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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Sixth Session

SUMMARY RECORD OF THE SEVENTY-NINTH MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 27 June 1967, at 3.15 p.m.

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	Mr. HERNDL	Austria
	Mr. BAL	Belgium
	Mr. SOUZA e SILVA	Brazil
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	Miss GUTTERIDGE	United Kingdom of Great Britain and Northern Ireland
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Representative of a specialized agency:		
	Mr. MILDE	International Civil Aviation Organization
Secretariat:		
	Mr. WATTLES	Deputy Director, Codification Division
	Mr. ABDEL-GHANI	Chief, Outer Space Affairs Group
	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/C.2/L.7/Rev.3, 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 and A/AC.105/C.2/L.29) (continued)

Mr. ABDEL-GHANI (Secretariat) said that, at the 78th meeting, the representative of Canada, after referring to the Sub-Committee's discussions in 1964, had mentioned that some members had expressed the wish that the Scientific and Technical Sub-Committee should study certain questions relating to the convention on liability, in particular the question of the extent of damage which might be caused by objects launched into outer space. He wished to say that the Scientific and Technical Sub-Committee had been unable to consider those questions because it had not been officially requested to do so by the Legal Sub-Committee. Suggestions had been made individually by members during the 1964 session, but the Legal Sub-Committee, as such, had at no time addressed a specific recommendation on the matter to the Scientific and Technical Sub-Committee.

Mr. PICK (Canada) expressed the hope that appropriate recommendations would be made to the Scientific and Technical Sub-Committee in future, so that it could consider any questions referred to it by the Legal Sub-Committee.

The CHAIRMAN said he hoped it would be possible to approach the Scientific and Technical Sub-Committee directly for if the approval of the full Committee on the Peaceful Uses of Outer Space, which met after the Scientific and Technical Sub-Committee, had to be sought first, any question addressed to the Scientific and Technical Sub-Committee by the Legal Sub-Committee would be delayed for a year.

Mr. ABDEL-GHANI (Secretariat) felt that the most simple solution might be for the Chairman to transmit the Legal Sub-Committee's recommendations to the Scientific and Technical Sub-Committee through the Chairman of the Committee on the Peaceful Uses of Outer Space.

Mr. Krishna RAO (India) said he feared such a procedure might be too lengthy: it might be a very long time before the Scientific and Technical Sub-Committee took up a question which the Legal Sub-Committee might wish to refer to it. It would be better to transmit recommendations from the Legal Sub-Committee directly to the Chairman of the Scientific and Technical Sub-Committee, and he would be free, if he wished, to inform the Committee on the Peaceful Uses of Outer Space of the recommendation.

The CHAIRMAN agreed that the Sub-Committee should try to lose as little time as possible, but he would like some time to consider the procedure which should be adopted. However, it would be common courtesy to inform the Chairman of the Committee

on the Peaceful Uses of Outer Space of any request which the Legal Sub-Committee might decide to transmit to the Scientific and Technical Sub-Committee. Things had to be done according to the rules, if the Sub-Committee did not wish its requests to remain unanswered.

Mr. AMBROSINI (Italy) wondered whether it might not be advisable for some members of the Legal Sub-Committee, for example the Chairman, to attend meetings of the Scientific and Technical Sub-Committee; members of the Scientific and Technical Sub-Committee could for their part attend meetings of the Legal Sub-Committee. In considering items on the agenda of one of the Sub-Committees questions often arose which were within the competence of the other Sub-Committee; such a procedure would facilitate relations, and help to ensure liaison, between the two bodies.

The CHAIRMAN suggested that the Sub-Committee might revert to the Italian representative's proposal by taking up the question of liaison between the two Sub-Committees in connexion with agenda item 4. (Study of questions relative to (a) the definition of outer space; (b) the utilization of outer space and celestial bodies, including the various implications of space communications). It was not yet known what questions the Sub-Committee might wish to request the Scientific and Technical Sub-Committee to examine, or even whether it would decide to make any request at all.

Mr. Krishna RAO (India) said he thought the problem of liaison between the two Sub-Committees solved itself automatically, since the composition of the two bodies was identical.

The CHAIRMAN invited the Sub-Committee to continue its consideration of agenda item 2.

Mr. HERNDL (Austria) said he wished to emphasize the humanitarian nature of the convention on liability which was designed to ensure protection for both juridical persons - governmental bodies and non-governmental entities - and individuals. Such an instrument was therefore necessary and it was to be hoped that the Sub-Committee would soon be able to produce a final text.

Determining the entity to be held liable for damage amounted to defining the launching State, which was what was done by the United States draft (A/AC.105/C.2/L.19). What was to be designated as the launching State? What happened if there was more than one launching State or if an international organization proceeded to launch objects into outer space as a form of international co-operation? It seemed obvious that any agreement would have to cover international organizations and provide for varying degrees of

liability depending on whether the space activities were undertaken separately or jointly by States. In that connexion, he shared the desire of the French delegation that a distinction be made between States which launched objects into outer space, States from whose territory and facility a launching was made, and States which were requested to observe the path of a space vehicle at a particular moment.

As to the type of liability, in view of the special risk involved in any space venture, liability for damage must be absolute. If for practical reasons the Sub-Committee decided that there must be a ceiling, it would have to be very high, so as to ensure fair and equitable compensation. Provision should also be made for cases in which there was fault on the part of the party suffering the damage; if there was dolus on the part of the party suffering the damage, then that party would have to be held at fault; if, however, there was only simple negligence, it was the principle of absolute liability that would have to be applied.

The convention also posed the question of the law which should be applied in determining the amount of compensation payable to a State which had suffered damage. Unlike those who considered that it should be based on the law of the injured State, he felt that it was the general principles of international law that should be applied, it being understood that two States could always agree between themselves on the law they wished to apply. That was the formula found in the Convention on the Settlement of Investment Disputes between States and Nationals of other States, which provided that the parties concerned could, by agreement, decide on the law under which the arbitration body would function.

With regard to the question of the scope of the convention, namely the types of accident to which the convention would apply, the Sub-Committee would have to consider accidents on the earth or in air space but not accidents that might occur in outer space. It would also have to determine who would be entitled to claim damages. That raised the question of the nationality of the victim, and it seemed to him that a national of a given State suffering damage on the territory of the launching State should be able to benefit from all the rights deriving from the convention.

With regard to claims procedure, he considered that the convention should not deprive the presenting State of the possibility of entering a claim under the convention on the grounds that it had already applied to an administrative body or a court of the respondent State. After all domestic procedures were exhausted, States should still be able to intervene, under the convention, on behalf of the natural or juridical persons they represented.

For the settlement of disputes concerning the interpretation and application of the convention, it should contain an arbitration clause, which was not the same thing as a clause establishing an arbitration commission.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that State responsibility was a question that pertained to the whole body of international law. Liability for damage caused by the launching of objects into outer space, which was a new question, was therefore of the greatest importance. The problem of State responsibility being considered by a number of United Nations organs including the International Law Commission and the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States. At its seventeenth session, the General Assembly, which had already discussed the work of the Special Committee, on more than one occasion, had considered a proposal submitted by the Czechoslovak delegation (A/C.6/L.505). That proposal, which described the basic elements of the principle of State responsibility, provided that States must be held responsible if they were guilty of violations of international law, and expecially of acts against peace. It further provided that States were responsible for such of their acts as violated the laws of other States or the rights of their nationals, and finally it laid down that States which incurred such responsibility were under a duty to pay adequate compensation.

The question of liability for the damage caused by the launching of objects into outer space was one particular aspect of the problem of responsibility. As several delegations had stressed, the Sub-Committee's task had been made easier by the adoption of the Treaty of 27 January 1967: (Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies). In that connexion, it should be stressed that the Treaty reflected a dynamic approach to the problem of responsibility. Article VI provided that States should bear international responsibility for national activities in outer space, including the Moon and other celestial bodies, and for assuring that such activities were carried out in conformity with the provisions of the Treaty. In other words, the activities of States Parties to the Treaty must be carried out in conformity with international law, including the United Nations Charter. It also followed from the Treaty that the responsibility of States continued to exist even where their space activities were undertaken in co-operation with non-governmental bodies, including international organizations. In the latter case, responsibility for compliance with the Treaty was to be borne by the

States Parties to the Treaty participating in the organization in question. So far as the compensation of possible victims of space activities was concerned, it was dealt with in article VII of the Treaty, which provided that any State that launched or participated in the launching of an object into outer space was internationally liable for any damage the object might cause.

In the Soviet delegation's opinion, those first rules of space law were of fundamental importance. They were distinctive in the sense that they made States responsible for their space activities and liable for any damage those activities might cause.

With regard to the draft convention itself, a number of delegations had stated that the Sub-Committee's function was to give substance to, but not depart from, the relevant provisions of the Treaty on Outer Space. His delegation agreed, and thought that the work already done should help the Sub-Committee in its task. However, it must be stressed that the problem was really complex since it involved different systems of law which dealt with the question of liability in different ways. Moreover, in order to give a colouring of legitimacy to their political concepts, some delegations were trying to secure the inclusion of controversial provisions, extraneous to the draft convention. In his delegation's opinion, any attempt to insert into the convention provisions conceived in such a spirit was doomed to failure and could only impede the work of the Sub-Committee. In that connexion, a number of delegations had pointed out that the new text submitted by the United States delegation (A/AC.105/C.2/L.19) was based on a formula which would necessarily limit the number of signatories. His delegation, whose position on the point was well-known, was surprised to find that the United States draft still contained provisions which were unacceptable to many States.

With respect to international organizations, several delegations had pointed out that the United States draft contained a number of provisions which placed those organizations on the same footing as States. That, too, was unacceptable to many delegations. It should not be forgotten that the conclusion of the Treaty on Outer Space had been long delayed because of the insistence of some that States and international organizations should be given equal treatment. Many delegations had stated at the time that, as the subjects of international law were primarily States, the inclusion of such provisions in the Treaty would confront them with political, juridical and practical difficulties. A solution had finally been found which respected the positions of principle adopted by States and did not oblige them to enter into relations with some international organization that might be established to deal with space questions. Accordingly, it had been provided in article XIII of the Treaty that any

practical questions arising in connexion with activities carried on by international inter governmental organizations in the exploration and use of outer space should be resolved by the States Parties to the Treaty either with the appropriate international organization or with one or more States members of that international organization which were parties to the Treaty. In any event, his delegation shared the view that the Hungarian draft (A/AC.105/C.2/L.10/Rev.1) was the one best calculated to solve the problems connected with outer space. It also thought that the question of international organizations could be settled on a mutual basis in accordance with the Treaty on outer space and with due regard for the positions of principle adopted by States.

There were three draft conventions before the Sub-Committee, and his delegation would study them, and any other drafts which might be submitted, with the attention they deserved. Any draft must satisfy two essential criteria: on the one hand, it must conform strictly to the Treaty of 27 January 1967, and, on the other, it must be acceptable to States with different legal systems. From that point of view the Hungarian draft formed an excellent working basis. Its provisions were very clear and should enable the Sub-Committee to solve the problems of compensation for damage without departing from contemporary international law. As it contained nothing extraneous to the Sub-Committee's terms of reference, it should also enable the Sub-Committee to make progress in its work. The Soviet delegation unreservedly supported the Hungarian draft and would, when appropriate, state its point of view in greater detail.

Finally, he pointed out that the Treaty on Outer Space, which had been adopted unanimously by the General Assembly and had already been signed by more than eighty countries, was the result of a collective endeavour to make outer space serve the interests of mankind.

Mr. AMBROSINI (Italy) observed that many of the agreements put forward in the Sub-Committee concerning liability had to do with liability in its general sense. They had been based both on the national law of the injured person and on private international law. Those arguments were no doubt important, but the Italian delegation had the impression that if such a broad approach were adopted, the Sub-Committee would take a long time to complete its work. The first thing for the Sub-Committee to do was to look at the existing situation. At the present time it was States - and States alone - that engaged in space activities, either directly or through such inter governmental organizations as the European Space-Vehicle Launcher Development Organization (ELDO) and the European Space Research Organization (ESRO). Consequently, it was appropriate, for

the time being, to speak only of liability on the part of States and of intergovernmental organizations. For that very reason articles VI and VII of the Treaty of January 1967 referred to "international responsibility", to States being "internationally liable", which meant liability as between international juridical persons. If the Sub-Committee stayed within that frame of reference and refrained from trying to go into the problem of general liability and the possible presentation of claims in court, its task would automatically be simplified and it would be able to make more rapid progress.

That was why the Italian delegation preferred the United States draft, which it considered to be the simplest, most practical and most comprehensive, within that frame of reference. The new United States draft contained a provision (article IX) to the effect that if the presenting State, or a natural or juridical person whom it might represent, elected to pursue a claim in the administrative agencies or courts of a respondent State, or pursue international remedies outside the convention, it should not be entitled to pursue such a claim under the convention against the respondent State. Nothing was said about the procedure for dealing with cases brought before ordinary civil courts, and rightly, since that was a matter outside the scope of the convention.

As to article IV of the United States proposal, which stated that the compensation payable by a State would be determined in accordance with applicable principles of international law, justice and equity, he could not see why it had been regarded as being too vague. If the liability under consideration was international liberty, it was perfectly natural to refer to international law. The adjudicating body would be entirely free to draw upon the resources of international law, including the vast and very comprehensive case law to which the representative of the United Kingdom had referred at the 78th meeting. Accordingly, it should not be too difficult for an arbitral tribunal to arrive at the necessary decisions. Moreover, the Italian delegation thought it quite in order to supplement the principles of international law, which already embodied ethical rules, by the principles of justice and equity.

Without disputing the merits of the Hungarian draft, which he would criticise mainly for being too doctrinal, or of the Belgian draft, the revised version of which he had not yet seen, he had to say that for the reasons given his delegation favoured the United States draft. However, Italy had some reservations concerning that proposal as well - particularly concerning the concept of absolute liability, which seemed to be generally accepted. Admittedly, the reason for accepting that principle had been largely to avoid certain difficulties. However, it was quite clear that delegations differed in their interpretation of the expression.

In the opinion of the Italian delegation, once it was found that there was a relationship of cause and effect between the space object and the damage, absolute liability existed even in the case of force majeure, the only exception being "fault" on the part of the victim. However, under the Hungarian proposal (article III), an exception was made in case of force majeure, i.e. natural disaster. If such a provision were adopted there would no longer be absolute liability.

Again, a distinction should be made between the various environments in which the damage might occur, so as to determine whether liability should be absolute or based upon fault. The Italian delegation had made a proposal on the subject in 1964. It would be ridiculous to lay down a rule of absolute liability in certain cases. For example, it was conceivable that a collision might occur between a small space rocket belonging to one State and a highly advanced rocket belonging to another. Under the principle of absolute liability, and assuming that it might well be impossible to determine where the fault lay, the State owning the more advanced rocket - most probably the richer State - would have to pay a relatively small amount of compensation while the other State would have to make reparation for the damage caused to a very costly device. A thoroughly inequitable legal situation would thus arise. It was legal doctrine in such cases that there could not be absolute liability and that, in view of the environment, there must be a presumption of common fault.

In concluding, he again urged that the Sub-Committee should confine itself to international liability. For the time being the Sub-Committee lacked the necessary data for considering liability in general terms. It should therefore address itself exclusively to the tasks of the moment, trusting that any future problems could be tackled in the light of subsequent experience.

Mr. DAMDINDORJ (Mongolia) said that in judging the merits of the various draft agreements the Mongolian delegation was guided mainly by the principles of the Treaty of January 1967. In its view, the proposal submitted by Hungary provided a good basis for drafting an agreement on liability. It also considered that the agreement should embody the principle of universality.

Concerning article IV of the United States draft he pointed out that the English and Russian texts differed on one point. Where the English read "applicable principles of international law", the Russian text contained an expression which meant "principles of international law in force". It might be better simply to say "principles of international law".

Lastly, the Mongolian delegation wished to draw attention to a problem which it considered very important. If an accident occurred on the territory of a State that was not a party to the agreement and not a member of the United Nations, it was hard to see how a situation of that kind could be dealt with if it was agreed that the law of the injured party should apply.

He wished to take the opportunity to say with regard to the other agreement being drafted - namely, the agreement on assistance to astronauts - that his delegation was also in favour of the draft submitted by Hungary.

Mr. HARASZTI (Hungary) thought that a general consensus was emerging from the Sub-Committee's discussion on the question of liability. The great majority of members had advocated exoneration from liability in certain strictly defined cases.

Recalling that the Hungarian draft (A/AC.105/29, Annex II, p.2) also provided, in article II, for a ceiling on the amount of damages, he said that his delegation was quite willing to meet the objections that had been raised concerning that provision, particularly on the part of those who had said that consideration should be given above all to the case of damage inflicted in a heavily populated urban area. In the light of the arguments put forward, the Hungarian delegation had reached the conclusion that the establishment of a ceiling would have more drawbacks than advantages and it was therefore prepared to delete the first paragraph of article II from its draft.

The Hungarian draft also provided that compensation should not extend to nuclear damage (article I) - a provision that had met with a certain amount of criticism. It was not disputed that nuclear damage would have to be compensated in the same way as other forms of damage. However, that question had been omitted from the draft agreement simply because the issues were too complex for a text of the kind contemplated.

With regard to the final clauses of the agreement, he thought that they should conform to the provisions of the Treaty of 27 January 1967, since the agreement on liability was designed to supplement that Treaty. The agreement should therefore be open to signature by all States, and article XV of the United States draft was unacceptable.

Regarding procedure, he was not sure that it was advisable to begin by taking the United States draft as the basis of discussion. He thought that, for the next meeting devoted to the question of liability, the Secretariat should be able to provide the Sub-Committee with a comparative table so that it could study all the proposals submitted thus far.

The CHAIRMAN said that the table was being prepared and would be available for the members of the Sub-Committee on Monday, 3 July 1967, or even earlier. He suggested that in conjunction with the discussion in the Working Group the members of the Sub-Committee should be able to ascertain how far they agreed on new basic points, which might be recorded in the same manner as the points on which agreement had been reached at the fourth session (A/AC.105/29, paragraphs 12, 15 and 17). He asked the members of the Sub-Committee to give careful consideration to that question, because he felt that common ground on a number of points had already been reached.

Mr. REIS (United States of America) said that the Sub-Committee's discussions had so far been very positive and that signs of further progress were already discernible.

The meeting rose at 5.35 p.m.