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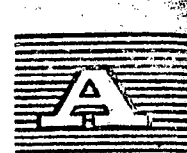
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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE
LEGAL SUB-COMMITTEE

Seventh Session

Volume I*

SUMMARY RECORDS OF THE NINETEENTH TO ONE HUNDRED AND FIRST MEETINGS
held at the International Labour Office,
Geneva from 4 to 13 June 1968

The list of representatives attending the session is found in the report
of the Sub-Committee to the Committee on the Peaceful Uses of Outer Space
on the work of its seventh session (A/AC.105/45, annex IV).

Chairman:

Mr. WYZNER

Poland

* The summary records of the one hundred and second to one hundred and tenth meetings held from 19 June to 23 June 1968, are contained in volume II.

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SUMMARY RECORD OF THE NINETIETH (OPENING) MEETING
held on Tuesday, 4 June 1968, at 3.15 p.m.

Chairman: Mr. WYZNER Poland

OPENING OF THE SESSION

The CHAIRMAN declared open the seventh session of the Sub-Committee and welcomed its members.

STATEMENT BY THE CHAIRMAN (item 1 of the provisional agenda)

The CHAIRMAN said that the Sub-Committee's record of achievement was impressive, since it was primarily its efforts which had led to the formulation of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967 Treaty), and the conclusion of the Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space (1967 Agreement), both of which had been hailed as instruments of momentous importance in the space field in general and in the development of space law in particular. The success obtained had been largely due to the endeavours made by members of the Sub-Committee to evolve acceptable principles and rules in a spirit of co-operation, and he was confident that that spirit of co-operation and mutual accommodation would continue to prevail.

While the two main items on the Sub-Committee's provisional agenda (items 2 and 3) were of great importance, he thought that the primary purpose of the session was the formulation of a draft agreement on liability for damage caused by objects launched into outer space. In the Sub-Committee's report on its special session in December 1967, it had expressed the view that it should expedite its work on the preparation of a draft agreement on liability, and that view had been endorsed by the Committee on the Peaceful Uses of Outer Space and by the General Assembly in its resolution 2345 (XXII) of 19 December 1967. While the Sub-Committee's task was by no means an easy one, he earnestly hoped that, in accordance with its previous record of achievement, it would be able to complete its work on the preparation of a draft agreement on liability and also to make significant progress on the other main item on its agenda.

ADOPTION OF THE AGENDA

The CHAIRMAN said that, in the absence of any objections, he would assume that the provisional agenda (A/AC.105/C.2/L.31) was adopted.

It was so decided.

SUMMARY RECORD OF THE NINETY-FIRST MEETING
held on Wednesday, 5 June 1968, at 10.55 a.m.

Chairman:

Mr. WYZNER Poland

DRAFT AGREEMENT ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE
(agenda item 2) (A/AC.105/37, A/AC.105/C.2/W.2/Rev.4) (continued)

The CHAIRMAN invited the members of the Sub-Committee to give their views on the draft agreement under consideration, and more particularly on proposals set out in the comparative table annexed to the Sub-Committee's report on the work of its sixth session (A/AC.105/37, Annex II, p.27; see also A/AC.105/C.2/W.2/Rev.4).

Mr. EORSI (Hungary) said that while the Sub-Committee had already achieved gratifying results with regard to both the principles governing the activities of States in the exploration and use of outer space, and to the rescue of astronauts, the return of astronauts and the return of objects launched into outer space, there was still a gap in space law in the matter of liability.

An agreement on liability for damage caused by objects launched into outer space had to protect the legitimate interests of victims, while also taking account of the fact that the activities of potential causers of damage were intended to serve mankind and that, in the overwhelming majority of cases, damage would not be caused intentionally or even through negligence. Thus it was not a question of punishing the guilty, but of providing for the protection of potential victims by the potential causers of damage, who would in a sense become the insurers of those victims. Hence, from the purely legal standpoint, an agreement on liability in that field came both within the scope of public international law by reason of its framework and machines, and within that of civil law by reason of its content - two areas in which ways of reasoning did not always coincide.

Furthermore, any agreement on liability must be as complete as possible; in other words, it must cover damage caused in outer space and not only damage caused on the ground or in the atmosphere. On the other hand, it must not extend activities beyond the sphere of outer space in the strict sense and its provisions would in no case apply to damage caused, for example, through the use of nuclear energy. If the proposed agreement on liability was to contribute to the maintenance of law and order in the spirit of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space (1963 Declaration) and of the principles approved by the General Assembly at its twenty-second session, it must exclude all possibility of exoneration in the event of damage caused by an unlawful activity. Finally, if the democratic nature of the international community was to be respected, accession to the Agreement must be open to all States without discrimination and there must also be appropriate machinery for the peaceful settlement of disputes.

It would be recalled that, at the Sub-Committee's sixth session, the Hungarian delegation had agreed in a spirit of compromise that, in the interests of potential victims, damages should not be confined to a fixed amount. In that same spirit, it was now prepared to go further and to admit the principle of the absolute liability of the States responsible for damage, and accordingly to eliminate from the draft Convention it had submitted any reference to damage resulting from natural disaster.

Mr. DELEAU (France) outlined the principles which would guide the French delegation in its study of the drafts submitted to the Sub-Committee.

On the question of the basis for liability in matters relating to outer space, the French delegation, like the great majority of members of the Sub-Committee, had found it necessary to modify the position it had adopted at the sixth session in favour of the principle of responsibility based on risk; that principle had made it possible to place the instrument being prepared on a foundation which was clear and straightforward, but which sometimes seemed to conflict with equity. Liability had to be regarded as having been incurred without fault whenever an inequality in the form of unequal possibilities of causing or sustaining damage was established between the respondent State and the victim. In other words, whenever damage was caused as a result of the launching of a space vehicle in the territory of third States which had neither participated in nor had any influence on the space activities of the launching State or States, the system of liability without fault had to be adopted, under which only the party which derived advantage from the space vehicle was required to make good the damage.

That decision originated in the idea that it was necessary for the international community to protect victims of damage caused by a space vehicle because it was considered equitable to favour the victim over the party causing the damage, even if the latter was not at fault, or to give the general interest, that of the third parties which had suffered damage, precedence over the particular interest, that of the State which caused the damage. Equity demanded compensation for any damage; justice, however required that the State whose role had been purely passive should be favoured over the State whose role had been active, particularly as the latter derived benefit from its activities. The principle of liability based on risk must therefore be applied in all cases where damage was sustained by States, or by persons in their territory, that had played no part in the space activities which caused the damage.

But in the case of victims which were third parties, the arguments used in support of liability based on risk carried much less weight, where the damage had been inflicted by the space activities of one State upon another State which was itself engaged in such activities. In those circumstances, why should the one State be favoured over the other or why should the State which had suffered the damage be accorded privileged treatment, since, in undertaking space activities itself, that State had accepted the risks involved? The interests of the international community therefore no longer necessarily lay in protecting the victim, but rather in not penalizing States engaged in a field, the conquest of which was a source of benefit and pride to mankind, provided there was no evidence that they had committed any fault.

In short, the French delegation therefore considered that, where the selection of the basis for liability was concerned, a distinction should be drawn according to whether the victims were or were not engaged in space activities themselves at the time of the accident. In other words, where damage occurred on the earth's surface and in the atmosphere, liability would be based upon risk. Where, however the damage occurred in outer space or was caused by a spacecraft to another spacecraft and its users, liability should be based on fault.

Attention should be drawn to the consequences of adopting a mixed system under which the criteria of risk and fault would be applied according to the circumstances, and of selecting the criterion of risk in the cases which still affected the great majority of States. First and foremost, the establishment of a distinction between damage occurring on the earth's surface or in the atmosphere on the one hand, and in outer space, on the other, necessarily entailed a definition of outer space within the meaning of the instrument under consideration. In the absence of adequate scientific and technical criteria, the French delegation considered that outer space could be defined arbitrarily by adopting a criterion of altitude. An altitude of 80 km above sea-level might reasonably be adopted, as, in the opinion of meteorologists, physical phenomena occurring above that altitude were not liable to influence conditions on the ground.

The application of the theory of risk with respect to third parties raised certain difficulties, namely, the non-exoneration of the respondent State and the non-limitation of the indemnity paid in compensation for damage. Under the theory of objective liability, any person causing damage was liable without there being any need for an examination of its conduct. Logically, therefore, no grounds for exemption could be

taken into account where a respondent State found itself in a situation in which its objective liability was involved. It was, however, difficult to agree that, where the victim had provoked the damage by its conduct, it should receive full compensation. That was why the French delegation was prepared to concede that, where damage resulted from an act, a deliberate omission or grave negligence on the part of the applicant State, the respondent State might be wholly or partially relieved of liability. But for the very reason that that was a case where the liability would be assumed to lie initially with the respondent State, the onus of proof that the damage resulted from the attitude adopted by the applicant State would rest solely with the former State.

Another logical consequence of the concept of risk as applied to damage suffered by third parties was the need for unlimited coverage for damage caused by space activities. Exemption from liability because of force majeure, or aggravation of or non-exoneration from liability because of gross negligence (faute lourde) could be contemplated only in the context of a system based on fault. Limitation of the amount of compensation could therefore be considered solely for practical or political reasons such as those which had been put forward by some delegations during the previous discussion. For its part, the French delegation would find it very difficult to accept such a limitation because, in view of progress in space technology, it thought it impossible to set the ceiling in such a way as to avoid the errors committed in the past in connexion with both air and maritime law by fixing amounts which were much too low. If the need to fix a very high ceiling was recognized, the main argument against the principle of non-limitation, namely, that poorer States would hesitate to take part in such undertakings, lost much of its validity.

The French delegation consequently believed that liability should be based on risk in the case of damage caused to third parties on earth and in the atmosphere, and on fault in the case of damage occurring between States engaged in space activities in space, whether outer space or air space.

Other essential elements of the instrument under consideration were the definition of the responsible party, the question of the settlement of disputes and that of the law to be applied for the purpose of assessing damage. [With regard to the determination of the responsible parties, it appeared that although the definition of the entities which could be considered internationally liable posed few problems, the matter became more complicated when it was a question of apportioning the liability among those

entities. In accordance with international rules and practice, the 1967 Treaty clearly distinguished between two categories of entities which could and should be considered internationally liable: States and international organizations. The same principle was to be found in article 6 of the 1967 Agreement. Unquestionably, therefore, in the agreement on liability, international organizations could and should be considered as such, and distinguished from member States. For that reason, an international organization which had carried out a launching should be the first party to be proceeded against by an applicant wishing to obtain compensation for damage resulting from the launching. In the event of default by the organization, the applicants could also proceed against each of the member States, but only in proportion to their contribution, except where the scale of apportionment of contributions had not been published. Thus, in the opinion of the French delegation, an organization's liability under the instrument being drafted could only be admitted in so far as all the member States, and not merely the majority of those States, were parties to the 1967 Agreement and to the afore-mentioned Treaty or had at least declared their acceptance of the undertakings provided for in the 1967 Agreement with respect to the activities of the organization. Such a formula would ensure that States members of an organization could not be called upon to pay indemnities arising out of the implementation of an agreement to which they were not parties or whose consequences they had not accepted in any form whatsoever.

The definition of the liable entities did not present any major difficulties, but it still had to be decided, in the event of several States or organizations having taken part in the launching of a spacecraft, which of them should be considered initially liable in the eyes of the applicant State. Under article VII of the 1967 Treaty the State which launched an object, the State which procured a launching and the State from whose territory or facility an object was launched were considered liable. The French delegation, however, still believed that that list was not satisfactory in that it did not settle the fundamental question of whether, under the future agreement, the State or organization which launched an object and the State or organization which made its facilities or territory available for that purpose should be considered equally liable. The French delegation considered that where several States or organizations were involved in a launching, the liability must lie with those of them which ultimately benefited from the space vehicle and space activity concerned. That applied to the State which launched or procured the launching, but not to the State which had simply authorized

the utilization of its territory or facilities. A solution under which the latter State would be regarded as having obligations of the same kind as those borne by the States which had launched or procured the launching would scarcely be equitable and would have the further consequence of impeding the development of international space co-operation by dissuading the States which were geographically the most favourably situated from making their territory or facilities available.

In the opinion of the French delegation, the best solution would, therefore, be to place the liability vis-à-vis third parties firstly upon the States which had launched or procured the launching. The State whose territory or facilities had been used could be held liable only where it had not been in a position to indicate who had undertaken the launching or where the State alleged to have done so refused to admit the fact or to pay compensation on the ground that it was not a party to the agreement. Such a solution would have the advantage of clearly defining liabilities, without precluding respondent States from deciding among themselves, by special agreement on the apportionment of the burden which would be borne by one of them under the agreement on liability.]

With regard to the assessment of damages, the French delegation thought that the matter should be settled directly between the applicant and the respondent States. The problem of the applicable law would thus arise only where direct agreement between the parties concerned proved impossible. The French delegation considered that the simplest solution and the one most in conformity with legal principles was for the damages to be assessed in accordance with the law of the place where the damages had been caused. That was the sole objective criterion, since the legal relationship could not be localized in terms of its object, namely a claim for compensation, nor could the personal law of the individuals concerned be invoked. It therefore seemed necessary for that legal relationship, which could not be localized either in terms of its subject or object, to be localized by reference to the legal fact out of which it arose, namely, the damage; the latter offered only one point of localization, the place where it had occurred. Thus, where compensation for damage could not be the object of an amicable agreement between the applicant and the respondent, the dispute should be settled by application, in the first instance, of the law of the place where the damage occurred. Obviously, however, in the absence of adequate or appropriate provisions under the local law, the tribunal responsible for settling the matter should be able to pass judgement ex aequo et bono.]

The need to institute effective procedure for the compulsory settlement of disputes stemmed from the facts set out above. The establishment of an arbitration commission established, in each case, in accordance with customary international practice, would be the only procedure which would ensure payment of the indemnities claimed by victims, for whom it was the best safeguard.

Miss GUTTERIDGE (United Kingdom) recalled that from 1961 onwards her Government had consistently advocated the conclusion of a series of international agreements establishing a legal régime for outer space. Both in the Sub-Committee and in other bodies, the United Kingdom representatives had affirmed that such a régime should be instituted step by step, each individual aspect being examined as the need arose. The continuing development of space technology called for the adoption of a pragmatic approach in the formulation of a legal régime for outer space.

After the entry into force of the 1967 Treaty, the time had come for the Sub-Committee to resume detailed discussion of a convention concerning liability for damage caused by the launching of objects into outer space. The task of the Sub-Committee was essentially to amplify articles VI and VII of the above-mentioned Treaty. The difficulties should not be under-estimated, for there were still considerable divergences between the three drafts already submitted. The United Kingdom delegation was convinced that, if the Sub-Committee was willing to consider on their merits all proposals already submitted or to be submitted during the present session, it could make considerable progress. In any case, one of the divergences had recently been eliminated, since the Hungarian representative had declared his willingness to remove from his draft any reference to natural disasters.

Her delegation was anxious to make a constructive contribution to the discussion and was ready to formulate any suggestions or proposals which might help to overcome the difficulties. For instance, it had in mind the questions of apportionment of liability and of the criteria for determining the law applicable to the assessment of damage, on the subject of which it might put forward certain proposals. It also hoped to be able to assist in formulating acceptable provisions concerning the rights and obligations of international organizations under the proposed convention. While her delegation did not consider that the formula in article 6 of the 1967 Agreement was necessarily entirely suitable for a convention concerning liability, it was encouraged by the progress made in that respect since the last session of the Sub-Committee.

The United Kingdom delegation thought that it should be possible to make substantial progress in the coming three weeks. In that connexion, it agreed with the United States representative that the comparative table of the three drafts would be useful as a basis for discussion; the table would, of course, have to be kept up to date.

Mr. TOKUHISA (Japan) considered that, if the Sub-Committee was to fulfil the mandate given to it by the General Assembly, it should, in the draft agreement, establish a just and equitable balance between the rights and obligations of the countries concerned, so that space activities might enjoy the support and agreement of all members of the international community of States, whether they were Launching States or not. Space activities and compensation for any damage caused by them - in other words, the rights and obligations of the Launching State and of the State suffering the damage - should be considered on an equal footing.

If the State suffering the damage was to receive compensation, it was essential that the State liable for the damage should be easily identified. It was therefore necessary for some means of identification to be established. For instance, the system of registration referred to in article VIII of the 1967 Treaty, could be applied on a global scale, at any rate as a provisional measure. However, his delegation considered that, in the final analysis, the problem of establishing the international system of registration should be fully considered.

The draft agreement provided for the State's liability for damage caused by space activities, but the State should not be exempted from such liability even in the case of force majeure or a natural disaster, nor should the contributory negligence of the victim be recognized unless the Launching State proved that the damage had resulted, wholly or partially, from gross negligence by the person suffering the damage, or from an act or omission on the part of the latter person, with the intention of making damage occur. He considered that, if those derogations from the principle of "absolute liability" were accepted, the victims would be less well protected.

In examining the problem of nuclear damage, full account should be taken not merely of the damage caused by the descent of a space vehicle carrying nuclear devices, but also of the damage arising out of nuclear installations as a result of the descent of a space vehicle. In seeking to include the question of nuclear damage in the draft agreement, it was important to avoid any conflict with the provisions of existing international agreements, in respect not only of damage caused to the nuclear installations themselves but of damage caused to third parties as its result.

Mr. RIHA (Czechoslovakia) said that all members of the Sub-Committee should strive to find formulas which all participants could accept, notwithstanding the divergences resulting from the differences between the various legal systems.

The Sub-Committee's work was being rendered easier by the 1967 Treaty which included several fundamental provisions on the liability of States. The three drafts before the Sub-Committee should enable it to prepare a final text. There were, of course, some questions which called for clarification. The agreement should be based on the following fundamental principles: the subject of liability was always the State; the right to claim compensation for damage was the exclusive attribute of the State; when there were several subjects, the claim for compensation should be presented to all of them; the liability should be absolute, and exemptions should be reasonably limited. In the final clauses, the Sub-Committee should proceed from the fact that, in the last two treaties it had elaborated, it had found the most democratic and most acceptable provisions.

Mr. GOGEANU (Romania) said that his delegation had noted with satisfaction the 1967 Agreement, which was an important milestone in the elaboration of a body of international space law.

The question of the rescue of astronauts and that of liability for damage caused by objects launched into outer space were closely linked. Launching entailed risks for the launcher but also for third parties, to whom it could cause material and moral damage. His delegation considered that the liability should be based on the risk undergone by the user of the space vessel.

The need for regulating the apportionment of liability in outer space navigation, especially with regard to damage caused by objects launched into outer space, was self-evident. Consequently, in view of the liability of States and international organizations launching space devices which caused damage to third parties, the problem was similar to that which had been studied concerning the liability of the user of a space device, namely, the objective liability based on the risk undergone, a liability which was absolute.

The amount to be paid in compensation was based on the extent of the liability, which meant that the State should undertake to pay full compensation for the damage caused by its activity. Although the system of subjective culpability had been sanctioned in some conventions, in the case of space vessels it was impossible for third parties suffering damage to prove the culpability of the person responsible.

His delegation considered that, even if the concept of objective culpability were rejected and liability were based on culpability alone, it would run counter to the standing principles of law to enshrine the concept of partial liability in the case of culpability; full compensation should be paid for the damage.

Technical and scientific research should be based on the safety of the devices used, so as to avoid giving countenance to the theory that such research conferred immunity in respect of liability for the safety of persons and property.

Lastly, he thought that it would be advisable to draw up a definition of outer space.

Mr. AMBROSINI (Italy) said that his country was against any limitation of liability, provided that the limit was fixed at a very high level, as was the case in international aviation. Moreover, in the event of a serious fault, the person responsible should never be allowed to shelter behind the concept of limited liability.

His delegation also considered that the principle of absolute liability for risk should be recognized, but that it should be applied also in the case of damage caused to third parties on the earth's surface, since there was never equality of situation between the person responsible for the damage and the victims.

When the damage was caused elsewhere than on the earth's surface, a distinction should be made between cases involving a space ship and a missile, and those involving two space objects. Short of proof to the contrary, the fault must be presumed to lie with the space object, in the first case, and with both sides in the second.

In that connexion, France appeared to be admitting the application of the principle of risk even within the earth's atmosphere. Italy, however, would oppose any proposal to that effect.

An international convention concerning liability for damage caused by the space activities of States was primarily designed to regulate the international liability of States, as was shown in the 1967 Treaty. The Sub-Committee was not concerned with problems of ordinary law. It was admittedly difficult to demarcate the boundary between public and private law in the field under discussion, but in view of the purposes of the proposed instrument it was essential that it should remain within the domain of public law.

The liability stemming from space activities could be incurred on the earth's surface, in the earth's atmosphere or in outer space; in any case, that was the approach in the texts before the Sub-Committee. His delegation was aware, however, that a proposal was to be submitted in which the proposed instrument would not be concerned with damage caused in outer space. The Sub-Committee could not entertain such a concept: it was in duty bound to adhere to the provisions of the 1967 Treaty, which took into consideration damage caused in outer space. His delegation was most anxious that the problem should be regulated in the instrument under study. Even if the Sub-Committee did not regulate that special case, it would not be able to prevent ordinary courts from giving rulings concerning damage in that domain. Failure to regulate the problem would run counter to the said Treaty and the Sub-Committee's work would have been in vain, for the ordinary courts would certainly intervene. Italy had always maintained, in discussions in United Nations bodies, that international law should be applied to outer space.

With regard to objective liability, his delegation was pleased that even Hungary had abandoned that principle in the case of natural disasters. In international air navigation compensation was always paid for damage on the earth's surface, even in the event of force majeure.

Moreover, the drafts before the Sub-Committee provided that any dispute which could not be resolved on an amicable basis between the Respondent State and the Claimant State should be referred to a commission of arbitration. The Italian delegation considered that, if the dispute was brought before a commission of arbitration, the injured party should not be allowed to file a suit in the ordinary courts. Conversely, if the injured party had had recourse to an ordinary court, he would not be able to ask for the dispute to be brought before a commission of arbitration. If, however, the injured party had recourse to an ordinary court, judicial or administrative, it was always possible to obtain an amicable settlement through the diplomatic channel.

With regard to international organizations, Italy agreed that they should be empowered to make a declaration to the United Nations to the effect that they accepted the instrument in question. His country considered that, in the case of damage caused

by the activities of an international organization, the latter was and should be directly liable in regard to the injured parties. There did not seem to be any disagreement on that point. It would be useful, however, to consider what would happen should the international organization fail to pay the sum fixed for compensation. The French representative had said that the States members of the organization should come into the matter and that the total compensation should be divided among them in accordance with the scale of contributions. The Italian delegation, for its part, considered that all the members of the international organizations concerned should be liable, whether or not they were Parties to the proposed instrument and the 1967 Treaty. After all, if an organization accepted a convention, its members were bound to pay compensation for any damage resulting from its activities, even if they themselves had not acceded to the Treaty in question.

The meeting rose at 12.25 p.m.

At the present stage, his delegation wished to draw the attention of the Sub-Committee to certain questions which it regarded as vitally important. In the first place, it considered that an agreement on liability should extend to damage caused by nuclear-propelled vehicles, a point on which it agreed with the view expressed by the Japanese representative. It also regarded any limitation of liability as contrary to the principle of total compensation for damage caused by space objects.

With regard to joint liability, his delegation shared the view of the French representative that it was essential to establish degrees of liability, since some States carried out launchings without any foreign co-operation, while others merely lent their territory for launching. It would therefore be unfair to impose the entire liability on a State which confined itself to lending its territory or facilities for the launching of a space object, even though it might be able to seek reimbursement from the State which had actually carried out the launching.

His delegation was glad that Hungary was prepared to withdraw from its proposal the provision relating to exemption from liability in case of natural disaster. That provision would conflict with the principle of objective liability, which was the very basis of the agreement envisaged.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that he proposed to make some general comments on the draft agreement on liability. The Legal Sub-Committee was resuming its work at a time when substantial progress had been recorded in the sphere of space law with the conclusion of the 1967 Treaty and the 1967 Agreement. If space law was to continue to develop, it was essential to establish co-operation between all States, without any discrimination, regardless of their social structure or the degree of economic and scientific development they had achieved. Harmonious collaboration between all States was indispensable if the development of space law was not to lag behind the conquest of space from the purely technical or scientific point of view.

The Legal Sub-Committee had been invited by the General Assembly to prepare a draft agreement on liability for damage caused by the launching of objects into outer space, on the basis of the principles governing the activities of States in the exploration and use of outer space. In order to do so, it would have to overcome the difficulties which arose from differences between the municipal law of various countries on the subject of compensation for damage.

After a detailed examination of the drafts submitted to the Sub-Committee, the Soviet delegation had come to the conclusion that the most satisfactory draft was the Hungarian, in that it was fully consistent with the universally recognized principles of international law and with article VII of the 1967 Treaty. The draft provided an equitable solution to the problem of the basis of liability, a notion regarded as separate from that of fault. In most cases the injured party was not in a position to provide proof of a fault on the part of the State liable for the damage. The Hungarian draft had the further advantage of covering damage caused in outer space without touching on the question of liability for damage caused by objects containing nuclear substances. The delegation of the USSR therefore proposed that the Hungarian draft should serve as a basis for the Legal Sub-Committee's discussions in connexion with the preparation of the proposed instrument.

Lastly, his delegation pointed out that the United Nations Conference on the Exploration and Peaceful Uses of Outer Space which was to take place in the summer of 1968 would not fail to make a substantial contribution to international co-operation in that field.

Mr. BEESLEY (Canada) said that an international agreement based on consensus and reconciling the conflicting issues of the various national legal systems and of international law could only be achieved if the parties sought what was possible rather than perfection. If the instrument in course of preparation was to be effective, it should be as clear, precise, realistic and complete as possible; the Sub-Committee should work not only for the present, but also for future possibilities.

With regard to the text itself, his delegation would recommend the use of the term "space object" rather than "space device" or "space vehicle", because the word "object" was more general and also covered risks arising from falling fragments.

The provisional agreement on the definition of the word "damage", on which Canada had made a proposal the previous year, seemed to require slight adjustment. It failed to refer to loss of property as distinct from loss of life.

Some States continued to oppose the idea of an international system of registration of space devices, which could be organized, for example, under the auspices of the International Civil Aviation Organization (ICAO). It would have great advantages when it came to establishing liability. The Canadian delegation shared the opinion expressed by the Japanese representative that the establishment of a registration system should be given serious consideration in the future. In

the meantime, the draft convention, drawing upon article VIII of the 1967 Treaty, should at least include the State of Registry in defining the Launching State. The act of registration would constitute public recognition by a State of its liability for any damage caused by the object launched and would be prima facie proof of the identity of the State or international organization which was to profit from the launching. Canada would therefore continue to support the adoption of the widest possible criteria in defining the Launching Authority with as few restrictions to liability as possible. It hoped that international organizations could be included in the definition of Launching Authority or that their rights and obligations would be defined more clearly in a separate paragraph, perhaps similar to article 6 of the 1967 Agreement.

With regard to the field of application of the convention, Canada favoured a provision permitting the State on whose territory the damage had occurred to espouse the claims of all its permanent residents except those who were nationals of the Launching Authority.

For the cogent reasons advanced by the French representative, his delegation thought that liability for damage on the earth's surface and in air space, as between space and non space objects, should be made absolute.

Article VII of the 1967 Treaty was general and abstract, but on one point it was perfectly clear, namely that States were internationally liable for the damage they caused, not only on the earth and in air space, but in outer space as well. His delegation therefore shared the opinion expressed by the Hungarian, French and Italian representatives that provision should be made in the convention for liability for damage caused anywhere in outer space, and that such liability should be based on fault rather than on risk. If international law was accepted as being applicable in outer space, as the Italian delegation had advocated, it was the Sub-Committee's duty to include liability for damage caused in outer space in the convention.

Canada was pleased to learn that Hungary was no longer insisting on natural disaster or force majeure being a defence to liability.

His delegation had expressed the opinion that, in the interests of obtaining a consensus, there should be some limitation on liability, the essential problem being to determine an appropriate ceiling. The Canadian delegation considered that the convention should provide for nuclear damage and it therefore advocated as high a ceiling as possible.

By and large, his delegation was satisfied with the agreement reached on the presentation of claims for compensation, but it thought the instrument should provide for the arbitration of disputes in a satisfactory manner. So far the Sub-Committee had been unable to agree on whether the national law of the person injured, of the place where the damage occurred or of the Launching Authority or perhaps some combination of those systems, based on principles of international law, justice and equity, should be applied. His delegation would therefore support any proposal which would solve the problem equitably.

His delegation thought that the question whether the convention should be open to signature by all States should be deferred until the Sub-Committee had a clearer idea of the substantive provisions which the instrument would contain.

Mr. BEREZOWSKI (Poland) recalled that in 1967 his delegation had postulated two principles: the mutual liability of States, with each Government undertaking to present claims for compensation for its injured nationals, and liability from the international civil point of view. The Hungarian proposal combined those two notions and should be supported by delegations.

The liability which was the subject of the future convention was an objective liability. It might be asked whether it was appropriate to restrict it in any way. The Italian delegation had found analogies between the air law and space law, but the problems involved were different: the sovereignty of air space was a recognized principle, but it was not yet possible to talk of sovereignty of outer space and an analogy between air law and cosmic law seemed impossible. The Sub-Committee should say whether there should be any limit on compensation for damage, even if the notion of damage was based on the hypothesis of risk.

Mr. AMBROSINI (Italy) thought there had been a misunderstanding, for he had long been convinced that the provisions of the air law were not applicable to cosmic law.

Mr. VRANKEN (Belgium) recalled that at the beginning of the Sub-Committee's work his delegation had submitted a draft convention. It was open to any suggestions for amendment or compromise, or even for deletions of parts of the text, provided those suggestions commanded general agreement and did not jeopardize the basic principles underlying the draft. Those principles were that exemption from liability should be

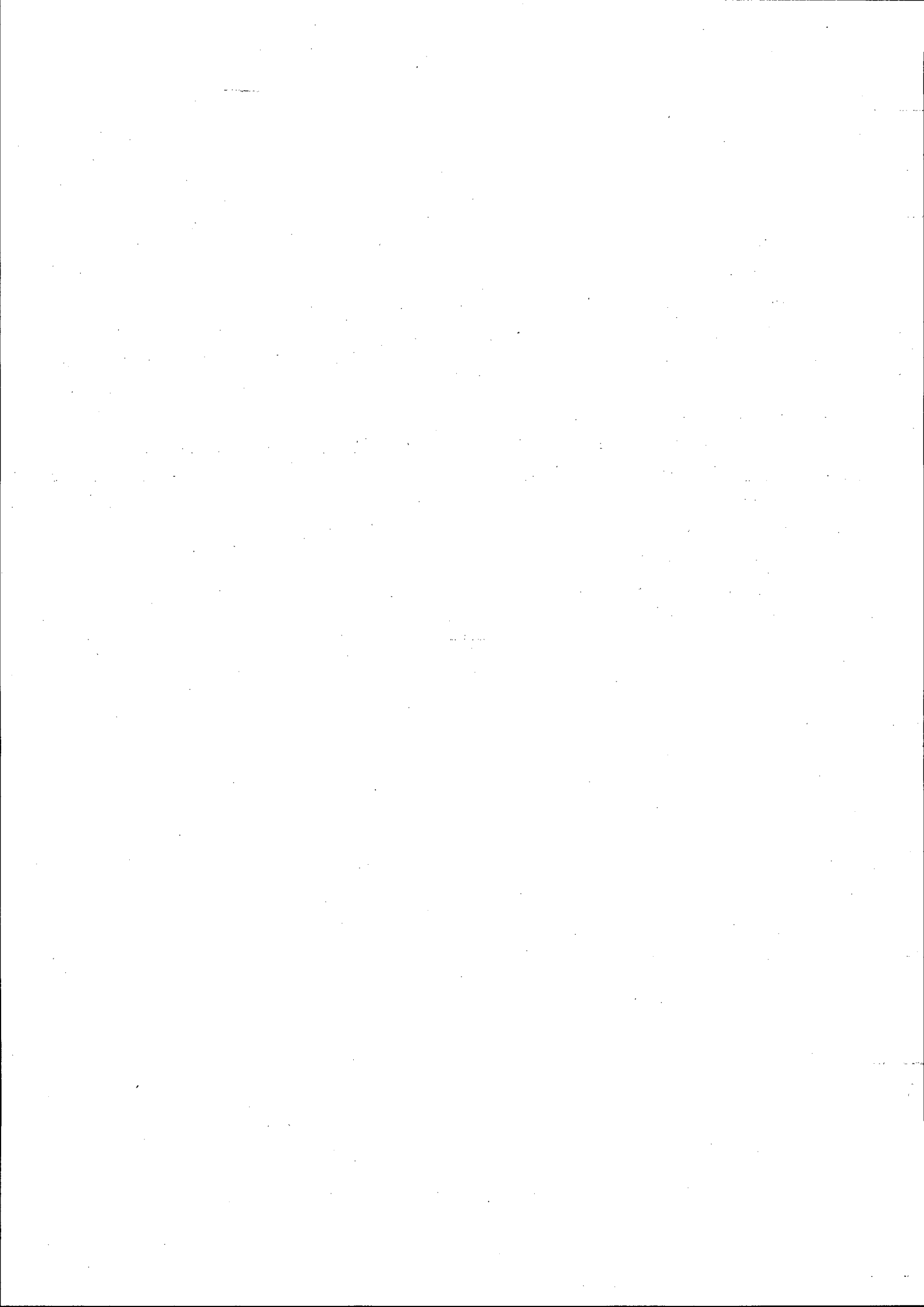
limitative and very clearly circumscribed; that the compensation payable should be determined on the basis not only of the rules of international law but also of a well defined and categorical law, preferably that of the State in whose territory the damage was caused; that the victim should be assisted in presenting his claim by a clear statement of which State or international organization he could approach; that there should be no limit on financial liability, unless it was a very high one: and that arbitration machinery should be established for the settlement of disputes.

ORGANIZATION OF WORK

After an exchange of views in which Mr. AMBROSINI (Italy), Mr. RAO (India), Mr. O'DONOVAN (Australia) and Miss GUTTERIDGE (United Kingdom) took part, the CHAIRMAN proposed that at the following meeting the Sub-Committee should take up the question of the field of application of the convention, should then adopt the order shown in the comparative table and should finally take up the question of definitions.

It was so decided.

The meeting rose at 1 p.m.



SUMMARY RECORD OF THE NINETY-THIRD MEETING
held on Friday, 7 June 1968, at 10.55 a.m.

Chairman: Mr. WYZNER Poland

DRAFT AGREEMENT ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/37, A/AC.105/C.2/L.32, A/AC.105/C.2/W.2/Rev.4 and Add.1 and 2) (continued)

Mr. HERNDL (Austria) said that he wished to mention a few points to which his delegation attached the utmost importance. First of all, he would like to have a clear and precise decision on the question of the law to be applied. It would be possible to opt either for national law or for the rules of international law, or it could be stipulated that there must be prior agreement between the parties. The formula adopted, however, should not be such as to encourage pressure in support of the adoption of a national law unilaterally favourable to the respondent.

Secondly, it seemed that the question of the field of application of the convention should be approached and settled from a practical standpoint. The scope of the agreement could perhaps be limited to damage sustained outside outer space and it should cover compensation for damage of all kinds caused by space activities on earth and in the atmosphere, including damage of nuclear origin. If the Sub-Committee wished to include damage sustained in outer space, it would have to adopt the principle of liability based on the concept of fault, exclusively.

The Austrian delegation supported the principle of absolute liability for damage occurring on earth and in the atmosphere, which seemed moreover to have been accepted already. It was necessary to protect States or entities that did not carry out space activities or obtain direct benefit from those activities.

Several criteria were possible for the identification of the Launching State, but the adoption of a registration system was in his opinion the soundest method.

With regard to the settlement of disputes, his delegation thought that compulsory arbitration would be the most effective procedure.

His delegation had made no choice among the drafts submitted to the Sub-Committee, each of which had its merits. He hoped that a study of the drafts would make it possible to draw up an instrument that could gain the support of the international community and afford protection to States, and through them to human beings, from the risks inherent in space activities, which were constantly increasing.

Mr. AZIMI (Iran) said that the exploration and utilization of outer space was of interest not only to the great powers that had the means of carrying out activities there, but also to the other countries, large or small, developed or developing, for all could suffer the consequences of damage resulting from outer space activities. Since the question affected the whole of mankind, every effort should be

made to reach agreement on it within the allotted time. Any country which launched an object into outer space had absolute liability for any damage that might be caused by the launching or the return to earth of that object and should give adequate compensation to the Presenting State. The basic concept should be that of risk. The general interest should have priority over private interests, and that of the victims over that of the author of the damage.

His delegation attached particular importance to the definition of terms such as "launching", "space object", "damage" etc., not forgetting that of "outer space".

Finally, it wished to congratulate the delegations of Belgium, the United States, Hungary and India on having submitted drafts that formed an excellent basis for the Committee's work.

Mr. PERSSON (Sweden) said that Sweden had no rigid views about the several articles of the agreement and was ready to accept adjustments for the common good, but it was anxious that the instrument should include provisions covering certain matters.

For example, since international organizations were already carrying out activities in outer space, it seemed essential that they should be covered in an agreement on liability for damage caused by objects launched into outer space and that both their rights and their obligations should be set out in it. They should also have a primary liability, and provision should be made for the apportionment of the subsidiary liability among their members.

The Swedish delegation considered that for the purposes of identification there was much to be said in favour of international or national registration of objects launched into space; an arrangement of that kind appeared moreover to be anticipated in the first sentence of article VIII of the 1967 Treaty.

In that connexion, he wished to point out that neither the Treaty nor the 1967 Agreement gave any definition of space craft or space devices. They referred only to "objects launched into outer space", "space craft" and "space objects"; it might not therefore be absolutely necessary to try to define those terms in the agreement on liability.

Nor did the Swedish delegation consider that the time was ripe for drawing a line between outer and inner space or trying to define outer space.

As far as damage was concerned, his delegation held that the text should cover at least all direct damage, including damage caused by nuclear devices, and that liability for the damage should be absolute.

Lastly, with regard to compensation for damage, the relevant principles of international law should be applied in the first place, but they should be supplemented by the law of the country where the damage had occurred. On the other hand, the distribution of the compensation claimed and obtained was a domestic matter for the Presenting State and as such should not be covered in an international agreement.

The CHAIRMAN declared the general debate closed and invited the Sub-Committee to begin its drafting work, starting with the provisions referring to the field of application of the draft agreement, on which subject the Sub-Committee had before it a proposal submitted by Italy (A/AC.105/37, annex II, p.25).

There were two aspects to the question: firstly, the spheres - surface of the earth, air or outer space - to which the agreement would be applicable; secondly, the natural or juridical persons to be covered by the instrument. At the sixth session, the Sub-Committee had reached the conclusion that the Launching State should be liable for all the damage caused on the earth or in the air, but agreement had not been reached on the desirability of extending the liability to damage occurring in outer space. The latter point was dealt with in different ways in the four drafts submitted; it would be necessary to find a way of reconciling them. With regard to the persons to whom the convention should be applicable, a measure of agreement had been reached in the case of persons who were not nationals of the Launching State, but it had not been possible to reach agreement on the question of damage suffered by permanent residents of the Presenting State.

Mr. EORSI (Hungary) thought that the question of liability for damage occurring in outer space was badly put: it was essentially a matter of damage caused by a space object to another space object, for instance the possibility of a collision, which could just as well take place in the atmosphere as in outer space. By that approach it became superfluous to attempt to fix the height of a line of demarcation between the atmosphere and outer space.

The damage to be covered was of two kinds: damage attributable to outer space activities and nuclear damage. If a spacecraft with a nuclear engine were accidentally to fall on the earth's surface, some of the damage would be other than nuclear and in that case the future instrument would be applicable; there would also be nuclear damage, which could have occurred apart from any space activity. In other words, space activity had created the conditions for the damage occasioned, but the cause of the damage had been the use of a nuclear engine. Nuclear damage came under

a particular field of liability, whatever the conditions in which it occurred; it did not come under space law, even if it was occasioned by outer space activity, just as nuclear damage caused by an atomic ship came under rules for the liability for damage of nuclear origin, and not under normal maritime law. The distinction between space damage and nuclear damage was far from being merely academic: it might make it necessary to include in the future instrument a special chapter on atomic damage which would take up nearly half the instrument.)

Some of the problems which could arise in that respect were the limitation of liability, which was absolute for non-nuclear damage and limited for nuclear damage; the question of insurance against such risks or the creation of a fund; cases of joint responsibility when two States co-operated in the launching of a space object, one supplying the device and the other the engine. Also to be borne in mind was the 1963 Vienna Convention on Civil Liability for Nuclear Damage, in which article IV, paragraph 3(b) provided a good defence for the owner of a nuclear plant, exonerating him from liability in the case of nuclear damage which was the direct result of a natural disaster of an exceptional kind. Another question was whether the period allowed for the presentation of claims for compensation was not too short.

[It was not by chance that all national legislations dealt with the question of liability in relation to nuclear damage as a special problem and did not divide it up according to the circumstances in which the damage had been caused. In so dividing it, the Sub-Committee would run the risk of creating a dangerous precedent. The question was so complex that the Sub-Committee would have to devote a considerable amount of time to drafting the pertinent section and might end by compromising the entire instrument.]

Mr. AMBROSINI (Italy) said that Italy's position with regard to the field of application of the instrument under consideration was quite firm: the instrument should be applicable to damage in outer space. Besides, if a collision were to occur between space objects in outer space and those objects fell to the earth and caused damage there, the problem of the damage caused on the earth's surface or in the earth's atmosphere would again arise. That was why Italy wanted the very precise provisions of article VIII of the 1967 Treaty to be applied. It would be a mistake to think that the work of the Sub-Committee could advance if that problem was left on one side.

In the opinion of the Italian delegation, the text being drafted should stipulate that the convention on liability should be applicable to all damage caused by space

objects, whether on the earth, in the earth's atmosphere or in outer space, and should include damage on celestial bodies other than the earth. An exception should be made solely in the case of damage that might occur on the territory of the Launching State and that exception would mainly cover damage due to accidents occurring immediately after the launching. In that case, it was of course the national law of the launching country that should be applied. That exception was objective in the sense that it disregarded the nationality of the individuals concerned, unlike the exception to be provided for in the case of damage to nationals of the Launching State, which could be prejudicial to those nationals if they suffered damage when abroad.

That was why the Italian delegation had requested that the Sub-Committee should begin by considering the preamble, which would have simplified the preparation of a rule of uniform application, as was appropriate in international law.

As far as the question of nuclear damage was concerned, the text as at present drafted covered all damage caused by space activities. If that formula was retained, nuclear damage would of course be covered by it. He fully understood the distinctions made by the representative of Hungary between the different types of possible nuclear damage, but in practice it would not be possible to establish those distinctions clearly for nuclear damage resulting from space activities. There was not yet enough experience of nuclear damage; if, however, the draft was retained in its present form, that experience would certainly have to be drawn on. On the other hand, several Conventions on damage caused by nuclear energy were already in existence and in dealing with possible damage it would be necessary to refer first and foremost to the Convention relating to the activity that had given rise to the damage.

In any case, whether the Sub-Committee decided to include or to exclude nuclear damage, it would have to follow specific rules. If it considered that nuclear damage was a special kind of damage needing special provisions, it should act accordingly.

In short, Italy wanted the convention under consideration to cover all damage caused by space activities of any kind, including damage occurring in outer space, with the single exception of damage caused on the territory of the Launching State. The exception as formulated in the Italian proposal relating to the field of application of the convention repeated the accessory provisions of the United States draft and was applicable to damage caused to persons playing a particular role in the launching, transit and descent of a space object. Damage of that kind should be

excluded from the convention, for it was covered by labour legislation and legislation for the protection of workers, including intellectual workers.]

All the drafts before the Sub-Committee had great merits, but they left a number of gaps. In the opinion of the Italian delegation, the most complete draft was that submitted by the United States. The consolidated draft submitted by the representative of India (A/AC.105/C.2/L.32) was extremely interesting and he would comment on it later, if necessary.

Mr. RIHA (Czechoslovakia) said that he would prefer the field of application of the Convention to be extended to outer space. To that end, the Sub-Committee might retain the text of article II of the Indian proposal, with the words "except outer space" deleted.

With regard to the Italian proposal, the Czechoslovak delegation did not see why the convention should include damage caused at the place of launching at the time of launching. Such damage should be covered by the national law of the country concerned, not by an international convention.

With regard to damage caused to persons taking part in the launching, agreement had been reached the previous year that the instrument would not be applicable to nationals of the launching country or to foreigners invited to attend the launching. In that case, too, the national law of the country concerned would be applicable.

That being so, the Czechoslovak delegation did not see the point of the Italian proposal.

Mr. AMBROSINI (Italy) said that he was in fact in agreement with the representative of Czechoslovakia: to say that the convention was not applicable in the case of damage caused on the territory of the Launching State was equivalent to saying that the settlement of such damage was a matter for the national law of the State concerned.

Mr. DELEAU (France) thought it logical that the convention should apply to all environments, whether the earth's surface, space or outer space, for it represented an extension of the relevant provisions of the 1967 Treaty, which covered all those environments.

It was natural that damage sustained by persons in the territory of the Launching State should be excluded from the convention, for in such cases compensation would be a matter for municipal, and not international, law.

The convention should cover all damage resulting from space activities: not only damage following launching and attempted launching, but also damage that might result

from the launching of an object into space, an attempted launching, the subsequent progress of the device, activities undertaken by the device in transit and, lastly, descent. In fact, the convention should cover all damages of whatever nature, including nuclear damage. Indeed, it would be difficult to exclude the latter without also excluding damage resulting from other unspecified means of propulsion in space. If new devices just as dangerous as nuclear energy were to be discovered, what attitude should be adopted towards them?

Moreover, it was important that any risk of unfairness to victims should be avoided. In the case of a two-stage rocket, for instance - one stage with a non-nuclear propulsion system, the other with a nuclear one - if the two stages fell separately and each caused an accident, there was no reason why different treatment should be meted out to the victims of the two accidents caused by one and the same launching. The field of application of the convention should therefore be as wide as possible and no category of damage should be excluded.

Mr. AZIMI (Iran) agreed that the field of application of the convention should cover all environments and all damage, nuclear or non-nuclear. He therefore accepted the principle of the Indian proposal, which was concisely drafted and generally covered the question satisfactorily. He agreed with the representative of Czechoslovakia, however, that the words "except outer space" should be deleted from article II, paragraph 1 of the draft.

Foreign nationals present at the launching of a space object should not be covered by the convention on liability, for they came under the municipal law of the country concerned in the same way as the nationals of the Launching State.

Mr. VRANKEN (Belgium) said that his delegation had no particular preference for any of the texts before the Sub-Committee, including the Indian draft. It hoped, however, that the convention could cover all environments, including outer space.

As far as nuclear damage was concerned, the Hungarian representative had put forward a convincing argument, but it should not be forgotten that the 1963 Convention did not cover nuclear damage resulting from space activities. His delegation was therefore in favour of including nuclear damage in the field of application of the convention on liability, to avoid the risk that victims of the same accident might come under different jurisdictions, one of which, moreover, had yet to be established.

Mr. HERNDL (Austria) recalled that he had suggested that the field of application of the convention should be restricted to damage caused on the earth and in the atmosphere, in order to simplify the preparation of the convention, and in particular the drafting of article II. That would have avoided the division of liabilities into liability based on the principle of risk, i.e. damage caused on the earth and in space, and liability based on fault, i.e. damage caused in outer space. His delegation, however, had no rigid views on the subject. Cases of damage in outer space would be rare and would in fact be limited to damage resulting from the collision of space devices. Such cases were also excluded in article 1 of the Belgian draft (A/AC.105/C.2/W.2/Rev.4).

In order to make his delegation's position quite clear, he stated that it supported the ideas underlying article II proposed by India.

Regarding nuclear damage, his delegation fully agreed with the Belgian representative. The Hungarian representative had presented a full and convincing case, but if nuclear damage was excluded from the field of application of the convention there was a risk that there would be no rule at all. If nuclear damage was caused, it would probably be extremely serious and a form of international settlement would have to be found. It would be simplest to include nuclear damage resulting from space activities within the field of application of the convention. Such cases should be covered by the convention, in the interest of States that were exposed to risks and dangers resulting from space activities in which they took no part and from which they did not benefit.

Mr. RAO (India) explained that it was not so much the possible inclusion of outer space in the field of application of the convention that worried him, as the means of assessing the damage caused in that environment. If, however, the majority of the members of the Sub-Committee were in favour of extending the field of application to all environments, including outer space, his delegation would be prepared to delete the words "except outer space" from article II, (paragraph 1 of its draft.

Mr. LAMPREIA (Brazil) agreed with the arguments put forward by the Belgian representative, who had pointed out that nuclear damage caused by space devices had been explicitly excluded from the scope of the 1963 Convention on Civil Liability for Nuclear Damage. If, therefore, the Sub-Committee decided to exclude that category of damage from the provisions of the convention under study, it would not be covered

by any rule of international law. The field of application of the proposed instrument should therefore be extended, explicitly or implicitly, to nuclear damage.

Mr. REIS (United States of America) acknowledged that, in a perfect world, the Legal Sub-Committee's task would be to work out a convention applicable in all environments, in accordance with article VII of the 1967 Treaty. In the present imperfect world, however, his delegation still held that to extend the field of application of the convention to outer space was likely to give rise to innumerable difficulties; moreover, the possibility of a collision between space objects was a very remote complex matter and not of direct concern to the great majority of inhabitants of the earth, whose protection was that Convention's major aim. Unlike the United States delegation, the majority of the members of the Sub-Committee seemed to take for granted, in the case of accidents in outer space, the principle of liability based on fault. It might be asked if fault were the most appropriate basis for liability if scientists exploring the surface of the moon were disturbed or killed by the crash of a space object of another launching State - a possibility that was no less likely, at least for space-exploring States, than collisions between space objects. If both space-sustained damage and damage on celestial bodies were included, it would be necessary to draw up a complicated system of rules distinguishing cases where the principle of absolute liability for risk was appropriate and where liability for fault was more sensible.

The States Members of the United Nations had often drawn attention to the advantages that a convention on liability for damage caused by objects launched into outer space would have for countries which did not engage in space activities. In his delegation's view, that was an implicit recognition of the fact that the convention on liability should, above all, provide a simple and expeditious method of compensating possible victims for accidents occurring on the surface of the earth during space activities.

Mr. BEREZOWSKI (Poland) admitted that article VII of the 1967 Treaty mentioned by the French representative gave a good definition of the territorial field of application of the convention on liability, but it should be borne in mind that the Treaty also defined the field of application of the convention at the individual level. In fact, it was in application of that principle that the Sub-Committee had decided, at its sixth session, that the provisions of the convention under study would not apply to damage sustained by nationals of the Launching State.

With regard to whether the convention should include provisions concerning liability for nuclear damage, his delegation thought that even from a formal point of view, that question was not within the competence of the Legal Sub-Committee. According to the principle of giving particular rules priority over general rules, if any shortcomings were noted in the 1963 Convention steps should be taken to complete that Convention rather than to include provisions to that effect in a convention on liability, which would deal with the problem in general.

Mr. AMBROSINI (Italy) pointed out that even damages occurring in outer space directly affected people living on the surface of the earth. It was in fact terrestrial international law that was applied in all the instruments adopted by the United Nations concerning outer space. It would therefore be premature to open a new chapter in cosmic legislation which would apply only to outer space until there was proof of the existence of rational beings on other planets.

Mr. MILLER (Canada) agreed that the main task of the Sub-Committee, as laid down by the General Assembly, was to work out a convention that would guarantee compensation for States or individuals who were victims of space activities in which they had taken no part. That being so, it was almost as important that the proposed instrument should guarantee the future rights of States which had only limited space activities.

The Canadian delegation was in general agreement with the idea of extending the field of application of the convention to outer space, although it realized that there were innumerable difficulties involved. As the Hungarian representative had suggested, one solution might be to restrict the damage caused in outer space to collisions between space objects, on condition that such objects were precisely defined.

His delegation also considered that the convention on liability should apply to all categories of damage, whatever their origin, i.e. including nuclear damage, but that there was no need to state that explicitly in the text of the convention. In that connexion it would perhaps be useful to set a ceiling on the amount of compensation that could be claimed as a result of nuclear damage.

Mr. O'DONOVAN (Australia) stated that his delegation had no rigid views concerning the field of application of the convention. It merely considered that that instrument should meet present or reasonably foreseeable needs. If it was proved that the risks of collision between space objects in outer space were of that

nature, his delegation would be prepared to agree that the field of application of the convention should include outer space. In that connexion he thought it better not to speak of damage caused in outer space but only of damage caused by the movement of space objects.

His delegation would favour the idea of extending the field of application of the convention to nuclear damage, a matter which with the development of nuclear space devices, was of practical, contemporary interest. Moreover, in view of the entirely new situation created by the launching into outer space of nuclear devices over which States could exercise only remote and indirect control, as opposed to the nuclear installations on the face of the earth, which were covered by various conventions, his delegation considered that the matter should be dealt with in the convention under study. Lastly, with regard to the point at which the convention would cease to be applicable, if nuclear damage were included in its field of application, such damage should be restricted to what could happen during the launching, transit or descent of the space device, as the French delegation had rightly suggested in reply to the problem mentioned by the Hungarian representative.

Mr. EORSI (Hungary) said that he did not think that it was at all clear from article I, paragraph 1 of the 1963 Convention on Civil Liability for Nuclear Damage that that Convention could never be invoked for the compensation of victims of nuclear accidents occurring in outer space. Even if that were so, it would be necessary, as the Polish representative had pointed out, to supplement the 1963 Convention with detailed provisions.

The representative of France had asked why the victims of nuclear accidents should be treated differently from victims of accidents of other kinds. The answer could be that the character of nuclear damage was in many respects very different from other kinds of damage. Moreover, the discovery of a new form of energy with dangers just as extensive as, but different from, those of nuclear energy would create an entirely new situation that would call for equally new solutions. Finally, the solution of including in the convention under study provisions concerning nuclear damage, which the representative of Austria had recommended as the simplest solution, would in fact almost be tantamount to drawing up another instrument within the convention on liability. His delegation therefore considered that the best course would be to draw up, as soon as possible, a set of special rules concerning nuclear damage, on the basis of the 1963 Convention.

Mr. RAO (India) said that he had taken part in the drafting of the 1963 Convention, and that at that time the possibility of nuclear damage caused by space objects had never been considered. That did not, of course, mean that the field of application of that Convention could not be extended to cover that category of damage.

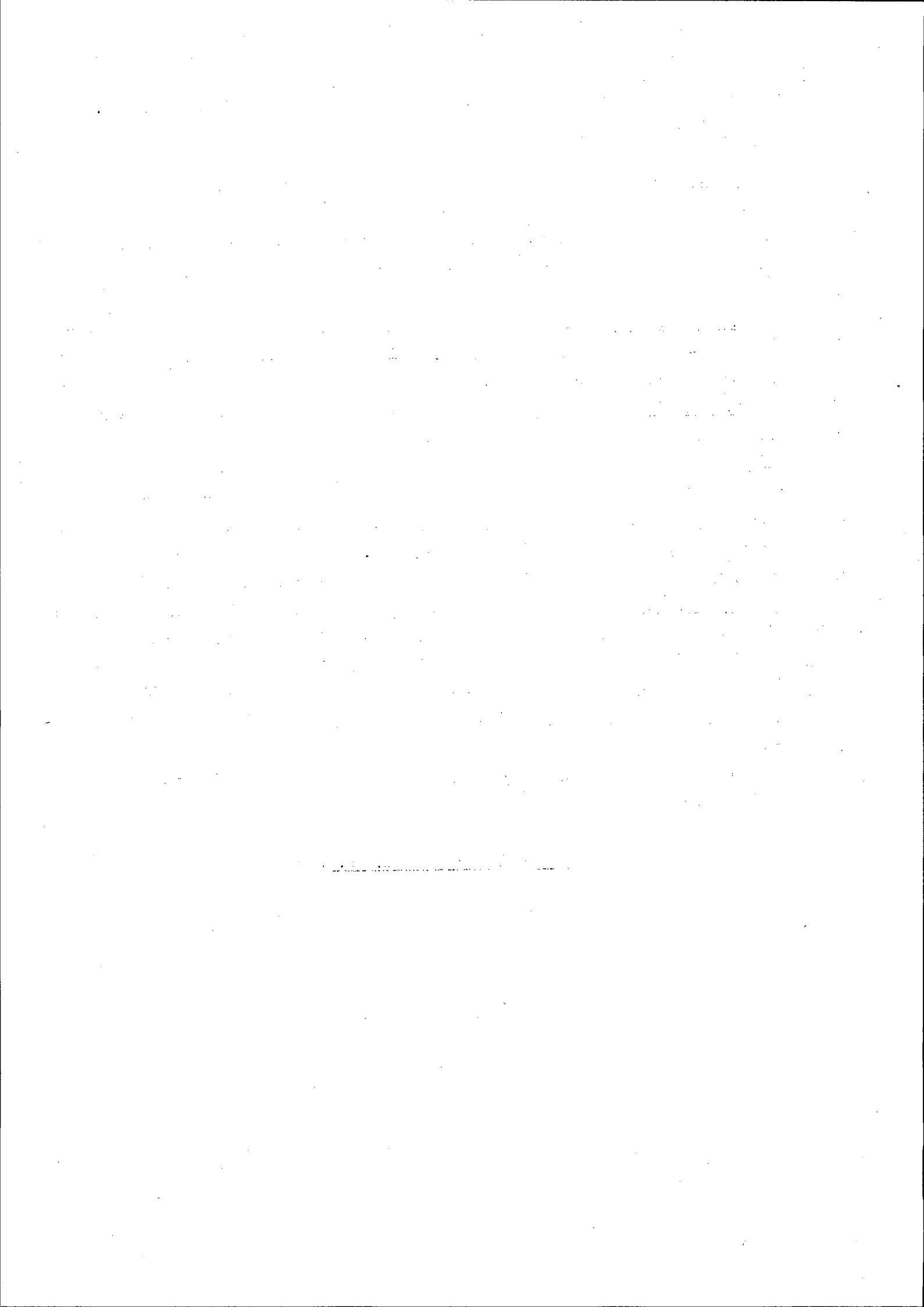
Miss GUTTERIDGE (United Kingdom) considered that, in view of the provisions of article I (l) (k) and (j) of the 1963 Convention, that instrument did not apply to damage caused by nuclear space devices.

Mr. VRANKEN (Belgium) agreed with the representative of the United Kingdom concerning the field of application of the 1963 Convention.

In reply to the Hungarian representative, he wished to make it clear that in his first statement he had not meant to press for the question of nuclear damage to be covered by the convention under study but merely to point out that, if that were not the case, the question would remain in abeyance. That did not of course exclude the possibility of the question being dealt with in another instrument.

The CHAIRMAN noted that, with a few exceptions, there were still considerable differences of opinion among the members of the Sub-Committee, particularly with regard to environments and the nature of the damage to which the convention should apply. As far as environments were concerned, the Sub-Committee could perhaps refrain, for the time being, from formulating too ambitious a definition of the damage caused in outer space and concentrate its efforts upon some practical aspects of the question, such as the damage resulting from collision between several space objects.

The meeting rose at 1.5 p.m.



SUMMARY RECORD OF THE NINETY-FOURTH MEETING
held on Monday, 10 June 1968, at 10.50 a.m.

Chairman:

Mr. WYZNER

Poland

DRAFT AGREEMENT ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE
(agenda item 2) (A/AC.105/37, A/AC.105/C.2/L.33, A/AC.105/C.2/W.2/Rev.4 and Add.1 and 2)
(continued)

The CHAIRMAN drew attention to a fresh proposal by Italy, concerning the field of application of the Convention (A/AC.105/C.2/L.33).

Mr. TOKUHISA (Japan) observed that, if the Sub-Committee were to advocate the inclusion, in the field of application of the convention, of damage arising in outer space, the problem was exactly what kind of damage might be envisaged as occurring in that environment. The damage arising out of the collision of space objects was a plausible example and the Japanese delegation thought that the principle of liability based on fault should prevail in such a case, not that of absolute liability. There might, however, be other kinds of damage. The United States delegation had rightly pointed out that damage might be sustained by astronauts working on the surface of the moon. It might also be thought that third parties - namely, passengers other than the crew of space vehicles - might sustain damage in such a case. His delegation held the view that the principle of liability based on fault was perhaps not applicable, for in its opinion that principle could not be invoked save in the case of collision of space objects which did not imply third-party liability.

Moreover, if the Sub-Committee were to decide to apply the principle of liability based on fault to the collision of space objects, it would have to consider how to reconcile that principle with the principle of absolute liability, which was the fundamental idea of the convention; that would inevitably entail the question of defining outer space. It would seem to be extremely difficult, and indeed premature, to give a satisfactory definition of outer space and it would be regrettable if agreement was not reached on the draft instrument because of that difficulty.

Having said that, the Japanese delegation wished to make a proposal, distinguishing, first of all, between damage sustained by space objects which collided with each other and damage to a third party arising out of such a collision. The principle of liability based on fault should be applicable to any kind of damage sustained by space objects which collided with each other, irrespective of whether such an accident occurred in the atmosphere or in outer space. It naturally followed that the principle of absolute liability should be applicable to any damage sustained by a third party, irrespective of whether such an accident occurred on the surface of the earth, in the atmosphere or in outer space. From that standpoint, the third party liability resulting from the

already included in the draft convention, since the latter dealt with damage in general, or it could be excluded from the convention in view of its special nature. In the latter case, it would be necessary, when the time came, to draw up an additional convention or a special protocol to be added to the present convention. His delegation fully understood the arguments put forward by the Hungarian and Soviet Union delegations but considered that it would be extremely difficult effectively to distinguish nuclear damage from other damage. The injured parties were entitled to compensation, even in the event of nuclear damage, and for that reason Italy was in favour of making the instrument applicable to nuclear damage.

[His delegation considered that with regard to damage caused in outer space two provisions would be required: first, a general formula based on the notion of fault and applying to every kind of damage that could occur. It had been objected that in the present circumstances it would be difficult to prove that a fault had been committed, but modern technology rendered it possible to follow a space object minute by minute, from its launching to its return to the earth's surface. It was therefore possible to propound the principle that the convention should take account of damage caused in outer space and that fault should be the determining factor in the establishment of liability.

Another case could, however, arise: namely, a collision which could cause the descent of a space object or fragments of that object. It had been said that a space object disintegrated in its descent; modern technology was, however, capable of preventing such disintegration, for astronauts could return safe and sound to the earth's surface. It would therefore be necessary to include another provision on damage arising from space objects which had collided or interfered with each other, causing damage on the earth's surface. In that case the governing principle should be objective liability.

Mr. RAO (India) welcomed the new proposal submitted by the United States delegation. So far as the wording was concerned, he feared that the intention of the first sub-paragraph - which was no doubt that the convention should not apply to damage caused by one space object to another unless it was caused by the fault of one of the Launching States - was not made absolutely clear.

In the second sub-paragraph, it would perhaps be desirable to replace the words "to others" by "to third parties".

Mr. AMBROSINI (Italy) supported the Indian representative's comments. In essence the first sub-paragraph proposed by the United States meant, not that the Launching State would not be liable for the damage caused, but that the convention would not apply to the

damage caused. There could be no doubt about the liability of the Launching State and such liability existed in municipal law and in agreements concluded among interested States. He would like the proposed text to be clearer in that respect.

Mr. REIS (United States of America) thought the text of the first sub-paragraph could indeed be improved by stating that the Launching State would not be liable for damage caused to the space objects of other States, or to their personnel, unless such damage was caused by the fault of the Launching State. The Indian representative's suggestion with regard to the second sub-paragraph appeared to him highly relevant.

Mr. RAO (India) thought that it would be preferable for the first sub-paragraph to begin, for example, with the words: "The conditions of this convention shall not apply to damage ..." etc.

Mr. MILLER (Canada) thought that the first sub-paragraph should be drafted in a positive rather than a negative form and should say "The Launching State shall be liable ... when such damage is caused by the fault of the Launching State".

Mr. C'DONOVAN (Australia), referring to the text on the field of application on which agreement had not been reached (A/AC.105/C.2/W.2/Rev.4/Add.2, p.3, B) thought that it would be desirable, in order to simplify the procedure, to allow the Presenting State to submit claims for compensation for persons permanently residing in its territory. If delegations thought that the definition of a person permanently residing in the territory of a State without being a national of that State would give rise to serious difficulties, he would not press the point.

Mr. EORSI (Hungary) welcomed the new United States proposal, which closely resembled article IV of the Hungarian draft. His delegation was sorry that it could not agree with the United States delegation on the question of damage of nuclear origin. The Canadian representative had adduced two main reasons in support of the inclusion of damage of nuclear origin in the convention: firstly, the difficulty of distinguishing between that type of damage and other kinds of damage caused by space activities, and secondly the psychological effect. Some types of nuclear damage, however, such as radiation, were characteristic and easy to distinguish. The Canadian representative thought that the difficulty of distinguishing between those two kinds of damage was a good reason for including damage of nuclear origin in the convention. That argument would be valid if the same rules were applicable to damage caused by activities in outer space and to that caused by nuclear devices, for then the question of distinguishing

between them would not arise. That was not so, however, and the Italian representative had recognized that special rules were necessary for damage of nuclear origin. If special rules in that respect were to be established, the problem of distinguishing between the two types of damage would again arise; hence the Canadian proposal did not eliminate the difficulty which it claimed to surmount.

So far as the psychological effect was concerned, it must be agreed that that was a much stronger argument and his delegation again emphasized that it was not opposed to liability for nuclear damage caused by activities in outer space; on the contrary, it wished to state formally that it was in favour of a solution of that problem. The fact that it did not advocate extending the field of application to nuclear damage was not related to the substance of the question, but to the circumstances which his own and other delegations, such as those of Poland and the USSR, had explained.

With regard to the suggestions that the question of nuclear damage should not be mentioned in the convention and should be taken up again at a later date, it was to be feared that at the current stage of discussion that solution was no longer possible, for the Hungarian proposal specified that the convention did not apply to nuclear damage. If the passage in question was now deleted, the convention could only be interpreted as applying to such damage and it was difficult to see why the Sub-Committee should only take up that question at a later stage. His delegation therefore thought that nuclear damage should be excluded from the convention, thus making it possible to arrive more rapidly at a solution with regard to liability for damage caused by activities in outer space, at a time when nuclear devices represented only a minimal proportion of activities in outer space. The Sub-Committee could subsequently devote itself to the problem of nuclear damage and reach a solution before large-scale nuclear operations had become current in outer space activities.

Miss GUTTERIDGE (United Kingdom) thought that, in respect of damage to permanent residents who were not nationals of a country, the Australian proposal ran counter to the rules of international law, according to which the State of which they were nationals was responsible for protecting persons residing abroad. An exception might be made, provided it was justified, but her delegation was not sure that that was so in the present case.

With regard to damage caused by collision, her Government did not interpret the expression in its narrow sense and was prepared to include damage such as that which the representative of Canada had mentioned. In that connexion, it should be noted that in the text just proposed by the United States representative the word "collision" was also taken in a fairly broad sense.

Mr. REIS (United States of America), referring to the statements by the Australian and United Kingdom representatives, said that the time had perhaps come for the Sub-Committee to depart somewhat from established international law. The United States, for its part, would not hesitate to support claims for compensation by residents of its territory who had not acquired United States nationality and who had suffered damage as a result of space activities, except, of course, if such persons were nationals of the Launching State.

The difficulties which some delegations saw with regard to the inclusion of compensation for nuclear damage in the convention were not apparent to his delegation. Such damage should be compensated for in the same way as any other type of damage.

Mr. MILLER (Canada), reverting to the Hungarian representative's statement, said that he too did not see why the convention should not cover nuclear damage also. The latter might, as a result of radiation, have delayed effects. It would be enough to include in the convention a special provision to cover the case of damage the extent of which could only be known some considerable time after the actual date of the accident, while stipulating that claims for compensation should not be submitted too long after the time at which the damage had become apparent. Bearing in mind the points on which agreement had been reached at the 93rd meeting, it should be possible to reach a solution to that effect.

Nuclear damage due to causes other than radiation - heat, light and explosion, for example - was analogous to non-nuclear damage.

His delegation thought that an appropriate text might perhaps be found in one of the existing conventions on nuclear damage. From the psychological point of view, it was essential that a solution should be found. World opinion was in favour of the inclusion of nuclear damage in the convention. The Sub-Committee could only exclude it if there were really valid reasons for doing so. At all events, it lay with those who did not wish it to be included to prove that it was not necessary.

The CHAIRMAN, summing up the discussion, said that as far as environments were concerned, the members of the Sub-Committee were in general agreed that outer space should not be completely excluded from the field of application of the convention.

There also appeared to be agreement that the convention should apply to outer space when damage had been caused to one space object by another space object, or when, in general, damage had been caused to a space object, and that in such cases it was the principle of liability for fault which should apply.

There did not appear to be any insurmountable disagreement with regard to the protection of nationals of one country residing in another. The United Kingdom would not in principle oppose the Australian proposal. Furthermore, the general view was that only nationals of the Launching State would be excluded from the benefits of the convention. The Belgian representative had said that he saw no insurmountable obstacle to accepting the Indian position on that subject, although the Belgian draft stated the contrary.

Mr. VRANKEN (Belgium) said that his delegation was inclined to accept the Australian and Indian view with regard to the protection of foreigners permanently resident in the Presenting State. He pointed out however, that that was a problem which came within the field of diplomatic protection; it was conceivable that a State might object to its nationals being protected by the Government of another country. That was a difficulty to which the Sub-Committee must be prepared to find a solution.

Mr. AMBROSINI (Italy) said that it was possible that, in the case of foreigners residing in the country in which damage had been caused, a claim might be made both by the country of residence and by the country or countries of which such foreigners were nationals. The various claims would come before the same tribunal and thus the problem would easily be settled. An agreement between the country of residence and the country of which the victims were nationals was also possible. There was one fundamental principle, however, that must be respected: it was the State of nationality which had the primary right to submit a claim on their behalf and to look after their interests.

So far as terminology was concerned, he thought it would be preferable to speak of "domicile" rather than of "residence".

Mr. BEREZOWSKI (Poland), referring to the Belgian representative's statement, said that his country viewed the problem of the relationship between the nationality and the diplomatic protection of nationals somewhat differently from Australia, Canada and the United Kingdom.

To agree that the convention should cover damage caused to a national of a foreign country residing habitually in the State in which the damage had been caused would be to trespass on the field of diplomatic protection. As the Italian representative had said it lay exclusively with the State to which the foreign national in question belonged to submit a claim for compensation on behalf of the said national. If the contrary were the case, the Respondent State might raise objections. It was a diplomatic and not a legal procedure which was involved.

Mr. O'DONOVAN (Australia) explained that his proposal was designed primarily to simplify the procedure for submitting claims for compensation. It would seem preferable that, for a given accident, one single claim for compensation for all the victims concerned should be submitted, rather than a series of claims, one of which would come from the State in which the damage had been caused and would refer to nationals of that State and the others from the various States of which the foreigners who had suffered damage at the time of the accident in question were nationals. Both the State of residence and the State of nationality should, of course, be entitled to submit claims for compensation, but the convention should include a provision to the effect that in the case of multiple claims compensation would be paid only once for a given person.

As far as priority was concerned, his delegation did not think it necessary to specify which of the two States should have the prior right to submit the claim for compensation. It should be possible to settle the question in a friendly way, the essential point being to protect the interests of the victims.

Miss GUTTERIDGE (United Kingdom) thought that the problem might be solved if the convention provided that the claim for compensation could be submitted by the State of residence with the consent of the State of nationality, if the latter was a party to the convention.

Mr. REIS (United States of America) hoped that it would be possible to avoid having to seek the consent of the State of nationality. He did not see what objection there could be to the submission of a claim for compensation on behalf of the victim by the State in whose territory the latter was resident, even if he was the national of a foreign State.

Mr. VRANKEN (Belgium) said that he too thought that the United Kingdom representative's suggestion went rather far in demanding what was to some extent active intervention by the State of nationality. It would be preferable to stipulate that, if the State of nationality expressed no objection, the State of residence could take action to defend the interests of foreigners who had suffered damage on its territory.

The CHAIRMAN pointed out that, if the Belgian representative's suggestion was accepted, a time limit would have to be fixed upon the expiry of which the State of nationality could no longer intervene.

Mr. PERSSON (Sweden) said that his delegation had no clearly defined position with regard to the suggestions made by the United Kingdom and Belgium, but it wished to draw attention to the case of de jure stateless persons, who would be without any protection if the defence of the interests of victims was linked solely to their nationality.

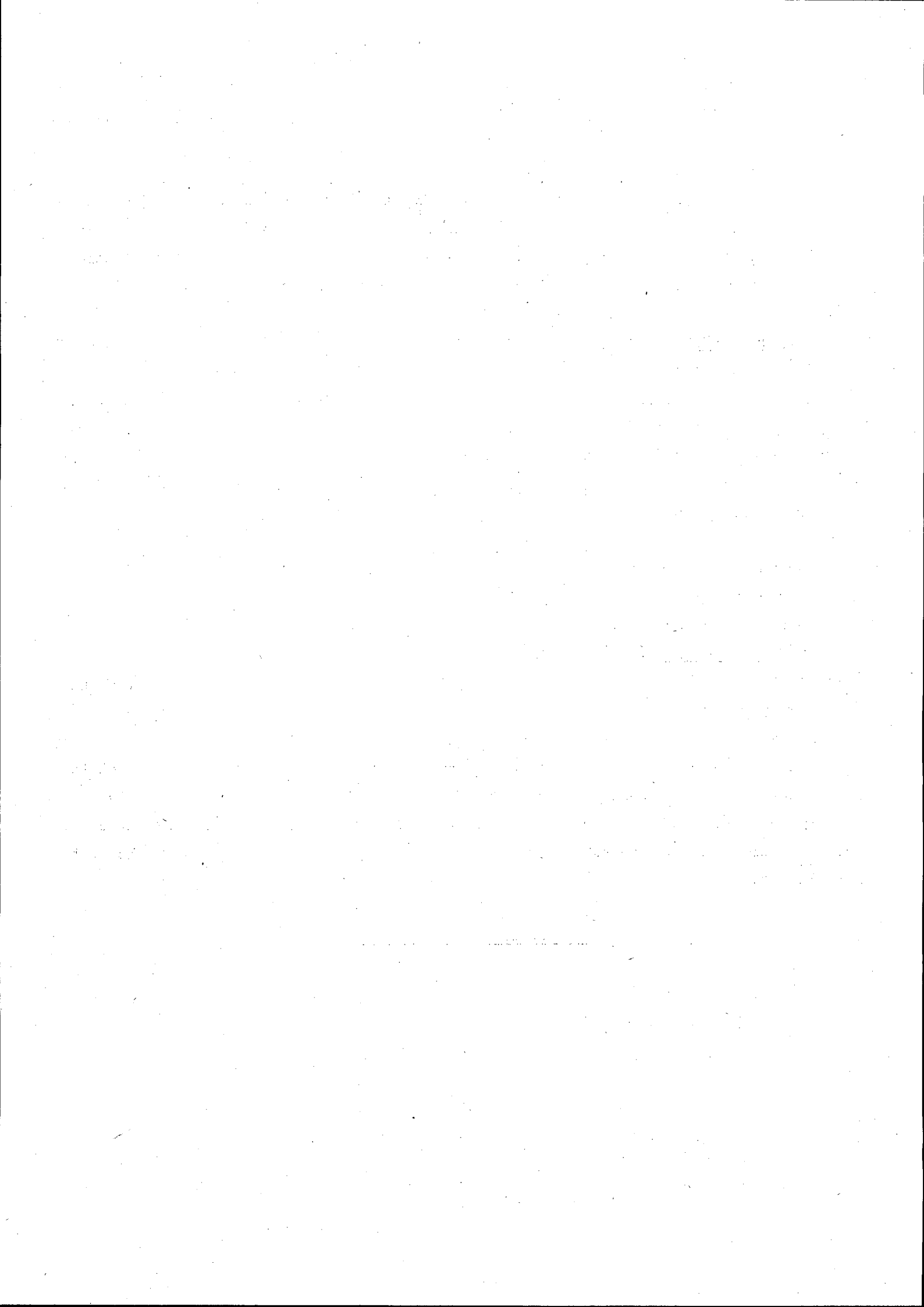
In the case of foreigners living permanently in the State in which damage had been caused, the question of the choice of the tribunal which was to preside over the allotment of compensation must not be forgotten. Many were inclined to think that such allotment should be governed by the law of the country in which the damage had occurred and not by the national law of the victim.

Mr. HERNDL (Austria) pointed out that the problem under consideration was connected both with international law and with the right to diplomatic protection. It was obviously necessary to simplify the procedure which would be followed by the arbitration tribunals and the bodies which would be set up to supervise the implementation of the future convention, but the solution did not necessarily lie in simply leaving it to the State of residence to protect the interests of foreigners residing permanently on its territory. Once compensation had been granted, problems might arise at the time of its allotment. There would have to be an agreement between the States concerned.

Moreover, if claims for compensation were submitted by two different States for the same victim, the competent tribunal could consolidate the requests or claims in accordance with the procedure laid down for that purpose.

Mr. AMBROSINI (Italy) repeated that it was the State of which the victim was a national which should have priority. To take the case of an Italian living in the United States who might die as a result of damage suffered and all of whose heirs would be in Italy, it would be for the Italian State to protect the interests of the latter. In any case, there was nothing to prevent two different claims being sent at the same time to the Respondent State on behalf of the same victim. The situation arose frequently in ordinary law and there was no reason to seek a different procedure in the present case. A claim should therefore be submitted both by the State of nationality and by the State of residence.

The meeting rose at 1 p.m.



Mr. AMBROSINI (Italy) withdrew his proposal, pointing out that it would be for the Chairman to decide on the possible establishment of a drafting committee at a later stage in the Sub-Committee's work.

The CHAIRMAN invited the Sub-Committee to consider the articles in the draft convention relating to the State or international organization liable, pending the settlement, by informal consultations between delegations, of the questions left in abeyance with regard to the field of application of the convention.

The relevant provisions of the various drafts submitted to the Sub-Committee were: in the Belgian proposal (A/AC.105/C.2/W.2/Rev.4), article 3 and certain provisions of article 2 which defined the terms "launching" and "Launching State"; in the United States proposal (ibid.), article II, paragraph 1, and certain provisions of article I which defined the term "Launching State"; in the Hungarian proposal, article VI, paragraph 1; and in the Indian proposal, article II, paragraph 1, and article I, paragraphs (d) and (f), which defined the terms "Launching authority" and "Respondent". It should be recalled that at its sixth session the Legal Sub-Committee had decided that the following elements should be included in the definition of the term "Launching State": the State which launched or attempted to launch the space object or device, the State from whose territory the space object or device was launched, and the State from whose facility the space object or device was launched, leaving for further consideration the question whether States belonging to the latter two categories should be liable primarily or only secondarily if the State referred to in the first category could not be identified (A/AC.105/C.2/W.2/Rev.4/Add.2, p.2). The Sub-Committee had further decided at its sixth session that international organizations that launched objects into outer space should be liable under the convention for damage caused by such activities, but no agreement had been reached on the question whether the liability of the States members of the international organizations that were parties to the liability convention should be residual and arise only in the event of default by the international organization or should arise at the same time as the liability of the international organization. Nor had agreement been reached on the rights of international organizations under the convention (ibid. p.4).

As those points were connected with the provisions appearing in the comparative table (A/AC.105/C.2/W.2/Rev.4) under the heading "International Organizations and the Agreement", he asked the Sub-Committee to consider simultaneously the two questions

of the State or international organization liable, and of international organizations and the Agreement, on the basis of the various proposals which had been submitted, the most recent proposal by the French delegation (A/AC.105/C.2/L.36) and article 6 of the 1967 Agreement.

Mr. DELEAU (France) submitted his delegation's proposal concerning the State liable and joint and several liability, explaining that it dealt only with States and not with international organizations: the French delegation reserved the right to return to the latter question on a subsequent occasion.

Article VII of the 1967 Treaty specified that each State Party to the Treaty that launched or procured the launching of an object into outer space, and each State Party from whose territory or facility an object was launched, was liable for damage caused by such object. In his delegation's view, it was incumbent on the Sub-Committee to lay down, in the draft agreement, the degrees of liability of the various categories of States.

The French proposal was based on two principles: namely, that primary liability should rest with the State launching a space object and deriving benefit therefrom, and that the interests of the injured party should be safeguarded as extensively as possible. Paragraph 1 of the proposal met the first of those two requirements, which he need not dwell upon, since it had already been discussed with regard both to the place in which the damage occurred and to the need to introduce the notion of the damage caused by the activities of the space object. With regard to the second requirement, namely, safeguarding the interests of the injured party, the French proposal established, in paragraph 2, the joint and several liability of States jointly procuring the launching of a space object. In that connexion, a precise definition should be given of the concept of "joint and several", which meant different things in Anglo-Saxon and in continental law. In the French Civil Code, obligations stemming from a common origin were described as "conjointes", although in fact they were divided into as many legal fractions as there were points at issue, each debtor being held liable only for his particular share. In the draft convention, each State held liable could be sued only for its share of the damage and the injured party was obliged to sue individually each State which might be liable. In the case of joint and several obligations, however, each party was held liable in full in regard to the injured party but was entitled subsequently to sue the other parties liable for their share. The notion of joint and several liability was therefore

designed to give an advantage to the injured party, and it was for that reason that the French delegation was proposing that the various States launching a space object should be jointly and severally liable.)

There was, however, another way of safeguarding the injured party's interests, and that was by laying down the secondary liability of the State whose territory or facilities had been used for the launching of a space object. That State's liability was subsidiary: in other words, it arose only when the liability of the State which had launched, or procured the launching of, a space object could not be established, either because the State whose territory or facilities had been used was unable to identify the State to which it had lent its territory or facilities, or because the State launching the space object was not a Party to the convention and was therefore not bound by the obligations laid down in the convention.

In his delegation's view, the subsidiary liability of the State whose territory or facilities had been used for the launching of a space object was in conformity with the interests of international co-operation. Indeed, if a State which lent its territory or facilities was automatically to incur the same liability as the State which launched, or procured the launching of, a space object, many countries would be dissuaded from lending their territory or facilities for that purpose. It was common knowledge that many space Powers were obliged to borrow the territory or facilities of other countries for the launching of satellites or for other activities in that domain. Such was the case of France, which was engaging in space activities in collaboration with India, Brazil and Argentina.]

Mr. AMBROSINI (Italy) said that he was in agreement with the substance of the French proposal but would like to introduce a few amendments.

In the first place, he wondered whether the French delegation was set on using the term "space device", when "space object" was in general use in other conventions and treaties. Secondly, the words "irrespective of the place in which the damage occurs", at the end of paragraph 1, might give the impression that France challenged the principle under which damage on the territory of the Launching State should be excluded from the field of application of the convention, a principle which appeared to enjoy the unanimous support of the members of the Sub-Committee. Thirdly, he wondered whether, in paragraph 2, it would not be better to specify that the apportionment of the compensation among the States jointly and severally liable should be carried out in accordance with agreements concluded beforehand between the States

concerned and that, in the absence of such agreements, the compensation to be paid should be divided equally among them. Lastly, the Italian delegation was willing to accept the principle set forth in paragraph 3 of secondary liability of the State whose territory or facilities had been used for the launching, but it thought that it would be better to say "if ... it does not identify the latter" instead of "if ... it cannot identify the latter", for it was difficult to imagine that a State which lent its territory or facilities for the launching of a space object could be unaware of the name of the State on whose behalf the object was being launched.

Mr. RIHA (Czechoslovakia) pointed out that in the Indian proposal only international inter-governmental organizations were specifically mentioned, while in the other three drafts the launching authority liable for damage caused, in accordance with the provisions of the convention, could be any international organization, whether inter-governmental or non-governmental. The Czechoslovak delegation preferred the Indian draft, but wondered whether the Sub-Committee could limit the scope of the convention on liability to inter-governmental organizations only, the more so since article VI of the 1967 Treaty laid down that States Parties to the Treaty bore international responsibility for activities in outer space undertaken by governmental agencies or by non-governmental entities.

Moreover, again in accordance with article VI of the Treaty, it appeared that "the appropriate State Party to the Treaty" was liable before the international community for activities carried on in outer space by an organization of which it was a member. It was common knowledge that international organizations did not, generally speaking, possess territory of their own and were therefore obliged to use the territory or facilities of their members for their space activities, the facilities used in the launching being the property of the State in whose territory they were or of the international organization. His delegation considered that the Government of the State whose territory was being used for the launching, by the very fact that it had lent its territory or its facilities, assumed the risk bound up with the space activities of the international organization of which it was a member. Consequently, the instrument on liability to be drawn up by the Sub-Committee should specify clearly that, in the case of damage arising from the space activities of an international organization, the injured party should be able to present a claim for compensation to the State whose territory had been used for the launching. His delegation wondered whether the scope of paragraph 3 of the French proposal could not be extended to cover the case of an international organization using the territory of a State for the purpose of carrying on a space activity.

The CHAIRMAN suggested that any observations concerning paragraph 2 of the French proposal should be postponed until the Sub-Committee took up the question of joint and several liability and that for the moment it should confine itself to the question of the liability of States and international organizations.

Mr. REIS (United States of America) said that he had taken note of the French proposal with interest. He thought that the word "itself" in paragraph 1 was superfluous. He himself would prefer to translate the expression "fait proceder", taken from article VII of the 1967 Treaty, by the English word "arranges", but the word used in the 1967 Treaty was "procures" and both terms could not correspond to the same French word. Furthermore, he pointed out that the provision concerning liability in the 1963 Declaration which had subsequently been incorporated in the 1967 Treaty as article VII, was extremely vague and had often been criticized for that reason. It was therefore essential to be clear and to settle such questions of terminology as those he had just mentioned.

The French proposal also used the term "space device", whereas the expression "space object" had been deemed preferable. Lastly, the word "activities" did not exactly correspond to the idea that was intended. He therefore proposed that the text of article II, paragraph 1, of the Indian proposal should be used, with a few minor amendments, namely, the transfer of the words "in accordance with the provisions of this convention" to the end of the paragraph and the replacement of the words "in all environments except outer space" by "wherever caused".

With that text as a basis, the useful suggestions in the French proposal with respect to joint and several liability could be considered.

Miss GUTTERIDGE (United Kingdom) said that, generally speaking, she approved of the idea put forward in the French proposal of a secondary liability applicable to a State which had merely made its territory, and possibly its facilities, available to the Launching State. With respect to the wording, she agreed with the United States representative that the word "itself" was superfluous and that the word "activities" was not indispensable because the word "transit" adequately expressed what was meant.

She would like to be sure that paragraph 1 covered all the relevant elements of article I of the United States proposal appearing in the comparative table, especially the phrase "or that exercises control over the orbit or trajectory of such an object".

With regard to paragraph 3, she assumed that the pronoun "it" in the phrase "if it cannot identify ..." referred to the State whose territory had been used. She would prefer the wording "if it does not identify the latter" or "if the latter cannot be identified".

Lastly, her delegation presumed that, although the French proposal referred only to States, that did not mean that international organizations were excluded from the field of application but only that they would be dealt with in a special article in due course.

Mr. HERNDL (Austria) said that the French proposal embodied two elements: firstly, the definition of the entity liable and, secondly the statement of the general principle according to which that entity was required to pay compensation for damage caused. The proposal would differentiate clearly between the liability devolving upon the Launching State itself and that devolving upon the State whose territory or facilities had been used. That distinction should be clearly drawn and the French delegation had done well to emphasize the idea of primary and secondary liability.

Three cases could be contemplated: (a) an isolated State might launch a space object, and liability would rest with that State regardless of the circumstances; (b) several States, acting jointly but not constituting an international organization, might carry out a launching, and in that case the question of their joint and several liability arose; (c) an inter-governmental organization might launch a space object, in which case primary liability would rest with that organization, without, however, ruling out the possibility of liability on the part of each of the States composing it. If a State had made its facilities and territory available to the organization or to the group of countries, it would bear only secondary liability, which would in any event be less than that of the organization or group of countries. His delegation wished to emphasize that it fully endorsed that basic aspect of the French proposal.

Mr. DELEAU (France) said that he was quite willing to delete the pronoun "itself" in paragraph 1 of his proposal. He had no objection to the Secretariat changing the English translation of the words "fait procéder" by replacing the word "arranges" by the word "procures". The expression "space device" had been used inadvertently; the French delegation had really meant to use the word "object". It was prepared to discuss the word "activities" with the United States delegation.

In paragraph 3, the phrase "if it cannot identify the latter ..." took into account the case in which the State whose territory had been used for the launching was unable to identify the actual Launching State. His delegation had wished to provide for that possibility in order to safeguard the rights of victims even if the State whose territory had been used could not identify the Launching State.

With respect to paragraph 2, he readily agreed that it could be separated from the remainder and that consideration of it could be deferred to a later date. Lastly, his delegation had not broached the question of inter-governmental organizations in its proposal because that would have complicated the statement of its position; it was obvious that additional provisions would be needed in that connexion.

Mr. VRANKEN (Belgium) pointed out that in its draft his delegation had reserved the right to submit an amendment dealing with the principle enunciated in article 3. That gave him an opportunity to state that he supported the French proposal. He would confine himself to observing that it still used the words "attempted launching" although it was understood that the word "launching" also covered attempts.

The United States suggestion that it should be specified that the Launching State was liable "in accordance with the provisions of this Convention" should be accepted. Lastly, in paragraph 3, he would prefer that the words "if it cannot identify the latter" should be replaced by the words "if it does not specify the latter".

The CHAIRMAN pointed out that the possibility that a State might not wish to divulge the identify of the actual Launching State should be considered. The words "if it does not name the latter" could perhaps be used.

Mr. O'DONOVAN (Australia), while reserving the position of his delegation on whether the word "State" used in the French proposal should or should not embrace international organizations, said that in general it approved of the proposal, especially of paragraphs 3 and 1, although it reserved the right to decide on its position with respect to paragraph 1 when the proposed consultations between the United States and French delegations to settle the question of the word "activities" had taken place.

His delegation agreed with the United States delegation that article II, paragraph 1, of the Indian draft might provide an excellent foundation for general rules; since that was also the purpose of paragraph 1 of the French proposal, the Sub-Committee could consider them together. His delegation endorsed the United States representative's remarks concerning the few amendments which might be made to the

Indian text and felt that the word "absolutely" might perhaps be deleted from the Indian paragraph in question, since situations might arise in which the principle of absolute liability would be inapplicable.

Mr. SIRRY (United Arab Republic), reverting to the question of the word "activities" in paragraph 1 of the French proposal, remarked that his delegation felt that it should remain in the text, as, in his opinion, the transit and descent of a space object were distinct from the activities which might be carried out on board and he doubted whether the English word "transit" referred to those activities. He nevertheless thought that, in the wording, the question of the transit and that of the activities should be dissociated.

The CHAIRMAN, summarizing the discussion, noted that virtual agreement had been reached on the question of the general rules of State liability and on the rule of liability with respect to the Launching State and the State making its territory or facilities available to the Launching State. The discussion had dealt primarily with the French and Indian proposals, but that obviously did not exclude the others. The consultations to be held among delegations would doubtless make it possible to consolidate those texts to the satisfaction of all. There seemed to be general agreement on the need to distinguish between the primary liability devolving upon the Launching State and the secondary liability devolving upon the State which merely made its territory or facilities available to the former.

Mr. EORSI (Hungary) said that he was not making any formal objection to the French proposal for the moment but reserved his delegation's right to revert to the question of the distinction drawn between the Launching State and the State which made its territory available to the former.

Mr. RIHA (Czechoslovakia) suggested that the term "Launching Authority" should be used in preference to the term "Launching State".

The CHAIRMAN said that that term would indeed cover international organizations but that the time did not seem ripe to take up that question, since the members of the Sub-Committee had not yet taken a firm position on the subject.

The meeting rose at 1.10 p.m.

SUMMARY RECORD OF THE NINETY-SIXTH MEETING
held on Wednesday, 12 June 1968, at 10.45 a.m.

Chairman:

Mr. WYZNER Poland

DRAFT AGREEMENT ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/37, A/AC.105/C.2/L.32 - L.37, A/AC.105/C.2/W.2/Rev.4 and Add.1 and 2) (continued)

Mr. AMBROSINI (Italy) said that his delegation, having noticed that the summary records of meeting were not always complete or fully correct, had decided to submit as a working paper a complete draft of the convention that the Sub-Committee was discussing. The draft would be, as it were, a composite text, for his delegation had taken into account all the drafts submitted and even an earlier French draft, whose merits it had noted. It had selected the best formulae in those drafts and thought that its text might be useful in enabling delegations to see the best solution in each case. It was not asking that the proposals in its text should be accepted at all costs; it only wished to give the Sub-Committee an opportunity to reflect on them. Its attitude was quite flexible, as it had demonstrated the previous day by willingly relinquishing its own point of view and rallying to that of the French delegation, which, moreover appeared to be accepted by most delegations, because it did not wish to delay the adoption of a final draft.

The CHAIRMAN said that he was sorry to learn that the statements of the Italian delegation had not always been reproduced with the necessary accuracy in the summary records. He would point out, however, that in view of the technical and legal nature of the discussions it was not surprising that some drafting errors should occur from time to time. Moreover, the records could provide only a summary of the discussions; in any event, they were provisional documents, to which delegations could make corrections.

Mr. AMBROSINI (Italy) said that he had noticed that some statements were given almost in full, whereas others were greatly summarized. He sincerely hoped that the Secretariat would take his observations into account.

The CHAIRMAN assured the Italian representative that his observations would be taken into account.

Mr. TOKUHISA (Japan) wished to revert to the question of the field of application of the convention and, more especially, to the United Kingdom proposal (A/AC.105/C.2/L.37). The proposal, which bore witness to a praiseworthy effort at compromise, none the less involved two problems. Firstly, it constituted a derogation from the general rules of international law with respect to the nationality of claims in the exercise of diplomatic protection. Since the proposal was the result of a

compromise, such a derogation might to some extent be permitted, but it should remain within reasonable limits and be defined as clearly as possible. Secondly, it was not entirely clear at what point it could be considered that a claim had not been presented on behalf of permanent residents.

Lastly, the United Kingdom proposal did not require an Applicant State to ascertain whether or not the State of nationality intended to present a claim. Hence, in practice, the Applicant State could present a claim in respect of a damage caused to a permanent resident at any time, thereby depriving the State of nationality of its right to exercise diplomatic protection over its own nationals.

[His delegation therefore felt that the presentation of claims by the State of residence in respect of damage sustained by permanent residents should be allowed only after the State of nationality had made known its intention to relinquish its right to present such claims. It suggested that the United Kingdom proposal should be amended by the insertion of the following phrase after the word "territory": "who are not nationals of the respondent State, when the State of nationality has decided not to exercise the right of compensation", the remainder of the text being deleted.]

Miss GUTTERIDGE (United Kingdom) thought that the ideas expressed in the wording proposed by the Japanese representative were implicit in the United Kingdom draft and that the Japanese version did not settle the question of when a claim would be presented on behalf of permanent residents.

Mr. VRANKEN (Belgium), referring to the United Kingdom proposal, pointed out that the words "by any other State" were vague; if any State had the right to present a claim on behalf of permanent residents, it was the State of nationality and not another State.

With respect to the Japanese proposal, he shared the objection expressed by the United Kingdom representative. Furthermore, if the phrase "whose claims have not been presented by any other State" was used, as in the United Kingdom proposal, it was necessary to provide a certain time-limit for ascertaining that no claim had been presented.

Mr. MILLER (Canada) completely agreed with both the preceding speakers. He did not think that the Japanese text was any more explicit than the United Kingdom text with respect to the period which must elapse before the State of residence could present claims. Nor did it seem desirable to require that the Applicant State should

await a definite decision from the State of nationality, for in that case a stateless person might have to wait a long time. The passage in question would probably have to be drafted somewhat ambiguously, but the terms used should not prevent the claimant State from presenting claims for compensation after a reasonable period had elapsed, and the United Kingdom text was probably preferable in that respect.

He agreed with the Belgian representative that the words "by any other State" were somewhat vague; if they were retained, there was a risk that States other than the State of nationality might present claims. Perhaps the wording "by their State or States of nationality" could be used.

Mr. AMBROSINI (Italy) agreed with the Belgian and Canadian representatives that the victim's State of nationality had the right to present the claim. It would perhaps be advisable to make provision in the United Kingdom proposal for the possibility of a previous consultation between the State desiring to present the claim and the State having the right to do so. That would render the text clearer and more workable.

Miss GUTTERIDGE (United Kingdom) said that her delegation was willing to replace the words "by any other State" by the words "by the State or States of nationality"; it realized that it was the State of nationality which, in conformity with ordinary rules of international law, should present claims. It wondered, however, whether the new wording adequately covered the case of stateless persons, to which the Canadian representative had just alluded. The more general nature of the original wording would have made better allowance for that case.

The CHAIRMAN thought that the discussion had not yet reached the stage where a final form could be given to the provision in question. The best course would be for the United Kingdom delegation to take the initiative of arranging for consultations on the matter with the delegations which had suggested amendments to the text, in order to produce a formula which would satisfy all the members of the Sub-Committee.

Miss GUTTERIDGE (United Kingdom) said that she readily accepted that suggestion.

Mr. BIRADOV (Union of Soviet Socialist Republics) pointed out that references to persons presenting claims should be avoided: only claims presented by States could be considered and accepted.

The CHAIRMAN said that the USSR representative's remark would be taken into account in the consultations to be held among delegations. He invited the Sub-Committee to resume consideration of the headings "State or International Organization liable" and "International Organizations and the Agreement" in the comparative tables.

Mr. MILLER (Canada) asked whether, in the light of the discussion at the ninety-fifth meeting, the French delegation intended to issue a revised version of its proposal (A/AC.105/C.2/L.36).

Mr. DELEAU (France) replied that on the previous day the French delegation had already taken into account several of the proposed amendments, such as the deletion of the word "itself" in paragraph 1 and the replacement in all three paragraphs of the word "device" by the word "object". It would be able to submit a revised version of its draft. It was prepared to amend the words "if it cannot identify the latter" in paragraph 3, which it was apparently feared might raise difficulties of interpretation, in order to make the text clearer.

Mr. LAMPREIA (Brazil), speaking on the French proposal, pointed out that, while his delegation recognized the value of distinguishing between the primary liability of the Launching State and the secondary liability of the State which merely placed its territory at the disposal of the other, it considered that States in the second category should not be totally exempt from liability, for that would considerably weaken their obligations as participants in the launching operation. For that reason, the Brazilian delegation would support the addition to the French proposal of a fourth paragraph laying down that, if States participating in the launching of a space object put the conditions of their co-operation in writing, Claimant States should be informed of those conditions and observe the individual sharing of liability assumed by the Contracting States.

That paragraph would have the advantage of specifying that all launchings of space objects undertaken jointly by several countries must be covered by written agreements among the States concerned; the importance of those agreements would thus be recognized in the text of the convention and the apportionment of liability among the States concerned would be facilitated. Subject to that addition, the Brazilian delegation was willing to support the French proposal.

Mr. RAO (India) observed that the Brazilian proposal was based on paragraph 4 of article III of the United States draft (A/AC.105/C.2/W.2/Rev.4), save for the omission of the provision that a copy of the terms of co-operation of the Contracting States must be filed with the Secretary-General of the United Nations. If that provision were inserted, the Indian delegation would have no objection to the adoption of the Brazilian proposal.

The only difference between the French proposal and the United States draft seemed to be that, in the former, particulars which could be included in the definition of the Launching State were to be found at the beginning of paragraph 1. If a definition was to be provided of the Launching State or authority, the United States draft was perfectly acceptable. If, on the other hand, it was decided to omit such a definition, then the wording would have to be: "A State which itself launches ... or procures the launching ...".

With regard to paragraph 3 of the French proposal, provision must certainly be made for the hypothetical situation envisaged in it. The last part of the paragraph might, however, be amended to read "if for any reason the Launching State cannot be easily identified".

Mr. MILLER (Canada) supported the amendment submitted by the Indian representative to paragraph 3 of the French proposal. It was indeed the problems of the Applicant State that should be the concern of the Sub-Committee.

In the light of the explanations given by the French representative at the previous meeting on the interpretation of "jointly and severally ... liable", the paragraph proposed by Brazil constituted a retrograde step in relation to paragraph 2 of the French proposal. The object of the convention under preparation was to facilitate the task of an Applicant State seeking compensation for damage. In the solution proposed by Brazil, the Applicant State would have to be informed of the conditions governing co-operation between the Contracting States and, in addition, claim from each one of them compensation corresponding to its share of the liability, which would entail a great deal of unnecessary effort on the part of the Applicant State.

In any case, in order to provide for the contingency in which one or more of the Contracting States failed to pay the compensation claimed, the Brazilian text should be supplemented by a provision similar to that in the last sentence of paragraph 4 of article III of the United States draft.

Mr. HERNDL (Austria) pointed out that the Brazilian amendment concerned paragraph 2, rather than paragraph 3, of the French proposal.

Paragraph 4 of article III of the United States draft to which allusion had just been made, was based on the concept that, in principle, a State placing its territory at the disposal of another for the launching of a space object bore the

same liability as the Launching State. Indeed, according to the definition given in the draft, a State from whose territory or facility an object was launched came into the category of Launching States, just as much as States that actively and substantially participated in the launching.

The French proposal was based on a different concept and merely laid down secondary liability for States whose territory or facilities had been used. According to that concept, the primary liability lay with the State which actually launched the space object. In the Austrian delegation's opinion, a State lending its territory or facilities for the launching of a space object should not be held liable unless the Launching State as such could not be identified, in which case the Launching State's liability would be transferred to the State whose territory or facilities had been used.

In any event, an agreement between the Launching State and the State whose territory or facilities were to be used concerned only the internal bilateral relations of the two States. For that reason, the concept expressed in paragraph 3 of the French proposal should not be amended. Paragraph 4 of article III of the United States draft and the text proposed by Brazil applied more to cases in which several States co-operated in launching a space object than to the case of a given State which merely placed its territory at the disposal of other States which possessed the necessary economic, financial, scientific and technical resources to carry out a launching and which should therefore bear primary liability for any damage caused.

The CHAIRMAN pointed out that the question of liability of States and international organizations and that of joint and several liability when several States participated in a launching were not easily separable and should, in fact, be examined together. Moreover, the four drafts before the Sub-Committee had points in common which should make it easier to reach general agreement.

Mr. REIS (United States of America) pointed out that, in the problem under discussion, the rule of international law to be applied was set out in article VII of the 1967 Treaty, which laid down that any State participating in any way in the launching of a space object, including States lending their territory or facilities, were liable for any damage caused, and that that liability was absolute.

The United States delegation had no firm position on the proposals before the Sub-Committee, but would point out that the French proposal deviated appreciably from the provisions of the said article VII. In any case, the definition of the liability

of the State lending its territory or facilities, as given in paragraph 3 of that proposal, would hold good in some circumstances but not in others. The Brazilian representative had pointed out that the role of a State lending its territory was not always completely passive. Indeed, it might in some cases be difficult to decide whether a State had effectively participated in a launching, thus coming under paragraph 2 of the French proposal, or had merely lent its territory or facilities, in which case paragraph 3 of that proposal would be applicable.

Regardless of the legal and political problems, the difficulties which had just been mentioned arose from the diversity of international co-operation systems. In the normal course of events, a State lending its territory or facilities laid down certain conditions: for instance, it wished to derive certain advantages from the launching and, as a general rule, stipulated that its nationals should be employed at the launching base. The French proposal would be valid in particular for cases - which were in any case rather theoretical - in which the State lending its territory or facilities played a completely passive role. If the French proposal laid down that the State actually carrying out the launching bore prime liability and the State lending its territory or facilities secondary liability, it could be regarded as an interpretation of article VII of the 1967 Treaty. The effect of the French proposal would, however, be to relieve the State lending its territory of all liability. Although that solution might be suitable in some cases, it would certainly be inadequate in others. The United States delegation would like to hear the views of other delegations on that matter.

Mr. AMBROSINI (Italy) thought that the proposal that agreements between States carrying out launchings as a joint project should be published and made known to everyone in advance should be rejected. The French proposal which the Italian delegation accepted, laid down that, whenever several States carried out a launching as a joint project, they were jointly and severally liable. The injured party therefore knew to whom it should present its claim for compensation and it could choose any State, in accordance with a well-known principle of continental law. Consequently, there would be no difficulty in that respect. Nevertheless, it might be desirable to know in what way the liability for compensation should be shared among the States co-operating in the launching; that, however, was a matter of internal relations, which did not concern the injured party. The Austrian representative had spoken of "bilateral relations", but it might well be a matter of multilateral relations. Consequently,

it was not necessary, and it might even be irksome, to oblige the participating States to file a copy of the terms of their co-operation with the United Nations Secretariat or with any other body. Moreover, it was important not to overload the text of the Convention or to raise questions that could be left aside.

In the draft which the Italian delegation was going to submit, mention was made of the apportionment of liability for compensation among the States participating in the launching, but only in order to simplify matters. That reference could be deleted, since the matter was of no concern to the injured party, because the States co-operating in the project were jointly and severally liable.

With regard to the United States representative's statement, it was true that article VII of the 1967 Treaty laid down that each State that launched an object into outer space, and each State from whose territory or facility an object was launched, was internationally liable for any damage caused, but the Treaty did not state whether or not the liability should be apportioned. That article could, in fact, be interpreted to mean that a State whose territory or facility had been used could become secondarily liable if the Launching State did not respond.

As a general rule, the Launching State possessed its own facilities. Some international organizations, such as the European Space Research Organization (ESRO), also had their own bases and facilities. There was no difficulty if a State or organization launched a space object from its own facilities, but it would seem to be necessary to distinguish between active and purely passive participation in the case of a State lending its territory or facilities to another State wishing to launch a space object.

Mr. EORSI (Hungary) said that his delegation considered that the best solution from the point of view of the victims of damage resulting from space activities, would be for all the States taking part in a launching, including the State which made its territory or facilities available, to be jointly and severally liable. If the majority of members of the Sub-Committee accepted the French proposal, Hungary too would accept it in principle.

With regard to the interpretation of article VII of the 1967 Treaty the Hungarian delegation was in complete agreement with the representative of Italy: the definition of primary and secondary liability did not come within the scope of that Treaty, which stated only general rules, and one of the Sub-Committee's tasks was to make those rules explicit.

The French proposal, like the draft convention submitted by Hungary, (*ibid.*) recognized the liability of the Launching State. It was important to determine in what way that liability arose. He, for his part, considered the wording "cannot identify the latter" in paragraph 3 of the proposal too narrow in scope. The Indian representative's suggestion would be preferable provided that it was worded more satisfactorily. It was necessary to provide that the State whose territory had been used should be obliged to disclose, if need be, the name of the Launching State. If it did not comply with that obligation, the State whose territory had been used would itself be liable.

As it stood, the text suggested by the representative of India might be interpreted as obliging the victim to identify the Launching State, either by applying to the State whose territory had been used or by other means. Hungary supported the delegations which had suggested that the words "if it cannot identify the latter" should be replaced by "if it does not identify the latter". The victim State could then apply to the State whose territory had been used, which, if it did not reply, would be held liable for the damage caused.

The Hungarian delegation agreed with the representative of Italy concerning the amendments to be made to paragraph 3 of the French proposal.

With regard to the Brazilian amendment, his delegation reserved the right to revert to it when it had received the written text of the amendment, but it agreed with the representative of Italy that agreements between States co-operating in launching operations should not entail any consequences for the victims. Moreover, the draft convention proposed by Hungary did not refer to internal relationships which might exist between Launching States. It was for the same reason that Hungary was opposed to paragraph 4 of article III of the United States draft convention: if an agreement of the type envisaged were deposited with the Secretary-General of the United Nations, it might give rise to various interpretations which might cause considerable difficulties for the victims. The aim of the victims was to obtain compensation as quickly as possible and they had nothing to do with the agreements existing between the States liable. The compensation of victims was moreover the object of all the draft conventions providing for joint and several liability.

In that connexion, the French translation of the end of article VI of the draft convention submitted by Hungary should read "ils sont solidairement responsables" and not "conjointement et solidairement responsables".

[Similarly, under paragraph 3, when an international organization was involved in the launching of the space object which had caused damage, the organization and its member States were jointly and severally liable, but the procedure was different. The claimant, in fact, first approached the international organization to claim compensation and it was only in case of non-settlement that it could apply to the States members of the organization.]

The CHAIRMAN asked members of the Sub-Committee to meet privately to draw up a text which would be acceptable to all taking part, so as to avoid a proliferation of proposals without unanimity being achieved on any of them.

ORGANIZATION OF WORK

Mr. VRANKEN (Belgium) recalled that it had been provisionally agreed that the Sub-Committee would devote one week of its work to the consideration of item 3 of the agenda. After consultation with other delegations to the Sub-Committee, it appeared that three days might be sufficient for the study of item 3, if the Sub-Committee met twice a day. In addition, in order not to interrupt the discussion taking place on the draft agreement on liability for damage caused by the launching of objects into outer space, the study of item 3 could be postponed until the end of the following week.

Mr. REIS (United States of America) pointed out that in resolution 2345 (XXII) of 19 December 1967 the General Assembly had called upon the Committee on the Peaceful Uses of Outer Space to complete the preparation of a draft agreement on liability before the opening of the twenty-third session of the General Assembly. So far only four of the fourteen headings of the draft agreement had been considered in detail by the Sub-Committee during the session. The United States delegation therefore considered that the Legal Sub-Committee should devote the whole of the present session to consideration of the draft agreement on liability, to the exclusion of the other items on the agenda.

Mr. DELEAU (France) supported the Belgian proposal. It seemed to him only reasonable that in the organization of its work the Sub-Committee should take account of the two resolutions addressed to the Committee on the Peaceful Uses of Outer Space by the General Assembly at its last session, resolution 2345 (XXII), to which the representative of the United States had referred and resolution 2260 (XXII) of 3 November 1967, in which the Committee on the Peaceful Uses of Outer Space had been urged

actively to pursue its work on questions relating to the definition of outer space and the utilization of outer space and celestial bodies. It had originally been planned to devote one week to the study of the latter question, but the French delegation, which had pressed for the Legal Sub-Committee to study questions relating to the definition and utilization of outer space, would be willing for that period to be reduced to three days in view of the priority to be given to the preparation of a draft agreement on liability.

Mr. RIHA (Czechoslovakia) and Mr. PIRADOV (Union of Soviet Socialist Republics) supported the Belgian proposal.

The CHAIRMAN suggested that the Legal Sub-Committee should devote three days only, later in the session, to a study of questions relating to the definition of outer space and the utilization of outer space, it being understood that the remainder of the session would be devoted to the preparation of a draft convention on liability.

It was so decided.

The meeting rose at 1.20 p.m.

the right to apply to the United States for compensation but the United States could then make a counter-claim for compensation from the Launching State.

In any case the aim of the United States was to safeguard the rights of possible victims and to simplify the proceedings for claiming compensation. In so doing it wished to bear in mind the possibility of the United States nationals who might be victims of damage caused by space activities of other countries. The United Kingdom proposal was excellent in that respect in that it considered first and foremost the point of view of the victims. Moreover, it included terms already used by the United States. It was true that the United Kingdom proposal was not free of ambiguity but that was inevitable for it was impossible to summarize in a single text all the various types of existing and future international co-operation.

The CHAIRMAN noted that the French delegation was in favour of its own revised text and that the United States delegation was in favour of the United Kingdom proposal the major difference apparently being the words "under the present Convention" in the United Kingdom text.

Miss GUTTERIDGE (United Kingdom) said that she was prepared to delete the words "under the present Convention" if that would make agreement easier.

It was true that the words "which actively and substantially participates in the launching of a space object" could be given a broad interpretation, but, as the United States representative had pointed out, there were any number of possibilities for international co-operation. The French text mentioned a State which "procures the launching by another State of a space object". It seemed to her that that would give rise to far more difficulties of interpretation than would the wording used in the United Kingdom proposal, for it could cover far more than mere arrangements made by one State to enable it to use the territory of another State or its launching facilities.

The CHAIRMAN thought that, in view of the opinions expressed, the Sub-Committee could perhaps accept the following text: "a State which launches a space object ... shall be liable for damage caused to persons or property during the launching, transit or descent of such space object, irrespective of the place in which the damage has occurred".

Mr. AMBROSINI (Italy) agreed in substance with what had been said. Some speakers had expressed doubts concerning the degree to which a State whose territory or facilities were used should be liable. On the other hand, the United States representative had said that, even if his country merely lent its territory or facilities to another State without taking any part whatever in the launching of a

space object, it would be ready to accept liability for any damage resulting from that launching. He was happy to hear that, since his own country had made such arrangements on several occasions. The point was perhaps a fine one but he felt that it would be useful to specify that the State whose territory or facilities were used remained liable. That was why Italy maintained that the State whose territory or facilities were used should be considered a Launching State and should itself be liable even if it did not actively and substantially participate in the launching or in the control of the transit or descent. If a State was liable simply because it lent its territory or facilities, there was all the more reason for it to be liable if it participated actively and substantially in a launching.

His delogation therefore suggested that a phrase such as "even if it does not participate substantially in the launching" should be added to the proposed text. If a State was liable when it did not participate in certain activities, it would necessarily be so when it did participate, and all cases would thus be covered.

Mr. REIS (United States of America) agreed with the Italian representative but thought that the point he had raised should be examined in connexion with paragraph 3 of the revised French proposal or the United Kingdom amendment.

Mr. AMBROSINI (Italy) concurred in that opinion.

The CHAIRMAN asked whether the Sub-Committee accepted the text that he had read out concerning the liability of a State which launched a space object.

Mr. RAO (India) said that he was prepared to accept the text suggested by the Chairman, subject to the possible amendment of the opening words to take account of the definition of the Launching State to be adopted.

The Chairman's proposal was adopted.

The CHAIRMAN invited the Sub-Committee to resume its consideration of the question of the field of application of the convention which logically should come immediately after the general rule that had just been adopted.

Mr. REIS (United States of America), referring to the amendments made to his proposal (A/AC.105/C.2/L.34), recalled that he had agreed with the Canadian representative's suggestion to delete the word "only" in the phrase "only if such damage is caused....." by which he had consented to replace the end of the first paragraph. On second thoughts, however, that adverb seemed to him to be indispensable and he preferred to reintroduce it.

The CHAIRMAN pointed out that it had also been agreed to add the words "of the space object" after the word "descent".

Mr. AMBROSINI (Italy) said that his delegation accepted the amended United States text. It had doubts, however, about the beginning of the second paragraph, in which, after the deletion of the words "the collision of", it was no longer clear what meaning was to be given to the words "third parties". The words "the collision of" should be restored together with some indication that the space objects had interfered with each other, for instance during manoeuvres. Alternatively, it should be explained more clearly what was meant by the expression "third parties" and whether it implied those that had not collided, third parties on the ground or third parties that were in the atmosphere in some way.

Mr. MILLER (Canada) said that he withdrew his request for the deletion of the word "only", for on second thoughts he recognized the value of that adverb.

With regard to the interpretation of the words "third parties" to which the Italian representative had referred, the United States proposal indicated clearly what it meant. The first paragraph referred to damage to a space object of a Launching State caused by the fault of another Launching State. Thus the two parties were clearly identified. The second paragraph related to damage caused to other persons by the fault of one of the two parties.

His delegation had already explained why it was opposed to the word "collision"; forms of damage other than collision could cause a space object to veer off course or to return to earth prematurely, and cause damage to third parties.

Mr. VRANKEN (Belgium) endorsed the Canadian representative's observations. He would, however, like the words "individually and jointly" in the English text of the second paragraph of the United States proposal to be translated in the French text by the word "solidairement" which was the term used in the French proposal concerning the State liable and joint and several liability. For the rest, he was willing to accept the United States proposal.

Mr. O'DONOVAN (Australia) said that, in view of the positive form now given to the first sentence, he could accept the United States proposal, provided that the Sub-Committee subsequently adopted a text defining cases of absolute liability. The notion of absolute liability was also absent from the paragraph that the Sub-Committee had adopted earlier in the meeting. It was essential, however, that it should be introduced in some way. It might perhaps have been best to state it in the text which had just been agreed upon, if necessary restoring the negative form of the first paragraph of the United States proposal.

The CHAIRMAN said that he thought the question could be settled by the insertion of the word "absolutely" before the word "liable".

Mr. DELEAU (France) said that he would like it to be made clear, in connexion with the launching, transit or descent, that the reference was to the Launching State's own space object.

In the second paragraph of the United States proposal the words "the colision of" should be deleted, for the reasons given by the Canadian delegation. Moreover, the expression "individually and jointly" formally excluded joint and several liability. His delegation wondered whether that had really been the sponsor's intention; on that point it supported the comments made by the Belgian delegation. It did not see why in that particular case, the victims should be deprived of the safeguard that the principle of joint and several liability provided for them.

Mr. RAO (India) said that he was grateful to the Australian representative for pointing out that the paragraph previously adopted did not include the word "absolutely" and he suggested that the word should be inserted in the text.

With regard to the first paragraph of the United States proposal, as the Chairman had pointed out, it had been agreed that the words "of the space object" should be added after the word "descent". That might lead to confusion, however, since the earlier part of the paragraph referred to "space objects of other Launching States". What was meant was that the Launching State was liable for the damage caused by its own space object to the space objects of other Launching States and their personnel solely if such damage was caused by the fault of the Launching State.

With regard to the second paragraph, his delegation wholeheartedly approved of what the Canadian representative had said concerning the interpretation of the words "third parties".

Moreover, in the English text, the expression used should be either "individually and jointly" or "jointly and severally" throughout; it should not be sometimes one and sometimes the other. The second formula seemed preferable.

Lastly, the question had been raised whether the word "transit" included "activities". He suggested that the word "transit" should be replaced by the word "voyage".

Mr. EORSI (Hungary) pointed out that his delegation accepted the principle of absolute liability and therefore had no intention of questioning it. The article under discussion, however, dealt with the field of application, and not the extent

of liability. The comparative tables included a heading entitled "Question of absolute liability and exoneration from liability". The question whether liability was or was not absolute arose from the possibilities of exoneration and he thought it would be better to defer the question of absolute liability until the pertinent heading was considered. "Absolute" liability was not in fact absolute, since the fault of the victim constituted an exonerating factor.

Mr. REIS (United States of America) supported the Indian representative's suggestion concerning the text already adopted and asked the Hungarian representative whether, in view of the fact that the principle of absolute liability was not in question, he could not accept that suggestion. His delegation considered it essential that the principle of absolute liability should be mentioned in an article of such fundamental importance.

The CHAIRMAN said that, whatever the Sub-Committee might decide in that respect, some questions, such as those concerning nuclear damage, various exonérations and so forth, would still have to be settled. If the Sub-Committee decided to insert the word "absolutely" in the text it had adopted, that would simply mean that it endorsed the general concept of absolute liability.

Mr. MILLER (Canada) said that he shared the view expressed by the Australian representative.

Moreover, in the text already adopted, the phrase "irrespective of the place in which the damage has occurred" seemed to him to be rather too wide in scope, for it might refer to a celestial body, and in that case the Launching State would theoretically be absolutely liable for the damage sustained.

The CHAIRMAN noted that agreement had not yet been reached on the question. He suggested that it should be dropped for the time being in order to enable delegation to consult each other.

Miss GUTTERIDGE (United Kingdom) said that she supported the Indian proposal for the amendment of the first paragraph of the United States proposal.

Mr. HERNDL (Austria), referring to the definition of Launching State appearing in the United Kingdom amendment, noted that it began with the words "A State which launches a space object ..." whereas the United States proposal said "The Launching State ...". It was better to use one and the same formula.

In connexion with the first paragraph of the United States proposal, his delegation had no objection to the negative form used. It agreed with those who maintained that, if the paragraph began by stating the principle of absolute liability, it would be better to revert to the negative form to distinguish between the two cases: that of absolute liability and that of liability by fault.

Mr. AMBROSINI (Italy) accepted the suggestion that consideration of the question of absolute liability should be deferred until the Sub-Committee considered the corresponding heading in the comparative tables.

He regretted that the discussion bore on a text which had been re-drafted several times; an up-to-date written version would be highly desirable. For instance, in the second paragraph of the United States proposal it was still not clear how the first phrase was to be interpreted and whether it was supposed to refer to damage caused to third parties by several space objects together and at the same time. Moreover, there was nothing to say where the damage to the third parties was caused. Was it in outer space? Since the Sub-Committee had accepted the principle of fault, the article could not be applied in outer space. It could be deduced that it could and should be applied to damage on the earth but it was doubtful whether it could be extended to damage caused in the earth's atmosphere.

He would like the discussion on the United States proposal to be suspended pending the circulation of an up-to-date text.

Mr. REIS (United States of America) said that he saw no reason why the Sub-Committee could not provisionally adopt the first paragraph of his proposal as a future part of article II of the draft convention, it being specified that, if the notion of absolute liability was inserted in the text adopted during the meeting, which would form part of article I, those provisions of article II would be applicable without prejudice to the provisions of article I.

Mr. PIRADOV (Union of Soviet Socialist Republics) stated his delegation's position on liability for damage - a key question, for the final solution would depend to a large extent on the effectiveness of the instrument.

First of all, it was essential that the formula adopted should in all respects conform to the provisions of articles VII and VIII of the 1967 Treaty. Some delegations had drawn attention to gaps in that Treaty. His delegation, for its part, considered that the conclusion of the Treaty had marked a decisive stage in the elaboration of a body of international space law and that it provided a solid basis for further work in that field, the more so since over a hundred countries had already

signed it. As the French representative had pointed out, however, in drawing up the draft agreement the Sub-Committee should seek to develop, rather than restrict, the principle of liability set forth in the Treaty. Moreover, as the Indian representative had recommended on the basis of article VII of the 1967 Treaty, all countries participating in a space activity should be regarded as jointly and severally liable for any damage caused. For that reason the Soviet Union delegation considered that, in order to strengthen the principle of joint and several liability of all States participating in a space activity, article VI of the Hungarian draft (A/AC.105/C.2/W.2, Rev.4) was the best proposal of all. The protection system envisaged in article III of the United States draft (ibid.) was excessively complicated. As the Australian representative had pointed out, it was important that the instrument prepared by the Sub-Committee should be as simple as possible.

The French proposal concerning the State liable and joint and several liability deviated appreciably from the other proposals submitted to the Sub-Committee, and from Soviet Union concepts of liability. The French proposal meant that, in the case of space activities undertaken jointly by several States, one of them was primarily liable to pay compensation for damage. [According to the Soviet Union thesis, on the other hand, in the event of damage the Applicant State should have the right to present a claim for compensation to anyone of the participating States. Nevertheless, in its desire not to delay the preparation of the draft agreement on liability, the Soviet Union delegation would be willing to support the French proposal - although it would have preferred another solution - provided, of course, that the principles set forth in the 1967 Treaty were not called into question.]

If the principle underlying the French proposal was accepted, namely, that the Applicant State should present its claim for compensation to a specified State, and not to any one of the States participating in a joint project, it had still to be determined which State should bear the principal liability, for the identity of the State launching, or procuring the launching of, a space object was not at all clear from the legal standpoint. [There again the best solution, if the French proposal was accepted, was to be found in article VIII of the 1967 Treaty, which laid down that "A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body". It could therefore be surmised that, in the case of a joint programme, the principal liability for any damage caused would be borne by the State on whose registry the space object causing

the damage was carried. If it proved impossible to identify that State, the liability for the damage would then be borne by the State whose territory or facilities had been used for the launching, provided, however, that the latter had the right to take proceedings against the other countries which had participated in the joint programme. The principle of the joint and several liability of all the participating States would thus be preserved; however, an order of priority would be indicated in the procedure to be followed in presenting claims for compensation, but it would not be necessary to specify the precise moment at which the State whose territory or facilities were being used for the launching of the space object changed from a passive to an active participant. It would in any case be a mistake in his delegation's view, to exempt the State which lent its territory or facilities for the launching of a space object, and which thereby participated in the launching, from all liability.

Lastly, the Soviet Union delegation wondered whether the time had not come for the Legal Sub-Committee to pass on to a new stage in the preparation of the draft agreement on liability by setting up, in conformity with its practice, a working party to prepare the final version of the provisions on which the members of the Sub-Committee had already reached agreement, it being understood that participation in the discussion of the working party would be open to all members of the Sub-Committee so desiring.

Mr. RIHA (Czechoslovakia) shared the doubts expressed by the Indian representative on the expression "individually and jointly liable" in the second paragraph of the United States proposal. That expression might well be misunderstood in the various translations which the signatory States would use. For instance, the formula would be quite meaningless if translated literally into Czech. Three possibilities were open to the Sub-Committee: "severally and jointly", "both individually and jointly", and "individually as well as jointly". The Czechoslovak delegation inclined to the first formula, but whatever the decision of the Sub-Committee it was absolutely essential that the same formula should be used throughout the draft convention.

The CHAIRMAN suggested that the Sub-Committee should adopt the first paragraph of the United States proposal, as amended in the course of the discussion.

Mr. PIRADOV (Union of Soviet Socialist Republics) considered that, in view of the importance of the matter, the Sub-Committee could not come to a decision without having a complete written text before it.

Mr. REIS (United States of America) said that he was reluctant to issue, on behalf of the United States, a version which would contain ideas and suggestions emanating from a number of delegations. In fact, the central idea had been drawn from the Hungarian draft.

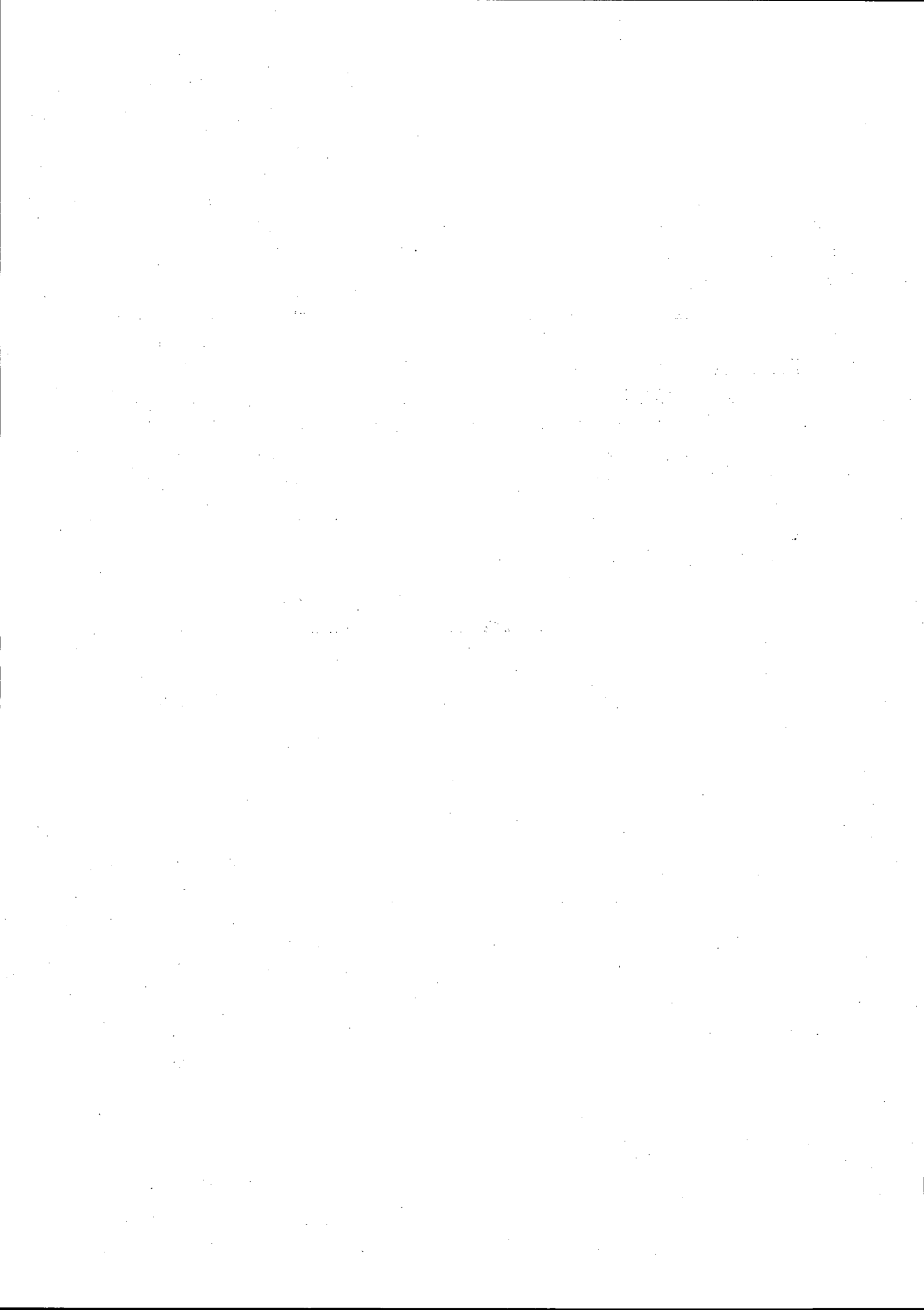
The CHAIRMAN suggested that the delegations concerned should prepare a joint proposal which would be acceptable to all the members of the Sub-Committee.

It was so decided.

The CHAIRMAN invited the Sub-Committee to take a decision on the possible establishment of a working party, as suggested by the Soviet Union delegation.

Mr. PIRADOV (Union of Soviet Socialist Republics) considered that it would be better to give the various delegations time to think over the matter and come to an agreement on that procedural question.

The meeting rose at 12.55 p.m.



It was quite natural that the State whose nationals had sustained damage should be entitled to present claims in respect of those nationals. With regard to permanent residents who were nationals of another State, the Hungarian delegation saw no need to give that State the right to present claims. If a Swede who resided permanently in the United Kingdom sustained damage in Italy, it was perfectly normal that it was Sweden which was entitled to present a claim on his behalf. If foreigners permanently resident in the applicant State were not considered a special case, the number of States presenting claims would be smaller, which would simplify the procedure.]

It should also be noted that in international law the status of permanent resident depended on the internal law of each country. If the convention were to provide for the case of foreigners permanently resident in the applicant State, difficulties might arise from the fact that before the convention could be applied it would be necessary to settle the question of the definition of foreigners permanently resident in the applicant State.]

[Under the Hungarian draft, only the State of nationality and the State whose territory had sustained damage would be entitled to present claims.] That would be a simplification, and that was why Hungary recommended its proposal to the Sub-Committee.

Mr. SEPÚLVEDA AMOR (Mexico) said that his delegation was going to have circulated officially a proposal which had already been submitted informally, it concerned claims for damage sustained by persons permanently resident in the territory of a State of which they were not nationals.* It was a matter of reversing the rule proposed by the United Kingdom delegation: it was for the applicant State to present claims for damage sustained by its nationals and by persons permanently resident in its territory, the State of nationality being able to present claims in respect of its own nationals only if the applicant State did not present them in respect of foreigners permanently resident in its territory. The criterion which made it possible to determine the State able to present claims was the place where the damage had occurred, which would simplify the procedure. The Mexican delegation saw no reason to give preference to the State of nationality. Furthermore, it considered that the presentation of claims was a completely different problem from that of the protection of nationals abroad.

Mr. HERNDL (Austria), referring to article VIII of the Hungarian draft, asked whether it was to be interpreted as conferring upon States in whose territory the damage had occurred the right to present claims in respect of all persons who had

* The Mexican proposal was distributed as document A/AC.105/C.2/L.43.

sustained damage in their territory, with the exception, of course, of nationals of the Launching State and persons in the immediate vicinity of the area where the launching operations had taken place.

Mr. EÖRSI (Hungary) replied in the affirmative: any person who was for any reason in the territory of a State, even as a tourist, and who had sustained damage, was represented by the authorities of that country, whether or not the person was a national. In any case, the injured State would present claims concerning its own nationals; it was better for it to submit claims in respect of foreign victims too, for that would avoid a multiplicity of claimants.

Mr. BEREZOWSKI (Poland) said that the United Kingdom proposal went a little further than the text of the 1967 Treaty. Article VII of that Treaty established clearly that the victims of damage caused by space activities could be either States or nationals of those States. It appeared that the problem of persons permanently resident in a particular State was a different problem from the question of nationality or territoriality, both of which were provided for in the Hungarian draft. The Polish delegation considered that the draft convention should be drawn up within the limits laid down by the 1967 Treaty: the United Kingdom proposal, which would tend to broaden the definition of the victim, did not conform with article VII of that Treaty and his delegation was unable to support it.

Mr. RIHA (Czechoslovakia) said that the fundamental idea of the convention should be the protection of victims. Many delegations had stressed that all the provisions of the convention should be as simple as possible, and the Hungarian draft was based on that concern for simplicity. It was a matter of establishing who could present claims on behalf of the victims; it seemed logical that it should be the State in whose territory the damage had occurred. If too many States were to be entitled to present claims, there was a danger that foreigners who had sustained damage in the territory of an injured State would be treated unfairly by comparison with nationals of that State. The State in whose territory the damage had occurred should therefore be, if not the only State, at least the first State entitled to present claims, whatever the nationality of the victims.

The CHAIRMAN suggested that the discussion should be suspended, since the two proposals submitted for consideration by the Sub-Committee had not yet been circulated. Moreover, it did not appear that there was unanimity on the need to introduce into the convention the question of persons permanently resident in the territory of a State of which they were not nationals. Further exchanges of views were therefore necessary.

ORGANIZATION OF WORK

The CHAIRMAN recalled that the representative of the USSR had suggested that a working party should be set up, consisting not only of the sponsors of the various proposals but also of all members of the Sub-Committee who wished to take part in the activities of the working party.

Mr. DELEAU (France) said that his delegation had weighed the advantages and disadvantages of the suggestion made by the representative of the Soviet Union. A working party would be useful provided that the discussions reserved for the plenary meetings were not continued in the working party, which would be a waste of time. The effectiveness of such a working party would depend on the preciseness of its terms of reference; the working party would have to be given drafting work confined to the point on which general agreement had already been reached in plenary. At the present stage of the work general agreement had been reached on the field of application of the convention; damage caused to persons and property; damage occurring during the launching, transit or descent of a space object, whatever the environment, and exceptions concerning certain categories of persons. In respect of the States liable, the general opinion was fairly close to the position adopted by the French delegation, which distinguished between the Launching State proper and the State which made its territory available to the Launching State. In regard to the nature of the liability, agreement had almost been reached on liability for risk on the earth and in the atmosphere, with certain exemptions, and liability for fault between space objects.

Hence if the proposed working party did the drafting work on the basis of the principles agreed upon in plenary, thereby relieving the Sub-Committee of that task, the initiative taken by the USSR delegation would help to advance the work. The French delegation therefore supported the suggestion of the Soviet Union provided that the working party would have very precise terms of reference and that its work would be presided over by the Chairman.

Mr. REIS (United States) said that, if the Sub-Committee was of the opinion that the setting up of a working party was the best way to speed up the work, the United States delegation was ready to support that suggestion. The informal consultations among members of the Sub-Committee had enabled the Sub-Committee to make considerable progress, but it had become impossible to continue such consultations, since not all participants had been willing to go on with them.

Mr. PIRADOV (Union of Soviet Socialist Republics) thanked the members of the Sub-Committee for understanding the desire of the USSR delegation to speed up its work and make it more effective, so that the draft convention could be submitted to the General Assembly at its twenty-third session.

The working party itself should determine its procedure. His delegation agreed with the French delegation that the working party should take over the work of drafting, on the basis of the principles agreed upon in plenary meeting, on the clear understanding that there was no question of replacing one body by another.

Mr. AMBROSINI (Italy), recalling that he had made a similar proposal some days previously, supported the proposal for the establishment of a working party. He considered that it should be a kind of drafting committee, whose task would be, not to continue the discussions of a general nature, but to arrive at a joint statement on the basis of the data provided by the discussions in the Sub-Committee. He was also of the opinion that the Chairman of the Sub-Committee should preside over the working party.

Mr. KHERADMEH (Iran) wondered whether, in view of the small membership of the Sub-Committee, it would not be preferable to give up the idea of setting up a working party and to prolong the meetings of the Sub-Committee.

Mr. MILLER (Canada) supported the idea of setting up a working party.

Mr. O'DONOVAN (Australia) supported the constructive suggestions of the USSR and the United States. His delegation, too, wished to speed up the work. He suggested that when the Sub-Committee reached in principle agreement on any matter it should immediately proceed into working party to draft a final text.

Miss GUTTERIDGE (United Kingdom) said that she, too, felt that progress had been slow and she welcomed the proposal by the representative of the Soviet Union; she shared the opinion expressed by the French delegation that the working party should be given precise terms of reference and should confine itself to drafting work.

The CHAIRMAN noted that the Sub-Committee appeared to favour the setting up of a working party to draft the provisions on which there had been general agreement in plenary meeting; the working party would therefore be set up and would meet as soon as possible.

The meeting rose at 1.10 p.m.

The CHAIRMAN said that there seemed to be general agreement in the Sub-Committee on certain principles. It seemed to be agreed that one source of exoneration from liability would be proof that there had been a wilful act or gross negligence on the part of the claimant. It had also been agreed at the previous session of the Sub-Committee that liability should not apply to damages sustained by nationals of the Launching State or by persons participating in, or in the immediate vicinity of, the launching. Lastly, there was agreement on the basic principle that there would be no exemption in cases where the Launching State had conducted activities not in conformity with the 1967 Treaty, with the United Nations Charter or with certain other conventions or agreements. Further clarification was required in respect of the other conventions or agreements.

Mr. MILLER (Canada) said that at the previous meeting there had been agreement in principle to the language used in article III of the Indian proposal (A/AC.105/C.2/L.32) and certain amendments to that proposal made during the meeting. He asked whether the Sub-Committee could agree that it had achieved a sufficient consensus on that subject to transmit it to the drafting group for elaboration and to proceed to consider another heading.

Mr. AMBROSINI (Italy) said that his delegation agreed in principle with the formulation in article III of the Indian proposal that "no exemption from the principle of absolute liability will be granted in cases where the respondent has conducted activities which affect the rights of other States under general international law." but he thought that the article should not merely refer to "general international law" but should make specific reference to the relevant provision in the 1967 Treaty.

Mr. MILLER (Canada) fully agreed with the Italian representative but pointed out that the sentence to which the latter was referring in the Indian proposal had been withdrawn in favour of a specific reference to the 1967 Treaty.

Mr. BEREZOWSKI (Poland) thought the Italian representative was right in saying that it was general international law that was referred to in article III of the 1967 Treaty. He thought, however, that if the draft agreement was to include a reference to the 1967 Treaty or to the principles of international law it would be sufficient merely to mention international law without specifying whether or not it was general international law. Article III of the 1967 Treaty said "... in accordance with international law, including the Charter of the United Nations"

because the United Nations Charter formed part of international law. Hence, if reference was made to article III of the Treaty there was no need to refer also to the Charter and to international law. Bearing in mind, however, the case of States which might not be parties to the 1967 Treaty it might be preferable not to refer to the Treaty but merely to international law.

Mr. SINHA (India) supported the Canadian representative's suggestion that the Sub-Committee had perhaps reached sufficient agreement on general principles to refer that topic to the drafting group.

The CHAIRMAN suggested that it might be advisable to refer the subject to the drafting group in view of the difficulties of reaching agreement on an exact formulation in the Sub-Committee.

Mr. NAKAJIMA (Japan) queried the exact meaning of the term "insofar as" in Article III of the Indian proposal. If damage was only partially due to gross negligence or wilful act or omission, then exoneration from liability should be granted "only to that extent". The wording to be used could be discussed at the Working Party.

Mr. HERNDL (Austria) said that, as he had stressed at the previous meeting, his delegation much preferred the original wording of the Indian proposal for Article III. If, however, that was not agreed upon, his delegation would accept a reference to the 1967 Treaty, the United Nations Charter and other conventions and agreements.

Mr. AMBROSINI (Italy) said that the Japanese representative was right and that the words "wholly or partially" should be deleted from the Indian proposal. If there was exemption from liability only in cases of a wilful act on the part of the claimant, that almost constituted a situation of fraud and it was not conceivable that the liability of a State which committed an act of grave negligence could be merely diminished - it must be absolute.

Mr. REIS (United States of America) and Mr. MILLER (Canada) thought that a revised text of the Indian proposal should be submitted to the drafting group.

Mr. SINHA (India) said that his delegation was not particularly attached to the term "insofar as" and would be prepared to consider alternative wording. He would also consider the deletion of the phrase "wholly or partially" but pointed out that it was based on article 1 (c) of the Belgian proposal (A/AC.105/C.2/W.2/Rev.4).

Finally, his delegation was perfectly willing to issue a revised text of its proposal if such was the general desire of the Sub-Committee, but he wondered whether it was really necessary to do so.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that his delegation was glad to note the general agreement on the principle that in the case of commission of a wilful act no exoneration from liability would be admitted, but it drew attention to the need to clarify the idea of "wilful". He agreed with the Indian representative that it was not perhaps necessary to issue a revised text of the Indian proposal since during discussion in the drafting group all the suggestions made by members of the Sub-Committee would be considered.

Miss GUTTERIDGE (United Kingdom) said that it would be helpful to have the revised text of article III of the Indian proposal in writing.

Mr. REIS (United States of America) said that his delegation had accepted the proposal by the Italian and USSR delegations that a drafting group should be set up because it had thought that such a course might expedite progress. He had been extremely disappointed that, at its first meeting, the group had been unable to cope with so simple a matter as the drafting of a general rule for the convention. The best approach would be to draft whenever possible, whether in the Sub-Committee or in the drafting group.

His delegation welcomed the Indian representative's offer to submit a revised version of article III of the Indian proposal.

Mr. AMBROSINI (Italy) said that he, too, had been disappointed in the discussions of the drafting group. It was useless to refer problems to such a group if it only raised other questions. It should confine itself to drafting, and each new proposal should be submitted in written form.

Mr. RYBAKOV (Union of Soviet Socialist Republics) agreed with the Italian representative that proposals should be submitted in written form.

He had been surprised at the United States representative's destructive criticism. Such statements could only divert the Sub-Committee from the specific problems involved in preparing an agreement. All methods which might advance the Sub-Committee's work, including consultations and the establishment of a drafting group, should be welcomed.

Mr. KHERADMEH (Iran) agreed with the Canadian and Italian representatives that the drafting group should deal only with the principles already agreed upon and find formulations for them. Its function was further to pinpoint the differences between the various texts, some of which, such as the Indian proposal, had been circulated in documents separate from the comparative table.

Mr. MILLER (Canada) said that the drafting group's function was to draft provisions on the basis of principles on which a consensus had already been reached. He hoped that no substantially new texts would emerge or radical changes be made, for that would complicate the group's work.

The CHAIRMAN suggested that the points on which a consensus had been reached, to which he had referred at the outset of the discussion, should be referred to the drafting group for work on the provisions in question. A revised version of the Indian proposal would be made available to the group.

The terms of reference of the drafting group had been formulated by the Sub-Committee at its ninety-eighth meeting: its sole task was to draft the provisions of the convention once the Sub-Committee had agreed on the principles. That did not preclude the possibility that the Sub-Committee might itself wish to undertake some drafting, but the most feasible course appeared to consist in reaching agreement on principles and entrusting the drafting to the drafting group.

Since a consensus had been reached on the general principles of the question of absolute liability and exoneration from liability, he suggested that the Sub-Committee should turn to the next topic. He recalled that it had been decided to consider the headings of the comparative table of provisions in the proposals submitted by Belgium, the United States of America and Hungary (ibid.) in groups in order to save time. The next topic to be dealt with covered the headings concerning measure of damages, limitation of liability in amount and payment of compensation in convertible currency. After consideration of that topic had been completed, the following five headings would be taken up, followed by the next three headings, after which the final clauses of the agreement would be considered.

Miss GUTTERIDGE (United Kingdom) pointed out that her delegation had submitted a proposal concerning international organizations jointly with the delegations of Austria, Belgium, France and Sweden (A/AC.105/C.2/L.41). Her delegation would like to be assured that the question of international organizations could be reverted to at a later date.

Mr. REIS (United States of America) asked whether it would not be preferable to take up the definitions before examining the final clauses.

The CHAIRMAN, replying to the United Kingdom representative's question, said that the question of international organizations could be reverted to at any time.

Replying to the United States representative's question, he said that definitions could be taken up at any point. He suggested that, in accordance with the United States representative's proposal, the definitions should be taken up before the final clauses.

It was so decided.

The CHAIRMAN, referring the next group of headings, pointed out that all referred to the question of the amount of compensation.

With respect to the measure of damages, all the drafts, with the exception of the Indian draft, and some proposals, contained principles for assessing damages. The limitation of liability in amount was dealt with only in article VIII of the United States draft. All the drafts included similar provisions regarding the payment of compensation in convertible currency.

Mr. AMBROSINI (Italy) pointed out that article 8 of the Italian draft (A/AC.105/C.2/L.40), dealing with assessment of liability, was patterned on the corresponding article in the United States draft.

The provision for the application of equity was particularly important because space law was a new field and equity made it possible to depart from established international law and apply some provisions of municipal law. That represented a concession to the delegations which thought that the law of one of the two States in question should be applied rather than international law. The primary purpose of the provision for the application of equity was to make possible a unification of applicable law so that all persons suffering damage would receive the same treatment in all cases. The appeal to equity would simplify the search for a uniform formula to which all could agree.

Mr. REIS (United States of America) pointed out that the Hungarian representative thought that the law of the Launching State should provide the basis for assessing damage. He asked what law would be applicable in that case if a space vehicle of the European Space Research Organization (ESRO) caused damage in the United States.

Mr. EORSI (Hungary) replied that no simple answer could be given concerning the law applicable in the assessment of damage. His delegation's main concern had been to provide a solution to the problem of immaterial damage. Although such damage was awarded in most laws, some socialist laws did not recognize it. The Hungarian draft had therefore sought to satisfy both the States which recognized immaterial damage and those which did not.

In that connexion there were three types of solution. The first was to provide a general rule on the lines proposed by the representatives of Italy and the United States of America. The second, an idea which had not as yet been suggested, was to make the convention self-regulatory by including a rule providing for measure of damage without reference either to general principles or to domestic law. The third type was by reference to domestic laws, and there were at least three possibilities: the law of the victim, as proposed by Belgium; lex loci delicti commisi, referred to by the representative of France in his opening statement; and his own delegation's proposal to refer to the Launching State.

At the present stage his delegation was not prepared to accept any solution which referred only to a general principle under international law. That would be too vague and would make it impossible to reach agreement in the event of litigation on the basis of territory. Moreover, if an arbiter were appointed - a procedure which his delegation would oppose - he would tend, in interpreting international law, to be influenced by the laws with which he was most familiar, namely those of his own country.

With regard to the second possibility, his delegation could accept a solution which excluded immaterial damage. He doubted, however, whether such a system would be practicable, because certain States could not accept the exclusion of immaterial damage.

The third type of solution might be workable if a provision could be found that was acceptable to all. The law of the victim had the great advantage that everyone concerned would be treated in accordance with the laws of his own country; a potential disadvantage was that if the damage involved victims of many nationalities the procedure would be extremely complicated. With regard to the law of the territory, the advantage was that in most cases the law of the victim would apply, but without the complications, since most of the victims would come from the territory in which

the damage occurred. A disadvantage was that where the damage occurred was purely a matter of chance. His own delegation's proposal that the law of the Launching State should apply had the advantage that law did not depend on chance, but the disadvantage of being unusual.

With regard to the United States representative's question, if the damage occurred in a territory where the law recognized immaterial damage, everyone involved would be compensated for immaterial damage; if the damage occurred in a territory which did not recognize immaterial damage, no-one would be compensated for it. That would apply to his delegation's proposal. Although the proposal was unusual, it should be remembered that the underlying factors were also unusual. Space law was an entirely new field and the principle of liability for space activity was something new under domestic law or the law of torts. At present there was merely a trend in domestic law to replace liability by insurance, which meant that the insurer had to bear all the risks, including national disaster and force majeure. The idea that powerful States launching space objects were liable for damage and would become insurers of anyone who might be injured called for a new approach to the problem. [His delegation proposal provided that the law of the insurer, namely, the Launching State, should apply since that State would calculate the possible damages and know best how to cover them. Whether or not the proposal was advantageous to the victim would depend on whether or not the rocket was launched by a State whose law recognized immaterial damage. Under the law of territory, the victim's situation would depend on where the damage occurred.

Mr. REIS (United States of America) said that his question to the Hungarian representative had not been answered. Ignoring for the moment the minor question of moral damage if the Launching State law applied, under what law would a United States citizen be compensated if he had been injured by an ESRO satellite in, say, Tennessee? A sort of moral profiteering seemed advocated by the Hungarian proposal, for if, to take another example, a fragment of a space vehicle launched by the United States of America injured a citizen of a so-called "socialist" State which did not recognize the law of moral damage, it would be unjust if that citizen's Government took advantage of the law of a country with a different social system and claimed moral damage.

Mr. AMBROSINI (Italy) said that in general Italian law was not favourable to the principle of moral damage. He was surprised at the objections to his proposal, since they indicated a lack of confidence in international law. The suggestion that international law was too vague did not seem valid, since flexibility was often an advantage. He was opposed to the application of the law of the Launching State, for reasons he had already explained. It would be undesirable to apply the law of the State where the damage occurred since that would involve private law. It was essential to find a solution under public international law.

Mr. EORSI (Hungary) said that he appreciated the difficulties caused by the United States federal system but thought that they had been over-emphasized. He was sure that in a particular case of litigation some means of settlement could be found under what some writers had described as "American law" either by reference to the law of torts or by applying the law of the Launching State.

Mr. REIS (United States of America) agreed that the difficulties caused by the federal system were not serious and that the problem could be solved. He was concerned, however, about the last remark of the representative of Hungary, which suggested that compensation for immaterial damage could be awarded to a citizen of a State which did not recognize such compensation under law.

Miss GUTTERIDGE (United Kingdom) said that, while it could not be argued that there were no principles of international law that would apply to the situation under discussion, it was clear that many delegations considered that it would be difficult to ascertain with sufficient precision which were the relevant ones. It might therefore be necessary to supplement the application of international law by reference to other laws. The most suitable supplementary law would, in her opinion, be the law of the place where the damage occurred, since the disadvantages were less than those connected with the law of the victim's country or the law of the Launching State.

Another possibility would be to supplement the principles of international law by reference to a law to be agreed upon by the Applicant and the Respondent States.

Mr. SMALL (United States of America) said that in asking its question his delegation had had in mind a United States citizen as the victim under the Hungarian proposal to apply the law of the Launching State. He would like to know what would be the position in the case of a rocket launched by an international organization.

With regard to the suggestion of the United Kingdom representative, he did not see the need for reference to a supplementary law since international law was adequate and since in international practice the Claimant State normally took its own laws into account to some extent in assessing claims.

Mr. DELEAU (France) said that if settlement were to be by amicable negotiation, that should cover the decision on which law should apply. If the matter were referred to arbitration, some guidance would have to be given.

For his country it would be difficult to agree to application of the law of the Launching State, for that would be abnormal. He was not in favour of applying the law of the victim's country since it might be too complicated if many nationalities were involved.

The main concern of his country was for the victim, who should be ensured the same treatment whatever the circumstances. It was essential that regulations concerning the victim should be uniform and should not differ according to the type of accident.

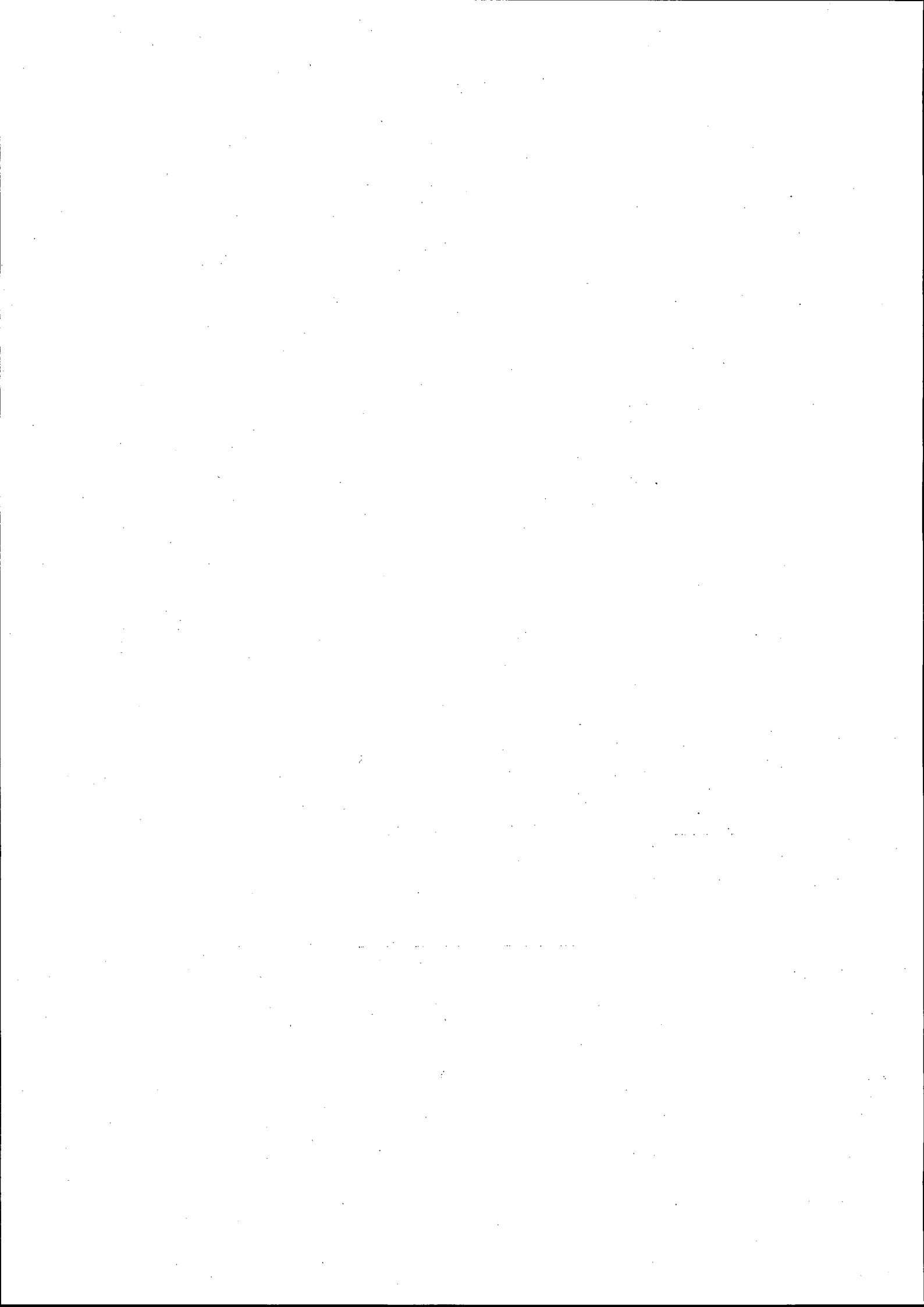
Mr. MILLER (Canada) said that the Launching State might be a group of countries. In that case which country's law would apply?

He strongly supported the comments of the representative of France on the need to keep in mind the interests of the victim.

In his opinion a reference to international law would be appropriate since there were principles which were generally recognized; he had an open mind on the question whether a supplementary reference to other law was necessary. There was merit in the United States representative's suggestion concerning the Claimant State.

Mr. EORSI (Hungary) said that an international organization was a legal person and as such had its own law, which should be applied. That was the law that would be applied in the case cited by the United States representative.

The meeting rose at 12.55 p.m.



SUMMARY RECORD OF THE ONE HUNDREDTH MEETING
held on Tuesday, 18 June 1968, at 10.50 a.m.

Chairman: Mr. WYZNER (Poland)

DRAFT AGREEMENT ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE
(agenda item 2) (A/AC.105/37; A/AC.105/C.2/L.32 and Add.1. L.33 and 34,
A/AC.105/C.2/L.36/Rev.2/L.37-44, A/AC.105/C.2/W.2/Rev.4 and Add.1, 2 and 3)
(continued)

The CHAIRMAN invited the Sub-Committee to continue its consideration of the three items of the comparative table (A/AC.105/C.2/W.2/Rev.4): measure of damages, limitation of liability in amount, and payment of compensation in convertible currency.

Mr. RIHA (Czechoslovakia) said that a number of speakers had stressed that the proposed convention should be as simple as possible, should be designed to protect the interests of the victim and that its provisions should be specific. Those views were especially relevant to the problem of the measure of damages and the applicable law. The convention should, as far as possible, state clearly the laws which should apply. Several possibilities had been suggested during the discussion; the comparative tables offered three possibilities, one of which was the principle of international law, justice and equity. At the previous meeting the representative of Italy had referred to the responsibility of States under international law. It seemed to his delegation that in the context of international law two questions had been confused. One was the question of the international responsibility of States, based on the principles of international law, which his delegation accepted. The other question was how to ascertain the damage caused by space objects, and that was really a matter of civil law. It should be borne in mind that when international or foreign aspects were involved they came within the sphere of domestic law, since they were not international in the sense of relations between States.

Since the problem of damage could not be determined under international law, a general provision in the proposed convention might lead to misunderstandings, particularly in the matter of compensation. His delegation would prefer a specific provision. Various possibilities had been suggested, such as lex personalis, lex loci delicti commissi and the new idea of the law of the Launching State proposed by the representative of Hungary. With regard to the last possibility, it could be argued that since the launching was carried out in accordance with the law of the Launching State, that law should apply also in the case of damage. With regard to objections to that suggestion, for example that it would tend to favour the Launching State rather than the victim, as there were as yet very few Launching States few legal systems would be involved in compensation for damages. The difficulty over the

If national law was to be applied in determining compensation, no exceptions to it should be allowed. His delegation was not sure that any national law should be applied, except as agreed between the parties concerned. If the Hungarian proposal that the Applicant State was primarily that in which damage had occurred, was accepted, it would appear that that State's law should have primacy in application. He could not accept the arguments advanced by the Hungarian representative at the ninety-ninth meeting for the application of the law of the Launching State. The application of that law might give rise to injustice because of the different social systems existing in the world and, even if it did not, it would entail great complications for the State representing the victims. In his view, the aim of the draft agreement was to facilitate the payment of compensation for damage and that could best be achieved by applying the law of the State in which damage had occurred. His delegation agreed that the nominal and punitive aspects of damage to which the USSR representative had referred should not be covered by the draft agreement.

In view of those considerations and acknowledging his debt to suggestions made by the United Kingdom representative, his delegation thought that the draft agreement should provide that the applicable law would be that agreed upon between the Applicant and Respondent States and, if no such agreement was reached, that damage should be assessed in accordance with the general principles of international law, justice and equity, having full regard to the law of the State in which damage had occurred but without any absolute obligation to apply that law strictly where it was not appropriate.

So far as payment of compensation in convertible currency was concerned, he thought the appropriate provision should stipulate that compensation would be paid in the currency or currencies agreed upon between the parties or in convertible currency. He pointed out that the persons concerned might be foreigners visiting the State and not necessarily nationals of the State submitting the claim. While his delegation would prefer the formula he had mentioned, it was open to persuasion that the Respondent State should be allowed to pay in the currency of the State in which damage had occurred.

His delegation would prefer that no limitation on the amount of liability should be included in the draft agreement, but it would consider such limitation if that was the desire of the majority and provided the ceiling of liability was sufficiently high.

His delegation supported the proposed Canadian definition of "damage", subject to a slight grammatical correction, namely deletion of the words "to property" in the last phrase.

Miss GUTTERIDGE (United Kingdom) said that her delegation had suggested at the ninety-ninth meeting that consideration should be given to finding a compromise on the applicable law on the basis that it should be the relevant principles of international law supplemented by reference to some other law and that that supplementary law should be the law of the State in which damage had occurred or some other law agreed upon between the Applicant and Respondent States. Her delegation did not consider that the measure of damages was a matter of private international law since the Applicant and Respondent were States and not private persons.

She had understood the Romanian representative to say that one objection to applying the principles of international law to the measure of damage was the lack of international practice. She could not agree that there was a lack of international practice in that field and drew attention to the authoritative textbook by an eminent American lawyer entitled Damages in International Law. Since she understood, however, that a number of delegations thought that international law was not sufficiently precise, she was prepared to agree to a compromise solution based on the applicable law being international law supplemented by the law of the State where damage had occurred or some other law agreed upon between the parties, and in that connexion she supported the suggestions just made by the Australian representative. She saw considerable difficulties in the Hungarian proposal that the supplementary international law should be the law of the Launching State. Difficulties would also arise if the law were to be that of the State of which the victim was a national, since that might involve the application of a number of different laws for the same incident. She therefore hoped there would be general agreement that the supplementary law should be lex loci delicti. Her delegation did not think that punitive damage or moral or immaterial damage should be covered by the draft agreement.

There appeared to be little difference between the Belgian and United States drafts with regard to payment of compensation in convertible currency and she thought it could be left to the drafting group to evolve a satisfactory formula on that subject.

She reserved the right to return to the question of limitation of liability at a later stage in the debate.

Mr. REIS (United States of America) said that, however the question of the measure of damages or applicable law might be settled, the relevant provisions of the convention would serve to guide not only the arbitral tribunal or claims commission, but also the claimant and respondent States during the phase of diplomatic negotiations. Some delegations appeared to be thinking only in terms of the arbitral tribunal or claims commission, but there was reason to hope that most claims would be settled before reaching the tribunal or commission.

Mr. AMBROSINI (Italy) agreed with the United States representative that the question of the law applicable in cases of damage also related to the stage of diplomatic negotiations and that a settlement could usually be reached at that stage. In that case, however, international law could be applied, or the applicable law chosen by the parties concerned.

Generally speaking, his delegation did not oppose the Canadian formulation, but it hoped that a more precise wording would be found, stipulating that the parties concerned could agree upon the applicable law and that the claims commission would respect that agreement, and only mentioning that international law provided principles for the settlement of such cases. His delegation would even be prepared to accept the inclusion of a reference to the law of the State on whose territory the damage occurred, but it could not agree to a reference to the law of the Launching State.

Referring to the Canadian proposal regarding the definition of damage, he pointed out that agreement had been reached on that matter at the sixth session of the Sub-Committee. His delegation did not think it necessary to refer to international organizations, but if that were done the question of the staff of those organizations should not be ignored.

Mr. DELEAU (France) said that he thought it reasonable to assume that the parties in question would take into account the provisions of the convention with respect to applicable law for the assessment of damages. The parties should remain free, however, to reach agreement on some other law.

Although his delegation opposed the limitation of liability in amount, if a large majority in favour of limitation of liability should emerge it might be able to rally to that opinion. That did not appear likely, however, since four of the five draft agreements before the Sub-Committee omitted it.

The CHAIRMAN noted that there appeared to be a consensus that the formulation of the definition of damage should be based on the points agreed upon at the sixth session. It would rest with the drafting group to decide whether the Canadian, Italian or some other version should be adopted.

Many representatives had expressed the opinion that no reference should be made in the convention to moral damage. The Hungarian draft did, however, mention such damage.

Mr. EÖRSI (Hungary) said that he realized that the majority opposed any reference to moral damage. His delegation was prepared to find a compromise wording satisfactory to all delegations and therefore hoped that private consultations would be continued. Consequently, he asked the Chairman to defer any decision on the matter.

The CHAIRMAN said that, although the question of the law applicable in the assessment of damage was a controversial one, many varying proposals having been submitted, he thought that agreement could be registered on the principle that when the parties concerned reached an agreement with respect to the applicable law, that law should be applied.

Mr. AMBROSINI (Italy) said that he thought that a simple formula could be agreed upon according to which certain laws such as international law should be applied unless the parties concerned chose the applicable law themselves.

The CHAIRMAN noted that no agreement had been reached on the question of the limitation of liability in amount, which was linked to that of nuclear damage, on which, too, no consensus had been reached. Although the United States draft made provision for the limitation of liability and that position enjoyed some support in the Sub-Committee, other States wished to exclude it from the convention. Private consultations would be needed to settle that point.

With respect to the question of the payment of compensation in convertible currency, he had heard no objection to the Australian proposal based on a suggestion by the United Kingdom delegation that payment should be made in the currency or currencies agreed upon between the parties or in those readily convertible.

Mr. RIHA (Czechoslovakia) said that his delegation accepted the principle in the Australian proposal but thought that the question of its place and importance in the final formulation of the provision concerned should be left open.

The CHAIRMAN assured the Czechoslovak representative that agreement on the principle concerned did not imply prejudging its final place or meaning and importance in the convention.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that the Sub-Committee should confine itself to exchanges of views and entrust the drafting group with the formulation of provisions acceptable to all.

Generally speaking, his delegation accepted the principle embodied in the Australian proposal, but it reserved the right to return to the matter at the final drafting stage.

The CHAIRMAN noted that agreement had been reached on basic principles regarding the definition of damages, applicable law and the payment of compensation in convertible currency. He suggested that those questions should be referred to the drafting group.

It was so decided.

The CHAIRMAN invited the Sub-Committee to undertake consideration of the next five headings in the comparative table, all of which were related to the question of the presentation of claims by States or international organizations: presentation of claims by States or international organizations and on behalf of natural or juridical persons; joinder of claims; presentation of claims for compensation through diplomatic channel; time limits for presentation of claims; and pursuit of remedies available in Respondent State or under other international agreements. The relevant articles of the Belgian, United States and Hungarian drafts were to be found in the comparative tables, those of the Indian draft in document A/AC.105/C.2/W.2/Rev.4/Add.1, and those of the Italian draft in article 9, article 10 (2) and article 12 in document A/AC.105/C.2/W.2/Rev.4/Add.3.

Mr. REIS (United States of America) recalled that at its sixth session the Legal Sub-Committee had reached a consensus on the questions of the presentation of claims for compensation through diplomatic channel and of time limits for presentation of claims. The Sub-Committee had been asked to complete drafting of a convention on liability for damage caused by objects launched into outer space so that the United Nations General Assembly could consider that convention at its twenty-third session. Since his delegation feared that the measure of agreement already reached might be jeopardized if the questions were reopened for discussion, it proposed that they should not be further considered in the Sub-Committee. The drafting group should also defer dealing with them until progress had been achieved on the other questions before it

Mr. PIRADOV (Union of Soviet Socialist Republics) said that he agreed with the United States representative that the Sub-Committee must fulfil its mandate and prepare a complete document for consideration by the General Assembly. The drafting group, however, was an extremely useful instrument whose potential assistance should not be neglected. If the Sub-Committee had a clear idea of the points on which

agreement had been reached at the sixth session, it might not be necessary to submit the two questions concerned to the drafting group. Nevertheless he wished to emphasize that the Sub-Committee's working method, by which it first agreed on principles and then referred those principles to the drafting group, was a sound one which should not be abandoned.

Mr. REIS (United States of America) took exception to the USSR representative's statement that the drafting group was a "useful instrument". The results of the only meeting it had held so far had been most disappointing. It could only be hoped that the situation would improve in future.

The CHAIRMAN suggested that the Sub-Committee should confine itself to the three headings on which agreement had not been reached at the sixth session, namely presentation of claims by States or international organizations and on behalf of natural or juridical persons, joinder of claims, and pursuit of remedies available in Respondent State or under other international agreements, leaving open the question whether the remaining two headings, namely presentation of claims for compensation through diplomatic channel and time limits for presentation of claims, should be referred to the drafting group.

It was so decided.

The meeting rose at 1 p.m.

Miss GUTTERIDGE (United Kingdom) thought that the statement suggested by the Chairman did not make it clear that the State of nationality had priority in the matter of presenting claims. Strict limits should be set to the right of a State in whose territory the damage occurred to present claims on behalf of persons who were not its nationals.

Mr. MILLER (Canada) wondered whether the question of persons permanently residing in the territory of the Applicant State was not taking up too much of the Sub-Committee's time. In the discussions that had taken place on the subject there had seemed to be agreement that, when damage occurred in the territory of a State, that State should have the right to present claims on behalf of any person, with the exception of claims presented by the State of nationality on behalf of foreign nationals residing in the territory of the Applicant State. The expression "persons permanently resident" might perhaps be discarded since it was giving rise to difficulties, and the following formula used: "The Claimant State may present claims in respect of any persons in its territory, other than nationals of the Respondent State", more or less on the lines of article V of the Indian draft. The United Kingdom proposal, which laid down the principle that, when the State of nationality did not intend to intervene on behalf of its nationals, another State could take its place, had much to commend it. The Canadian delegation would like the Sub-Committee to link the concept embodied in the Indian draft with the wording proposed by the United Kingdom, so as to include in the text the idea of a certain time-limit within which the State of nationality should either have presented claims on behalf of its nationals or signified its intention of so doing. If, on the expiry of such time-limit, that State had not taken action one way or the other, then perhaps the Respondent State could intervene.

Mr. SINHA (India) thanked the delegations which had supported the provisions of article V of the Indian draft. It appeared that the majority of members of the Sub-Committee would be willing to accept a version based on that text, subject to certain restrictions concerning the priority of the State of nationality in respect of the presentation of claims. The Sub-Committee might perhaps agree on the principle that the State in whose territory the damage had been caused could in certain circumstances present claims on behalf of persons permanently resident in its territory. If the Austrian delegation could accept that formula, a solution would be in sight. Consideration could even be given to inserting a further provision to the effect that,

without prejudice to the position adopted by the State of nationality in respect of the presentation of claims on behalf of its nationals, the State in whose territory the damage had been caused could, for the purposes of the convention, present claims on behalf of those persons.

Mr. ZEMANEK (Austria) fully supported the Canadian representative's suggestion. He was not opposed to the concept of presenting claims in accordance with the "territorial" formula, but the Canadian suggestion offered a wider base and was not confined to persons permanently residing in the territory of the Applicant State.

Mr. SIRRY (United Arab Republic), Miss GUTTERIDGE (United Kingdom) and Mr. DELEAU (France) supported the Canadian representative's suggestion.

Mr. REIS (United States of America) said that he presumed that the Canadian suggestion would not preclude the presentation of claims by a Respondent State on behalf of one of its nationals who had suffered damage in the territory of another State. He was none too happy about the emphasis laid on the State in whose territory the damage had been caused.

Mr. AMBROSINI (Italy) pointed out that article 9, paragraph 1 of the Italian draft, laid down that the same claim could be presented by the State for damage caused anywhere to its own nationals and to natural or juridical persons permanently domiciled in its territory. Italy had chosen that formula because it had understood that all members of the Sub-Committee were already in agreement on the principle; since, however, the question was being raised again, the main task was to decide whether the wording should be "persons permanently resident" or merely "persons residing on any basis whatsoever in its territory".

His delegation was somewhat reluctant to discard the concept of "permanent residence", for it wondered whether, if, for example, a person who was in Italy as a tourist suffered damage there, Italy would have the right to present a claim on his behalf or even whether it would be in Italy's interest to do so.

Italy wished to stress that, if two States - the State of which the victim was a national and the State where the victim happened to be - could both present claims, it would be for the Respondent State to decide which claim should be accepted first. Both claims had the same object; the sum to be paid in compensation might vary, but the matter was one for discussion between the Applicant and the Respondent State, and,

if necessary, within the Arbitration Commission. The Italian delegation did not think that the presentation, at the same time and for an identical purpose, of two different claims could have any major disadvantages. For that reason, it was willing to accept any formula.

Mr. EORSI (Hungary) said that the Canadian representative's suggestion was a considerable improvement on the text originally proposed by Hungary, and that his delegation would support it.

The CHAIRMAN noted that the Sub-Committee supported the Canadian representative's suggestion, which combined several of the proposals before it. In accepting it, the Sub-Committee would recognize the principle that the State of nationality could present claims on behalf of its own nationals, as laid down in the Italian draft, and at the same time would admit that the State in whose territory the damage had been caused had the right to present claims on behalf of persons suffering damage in its territory. Lastly, account would be taken of the principle, put forward by the United Kingdom delegation, that the State of nationality should have priority in the matter of presentation of claims. He suggested that, if the Sub-Committee accepted the Canadian suggestion, it should be transmitted to the drafting group for preparation of the final text.

It was so decided.

The CHAIRMAN asked the Sub-Committee to consider the heading "Joinder of claims".

Mr. MILLER (Canada) and Miss GUTTERIDGE (United Kingdom) supported article of the Indian draft, whose simplicity and completeness they commended.

Mr. ZEMANEK (Austria) agreed. The Indian text, however, said that "There may be joinder of claims ...", while the Belgian draft (article 4 (f)) was more categorical, saying "There shall be joinder of claims" (A/AC.105/C.2/W.2/Rev.4).

Mr. SINHA (India) said that he had no objection to the use of the words "shall be". He suggested that that point should be left to the drafting group.

The CHAIRMAN pointed out that, if the convention used the words "shall be", that would place an unconditional obligation on the Parties, who might not perhaps be willing to commit themselves so far.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that his delegation would support the principle set out in article IX of the Indian draft.

Mr. RIHA (Czechoslovakia) thought that it would be better to give the Parties the possibility of choosing.

Mr. PIRADOV (Union of Soviet Socialist Republics) considered that the principle was clear and that its formulation should not present any difficulties; nevertheless, it would be better to adopt the usual procedure and refer the text to the Drafting Group. The question of international organizations often arose; it had been said that it could be considered separately and the Soviet Union delegation considered that the Drafting Group should not be deprived of the opportunity of drafting the article under study.

The CHAIRMAN suggested that the matter should be referred to the Drafting Group, it being understood that it would take article IX of the Indian draft as a basis.

It was so decided.

The CHAIRMAN asked the Sub-Committee to consider the heading "Pursuit of remedies available in Respondent State or under other international agreements".

Mr. O'DONOVAN (Australia) said that his delegation could support, in principle, the text of article V, paragraph 4, of the Indian proposal but could not accept the last sentence as now worded. A State could present a claim to a Respondent State on behalf of a number of persons who had suffered damage in the Applicant State. Some of those persons, however, might decide to bring an action before the courts or the administrative agencies of the Respondent State, while others would prefer the claim to be presented on their behalf by the State in whose territory the damage had been caused. In his delegation's view, it should be impossible for claims pending with the courts in the Respondent State to be presented under the convention, but it should be possible to entertain claims which were not before the courts or the administrative agencies of the Respondent State.]

The text of the Indian proposal could certainly be drafted more precisely. The Australian delegation would like to know, in particular, whether it was the intention of the Indian representative to ensure that the presentation of a claim, under the convention, by the State in whose territory the damage had been caused or by the State of nationality would not be made impossible by the simple fact that one of the many persons who had suffered damage had decided to bring an action before the courts or the administrative agencies of the Respondent State.

Mr. SINHA (India) replied that the object of article V, paragraph 4, of his delegation's draft was to prevent a case from being brought simultaneously before two different authorities. Article IX of the United States proposal (ibid) was based on the same principle.

With regard to the question raised by the Australian representative, he did indeed think that if a natural or juridical person had not tried to bring his case before the courts of the Respondent State, the Applicant State would be quite free to present a claim direct to the Respondent State on behalf of the person in question. In the event of one or more persons deciding to apply direct to the courts of the Respondent State, their claim could not be presented direct by the Applicant State but he thought that that State would be able to take the matter in hand subsequently if the parties concerned had not received satisfaction.

Miss GUTTERIDGE (United Kingdom) said that she too supported article V, paragraph 4, of the Indian proposal, which was intended to prevent an action from being brought simultaneously before several different authorities of a country. Her delegation had always thought that the convention should include some such provision, and it had submitted several suggestions which scarcely differed from the Indian proposal, whose provisions were similar to those of the corresponding article in the United States draft. Her delegation might later wish to suggest some drafting changes, when the text was being given final shape.

Mr. AMBROSINI (Italy) said that he accepted the interpretation that the Indian representative had given in article V, paragraph 4, of his proposal. If some claimants had already brought an action before the ordinary courts of the Respondent State, the Applicant State or the arbitration commission should not take up the matter since one and the same case could not be presented simultaneously to different authorities. If the person who had applied to the ordinary court withdrew the action the Applicant State or the arbitration commission should then agree to take up the defence of that person's interests.

That being so, Italy accepted article V, paragraph 4, of the Indian proposal.

Mr. TOKUHISA (Japan) said that, generally speaking, his delegation accepted article V, paragraph 4, of the Indian text. The use of the word "simultaneously" in the last sentence, however, entailed a considerable difference between the Indian draft, on the one hand, and those submitted by Belgium and the United States, on the other. If he understood correctly, the claimants would not, under the Indian text,

have the right to bring two actions simultaneously, which meant that the Applicant State would be able to present a claim at State level once the case had been lost in the courts of the Respondent State or if the claimant was not satisfied with the judgment rendered. In that case, according to the Indian representative's interpretation, the question might be taken up again at State level, whereas according to the United States and Belgian proposals, if a claimant brought an action for compensation on his own personal behalf, the problem could not be taken up subsequently by the Applicant State. Moreover, the United States draft provided for other international remedies outside the convention under discussion.

His delegation would like to have some explanation about those discrepancies and to hear the views of members of the Sub-Committee on the provisions in the United States and Belgian texts which did not appear in the Indian draft.

Mr. REIS (United States of America) said that his delegation considered article V, paragraph 4, of the Indian proposal an improvement on the United States draft. He particularly approved of the provision under which the claimant could not "simultaneously" pursue claims at two different levels. He also took due note of the questions raised by the Japanese representative.

Mr. AMBROSINI (Italy) thought that the doubts expressed by the Japanese representative were unfounded. There was a basic principle in the law of all countries that the same question could not be brought twice before the courts or before administrative organs. In the event of what was described as res judicata, a case could not be brought before an arbitration commission, for example, when it had already been judged by an ordinary court. Res judicata meant that the case was closed.

Mr. MILLER (Canada), bearing in mind the question raised by the Australian representative and article 4 (b) of the Belgian draft, proposed that the last sentence of article V, paragraph 4, of the Indian proposal should be replaced by the following text: "In such a case, the claimant shall not be entitled to present simultaneously under this Convention a claim against the respondent for the same damage".

Mr. BEREZOWSKI (Poland) said that in the matter of remedies there was a well-known principle of international law that a question could not be brought before an international authority if it had not previously gone through the channels of domestic jurisdiction. It might therefore be said that in the case of res judicata a second judgment could not be sought.

In the case before the Sub-Committee, however, the situation was different. It was not the person who had brought the case before a domestic court who would initiate an action against another State through the intermediary of his own State, but on the contrary, a State which would present a claim to a Respondent State. If the State to which the claim had been presented proved that a domestic remedy existed or that it had been exhausted, the other State would not claim compensation.

If, therefore, the draft convention did not include any provision concerning the exhaustion of domestic remedies, the question might be raised either through diplomatic negotiation or before a body set up by the States concerned for the settlement of the dispute which had arisen between them.

Mr. AMBROSINI (Italy), replying to the Polish representative, said that when a State submitted a claim on behalf of persons who were its nationals, that State represented victims: it was therefore acting, not for itself, but for the nationals it represented. That was why the Italian delegation had used the expression "for damage caused to the State or to the natural or juridical person it represents". If that idea of representation was taken into account, the Polish representative should arrive at the same conclusion as the Italian delegation, namely that a State representing the victims could not submit a question to the other State concerned through diplomatic channels once it had been settled in the ordinary courts of the Respondent State.

Mr. O'DONOVAN (Australia) suggested that in the amendment proposed by the Canadian representative the words "for the same damage" should be replaced by the words "in respect of the same damage". What was at issue was, in fact, the presentation of a claim concerning the damage suffered by persons in the territory of a State.

His delegation also suggested that the words "against the respondent" in article V, paragraph 4, of the Indian proposal, as amended by the Canadian representative, should be deleted. Claims were not necessarily presented against a State. If the space object which had caused the damage had been launched by a company established in a particular State, an action might very well be brought in the courts of the Respondent State, not against the State itself but against the launching authority, which would in that case be the company in question.

The CHAIRMAN noted that the members of the Sub-Committee agreed that the presentation of a claim under the convention should not be made subject to the exhaustion of the remedies open in the Respondent State. He proposed that the Drafting Group should be instructed to prepare the final text for that principle on the basis of article V, paragraph 4, of the Indian proposal, taking into account the amendments proposed during the meeting.

It was so decided.

The CHAIRMAN asked the Sub-Committee to consider the section of the draft agreement dealing with the following three points: procedures for settlement of claims for compensation; space object not to be subject to sequestration or enforcement measures, and jurisdiction of International Court of Justice.

With regard to the first point, he drew attention to the text appearing in document A/AC.105/C.2/W.2/Rev.4/Add 2 (p.6), on which agreement had been reached at the sixth session.

The second point was dealt with in article XII of the Hungarian proposal.

The third point was dealt with in article XII of the United States draft and in article 13 of the Italian draft. In both those texts, it was provided that any dispute arising from the interpretation or application of the convention which was not previously settled by other peaceful means could be referred by any Contracting Party to the International Court of Justice.

Mr. MILLER (Canada) said that in the draft articles relating to the presentation of claims through the diplomatic channel, which the Sub-Committee had agreed not to discuss, provisions were presented as having a mandatory character, the verb "shall" being used, whereas at its sixth session the Sub-Committee had decided to draft those provisions in much less categorical fashion, using the verb "may".

The CHAIRMAN noted the Canadian representative's observation, which would be taken into account by the Drafting Group.

Mr. BEREZOWSKI (Poland), referring to the jurisdiction of the International Court of Justice, pointed out that the compulsory jurisdiction of the Court, which States might or might not recognize (Article 36, paragraph 2 of the Statute), was not accepted by all States. Many difficulties had arisen when there had been an attempt to include in other international conventions a provision providing for compulsory recourse to the International Court. That had happened in the case of the 1967 Treaty and the 1967 Agreement which had been the outcome of a compromise and which included no provision for the compulsory jurisdiction of the Court. That was why the Polish delegation opposed the insertion of such a provision in the draft under preparation.

Mr. RIHA (Czechoslovakia) fully endorsed the Polish representative's statement. Article XII of the United States draft provided for the compulsory reference of unsettled disputes to the International Court of Justice; that was a position which his delegation could not accept, on grounds of principle.

Mr. O'DONOVAN (Australia) recalled that during the general debate his delegation had pointed out that the convention under discussion would not be effective unless it laid down a satisfactory procedure for settlement by a third party. Its position had not changed. The Indian draft provided no real solution to the problem, although it provided for the possibility of a settlement by a claims commission, in accordance with the protocol annexed to the convention, it did not mention compulsory recourse to settlement by a third party.

Nor did Australia find article XI of the Hungarian draft satisfactory, since it did not provide for compulsory recourse to an impartial tribunal as a last resort.

In the circumstances, his delegation was prepared to support article X of the United States draft.

The members of the Sub-Committee should bear in mind that in most cases the claim for settlement which might be presented under the convention would be claims presented by small States against great Powers, which for the time being were the only States engaged in space activities on a large scale. It therefore seemed necessary to guarantee that in the last resort, if no agreement could be reached between the States in litigation, the dispute should be settled impartially under an effective compulsory procedure. The Australian delegation was convinced that only a procedure of settlement by a third party would make it possible to achieve a satisfactory solution.

With regard to the adoption of a provision in the convention prohibiting the sequestration of a space object, the adoption of the 1967 Agreement seemed to have made such a provision unnecessary.

Miss GUTTERIDGE (United Kingdom) said that her delegation, too, considered it essential that the convention should include a satisfactory provision concerning the settlement of claims. Such a provision should stipulate that decisions of the tribunal dealing with claims would be binding. For that reason the United Kingdom delegation could not accept article XI of the Hungarian draft. On the other hand, it approved in general of article X of the United States draft, which covered several points which it considered important.

The United Kingdom delegation was generally in favour of the submission of any disputes concerning the interpretation or application of conventions to the International Court of Justice and it supported the inclusion of provisions to that effect in multilateral conventions. In the present instance, however, it would not

press that point provided that a satisfactory agreement could be reached concerning the settlement of claims in accordance with a procedure entailing recourse to an impartial third party. What was absolutely essential was that the convention should include an article establishing an arbitration tribunal as the representative of Australia had suggested.

She agreed with the representative of Australia that article XII of the Hungarian draft had been rendered unnecessary by the adoption of the 1967 Agreement.

Mr. SINHA (India) said that India had not included in its draft any proposal for the Protocol for the settlement of claims, because it had been certain that opinions in the Sub-Committee would be divided on the matter. It had therefore preferred to know how the members of the Sub-Committee felt on the subject before preparing a text.

In principle, the Indian delegation was of the opinion that it was desirable in the circumstances to provide for a clearly defined settlement procedure, on the understanding that the body which would have to give the final decision could examine only the financial aspects of the claim. His delegation hoped to submit a text shortly.

Mr. PIRADOV (Union of Soviet Socialist Republics) supported the method suggested in article XI of the Hungarian draft because it was realistic and in conformity with the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space. The fundamental advantage of the method was that it was based on the fact that activities undertaken in outer space were carried out at inter-governmental level.

The Soviet Union delegation also supported article XII of the Hungarian draft, prohibiting the sequestration of space objects. After the adoption of the 1967 Agreement, the adoption of article XII should not give rise to any difficulty in the Sub-Committee.

Mr. REIS (United States of America), referring to the settlement of claims, considered that the solution proposed in article XI of the Hungarian draft did not constitute real arbitration. The proposed committee of arbitration set up on a basis of parity, which in the most straightforward cases would consist of a representative of the Launching State and a representative of the claimant, would in fact be merely a new edition of the body which had preceded it and which had already failed in its mission.

Hence it would not be possible to arrive at a final decision. As the representative of Australia had said, it was necessary to provide a procedure which would make it possible to resolve disputes on which it had been impossible to reach a settlement.

With regard to the question of the sequestration of space objects, the 1963 Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, the 1967 Treaty which reproduced it and the 1967 Agreement all expressed the same idea: a launching authority retained its rights of ownership over objects which it launched into outer space. Furthermore, the 1967 Agreement provided that the State in whose territory a component part of a space object fell should return it to the launching authority, which was required to furnish identifying data. In the opinion of the United States delegation, there was no point in repeating the same thing in a new convention, particularly as there was relatively little chance that space vehicles as such would return to the earth's surface otherwise than planned and as the fragments were by and large of no use whatsoever to anyone except the launching authority.

In the circumstances, he hoped that the Hungarian delegation would not press for the inclusion of its draft article XII in the convention.

Mr. GOGEANU (Romania) said that it would be difficult for his delegation to accept a provision providing for compulsory recourse to the International Court of Justice because such a provision might have unforeseen consequences from the point of view of the sovereignty of States. That was why he supported article XI of the Hungarian draft.

Mr. AMBROSINI (Italy) pointed out that the discussion concerned two connected but distinct questions: the question of arbitration and the question of disputes concerning the interpretation and application of the convention, disputes which the United States thought should be referred to the International Court of Justice.

With regard to the question of arbitration, the Italian delegation considered that any State which had sustained damage and which could not obtain a settlement out of court would be entitled to refer the dispute to an arbitration commission or tribunal. Once the dispute had been settled by that body, the decision should be final and binding and the respondent must comply with it.

In that respect the committee of arbitration set up on a basis of parity, as proposed in article XI of the Hungarian draft, could not constitute an arbitration tribunal because it would be unable to produce a majority decision. Furthermore,

paragraph 2 of article XI of the Hungarian draft spoke of an "international arbitration procedure". He did not see exactly what difference there was between that procedure and the procedure envisaged in paragraph 1. In fact, article XI of the Hungarian draft provided for a twofold arbitration procedure. The Italian delegation would like some enlightenment on that subject.

In respect of the disputes relating to the interpretation and application of the convention, the Italian delegation thought that the draft convention should include a rule governing the matter. The question there was not one of arbitration proper but of an official interpretation of the convention in order to ensure one and the same jurisprudence in cases involving arbitration. For that reason he considered that the words "Subject to prior recourse to proceedings under article X" at the beginning of article XII of the United States draft should be deleted. Indeed, if a dispute was referred to an arbitration tribunal first, there was a danger that its decision would conflict with the interpretation given by the International Court of Justice or by any other selected body.

In short, the Sub-Committee should draw a clear distinction between the arbitration procedure for passing judgement on the State liable for the payment of compensation and the procedure for determining the real meaning of the articles of the convention.

Mr. DELEAU (France) said that he too thought that it was necessary to establish a procedure in the convention for the compulsory settlement of disputes. It must provide assurance that claims put forward under the convention when bilateral negotiations had failed to bring about an agreement would definitely be settled. He did not think that the formula proposed in article XI of the Hungarian draft was satisfactory, because in fact it only provided for a different method of diplomatic negotiation. The French delegation was prepared to support any formula providing for a system of arbitration procedure, possibly through the establishment of a committee of arbitration whose decisions would be binding.

Mr. MILLER (Canada) thought, like those who had spoken before him, that if the Sub-Committee did not work out a satisfactory method for the settlement of disputes which was based on arbitration and was binding, it was doubtful whether it would be possible to apply the convention.

He would like the representative of Hungary to provide some explanation of article XI of his draft, paragraph 1 of which seemed to provide a means of continuing the negotiations which had probably preceded the situation in which article XI had become applicable, and of what he meant by the phrase "the States may agree upon an international arbitration procedure" in paragraph 2.

The Canadian delegation supported article X of the United States draft in principle, but it reserved the right to propose a few minor amendments during the final drafting of the article. His delegation also supported article 4 of the Belgian draft, which provided a useful and necessary machinery for the settlement of disputes.

He thought that the concept on which article XII of the Hungarian draft was based had now been superseded by events and was probably not needed in the convention, particularly as it appeared in some recently concluded agreements.

The Canadian delegation would be prepared to agree to the deletion of the reference to the International Court of Justice if it was assured that a satisfactory and compulsory arbitration machinery would be provided for in the convention.

Mr. PERSSON (Sweden) said that his country could be both a Respondent State and an Applicant State, since Swedish territory was being used as a launching base by an international organization. His Government had always advocated the submission of disputes to an international tribunal and was prepared to accept recourse to a commission of arbitration or to the International Court of Justice. The Swedish delegation therefore agreed with the delegations of Austria, the United Kingdom, Italy, France, the United States and Canada that it was essential to refer claims which the parties had been unable to settle to an impartial body. His delegation supported article X of the United States draft and was prepared to accept the decisions which the proposed commission of arbitration might hand down.

Mr. EÖRSI (Hungary), referring to article XII of his country's draft, pointed out that the provisions of the 1967 Agreement neither concerned nor excluded cases of damage caused in the country in which the space object was found. The question was therefore open to two different interpretations. Under the first interpretation, to which the Hungarian delegation subscribed, that Agreement related to all cases in which a space object was found in a particular territory. The second interpretation, however could not be excluded in advance: namely, that the Agreement was designed to cover the normal course of events and that, if damage was caused in the country in which the space object was found, that was a new factor which should be covered by another instrument, the convention on liability for damage caused in outer space. The Hungaria

delegation thought that the question should be dealt with and that, to avoid unnecessary duplication, it should be stated that the provisions of article 5 of the 1967 Agreement applied also in cases of damage. Such a solution could constitute a compromise which would make it possible to refer to the question of sequestration without entailing further difficulties, and thereby to extend the obligation to return space objects, provided for in the 1967 Agreement to the convention under discussion.

The text of article XI of the Hungarian draft might seem obscure because of certain drafting defects, but its basic aim was the establishment of a committee of arbitration on a basis of parity. He did not think that the article merely provided for a different means by which diplomatic negotiations could be continued. The two persons selected to arbitrate would exercise their functions as in a committee of arbitration consisting of three persons, the first appointed by the claimant, the second by the respondent and the third in accordance with the rules applicable in the case in question. Arbitration on the basis of parity was applied by the International Chamber of Commerce, which provided for the appointment, by the respective parties, of two persons who would decide the question in dispute. The Hungarian delegation was aware that that procedure did not always produce results. If, however, the committee of arbitration did not reach a decision, the parties concerned could then choose a third impartial arbiter or agree on another solution.

He realized that the solution proposed by Hungary gave rise to difficulties. It would certainly be better if a commission could pass judgment on the various cases impartially. It should be borne in mind, however, that decisions concerning damage caused by space activities did not raise purely financial problems; they always had political aspects. Some States were perhaps satisfied with recourse to the International Court of Justice as proposed in the United States draft, or to another means of "super-arbitration". Hungary had itself appealed to that type of arbitration or super-arbitration on questions of foreign trade. But the problems raised in connexion with the future convention were of a political nature and experience had shown that it was necessary to be extremely cautious when political problems were involved. That was why, if an impartial decision was to be reached, the parties should agree on a settlement procedure, as provided for in paragraph 2 of article XI of the Hungarian draft.

He thought that the preceding speakers had overstressed the disadvantages of such a solution. Any one versed in international law knew that, in that field, legal sanction was not the most effective means of settlement. Moral and political pressure generally played an important part. In cases in which damage was caused by space activities, such pressures were directed against the great Powers responsible and were calculated to help the small States which had sustained the damage. The two members of the Committee of arbitration to be set up on a basis of parity were not alone. International public opinion would bring pressure to bear on the space Powers to induce them to satisfy the claims of the small States.

Mr. LAMPREIA (Brazil) considered that all the parties involved in a dispute concerning settlement of a claim should be able to have recourse to a means of peaceful settlement such as a commission of arbitration which they had selected by agreement.

The Brazilian delegation was more in favour of article VII of the Indian draft, which seemed to provide for an optional Protocol.

Mr. BUCETA (Argentina) said that, in order to make the Sub-Committee's task easier, the Argentine delegation had decided to withdraw the draft which it had submitted the previous year on the problem under discussion (A/AC.105/C.2/L.25) and that it supported the wording of article XI of the Hungarian draft. He wished to stress that his country was opposed to the principle of the compulsory jurisdiction of the International Court of Justice.

Mr. ZEMANEK (Austria) considered that a provision for instituting the effective and final impartial settlement of disputes should definitely form part of the convention. The attitude of the Austrian Government concerning the convention as a whole would certainly be dictated by the solution found for the problem of the impartial settlement of disputes.

Paragraph 1 of article XI of the Hungarian draft could not be applied at least in one case, for the Sub-Committee had just adopted the principle of article IX of the Indian draft which laid down that there could be joinder of claims. In such a case it was not possible for a committee of arbitration to be set up by the two States on a basis of parity. It was impossible to speak of parity when there were more than two countries, and there could be a Respondent State and two Applicant States or two Respondent States and one Applicant State.

With regard to the Hungarian representative's remarks about political and moral pressures which might be brought to bear on the Respondent State, he did not think that a State such as Austria would be in a position to exercise moral and political pressures on another State. Moreover the International Conference on the Law of Treaties had just unanimously adopted a resolution which condemned the use of force, including economic and political force, and he feared that economic and political pressures did not come within the purview of the question under discussion.

With regard to article XII of the Hungarian draft, Austria, which was a party to the 1967 Treaty, would respect the obligations arising from those instruments. The idea on which article XII of the Hungarian draft was based seemed to be to protect the Launching States, which were great Powers, in all circumstances, but the delegations which were in favour of that article did not seem to be much inclined to allay the fears of the small States, which would like an impartial machinery for the settlement of disputes to be set up.

Mr. REIS (United States of America) observed that the Sub-Committee had not made much progress in drafting the convention and that it would moreover be regrettable to go back on what had been decided in the 1967 Agreement. He was thinking in particular of the Hungarian representative's remark that article 5 of that Agreement could be interpreted as imposing the obligation to return objects launched into outer space or the component parts of such objects only in the normal course of events and not when the objects had caused damage. The United States Government found such an interpretation unacceptable. It did not behove the members of the Sub-Committee to analyze the terms of that Agreement afresh and to imply that what had been negotiated in all good faith could now be given a subjective interpretation.

Furthermore, he did not understand why the representative of Hungary had used the term "super-arbitration" concerning article X of the United States draft and he saw no difference between arbitration and super-arbitration. Moreover, the representative of Hungary had implied that the question involved political aspects. That was not so at all; the United States proposal raised only financial, material and human questions.

Mr. SINHA (India) pointed out that article VII of the Indian draft did not propose an optional protocol. The Indian delegation had opted for a protocol because the detailed provisions which it would contain could not be well drafted in the convention itself, and the intention was that it should be binding.

Mr. KHERADMEH (Iran) observed that provisions of the United Nations Charter recommended that Member States should refer their disputes to the International Court of Justice. He favoured recourse to the Court when disputes could not be settled by other international means for settlement.

Mr. EÖRSI (Hungary) said that he did not understand why the United States representative was showing such opposition to a simple reference, in the convention to the 1967 Agreement, which there was no question of reopening. He still thought that that Agreement might be interpreted in two different ways and that whether it covered cases of damage caused to a State by a space object was open to question. A fair interpretation would be that the Agreement related to cases of damage, but the possibility that one party might seek to interpret the instrument in another way could not be excluded. It was to avoid the difficulties which would result that the draft convention should include a reference to article 5 of that Agreement.

It was true that the convention did not raise only political problems; it also raised financial, material and human problems. But a decision on liability inevitably had political aspects.

With regard to the term "super-arbitration", he thanked the United States representative for pointing out that the expression was not appropriate, but that in no way changed the substance of his remarks.

In reply to the observations by the representative of Austria, he did not think that the principle of a joinder of claims was contrary to the parity provided for in the Hungarian draft. Many drafts included provisions for recourse to a commission by more respondents than claimants, who could jointly appoint an arbiter. In the case of a joinder of claims, the Applicant States should appoint an arbitrator jointly.

As far as moral and political pressures were concerned, he did not think that a neutral State could exert political and moral pressure on a great Power; his statement had been concerned with spontaneous pressures which already existed. If a dispute could not be settled between the parties to a dispute, it would then arouse the interest of international public opinion, which would exert pressure, particularly through the Press, radio and television.

Mr. REIS (United States of America) welcomed the statement made by the representative of Hungary concerning the 1967 Agreement.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that he had listened with interest to the suggestion by the representative of Hungary that there should be a reference in the convention to article 5 of the 1957 Agreement. The USSR delegation would make a careful study of that suggestion. It regretted that the United States representative sometimes tended in his remarks to go further than was proper in relations between representatives of States, and it hoped that he would refrain in future.

Miss GUTTERIDGE (United Kingdom) noted that the representative of Hungary had implied that political pressures might be brought to bear in the case of a settlement by third parties. Under article X of the United States draft, however, the Respondent State and the Presenting State would each appoint one person to serve on the commission, the third person being appointed by the President of the International Court of Justice. It seemed to her that that procedure was designed to ensure that the Chairman was impartial and that no pressure was exercised on him. She failed to see why political pressures would be brought to bear in the case of an impartial settlement by third parties.

The meeting rose at 5.5 p.m.