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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Special Session

SUMMARY RECORD OF THE EIGHTY-SEVENTH MEETING

Held at Headquarters, New York,
on Friday, 15 December 1967, at 11 a.m.

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PRESENT:

Chairman:	Mr. WYZNER	(Poland)
Members:	Mr. GOWLAND	Argentina
	Mr. McKEOWN	Australia
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	Mr. BAL	Belgium
	Mr. YANKOV	Bulgaria
	Mr. MILLER	Canada
	Mr. GOTMANOV	Czechoslovakia
	Mr. DELEAU	France
	Mr. PRANDLER	Hungary
	Mr. RAO	India
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	Mr. CAPOTORTI	Italy
	Mr. OTSUKA	Japan
	Mr. CHOUERI	Lebanon
	Mr. TELLO	Mexico
	Mr. CHULUUNBAATAR	Mongolia
	Mr. KOZLUK	Poland
	Mr. MICU	Romania
	Mr. COLE	Sierra Leone
	Mr. BLIX	Sweden
	Mr. PIRADOV	Union of Soviet Socialist Republics
	Mr. EL ARABY	United Arab Republic
	Mr. DARWIN	United Kingdom of Great Britain and Northern Ireland
	Mr. REIS	United States of America
Secretariat:	Mr. STAVROPOULOS	Under-Secretary, Legal Counsel
	Mr. SLOAN	Secretary of the Sub-Committee

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DRAFT AGREEMENT ON ASSISTANCE TO AND RETURN OF ASTRONAUTS AND SPACE VEHICLES (A/AC.105/C.2/L.28/Rev.1) (continued)

The CHAIRMAN drew attention to the revised version of the draft agreement (A/AC.105/C.2/L.28/Rev.1).

Mr. McKECWN (Australia) said that his delegation attached great importance to the fact that a new draft agreement on the rescue of astronauts, the return of astronauts, and the return of objects launched into outer space had been prepared was supported by the major space Powers represented in the Sub-Committee. He was glad to note that the new text achieved the primary purpose which the Australian and Canadian delegations had sought to attain in the joint draft they had submitted at the previous session. At that session, the Sub-Committee had discussed the question whether the agreement should cover all the matters included in the mandate it had received from the General Assembly in resolution 2222 (XXI), but had reached no decision. Thus the new text represented a step forward, for its title and content reflected a genuine attempt to tackle the problem in its entirety. In operative paragraph 4 (a) of resolution 2222 (XXI), the General Assembly had accorded equal importance and urgency to the liability agreement and the agreement on assistance to astronauts and the return of space vehicles. It was not true that the space Powers were exclusively interested in one agreement and the non-space Powers in the other, but there was something to be said for the view that the two agreements established a balance between the rights and obligations of the two categories of States. Australia possessed launching facilities, and its large territory made it liable to receive objects re-entering the atmosphere, as had already occurred. It was therefore alive to the interests of both categories of States. Progress towards the conclusion of one agreement need not impede the conclusion of the other. His delegation was glad that the representatives of the United States and the Soviet Union had declared, at the previous meeting, that they intended to pursue actively the question of the liability agreement. It associated itself with those delegations which had suggested that the preamble to the draft under consideration should call for rapid progress towards the conclusion of such an agreement.

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(Mr. McKeown, Australia)

The provisions of article 2 of the draft were of key importance, and raised the problem of determining which party was responsible for deciding whether "assistance by the launching authority would help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations", when the States concerned did not agree on that issue. That bore closely on the question of sovereignty and the right of Contracting Parties to control access to their territory. At the previous meeting, the United States representative had given a useful explanation of the purport of that provision, and had stated in particular that in the unlikely event that the territorial party and the launching authority did not agree, the former would of course have the final say in the matter. His delegation took note of that statement.

Australia attached great importance to article 6, which defined the term "launching authority". Since very few States were able to carry out launchings themselves, it was essential - and a matter of particular concern to Australia, as a member of the European Launcher Development Organization - that the term should be understood to include the competent international organizations. He was therefore glad that the authors of the new text had decided to give consideration to that question.

With regard to article 7, his delegation noted the view expressed by the United States representative at the previous meeting concerning the present state of international law regarding accession to multilateral agreements by unrecognized régimes. His Government, too, considered that the signature of multilateral agreements by such entities did not imply their recognition by other signatories.

In conclusion, he hoped that full agreement would be reached in the Legal Sub-Committee, and that the latter would be able to recommend to the General Assembly, through the Committee on the Peaceful Uses of Outer Space, a draft which was fully supported by all its members.

Mr. COLE (Sierra Leone) thanked the Chairman for convening the Legal Sub-Committee to consider the revised draft agreement (A/AC.105/C.2/L.28/Rev.1), which expressed the agreed views of the two principal space Powers on the problems of rescuing astronauts and returning objects launched into space. His Government had signed the Outer Space Treaty and firmly intended to fulfil all its obligations

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(Mr. Cole, Sierra Leone)

under that instrument. Before accepting new obligations, however, it had to have time to study them and obtain any necessary explanations, particularly on legal points. The provisions of the draft agreement which had been submitted to the Sub-Committee had very important implications for States and for the international organizations participating in space activities. He shared the concern expressed at the previous meeting by the delegations of India, Iran and Japan. The observations made by the representatives of France and the United Kingdom also contained food for thought.

Certain provisions of the draft agreement would have to be studied carefully. That applied particularly to article 2, which raised the question of the territorial sovereignty of States. The phrases "objects launched into outer space" and "their component parts" in article 5, paragraph 3, and "object or... parts... of a hazardous or deleterious nature" in article 5, paragraph 4, raised the question how a non-space Power, particularly a developing country, should proceed in order to form a conclusion on the nature of the objects in question. Moreover, was it to be inferred from article 5, paragraph 5, that to be able to claim payment of its expenses a Contracting Party must not only have recovered but returned the space object? With regard to article 6, by what criterion was responsibility for launching to be determined?

His delegation considered that those were only some of the problems which suggested themselves on superficial examination of the draft agreement.

The Sub-Committee must, of course, endeavour to carry out promptly the work assigned to it under its terms of reference. However, his delegation wished to be given enough time to form its judgement. In any event, it should be borne in mind that the study of legal liability for damages caused by space activities was also very urgent.

Mr. CHULUUNBAATAR (Mongolia) said that he wished first to congratulate the representatives of the two main space Powers, the Soviet Union and the United States, on having reached agreement on the document before the Sub-Committee. His country carried out no launchings, but it pursued a policy of peace and therefore favoured the use of outer space for peaceful purposes only. Since the objective its provisions sought to attain was to guarantee the safety of astronauts for

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(Mr. Chuluunbaatar, Mongolia)

humanitarian and scientific reasons, his delegation was prepared to support the draft agreement, which would constitute a further advance in international co-operation in the peaceful use of outer space. It felt that the draft agreement included all the measures which a Contracting Party should take to ensure the rescue and return to their countries of astronauts who had had to make a forced landing, and in addition it provided for the return of objects launched by a country and recovered outside its territorial frontiers. It was therefore an extremely comprehensive document; moreover, it was one of universal significance. That feature of the draft agreement was evident in article 7, under which the agreement was to be open to all States for signature. He assumed that the drafters of the document had already envisaged annexing a protocol to it; he hoped that a procedure would be employed which would give the agreement the universal scope it deserved and that the instrument would be accepted by all Member States which were not represented on the Committee.

Mr. CAPOTORTI (Italy) said that the development of space law was of great importance, and welcomed the dispatch shown by the authors of the draft agreement in submitting their text. He hoped that the same diligence would be shown in preparing the draft agreement on liability for damages caused by the launching of objects into outer space. The two agreements were equally important and, moreover, were closely related, even from the practical standpoint; one need only mention the problem of damages resulting from the forced landing of objects launched into space to realize that. Since it was very difficult to separate the two problems, his Government would be in a difficult position if it were asked to ratify only one of the two proposed agreements.

With regard to the text of the draft agreement, his delegation attached great importance to article 2, especially its third sentence. In its view, that sentence was to be interpreted as meaning that the Contracting Party had the power, in the last resort, to decide whether the assistance of the launching authority would help to effect a prompt rescue or would contribute substantially to the effectiveness

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(Mr. Capotorti, Italy)

of search and rescue operations, it being understood that the parties concerned would jointly make the arrangements for such co-operation. There were several arguments in support of that interpretation. The first was the actual text of article 2, the last sentence of which implicitly recognized the function of the Contracting Party during the preliminary phase of co-operation. Secondly, as a number of delegations had already pointed out, during the previous meeting the representative of the United States, which had helped to prepare the draft agreement, had stressed that in the event of disagreement between the two parties the Contracting Party would naturally have the last word. Lastly, it was a general principle of international law that any obligation framed in general terms must be interpreted primarily in the light of the interests of the party which incurred the obligation - in the present case the Contracting Party - and in such a way as to encroach on that Party's sovereignty to the least possible degree. He therefore hoped that it would be possible to redraft article 2 so as to meet those considerations. In article 3, the words "in a position to do so" should in his delegation's opinion be understood as referring to the technical facilities possessed by the Contracting Party concerned. He noted with satisfaction that the authors of the draft agreement had agreed to a new text for article 6 which gave more weight to the interests of countries like his which were particularly interested in the launching programmes of international organizations.

His delegation regretted the absence of a clause on the settlement of disputes arising out of the application of the agreement. Although it did not intend, at least for the moment, to submit a formal amendment to fill that gap, it hoped that some provision for the settlement of disputes by arbitral or judicial means would be included in the draft agreement. In conclusion, he observed that the draft agreement was important not only in itself but as part of a larger field, space law. The United Nations must protect the interests of both space Powers and other States.

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Mr. BAL (Belgium) said that his delegation had often emphasized the need for the formulation as soon as possible of a set of legal norms applicable to activities for the exploration and use of outer space; and since the conclusion of the Treaty on the principles governing such activities it had many times expressed the hope that separate agreements would speedily be drawn up to set out in detail the rules laid down in the Treaty of January 1967. It was therefore glad that new efforts had been undertaken to solve one of the classic problems of space law, namely, the problem of the rescue of astronauts, the return of astronauts and the return of objects launched into outer space. It could be seen from the draft agreement that real progress had been made in that sphere: the text before the Sub-Committee covered the three aspects of the problem and took into account various proposals made at Geneva, in particular those of the Australian and Canadian representatives. It could not be denied that the question was complex, but it was to be hoped that an agreement could soon be drawn up which would be widely supported by the States Members of the United Nations.

The Belgian Government was studying the draft agreement, in a constructive spirit. The changes made in the text since the previous meeting seemed likely to facilitate the preparation of a generally acceptable juridical instrument. In particular, the Belgian delegation had noted the amendment of article 6, relating to the question of the rights and obligations of international organizations, to which Belgium attached particular importance. Those initial changes gave ground for hope that it would be possible to meet the wishes of several delegations on other important points affecting the substance of the draft.

The Sub-Committee must give urgent consideration to other matters of space law, primarily the negotiation of a treaty on liability for damages caused by the launching of objects into outer space. In that connexion, it should be noted that resolution 2260 (XXII), which had just been adopted by the General Assembly, imposed on the Sub-Committee the duty to progress rapidly beyond the modest results achieved at its last session on the problem of liability. The Belgian delegation had noted with particular interest the statements of the United States and the Soviet representatives regarding the continuance of work on the liability question; any assurances which the Sub-Committee might receive concerning the negotiation of a treaty on that question would be bound to have a favourable effect on the preparation and implementation of the agreement on assistance and return at present contemplated. Finally, though it was true,

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as several delegations had pointed out, that the Sub-Committee had only a limited amount of time to take decisions on important questions, it should nevertheless make every effort to advance its work as much as possible.

Mr. GOWLAND (Argentina) thanked the Chairman for the efforts he had made to convene the Sub-Committee, and welcomed the steps that had been taken to implement the recommendations made by the General Assembly in its resolution 2260 (XXII). It was a matter for satisfaction that parties holding different opinions had acted promptly, although it was true that their task had been facilitated by the fact that the majority of the draft's provisions had already been considered in detail.

The Argentine delegation wished to congratulate the delegations of the United States and the Soviet Union on their spirit of co-operation. For the time being, the draft called for little comment, except for article 2, which provided that the Contracting Party was to co-operate with the launching authority with a view to the effective conduct of search and rescue operations. The Argentine delegation endorsed the comments made by the Australian and Italian representatives, and believed that that article was to be interpreted to mean that the final decision lay with the Contracting Party on whose territory the search and rescue operations were to be carried out. That interpretation would ensure respect for the sovereignty of the States concerned.

It was encouraging to note that everything possible was being done to make improvements in the text, and it was to be hoped that the draft would be adopted as quickly as possible.

Mr. MARSCHIK (Austria) welcomed the fact that it had been possible to draw up a draft agreement, but regretted that similar progress had not been achieved with regard to the second draft agreement, on liability for damages caused by the launching of objects into outer space. Those two agreements were closely linked and would ensure a balance between the rights and obligations of space and non-space Powers. Nevertheless, that should not prevent the Sub-Committee from reaching an agreement on the text relating to the rescue and return of astronauts.

(Mr. Marschik, Austria)

The various proposals that had been made had been taken into account, in particular in article 2, the key provision of the draft. However, the Austrian delegation believed that the wording of that article should be slightly altered. Since the first two sentences enunciated the obligations of the Contracting Party and the fourth sentence reaffirmed that search and rescue operations would be subject to the direction and control of the Contracting Party, the order of the third and fourth sentences should be reversed so as to achieve a better balance between the rights and obligations of the Contracting Parties.

Article 4 imposed an absolute obligation on the Contracting Party to return the personnel of a space craft that had landed in its territory to representatives of the launching authority. Some members of the Sub-Committee felt that that provision might conflict with certain national laws, particularly those relating to the right of asylum. However, the Austrian delegation was prepared to accept that article if it was not interpreted as contradicting the recognized principles of international relations, which were reflected in Austria's traditional policies towards aliens.

He hoped that it would be possible to reach a text acceptable to all during the current session.

Mr. TELLO (Mexico) welcomed the fact that it had been possible to reach agreement and prepare a draft on what was essentially a humanitarian question, and noted that the representatives of the two great space Powers intended to continue their efforts to prepare a draft agreement on liability for damages caused by the launching of objects into outer space.

The Mexican delegation supported the United States representative's interpretation of article 2, namely, that the decision whether or not the assistance of the launching authority was necessary for rescue operations lay with the Contracting Party, and that search and rescue operations were to be conducted under the direction and control of the Contracting Party. Subject to that interpretation, the Mexican delegation had no basic objection to the revised draft, which it endorsed in general.

The meeting rose at 12.30 p.m.