibility of establishing an international agency for the registration of space vehicles. The second problem would be to determine what law should apply in measuring compensation. He was not sure that it would be appropriate to apply either the law of the State in which the damage occurred or that of the State responsible for the damage. It might be useful to explore the idea of establishing some kind of international insurance fund from which claims for compensation could be satisfied.] In the absence of such a solution, article IV of the United States proposal seemed to provide the best criterion. In fact he would suggest that the Working Group should take the United States text as its basis of discussion since it was comprehensive, up-to-date and took account of some of the difficulties that had been raised. ✓

Mr. COLE (Sierra Leone) expressed appreciation to all those who had contributed to the regulation of the important question of the peaceful uses of outer space. It was in the hope that international space efforts would ultimately prove a substitute for war on earth that his Government had signed the Treaty on Outer Space.

It was heartening to note that, at its fourth session, the Sub-Committee had reached agreement on three basic principles governing the question of liability. There now seemed to be a consensus on another basic concept - namely, absolute liability for damage caused by space launchings. His delegation subscribed to all those agreed principles and considered that they should be embodied in the future convention. It would also like the convention to state the principle that personal injury should include any disease or impairment of a person's physical or mental condition.

In his delegation's view article II (1) of the revised United States proposal did not make it sufficiently clear that liability should apply to damage caused on earth, in air space and in outer space. It was most important to incorporate that concept in view of the growing trend in international law towards the strictly literal interpretation of agreements.

As to article IV of the United States draft, his delegation would not quarrel with the use of the term "justice and equity" provided that it embodied the concept of human dignity. He did, however, have some misgivings about the expression "applicable principles of international law", which seemed insufficiently clear. If it implied what was known as "the international standard" he would point out that that traditional western concept had given rise to considerable controversy and had been rejected by most nations. His delegation would therefore like further consideration to be given to the concept of the lex loci, reflected in article 2 of the revised Belgian proposal (A/AC.105/C.2/L.7/Rev.3).

With regard to the notion of a ceiling on the quantum of damages to be awarded, he would merely say that his delegation agreed with those who had objected on the grounds that such a practice would be contra bonos mores.

On the other hand, he warmly welcomed the provisions proposed in article XII of the United States draft, although it was not made sufficiently clear that they extended to the decisions made by a commission appointed under article X.

Sierra Leone would also like the agreement on liability and that on assistance to astronauts to contain clear provisions making it compulsory for launching States or organizations (a) to have their space vehicles or objects registered before launching,

and (b) to make an announcement of the proposed launching either beforehand or at the time it took place, providing as much information as possible in order to facilitate identification. The agreement should also include not only a provision on liability for damage caused by non-peaceful uses of outer space but also a requirement that compensation for any damage should be of a punitive nature. Sierra Leone attached the utmost importance to that point, in view of current allusions to "military adventurism" in outer space and of suggestions that space Powers should have the privilege of conducting unlimited nuclear tests.

Mr. KOSTOV (Bulgaria) said that it was encouraging to note that, despite the complexity of the question of liability, two positive achievements had been recorded. First there had been the signing of the Treaty on Outer Space, article VII of which embodied the principle of international liability for damage caused by space launchings and thus provided a basis for detailed regulations on the subject. Secondly, earlier discussions in the Sub-Committee had revealed that there were certain areas of general agreement which could facilitate the elaboration of a convention.

All delegations seemed rightly to agree that the principle of absolute liability should form the basis of a future agreement. The Bulgarian delegation fully supported that principle. While there was strong reason for allowing exonerations from that principle, they should be strictly limited and clearly defined and should not conflict with the principle itself. In his delegation's view the principle of absolute liability should not extend to the collision of objects in outer space, in which case liability should only arise when one of the launching States was at fault.

In the interests of fairness, damage resulting from natural disasters should not be governed by the principle of absolute liability. Incidentally, it would be more appropriate to speak of natural disaster than of force majeure since the latter concept was subject to varying interpretations in different municipal systems.

Bulgaria favoured exonerations from the principle of absolute liability on the grounds that if space activities were conducted for the benefit and in the interests of all mankind, the attendant risks should be shared by all States. To confine liability to the States engaging in such activities would have a discouraging effect on their endeavours and thus hamper technological progress. The Bulgarian delegation also considered that fault on the part of the injured party could also justify exonerations from absolute liability. However, that criterion should apply only in the more extreme cases, such as gross and wilful negligence, although in his view the provisions of article II (2) of the United States proposal went too far.

He wished to reiterate his delegation's view that the agreement on liability should make a clear-cut distinction between liability for damage caused as a result of lawful activities in outer space and liability for damage arising out of unlawful activities. In the latter case a State should be fully liable and not entitled to any exoneration whatsoever.

In view of its very specific nature, the question of liability for nuclear damage should not be included in a convention at the present time, although it would need regulating at a later stage, when more technical information was available. The question had, in any case, been dealt with in existing conventions on air and maritime law. Perhaps it might best be solved by the codification of State nuclear activities in all spheres.

The Bulgarian delegation felt that there was little justification for setting a ceiling on the quantum of damages, particularly if the question of nuclear damage was excluded from the agreement. Any such measure would run counter to the principle of objective liability and be tantamount to accepting a partially contradictory principle, that of casum sentit dominus. It could lead to serious difficulties in the case of damage suffered by the economically weaker States. As to the criteria for the measure of damages proposed in article IV of the United States draft, they were far too vague. International practice regarding the settlement of disputes concerning compensation varied widely. Accordingly, more specific criteria would be needed.

The question of the liability of international organizations for damage caused by objects launched by them should come within the scope of the agreement. In his delegation's view, the Hungarian proposal provided the most practical solution. On the other hand, article V of the United States draft gave rise to some serious objections. For example, paragraph 3 of that article failed to provide for cases in which certain members of an international organization engaging in space activities might express disagreement with those activities.

Lastly, if the agreement on liability was to have any real standing in international law it must lay down procedures for signature and accession by States, for the settlement of disputes concerning its application and like matters. Although such questions would be more appropriately discussed at a later stage, the Bulgarian delegation wished to go on record with the view that all the final clauses of the agreement should be guided by the relevant provisions of the Treaty of 27 January 1967.



Mr. BEREZOWSKI (Poland) said he thought it would be difficult at the present stage to speak, as the Belgian representative had done, of the unification of rules governing liability for damage to third parties. The Sub-Committee was not yet in a position to treat the question in anything but a general way. With regard to liability, it was possible either to say that an injured person had an inherent right to claim for compensation against the person causing the injury, which would be covered by private international law, or that in the launching of space vehicles liability was borne by one State, as representing its own interests and that of its nationals, towards another, acting in a similar capacity.

International organizations too could launch space vehicles and could therefore be liable for damages in the same way as States. However, the United States proposal (A/AC.105/C.2/L.19) actually included international organizations under the definition of launching State, which was hardly appropriate. It would be better to say, as the Hungarian proposal (A/AC.105/C.2/L.24) did, that liability would rest with "the State or international organization" concerned in the launching. He agreed with the French representative that liability should be based on the concept of risk. It should be necessary only to prove that damage had occurred to justify a claim and the draft agreement must contain a provision to that effect. He felt, however, that a State from whose territory or facility a space object was launched incurred a subsidiary liability for any damage that occurred as a result of a launching by a State, international organization or legal entity.

It appeared that if enough exonerations could be provided for, absolute liability would be acceptable to all. Exoneration from liability could exist where there was negligence on the part of the person suffering the damage, negligence by a third party, or force majeure. In addition, exoneration should be provided for if a space flight took place in accordance with appropriate international regulations and damage ensued. In that connexion, he observed that the United States proposal suggested that compensation should be determined in accordance with applicable principles of international law, justice and equity. It might perhaps be more appropriate to speak of the rules of public and private international law and the principles of justice, which would be more in keeping with the Charter of the United Nations.

Under the Rome Convention on the Liability of Foreign Aircraft for Damage caused to Third Parties on the Surface, for example, liability for damage caused by aircraft was governed by the law of the place in which the damage occurred. Such a principle could apply so long as the damage caused by a space vehicle occurred within the territorial limits of a State; however, if it did not, liability should be determined by the law of the launching State.

In conclusion, he felt that the final clauses of the draft agreement should closely follow those of the Treaty of January 1967, so that it would be open to accession by all States.

The meeting rose at 1.20 p.m.