

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTEENTH MEETING

held on Monday, 16 June 1969, 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/C.2/5; A/AC.105/C.2/L.40/Rev.1)

The CHAIRMAN recalled the terms of operative paragraph 2(a) of General Assembly resolution 2453 B (XXIII) and said that, since the Sub-Committee's seventh session, informal consultations between various delegations had helped to clarify the points of view of those delegations on some of the issues which had remained unresolved at the end of that session.

At the close of the seventh session, the Sub-Committee had had before it the texts of five draft conventions on liability, namely, those submitted to the sixth session by Belgium (A/AC.105/C.2/L.7/Rev.3)^{10/}, Hungary (A/AC.105/C.2/L.10/Rev.1 and Corr.1 and A/AC.105/C.2/L.24 and Add.1)^{11/} and the United States (A/AC.105/C.2/L.19 and Corr.1)^{12/}, and those to the seventh session by India (A/AC.105/C.2/L.32/Rev.1 and Corr.1)^{13/} and Italy (A/AC.105/C.2/L.40 and Corr.1 and 2)^{14/}. The Italian draft had at the opening of the current session been replaced by a revised draft (A/AC.105/C.2/L.40/Rev.1). The Belgian, Hungarian and United States drafts had been previously set out in a comparative table (A/AC.105/C.2/W.2/Rev.4)^{15/}, and the secretariat was preparing a further comparative table which would contain the revised Indian and Italian drafts and also the texts and principles on which the Sub-Committee had reached agreement during the seventh session reproduced from paragraph 10 of the Sub-Committee's report on the work of that session.^{16/}

^{10/} See Official Records of the General Assembly, Twenty-Second session, Annexes agenda item 32, document A/6804 and Add.1, annex III, appendix II, pp. 17 and 18.

^{11/} Ibid., pp. 21 and 22.

^{12/} Ibid., pp. 19 - 21.

^{13/} Ibid., Twenty-third session, agenda item 24, document A/7285, annex III, appendix I, pp. 144 - 153.

^{14/} Ibid., pp. 153 - 163.

^{15/} Ibid., Twenty-second session, annexes, agenda item 32, document A/6804 and Add.1, annex III, appendix II, pp. 23 - 31.

^{16/} Ibid., Twenty-third session, agenda item 24, document A/7285, annex III, para. 10, pp. 129 - 134.

Mr. O'DONOVAN (Australia) said that an equitable liability agreement was urgently needed because the risk of damage intensified as increasing numbers of objects were launched into outer space and because, in the development of international law on outer space affairs, a proper balance should be maintained in the protection of the respective interests of the space Powers and the non-space Powers. In the 1967 Treaty articles I to IV, which guaranteed freedom of exploration and use of outer space, were clearly for the benefit of all mankind, article V, which dealt with the rescue of astronauts and the return of objects launched into space, was primarily for the benefit of States engaged in space activities on a substantial scale, while the provisions of article VII, concerned with liability for damage caused by space objects, were intended primarily to protect the rights of States not extensively engaged in space activities. The Sub Committee's task was to elaborate the latter provisions.

It was quite natural that the non-space Powers should resist any attempt to curtail their right to compensation for damage under the Treaty, and try to secure confirmation of that right and ensure that appropriate procedures for its enforcement were adopted.

Referring to the unresolved issues brought to the attention of governments in a proposal co-sponsored by his delegation at the seventh session (A/AC.105/C.2/L.51)^{17/} he said that Australia had not been convinced by the arguments advanced in favour of excluding nuclear damage from the proposed convention and saw no reason for such exclusion. Article VII of the 1967 Treaty provided that the State responsible was "internationally liable for damage" and made no distinction between damage of nuclear origin and other damage. He had reason to believe that the delegations which had opposed the inclusion of nuclear damage in the convention were now prepared to accept it, but such a change of attitude should not be regarded as a concession, since it merely constituted the withdrawal of a demand for a concession involving a curtailment of rights under the Treaty.

There was nothing in the 1967 Treaty to suggest that any limitation of liability in amount was intended and the inclusion of a limitation in the convention would also constitute a concession, which could only be justified, if at all, by more definite and specific provision for remedies under the convention than was made in the Treaty.

^{17/} Ibid., annex III, appendix I, pp. 168 and 169.

Some limitation of liability might be acceptable if the limit was set sufficiently high and there was a clear understanding that, where a State suffered damage in an amount greater than the limit of liability specified in the convention, that State would be free to pursue claims for amounts in excess of that limit under the Treaty or under general principles of international law.

The Treaty contained no explicit provision for compulsory settlement of disputes by a third party and, in regard to the enforcement of remedies for damage caused by space objects, represented no discernible advance on existing rules of customary international law. That could hardly be regarded as satisfactory from the point of view of the non-space States. Unless the convention laid down an effective procedure for the final settlement of disputes by some impartial tribunal with power to make binding awards, the Sub-Committee's achievements would be of little significance. While there might be room for negotiation on the range of disputes to which a compulsory settlement procedure should apply, Australia firmly believed that at least disputes concerning the measure of compensation to be paid in a particular case should be settled, in the last resort, by compulsory third party procedures. A liability convention without such provision would confer largely illusory rights and would represent no advance over the relevant provisions of the 1967 Treaty, since disputes could ultimately be settled only by mutual agreement or by mutually agreed procedures.

The 1967 Treaty made it clear that international organizations should be liable for damage caused by space objects which they launched, but in his delegation's opinion, the Treaty did not impose, or even provide effectively for the imposition of, legal obligations on international organizations. He was not aware of any principle or rule of international law whereby a group of States could, by international agreement, impose legal obligations on an international organization without the acquiescence of that organization. If the convention was to include such a provision, it would be necessary either to permit international organizations to become parties to the convention, a procedure which seemed unacceptable to some delegations, or to provide for a mechanism along the lines of the proposal submitted by the representatives of Austria, Belgium, France, Italy, Sweden and the United Kingdom (A/AC.105/C.2/L.41 and Add.1)^{18/} whereby an international organization could, by declaration, assume rights and obligations similar to those of States under the convention.

^{18/} Ibid., pp. 165 and 166.

Since the 1967 Treaty did not indicate which law should be applied in assessing compensation payable to a State which had suffered damage, it could be taken to imply that appropriate principles of international law would be applicable. In the absence of specific rules of international law for the assessment of compensation for damage from space objects, he believed that the relevant principles would require a State causing such damage to make full restitution to a claimant State. As there was obviously room for argument as to what constituted full restitution in differing social and political environments, the provisions of the convention relating to applicable law should include some more precise guide to the assessment of compensation than a mere reference to the principles of international law. The convention should, however, enable the parties to a claim to agree among themselves on the principles to be applied in assessing compensation, while stipulating that, unless the parties agreed to have recourse to other principles or rules, compensation should be assessed in accordance with relevant principles of international law. The provisions should also indicate with some precision how compensation was to be assessed in respect of the commonest types of damage that could be foreseen, i.e. damage to, or destruction of, property and injury or death of persons. Australia would accept a text on applicable law which included provisions along the lines of the joint proposal submitted by the United Kingdom and Australia (A/AC.105/C.2/L.47)^{19/}

With regard to joint liability, the 1967 Treaty clearly envisaged that, where a number of States participated in the launching of an object, each should be jointly and severally liable for any resulting damage. That principle seemed reasonable, although it would be useful if the convention included a provision along the lines of the proviso to article IV of the first Indian proposal (A/AC.105/C.2/L.32)^{20/} recognizing the validity of agreements on the apportionment of liability between two or more contracting States.

If the Sub-Committee was to complete the preparation of a convention on liability at the present session, it should not, in his view, re-open discussion of the texts or principle agreed upon at the seventh session until all outstanding issues of principle had been settled. There seemed to be five possible ways of dealing with those issues.

^{19/} Ibid., p. 168.

^{20/} Ibid., p. 141.

first, the Sub-Committee could take them up in the order in which they would appear set out in comparative form, initially leaving aside preambular matter and perhaps definitions. Secondly, it could adopt one of the draft texts as a working paper, following the order used in the draft, again leaving aside preambular matter and perhaps definitions. Thirdly, it could deal with the issues mentioned in document A/AC.105/C.2/L.51 in the order in which they appeared in that document. Fourthly, it could select from among the unresolved issues two, three or four basic issues on which agreement had so far been impossible and attempt to reach agreement on each individually. Lastly, it could take up the issues so selected, not individually, but in agreed sets.

Results were unlikely to be achieved rapidly if the Sub-Committee worked only in plenary meetings, although that might be preferable to the method of work adopted at the seventh session. Alternatively, the method used at the seventh session could be adopted, subject to the rule that, after agreement had been reached in principle in a plenary meeting, the working group should meet in order to formulate a text giving effect to that principle at such a time as would permit delegations to submit written drafts to the Secretariat for translation into the working languages and distribution before the meeting of the working group. Such a procedure would be effective only on the firm understanding that the working group would not deal with proposals made orally other than oral amendments to a written text which were consistent with the principle agreed upon.

As it was difficult to conduct effective negotiations in a group with a membership of twenty-eight, it might be advisable to establish a smaller, but representative, working group. Such a group would need to be accorded the same facilities as the Sub-Committee, including the services of the Chairman; interpretation would be required, but not summary records. It would not be possible to hold plenary meetings of the Sub-Committee while the working group was in session, but the latter could report progress from time to time at plenary meetings of the Sub-Committee. He hoped that the Chairman would continue his informal consultations with delegations with a view to obtaining the earliest possible general agreement on a suitable method of work.

Mr. CHARVET (France) said that liability for damage caused by objects launched into outer space should rest primarily with the launching State and accessorially with the State lending its territory for the launching. The liability should be total and objective. It would be based on the concept of risk in the case of damage caused on land, at sea or in the earth's atmosphere and on the concept of negligence in the case

of damage occurring in outer space. Any State carrying out a launching assumed a risk vis-à-vis third parties and it was only natural that it should bear all the consequences of its action. Partial or total exemption from liability was, however, admissible in cases where there was negligence on the part of the victim. In such cases, however, the respondent had to prove that the victim was negligent.

In the case of disagreement between claimant and respondent, recourse to arbitration would obviously be necessary, the arbitral procedure being based on the various national customs and legislation. Arbitration would be of no value, however, if it did not result in a decision effectively holding the authors of the damage as liable. It was unthinkable that arbitration should result in anything other than a binding award.

Like States, international organizations could launch objects into space. Organizations accepting a liability convention should therefore be subject to its terms. When they were responsible for a launching it was to them that the victim addressed his claim. In case of default, however, the members of the Organization would, after a time-limit to be agreed by the Sub-Committee, have to act as guarantors so that the victim could be compensated.

In the existing circumstances a limitation of liability seemed undesirable, because space techniques were still far from developed. It should be borne in mind when examining that question that, for a considerable time to come, the great majority of countries would be more likely to be in the position of claimant than of respondent.

Assessment of damages, including atomic damages, was a practical problem. It would appear that, if the Sub-Committee was to abide by the principles of justice and equity, the victim of a space object should be treated neither better nor worse than the victim of an aircraft, boat or automobile accident. Equity would not be safeguarded unless the procedure for assessing damage took account of the law of the territory on which the damage occurred. It should be remembered in that connexion that danger from space was but a new form of danger resulting from new techniques and did not in essence differ from the dangers caused by aircraft or automobiles.

He hoped that the Sub-Committee would not become involved in legal subtleties, but would remember that its task was to devise an effective formula for protecting the victims of technological progress. Its major concern should be to determine the most practical, rapid, simple, effective and equitable method of compensating the victims of accidents caused by space objects.

Mr. COCCA (Argentina) said that among the merits of the Indian draft convention were its reference to the 1967 Treaty and the 1968 Agreement, its definitions of damage and launching, its provisions relating to joint programmes and non-limitation of the amount of compensation and its use of the phrase "natural and juridical persons".

The new Italian text summarized the agreements reached as a result of five years' work on the subject of liability and, in its annex, provided explanations of great practical value. His delegation agreed with the Italian delegation that it was essential to define the purpose of the convention. It also approved the definitions in the Italian draft, particularly the definition of "space objects", and it shared the Italian delegation's views concerning the field of application of the convention. The provisions relating to the nature of and ground for liability in the various cases of damage and the comments on those provisions in the annex to the draft convention merited close attention. The Italian provision on the liability of international organizations for damage was similar to that in the United States proposal, but that approach appeared to have been abandoned in the Indian text. By providing that, with the consent of the parties, national law could apply in the determination of compensation, article 8 of the Italian draft was an improvement on the earlier texts. Consideration should be given, however, to the question of territorial law to which the French delegation had referred.

His delegation had hoped that the proposals it had submitted to the sixth session in document A/AC.105/C.2/L.25^{21/} concerning the functions and procedures of the arbitral commission would be expanded upon. The provision in article 13 of the Italian draft, whereby questions could be referred to the International Court of Justice for decision, was not altogether satisfactory, but the procedure relating to international organizations which did not pay compensation for damage was a practical measure and deserved study. The procedure under ordinary law provided for in article 12 appeared satisfactory. The Sub-Committee should note, in particular, Italy's opposition to any form of limitation or liability.

The Argentine delegation considered that useful agreements had been reached in the informal meetings held in New York and New Delhi. With regard to the question of international organizations, he pointed out that if the majority of an organization's

^{21/} Ibid. Twenty-second session, annexes, agenda item 32, document A/6804 and Add.1, annex III, appendix I, p. 21.

members were parties to the convention on liability, the organization would be liable under the terms of the convention, for any damage it might cause. The decision concerning joint and several liability was also appropriate. It was right that the claim should be presented first to the organization and only later to one or more of its members which might be parties to the convention. His delegation agreed that account should be taken of the law of either the claimant or the respondent State, in addition to international law, and that, in the case of dispute, international law should prevail.

The three phase procedure suggested with relation to claims seemed impracticable. The first and third phases, namely, the diplomatic procedure and the arbitral commission would suffice. The competence of the arbitral commission should not be limited. In that connexion, his delegation drew attention to the draft on the arbitral commission which it had submitted to the Sub-Committee at its sixth session. Argentina had already held that the victim of the damage should be fully compensated. If, however, the majority of the members of the Sub-Committee considered that a limitation was necessary, Argentina would be prepared to agree to a ceiling which, by reason of its level, would guarantee the victim full compensation. His delegation thought that no distinction should be made in the convention between nuclear and non-nuclear damage.

Mr. NICIU (Romania) said that the Sub-Committee had already made substantial progress in its work on the draft convention. His delegation considered that the convention should contain the principle of absolute liability, based on risk. It should provide for full compensation for any damage caused, in accordance with the principle damnum emergens et lucrum cessans. The amount of compensation to be paid should be determined in accordance with the principle lex loci delicti commissi, which had the advantage of ensuring that the victim was compensated while respecting the sovereignty of States. Liability for damage caused by objects launched into space by international organizations should rest with both the organization concerned and its member States. Any dispute between a claimant and respondent State concerning compensation for damage should be settled through bilateral negotiations. Should such negotiations prove fruitless, the parties could resort to any other peaceful means provided for under international law, including arbitration. States should have recourse to peaceful means of their own choice, as provided in Article 33 of the United Nations Charter. In its final clauses the convention should state that it was open to all without any discrimination whatsoever.

Mr. AMBROSINI (Italy) said that the Sub-Committee should try to avoid a proliferation of draft texts. The ideal procedure would have been first to hold a general discussion and then to appoint a rapporteur to draw up a draft agreement as a basis for further discussion. Valuable time would thus have been saved. Despite the fact that it had submitted a draft convention, Italy had not been among the States invited to the informal discussions to put forward proposals to the Sub-Committee.

The document submitted by his delegation attempted to combine the various proposals which had been made and to find the most suitable wording, which was particularly important in legal matters. It had not been made clear whether all the drafts originally submitted were still to be considered in view of the decision of the restricted informal group to take the five-Power draft as a basis for discussion. In his view, the Sub-Committee as a whole should not be bound by that decision.

The Italian draft took into account the different environments in which damage might occur. In the case of damage occurring on the earth the victims might be unconnected with the space activity, and the principle of absolute liability should apply. In the case of damage in the earth's atmosphere or in outer space, however, it would be contrary to accepted jurisprudence to apply that principle, which was an exceptional rule in all national legislations. For that case, the principle of joint negligence should be adopted. Damage in the earth's atmosphere or in outer space occurred in the vast majority of cases as a result of the collision of two objects in flight or transit. The principle of ad hoc liability should therefore apply. He was surprised that no provision had been made for cases of collision in previous drafts. The laws relating to aircraft, shipping and road vehicles all provided expressly for such cases. They could not be covered by a general and vague formula because there were various possible situations in which the cause of the collision was unknown or in which it was attributable to force majeure or in which there was joint negligence. It was necessary to envisage collisions between space objects and the component parts thereof and to make provisions similar to those which existed in maritime law.

The Italian draft had the advantage of flexibility. For example, in the establishment of an arbitral commission for the settlement of claims, article 10 provided that the chairman could be appointed by the President of the International

Court of Justice or, by agreement between the parties, by any other scientific legal organization. Similarly, article 13 made it optional, and not obligatory, for the parties to refer to the International Court of Justice.

With regard to the status of international organizations, under present international law such organizations could not become parties to treaties or conventions but might request to be subjected to the obligations and to enjoy the rights of States parties, which was the course advocated by the United States draft. The convention should not require that the members of the organization be parties to it. Where an organization failed to meet its liability for damage, its member States should be jointly and severally liable in proportion to their contribution to the organization.

The convention would be incomplete if it made no provision for dealing with possible disputes. The Indian delegation's proposal for a convention on material law with separate protocols on international organizations and settlement of disputes would have the disadvantage that the convention could be prevented from coming into force by the failure of some States to adopt the protocols.

While he agreed that a small working group as proposed by the Australian representative might contribute to the efficiency of the Sub-Committee's work, it would exclude the participation of some members who could make a useful contribution.

Mr. O'DONOVAN (Australia) said that he wished to make it clear that he had not formally proposed the establishment of a small working group but had merely suggested that as one possible solution.

Mr. MILLER (Canada) said that the Australian representative had provided a useful indication of the various courses of action open to the Sub-Committee. His delegation considered that the Sub-Committee should first continue its general debate and see whether the areas of disagreement might be further narrowed. If time remained at the end of that discussion, it might then be possible for the Sub-Committee to proceed further with its work as a working group of the whole. Experience had shown that not all members were interested in every point under discussion, and under such an arrangement they would be able to participate or not as they saw fit. He agreed with the Australian representative's suggested procedure for the working group, which would obviate the difficulties encountered at the seventh session when texts had been submitted rather late in the working group's discussion of a particular principle.

The Sub-Committee could work effectively on the basis of the new comparative table to be produced by the secretariat. It should concentrate on the areas on which agreement had not yet been reached, notably the five items discussed at the informal meeting in New Delhi, and should leave aside the question of the preamble and the definitions.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SEVENTEENTH MEETING

held on Tuesday, 17 June 1969, at 11 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/C.2/W.2/Rev.4/Add.4; A/AC.105/C.2/L.40/Rev.1) (continued)

Mr. AZIMI (Iran) said that in his delegation's opinion the launching State or international organization should have absolute liability for all damage caused by space objects which they launched, including nuclear devices. In the case of an international organization the responsibility should rest in the first instance with the organization itself. If, however, the latter failed to meet its responsibility, its member States should be jointly and severally liable in proportion to their assessed contribution to the organization. Liability should begin at the moment of the launching of the object and continue until its return to earth. Compensation for damage on the earth should be in accordance with the law of the country in which the damage took place. The compensation should be equitable and should be effected as rapidly as possible. In the case of damage on the earth there was no difficulty in determining the victim or the object which had caused the damage, but when the damage was sustained in outer space as a result of collision between two or more objects it was more difficult to determine responsibility, and the principle of negligence should apply. Disputes concerning the determination of responsibility should, if possible, be settled by negotiation. If, however, agreement could not be reached within a specified period, the dispute should go before an arbitral commission.

His delegation considered that the Sub-Committee should itself study all the documents before it. A small working group might, however, be set up to consider specific questions referred to it.

Mr. RAO (India) said that the Sub-Committee would have to decide how to tackle the unresolved issues. His delegation agreed with the Australian representative's emphasis at the 116th meeting on the need for effective procedures, and supported the establishment of a small working group with a membership representative of the various views put forward in the Sub-Committee. On the other hand, if it was generally agreed that a working group of the whole would be preferable, his delegation would accept that alternative. The working group's primary concern should be the

early preparation of a draft agreement on liability. In determining the working group mandate, there were other possible courses which should be considered in addition to the five mentioned by the Australian representative. In his delegation's opinion, the group should be asked to resolve all the outstanding matters referred to in the proposal sponsored by the Argentine and ten other delegations (A/AC.105/C.2/L.51) and in the communiqué issued at the end of the informal meetings held in New Delhi. There was no need for the Sub-Committee to specify an order of priority for examination of the questions involved. Until agreed solutions on those issues were arrived at, an approach either on the basis of a comparative table of all the drafts or of any one of them might not produce any useful results. Once the working group had reported agreement on the as yet unresolved issues it would be possible for the Sub-Committee to take up one of the draft texts already submitted and prepare an agreement.

Mr. MILLER (Canada) said there were encouraging signs that some members of the Sub-Committee were willing to make some concessions. The Canadian Government attached great importance to a convention on liability, the urgent necessity of which had been emphasized by the General Assembly. To be fully effective, such a convention must be as clear, precise and complete as possible, and its provisions should enable the victims of injury or damage from space activities and objects to be compensated in the most rapid, comprehensive and practical manner.

The Sub-Committee should concentrate at least initially on the five outstanding issues considered during the informal discussions in New York and New Delhi, the least contentious of which was perhaps whether the convention should deal with the question of nuclear damage. His delegation was pleased to note that there now appeared to be no real obstacle to agreement in principle that the convention should make no distinction between nuclear and non-nuclear damage.

His delegation still thought that the States members of an international organization should be held liable for damage caused by the space activities of that organization, but only if the organization itself failed to meet within a reasonable time claims presented to it. The granting of rights to and the imposition of obligations upon an international organization and its member States should be made conditional upon some formal act of acceptance by the organization. That proviso was included in most of the draft conventions before the Sub-Committee although it had been omitted from the communiqué of the New Delhi meeting which did, however, indicate that all the States participating in the meeting had agreed ad referendum with the Indian proposal concerning

international organizations. It should be possible for the members of the Sub-Committee to reach a similar agreement.

The 1967 Treaty made no reference to the law to be applied in determining the compensation payable for damage. The Sub-Committee had so far been able to agree in principle only that where the claimant and respondent agreed on the applicable law, that law should apply. The question of the law to be applied if the parties could not agree remained unresolved, but he believed that the differences of opinion on the subject were not great. The remaining difficulties connected with the determination of the amount of compensation payable, were concerned with the primacy of the applicable principles of international law and whether it was appropriate at all in a "victim-oriented" convention to include the law of the State responsible for the damage: his delegation was not convinced of the desirability of such inclusion.

Of the draft conventions submitted, only the United States text provided for limitation of liability. The 1967 Treaty made no such provision, nor did the generally-agreed principles and rules of customary international law. His Government was in principle opposed to any limitation, and its willingness to accept a high ceiling of limitation was to be taken only as a practical concession with the object of achieving a consensus on the convention as a whole. If the convention was to specify a limit of liability, it should provide that claimants would be free to pursue claims in excess of that limit under the provisions of the 1967 Treaty or under general principles of customary international law.

In his delegation's opinion, the most crucial matter to be resolved was the compulsory third-party settlement of disputes. If a consensus could first be obtained on that issue, the remaining issues could be rapidly resolved. To attempt to draft a convention without an effective procedure for settling disputes on the basis of impartial machinery capable of rendering decisions binding upon the parties, would be to waste the time and effort expended over the past five years, and the resulting text would be of little value, particularly to the non-space States for whose protection it was intended. A simple reference to the methods of peaceful settlement mentioned in Article 33 of the United Nations Charter would not suffice.

With regard to the question of the nomination of the third member of the claims commission, his delegation appreciated the spirit of compromise which had inspired the proposal made by the Indian delegation at the New Delhi meeting but it preferred the provisions of annex II, article III of the earlier Indian text. (A/AC.105/C.2/L.32/Rev.1).

His delegation shared the view that the Committee would probably have to render some interpretative opinions on the provisions of the convention.

The acceptance by the second session of the United Nations Conference on the Law of Treaties of the referral of disputes on important and complex matters to the International Court of Justice or to arbitration clearly pointed the way in which the Sub-Committee should proceed.

Mr. VRANKEN (Belgium) said that his delegation would support any proposal likely to lead to a satisfactory solution of the outstanding issues connected with the question of liability. The progress made so far had been somewhat disappointing. A convention on liability was urgently needed for a number of reasons: because the scope of space activities was constantly increasing; because rules of law should govern all human activities everywhere to prevent the destruction of the weak by the powerful, the establishment of space monopolies and application of the so-called law of occupancy; because Belgium, like many other countries, would be unable to sign other conventions on space matters, notably the 1968 Agreement, until there was a convention on liability and, lastly, because space activities were for the benefit of all mankind and it would not be equitable for some countries to bear a burden so that a few others could benefit.

The only way in which small countries could participate in space activities was through international organizations on the basis of organized co-operation. Reaffirming that Belgium would continue to support proposal A/AC.105/C.2/L.41 and Add.1 on international organizations, he said that his delegation was nevertheless ready to co-operate in the search for a compromise solution to that issue.

Under all existing rules of law compensation for damage had to be such as to restore the status quo ante, but the expression "rules of international law" was vague and open to many interpretations and, if the convention was not more explicit, the victim might well find himself denied adequate compensation for damage. The simplest solution to the question of applicable law would surely be to allow the victim to have recourse to the legal system to which he was already subject. Existing international law should, of course, be taken into account, but should not be allowed to detract from the protection afforded to victims.

Without provision for impartial settlement of disputes by compulsory third-party arbitration, a convention on liability would be virtually meaningless. In that connexion, he drew the Sub-Committee's attention to article 66 of the recently adopted Vienna Convention on the Law of Treaties.

In his view, the Sub-Committee would make the most rapid progress in its work by taking up the outstanding issues as they were presented in the proposal A/AC.105/C.2/L.51, provided that solutions could be found for all the issues listed. He was sure, however, that the Chairman would find the most effective means of reaching agreement on the outstanding issues. He supported the Australian representative's suggestion that only written texts should be considered in the working group, whatever its composition.

Mr. BOYD (United States of America) said that completion of a convention on liability was long overdue and that none of the outstanding issues were beyond the capacity of the Sub-Committee to resolve at the current session if they were approached in a spirit of compromise and good faith. Tentative agreement had been reached on some thirteen substantive issues and about twelve others remained unresolved. He understood that inclusion of nuclear damage had also been generally accepted.

His delegation was prepared to support the suggestion that a working group of the whole should be convened to consider written texts once the Sub-Committee had reached agreement in principle on a particular issue. The urgent issues listed in proposal A/AC.105/C.2/L.51 could now be taken up as a matter of priority. His delegation would be willing to discuss them in whatever order the Sub-Committee deemed appropriate. It should nevertheless be borne in mind that there were other, if less complex, issues which would have to be settled if a satisfactory convention was to be drafted at the present session.

Referring to the procedure for settling disputes under the convention, he said that, in the view of his delegation, a procedure such as that in articles X and XII of the United States draft (A/AC.105/C.2/L.19) would be appropriate for the type of dispute that might arise under the convention. However, in a spirit of compromise, his delegation was willing to accept some form of binding arbitration as the final stage of a settlement procedure and not to insist on appeal to the International Court of Justice. The type of final-stage procedure outlined in the Indian proposal at the New Delhi meeting had been accepted by the United States; he hoped that the delegations which had opposed that procedure would reconsider their position in the interest of arriving at a solution.

His delegation still considered that the convention should contain a provision limiting the amount of a respondent State's liability in respect to each launching. On the basis of precedents in conventions concerning liability for damage caused by land-based nuclear reactors and nuclear-powered ships, it had indicated that it could

accept a liability limit between \$100 million and \$500 million, although it believed that \$500 million would greatly exceed the extent of damage which could reasonably be foreseen from an accident involving a space object. He was glad to note that an increasing number of delegations now appeared willing under certain circumstances to accept a limitation. A limitation provision in the liability convention would, of course, apply only with respect to the terms of the convention itself. In the extraordinary event of a claim for damage in excess of the agreed limit, a claimant State could pursue its remedies under the liability convention up to that agreed limit and present a claim for any damage in excess of the limit through normal diplomatic channels, as it would do now with any claim in the absence of a convention. His delegation was prepared to amend the limitation provision in article VIII, paragraph 1 of the draft it had submitted to read: "The liability of the Launching State or State under this Convention shall not exceed _____ with respect to each launching".

The United States was not seeking any special treatment by asking for a limitation provision in the convention, for such provisions appeared to be included in all other general liability conventions, even those concerning liability for such hazardous activities as the operation of land-based nuclear reactors and naval reactors and aviation. Their inclusion was quite natural, inasmuch as the parties to those conventions were, as a rule, both potential respondents and potential claimants. In the case of damage caused by the launching of objects into outer space, it might seem, at present, that there were only a few potential respondent States and many potential claimant States, but more and more States were engaging in space activities, either individually or as members of international organizations, and the number of potential respondent States was certain to increase in the future. The fact that, for the present, there were fewer potential respondent States did not seem to be a sufficient reason for departing from the general pattern of multilateral liability conventions, which included limitation provisions. His delegation would be glad to consider any exceptions to that general rule.

It was frequently pointed out that article VII of the 1967 Treaty on outer space activities contained a liability provision without a limitation. However, that Treaty was not strictly a general liability convention, and article VII merely codified the international legal rule that a country which launched a space vehicle, or from whose territory an object was launched into outer space, was internationally liable for damage caused by that object or its component parts. The Sub-Committee was now

elaborating that article and making that general rule more specific by developing rules and procedures for the prompt settlement of claims. In doing so, it was seeking to balance the interests of the space Powers and the non-space Powers, as it had done when drafting the 1967 Treaty he had just mentioned and the 1968 Agreement.

Mr. TOKUHISA (Japan) hoped that all delegations would make every effort to complete the preparation of a draft convention on liability at the current session. There was already tentative agreement on a number of points, but the various drafts before the Sub-Committee contained many terms which were ambiguous and open to different interpretations. The meaning of those terms would have to be clarified at the session and his delegation would be submitting a document listing the major points requiring clarification. He suggested that the Sub-Committee should issue an official note giving the consensus arrived at in the Sub-Committee on the interpretation of certain points in the convention. That would reduce the possibility of future disputes over its interpretation.

He drew attention to the fact that there were two kinds of nuclear damage: damage from nuclear materials spread from nuclear energy facilities on land or nuclear ships damaged or destroyed by a space object, and damage resulting from the nuclear reactor or isotope battery of a space object. It would be necessary to clarify whether both kinds of damage were covered by the term "nuclear damage".

In his delegation's view, the convention should establish no limitation of liability, since space activities were still inherently dangerous and safety measures were not adequately ensured by international regulation.

In the matter of applicable laws, international law, justice and equity should take precedence. Since neither existing international law nor the proposed convention laid down a quantum for compensation, they would have to be supplemented by a national law by agreement between the claimant and respondent States. If those States could not agree on a national law, the law of the State in which the damage occurred should be taken into account as a supplement to international law. It was pointed out that there might be conflicting interpretations between the parties in implementing the convention in particular cases, since the convention on the one hand had no quantum for compensation and on the other, it had by nature many provisions of a general character. His delegation strongly supported the proposed institution of compulsory third-party arbitration of disputes. The Canadian representative's suggestion on that subject was a useful one. His delegation also supported the Australian delegation's

view that it was necessary to enable international organizations to assume, by declaration, rights and obligations under the convention similar to those of States.

Mr. PERSSON (Sweden) said that his country maintained the views on the draft agreement which it had expressed at the Sub-Committee's seventh session. In particular, it would like the final text which was to be submitted to the Committee and to the General Assembly to include, firstly, provisions which would make it possible for international organizations active in the field of launching space objects to accept the rights and obligations of the convention; secondly, a rule on the applicable law which referred not only to appropriate principles of public international law but also to the law of the State where the damage occurred; thirdly, a provision covering damage caused by a nuclear device.

His delegation attached particular importance to the settlement of disputes. Sweden had always supported peaceful settlement between States by means of arbitration or court proceedings and was a party to a number of bilateral and multi-lateral treaties providing for such settlement. The recent adoption of the Convention on the Law of Treaties marked an important step forward in that regard. The convention under discussion should take due account of the new attitude in the matter and of developments in other fields of international law.

His delegation considered that a disputed compensation claim should be submitted to an impartial tribunal or commission empowered to make final and binding decisions. Like the Canadian delegation, it could not be satisfied with a provision based on Article 33 of the Charter or on similar provisions in other international agreements. It shared the views of the representative of Australia with regard to existing international law and the important issues set out in proposal A/AC.105/C.2/L.51. It had an open mind regarding the procedure to be adopted in establishing rules for compulsory settlement of disputes, provided that that procedure was aimed at instituting an impartial, effective and competent machinery which would guarantee full and just compensation of a claimant State or individual victim.

Mr. PETRAN (Hungary) said that the statements made so far revealed a constructive approach to the outstanding issues before the Sub-Committee. It would be unfortunate if delegations merely restated their earlier positions on those issues, which could only be resolved by compromise. The Sub-Committee should focus its attention primarily on the issues listed in the communiqué issued after the New Delhi consultations. The simplest way of dealing with those issues would be to establish a working or drafting group open to all members of the Sub-Committee wishing to participate

In his view, the convention should establish a procedure for the settlement of disputes arising under it. However, the inclusion of provisions to that effect in other international conventions had given rise to bitter controversy and had been unacceptable to many countries. The Sub-Committee should therefore seek a compromise solution which took into account the interests of all States.

Limitation of liability was a complex issue, since it was difficult to fix a limit without any clear conception of the scope and nature of future space activities and it was unlikely that discussion of the subject would lead to any constructive solution. The question of applicable laws was also complicated as there could be borderline cases where it was difficult to establish whether an incident had in fact occurred over a State's territory. It would be preferable to provide for the application of the laws of both the respondent and the claimant States having due regard to relevant, generally accepted, rules of international law. His delegation was willing to consider any constructive proposals which took fairly into account the interests of all States.

Mr. FREELAND (United Kingdom) said that his delegation welcomed the widespread desire in the Sub-Committee to proceed as soon as possible to the drafting of further texts for a convention on liability and it could agree to a working group procedure of the kind suggested by the Chairman. The best approach lay in the careful preparation and scrutiny of written texts, in which his delegation was ready to co-operate fully. The main issues had already been covered by the Australian representative and other speakers but he wished to draw attention to three points in particular. The first two - applicable law and the settlement of claims - were closely inter-related. The third was the question of international organizations.

A convention on liability would be generally regarded as of little account if it provided no clear legal basis for the determination of compensation for damage and no reliable assurance that that compensation would eventually be paid on the question of the law applicable for the assessment of compensation, what had so far seemed to his delegation the most appropriate solution was that the basis should, except where the parties agreed otherwise, be international law, but that account should also be taken of the law of the State in which the damage occurred. For reasons similar to those given by the Canadian representative, his delegation did not believe that there was a convincing case for reference to the law of the respondent State. It was, however, prepared to examine further the best means of expressing the appropriate combination of international and national law. It was clear, however, that any formulation likely to be acceptable to the Sub-Committee would be to some extent imprecise.

It was, therefore, all the more important that there should be a procedure by which an impartial tribunal could in the last resort determine, with binding effect, the assessment in a particular case. That was not a doctrinaire issue but a crucial practical safeguard for men and women throughout the world, which no consideration of State sovereignty or of differences between social systems need or should prevent. As to the details of the procedure to be followed, his delegation was prepared to examine objectively any proposals which might lead to an effective and generally acceptable solution.

International intergovernmental organizations carrying out space activities performed a valuable role which was likely to increase, and to increase in the common interest. Those organizations were, as recognized in the 1968 Agreement, separate international persons. Appropriate provision for them should, therefore be made in the convention on liability, which should take due account of that separate personality.

Mr. AMBROSINI (Italy) said that, on the question of applicable law, the Committee might wish to consider the formula proposed in his delegation's draft, which appeared to reconcile the different solutions previously proposed.

His delegation recognized that many conventions provided for limitation of liability for damage, although no mention of that question was made in the 1967 Treaty. Most delegations had declared their willingness to accept limitation of liability provided the ceiling was high enough and different figures had been put forward, ranging from \$1 million to \$5,000 million. In the present circumstances, the Italian Government was opposed to any limitation of liability, although it would be willing to accept any compromise solution agreed to by the majority of members of the Sub-Committee. It considered however that when damage was caused intentionally, liability should be unlimited.

In his view the convention should provide for compulsory arbitration of disputes and establish rules governing the arbitration procedure.

The meeting rose at 12.50 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND EIGHTEENTH MEETING

held on Tuesday, 17 June 1969 at 3.30 p.m.

Chairman:

Mr. WYZNER

Poland

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

Mr. RIHA (Czechoslovakia) said that his delegation shared the view that the Sub-Committee's main task at the current session was to prepare a final text of the draft agreement on liability for damage caused by objects launched into outer space, pursuant to General Assembly resolution 2453 (XXIII) of 20 December 1968; it hoped that the Sub-Committee would succeed in that task despite the difficulties arising from the fact that States had different interests and legal systems.

He also hoped that the consultations held at New Delhi in March 1969 between the sponsors of the various proposals had thrown light on those points on which no agreement had yet been reached, thus helping to make an acceptable solution possible. Although certain differences of view had been attenuated, some questions called for a closer study which should logically be made by the Sub-Committee at the current session.

His delegation was prepared to accept certain compromise solutions if that would advance the work on the text. As to the applicable law, for instance, it had stated at the seventh session that it favoured the principle of applying lex loci, in other words the law of the country in which the damage had occurred. The New Delhi consultations had revealed that compensation for damage should in the main be determined according to the principles of international law, including, in the view of his own delegation, that of the choice of law by the parties concerned and the possibility of combining the law of the respondent State with that of the claimant State.

His delegation fully subscribed to the idea that no distinction should be drawn between nuclear damage and non-nuclear damage, although admittedly it had expressed hesitation on the matter at previous sessions.

His delegation would prefer that no limit should be placed on compensation for damage in the convention. If the convention had to establish a limit, his delegation would be prepared, in a spirit of compromise, to consider the question in the light of the observations made at the 117th meeting by several members of the Sub-Committee.

Mr. de SOUZA e SILVA (Brazil) said that although he hoped that during the current session the Sub-Committee would at last reach a conclusion in accordance with the relevant recommendations of the General Assembly, he feared that the lack of political determination to reach an agreement then would prevent it from doing so.

The six important questions still outstanding were enumerated in proposal A/AC.105/C.2/L.51 presented at the seventh session by a number of delegations, including his own. The first was nuclear damage, on which agreement seemed near. In his view, there were no logical or legal reasons for excluding nuclear damage from the convention. Moreover, no distinction between nuclear and non-nuclear damage was made in the 1967 Treaty.

The second question was whether liability for damage caused by space objects should be limited in amount. His delegation considered that a convention designed to protect life and property from such damage should not limit the amount of compensation due in respect of damage caused to third parties. Even if, in a desire to accommodate certain space Powers, the Sub-Committee decided to set an arbitrary figure in the draft convention, none of the provisions included should prevent the claimant State from lodging, in accordance with the appeal procedures available under international law, a claim for compensation exceeding the amount of the figure laid down.

The third controversial question concerned the settlement of disputes. His delegation took the view that no international convention should provide for the compulsory settlement of disputes, and that the parties should avail themselves of the methods of amicable settlement existing under international law. However, in view of the peculiar nature of space law and of the need to evince a spirit of compromise, he believed that a solution could be found by taking as a basis the various suggestions made during the Sub-Committee's discussions.

On the subject of international organizations, he was prepared to support the principles contained in the proposal presented by the delegations of Austria, Belgium, France, Italy, Sweden and the United Kingdom (A/AC.105/C.2/L.41 and Add.1), to which could be added a provision relating to instances in which space objects were launched by intergovernmental organizations which did not meet all the conditions set out in paragraph 1 of the proposed article. Such a provision would make all the States members of those international organizations and parties to the liability convention liable jointly for any damage caused by the organizations' space activities, thus removing any further doubt.

The fifth controversial question concerned the law applicable to measure of damages. Since the 1967 Treaty offered no indication as to the method of proceeding, he considered that the principle of lex loci delicti commissi might afford a sound basis for discussion.

The final question to be decided concerned certain aspects of joint liability. In his view, States which played no active part in the launching of an object but merely made their territory and installations available, should not be held liable for the results of that launching. In whatever way the Sub-Committee decided to solve the problem of the sharing of liability between two or more States, nothing in the convention, as the Indian delegation had suggested in article IV of its first draft proposal (A/AC.105/C.2/L.32), should "preclude the conclusion of agreements on the apportionment of liability between two or more Contracting Parties".

The convention on liability would be dealing with the same rights and obligations as those defined in the 1968 Agreement. Having already ratified the 1967 Treaty, his Government was awaiting the completion of a fair and equitable convention on liability so that it could become a party simultaneously to the other two instruments which were to govern international space law.

Mr. PIRADOV (Union of Soviet Socialist Republics) observed that the positions of all delegations were well known and that it was now a matter not of repeating arguments but of finding a solution to the questions still in abeyance. The consultations held in New York and at New Delhi had revealed a number of disputed issues which must be resolved as a matter of urgency if the preparation of the draft convention was to be completed. To achieve that aim, all members of the Sub-Committee must accept compromise solutions.

It was an inescapable fact that none of the statements made during the general debate had done much to advance the work, which could have been more fruitful if delegations, instead of dwelling on past achievements, had put forward specific proposals. Many were adhering to positions which they had already upheld previously, and it went without saying that, as in the case of the USSR delegation too, each believed that its own proposals were best. On the question of international organizations, for instance, his delegation thought the solution should be sought in article XIII of the 1967 Treaty. On the question of the applicable law, the Hungarian proposal seemed to it to be the most satisfactory. In the circumstances, the USSR

delegation would continue to uphold its own theses if the position of certain delegations - and particularly those of the Western countries - remained unchanged.

But it was necessary to be realistic, and reach a reasonable compromise. His delegation accordingly considered that the six controversial questions should be solved all together, and it was ready to make a large contribution to the success of the work. For instance, it was prepared to agree to the extension of the convention to cover nuclear damage, to agree to the non-limitation of liability in amount, to accept in principle the Indian compromise proposal concerning the applicable law, and to take account of the positions and interests of the Western Powers so far as concerned the international organizations. It should be pointed out once more, however, that those concessions would be possible only if the Western Powers in turn evinced the same desire to reach an understanding. If they failed to do so, then, to the great regret of the Soviet delegation, there could be no draft convention.

His delegation was nonetheless convinced that the draft convention on liability could be completed at the present session, and that the best way of achieving a positive result would be to set up a working party consisting of all members of the Sub-Committee who wished to participate in it. The working party would be responsible for preparing those articles which, though not relating to the six controversial questions which had to be settled en bloc still remained to be drafted. At the same time, delegations could hold consultations with a view to reaching mutually acceptable solutions to the problems still in abeyance.

The CHAIRMAN said that the general exchange of views on agenda item 2 having been completed, the Sub-Committee should decide whether to set up - as seemed to be the unanimous wish of its members - a plenary working group to examine in detail the provisions of the draft convention on liability. The Sub-Committee should also decide, on the one hand, which aspects it and the proposed working group should examine in the immediate future, and, on the other, the order in which the questions in abeyance should be taken up. On that last point, it had been suggested that the Sub-Committee should follow the order of the sub-titles given in the comparative table of provisions contained in the proposals already presented (A/AC.105/C.2/W.2/Rev.4/Add.4).

Mr. O'DONOVAN (Australia) asked the Soviet representative to confirm whether he was proposing that the plenary working group should, at least initially, take up those questions in abeyance which did not form part of the "New Delhi points".

Mr. PIRADOV (Union of Soviet Socialist Republics) confirmed that that was what he had proposed. While the working group was studying first the outstanding questions which were not part of those which had to be solved en bloc, the delegations could consult one another and might even produce acceptable solutions to the more important controversial questions, which were to be solved en bloc.

The working group should be allowed to choose its own working method.

The CHAIRMAN remarked that, in that case, the Sub-Committee should decide whether it wished to meet immediately as a plenary working group, or to continue with its study of certain questions of detail with a view to referring them back to the working group only after it had reached agreement in principle.

Mr. MILLER (Canada) pointed out to the Soviet representative that certain headings of the comparative table covered what he had termed "questions to be solved en bloc": two of them, for instance, referred to international organizations.

His own delegation considered that the Sub-Committee should first - and without delay - give its attention to the "New Delhi points".

In any case, it would like time to study the Soviet suggestions closely before stating its position. It would also, however, like to have a clearer idea of what the creation of the working group, as proposed by the Soviet delegation, would mean in practice.

Mr. O'DONOVAN (Australia) said that he, too, would like time to reflect on the Soviet suggestions before stating his views, for he was still convinced that questions of procedure were of great importance to the Sub-Committee's work.

After a procedural discussion in which the CHAIRMAN, Mr. VRANKEN (Belgium), Mr. AMBROSINI (Italy), Mr. ZEMANEK (Austria) and Mr. MILLER (Canada) took part, concerning the amount of time to be allowed for reflection and consultation, the CHAIRMAN suggested that the Sub-Committee meet again the following morning.

It was so decided.

The meeting rose at 4.40 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND NINETEENTH MEETING

held on Wednesday, 18 June 1969, at 11.30 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/C.2/W.2/Rev.4/Add.4) (continued)

The CHAIRMAN called for suggestions regarding the method of organizing the Sub-Committee's work on agenda item 2.

Mr. VENCATASSIN (France) said that the points to be considered could be divided into two categories: those upon which agreement had been reached at the 1968 session and which were ready for drafting and the five fundamental points upon which agreement had not yet been reached and which called for further reflection and discussion.

His delegation proposed that the Sub-Committee should proceed to consider both categories at once: the second at plenary meetings of the Sub-Committee in the mornings and the first in a working group which would meet in the afternoons. If, during discussions in the working group, any controversy arose over a point which appeared to be connected with one of the five points being discussed in the plenary meetings, that question would automatically be taken up in the plenary meetings. As far as possible the working group should base its discussion on written proposals.

Mr. TOKUHISA (Japan) and Mr. NICIU (Romania) supported that proposal.

Mr. COCCA (Argentina) also supported the French representative's proposal. He assumed that all members of the Sub-Committee would be entitled to participate in the work of the working group.

Mr. RIHA (Czechoslovakia) said that he had no objection in principle to the French proposal but would like certain clarifications. He took it that the points not resolved at the seventh session would not be dealt with by the working group until agreement had been reached on them in plenary meeting. The plenary meetings would presumably be supplemented by informal private consultations between members.

Mr. EL ZEIN (Lebanon) also supported the French proposal. In his view, the working group's task would be limited to ensuring the continuity and co-ordination of the work already done by the Sub-Committee at its seventh session on the draft conventions submitted by Belgium (A/AC.105/C.2/L.7/Rev.3), Hungary (A/AC.105/C.2/L.10/Rev.1 and Corr. 1 and A/AC.105/C.2/L.24 and Add.1) and the United States (A/AC.105/C.2/L.19); the draft conventions submitted in the course of that session by India (A/AC.105/C.2/L.32/Rev.1 and Corr.1) and Italy (A/AC.105/C.2/L.40 and Corr. 1 and 2); the definitions of the terms "damage" and "launching authority"

proposed by Canada (A/AC.105/C.2/L.44)^{22/} and Australia (A/AC.105/C.2/L.39)^{23/} respectively, and proposals in regard to the field of application and exemptions submitted by the delegations of the United States (A/AC.105/C.2/L.34)^{24/}, the United Kingdom (A/AC.105/C.2/L.37/Rev.1)^{25/} and Mexico (A/AC.105/C.2/L.43)^{26/}.

The CHAIRMAN said it was his understanding that, at least in the initial stages, the working group would not reopen discussion of texts upon which agreement had been reached at the seventh session, although it might later introduce certain drafting changes.

Mr. PIRADOV (Union of Soviet Socialist Republics), supporting the French proposal, said that the timetable of Sub-Committee meetings every morning and working group meetings every afternoon should not be adhered to too rigidly. The Chairman should arrange the programme in the light of circumstances.

The CHAIRMAN said that there were four points which should be clarified. First, if work in either the Sub-Committee or the working group required a change in the proposed schedule, should the modification be decided by the Sub-Committee, by the working group or by the Chairman of the Sub-Committee? Secondly, should the working group refer any controversial point immediately to the Sub-Committee or should it first try to reach agreement on it and how long should it spend in that attempt? Thirdly, should the working group itself decide the order in which it would consider the points referred to it or would it be desirable to agree immediately that the order of the comparative table should be followed, omitting the preamble, the definitions and the five controversial points, on the understanding that the working group could change that order if it so desired? Fourthly, should the Sub-Committee appoint the chairman of the working group or should the latter choose its own chairman?

Mr. MILLER (Canada) welcomed the general support for the French representative's constructive proposal.

^{22/} See Official Records of the General Assembly, Twenty-third session, agenda item 24, document A/7285, annex III, appendix I, p. 167.

^{23/} Ibid., p. 165.

^{24/} Ibid., p. 164.

^{25/} Ibid.

^{26/} Ibid., p. 167.

With regard to the four points raised by the Chairman, he did not think that the time-table should be too rigid. In his view, any necessary adjustment should be decided by the Chairman of the Sub-Committee. Any point which gave rise to controversy in the working group should immediately be referred to the Sub-Committee if it was obviously linked with one of the five key points to be discussed by the latter. His delegation supported the Chairman's suggestion regarding the order in which the points should be discussed by the working group. That would not preclude reverting, if time permitted, to the preamble and definitions, on which a measure of agreement had been reached, in order to clarify their drafting. He assumed that the Chairman of the Sub-Committee would preside over both the meetings of the Sub-Committee and those of the working group, on the understanding that he might be replaced temporarily should that prove necessary.

Mr. BOYD (United States of America), expressing support for the French representative's proposal, said he assumed that, if the Sub-Committee reached agreement in principle on any of the five controversial issues, the text of such agreement would then be referred to the working group.

Mr. O'DONOVAN (Australia) also supported the French representative's proposal. He said that he agreed with the Canadian representative's suggestion concerning the chairmanship of the working group and thought that the latter should in principle remain master of its own procedure. Any decision to modify the practice of holding plenary meetings in the morning and working group meetings in the afternoon should be taken by the Sub-Committee itself and not be made the Chairman's responsibility.

Mr. VENCATASSIN (France) said that he had suggested the holding of Sub-Committee meetings in the morning and working group meetings in the afternoon as an initial arrangement. It should be the Chairman's responsibility to make any necessary changes. The working group might take the comparative table (A/AC.105/C.2/W.2/Rev.4/Add.4) as a basis for its discussions, excluding the definitions and preamble and the five controversial issues. If it found that any of the points it was discussing were connected with any of those five issues it should refer them back immediately to the Sub-Committee. He supported the Canadian representative's suggestion concerning the chairmanship of the working group.

Mr. FREELAND (United Kingdom) said he took it that any change in the proposed schedule of meetings would be decided by the Sub-Committee, which the Chairman would consult on the matter. On that understanding, his delegation would support the French representative's proposals.

Mr. AMBROSINI (Italy) supported the French representative's proposal. He, too, considered that the Chairman of the Sub-Committee should also be chairman of the working group. The latter should be given some autonomy in the matter of procedure, except in those cases where the Sub-Committee might wish to request a certain order of priority in the consideration of items. If the working group should find it impossible for any reason to continue its work, the Sub-Committee should be convened immediately. He asked whether the working group would need specific instructions from the Sub-Committee before it considered the five controversial issues.

Mr. VENCATASSIN (France) said that the Sub-Committee should agree on those five issues before they were taken up by the working group. He confirmed that, under his proposal, only the Sub-Committee itself would be empowered to change the schedule of meetings he had indicated.

The CHAIRMAN, summing up the French representative's proposal, said that, if it was adopted, the working group would consider the outstanding issues with the exception of the five controversial ones, which would be considered by the Sub-Committee itself. Private consultations would also continue with a view to narrowing the area of disagreement. As soon as the Sub-Committee had reached agreement on the five points, they would be referred to the working group for formulation as specific provisions of the draft convention. If any of the points being dealt with by the working group were found to be connected with any of the five controversial issues, they would be referred back to the Sub-Committee for decision in principle. As a general rule, the working group would work only on the basis of written texts submitted to it. Only the Sub-Committee itself would be able to alter the arrangement whereby the Sub-Committee would meet each morning and the working group each afternoon. There appeared to be general agreement that, initially at least, discussion should not be reopened in the working group on texts on which agreement had been reached at the seventh session, but that would not preclude the working group's making drafting changes in such texts in the final stage of its work. He also understood that the Sub-Committee was in favour of its Chairman acting as chairman of the working group whenever possible and of his requesting another member to take his place, after appropriate consultations, when he was unable to do so.

He understood it to be the general consensus that the working group should generally follow the order of the items in the comparative table, leaving aside the five controversial items and the preamble and definitions.

Mr. VENCATASSIN (France) confirmed, in reply to questions by Mr. VRANKEN (Belgium) and Mr. FREELAND (United Kingdom) that, under his proposal, the five controversial issues would be referred to the working group only after agreement had been reached on them in the Sub-Committee.

The French representative's proposal was adopted.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE HUNDRED AND TWENTIETH MEETING

held on Thursday, 19 June 1969, at 11 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/C.2/L.40/Rev.1; A/AC.105/C.2/W.2/Rev.4/Add.4) (continued)

The CHAIRMAN invited comment on the five outstanding issues relating to the draft agreement which the Sub-Committee had decided to consider initially.

Mr. FREELAND (United Kingdom) said that he wished first to refer to the question of international inter-governmental organizations. His delegation believed that appropriate provision for the case of such organizations should be made in a convention on liability, which would have to recognize their separate existence. The most appropriate provision would be an article along the lines proposed by his delegation jointly with those of Austria, Belgium, France, Italy and Sweden in document A/AC.105/C.2/L.41. There were four elements of that proposal to which he wished to call attention. Under the article proposed, a declaration of acceptance by the organization of the rights and obligations provided for in the agreement was an essential condition of the application of the agreement to it. The separate personality of organizations would in that way be taken into account, as in article 6 of the 1968 Agreement. Secondly, an organization to which the agreement applied would not only assume obligations, but would also enjoy rights under it. Thirdly, in the case of space damage caused by an organization to which the agreement applied initially, the organization alone would be liable; and any claim in respect of such damage would be presented to the organization accordingly. Only if the organization had not fulfilled its obligations within six months of the presentation of the claim would a direct liability for its members arise. Lastly, in the event of damage suffered by it, the organization could itself present a claim under the agreement.

The solution suggested in the communiqué following the informal consultations in New Delhi differed in some respects from that proposal. Its first principle was that, in cases where a majority of the members of an international organization which conducted space activities were contracting parties to the liability agreement, that organization would be liable under the agreement for damage caused by the organization. He regretted that, as so formulated, the principle did not seem satisfactory, in so far as it suggested that an organization itself could be committed by the mere fact of participation by the majority of its members in the agreement. His delegation considered

it necessary to provide for an organization to be committed by an act of its own, such as a declaration of the kind which he had mentioned. However, it was prepared to agree to the inclusion of a provision which would commit parties to the agreement that were members of organizations conducting space activities to support, within those organizations, the making of such an act of adherence. That would help to provide assurance that organizations would in fact declare their adherence. Secondly, the New Delhi communiqué mentioned only the liability or obligations of organizations and not the protection or rights to be enjoyed by them. It was, however, both equitable and necessary in practice that organizations should also enjoy the benefits of relevant provisions of the agreement. Thirdly, according to the New Delhi principles, in the case of damage caused by the space activities of an organization both the organization and its members would be jointly and severally liable from the outset. A claim in respect of such damage would, however, be presented first to the organization; and only if the organization were unable to settle a claim within one year could the claimant proceed against one or more of its members which were also parties to the agreement.

That provision might be criticized as less logical and seemed less satisfactory than the corresponding one in document A/AC.105/C.2/L.41. But as a practical matter, and in a spirit of compromise, his delegation would be prepared to accept such a solution on the question of liability as part of a generally satisfactory solution of the problem of international organizations and in the context of an over-all settlement of the five outstanding issues as a whole. It was also prepared to consider whether a declaration by an organization might be regarded as a sufficient juridical link to enable the agreement to provide that, in the event of default by the organization, a claimant could proceed against any one or more of its members and not only those of them which were parties to the agreement.

If only for practical reasons, the United Kingdom might also accept, as part of a compromise solution, a provision under which, in the case of damage suffered by an organization, a claim under the agreement in respect of such damage should be presented by the State in which the headquarters of the organization were situated, rather than by the organization itself.

Mr. CHARVET (France) said that his delegation shared the views expressed by the United Kingdom representative and approved in principle the Indian draft on the subject of international organizations. A liability convention should include provision for such organizations, which would undoubtedly increase in number as the smaller

countries were unlikely to be able to engage in space activities individually for a long time to come. In order to reach a compromise solution, his delegation was prepared to consider a modification of the text proposed in proposal A/AC.105/C.2/L.41 and would accept an article providing for the presentation of an organization's claim by the State in which the organization had its headquarters.

Mr. AMBROSINI (Italy) said that the Italian draft (A/AC.105/C.2/L.40/Rev.1) provided for the presentation of a claim for compensation by an organization which had suffered damage, but also included, for practical reasons, a provision whereby an organization could be represented by one of its member States. The question arose whether States members of an organization (which had decided unanimously to adhere to the liability convention), which were not parties to the 1967 Treaty, would be obliged to pay compensation for damage if the organization were not able to do so. In his view, they would be so obliged by virtue of having agreed to the organization's declaration of acceptance of rights and obligations under the convention. The Sub-Committee might usefully consider that point.

Mr. VRANKEN (Belgium) agreed with the representatives of France and the United Kingdom that the convention could not ignore the existence of international organizations engaged in space activities. They were juridical facts of international life and should be regarded as entities in public law. Belgium appreciated the difficulties of delegations which did not share that view and it was prepared to make three concessions by way of compromise provided agreement could be reached on all the five issues together. First, it would agree that an international organization and its member States should be jointly liable for damage. Secondly, it would concede the obligation of an organization to adhere to the convention if the majority of its members had done so, although such an obligation might be difficult to express in the convention since the individual commitments of its member States could not be binding on an international organization; some non-legal formula would have to be worked out. Thirdly, it would agree that a claimant international organization need not institute proceedings itself, but should be able to do so through the State in which it had its headquarters.

Mr. O'DONOVAN (Australia) recalled that the willingness of some delegations to compromise on the question of international organizations had made it possible to include in the 1968 Agreement a provision enabling organizations to assume rights and obligations under the Agreement by making an appropriate declaration. The United Kingdom representative had indicated that his delegation might be prepared to consider,

as part of an over-all settlement of the five outstanding issues, the possibility that States members of an international organization which had made a declaration of acceptance, but were not themselves parties to the convention could be held jointly and severally liable, in the event of default by the organization, for damage caused by space objects for which the latter was responsible. His delegation could not, at that stage, commit itself to the acceptance of such a provision, even in the context of a general settlement. If, however, that issue became crucial for such a settlement, he believed that his Government would be prepared to give it sympathetic consideration.

Mr. MILLER (Canada) said acceptance of the principle that all the States members of an international organization could be held jointly and severally liable in the event of damage caused by the organization's space activities, regardless of whether or not they were parties to the 1967 Treaty or the liability convention, would involve a departure from the principle embodied in article 6 of the 1968 Agreement. Such a departure could only be contemplated in the context of similar concessions on other issues before the Sub-Committee, especially that of compulsory third-party settlement of disputes.

The CHAIRMAN said that the discussion had revealed that there was no formal objection to certain principles. Those were: (1) that, where the majority of the members of an international organization were parties to the liability convention, that organization would be liable under the terms of the convention; (2) that an international organization and its members were jointly and severally liable - the Australian representative had raised certain questions on that point, which might require further study and perhaps re-phrasing; (3) that an organization or other claimant might institute proceedings against one or more members of an international organization; (4) that a claim by or on behalf of an international organization might be presented by the State in which the organization's headquarters were situated; (5) that an organization, the majority of whose members were parties to the convention, might be obliged or invited to become a party to the convention. In the latter case, a draft declaration might be submitted to the General Assembly inviting the organization in question to become a party to the convention.

Mr. FREELAND (United Kingdom), referring to the first principle formulated by the Chairman, said that his delegation did not accept that an international organization should be regarded as committed to the provisions of the convention by the mere fact that a majority or some other stipulated proportion of its members had become parties. In its view, the organization itself would have to express its willingness

to accept the obligations and rights of the convention. It would do so if a sufficient number of members took action to that end within the organization; and certainly such action might be encouraged by other methods such as an appeal by the General Assembly, as suggested by the Chairman.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that his delegation would not reiterate its own position which had been clearly stated on many occasions. It would take into account all the opinions expressed, many of which were unfortunately mere repetitions of the positions adopted at the Sub-Committee's seventh session.

Mr. CHARVET (France) said that acceptance of the idea that the State in which the headquarters of the international organization were situated might represent the latter constituted a step forward in the solution of the controversial issues.

Mr. RIHA (Czechoslovakia) said that the question of liability on the part of an international organization might be solved in two ways. The organization might be considered liable if the majority of its members were parties to the convention or, as recommended by the United Kingdom representative, if the organization itself declared its acceptance of the rights and obligations provided for in the convention. The United Kingdom's position was logical from the legal point of view but presented practical difficulties. Many States were able to take part in space research only within the framework of their membership of an international organization. The situation might therefore arise in which the States themselves became parties to the convention and at the same time members of an organization which was not itself bound by the convention. It therefore appeared preferable for practical reasons and at the same time acceptable from a legal point of view that the organization should be liable under the terms of the convention when the majority of its members were party to it. The organization could, of course, later accede to the convention but that should not be the main condition of its liability.

Mr. FREELAND (United Kingdom) said that he understood the desire for some assurance that international organizations would in fact make a declaration accepting rights and obligations under the convention. Two possible methods of encouraging that course had been mentioned. But there was, in any event, no reason to suppose that international organizations concerned would be unwilling to act in that way if by doing so they could avail themselves of the protection as well as accept the obligations arising from the convention. Perhaps the best inducement to any international organization to declare its willingness to accept the convention would be the establishment by the latter of an effective system for the settlement of claims.

Mr. ZEMANEK (Austria) said that if an international organization became a party to the convention, then its member States which were not themselves parties to the convention would automatically be bound by it. The case was in fact similar to that of a State not party to the convention participating in a joint space venture with another State which was a party, in which case the State or States parties to the convention would be jointly and severally liable for the total amount of damage payable and would then have to claim from the other members of the international organization not parties to the convention their share of the total compensation due to the claimant. For States not parties to the convention to be bound by its provisions would be contrary to the Vienna Convention on the Law of Treaties. The problem was in fact an artificial one, because even if the liability convention provided for joint and several liability of the members of an organization, that provision could refer only to those members which were parties to the convention, which members would be liable for the total amount of the damage.

His delegation did not consider that, from a legal standpoint, an organization was liable or had to declare its acceptance of the convention merely because the majority of its members were parties to it. What would happen, for example, if only a minority of the members of the organization were contracting parties to the convention? The problem, however, was psychological rather than legal. It was obviously in the interest of the member States that the organization should declare its willingness to become a contracting party to the convention, and thereby become subject to its provisions, in order to ensure a distribution of risk.

Mr. AMBROSINI (Italy) said that it was essential to provide in the convention for the case of international organizations. Where an international organization had made no declaration of acceptance of the rights conferred and obligations imposed by the convention, his delegation considered that national or international law should apply as appropriate to the individual case. The legal and psychological issues to which the Austrian representative had referred could probably not be separated. In his opinion, it was unnecessary for all the members of an international organization to be parties to the convention before the organization could make a declaration of acceptance, since the organization was a legal entity in itself, with an existence separate from that of its member States. A declaration of acceptance by the organization should place an obligation upon its member States, whether or not they were parties to the convention, since, as members of the organization, they would have agreed to such acceptance.

He supported the United Kingdom's representative's view that it was important for those members which had acceded to the convention to encourage the organization to make such a declaration. The hypothetical minority situation described by the Czechoslovak representative should be borne in mind.

A separate protocol as proposed by the Indian delegation might give rise to difficulties unless States acceding to the convention were required to accede also to the protocol.

Mr. BEREZOWSKI (Poland) said that, in dealing with the question of international organizations, the Sub-Committee should take as its starting point the 1967 Treaty and its own decisions taken at previous sessions, which had recognized the liability of international organizations for damage caused by the launching by them of objects into outer space. The idea that an international organization could be held liable only if it was a party to the convention was legally indefensible; it was unnecessary to depart from the terms of article VI and the second paragraph in article XIII of the 1967 Treaty in that respect. He opposed the idea of representation of the international organization by the country in which its headquarters were situated, because such a concept ran counter to the principle of liability of the organization itself. In his view, it would be sufficient for the convention merely to state that international organizations were also liable and to refer to the relevant articles of the 1967 Treaty.

Mr. COCCA (Argentina) noted a tendency, in the discussion, to give greater personality to the international organizations than was given in article VI of the 1967 Treaty which simply stated that when activities were carried out in outer space by an international organization, responsibility for compliance with the Treaty should be borne both by the international organization and by the States Parties to the Treaty participating in such organization. Under article 6 of the 1968 Agreement, an international organization could be a "launching authority" provided that it declared its acceptance of the rights and obligations provided for in the Agreement and a majority of its members were parties to the Agreement and to the 1967 Treaty. The 1968 Agreement therefore called for a voluntary act on the part of the international organization, with the additional proviso that the majority of the organization's members must be parties to both the Agreement and the 1967 Treaty. The consensus in the Sub-Committee appeared to be that an international organization should be liable under the convention for damage caused by space activities in which it engaged. Some

general formula along the lines suggested by the Polish representative might be adopted and the Sub-Committee might also wish to include in the draft a reference to participation in both the liability convention and the 1967 Treaty.

It was necessary to bear in mind that participation by international organizations in space research was constantly increasing. It was in fact the exception for space activities to be carried out by a single State.

In preparing the final draft of the liability convention, the Sub-Committee should take into account the text of the 1967 Treaty, the 1968 Agreement, the consensus reached in the Sub-Committee which had led to the preliminary draft convention produced at New Delhi and the Italian draft, which appeared to be a synthesis of the last two documents. He believed that a text could be developed which would reconcile all the various points of view.

Mr. AMBROSINI (Italy) observed that the 1967 Treaty did not specify the type of liability to be imposed on international organizations in case of damage. In his view, the convention on liability should provide for liability of organizations in respect of damage on the earth, in the earth's atmosphere and in outer space.

Mr. PERSSON (Sweden) agreed that the convention should apply fully to international organizations. He also shared the United Kingdom representative's view that the conferring of rights on international organizations might encourage them to declare their acceptance of the convention. His delegation supported the proposal of the representatives of France and the United Kingdom, on the understanding that further study would be given to the problem of States which were members of an organization to which the convention applied but were not parties to the convention.

Mr. TOKUHISA (Japan) asked what would be the position in the case of an international organization having its headquarters in a State which was not a party to the convention if the principle of representation of the organization by the host country were to be adopted. Even if the State was a party to the convention, would not some provision have to be made in the headquarters agreement to enable the country to present claims on the organization's behalf?

Mr. PETRAN (Hungary) considered it sufficient for the convention to state in general terms that international organizations were liable for damage caused by them. To provide for representation by the host country would give rise to difficulties if the State concerned was not a party to the convention. To attempt to provide in detail for all possible eventualities in the case of all present and future organizations would be a hopeless task.

In his view, article VI of the Indian proposal (A/AC.105/C.2/L.32/Rev.1) dealt satisfactorily with the difficulties with regard to the settlement of claims. It should satisfy all interested parties and would cover those cases in which more than one country was affected and in which it was difficult to determine the national law to be applied.

With regard to the procedure to be applied in the case of litigation arising from damage caused by objects launched into outer space, the precedent established by article XI of the Antarctic Treaty^{27/} might usefully be followed.

Referring to the point raised by the Japanese representative, Mr. CHARVET (France), supported by Mr. FREELAND (United Kingdom), said that the convention could provide that, if the host country was not a party to it, a member State which had become a party to it could present claims in respect of damage to the organization. The question of including a relevant clause in the organization's headquarters agreement would have to be settled by the parties concerned and was not within the Sub-Committee's competence.

The meeting rose at 1 p.m.

^{27/} United Nations, Treaty Series, vol.402, p.72.

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-FIRST MEETING

held on Friday, 20 June 1969, 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/C.2/L.40/Rev.1; A/AC.105/C.2/W.2/Rev.4/Add.4) (continued)

Mr. NICIU (Romania) said that since the States members of an international organization decided what activities the organization should undertake, they should bear full responsibility for the consequences of the organization's actions. His delegation did not agree that an international organization was an entity in itself, with a separate existence from that of the member States composing it. The launching of an object into outer space by an international organization was identical with a joint launching by several States. The organization's liability should not have to depend upon its having made a declaration of acceptance of the rights conferred and obligations imposed by the convention on liability, although that did not mean that such a declaration could not be made. The State in which the organization was situated could present a claim for any damage sustained, in accordance with the agreed text in the comparative table (A/AC.105/C.2/W.2/Rev.4/Add.4).

Mr. O'DONOVAN (Australia), referring to the question of applicable law, said that he had understood the Hungarian representative to indicate his acceptance of article VI of the Indian proposal (A/AC.105/C.2/L.32/Rev.1) shown in the comparative table. That text differed from the one submitted by the United Kingdom and Australian representatives (A/AC.105/C.2/L.47) only in its reference to the national law of the claimant State. The Working Group, at its first meeting, had discussed the eventuality of a number of States presenting a claim in respect of the same incident, in which case the compensation payable might differ according to the national laws concerned. His delegation would be opposed to a multiplicity of national laws being taken into account.

The possibility, mentioned by the Hungarian representative, of damage occurring on the border of two States was exceptional, and it would be difficult to provide for all the exceptional cases which might arise. He agreed, however, that in such an event two national laws might have to be taken into account. It would be preferable, in his delegation's view, if the text of article VI were to refer, not to the national law of

the claimant State, but to the national law of the State in which the damage had occurred, on the understanding that, if the damage had occurred in two States simultaneously, the laws of both would be taken into account as far as possible.

Mr. AMBROSINI (Italy), referring to article VI of the Indian text, said that both national and international law could not apply. The expression "taking account of" was vague and open to several different interpretations. Although his delegation was favourably disposed to the application of international law in the first instance, he urged adoption of the principle mentioned in his delegation's text, i.e., recourse to the rules of equity. Alternatively the provision might be made more flexible by using only the first part of article VI of the Indian text: "The amount of compensation payable under this Convention shall be determined in accordance with any national law". His delegation would be opposed to the application of the law of the launching State.

He felt that the solution he had suggested was the most acceptable one even from a general legal standpoint, since the parties to a dispute were always free to decide upon the nature of the arbitration.

Mr. CHARVET (France) said that, in his delegation's view, the applicable law should be that of the country in which the damage was sustained. It would be inequitable to discriminate between victims of damage caused by space objects and victims of other forms of accident, to which that national law applied. Application of that law would obviate the complications that might arise in applying multiple procedures, and it should be possible, through bilateral agreement, to meet the legitimate concerns of nationals of other countries who might be involved.

The first sentence of article VI would be more flexible if it were amended to read: "The amount of compensation payable under this convention shall be determined by agreement between the claimant and the respondent". While his delegation failed to see how it would be possible to apply international law which, in regard to outer space, was still in the embryonic stage, it would, as a major concession, be prepared to accept the reference to international law, provided the national law of the country in which the damage had occurred was placed on an equal footing with international law by the deletion of the words "taking account of" and the replacement of the words "claimant State" by "State in which the damage occurs".

Mr. RIHA (Czechoslovakia) said that the stage had been reached at which a compromise was required. An acceptable solution might be to combine the two principles which had been mentioned: the principle of international law and the principle of

agreement between the conflicting parties. The principle of the responsibility of the State for its activities was one of the first principles of international law and should therefore be the main principle in an international convention. With regard to agreement between the parties in dispute, the Sub-Committee had agreed at its seventh session that, if the claimant and respondent agreed on the applicable law, that law should apply. Article VI of the Indian draft provided a compromise between the two conflicting views that parties should be left free to choose which national law should apply and that they should be directed to a particular law.

With regard to the question of limitation of liability, his delegation failed to see how a convention which would limit the amount of compensation payable could at the same time be "victim-oriented", as it had been repeatedly stated that it should be. Furthermore, limitation of liability would conflict with the principle of choice of law by the parties, since they might wish to choose the law of a country which did not recognize any limitation of compensation, but would be prevented from doing so if such limitation was stipulated in the convention. He was not convinced, moreover, that it would be practicable to establish a fixed liability ceiling, since an amount that might appear high to one country might seem low to another; no damage having been caused by space activities so far, there was no experience by which to measure the level which would be appropriate. For all those reasons his delegation would prefer the convention to embody the principle of unlimited liability.

Mr. PETRAN (Hungary) said that the provisions concerning compensation should be as specific as possible, and the standards adopted should be of lasting validity and a reliable safeguard for all potential victims. There might, however, still be compensation cases - for instance, when damage was sustained in frontier zones - which could not be settled by any standard procedure laid down in the convention. Liability for compensation allowed under the civil law of one country might not be recognized in that of another. It would therefore be wise to give potential victims the possibility of recourse to the laws of both the claimant and respondent States. The broadest possible provision should be made for compensation and, for humanitarian reasons, the victim should be allowed recourse to all legal remedies. To provide for application of the law of the claimant State alone might in some cases restrict the right to compensation. His delegation therefore favoured a provision, based on article VI of the Indian draft, which would take into account the principles outlined in the New Delhi communiqué and the views he had just expressed.

Replying to the Canadian representatives' objections to his earlier proposal that the provisions concerning the settlement of disputes might be based on article XI of the Antarctic Treaty, he pointed out that that article covered virtually all the settlement procedures considered desirable by many members of the Sub-Committee. His delegation was not opposed to a provision allowing recourse to the International Court of Justice or to third-party arbitration, but it considered that such action could be taken only with the consent of all parties to the dispute. No settlement could be imposed on a sovereign state against its wishes. For those reasons, the formula adopted in article XI of the Antarctic Treaty appeared to be the most appropriate one. Apart from any obligations they might assume under the liability convention, States engaging in space activities for peaceful purposes were under a moral obligation to the rest of mankind to ensure that full restitution was made for any damage for which they were responsible.

Mr. BOYD (United States of America) said that there appeared to be a broad measure of agreement on the simplest type of case which could arise under the convention, i.e. that of damage caused in a State by a space object and the presentation by that State of a claim for damage to its nationals to the launching authority. More complicated cases would be far less likely to arise and would create more difficulty in reaching agreement. It was necessary, in drafting the convention, however, not only to have a balance between the interests of potential claimants and respondents, but also between the most likely situations and the more remote special cases.

As far as the applicable law was concerned, it appeared to be generally agreed that there should be a provision enabling the parties to a dispute to agree among themselves on the law to be applied; that, if they were unable to agree, relevant rules of international law should be applied, and that, if international law was applied, some additional criterion should be taken into account. There was as yet no agreement on what that criterion should be. In article VI of the Indian draft that criterion was the law of the claimant State. Other delegations were in favour of taking into account the law of the State where the damage occurred, which in most cases would be the claimant State. Both solutions were acceptable to his delegation, although it was inclined to favour the former as it appeared to be more widely supported.

He did not think that the inclusion of a provision limiting liability would be inconsistent with the concept of a "victim-oriented" liability convention, since a claimant State could present a claim for any amount in excess of the limit through

normal diplomatic channels. Any limit adopted would necessarily be arbitrary. However, his delegation had indicated a very broad range of limits which it would be prepared to accept and it felt that a generally acceptable solution could be found if a spirit of compromise was shown.

Mr. COCCA (Argentina) said that the applicable law should undoubtedly be international law, unless the parties to the dispute agreed among themselves that a national law should apply. Such a provision was included in several of the drafts before the Sub-Committee. None of those drafts provided for the application, as a third alternative, of the law of the State in which the damage had occurred. Provision for those three alternatives was desirable, although the third could be omitted if agreement on a text could not otherwise be reached. No attempt should be made to establish a hierarchy among the three alternatives, or to give primacy to any one of them. In the case of incidents in frontier zones where it was difficult to determine which national law should apply, liability and compensation should be determined on the basis of international law. Where disputes were settled by arbitration, the prime consideration should be justice and equity. His delegation would submit to the Sub-Committee a written draft on the question of applicable law reflecting the views he had expressed.

Mr. ZEMANEK (Austria) said that the first part of article VI of the Indian draft was acceptable to his delegation, since it was a reasonable concept already found in international law. The law of the claimant state, mentioned in the second part of the article, would in nearly all cases coincide with lex loci delicti commissi. There could however be cases where the damage was not sustained in the territory of the claimant State. That possibility should be borne in mind, but since such cases would be rare, provision for them could be omitted from the convention if that would make agreement easier.

The relevant text proposed in the New Delhi communiqué embodied the principle, also advocated by the Hungarian representative (A/AC.105/C.2/L.10/Rev.1 and Corr.1 and A/AC.105/C.2/L.24 and Add.1) that the law of the claimant State and, where considered appropriate, the law of the respondent State should apply, with the proviso that, where there was a conflict of laws, international law should prevail. His delegation could not support that formula as worded in the New Delhi communiqué, since it would be unworkable. The application of national law was provided for precisely because many delegations felt that international law on that matter was insufficiently developed

and that there might be cases in which no applicable rule would be found in international law. Consequently, the application of any national law would be a subsidiary means, in a victim-oriented convention, of enabling the victim to obtain compensation even if none would be payable under existing international law. The proviso that international law should prevail in case of conflict of laws was meaningless. Where there was conflict between two national laws, those laws would have been applied because there was no applicable rule of international law. Where an applicable rule of international law existed, national laws, being only a subsidiary means of determining compensation, would not apply.

The Hungarian representative had rightly observed that States should not be able to impose a specific method of settling disputes on other sovereign States against their will. In becoming a party to a convention which provided for a specific method of settlement, however, a State was freely consenting to the application of that method of settlement. He did not agree with the Hungarian representative that article XI of the Antarctic Treaty would be an appropriate formula for the liability convention. The situations involving damage conceivable under the Antarctic Treaty were totally different from those which could occur under the liability convention under discussion. Moreover, the provisions of that article merely repeated obligations which were already incumbent on all States Members of the United Nations by virtue of Article 33 of the United Nations Charter, with the further provision that States could, if they wished, refer their disputes to the International Court of Justice for settlement. The inclusion of a provision along the lines of that article in the proposed liability convention would not alter the existing situation and would therefore be pointless.

Mr. AMBROSINI (Italy) said that, on the question of applicable law, there was no fundamental difference between the Indian and the Italian proposals. The former gave priority to agreement between the parties on the choice of the applicable law and the latter stated that international law should apply unless the parties agreed to choose another system, so that in that case also the wish of the parties had priority over international law. As the Hungarian representative had said, it was essential to agree on a precise text which would present no difficulties either to the parties concerned or to anyone trying to interpret it. The statement that the parties were free to choose their own system was perfectly clear. In the case of disagreement, recourse should be had to arbitration, a means of resolving disputes that was recognized

by both international and private law. The International Chamber of Commerce had made a careful study of the question and had recommended that method of settling disputes in preference to recourse to an ordinary court of law.

To make both international law and national law applicable seemed likely to create difficulties, especially if the provisions of the two types of law did not coincide. Equity therefore appeared to be the best basis for settlement although no other delegation had referred to it.

It had been said that international law was incomplete. However, recourse to that law had been the means of settling a number of disputes between States.

It had been said that the system for the settlement of disputes must be compulsory in order to eliminate as far as possible controversy between States arising from damage caused by space activities. The principal object, however, was to protect the victims of such damage, and a simple and expeditious procedure governing financial compensation was therefore needed, as was mentioned in the preamble of the United States draft (A/AC.105/C.2/L.19). It was for that reason that his delegation had proposed a reduction in the time allowed for both diplomatic and arbitral procedures.

His delegation was opposed to any limitation of liability but if the Sub-Committee unanimously decided that a limit was necessary it should set a very high one so that compensation to a single victim would be unlikely to exceed the limit, which would be reached only if the victims were very, very numerous.

Mr. RAO (India) said that his delegation's position on the question of applicable law had evolved slightly since the New Delhi meeting in the light of the views expressed by other delegations. The Indian draft convention had referred to the application of international law, taking into account the national law of the claimant State. The application of the law of the respondent State was not excluded but would be a matter of agreement between the two parties. The formula agreed upon at the New Delhi meeting had provided for the application of the law of the respondent State also where considered appropriate. The application of the law of the claimant State alone might be preferable but the other possibility was suggested by India in a spirit of compromise.

The Italian draft convention (A/AC.105/C.2/L.40/Rev.1) did not provide for the application of the law of the claimant State as a matter of course, and his delegation therefore found it difficult to accept that text.

The Austrian representative had raised a pertinent point in referring to the possibility of conflict between international law and that of the respondent or claimant State. His delegation did not, however, agree that there was no well-defined system of international law regarding the payment of compensation to victims of damage. The Austrian representative had also said that if the primacy of international law was established no other law would be applicable. That would certainly be true in the absence of provisions to the contrary but such provisions could be inserted in the convention and there need be no inconsistency if it were stipulated that international law would be applicable taking into consideration the law of the claimant State and, where considered appropriate, the law of the respondent State.

Mr. MILLER (Canada) said that a consensus appeared to have been reached on the principle that, where there was agreement between the parties, their choice of the applicable law should be accepted, whether it be a particular national law, international law or a combination of the two. There appeared to be considerable support for including international law as the second element in any formulation, although views differed regarding the practical extent to which international law could apply in determining the amount of compensation payable under the convention. With a view to the future, it might be wise to include in the convention a reference to international law, even if it was still in its infancy as far as space activities were concerned, especially since the General Assembly had agreed that international law should apply to such activities. In his view, international law should not only be mentioned, it should also be given primacy. A phrase such as that in article VI of the Indian draft "taking account of the national law of the claimant State" could be added. His delegation did not think that any reference should be made to the applicable law of the respondent State.

He agreed with the Austrian representative that a reference to article XI of the Antarctic Treaty would add nothing to the provisions of Article 33 of the Charter, which was already binding on Members of the United Nations. To provide only for the possibility of submission of disputes to the International Court of Justice was not sufficient in a convention on liability.

His delegation had previously indicated that, in principle, it did not favour a limitation of liability. If, however, for practical reasons, some limitation was considered necessary, that limitation must be very high.

Mr. FREELAND (United Kingdom) said that his delegation, in consultation with other delegations, was preparing for submission to the Sub-Committee a formal proposal which would give written expression to some of the ideas expressed during the discussion of the question of international organizations.

With regard to applicable law, the position of his delegation had been set forth at the seventh session in document A/AC.105/C.2/L.47 submitted by Australia and the United Kingdom. Although, as the Canadian representative had observed, international law with regard to space activities was in its infancy, the principles of international law concerning compensation for damage were well established. Reference to the law of the State where the damage occurred appeared preferable to a reference to the law of the claimant State, from the point of view of ensuring the application of a uniform standard in the case of each incident of damage. That appeared to be the main point of difference between the joint Australian/United Kingdom text and article VI of the draft Convention proposed by India. In the majority of cases, of course, the two laws would coincide. He recognized the difficulty of finding the best way of expressing the relationship which should be accorded to respectively, international law and whatever system of national law was referred to. His delegation was not tied to the formula it had proposed and wished to reflect further on the matter in the light of the discussion.

As regards the reference which had been made to article XI of the Antarctic Treaty, his delegation did not consider that a formula on those lines would provide an acceptable solution in the present case. While it might be appropriate in a context such as that of the Antarctic Treaty, it would not be adequate in the case of an agreement on such a concrete matter as liability for damage.

Mr. PERSSON (Sweden) said that his delegation's position on the question of applicable law was well known. Where the parties failed to agree on the law to be applied, it could accept the view that the general principles of international law should be combined with the national law of the country where the damage occurred which, for many reasons, appeared preferable to any other national law. His delegation had at first been hesitant about referring to international law because that law might be interpreted differently in different parts of the world. However, it was now prepared to accept what appeared to be the general view that international law should be mentioned in the article under discussion.

It was clear that a reference to the law of the respondent State was unacceptable because compensation for medical costs, replacement of property, legal advice and other matters would have to conform with practices in the claimant State and for a claimant to obtain legal advice from a lawyer in a foreign country would present almost insurmountable difficulties. If the liability convention was to cover all possible cases, it would be a very unwieldy document.

For the reasons mentioned by the Austrian representative, his delegation was unable to accept, in its present form, the text approved by the New Delhi meeting.

Mr. de SOUZA e SILVA (Brazil) said that, from the various drafts submitted and the discussion at the current session, it appeared that the main question to be decided was the relative priority to be given to the four means of determining the amount of compensation: agreement between the parties, law of the claimant State, law of the respondent State and international law. There seemed to be a consensus that the compensation should preferably be determined by agreement between the parties, which could involve application of the law of the claimant or of the respondent State, a combination of both and international law. With regard to the priority to be given to the next element, the Canadian representative appeared to prefer international law, whereas the Brazilian delegation preferred the law of the claimant State, which generally coincided with the law of the State where the damage occurred. International law would supplement the two previous elements. If no agreement could be reached between the parties on the applicable law, then the matter would go to arbitration, which would be the subject of subsequent discussions. His delegation was, however, prepared to consider other proposals which might be submitted.

The CHAIRMAN said that the discussion at the current meeting had confirmed the consensus reached at the seventh session that, if agreement on the applicable law could be reached between the claimant and the respondent, that law should apply. There also appeared to be general agreement on the need to mention international law. It would be necessary for the Sub-Committee to discuss further the relative importance to be attached to the law of the claimant State, the law of the respondent State and equity.

Mr. VENCATASSIN (France) said that his delegation reserved its position on the principle that the compensation should be fixed on the basis of the law agreed between the parties. It would prefer a more general formula providing simply that the amount of compensation would be determined by agreement between the parties.

The meeting rose at 1.15 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-SECOND MEETING

held on Tuesday, 24 June 1969, at 11 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/C.2/W.2/Rev.4/Add.4; A/AC.105/C.2/L.59, L.60 and Add.1, A/AC.105/C.2/L.62; A/AC.105/C.2/WG/4 and A/AC.105/C.2/WG/5) (continued)

Mr. VRANKEN (Belgium) introduced the proposal on the applicable law submitted by his country, together with Austria, Canada, Italy, Japan and Sweden (A/AC.105/C.2/L.62).

It seemed to have been established, as a result of the discussion, that any text on the applicable law should refer, on the one hand, to international law, and, on the other, to agreement on the applicable law between the two parties in question. In a spirit of compromise, his delegation was prepared to accept the reference to international law, but on condition that mention should also be made of another rule of law; for to invoke international law alone would be tantamount to not establishing new rules, whereas the Sub-Committee's task was precisely to establish such rules.

What was international law in that regard? Some spoke of the Charter of the United Nations, but within the framework of the agreement on liability any reference to the Charter was superfluous. Others invoked the rule of international law according to which a State was liable for the damage it had caused, but such a rule gave no indication of the applicable law, since it was already difficult in such cases to settle the question of compensation for damage by *sui generis* arrangements. Also relevant was the 1967 Treaty, particularly article VII, but that article merely stated a principle and the States themselves felt that a more detailed agreement on liability should be worked out, as had been done in the case of article V of the Treaty, which had been duly supplemented by the 1968 Agreement. In his delegation's view, the specific purpose of an agreement on liability was to develop customary international law by establishing more specific written rules. It was, moreover, with that consideration in mind that the Belgian, Hungarian, Indian and Italian draft agreements all referred to national law, though the reference was different in each case.

The Belgian draft made the victim its central consideration; it was for that reason that it stated as a rule that the national law of the victim should take precedence, and that recourse should be had to international law only if the national law was deficient.

His delegation remained convinced that that solution was the most favourable for the person or State suffering the damage, but it was now prepared, with a view to achieving general agreement on the five points known as the "New Delhi Points", to make two concessions. First, it was prepared to accept that the order of the references should be reversed and that international law, however incomplete it might still be, should be mentioned first; moreover, where there was any conflict between international law and lex loci, international law would prevail. Secondly, it was now prepared to accept the idea put forward by many delegations, including those of Canada, Romania, Argentina, Czechoslovakia, Sweden and France, to refer also to lex loci delicti commissi.

That formula had four advantages: first, it was in line with extremely important precedents (article 20 of the Rome Convention of 7 October 1952 on Damage caused by Foreign Aircraft to Third Parties on the Surface;^{28/} articles 11 and 13 of the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy;^{29/} articles VIII and IX of the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage^{30/}); secondly, it confirmed the principle that, so far as possible, primary consideration should be given to the victim, who in almost all cases would thus be able to defend himself, since he would be able to proceed in accordance with his own national law; thirdly, it represented a middle way between the two extremes - the drafts which gave priority to the law of the respondent State and those which gave priority to the law of the claimant State; finally, it seemed that it was acceptable to a large number of delegations.

He pointed out that the proposal A/AC.105/C.2/L.62 referred to "the law of the State" and not to "national" law, in order to take account of States with a federal structure. The authors of the proposal had taken note of the comment by the Italian representative that the expression "taking account of" was not a legal one, but they wished to point out that it had been the result of a compromise. They had also taken note of the French delegation's observation that agreement between the parties could be reached without referring to a rule of law, as had been shown in practice, since in

^{28/} United Nations, Treaty Series, Vol.310, p.182.

^{29/} Organisation for Economic Cooperation and Development, Paris, 1964.

^{30/} United Nations Juridical Yearbook, 1963 (ST/LEG/SER.C/1, Sales No: 65.V.3), p.152.

the majority of cases compensation was fixed ex aequo et bono. Finally, no change had been made in the compromise reached at the Sub-Committee's seventh session concerning the applicable law in the case of agreement between the parties.

Mr. KOLTCHAKOV (Bulgaria) noted that, according to some delegations, the idea to be kept in the forefront was that the convention must be victim-oriented. However, his delegation took the view that the convention should serve the interests of the respondent countries as well as those of the claimant countries, on the understanding, of course, that that classification of countries was relative, since the distinction between the major space Powers and other countries was tending to become less pronounced owing, in particular, to the international organizations.

In any event, so long as there was no common international fund for financing the peaceful exploration of outer space which could apportion damages, a need would be felt to reconcile the interests of the State claiming compensation and those of the liable State. In order to define the applicable law for determining the amount of compensation, it was necessary, therefore, to take account in each case of both the interests of the victim and the share of risk assumed by each country.

The advocates of a victim-oriented convention argued that the victim would be better protected if the applicable law was that of the State to which he belonged or that of the country in whose territory the damage had been sustained. It was possible, however, that the law of the respondent country might be still more favourable to the victim, either because the rule of compensation it prescribed accorded him higher compensation, or because of the elements it took into account when defining the compensable damage. For example, the law of the claimant State might not take account of moral damages, unlike the law of the respondent State. For that reason, his delegation felt that the victim should be able to choose the applicable law, provided that the respondent State could contest that choice, and on the understanding, also, that the two parties should be entitled to choose by common consent the law of the claimant State, that of the respondent State, a mixed system, or the law of a third State. Clearly, it was for the interested parties to determine the amount of the compensation directly.

Another cardinal factor, in his delegation's view, was the need to refer to international law and to give it preference in the event of a conflict between its provisions and those of the national law chosen. His delegation therefore supported the formula adopted at the official talks at New Delhi on the question of applicable law.

With regard to the question of whether the convention on liability should take account of nuclear damage, his delegation continued to believe that damage due to nuclear devices should be the subject of a special convention, but it was prepared to compromise and to revise its position, if need be. Nevertheless, it wished to point out that the launching of nuclear devices was not foreseeable in the immediate future and it would be unrealistic to attempt to evaluate a priori the amount of the damage to be awarded. If the amount was small, the victims would suffer grave injury, and if it was high, some countries would hesitate to ratify the convention. It would be better to leave to State practice the question of determining the liability in each case.

International organizations had no sociological reality apart from that of the States comprising them. The draft submitted by Belgium, France, Italy, Sweden and the United Kingdom (A/AC.105/C.2/L.60 and Add.1) concerning those organizations stated in paragraph 1 that the convention would apply to any organization which conducted space activities if the organization declared its acceptance of the rights and obligations provided for in the convention and if a majority of its member States were contracting parties to the convention and to the 1967 Treaty.

The first of those conditions might give rise to practical difficulties, as the Czechoslovak representative had already pointed out at the 120th meeting. Moreover, the fact that paragraph 2 of the draft was concerned with how member States might induce the organization to make a declaration in accordance with paragraph 1 showed that there might be disagreement on that point. His delegation considered that the sole and indispensable condition to be fulfilled for the convention to be applicable to international organizations was that the majority, if not all of their member States should be parties to the convention. That requirement would, moreover, encourage the States members of those organizations to accede to the convention.

The second of the conditions referred to in paragraph 1 of the draft did not mention what would happen if the majority of the States members of the organization which were parties to the liability convention were not at the same time parties to the 1967 Treaty, or vice versa.

For those reasons, his delegation supported the formula resulting from the discussions at New Delhi, on the understanding that, as the United Kingdom representative had pointed out at the same 120th meeting, the international organizations which were bound by the obligations of the convention should also benefit from the rights granted by it. The New Delhi formula was equitable because it provided that the organization

and its member States would be jointly and severally liable for damage caused by the space activities of the organization. It also rightly provided that the claim for compensation should be sent first of all to the organization and that the claimant State could only address itself to a member State or member States if the organization had not carried out its obligations within the agreed time, which could be decreased from one year to six months.

With regard to the settlement of any disputes, his delegation supported the point of view expressed in its most concise form in the Hungarian draft.

Mr. FREELAND (United Kingdom) considered the proposal which had just been submitted on applicable law (A/AC.105/C.2/L.62) to be another significant step forward in the Sub-Committee's work; his delegation's initial reaction was favourable.

The main lines of the proposal concerning international organizations (A/AC.105/C.2/L.60 and Add.1), of which the United Kingdom was a co-sponsor, had been foreshadowed in what he had said at the 120th meeting of the Sub-Committee. The proposal was intended as the basis for a compromise solution on that issue within the framework of an over-all settlement of the so-called New Delhi points.

He wished to make three remarks concerning paragraph 1. First, the articles the numbers of which were left blank in the opening lines were those which would contain the final clauses of the convention, whose application would be inappropriate in the case of international organizations. Secondly, the paragraph retained the idea, found also in article 6 of the 1968 Agreement, that the application of provisions of the convention to an international organization would be dependent on the making of a declaration by the organization itself. Having considered all the arguments which had been advanced on the point, his delegation still found the reasons for providing for an organization to accept the application of provisions of a convention to it by means of an act of its own to be compelling. Questions of procedure such as the receipt of the declarations and the notification of them to contracting parties might be dealt with in the final clauses of the convention. Finally, the condition that a majority of the States members of the organization concerned should be contracting parties to the convention and to the 1967 Treaty also followed the precedent of article 6 of the 1968 Agreement - a point which he wished to draw to the attention of the Bulgarian representative. That condition provided an assurance both of the spreading of liability for any damage caused by space activities of the organization and of the carrying out of those activities in accordance with the principles prescribed in the 1967 Treaty.

Paragraph 2 was a new provision, whereby member States of an organization conducting space activities would, if parties to the liability convention, be bound to support, within the framework of the organization, the making of a declaration of the kind referred to in paragraph 1. The provision would produce, as the number of members of the organization participating in the convention increased, a growing impulse, if that were necessary, towards the making of a declaration.

Paragraph 3 was to a large extent derived from the principle on the liability of organizations which had been suggested in the New Delhi communiqué; it therefore differed substantively from the previous proposal (A/AC.105/C.2/L.41 and Add.1) according to which initially the organization alone would be liable, its member States only becoming liable if it did not fulfil its obligations within six months of the presentation of the claim. Under the new proposals both the organization and those of its members which were parties to the convention would be jointly and severally liable from the outset, with the two reservations contained in paragraph 3, which were more precise and more satisfactory than the New Delhi text. The time-limit of six months allowed to the organization for the payment of compensation would begin to run from the time when the amount of compensation had been agreed upon or determined, by agreed settlement procedures, to be due. If that amount were not paid within the period, the claimant could invoke the liability of the members concerned; and they, it was to be understood, could not contest the amount, so there would be no question of further proceedings on that issue.

Paragraph 4 would provide a simple and effective way round the practical difficulties which could otherwise arise in connexion with the presentation of claims in respect of damage caused to international organizations.

Mr. COCCA (Argentina) said that his delegation had no objection to proposal A/AC.105/C.2/L.62, for it was close to the Argentine proposal (A/AC.105/C.2/L.59), except that it mentioned the law of the State in whose territory the damage occurred, while the Argentine proposal referred to the law of the place where the damage was caused, which was the accepted legal concept (lex loci delicti commissi). On the other hand, a space object could fall in territory that was not properly speaking a State; it was impossible, for example, to speak of Antarctic States. In that case, recourse would have to be had to the law of the place and, in the example given, to the law it had been agreed should be applicable. In other cases, such as international cities or zones and Trust Territories, more than one State could participate in the Administration. Moreover, the phrase "in the event of any conflict between the aforementioned laws, international law shall apply" in the proposal under

consideration implied that international law was sufficiently developed to meet all situations and solve all difficulties, whereas in reality international law concerning space was in its initial stages and was as yet seriously deficient. He fully supported the second paragraph of the proposal.

His delegation supported proposal A/AC.105/C.2/L.60 and Add.1 concerning the question of international organizations. Its only objection concerned paragraph 4, which as it stood, assumed that the State in whose territory the headquarters of the organization were situated was more diligent than the others. Such an assumption was out of place in an international convention on liability. He therefore proposed deleting from paragraph 4 the phrase "by the State in whose territory the headquarters of that organization are situated or, if that State is not a Contracting Party to this Convention".

Finally, with regard to the decision taken by the Working Group on the question of absolute liability (A/AC.105/C.2/WG/5), he considered that in paragraph 1 the words "by its space object" were hardly suitable in a legal text. States did not have only one space object. In the Spanish text it would be better to say "por un objeto espacial suyo".

Mr. PERSSON (Sweden), commenting on proposal A/AC.105/C.2/L.62 on the applicable law, of which his delegation was a sponsor, said that in his opinion replacement of the lex loci delicti commissi by the law of the claimant State would create difficulties in a number of cases. In fact, failing a definition of the "claimant State", the agreed text on the presentation of claims (A/AC.105/C.2/WG/4) would have to be relied on. Under the provisions of that text, a Contracting Party could present a claim for compensation when the State itself or its nationals had suffered damage in any country. It could also present a claim for damage sustained by any natural or juridical person in its territory. Additionally, a contracting party could appear as a claimant State acting on behalf of permanent residents in its territory. It might thus very well happen that, in a particular case, and by virtue of those regulations, claims might be presented by more than one State: the damage would then have to be assessed partly according to one system of law and partly according to the national law of another claimant State. The draft texts before the Sub-Committee contained a provision on joinder of claims, but that provision was intended to serve a different purpose and did not solve the difficulties of a case in which several claimant States were each invoking their national law.

As for the case of claims presented by international organizations, there was no national law to be applied if the organization was empowered to present its own claims. Should one of the Parties to the Convention on liability which was a member of that international organization appear on behalf of the organization as the claimant State, it would be a mere chance as to what national law would be applicable in the proceedings for settling the claim.

Similar complications would arise if the rules of the law of the respondent State governed the assessment of the damage when two or more States were jointly and severally liable, either as a consequence of a joint venture in launching a space object or because they were members of the same international organization. It did not seem advisable to leave it to the claimant State to choose the law applicable by presenting the claim to one or other respondent State at will.

An additional difficulty stemmed from the fact that, in many countries, the law of torts was the concern of the States or provinces of a federal State and in many federal States there was no single national law on the subject.

It might be added that assessment of damages was intended as compensation according to the norms and prevailing conditions in the country where the damage had occurred, a fact which also pointed to the advantage of the application of the lex loci.

In conclusion, the Swedish delegation considered that application of the lex loci delicti commissi was much to be preferred, from the legal and practical point of view, to application of the national law of the claimant or respondent State, as proposal A/AC.105/C.2/L.62 made clear. However, the wording of the proposal might perhaps be improved, and his delegation was ready to consider any suggestion to that effect.

Mr. RYBAKOV (Union of Soviet Socialist Republics) noted that the idea that the contentious issues must be solved together seemed to be accepted, but the discussion had unfortunately not yet led to tangible results.

For the settlement of disputes, in the first place, his delegation considered that the proposal submitted by Hungary offered the best way of solving the difficulties. That proposal, which followed the precedent set by the Antarctic Treaty should constitute a common basis acceptable to all States Members of the United Nations, for the clauses of that Treaty were in conformity with the United Nations Charter and the principles of the sovereign equality of States.

Another difficult problem was the one of the law applicable. The Legal Sub-Committee's debates and consultations which had taken place in New York and New Delhi had enabled a certain area of compromise to be marked out, thanks in particular to the proposal submitted by India. His delegation's position differed considerably from the one expressed in the Indian proposal, but it considered that the latter was one of the only possible ways of reconciling the points of view. The other proposals and, in particular, the one submitted by the Belgian delegation, reflected attitudes which had been taken up long ago and left no room for compromise. The Soviet Union delegation supported the Indian proposal, in view of the principles which had been defined at New Delhi. It would, however, study the proposal submitted by the Italian delegation with the greatest care, for it was possible that that proposal might also enable them to obtain definite results.

Moreover, it seemed to be agreed that the Convention should fix no limit for liability. Originally that had not been his delegation's position, but it was probably impossible to determine a limit for liability which would be acceptable to all countries concerned if the drafting of the Convention was not to be postponed indefinitely.

Moreover, his delegation was increasingly convinced that the problem of international organizations was a purely artificial one and that it should be looked at from an essentially practical point of view. It was prepared to accept the inclusion in the draft Convention of a special article concerning the liability of international organizations. The provision might be based on the proposal submitted by Hungary, which simply stated that if liability for damage rested with an international organization, the organization and its member States should be jointly and severally liable for compensation to the States suffering damage. Such a solution would enable all the controversial political and juridical problems to be eliminated, particularly the ones concerning the type of law applicable to international organizations, which had no real connexion with the draft convention. All the arrangements concerning the liability of international organization should be modelled on articles VI and XIII of the 1967 Treaty. It would thus be possible to ensure both a speedy settlement of compensation for damage caused and to avoid any financial difficulties by providing that the international organization and its member States would be held jointly and severally responsible. The solution proposed by Belgium, France, Italy, Sweden and the United Kingdom, on the other hand, raised considerable problems; the fact that the

international organization had to make a declaration that it accepted the rights and obligations provided for in the convention, for example, might detract from the joint obligation of the organization and its member States and the liability of the organization itself. His delegation was therefore convinced that the question should be settled on the basis of article XIII of the 1967 Treaty. Nevertheless, in so far as a settlement of disputed questions could be reached en bloc, it was prepared, in a spirit of compromise, to give serious study to the formula proposed by India during the New Delhi consultations, although it was far from being entirely satisfactory.

Mr. GOTMANOV (Czechoslovakia) said that, in view of the many different solutions which had been proposed for the question of the settlement of disputes, his delegation considered that a procedure comprising two or three successive phases should be adopted.

That opinion was based both on the rules of international customary law and on the practice developed in international treaties. The majority of treaties provided that the settlement procedure should only be applicable to disputes which it had not been possible to settle by agreement. His delegation, therefore, considered that any dispute concerning compensation for damage caused by the launching of an object into outer space should be settled in the first place by bilateral negotiations between the claimant State and the respondent State. If such negotiations failed, the parties should be able to have recourse to any other pacific means for settling disputes, including arbitration.

Other treaties provided that the parties should submit disputes to a conciliation procedure. If that method did not lead to fruitful results, the parties would be free from any other obligations. Still others provided for such procedures and other means of settling disputes to be undertaken simultaneously.

Thus there was no lack of settlement procedures; the Hungarian representative had quoted as an example the provisions of the Antarctic Treaty. The important thing was for States to be obliged to take all necessary measures with a view to reaching an amicable solution; naturally, it would be for the parties concerned to agree on a method of settlement acceptable to all.

His delegation was convinced that any solution of the problem of the settlement of disputes must be based on the principle of the agreement of the parties concerned, a principle which would also be conducive to the settlement of several other problems concerned with the draft convention.

ORGANIZATION OF WORK

The CHAIRMAN drew the Sub-Committee's attention to the provisional list of topics prepared by the secretariat in pursuance of a decision taken by the Sub-Committee at its 115th meeting. He invited delegations to submit proposals at the appropriate time concerning the priority to be given to the topics envisaged and their comments on the list.

Mr. EL REEDY (United Arab Republic) asked whether the list could include new proposals to be studied at future sessions of the Sub-Committee or whether it could only include topics which had already been submitted at the current session or at previous sessions.

The CHAIRMAN replied that, in conformity with the decision taken by the Sub-Committee, the list compiled by the secretariat only included subjects already suggested by delegations during the current session and at previous sessions, but that delegations would, of course, be free to make suggestions concerning the list and the future work programme.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that the list should be considered as an information document and that the Sub-Committee should study it, but not come to an immediate decision upon it. In his opinion, it would be better to compile the list of topics in the chronological order in which they had been raised during discussions.

The CHAIRMAN pointed out that the list contained, first, matters which had been submitted in writing, and then those which had been proposed orally during the Sub-Committee's meetings and reported in the summary records. Such an order did not indicate any priority.

The meeting rost at 1 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-THIRD MEETING

held on Wednesday, 25 June 1969, at 11 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/C.2/W.2/Rev.4/Add.4; A/AC.105/C.2/L.60 and Add.1, A/AC.105/C.2/L.62) (continued)

Mr. AMBROSINI (Italy) said he wished to explain first of all that the main reason why his delegation had supported the proposal submitted by the United Kingdom and four other delegations on the question of international organizations (A/AC.105/C.2/L.60 and Add.1) was that the United Kingdom delegation had stated that an international organization and its member States would be held jointly liable only if the international organization itself did not pay the compensation due to victims of damage.

The question of the applicable law was a most delicate problem and called for a solution that would be both flexible and functional. His delegation had agreed to a compromise proposal that the applicable law should, in the first instance, be international law and, when possible, the national law of the State in whose territory the damage had occurred, in other words the lex loci delicti commissi. In its original draft (A/AC.105/C.2/L.40) his delegation had expressly referred to equity; but it had been pointed out that such a reference was superfluous because it had been stipulated that compensation might be determined "in accordance with any other principle agreed upon between the claimant State and the respondent State". For that reason, there was no further mention of equity in the proposal submitted by Austria, Belgium, Canada, Italy, Japan and Sweden (A/AC.105/C.2/L.62). However, equity was also mentioned in article IV of the United States draft (A/AC.105/C.2/L.19). In the circumstances, if the text of the draft convention no longer contained any reference to equity, those interpreting it might conclude that its authors had intended to rule out recourse to equity, which was obviously not the case.

For that reason, and after carefully considering the matter, his delegation continued to believe that recourse to equity provided the most satisfactory solution to the problem of the applicable law. The draft convention should protect the victims of any damage that might be caused and at the same time recognize the risks inherent in activities connected with the exploration and use of outer space which, in virtue of the 1967 Treaty, were being carried out for the benefit of all mankind. Consequently, the provision concerning the applicable law, after mentioning public and

private international law and the lex loci delicti commissi, should include a reference to equity and provide that it was open to the parties to choose, by common agreement, another system of settlement. The second paragraph of proposal A/AC.105/C.2/L.62 should accordingly be worded as follows: "However, the compensation may be determined in accordance with equity or any other principle agreed upon between the parties".

Mr. CHARVET (France) said that his delegation had already stated its position on the questions of the applicable law and international organizations and had mentioned the concessions it was willing to make in the light of the conclusions outlined at the unofficial meeting at New Delhi. In view of the short time available, and although it did not consider the simultaneous discussion of the five controversial points to be the best method, his delegation would state its position on them.

First, although it held different views it had agreed that the question of international organizations should be dealt with in a compulsory protocol annexed to the convention. It accepted the Indian proposal in principle and also agreed that claims for compensation should be sent to those organizations through the State where the organization had its headquarters.

As to applicable law, the French delegation had accepted in a spirit of compromise that claims for compensation should refer not only to the law of the State where the accident had occurred, but also to an international space law, although the least that could be said of that law was that it was still imprecise and vague.

The French delegation's attitude towards nuclear damage was well known: it considered that such damage should be covered by the convention, partly because it appeared to be included in the 1967 Treaty which was assumed to cover all damage without distinction, and partly because there was an essential difference between nuclear damage which might result from space activities and that covered by normal nuclear law. Nuclear damage caused by a space device was impossible to foresee, and even more impossible to assess in advance, whereas the victims of damage caused by reactors or other terrestrial atomic devices would not be caught entirely unprepared, since they had accepted the proximity of those devices, and therefore the risk, which could be assessed according to its gravity. The progress of space technique would moreover lead to a proliferation of space devices, which would certainly soon be equipped with nuclear propulsion systems; in other words, if nuclear damage was not covered by the draft convention on liability, it would be necessary to start preparing a parallel convention as soon as possible. His delegation therefore fully approved

article II of the Indian draft (A/AC.105/C.2/L.32/Rev.1) which made the launching state entirely responsible for damage caused by its space devices, on the understanding that that article covered all categories of damage, regardless of its nature.

With regard to the limitation of liability, his delegation continued to think that the principle of unlimited liability was greatly to be preferred to any other solution; for why should an arbitrary limitation be imposed when no one yet knew what dangers the future would bring? Moreover, unlimited liability would ensure equitable treatment that would be the same for all victims of human activity. No victim of an accident caused by any device, whether a spacecraft, a motor car, an aircraft, a ship or anything else should receive better or worse treatment than any other victim. Yet that was what might happen if liability were limited. Compensation for damage caused by a space object might be divided among so many victims that the amount allocated to each would be insufficient. However, in order to meet the wishes of States holding different views and on condition that its other concessions would be compensated by similar concessions of a substantial nature, his delegation was prepared to accept the principle of the limitation of liability on two essential conditions. First, the limit adopted must be high and not be less than \$500 million; secondly, such a limit should not be applicable to a respondent State which in carrying out its launchings had violated international law and in particular the 1967 Treaty and the regulations implementing it.

The last and undoubtedly the most important point was that of the peaceful settlement of disputes. The 1967 Treaty, the 1968 Agreement and the preamble of the draft convention on liability itself were all based on admirable principles, but there was a grave danger that they would remain a dead letter unless they led to a practical procedure for decisively settling any disputes caused by space activities. The Indian draft, which was the result of the New Delhi consultations, used a rather more complicated formula than that advocated by the French delegation, which merely envisaged an arbitration committee of the usual kind, the chairman of which would, in the event of disagreement, be chosen by the President of the International Court of Justice. As that proposal had not met with general approval, and as his delegation was anxious to reach a compromise solution, it wished to say that it had no major objection to agreeing to that part of the Indian draft; but its attitude did not constitute a precedent, and the proposal required improvement in certain respects.

His delegation would be unable to make that concession, however, unless it had an assurance that that procedure would lead to a decision that would be enforceable;

that alone could provide victims with real and effective protection. Just as civil, criminal or other codes were valueless unless there were courts to apply them, the draft convention on liability would have no substance without such a procedure.

All those concessions, coming from a potentially respondent State by virtue of its space activities, were evidence of the French delegation's desire to reach agreement at the current session. His delegation was ready to consider every possible kind of compromise, provided that it was not contrary to the interests of the victim, who was the weakest party in a dispute of that kind. In signing the 1967 Treaty and the 1968 Agreement, many countries had admittedly been actuated by the desire to facilitate the work of pioneers in space; but they had also been influenced by the hope that a convention on liability would soon be drawn up to give practical effect to the principles set forth in those two instruments which, in the absence of a convention on liability, might one day have to be reconsidered.

Mr. O'DONOVAN (Australia) said that, at the opening of the general debate, his delegation had indicated how, in its opinion, the Sub-Committee should proceed in order to expedite the formulation of a complete text of a draft convention on liability. His delegation had proposed that the Sub-Committee should concentrate on the major issues on which agreement had not been reached and had suggested that they be settled as a "package deal". The Sub-Committee had adopted that approach, but had not taken the further step required, which was to appoint a small representative group to negotiate the matters to be included in such an arrangement. The discussions which had taken place within both the Sub-Committee and the Working Group had not made any substantial progress, and it did not appear that the bilateral negotiations taking place between the two major space powers were likely to achieve a greater measure of success. In any case, bilateral negotiations did not seem to be the best way of arriving at a solution that would be satisfactory to all the parties concerned. Both the major powers would of course have to endorse any formulation arrived at, but multilateral negotiations were the only means of achieving tangible results.

That being so, the Chairman should appoint a small representative group that would report back to the Sub-Committee, or else he should invite a small number of delegations, representative of the various interests involved, to undertake informal negotiations. Whichever solution was adopted, the Sub-Committee would be informed of the outcome of such negotiations, and all its members would have an opportunity to express their views on the subject; both approaches were therefore perfectly democratic. It was important to reconcile the various points of view, especially where the question of settlement of disputes was concerned.

His delegation had already stressed that unless the convention laid down an effective procedure for the final settlement of disputes by some impartial tribunal with power to make binding awards, the Sub-Committee's achievements would be of little practical significance. The matter was of paramount importance, not only because the economic and political power of the claimant and respondent States was likely to differ considerably, but also because all civilized societies found it necessary to establish procedures under which all claims for damages were definitively settled by impartial tribunals. Why should the situation be different in the case of outer space?

Some delegations had proposed the adoption of a provision similar to that contained in article XI of the Antarctic Treaty, but such a provision would not be suitable for a convention dealing specifically with liability. If that was the most that could be agreed upon, it would be hardly worth including such a provision in the draft.

His delegation still took the view that all disputes concerning the interpretation and application of the convention should be referred to the International Court of Justice and that other disputes between the contracting parties relating to the merits of a claim for damages or the assessment of damages should be settled by an arbitration tribunal. The Indian draft, however, specifically excluded from the settlement procedures prescribed in the compulsory protocol all disputes relating to the interpretation of the convention. In a spirit of compromise, his delegation would support such a solution.

Mr. NICIU (Romania) stated that, as far as the applicable law was concerned, his delegation would prefer the Sub-Committee to adopt the principle of lex loci delicti commissi. In the absence of the necessary legislation, recourse should be had to the principles of international law.

With regard to the settlement of disputes arising between a claimant and a respondent State, the convention on liability should not depart from the fundamental principles of general international law or from the United Nations Charter. It should confirm the rule that all disputes should be settled solely by peaceful means, but leave the choice of those means to the parties. Among those means, his delegation gave preference to direct bilateral negotiations. Should such negotiations fail, the parties concerned would have to select another means of peaceful settlement, such as arbitration. But in any case it would be inadvisable to specify in advance any one of those means of settlement, or to lay down rules about the membership and procedures of the arbitral bodies concerned. The convention should nevertheless require the

parties, in the event of their failing to reach agreement within a specified time, to resort to a means of peaceful settlement other than direct bilateral negotiations.

Mr. BOYD (United States of America) said he would discuss principally his delegation's position on the question of the settlement of disputes, which it considered to be the main issue still outstanding.

His delegation did not agree, however, that the question of limitation was the keystone of the convention on liability. Any limitation agreed upon would apply only to an exceptional claim for damages which, in the present situation, came within the province of the unforeseeable. Furthermore, his delegation had a flexible attitude on that question, with regard both to the level of limitation and to the possibility of submitting through diplomatic channels claims for amounts in excess of the limit adopted. The French delegation had shown a spirit of compromise by its willingness to agree to a limit on liability, provided that the limit would be not less than \$500 million which the United States delegation indicated would be acceptable to it. The French delegation had further requested that there should be no limit in cases where there had been a violation of space law or the principles of international law. His delegation saw no objection in principle to that idea and was prepared to consider in greater detail with the French delegation and any other delegation wishing to participate, how it might be incorporated in the convention. Opponents of a limitation had said it would be difficult to agree on a figure; but similar problems had been solved in other multilateral conventions on liability. Some delegations might be uncertain as to a reasonable figure, since in the first twelve years of space exploration there had been no claims for damage caused by objects launched into outer space. However, to deal with this problem, the convention might include a provision to review the operation of the convention perhaps fifteen years after its entry into force; it would then be possible to take account of claims experience and advances in technology. In any event, his delegation wished to emphasize that the question of limitation was a marginal one and that it believed that the Sub-Committee was capable of solving it before the end of the session.

The question of the settlement of disputes was quite a different matter. His delegation agreed with those who maintained that there was not much point in having a convention on liability unless it established a settlement procedure in addition to what was already required under the general principles of international law and the United Nations Charter. Claims for damages would still be settled, in most cases, by normal negotiations, but such negotiations would be made more effective by the knowledge that any disputed claim could be referred to a binding third party settlement procedure if diplomatic means failed.

Unfortunately, some delegations appeared reluctant to accept any binding third party settlement procedures for any claims whatsoever, whereas the United States supported the availability of such a procedure for claims below a certain amount to be agreed, which, in practice, would probably cover all claims.

On the question of the applicable law, his delegation was prepared to endorse proposal A/AC.105/C.2/L.62, if it proved acceptable to the Sub-Committee. It was also ready to accept the provision in article VI of the Indian draft convention. The United States could also accept most of the formula evolved during the informal talks at New Delhi, but it was not convinced that there should be a reference to the law of the respondent State.

On the question of international organizations, the United States was also willing to support the compromise proposal A/AC.105/C.2/L.60 and Add.1, which was consistent with the evolution of generally accepted treaty principles as embodied in the 1967 Treaty and in the 1968 Agreement. It would have been willing to support the formula devised during the New Delhi consultations, but it did not appear to be acceptable to those members of the Sub-Committee which participated in international space organizations.

The Australian representative had said that it would be useful if private consultations could take place; he (Mr. Boyd) agreed with that view. His delegation had held informal consultations with many other delegations and was prepared to continue to do so, both on a bilateral and on a multilateral basis.

Mr. KRISHNA RAO (India) said that he wished to dispel any misunderstanding. The informal consultations which had been held at New York at the end of the Sub-Committee's seventh session had been attended by the two space Powers and by certain other countries which had submitted proposals to the Sub-Committee. The purpose of the consultations had certainly not been to exclude any delegation whatsoever from the negotiations. Moreover, there had been nothing secret about them and he had been careful to inform all his colleagues, whether they represented aligned or non-aligned countries, of the substance of the discussions. As those New York discussions had been inconclusive, he had thought it would be a good idea to arrange for the representatives of the same countries to meet at New Delhi. But there had never been any question of issuing any kind of official document after the meeting.

The problems which had been discussed both at New York and New Delhi were not new: the Sub-Committee had been considering them for seven years. It had first had to decide whether it was necessary to prepare a convention on the rescue of astronauts or whether a declaration would suffice. The question of the rescue of astronauts had

proved easy to solve once its humanitarian character had been recognized. A convention on liability was undoubtedly necessary because a State must be held responsible for damage attributable to any dangerous activity it might undertake. Possible conflicts could not be solved through diplomatic negotiations alone. India was on principle opposed to any procedure for the compulsory settlement of disputes, but not in the case in point, where the only question was to determine how possible victims could be given monetary compensation by the space Powers.

After five years' work, all that the draft convention submitted by India to the seventh session had done was to give form to ideas which the majority of the members of the Sub-Committee had long supported. During the informal consultations at New Delhi, the Indian delegation had endeavoured to reconcile still conflicting points of view. Some delegations had been willing to compromise. The French delegation had just made further concessions, subject to two conditions, one of which was concerned with the limitation on the amount of compensation, while the other required that limitation to be disregarded in cases where a space Power had violated space law - in other words the 1967 Treaty, the 1968 Agreement, and the Convention on Liability - or international law. That position deserved careful study. It was essential to recognize that the solution eventually adopted by the Sub-Committee could not constitute a precedent, for the court which would in due course settle a dispute would have to answer only two questions: who was responsible and how much should he pay?

The Australian representative had proposed that, in order to arrive at a solution of the two major problems still preventing the preparation of a convention on liability, namely, the limit to compensation and the procedure for the settlement of disputes, a small working group should be set up. He had no objection of principle to that idea. In one way and another the two space Powers had succeeded in bringing into existence the two Conventions to which attached importance, the 1967 Treaty and the 1968 Agreement. Those two instruments were, however, of no interest to the non-space Powers which, for their part, were anxious to have a convention on liability. What was important for those countries was essentially the question of possible accidents, not the definition of outer space. The fact that there had been no accident during the past ten years provided no guarantee. Moreover, accidents had in fact taken place, because two fragments had already been picked up in India, one from a United States object and the other from a Soviet Union object; very fortunately they had fallen in open country.

Should the Sub-Committee be unable to produce a final draft of the convention at its eighth session, it should refer those provisions it had adopted to the Committee, and the Committee would bring the matter before the General Assembly.

Mr. EREDO (Mongolia) said that it would be undesirable to place a limitation on the amount of liability; in fact, all the draft conventions submitted except one were agreed on that point. Again, the convention should not distinguish between nuclear and non-nuclear damage.

As to the applicable law and the question of international organizations, he would support those proposals which were closest to the formulas prepared during the New Delhi consultations.

On the question of the settlement of disputes he preferred recourse to direct negotiations between the parties to any procedure for compulsory settlement. On that question, he wholeheartedly supported the Hungarian draft proposal (A/AC.105/C.2/L.10/Rev.1 and Corr.1, A/AC.105/C.2/L.24 and Add.1).

An attempt should be made to solve those questions en bloc. After three weeks' work, no real progress had been made although the need for a convention on liability was becoming increasingly urgent. Delegations confined themselves to reiterating their position; he wished it was possible to imbue the discussions with a sense of urgency so that some delegations would agree to make concessions, as the Hungarian delegation had done.

The Australian representative had suggested that a small working group should be set up. It was only a week since the Working Group of the Whole had really begun its task. How could a small working group be more representative of the various positions held? The Australian representative's second suggestion, concerning bilateral and multilateral consultations, seemed to be a better one.

Mr. FREEIAND (United Kingdom) shared the concern of those who had noted with regret the apparent lack of progress in informal consultations during the session. If only for lack of time, the method of purely bilateral discussions offered no real prospect of success. He reminded the Mongolian representative, who had said that the Working Group of the whole had not been working long, that that Group was not dealing with the five "New Delhi Points", so that it could not, by itself, provide a solution. The United Kingdom delegation would favour the adoption of either of the alternative courses suggested by the Australian representative.

As to the question of limitation on liability, while his delegation was sympathetic to the views of the many who felt that the convention should include no limitation, it certainly did not exclude the possibility of agreeing to a limit, provided that the figure was high enough to take account of all contingencies including nuclear damage. Having heard the ideas suggested by the French and United States representative, among

others, his delegation considered that enough flexibility had been shown on that question to encourage the belief that an acceptable solution could be found. He wished he could say the same for the crucial question of the settlement of disputes.

Mr. MILLER (Canada) emphasized that the proposal on the applicable law, of which his delegation was a sponsor, was not a mere variant of previous proposals, but marked real progress in that it aimed at establishing a balance between international law and the law of the State on whose territory the damage occurred. The sponsors had preferred to refer to the law of the State on whose territory the damage occurred, rather than the law of the place where the damage occurred, since the latter wording might give rise to difficulties in the case of federated States. Referring to the example mentioned by the Argentine representative, of an object falling in the Antarctic, he observed that the Antarctic Agreement provided for the settlement of problems of jurisdiction.

With regard to the suggestion that the victim should be allowed to choose the applicable law and, in cases where the law of the launching State, or the respondent State was more advantageous for it, to choose that law, he observed that the Indian proposal made at the New Delhi informal talks contained a provision of that kind, since it stated that the amount of compensation payable should be determined in accordance with international law, taking into consideration the law of the claimant State and, where considered appropriate, the law of the respondent State; it was understood that, in a convention on liability designed to protect the victim, the expression "where considered appropriate" should be taken to mean considered appropriate by the victim.

With regard to international organizations, the Canadian delegation could support the proposal (A/AC.105/C.2/L.60 and Add.1, since it contained most of the points omitted from the New Delhi proposal. The text stipulated that international organizations should declare their acceptance of the rights and obligations provided for in the convention; it was based on the provisions concerning international organizations in Article VI of the 1968 Agreement. It contained new and useful ideas, and provided, in particular, that the States members of an organization which were contracting parties to the convention should support, in the organization, the making of the declaration by which it would accept the rights and obligations provided for in the convention. In addition, the proposal tended to equalize the conditions for the international organizations and those of their members which were parties to the convention, and made them jointly liable for damage caused by the space activities of such organizations. It also contained a useful provision concerning claims presented by international organizations which had suffered damage themselves.

With regard to limitation of liability, the French representative's proposal at the current meeting was of great interest, and if it were put in writing, possibly in consultation with the United States delegation as the latter had agreed, it might solve the problem.

As to the settlement of disputes, the Canadian delegation did not think that Article XI of the Antarctic Treaty was a satisfactory means of solving the problem, since it was not mandatory: without a mandatory procedure for the settlement of disputes by a third party, a convention on liability would be of little practical value. Nor could Article XIII of the 1967 Treaty provide a solution. The provisions on liability appearing in the Treaty must be made more precise and amplified.

With regard to the organization of work, his delegation wished first of all to thank the Indian delegation for its efforts at New York and New Delhi. The criticisms which the Canadian delegation might have to make on the substance of the Indian proposal, as it appeared in the New Delhi communiqué, in no way reflected on the usefulness of the informal consultations, the value of which that delegation recognized. The Canadian delegation shared the view that it was urgent, particularly for the non-space Powers, to draw up a convention on liability. It would be desirable for the space Powers to accord the same priority to the drafting of that convention as they had given to the conclusion of the 1967 Treaty and the 1968 Agreement.

The Working Group was making satisfactory progress. The object of the Australian representative's proposal was not to replace that group, but to set up another, which would be appointed either by the Sub-Committee or by the Chairman, and whose main task would be to conduct negotiations on the questions still outstanding. The Sub-Committee should take a decision on that proposal as soon as possible. The Canadian delegation did not consider it undemocratic to set up a small negotiating group, but of course its composition might give rise to difficulties. The Chairman could appoint a group which was truly representative and which would begin work almost immediately.

Mr. SAYAR (Iran) supported the Australian representative's proposal in so far as it was calculated to accelerate the Sub-Committee's work. Certain controversial questions could be discussed informally by interested delegations, and the Sub-Committee or the Working Group of the Whole could be kept informed of the results of the negotiations. Such bilateral or multilateral negotiations would open the way to wider agreement in the Sub-Committee. The Chairman's advice could also contribute to reconciling the different points of view during the private talks.

Mr. EL REEDY (United Arab Republic) expressed his delegation's appreciation of the initiative taken by the Indian Government.

With regard to the French representative's proposal at the present meeting, his delegation considered that in principle no limit should be set to the amount of compensation payable, because of the nature of the accidents which might occur in space, but that it might nonetheless be useful to consider a limit, provided that it was high enough to cover all possible damage.

With regard to the Australian representative's proposal that a small working group should be set up, his delegation welcomed any suggestion calculated to accelerate the drafting of the convention on liability at the current session. It might be desirable for the group to be open to any delegation wishing to take part in its work, on the understanding that the delegations most interested in the drawing up of the convention would participate actively.

Mr. AMBROSINI (Italy) said that his delegation was opposed to the limitation of liability. There was no experience from which to assess the damage that might be caused by a space object. Moreover, it should not be forgotten that adoption of the principle of limitation would not suffice to solve the problem. For example, if there were a number of victims, it would be necessary to decide whether it would be possible to compensate them all and whether a limit should be set for the compensation of each one, or whether, on the contrary, the agreed limit should be divided among the victims, which was the system adopted in the Rome Convention of 1952 on Damage Caused by Foreign Aircraft to Third Parties on the Surface.

He again emphasized the need to prepare a draft convention on liability in the shortest possible time, showing goodwill and a spirit of compromise; the Australian proposal for setting up a small working group to deal with all the controversial questions might perhaps lead to such a compromise solution.

The CHAIRMAN, referring to the Australian representative's proposal, said it was very difficult for him to nominate delegations to be members of a small working group. To nominate a few delegations would mean excluding others; but on the other hand, the proposal by the representative of the United Arab Republic that participation should be open to all interested delegations was contrary to the purpose of having a small group. There were two possibilities: if it was to be an official group, the Sub-Committee could make proposals regarding its composition and take a decision on the subject; if it was to be an informal negotiating group, the question of its composition could be settled informally. Naturally, he was at the Sub-Committee's disposal, but he emphasized that any decision taken by him might be controversial.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that his delegation had always considered that all questions should be settled exclusively by discussion in the Sub-Committee itself. He accordingly supported the suggestion by the representative of the United Arab Republic that all delegations wishing to do so should be able to take part in the working group's deliberations.

The Sub-Committee could request the Chairman to decide on the methods of work he considered appropriate, in consultation with the various delegations.

With regard to the reference which had been made to the 1968 Agreement, he observed that that Agreement had been desired not merely by a single country or group of countries, but by all mankind, since astronauts were the envoys of mankind as a whole.

He wished to reaffirm his delegation's desire that a convention on liability should be drawn up as soon as possible. His delegation had always shown goodwill and a spirit of compromise, and it was prepared to work for the attainment of that object by all possible means, provided there was a basis of reasonable compromise.

Mr. KRISHNA RAO (India), clarifying his previous intervention, said that the 1968 Agreement had been imposed by the space Powers. The other Powers had been notified of it only twenty-four hours before the Agreement had been submitted to the General Assembly, towards the end of the twenty-second session.

With regard to the consultations which, in the Soviet delegation's view, should be held among all delegations, that was precisely the object of the work of the Sub-Committee itself. The Australian proposal had a different object: it related to consultations which would be held parallel to those of the Sub-Committee. That proposal deserved consideration.

Lastly, he emphasized that the fact that five delegations met did not necessarily mean that the other delegations were excluded, or that there could not be consultations among ten, fifteen or twenty delegations. For his part, he was in no way opposed to consultations among more than five delegations.

The meeting rose at 1.20 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-FOURTH MEETING

held on Thursday, 26 June 1969, 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/C.2/W.2/Rev.4/Add.4; A/AC.105/C.2/L.59, L.62) (continued)

Mr. BEREZOWSKI (Poland), referring to proposal A/AC.105/C.2/L.62 on the applicable law, observed that the wording of the second paragraph did not fully reflect the principle recorded in paragraph 10 of the report of the Sub-Committee on the work of its seventh session (A/AC.105/45), namely "that if there was agreement on the applicable law between the claimant and the respondent, then that law should be applied". In other words, such agreement between the claimant State and the respondent State was on the applicable law and not on a principle, and the proposal should therefore be reworded so that the idea of principle was replaced by that of the applicable law.

His delegation was grateful to the Government and representative of India for their efforts at the New York and New Delhi informal discussions, and to the other Governments which had taken part. Nevertheless, it was unable to accept all the New Delhi proposals, since agreement had not been reached on two main points: arbitration and limitation on liability.

Referring to the suggestion to set up a small working group, he pointed out that if a separate working group was formed to study the so-called "New Delhi items" the role of the Sub-Committee would be diminished and, what was more, the Sub-Committee might not have time to complete its task. Of course, informal talks between delegations could continue to be held with a view to reaching compromise solutions which would facilitate the work, but they should not encroach on the already limited time at the Sub-Committee's disposal.

Mr. COCCA (Argentina) said that he was afraid his statement at the 122nd meeting might have been misconstrued, and he wanted to put on record the fact that Argentina exercised sovereignty over a portion of the Antarctic continent which was part of its national territory.

His delegation supported the proposal A/AC.105/C.2/L.62, which was very close to its own (A/AC.105/C.2/L.59). However, Argentina preferred to speak of the "law of the place where the damage was caused" rather than "the law of the State", because there were places where it was not precisely the law of a particular State which was applied but the law of the place; law existed at every point on the planet, even on the high seas, but it was not always the law of a particular State.

If, for example, a space object fell in Vatican City, which for many was not a State, or in a disputed area or on a frontier, there was no law of a State. Moreover, it should not be forgotten that there were still some Trust Territories and that, pursuant to Article 81 of the United Nations Charter, the Administering Authority of such a territory might be one or more States or the Organization itself.

In the English version of the Argentine proposal (A/AC.105/C.2/L.59), the expression "the law of the place" did not seem to convey the idea which was clear in the French and Spanish versions. His delegation considered it necessary to include in the text of the convention the principle of lex loci delicti commissi, a principle of international law which was not novel and which was accepted by the law of most States, including Argentina. If the formula "the law of the State", used in the English version of proposal A/AC.105/C.2/L.62, conveyed that idea and if it were generally acceptable, his delegation would support it.

As to the procedure of settling claims, it was necessary to adopt for inclusion in the convention a formula which was clear, precise and compulsory. Such a formula might vary from a general statement. Like that contained in article XI of the Hungarian proposal (A/AC.105/C.2/L.10/Rev.1) to a more detailed regulation which went even further than the Argentine proposal and the Indian draft protocol (A/AC.105/C.2/L.32/Rev.1 and Corr.1). If the latter approach was followed, his delegation was prepared to give it full support. However, by way of compromise, a general statement could be included in the convention and, in the fairly near future, a protocol, or supplementary agreement, could be drawn up, as had been done in the case of INTELSAT, which, one year after signature of the Washington Agreements of 1964, had drafted an agreement on arbitration.

Mr. de SOUZA e SILVA (Brazil) reiterated his Government's view that provisions for the settlement of disputes should not be included in international conventions as a matter of compulsory procedure, and that the parties themselves should rely on the methods for the peaceful solution of controversies provided for in international law.

Moreover, it did not think that a convention on liability without a compulsory arbitration clause would necessarily prove ineffective, as certain delegations had argued, inasmuch as international law prescribed other methods for settling disputes which were also valid.

However, in view of the novel and peculiar character of space law, and in a spirit of compromise, the Brazilian delegation would be prepared to accept an arbitration clause under certain conditions. A disagreement between the claimant and the respondent

state might bear either on the very basis of the claim or on the determination of the amount of damages. In view of the special nature of the latter type of disagreement, and particularly of its financial aspects, the Brazilian delegation could agree to the referral of such disputes to compulsory arbitration. However, all other disagreements should be dealt with by the other methods of settlement, which of course included arbitration, but only if the parties agreed to it.

ORGANIZATION OF WORK

In reply to questions put by Mr. ZEMANEK (Austria) and Mr. AMBROSINI (Italy), the CHAIRMAN stated that the members of the Sub-Committee had failed to reach agreement on either of the suggestions of the Australian delegation concerning the appointment of a small negotiating group; therefore, in the absence of an explicit mandate from the Sub-Committee, he was unable to act on them. Delegations were of course perfectly free to hold informal consultations or negotiations if they so wished.

Mr. ZEMANEK (Austria) said that the Sub-Committee was making no progress in its deliberations and that prospects for agreement appeared increasingly remote. His delegation reserved the right, if the situation did not change, to propose formally the closure of discussion and to support the Indian suggestion to refer to the General Assembly all the questions it had been unable to settle.

The meeting rose at 11.35 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-FIFTH MEETING

held on Friday, 27 June 1969, 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/C.2/L.59, L.61 and L.62; A/AC.105/C.2/W.2/Rev.4/Add.4)
(continued)

Mr. RIHA (Czechoslovakia) recalled that the Czechoslovak delegation had initially thought it preferable that the convention should not cover nuclear damage, owing to its very special nature. At the Sub-Committee's seventh session there had been a review of the various ways of including such damage in the convention, and after carefully considering the arguments advanced by the delegations favouring inclusion, his delegation was inclined to support it in principle.

In its working paper (A/AC.105/C.2/L.61, sec.5) the Japanese delegation observed that there were two kinds of nuclear damage: the first was damage resulting from the nuclear reactor or isotope battery of a space object, and the second was damage from nuclear materials which spread from the nuclear facilities on the ground or nuclear ships, damaged or destroyed by a space object. Thus the question was whether the convention should as necessary cover both kinds of risk. There was no doubt that it should cover the first, but the second was debatable.

The Japanese delegation had also observed that the Sub-Committee would have to establish an interrelationship between the convention it was preparing and the 1963 Vienna Convention. The Japanese delegation took the view that a State which had suffered nuclear damage of the second kind would have a choice, in the matter of a claim for compensation, between the convention in course of preparation and the Vienna Convention. The Czechoslovak delegation would be prepared to endorse that interpretation and hoped that the Sub-Committee would in due course carefully study the Japanese delegation's comments.

Mr. TOKUHISA (Japan) said that his delegation had submitted the working paper referred to by the Czechoslovak representative mainly because it had wished to show that it would be necessary to clarify the legal implications of the inclusion of nuclear risks in an agreement on liability. His delegation would not again rehearse its misgivings about those implications, since it had alluded to them in its working paper.

In order to avoid any misunderstanding, it must stress that it had so far not made up its mind on whether the convention should or should not cover nuclear damage. It would like to hear the views of other delegations on the legal implications it had mentioned.

Mr. FREELAND (United Kingdom) wished to add briefly to what his delegation had said earlier on the question of applicable law. At the 124th meeting, the representative of Argentina had pointed out the advantages of referring, in the relevant provision, to the law of the place where the damage was caused, as in his proposal (A/AC.105/C.2/L.59), rather than to the law of the State on the territory of which the damage occurred, as in another proposal (A/AC.105/C.2/L.62). A reference to the law of the place might indeed have advantages, from the point of view of precision and comprehensiveness; and certainly the point deserved further study. It should, however, be recognized that even a reference to the law of the place would not produce a clear-cut and uniform answer in all possible cases. To take an example mentioned by the Argentine representative, that of the Antarctic, there were persons in that area who, as a result of article VIII of the Antarctic Treaty, were subject only to the jurisdiction, and hence to the law, of the State of which they were nationals. Since that example had led the Argentine representative to make a reference to sovereignty in the area, the United Kingdom delegation considered it necessary to say that it did not accept that reference.

On the question of applicable law, as on others, it was almost certainly too much to hope to cover all contingencies in a convention of that kind. Although the idea of referring to the law of "the place" merited further consideration, his delegation regarded the proposal on applicable law submitted by Austria, Belgium, Canada, Italy, Japan and Sweden (A/AC.105/C.2/L.62) as providing a generally satisfactory and workable rule.

The CHAIRMAN noted that, on the question of the applicable law, the members of the Sub-Committee appeared to be in agreement on two points. First, at its seventh session, the Sub-Committee had decided in principle, with regard to assessment of damage, that if a law had been agreed upon between the claimant and the respondent, that law should be applied (A/AC.105/C.2/W.2/Rev.4/Add.4). At its eighth session the Sub-Committee had not altered that decision. The second point settled after discussion was that compensation should also be determined in accordance with international law.

Mr. VRANKEN (Belgium) confirmed the Chairman's interpretation. On behalf of the sponsors of the proposal (A/AC.105/C.2/L.62) on the applicable law, he explained that the last sentence should be taken to mean that, where the parties agreed, any solution was permissible; the parties were not required to refer to a rule of "law". That was why the sponsors of the proposal spoke of "any other principle agreed upon". But the delegations concerned did not insist upon that formula and would be prepared to accept another, provided that it was as broad as possible.

Mr. ZEMANEK (Austria), speaking as a co-sponsor of the proposal A/AC.105/C.2/L.62, confirmed that the idea of the last sentence was to make the text as flexible as possible; the term "principle" had been used because the sponsors had had in mind the principles of equity. However, since that term might be taken to exclude law, it would be better to cover all possible contingencies by rewording the principle agreed on at the seventh session in the following way: "If there is agreement between the claimant and the respondent on the applicable law or on the principles to be applied, then that law or those principles should be applied".

Mr. MILLER (Canada) supported the suggestion of the Austrian representative.

Mr. PIRADOV (Union of Soviet Socialist Republics) said he would not express an opinion until he had received the written text.

The CHAIRMAN said the Sub-Committee would again take up the question when the text of the Austrian suggestion had been circulated.

He asked, with regard to the second point of agreement he had mentioned, namely the need to refer in the provision relating to the applicable law to international law, whether the members of the Sub-Committee were agreeable to stating the principle which they seemed to favour in the terms of the first sentence of proposal A/AC.105/C.2/L.62. It was understood, of course, that that would not necessarily be the wording used in the corresponding provision of the text of the convention.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that he agreed in principle but inasmuch as the Sub-Committee was still engaged in only a preliminary examination of the five pending questions, he did so subject to the express reservation that his agreement in principle was in the context of an over-all solution of those five questions.

The CHAIRMAN suggested that the Sub-Committee should agree in principle to refer to international law in the provision relating to the applicable law.

It was so decided.

Mr. O'DONOVAN said that in the absence of agreement between the parties on the applicable law, Australia would prefer that the parties should have to turn not only to international law but also to the law of the "place" in which the damage was caused and not to that of the "State" in which it occurred. Provision had to be made for federal States, such as Australia, where risks were in general covered by legislation which differed somewhat depending on the "place".

He also wished to make it clear that he could not accept Argentina's claim to sovereignty over the whole of the Antarctic territory, as stated by the Argentina representative at the 124th meeting.

The meeting rose at 11.30 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-SIXTH MEETING

held on Monday, 30 June 1969, 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/C.2/W.2/Rev.4/Add.4; A/AC.105/C.2/L.60 and Add.1;
A/AC.105/C.2/L.62, L.65, L.67; PUOS/C.2/69/1).

Mr. AMBROSINI (Italy) said that by deciding that the Apollo 11 astronauts would carry the flags of all States Members of the United Nations with them to the moon, the United States Government had reaffirmed its respect for the 1967 Treaty. The Sub-Committee should welcome the United States' decision.

Mr. DJAHANNEMA (Iran), referring to the questions on which the Sub-Committee had not yet reached agreement, said that provisions relating to nuclear damage should be included in the proposed convention. There were two reasons for that: first, there was a difference between nuclear damage caused by space objects and that coming under the 1962 Convention of Brussels on the liability of operators of nuclear ships^{31/} and the 1963 Convention on Civil Liability for Nuclear Damage respectively; and, secondly, the proposed Convention would be the first international treaty relating to damage caused by nuclear-propelled space objects. It should be remembered, too, that the 1967 Treaty did not distinguish between types of damage.

Although it was opposed, in principle, to any limitation of liability, his delegation was prepared, in a spirit of conciliation, to consider proposals such as those made by the Australian and French delegations.

The most important question was that of the peaceful settlement of disputes between claimant and respondent States on the question of compensation for damage. The proposed convention would be valueless unless it provided practical means for the effective settlement of disputes arising out of space activity. Iran could accept the idea of compulsory arbitration as the final step in settlement procedure, but it considered that the competence of an arbitral commission should be restricted to determining liability and assessing the amount of compensation to be paid, in accordance with the views expressed by the Indian representative, and to interpreting the provisions of the convention, as suggested by the representative of Canada.

^{31/} Société du Journal de la marine marchande, Le droit maritime français,
Tome XIV, p. 582

Iran could support the proposal (A/AC.105/C.2/L.60 and Add.1) concerning the liability of international organizations.

The CHAIRMAN, drawing attention to the Austrian proposal (A/AC.105/C.2/L.65), reminded members that agreement had already been reached on the text of a principle relating to the applicable law (PUOS/C.2/69/1). If adopted, the Austrian proposal would be added to that text.

Mr. VRANKEN (Belgium), supported by Mr. CHARVET (France), said that the text reproduced in document PUOS/C.2/69/1 should end with a comma, not a full stop. The Sub-Committee had certainly agreed that the compensation to be paid should be determined first in accordance with international law. It had also been of the opinion, however, that the principle was incomplete and that other elements should be added to it.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that his delegation could not agree to the Belgian proposal. The Sub-Committee had reached agreement on the principle stated in document PUOS/C.2/69/1 but on nothing more.

Mr. VRANKEN (Belgium) said that in that case the words "in the first place" should be inserted after the word "determined".

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that the Belgian delegation should explain why it was unable to accept the principle on which the Sub-Committee had agreed. It should also submit written texts of any modifications it wished to propose to accepted principles.

Mr. AMBROSINI (Italy), referring to the Austrian proposal, said that the Sub-Committee had already decided that international law would be applicable unless the parties to a dispute decided otherwise. His delegation could not, therefore, accept the Austrian proposal. If there was agreement between the parties to a dispute concerning the applicable law, the arbitral commission must obviously respect the parties' wishes. Arbitration was a type of procedure under which the parties to a dispute always decided the issues on which the arbitral commission was to pass judgement. The Austrian proposal therefore appeared rather pointless. The convention produced by the Sub-Committee should be clear and concise.

Mr. FREELAND (United Kingdom) said that the Belgian representative's misgivings probably arose from the fact that the principle stated in document PUOS/C.2/69/1 appeared to be exclusive. The United Kingdom delegation certainly regarded it as only one of a series of principles which the Sub-Committee might adopt on the question of applicable law. The Sub-Committee might also agree to, for instance, the principle stated in

document A/AC.105/C.2/L.65, which was acceptable to his delegation. It might, in addition, agree to a principle referring to a system of domestic law. The principle referring to international law could remain as stated in document PUOS/C.2/69/1, provided it was clearly understood that it would be complemented by another principle, or other principles, which might be agreed subsequently. The Sub-Committee should make clear that any principle on which it failed to reach agreement at the current session would be reserved for further consideration.

Mr. VRANKEN (Belgium) endorsed the comments of the United Kingdom representative. His delegation could accept the text contained in document PUOS/C.2/69/1 provided it was understood that the principle would be supplemented by another on which agreement had not yet been reached.

Mr. RYBAKOV (Union of Soviet Socialist Republics), pointing out that there were still five questions on which the Sub-Committee had to reach agreement, read out a text prepared by his delegation on the liability of international organizations (A/AC.105/C.2/L.67). The first sentence merely reproduced a principle on which agreement had already been reached; the second embodied the principle, on which the Sub-Committee had agreed, of the joint and several liability of the participants in a joint launching; while the third recognized the need to take account of questions arising out of possible damage to the property of international organizations by space objects. His delegation hoped that its proposal would form the basis for a "package deal" on the controversial questions still to be settled by the Sub-Committee.

It was understandable that the wording of the principle stated in document PUOS/C.2/69/1 was not acceptable to all delegations. The Soviet delegation, too, had misgivings about the text, but feared that if modifications to it were accepted, the Sub-Committee might find itself obliged to re-word other principles on which agreement had already been reached.

Mr. ZEMANEK (Austria), said that his delegation could agree to the addition of the words of the agreed text in document PUOS/C.2/69/1 to the text of the agreed principle in the comparative table (A/AC.105/C.2/W.2/Rev.4/Add.4). Since the Austrian proposal reproduced the idea in proposal A/AC.105/C.2/L.62 of which the Italian delegation was a co-sponsor, he failed to understand the Italian representative's objection to it.

The USSR proposal on international organizations contained nothing new, and his delegation did not need to see it in writing. Its first sentence was covered by footnote 3 of the comparative table. The Austrian delegation itself had requested the

insertion of the word "provisional" in the heading to that footnote because it had considered that the agreement could be no more than provisional so long as the legal act by which the organizations concerned would assume their obligations under the convention had not been specified. The second sentence of the Soviet Union proposal was a repetition of the Hungarian delegation's proposed article VII, (A/AC.105/C.2/L.10/Rev.1), further discussion of which would be pointless in view of its repeated rejection by a number of delegations.

Mr. MILLER (Canada) said that, while recognizing the interrelationship of the five controversial points and the reasons for the Soviet Union delegation's reluctance to accept separate formal texts, his delegation considered that the Sub-Committee should, as at its previous sessions, record agreements reached in principle.

His delegation had supported the Austrian proposal on the applicable law, which was based upon and served to clarify proposal A/AC.105/C.2/L.62 of which Canada was a co-sponsor. He proposed that the agreed text in document PUOS/C.2/69/1 should be inserted as the first sentence of the agreed principle for measure of damages in the comparative table; that the first sentence of the text of the agreed principle in the table should become the second sentence, and that the second sentence in the table should be replaced by the Austrian proposed text.

He agreed with the Austrian representative's emphasis on the importance of the word "provisional" in the heading to footnote 3 of the comparative table in relation to the first sentence of the USSR proposal. Except for the last paragraph, that proposal did not contain any significant new points. The first paragraph was a restatement of the principle provisionally agreed upon at previous sessions, and the second reproduced the text of article VII of the Hungarian proposal (A/AC.106/C.2/L.10/Rev.1). Neither of those two paragraphs covered the rights of international organizations under the convention or provided for acceptance by them of their obligations. Furthermore, in imposing the same liability jointly and severally on all States members of an international organization the proposal went beyond the provisions of article VI of the 1967 Treaty. In his delegation's view, liability should fall only on States members of the international organization which were parties to the convention. The Soviet Union proposal did not make it clear whether the States members should be held liable only after the organization had been approached and had defaulted. The last paragraph of the proposal did, however, seem to represent a constructive move, and his delegation reserved its right to comment further on it after it had seen the written text.

Mr. AMBROSINI (Italy) reminded the Sub-Committee that his delegation had originally proposed a broad formula on applicable law which would leave it open to the parties to the dispute to choose any method of settlement. It had co-sponsored proposal A/AC.105/C.2/L.62 and Add.1 in a spirit of compromise, and stood by its decision to do so. He had merely wished to point out that if the principle was accepted that the parties had a duty to tell the arbitral commission what law should be applied, the Austrian proposal was superfluous.

Furthermore, the representative of Austria had not, in submitting his new proposal amending the proposal contained in document A/AC.105/C.2/L.62 and Add.1 which Austria had co-sponsored, been aware of the views of the other co-sponsors, in any case not those of the Italian delegation.

Mr. BOTA (Romania) said that so far as the liability of international organizations was concerned, the Sub-Committee should base itself on articles VII and XIII of the 1967 Treaty. Article XIII did not separate the international organizations from their member States nor could his delegation accept the suggestion that an international organization was an entity with an existence separate from that of its member States. The launching of an object into outer space by an international organization was identical to a joint launching by several States. The organization's liability should not depend upon its having made a declaration of acceptance of the rights conferred and the obligations imposed by the convention on liability, although that did not mean that such a declaration could not be made. A victim should not be denied compensation because the organization had not made a declaration, or for any other reason. The organization and its member States should thus become liable at the same time.

Mr. FREELAND (United Kingdom) said that his delegation still thought that international organizations should be recognized in a convention on liability as separate entities and that, as in the case of article 6 of the 1968 Agreement, provision should be made for them to accept the rights and obligations of the convention.

He agreed with the Austrian and Canadian representatives' comments concerning the first two paragraphs of the USSR proposal. The third paragraph appeared to be largely a repetition of paragraph 4 of the proposal A/AC.105/C.2/L.60 and Add.1 which his delegation had co-sponsored. That provision had been put forward as part of a compromise, to meet certain practical difficulties arising in the case of the presentation of claims by international organizations. Expressing doubts as to whether a practical suggestion of that kind could be treated as if it were a principle, he said he might comment further on the USSR proposal after seeing it in writing.

Mr. RYBAKOV (Union of Soviet Socialist Republics), referring to the doubts expressed by the representative of Canada regarding the USSR proposal, said that undue emphasis seemed to be placed on the "provisional" character of the agreement reached on the article in question. All agreement on the terms of the proposed convention would be provisional until the convention was ratified by the parliaments of the signatory countries. The last part of the proposal reflected the views expressed by several delegations, including that of France, during the discussions in the Working Group. The proposal was based directly on the provision in the 1967 Treaty which made international organizations liable for damage in all cases. The accession of the vast majority of United Nations Member States and some non-members to the Treaty seemed to be sufficient guarantee that any international organization engaged in space activities would act in accordance with that Treaty. He therefore saw no reason for the doubts expressed by the Canadian representative.

He regretted that the Austrian representative was prepared to reject the USSR's proposal, even before seeing it in writing, on the grounds that it included wording used in some earlier proposals, notably the draft article proposed by Hungary. The principle embodied in the Hungarian text was a sound one and appropriate for inclusion in the convention. It was difficult to find new approaches on matters of principle that would be acceptable to all delegations, and pointless to try to express those already before the Sub-Committee in different words without altering the substance. Concessions made at the present session on matters of principle had often been rejected and old ideas were sometimes presented in a new form as a new approach. If progress was to be made towards a convention acceptable to all United Nations Member States, new approaches and not new words were needed. A mere confrontation of ideas would lead nowhere. His delegation had explained its position on all the controversial issues and the outright rejection of its position could hardly contribute to progress.

He shared the Italian representative's view that the Austrian proposal on applicable law involved changes which were superficial and unnecessary. He preferred the original wording, but would nevertheless study the Austrian proposal.

Mr. RIHA (Czechoslovakia) supported the views expressed by Romania concerning the relationship between States and international organizations in the matter of liability. He preferred to wait until the USSR proposal had been submitted in writing before commenting on it. He was surprised that some delegations had objected to that proposal on the grounds that the wording of the second paragraph was the same as that of the Hungarian draft article. The Sub-Committee should make use of all the ideas and principles contained in the many drafts submitted to it.

Mr. MILLER (Canada) said that his delegation would give all texts submitted by the USSR the attention they deserved. He agreed with the representatives of Czechoslovakia and Romania that the provision governing the relationship between international organizations and their members in the matter of liability might be based on article XIII of the 1967 Treaty. The words "which are Parties to this Treaty" at the end of the article were especially pertinent. New wordings proposed in connexion with outstanding issues to introduce nuances of meaning should, he thought, be considered; and he therefore was prepared to accept the Austrian proposal. If other delegations objected to it, however, he would reconsider it in the light of their criticism.

Mr. PERSSON (Sweden) said he would study the USSR proposal when the written text had been circulated. He nevertheless recalled the proposals which his own and other delegations had submitted jointly on the subject in document A/AC.105/C.2/L.41. That proposal had now been replaced by the one in document A/AC.105/C.2/L.60 and Add.1, which incorporated several concessions made to meet other delegations' views. In his delegation's opinion, it did not represent an ideal solution but was a useful contribution to the search for a generally acceptable text.

The meeting rose at 12.45 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-SEVENTH MEETING
held on Tuesday, 1 July 1969, 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/C.2/W.2/Rev.4/Add.4; A/AC.105/C.2/L.60 and Add.1,
A/AC.105/C.2/L.61 and L.62, A/AC.105/C.2/L.65, A/AC.105/C.2/L.67, PUOS/C.2/69/1)
(continued)

The CHAIRMAN invited the Sub-Committee to consider the Austrian proposal on applicable law for the assessment of compensation (A/AC.105/C.2/L.65).

Mr. PIRADOV (Union of Soviet Socialist Republics) said he preferred the wording originally agreed upon at the sixth session,^{32/} for the reasons he had given earlier.

Mr. HERNDL (Austria) said that the text proposed by his delegation represented an attempt to introduce the principles embodied in proposal A/AC.105/C.2/L.62 in a form which seemed, from the discussion, likely to be generally acceptable. If, however, it made agreement more difficult, his delegation would withdraw it, on the understanding that proposal A/AC.105/C.2/L.62 remained before the Sub-Committee.

The CHAIRMAN asked the Sub-Committee whether it wished to reaffirm the principle, agreed upon at the seventh session, that "if there was agreement on the applicable law between the claimant and the respondent, then that law should be applied". As the Canadian representative had suggested, that sentence could follow the recently agreed text in document PUOS/C.2/69/1, and the two principles could be issued in one document in the order in which they had been approved.

It was so decided.

Mr. MILLER (Canada), recalling that at the seventh session the Sub-Committee had agreed, in principle, to leave open the question of the law to be applied to the assessment of compensation for damage, said that at the present session the Sub-Committee would probably have to leave open the question of the national law which should be applied in conjunction with international law in such cases. It might be appropriate to record the Sub-Committee's intention to leave that question open in a sentence such as the following: "The Sub-Committee left open the question of what other law might also be applied to the assessment of compensation for damage".

^{32/} See Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 32, document A/6804, annex III, para.17.

Mr. PIRADOV (Union of Soviet Socialist Republics) said it would be more useful to focus attention on points on which agreement had been reached than to spend time on orally submitted texts dealing with unresolved issues.

Mr. MILLER (Canada) replied that, although he would not press his proposal, he believed that it was just as important to highlight points on which agreement could not be reached as to record areas of agreement. Such a procedure was sound and had been followed by the Sub-Committee for a number of years.

Mr. BOYD (United States of America) said he agreed with the Canadian representative. The Sub-Committee's observations on the questions left open would be useful in preparing for the ninth session and would help governments to decide what attitude to adopt. The report of the eighth session would indicate the wider areas of agreement and draw attention to the few major issues on which differences remained. Unresolved aspects as well as progress made on such questions as applicable law and the treatment of international organizations should therefore be recorded.

He thought there should be no exclusion and no special rules for compensation for nuclear damage, since the compensation sought by a claimant would be no different from that payable for other forms of damage. All kinds of damage should be treated alike. In his delegation's opinion, that applied also to the points raised in the working paper submitted by Japan (A/AC.105/C.2/L.61), which advocated special interpretations for certain kinds of nuclear damage. Cases of the kind envisaged in the Japanese paper were most unlikely to arise under the Liability convention, and it did not seem necessary or desirable to complicate the work of the Sub-Committee by treating such cases in any special way. It would be wiser to concentrate on making adequate provision for the cases most likely to arise.

Mr. O'DONOVAN (Australia) said there seemed to be agreement that the applicable law should be international law or the law agreed upon between the claimant and the respondent, but that those were not necessarily the only principles to be taken into account in the assessment of compensation. He supported the Canadian representative's proposal, but would not insist on a reference to the failure to reach agreement on that issue if other delegations did not wish the report to show that the question of applicable law was still open. The report should, however, make it clear that what had been agreed did not represent all that the Sub-Committee had considered on the subject of applicable law.

Mr. ANGUELOV (Bulgaria), expressing his support for the USSR proposal on the position of international organizations vis-à-vis the liability convention submitted in its working paper A/AC.105/C.2/L.67, repeated his contention that an international organization could not be considered as a separate and different entity from the States it comprised. The text proposed avoided all controversial questions such as which international organizations would be considered as parties to the convention, the conditions on which they would participate, the proportion of their members which had to be parties to the convention for the latter to be binding on the organizations, or whether the organizations would be required to make a declaration accepting the provisions of the convention. Claimants could present their claims either to the organization or to its members, whichever course served their interests best, since the organization and its members would be jointly liable. An organization's right to compensation for damage to its property would be upheld by one of its members. Although an organization's rights under the convention would be recognized, the exercise of those rights would not be subject to any formal rules. His delegation found the USSR's proposal entirely satisfactory and wished to co-sponsor it.

The CHAIRMAN recalled that, although the Sub-Committee had before it two proposals on the position of international organizations (A/AC.105/C.2/L.60 and Add.1 and L.67), it had provisionally agreed at its sixth session on the principle that international organizations that launched objects into outer space should be liable under the convention for damage caused by such activities. He asked whether the Sub-Committee wished to reaffirm that principle.

Mr. FREELAND (United Kingdom) thought that it would be difficult to discuss the two draft articles before the Sub-Committee and try to deduce principles at the same time.

Mr. VENCATASSIN (France) endorsed the views expressed by the United Kingdom representative. There was no great discrepancy between the broad principles stated in the two proposals. The main difference was that the wording of proposal A/AC.105/C.2/L.60 and Add.1 was much more specific than that of the Soviet proposal. It was necessary to be specific. International organizations should, of course, be liable for damage, but only if they had declared their acceptance of the rights and obligations in the proposed convention. Similarly, it was right that an international organization and its member States should be jointly and severally liable. In case of damage caused by an international organization, however, the claim should first be presented to the

organization. If the claim had not been met within a period of six months, the claimant would be entitled to invoke the liability of all the members of the organization which were also parties to the proposed convention. Finally, only those member States which were parties to the convention should be responsible jointly with the international organization and severally. Under the final paragraph of the USSR proposal, the claim, in case of damage to the property of an international intergovernmental organization, would be presented by one of the States members of the organization which were parties to the convention. The provisions of the convention should, if possible, be consistent with each other. Thus, if in the case of damage caused to an international organization the claim could be presented only by a State member of the organization which was a party to the convention, liability also should be restricted to those States members which were parties to the convention.

Mr. VRANKEN (Belgium) said that there would be little difficulty in accepting the principle stated in the last paragraph of the USSR proposal; it differed only slightly from the principle stated in paragraph 4 of proposal A/AC.105/C.2/L.60 and Add.1. The principle stated in the second paragraph of the USSR proposal was, it was true, also to be found in paragraph 3 of proposal A/AC.105/C.2/L.60 and Add.1, but under the USSR proposal the victim might be obliged to sue both the international organization and its member States. That procedure should be avoided. As to the first paragraph of the Soviet proposal, it was difficult to support the Bulgarian contention that international organizations had no separate existence as such, since provisional agreement had been reached on an article stating that an international organization could be liable under the convention.

Mr. MILLER (Canada) suggested that the Sub-Committee might consider adding the concept contained in both the third paragraph of the USSR proposal and paragraph 4 of proposal A/AC.105/C.2/L.60 and Add.1 to the list of points on which agreement had been reached at the sixth session. It should be clearly understood, however, that the point was one on which only provisional agreement had been reached and that all the language agreed to at the sixth session, including that between brackets, must be maintained.

Mr. ZEMANEK (Austria) asked the Canadian representative whether, under his proposal, the last part of the paragraph between brackets in foot-note 3 of the comparative table (A/AC.105/C.2/W.2/Rev.4/Add.4) would be maintained, and whether the words "provisional agreement" would be maintained in the heading of the same foot-note.

Mr. MILLER (Canada) replied to the second question in the affirmative. As to the first question, the wording of the last part of the paragraph would have to be modified slightly. The full stop after the word "Convention" might, for instance, be replaced by a comma which would be followed by the words "although it was agreed that" and then the text of the last paragraph of the USSR proposal. The final sentence of the last paragraph between brackets should be maintained.

Mr. FREELAND (United Kingdom) said that his delegation could accept the Canadian proposal.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that the text of the final paragraph of his delegation's proposal was more exhaustive than the corresponding paragraph in proposal A/AC.105/C.2/L.60 and Add.1. It was appropriate, therefore, that it should be included among the points on which provisional agreement had been reached.

Mr. VRANKEN (Belgium) said that since provisional agreement had been reached on the third paragraph of the Soviet proposal, that text should, logically, follow the first paragraph on which agreement had provisionally been reached at the sixth session. The remaining paragraphs would, as in the comparative table, be maintained between brackets. It was the question of the status of international organizations on which disagreement subsisted. The word "Convention" in the last part of the paragraph between brackets should be followed by the words "or on their accession to the Convention".

Mr. PIRADOV (Union of Soviet Socialist Republics) pointed out that the question of the rights of international organizations was covered by the provisions of the third paragraph of his delegation's proposal.

Mr. ZEMANEK (Austria) suggested that if the word "complete" were inserted before the word "agreement" in the last paragraph between brackets, there would be no need to specify the points on which agreement had not been reached.

Mr. VRANKEN (Belgium) said that he agreed with the contention of the United Kingdom and United States representatives that the Sub-Committee should state the points on which it had failed to agree as well as those on which it had agreed.

Mr. O'DONOVAN (Australia), referring to the applicable law, said that, provided its position was recorded, his delegation would agree that no reference should be made to the points on which agreement had not been reached. His delegation could not accept, for example, the procedure proposed by the USSR for dealing with the position of international organizations. The Sub-Committee would decide at a later meeting what matters to include in its report. It was not yet clear whether the report would refer

adequately to the points on which agreement had not been reached, and his delegation accordingly supported the Belgian position that those points should be mentioned in any document dealing with points upon which provisional agreement had been reached. His delegation could not agree to the insertion of the word "complete" before "agreement" in the last part of the paragraph between brackets in foot-note 3 of the comparative table, since it would suggest that the Sub-Committee was close to real agreement on the subject, which his delegation did not believe to be the case.

The CHAIRMAN, supported by Mr. PIRADOV (Union of Soviet Socialist Republics) suggested that, in accordance with the proposals so far agreed, the heading of foot-note 3 should read "Points on which provisional agreement was reached by the Sub-Committee"; the first paragraph should remain as it stood in the comparative table and should be followed by the third paragraph of the USSR working paper, with the word "shall" in the second line amended to read "should"; the part between brackets in the comparative table would then follow.

Mr. FREELAND (United Kingdom), supported by the CHAIRMAN, proposed that the penultimate sentence of the part between brackets should be amended to read: "Nor was agreement reached on other aspects of the question of the rights of international organizations under the convention". That wording would be more logical in relation to the wording of the third paragraph of the USSR working paper.

Mr. MILLER (Canada) agreed with the Chairman's suggestion, as amended in the manner proposed by the United Kingdom representative, and expressed appreciation of the USSR delegation's agreement to the Chairman's formulation.

The Chairman's suggestion, as amended in the manner proposed by the United Kingdom delegation, was approved.

The CHAIRMAN invited the Sub-Committee to consider whether nuclear damage should be included among the points on which provisional agreement had been reached.

Mr. MILLER (Canada) said that his delegation considered nuclear damage to be included as a matter of course. It had stated at previous sessions that the problem was that some delegations wished to have it excluded. His delegation would not object to discussing the subject, but since its relationship to some of the controversial points on which agreement had not yet been reached raised difficulties for some delegations, it might be preferable not to discuss it at that stage.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that if the "package deal" proposed by his delegation was accepted there would be no problem.

Mr. FREELAND (United Kingdom) said that although his delegation would not attempt to override any hesitation others might have in recording agreement or provisional agreement on a principle concerning nuclear damage, the existence of the "package deal" idea had not prevented the Sub-Committee from recording agreement on other subjects within the "package", and there was no reason why it should do so in the present instance. The recording of an appropriately formulated principle did not mean that the convention itself had to mention nuclear damage. Such a principle might read: "Nuclear damage should not be excluded from the forms of damage covered by the convention".

Mr. O'DONOVAN (Australia) said that if the United Kingdom proposal could be accepted ad referendum and provisionally it could lead to real progress in the Sub-Committee's work. His delegation would accordingly support it.

Mr. RIHA (Czechoslovakia) disagreed with the Canadian representative's comments. His delegation had originally understood that the convention would not cover nuclear damage, and to have agreed that it should do so was a compromise on its part. There were a number of legal aspects connected with the subject which had not yet been discussed. His delegation would agree to the recording of provisional agreement on a principle on the lines proposed by the United Kingdom representative.

Mr. VRANKEN (Belgium) also supported the United Kingdom proposal. During previous discussions his delegation had agreed to consider the principle as established. The subject was one of the five points which should be dealt with together, but meanwhile a provisional principle could be agreed upon. He proposed that the fact that the subject formed part of the "package deal" should be mentioned.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that his delegation would give careful thought to the United Kingdom proposal, and might revert to the question at a later stage.

Mr. FREELAND (United Kingdom), in response to a request by the CHAIRMAN, agreed to submit his proposal in writing.

The meeting rose at 12.25 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-EIGHTH MEETING

held on Wednesday, 2 July 1969, 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/C.2/L.68, L.69; A/AC.105/C.2/W.2/Rev.4) (concluded)

Mr. KRISHNAN (India) said that it was regrettable that the Sub-Committee would be ending its session with little to show for its efforts, despite the mood of constructive co-operation in which it had begun. His delegation continued to hope that the intensive consultations that had been held between the seventh and eighth sessions, in an endeavour to reach the compromise for which the Chairman had pleaded, had not been in vain. The text of the New Delhi communiqué showed that the area of disagreement had been narrowed considerably and it had been reasonable to expect that full agreement might be reached. It seemed to his delegation, however, that the Sub-Committee was now further from agreement on the convention than it had been at the beginning of the session. Its failure to adopt a text had not been due to lack of co-operation by the non-space Powers, which had in the past acquiesced in the somewhat unconventional procedures used to pilot other agreements, such as the 1968 Agreement through the General Assembly. When that agreement had been adopted it had been generally understood that every effort would be made by the States concerned to complete the draft convention on liability at least in time for submission to the General Assembly at its twenty-third session. The humanitarian considerations upon which the 1968 Agreement had been based should inspire the Sub-Committee in drafting the convention on liability, particularly as there would be a greater number of potential victims.

In the broad objective of ensuring that outer space activities served the common interests of all mankind, and viewed in the community spirit which had inspired the General Assembly to declare that astronauts were the envoys of mankind, it would not appear reasonable to draft a convention on liability which limited the rights of innocent victims to secure redress. Attempts to restrict the scope of the convention were unjustified and inappropriate. He urged the space Powers to ponder the words of Professor Lachs, a Judge of the International Court of Justice, who had stated that the jurist's task in shaping the law of outer space involved more than the framing of technical treaty clauses and the analysis of documents: he was called upon to make progress in that law, to mould it in the interest of men and nations, to guarantee the protection of law to the great achievements of the past and present, to remove threats to survival and to strive for progressive law.

Introducing a revised version of the draft convention which his delegation had proposed at the Sub-Committee's seventh session, he requested that it should be issued as an official document of the Sub-Committee^{33/}. It had been drafted in an attempt to cover in one document the maximum area of agreement. There was nothing really new in it; it recorded the points of agreement arrived at in the Sub-Committee, with some rearrangement of paragraphs of the agreed texts. The preamble and final clauses reproduced the earlier Indian proposal (A/AC.105/C.2/L.32/Rev.1 and Corr.1), the greater part of the preamble having been borrowed from the preambular paragraphs of the General Assembly resolutions on outer space. The final clauses were based on the final clauses of the 1967 Treaty and the 1968 Agreement. The terms "claimant" and "respondent" had been retained in article I because his delegation considered that they served a useful purpose, particularly since they were used throughout the body of the convention. Article III(2) reproduced the text upon which the Sub-Committee had agreed at its seventh session. Article IV(2) reproduced the Soviet Union proposal as amended by the Australian delegation; his delegation had gained the impression that it might eventually be found acceptable to all. The USSR text had been used for article X since it had seemed to enjoy a wide measure of support in the Sub-Committee. Article XI reproduced the language of the corresponding provision in the earlier Indian proposal. His delegation considered it appropriate to incorporate that provision in the draft of a full convention, despite the Working Group's decision that there would be no general provision relating to joinder of claims in the text of the convention on the understanding that the question might be considered later if the need arose.

The revised text contained the optimum provisions with regard to the so-called New Delhi points. In article I(a) the term "damage" had been defined as including both nuclear and non-nuclear damage. If the Sub-Committee thought that a separate provision on that point was necessary, his delegation could support such a formulation. It was encouraging that no dissenting opinion had been expressed on the substantive issue involved.

The new provision on applicable law in article VI was a combination of the agreement reached by the Sub-Committee at its seventh session and the Indian proposal in the New Delhi communiqué. The provisions on international inter-governmental organizations

^{33/} Subsequently circulated as document A/AC.105/C.2/L.32/Rev.2.

in article XIII included the Indian proposal in the New Delhi communiqué which had been accepted by the delegations participating in the informal consultations. A new provision had been added to cover damage caused to the property of an international intergovernmental organization because it was felt that in the light of the discussions at the present session such a formulation might eventually prove unanimously acceptable.

His delegation considered that the question of settlement of claims occupied an important place in any convention on liability. The new proposals in annex I were closely modelled on the Indian proposal in the New Delhi communiqué. Three stages were envisaged: diplomatic negotiations, an inquiry commission and a claims commission. The non-space Powers were prepared to afford all reasonable opportunities to the respondent States before the stage of the claims commission, which would be competent to render a binding decision, was reached. His delegation would be prepared, in a spirit of compromise, to consider the introduction of a conciliation commission between the inquiry commission and the claims commission and would present a further revised draft to incorporate that idea if the Sub-Committee so desired. The question of headings to the various articles was a minor matter on which agreement should not prove difficult.

His delegation was submitting its revised text as the best compromise that could be hoped for and in the conviction that the best should not be allowed to become the enemy of the good. There was already general agreement on most of its provisions. It should be possible to settle the minor differences rapidly once agreement had been reached on the few remaining vital issues. He appealed to the space Powers in particular to make the extra effort necessary to solve those more difficult problems. The late Indian Prime Minister, Shri Jawaharlal Nehru, had once emphasized in a different context the need for catching up before the gap widened. Failure on the Sub-Committee's part to comply with the directive in General Assembly resolution 2453 (XXIII) of 20 December 1968 would make it imperative to refer the whole matter through the Committee to the General Assembly as the final arbiter.

Mr. PÉTRAN (Hungary) said that his delegation had devoted its full attention to the work of preparing the convention on liability and had carefully examined all proposals which had been submitted on the subject. Evidence of its efforts could be found in the draft convention which it had submitted (A/AC.105/C.2/L.10/Rev.1 and A/AC.105/C.2/L.24 and Add.1). Unless attention was concentrated on the controversial questions still outstanding, the only outcome of the Sub-Committee's session would be a further proliferation of documents.

The most controversial question remaining was the settlement of disputes. His delegation had endeavoured to reconcile opposing views in article XI of the draft convention which it had submitted (A/AC.105/C.2/L.10/Rev.1) and by drawing attention to article XI of the Antarctic Treaty of 1959. In an additional effort towards a solution it now proposed that consideration should be given to drawing up an optional protocol on a mandatory procedure for the settlement of disputes, as had been done in the case of the conventions drawn up at the 1958 United Nations Conference on the Law of the Sea, the 1961 United Nations Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. Such a course would make it possible for States to sign the convention while accepting or rejecting the protocol as they saw fit and would help towards a speedy conclusion of the convention, which would not be of real value unless it was accepted by the majority of States. His delegation would welcome the views of others on the proposal, which was based on the realistic approach and spirit of good will necessary for the settlement of controversial issues.

Mr. ZEMANEK (Austria) said that it was to be regretted that the Sub-Committee had not yet reached agreement on the convention on liability, the prospects of which had seemed good at the end of the informal discussions at New Delhi. The convention was an issue not of current political configurations but of potential claimants - the great mass of non-space Powers - defending their legitimate interests against potential defendants. His delegation failed to see how any ideological elements could be read into the issue.

The reference which had been made to the mode of adoption of the 1968 Agreement had been resented by some delegations. It should not be forgotten, however, that the non-space Powers had in fact undertaken obligations for the rescue and return of the envoys of mankind and of space objects, in the interests of an activity in which they were only indirectly, and to a minor degree, beneficiaries. The link between the two conventions had been recognized at earlier sessions of the Sub-Committee, and when the General Assembly had adopted the 1968 Agreement, solemn assurances had been given by all concerned that conclusion of the convention on liability would quickly follow.

The non-space Powers had always adopted a realistic attitude. It was enough for his delegation that its own Government should be satisfied with its work; it did not seek the approval of those who described as "unrealistic" or "unconstructive" the views of delegations which defended their countries' legitimate interests. Everyone who

respected the principle of sovereign equality should refrain from making sweeping comments on the attitude of the representatives of another sovereign State. If "realism" was taken to mean that countries should sacrifice their own interests and accept what others deigned to give there would appear to be two different notions of sovereign equality and of negotiation.

His delegation had come to the session prepared to accept the proposal which the Indian delegation had made at New Delhi. Although his delegation had not been happy about all the points in it, particularly the provisions on applicable law, international organizations and the settlement of disputes, it would have accepted them as one package because they seemed to represent a fair compromise between conflicting interests. His delegation was still hopeful that agreement might be reached, but its patience was diminishing. It would study the proposal made by the Hungarian representative with the customary attention.

Mr. FREELAND (United Kingdom) said that the tabling of a further revised draft convention represented another constructive contribution by the Indian delegation towards progress in the work on that subject. At first glance, the new Indian proposal indeed seemed to reflect in large measure the agreement reached so far. Although his delegation saw difficulty in some of the points contained in it, the new draft as a whole could provide a useful basis for further efforts to prepare an acceptable convention.

As regards the Hungarian proposal, the main purpose of the convention was to provide security for potential victims of damage caused by space activities. There would be no genuine security for such victims if there were no adequate assurance that they would in due course receive proper compensation. The addition of an optional protocol on the settlement of disputes, as suggested by the Hungarian delegation, would not provide that assurance unless there were good grounds for expecting all potential respondent States to become parties to the protocol. At present there was no reason to expect that all would. Its acceptance by potential claimant States could not suffice to give the security they were seeking. Such an expedient, while it might be satisfactory in quite different contexts, must therefore be regarded as unlikely of itself to bridge the gap in the present case between the opposing positions on the settlement issue. He accordingly urged a greater readiness to accept, as the realistic course, the inclusion in the convention of provisions for binding third-party settlement.

Introducing the United Kingdom's proposal on nuclear damage (A/AC.105/C.2/L.68), he pointed out that, of all the five issues discussed in the New Delhi talks, the question of nuclear damage seemed to have given rise to the broadest measure of agreement

in the Sub-Committee. It had therefore seemed desirable that the Sub-Committee should have an opportunity to express its agreement or provisional agreement on a formulation of that principle. If some delegations needed more time to study the United Kingdom proposal, he would however not press for its early consideration.

Mr. PERSSON (Sweden) said that the new Indian proposal was a valuable contribution to the Sub-Committee's efforts to prepare a convention on liability. Such a convention could be regarded as the proper counterpart of the numerous obligations undertaken by the non-space Powers vis-à-vis the space Powers under the 1968 Agreement. That view was reflected in the General Assembly's repeated requests for the early completion of a draft agreement on liability. The convention would be the Bill of Rights of those sustaining damage as a result of space activities. Many delegations considered that the most important guarantees that the space Powers could give potential victims, whether individuals, juridical persons or States, were effective remedies for the settlement of claims for compensation, preferably laid down in the convention itself and not in an optional protocol annexed to it. He agreed with the United Kingdom representative that such a protocol would not safeguard the legitimate interests of claimants under the convention.

The inclusion of a provision similar to article XI of the Antarctic Treaty would also be unsatisfactory for the purposes of the convention. Under that article, if the parties to the dispute were unable to reach a settlement by negotiation or to agree to refer the dispute to International Court of Justice - as seemed likely in the present context - they were obliged to continue their efforts to find a solution by the very means which had already proved unworkable. Arbitration had proved useful in international relations and was recommended in many international treaties. As an example of a recent agreement on the same subject, he wished to mention the 1961 European Convention on International Commercial Arbitration,^{34/} which had certain affinities with the liability convention, since in both cases the arbitration commissions would be called upon to decide on the amount of compensation payable. Ratification of the European Convention implied acceptance of the principle of arbitration, but many of the States whose delegations were now opposed to any form of compulsory settlement of disputes had ratified that Convention.

^{34/} United Nations, Treaty Series, vol. 484, p. 350.

It would be useful if States represented in the Sub-Committee could be kept informed of the progress of any future informal consultations on the unresolved issues in view of their far-reaching consequences for all countries.

Mr. de SOUZA e SILVA (Brazil) said that he understood that groups of delegations had met, under the chairmanship of the Chairman of the Sub-Committee with the assistance of members of the secretariat, for informal consultations on matters which were part of the Sub-Committee's work programme. Other members of the Sub-Committee had not been informed of those meetings and had therefore been unable to attend them. His delegation had no objection to the holding of informal consultations which it did not wish to attend, but it disapproved of a procedure whereby certain delegations were excluded from consultations held without the knowledge of all members of the Sub-Committee.

The CHAIRMAN said that no informal meetings of that kind had been held in connexion with agenda item 2, since some delegations had opposed the Australian suggestion that a small working group should be established for that purpose. There had, however, been informal consultations of groups of delegations on the five proposals submitted under agenda item 3, since the Sub-Committee had decided to devote only three days to that item. The sponsors of those proposals and he himself had hoped that the Sub-Committee would be able to deal more expeditiously with them if the sponsors met informally, perhaps with other delegations, to exchange views on them. Those consultations had been open to all delegations wishing to attend and any conclusions or consensus reached there were not binding on the Sub-Committee or any of its members, who would have the right to express their views and take appropriate decisions on them in the Sub-Committee. No official notice of the consultations had been given, but there had been no question of excluding any member who might wish to participate.

Mr. O'DONOVAN (Australia) endorsed the Chairman's statement. If any progress had been made in the discussions on agenda item 3 it was by reason of the procedure outlined by the Chairman. Had the Sub-Committee seen fit to adopt a similar procedure for agenda item 2, progress on that item might have been more substantial.

Mr. RYBAKOV (Union of Soviet Socialist Republics) supported the views expressed by the Brazilian representative. The Soviet Union delegation had been unaware of the fact that all delegations had not been invited to the informal discussions. In view of the involuntary absence of certain delegations, it could not be contended that the informal discussions on agenda item 3 had been successful.

Mr. BOYD (United States of America) regretted that the Sub-Committee had been unable to complete the draft of a liability convention at the present session. Some progress had nevertheless been made and would be reflected in the report. His delegation had made careful preparation for the session and had adopted flexible positions with regard to the outstanding issues, and had participated widely in bilateral and multilateral informal consultations both prior to and during the current session. His Government recognized the continuing validity of the pledges made during the General Assembly's discussion on the 1968 Agreement and continued to consider completion of the Convention an urgent matter, also because the United States was a potential claimant as well as a potential respondent.

He understood that the new Indian draft reflected areas of agreement reached so far and said that provision for the settlement of disputes was one of the key issues remaining unresolved. He had the impression, however, that the Indian representative had attached equal importance to the question of the limitation of liability. In his delegation's opinion that was a marginal issue on which his delegation had shown considerable flexibility and which could be readily settled. There were still substantial differences of opinion on the settlement of disputes, an issue which warranted the special attention of all delegations. Agreement would require a universal willingness to compromise, as well as good will and realism.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that his delegation would study the new Indian proposal, which quite rightly included the question of limitation among the crucial outstanding issues. There should be no limitation on liability, since it would be difficult at present to decide on a realistic limit. The Indian draft on applicable law seemed to offer a realistic solution as far as the principal was concerned. The final clauses presented no problem, since there were already adequate precedents in existing space agreements. The first stage in the settlement procedure proposed by India warranted careful study, but the last stage was unlikely to lead to progress.

The Indian proposal was supplemented by the constructive suggestion made by the Hungarian delegation. He agreed that attention should henceforth be concentrated on the unresolved issues. The idea of an optional protocol was a realistic way to solve the difficult problem of settlement procedure and its acceptance would permit the earliest possible conclusion of a convention on liability. He hoped that delegations would not discard it without careful study.

The Austrian representative had said that ideological issues should not be introduced into the debates of the Sub-Committee. It was not a question of introducing ideological issues, but of taking into account the positions of States with different social and legal systems and with a different approach to international relations. That was the only way to settle complex issues involving divergent views on matters of principle. The appeal to the space Powers to contribute to efforts to complete a convention implied that those Powers were to blame for the failure to reach agreement. Responsibility for the preparation of a convention did not rest only with the space Powers, but called for concerted efforts by all the States represented and an equal, constructive contribution from each one. It had also been implied that the existence of the 1968 Agreement while there was no convention on liability was also the fault of certain States. Events had made it imperative to solve the problem of rescue, and that had proved possible because no controversial issues were involved. Astronauts had already died, but so far no space object had caused any damage. The 1968 Agreement in fact provided less protection to astronauts than was warranted by their courage, to which all mankind was indebted. The USSR would not support any attempt to use the safety of astronauts as a bargaining counter for obtaining agreement in other fields. Liability was a far more complex issue, on which there were conflicting positions and which could only be resolved on the basis of compromise. He wholeheartedly supported the Hungarian representative's appeal to all delegations to show good will and adopt a realistic attitude.

Mr. COCCA (Argentina) said that at the present session the Sub-Committee had benefited by the efforts of Italy and India, which had both submitted draft conventions summarizing points on which agreement had been reached at the previous and the current session. The second revised Indian draft, together with the texts of principles on which the Sub-Committee might reach agreement before the end of the session and with the Sub-Committee's report, might provide the basis for the final text of the convention on liability. It had to be admitted, however, that differences of opinion in the Sub-Committee were as acute as ever. It did not therefore seem appropriate, at that stage, to embark on the preparation of complex compromise solutions as suggested by the Hungarian delegation. The Sub-Committee should tackle the substance of the problem of the compulsory settlement of disputes, for whatever procedure was adopted should provide that settlement was to be compulsory. Provision was made in article 1 of

the compulsory protocol annexed to the Indian draft convention for an Enquiry Commission which was not exactly similar to the Conciliation Commission of the Vienna Convention on the Law of Treaties. Similarly, the provisions of article II of the so-called compulsory protocol were limited by those of article VI. Even the Indian draft could not, therefore, be regarded as providing a solution which, when all other attempts at settlement had been exhausted, would be compulsory. It was essential that the final, and necessarily compulsory, solution should be applicable in accordance with law and equity. In the opinion of his delegation, therefore, none of the drafts submitted to the Sub-Committee at the current session could be regarded as providing a satisfactory final solution. All the proposals submitted on the subject would, however, be most useful in helping the Sub-Committee to prepare a final text at a later session.

Mr. EL REEDY (United Arab Republic) said that there was a general feeling of despondency at the Sub-Committee's failure to prepare a satisfactory convention. Little would be gained by trying to assign blame for the failure; rather, all members should persevere in their efforts to accomplish the task entrusted to them by the General Assembly, namely, to complete an agreement on liability. Such an agreement would eventually form part of space law and, as such, would benefit both claimant and respondent States. It might be useful at that stage to recall such events in the Sub-Committee's history as the agreement to work by consensus and the willingness of the non-space States to formulate the 1968 Agreement while renouncing claims to sovereignty in outer space and accepting the general principle of the peaceful exploration of outer space. Those decisions had been taken in a spirit of realism. It was in that spirit, too, that members should continue to examine all proposals submitted to them, particularly the Indian proposal concerning the introduction of a conciliation stage in the settlement of disputes.

Mr. CHARVET (France) said that his delegation would study the Indian proposal carefully in the conviction that it included a number of points on which agreement could have been reached at that meeting if it had been possible to discuss the text point by point. The French delegation was interested, too, in the Hungarian proposal. In a spirit of realism, however, it had to point out that the purpose of the convention on liability was the protection of victims. The Hungarian proposal might be acceptable if the Sub-Committee's task was to prepare an inter-State agreement to regulate States' activities. That, however, was not the case. The Sub-Committee was, of course,

interested in the question of damage to property but its main concern was with protection of the physical person. It did not seem, therefore, that an optional protocol would provide a satisfactory solution to the problem.

Mr. VRANKEN (Belgium) regretted the fact that at its eighth session the Sub-Committee had made but scant progress. His delegation had participated in the New Delhi talks and had always been prepared to make compromises in order to achieve a satisfactory convention. It was in a spirit of compromise that it was prepared to accept the Indian draft despite the fact that there were points in it with which Belgium did not agree.

The Sub-Committee had made real progress. The question of the settlement of disputes would, however, always be a stumbling block. The Belgian delegation was convinced that there was more a political than a legal question. It wondered, therefore, whether it would not be useful to raise it in other United Nations bodies with a view to finding a satisfactory solution. His delegation had lost all hope of finding a purely legal solution in the Sub-Committee.

Mr. KRISHNAN (India) expressed his delegation's satisfaction with the reception accorded to its revised draft convention. If as a result of its initiative the Sub-Committee's work had been expedited, however slightly, his delegation's efforts would have been amply rewarded. It was encouraging to learn that the United States delegation would maintain a flexible approach to the question of a ceiling on liabilities and that the Soviet Union delegation welcomed the Indian draft.

With regard to the procedure for the settlement of claims, an optional protocol modelled on those of the Vienna Conventions of 1961 and 1963 or on the corresponding provisions of the Antarctic Treaty would not, in the opinion of his delegation, meet the need. India would, however, study the Hungarian proposal with the attention it deserved.

Mr. MILLER (Canada) said that the Sub-Committee's eighth session had not been a total failure. The results of the work done in the Working Group would, when discussed in the plenary meeting, show just how good the atmosphere at the session had been. Progress had been made on several points: two textual articles had been prepared on the presentation of claims; agreement had been reached on additional principles of applicable law; articles had been prepared on the pursuit of remedies

and the time limit for the presentation of claims; the text on joint liability had been reaffirmed; a text on international organizations had been prepared and the definition of damage improved; a text had been prepared on the definition of "launching States" and a new agreement on the term "space object" had been reached.

It did seem, however, that by discussing them as part of a package deal, the Sub-Committee had inhibited its progress on the five "New Delhi Points". The Canadian delegation would consider carefully both the Indian and the Hungarian proposals. It could not but feel, however, that a victim-oriented convention should provide that a victim would, not might, be compensated for damage caused by space objects.

The key to successful completion of a comprehensive convention lay, of course, in a satisfactory solution to the problem of the peaceful settlement of disputes. His delegation was confident that if the spirit of compromise, good will and perseverance evinced at the present session was maintained, the Sub-Committee would achieve its objective.

The CHAIRMAN agreed with the Canadian representative that it was necessary to strike a proper balance in the Sub-Committee's achievements. It was regrettable that, owing to factors beyond its control, the Sub-Committee had been unable to prepare a convention on liability. On the other hand, the Sub-Committee had worked out the substance of the whole convention, except for three articles. In view of the really difficult circumstances in which the Sub-Committee had had to work, that was an impressive achievement.

In conclusion, he appealed to all members to do their utmost to reach agreement on the three questions still outstanding.

The meeting rose at 1.25 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND TWENTY-NINTH MEETING

held on Wednesday, 2 July 1969, at 3.20 p.m.

Chairman:

Mr. WYZNER

Poland

STUDY OF QUESTIONS RELATIVE TO:

- (a) THE DEFINITION OF OUTER SPACE
- (b) THE UTILIZATION OF OUTER SPACE AND CELESTIAL BODIES, INCLUDING THE VARIOUS IMPLICATIONS OF SPACE COMMUNICATIONS (agenda item 3) (A/AC.105/C.2/L.55/Rev.1, L.56, L.57 and Corr. 1, L.64 and L.69) (resumed from the 115th meeting and concluded)

The CHAIRMAN invited the Sub-Committee to resume its examination of item 3 and to take decisions on a number of proposals in the order of their submission.

Mr. MILLER (Canada) explained that his delegation had submitted a proposal (A/AC.105/C.2/L.55) to meet the wishes of those delegations which wished the Scientific and Technical Sub-Committee to state its views on the technical aspects of the registration of objects launched into space. A revised text (A/AC.105/C.2/L.55/Rev.1) had been produced after unofficial consultations.

The Canadian proposal (A/AC.105/C.2/L.55/Rev.1) was adopted.

The CHAIRMAN pointed out that the proposals submitted by Belgium (A/AC.105/C.2/L.56) and France (A/AC.105/C.2/L.64) concerning the definition of outer space were very similar; he therefore suggested that they should be examined together.

Mr. ABDEL-GHANI (Chief, Outer Space Affairs Division) said that, under the Belgian proposal, the Secretary-General was invited to prepare a background paper taking account of the contributions, studies, data and documents which might be obtained from the specialized agencies and other international and national organizations interested in the subject.

The secretariat would have no difficulty in contacting the specialized agencies and obtaining their views. The question of the delimitation of outer space, was obviously of interest, for instance, to ICAO; other agencies such as ITU and WMO were also interested, in view of their respective activities in space communications and space meteorology.

It would, however, be useful if the Sub-Committee could help the secretariat to identify the other international and national organizations and institutions to which the proposal was intended to apply. The secretariat believed that two annual reports issued by the United Nations in that respect might serve as a basis. The

report on the activities of international organizations provided an account of the activities carried out by the United Nations through its Committee on the Peaceful Uses of Outer Space with its two sub-committees and subsidiary working groups. It also provided information on the activities of the specialized agencies and other international organizations, both inter-governmental and non-governmental. It would be helpful if the Sub-Committee could indicate whether the international organizations referred to in the French proposal were those which reported to the Committee. Those organizations were the following: in the case of inter-governmental organizations, ELDO, ESRO, INTELSAT and the European Conference on Satellite Communications; in that of non-governmental organizations: ICSU, COSPAR, IAF and the Inter-American Agency for Space Research. If the Sub-Committee had any other international organizations or specific international institutions in mind, it would facilitate the secretariat's work if that could be indicated.

The second report dealt with national activities and was a compilation of information submitted by the Member States (some forty States in the case of the last report). It should be emphasized that, in accordance with General Assembly resolutions, that report related solely to States Members of the United Nations. Most of the reports communicated by Member States referred to national organizations which were concerned with outer space matters, and, in implementing the French proposal, the secretariat would approach only the national organizations which Member States had mentioned in their reports; those organizations would be approached regardless of the level of scientific and technical progress in the space field achieved by the countries to which they belonged.

Mr. SLOAN (Director, General Legal Division) outlined the financial implications of the two proposals under discussion. On the basis of a document of about a hundred pages issued in four languages, the cost of the paper referred to in the Belgian proposal was estimated at approximately \$5,000. The cost of the paper referred to in sub-paragraph (a) of the first operative paragraph of the French proposal was also estimated at \$5,000 while that of the paper on the compilation of material received from the specialized agencies and IAEA was estimated at \$4,000 on the basis of a document of some eighty pages. In either case, the substantive work would be carried out within the existing facilities.

Mr. VENCATASSIN (France), referring to the statement by the Chief of the Outer Space Affairs Division, said he thought that the secretariat should approach

all the international organizations, both inter-governmental and non-governmental, which had been invited to participate in the 1968 Vienna Conference, as well as all the national organizations mentioned in the reports submitted by States Members of the United Nations.

Mr. PIRADOV (Union of Soviet Socialist Republics) pointed out that the Sub-Committee could not invite the Secretary-General to prepare papers without reference to the Committee. It would therefore be preferable for the operative part of the Belgian proposal to begin as follows: "Requests the Committee on the Peaceful Uses of Outer Space to invite the Secretary-General to prepare ..."; the remainder would be left unchanged.

His delegation considered that the international and national organizations and institutions which the secretariat should approach for the purpose of preparing the paper in question should all be specified, and that the Committee would have to take a decision on the matter. The operative part of the Belgian proposal and sub-paragraph (a) of the first operative paragraph of the French proposal should therefore be followed by a phrase of the following type in brackets: "at the discretion of the Committee on the Peaceful Uses of Outer Space".

Mr. FREELAND (United Kingdom) said that the amendment proposed by the USSR representative was not quite clear in that it also seemed to apply to the specialized agencies. In the circumstances, it might be better to use the following wording: "... obtainable from the specialized agencies and such other international and national organizations and institutions interested in the subject as may be determined by the Committee".

In any event, his delegation considered that, if the Committee had to make a choice, it would probably be along the lines suggested by the Chief of the Outer Space Affairs Division. He wished to make clear that his delegation's agreement to the insertion of the above-mentioned phrase should not be taken to mean that it favoured some other choice.

Mr. PIRADOV (Union of Soviet Socialist Republics) supported the wording suggested by the United Kingdom representative.

Mr. ABDEL-GHANI (Chief, Outer Space Affairs Division) said that, to avoid confusion, the word "concerned" should be inserted after the words "specialized agencies".

The CHAIRMAN suggested that the Belgian proposal should be adopted with the amendments proposed by the United Kingdom representative and the Chief of the Outer Space Affairs Division, and with the addition of sub-paragraph (b) of the first operative paragraph of the French proposal. The French delegation had just informed him that it would withdraw the remainder of its proposal in view of the differences of opinion to which it had given rise during unofficial consultations.

The Belgian proposal (A/AC.105/C.2/L.56), as amended and supplemented by sub-paragraph (b) of the first operative paragraph of the French proposal (A/AC.105/C.2/L.64) was adopted.

The CHAIRMAN invited the Sub-Committee to consider the proposal submitted by Czechoslovakia (A/AC.105/C.2/L.57 and Corr.1).

Mr. RIHA (Czechoslovakia) pointed out that the proposal submitted by his delegation was not a substantive proposal; its sole purpose was to draw attention, in the Sub-Committee's report, to the fact that several delegations had expressed an interest in the establishment of an inter-governmental international agency for outer space affairs. It should be noted that the proposal dealt only very generally with the study to be undertaken and made no mention of when or by what body it should be carried out.

Mr. FREELAND (United Kingdom) said that his delegation was not persuaded of the existence of a need for an inter-governmental international agency for outer space; in view, however, of the explanations given by the Czechoslovak representative, it had no objection to mention being made in the report of the interest two delegations had shown in the idea of a study of the question.

The proposal submitted by Czechoslovakia (A/AC.105/C.2/L.57 and Corr. 1) was adopted.

The CHAIRMAN invited the Sub-Committee to consider the proposal submitted by Argentina, France and Poland (A/AC.105/C.2/L.69).

Mr. COCCA (Argentina) said that the aim of the proposal, like that of Czechoslovakia, was merely to include a sentence in the Sub-Committee's report. It made no reference to the date on which the questions referred to should be considered nor to the order of priority to be allocated to them.

The words "en particulier" in the ninth line of the Spanish text should be replaced by a more general term because it was not the sponsors' intention that priority should be given to consideration of the legal regime governing substances coming from the moon and from other celestial bodies.

The CHAIRMAN thought that the word "including" in the English text better reflected the sponsors' intentions and that the French, Russian and Spanish texts should be brought into line with the English.

Mr. TOKUHISA (Japan) said that one of the questions that had to be dealt with by the Sub-Committee as a matter of priority in its subsequent work was that of the registration of objects launched into space, referred to in sub-paragraph (a) of the proposal under consideration. The Japanese delegation could say forthwith that it was in favour of developing an international system for the registration of objects launched into space.

Mr. RIHA (Czechoslovakia) supported the proposal under consideration. He hoped that it would be acceptable to all members of the Sub-Committee, since it did not specify either when the Sub-Committee should deal with the two questions concerned or the order of priority to be allocated to them. The words "Sub-Committee will examine" did not oblige the Sub-Committee to solve the problems raised by the consideration of those questions.

Mr. PIRADOV (Union of Soviet Socialist Republics) also supported the proposal. He suggested, however, that the wording of sub-paragraph (a) should be brought into line with that of sub-paragraph (b) so that it began with the words "Consideration of the question of the registration of objects".

Mr. EVANS (Australia) said that during the consultations leading to preparation of the proposal, it had been agreed that the questions referred to should not in any circumstances be reported to the Committee in a way which implied that they would henceforth appear as sub-items on the Sub-Committee's agenda. The Sub-Committee should certainly undertake further studies of the questions mentioned in sub-paragraphs (a) and (b), but such studies should be of a general nature. He suggested, therefore, that the proposal should be worded as follows:

"It has been agreed that, under the agenda item entitled 'Study of Questions relative to the utilization of outer space and celestial bodies, including the various implications of space communications', the Sub-Committee will examine further the question of a draft convention concerning the registration of objects launched into space for the exploration or use of outer space. It was also proposed by Argentina, France and Poland that consideration might be given to the question of the rules which should govern man's activities on the moon and other celestial bodies, including the legal régime governing substances coming from the moon and other celestial bodies."

In that form, the proposal would reflect more accurately the debate which had taken place in the Sub-Committee.

Mr. MILLER (Canada) said that, during the preliminary consultations, it had been agreed that the wording of the two questions concerned should be as close as possible to that used in paragraph 18 of the Sub-Committee's report on its seventh session. (A/AC.105/45).

The difficulty lay in the words "the Sub-Committee will examine the following questions", which gave the impression that the Sub-Committee was undertaking to study those questions forthwith. The simplest solution would be merely to alter that part of the text to read: "the Sub-Committee could consider the following questions".

His delegation had no objection to the reference in sub-paragraph (a) to the draft convention concerning the registration of objects launched into space, since, for all practical purposes, the Sub-Committee would be required to base its study on the draft convention submitted by France to the seventh session (A/AC.105/C.2/L.45).

It should be made clear, however, that the questions in sub-paragraph (a) and (b) were not the only ones which might be considered under the agenda item mentioned at the beginning of the proposal. The Sub-Committee might also wish to consider later under that item the legal aspects of direct broadcasting from satellites.

Mr. BEREZOWSKI (Poland) said he was afraid that if the words "the Sub-Committee could consider" were used, as suggested by the Canadian representative, such consideration might never take place. It would be better to say: "it has been agreed that the agenda item entitled ... also includes the following questions".

Referring to the Australian representative's proposal for the amendment of sub-paragraph (b), he pointed out that, if adopted, the proposal submitted by Argentina, France and Poland would be regarded as representing the opinion of all members of the Sub-Committee.

Mr. TOKUHISA (Japan) said he agreed with the views expressed by the Australian representative and supported the modified version he had proposed.

Mr. BOYD (United States of America) supported the amendment proposed by the representative of Canada. Even more than the existing text, the wording suggested by the Polish representative would give the impression that the subjects mentioned in sub-paragraphs (a) and (b) would have to be included in the Sub-Committee's agenda under the agenda item mentioned.

Mr. VENCATASSIN (France) said that, from a general standpoint, the question of the utilization of outer space was by no means of secondary importance. If there

was to be no convention on liability, or if the convention agreed upon provided for limited liability, the Sub-Committee would have to make a careful study of all the uses of space to ensure that they were not contrary to the main principles laid down in the 1967 Treaty.

Referring to the proposal submitted by Argentina, France and Poland, he reminded the Soviet Union representative, who had suggested that the wording of sub-paragraph (a) should be brought into line with that of sub-paragraph (b), that France wished the Sub-Committee to make a detailed study of the draft convention concerning the registration of objects launched into space submitted by his delegation at the seventh session.

With regard to the text as a whole, he fully supported the observations and suggestions of the Polish representative.

Mr. MILLER (Canada) explained that he had suggested the phrase "the Sub-Committee could consider ..." merely to ensure that the text gave the Sub-Committee the same opportunities for conducting its future work as did the wording of paragraph 18 of the report on the seventh session.

Mr. RIHA (Czechoslovakia) said that paragraph 18 of the report on the seventh session referred to the work of the current session. The approach in the proposal submitted by Argentina, France and Poland was quite different. He supported the wording proposed by the Polish delegation: namely "the agenda item ... also includes the following questions ...", which made it clear that the questions mentioned in sub-paragraphs (a) and (b) might be followed by several others.

Mr. PERSSON (Sweden) thought that the question of direct broadcasting from satellites mentioned by the Canadian representative had already become as important as the questions in sub-paragraphs (a) and (b). He therefore suggested that the following paragraph be inserted in the Sub-Committee's report;

"It has also been agreed that the question of the use of outer space for direct broadcasting from satellites should remain on the Sub-Committee's agenda."

Mr. VENCATASSIN (France) formally proposed that the proposal should begin as follows; "It has been agreed that under the agenda item entitled the Sub-Committee will examine the following questions: ..."

He recalled that France had associated itself with Argentina and Poland in proposing consideration of the question in sub-paragraph (b) because it attached major importance to consideration of all the rules, including the legal régime which should

govern man's activities on the moon. In the next few years, a large quantity of material would be brought back from the moon to the earth's surface. In the absence of a convention on liability, the Sub-Committee would be obliged to consider the legal régime governing that material, particularly from the point of view of contamination.

Where the Swedish representative's suggestion was concerned, the legal aspects of direct broadcasting from satellites were at present being studied by a working group which was to report directly to the Committee. In the circumstances, therefore, the Legal Sub-Committee could not propose to take up the working group's conclusions.

Mr. PIRADOV (Union of Soviet Socialist Republics) supported the Swedish proposal; it would enable the Sub-Committee to take account of the growing importance of the question of direct broadcasting from satellites.

Mr. BEREZOWSKI (Poland) agreed that the English wording of the first sentence of the proposal submitted by Argentina, France and Poland should be that proposed by the Canadian representative, and the French wording that proposed by the French representative.

Mr. PETRÁN (Hungary) proposed that sub-paragraph (a) of the proposal should be worded as follows: "Consideration of the question of the international registration of objects launched into space for the exploration or use of outer space"; and sub-paragraph (b) as follows: "Consideration of the international legal rules which should govern man's activities on the moon ...".

Mr. VENCATASSIN (France) said that he could accept the wording proposed by the Hungarian representative for sub-paragraph (a), provided it was followed by the words "and of the draft convention submitted on the subject".

Mr. COCCA (Argentina) said that, for sub-paragraph (b), he could accept either "Consideration of the question of the legal rules ..." or "Consideration of the legal rules ...".

Mr. RÍHA (Czechoslovakia) proposed that the word "also" should be inserted after the word "examine".

Mr. EVANS (Australia), referring to the discussion of the amendment he had suggested, explained that there was no question of recommending an agenda to the Sub-Committee. He would not, however, press his suggestion and had no objection to the introductory sentence proposed. Neither would he press for the amendment of sub-paragraph (b) and was ready to accept the additional text submitted by Sweden.

With regard to the Hungarian proposal concerning sub-paragraph (a), he thought the addition of the word "international" might limit the scope of the study; the French draft convention, for example, related mainly to national registration.

In conclusion, he pointed out that when several questions remained unsolved it was unusual to say "It has been agreed that".

The CHAIRMAN agreed that there was no question of amending the wording of the Sub-Committee's agenda, but only of listing questions which might be considered.

Mr. BOYD (United States of America) said he accepted the phrase "the Sub-Committee could examine ...". Where the suggested addition of the word "also" was concerned, he would prefer the words "among others" to be added after the word "questions".

Mr. ZEMANEK (Austria) said that the words "also" and "among others" were superfluous since the word "could" indicated a possibility.

The United States suggestion for the addition of the words "among others" was adopted.

Mr. PETRÁN (Hungary), referring to sub-paragraph (a), observed that the wording "the question of the registration of objects ..." was very broad and would cover the draft convention submitted by France.

Mr. VENCATASSIN (France) agreed that that wording could be interpreted as covering the draft convention submitted by France; his delegation, however, would prefer the text to be specific and would maintain its amendment.

Mr. FREELAND (United Kingdom) proposed that sub-paragraphs (a) and (b) should be redrafted as follows: "(a) The question of registration of objects launched into space for the exploration or use of outer space, including the draft convention proposed on that subject; (b) Questions relating to the rules ...".

Mr. VENCATASSIN (France) and Mr. EVANS (Australia) agreed with that proposal.

Mr. PIRADOV (Union of Soviet Socialist Republics) also supported the United Kingdom proposal; he would, however, like a sub-paragraph (c) to be added, along the lines of the proposal (A/AC.105/C.2/L.46) made at the seventh session by the Czechoslovak delegation, worded as follows: "the question of the utility of the elaboration of the legal principles on which the creation and functioning of space communications should be based".

Mr. PERSSON (Sweden) said that, after having reached agreement with the delegations concerned, he would amend his proposal as follows: "During the exchange

of views in connexion with the agenda item entitled "Study of questions relative to the utilization of outer space and celestial bodies, including the various implications of space communications", the delegation of Sweden observed that the Sub-Committee could consider also the legal aspects of questions relating to the direct broadcasting from satellites.

Mr. MILLER (Canada), supported by Mr. EVANS (Australia), said he was in favour of the paragraph proposed by the Swedish representative. That paragraph, together with the one proposed by Czechoslovakia at the seventh session, could be added as separate paragraphs.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that, in his opinion, the Czechoslovak proposal should become sub-paragraph (c) of the proposal under consideration.

Mr. BOYD (United States of America) pointed out that the Czechoslovak proposal submitted at the seventh session had not been re-submitted at the current session and, hence, his delegation had no instructions concerning it. He therefore suggested that the proposal should be covered by a paragraph in the report but that it should not form a third sub-paragraph in the proposal under study.

Mr. PIRADOV (Union of Soviet Socialist Republics) said he was surprised at the objections raised by the United States representative. Since the Czechoslovak proposal had been approved at the previous session by the Sub-Committee as a whole, including the United States delegation, it necessarily had that delegation's approval at the current session.

Mr. RIHA (Czechoslovakia) thanked the USSR delegation for the initiative it had taken. However, in a spirit of compromise, his delegation would support the United States suggestion for the inclusion in the report of a paragraph worded on the following lines: "The delegations of the USSR and Czechoslovakia expressed the view that, under the agenda item entitled . . . , the question of the utility of the elaboration of the legal principles on which the creation and functioning of space communications should be based should be examined".

Mr. PIRADOV (Union of Soviet Socialist Republics) supported that suggestion. The suggestion was adopted.

Mr. RAO (India) proposed that the words "coming from the moon" in sub-paragraph (b) should be replaced by the words "which may be obtained from the moon".

Mr. VENCATASSIN (France) pointed out that the words "matériaux provenant de la lune" in the French text meant both substances taken from the moon and substances carried from the earth to the moon and brought back to earth.

The Indian proposal was adopted.

Mr. COCCA (Argentina) supported the proposal made by the Swedish representative. He pointed out that other delegations had expressed support for the legal study of problems relating to broadcasting from satellites, including those of Canada and his own, and asked that his delegation should be mentioned as well as that of Sweden.

The paragraph proposed by Sweden, as amended, was adopted.

The CHAIRMAN read out the text of the proposal submitted by Argentina, France and Poland, as amended:

"It was agreed that under the agenda item entitled "Study of questions relative to the utilization of outer space and celestial bodies, including the various implications of space communications", the Sub-Committee should examine the following questions among others:

- (a) The question of registration of objects launched into space for the exploration or use of outer space, including the draft convention proposed on that subject;
- (b) Questions relating to the legal rules which should govern man's activities on the moon and other celestial bodies, including the legal régime governing substances which may be obtained from the moon and from other celestial bodies."

The proposal A/AC.105/C.2/L.69, as amended, was adopted.

The meeting rose at 5.45 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTIETH MEETING

held on Friday, 4 July 1969, at 11.10 a.m.

Chairman: Mr. WYZNER Poland

CONSIDERATION OF THE DRAFT REPORT OF THE SUB-COMMITTEE TO THE COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE (PUOS/C.2/69/3 and Add.1 and Corr.1, Add.2 and Add.3)

The CHAIRMAN suggested that the Sub-Committee should consider its draft report (PUOS/C.2/69/3 and Add.1 and Corr.1, Add.2 and Add.3) paragraph by paragraph.

It was so agreed.

PUOS/C.2/69/3

Paragraph 1

Paragraph 1 was approved.

Paragraph 2

The CHAIRMAN, following a discussion in which Mr. SOUZA e SILVA (Brazil), Mr. MILLER (Canada) and Mr. CARDENAS (Mexico) had taken part, suggested that the word "delegations" in the penultimate line should be followed by a reference to a footnote listing, in alphabetical order, the names of the delegations which had participated in the informal consultations at New Delhi.

It was so agreed.

Paragraph 2 as amended was approved.

Paragraphs 3 to 7

Paragraphs 3 to 7 were approved.

PUOS/C.2/69/3/Add.1 and Corr.1

Paragraph 8

The CHAIRMAN pointed out that the words "and 115th", in the last line, should be replaced by ", 115th and 129th".

Paragraph 8, as thus corrected, was approved.

Paragraph 9

Mr. MILLER (Canada) said that the text of the paragraph should be brought as closely into line as possible with the relevant conclusions of the Scientific and Technical Sub-Committee on the question of identifying scientific or technical criteria which would permit a precise and lasting definition of outer space. He proposed,

therefore, that in the third line the words "for the moment" should be replaced by the words "at that time" and the word "and" by the word "or"; that in the fourth line the word "and" after the semi-colon should be deleted; and that in the sixth line the word "exploration" should be followed by a semi-colon instead of a comma.

It was so agreed.

Mr. BOYD (United States of America) suggested that paragraphs 9 and 10 should be combined by adding the words "He identified those proposals:" at the end of paragraph 9, and deleting the first eighteen words of paragraph 10 (from "The Sub-Committee" to "in 1968:").

It was so agreed.

Mr. MILLER (Canada) proposed that the words "pertaining to" in the fourth line of paragraph 10 should be replaced by the word "concerning".

It was so agreed.

Mr. O'DONOVAN (Australia), referring to document PUOS/C.2/69/3/Add.1/Corr.1, said that the French and Czechoslovak proposals were on a par with each other. The last eight words of the document were, therefore, unnecessary and the corrigendum should be withdrawn.

Mr. RIHA (Czechoslovakia) said that although his delegation would have preferred the corrigendum to be retained, it could, nevertheless, accept the Australian proposal. It was also prepared to accept the amendments proposed by the Canadian and United States delegations.

Paragraphs 9 and 10, as amended, were approved.

Paragraph 11

The CHAIRMAN said that in the seventh line a semi-colon should be inserted after the document number; that in the fifteenth line the comma after the document number should be changed to a semi-colon; and that in the last line the word "Sub-Committee" should be followed by the document number A/AC.105/C.2/L.64 between brackets.

Mr. FREELAND (United Kingdom) said that the reference to the Czechoslovak proposal in the thirteenth, fourteenth and fifteenth lines suggested that a specific proposal for such a study had been made. That was not the case. The situation would be more accurately reflected if the words "for a reference in the report to the idea" were inserted after the word "Czechoslovakia" in the thirteenth line.

Mr. RIHA (Czechoslovakia) said he could support the United Kingdom amendment.

The amendment was adopted.

Mr. MILLER (Canada) said that the reference to the Canadian proposal would be more accurate if the words "as soon as possible" were inserted between the words "study" and "technical" in the eighth line of the paragraph, and if the word "outer" were deleted from the phrase "launched into outer space" in the ninth line.

Those amendments were adopted.

Mr. VENCATASSIN (France) proposed that in the seventeenth and eighteenth lines the words "of certain items in the agenda of the next session of the Sub-Committee" should be in the "agenda of the next session of the Sub-Committee of items relating to the registration of objects launched into space with a view to the exploration and use of outer space, the definition of outer space and the uses of outer space".

It was so agreed.

Paragraph 11, as amended, was approved.

Paragraph 12

Mr. VENCATASSIN (France) suggested that as the list of topics prepared by the Secretariat was not an official Sub-Committee document, the paragraph should be deleted.

Mr. COCCA (Argentina) suggested that the paragraph should be amended in such a way as to make it clear that the list submitted by the Secretariat had been an unofficial list.

Mr. VENCATASSIN (France) said that his delegation could accept the Argentine suggestion.

Mr. MILLER (Canada) suggested that in the first line the words "a provisional" should be replaced by the words "an unofficial"; that in the first and second lines the words "that were contained in some of the above proposals as well as those" should be deleted; and that in the third line the words "at present and past sessions" should be inserted after the word "Sub-Committee".

It was so agreed.

Mr. ZEMANEK (Austria) proposed that in the third line the words "for purposes of information and" should be inserted after the word "Secretariat".

It was so agreed.

Paragraph 12, as amended, was approved.

(PUOS/C.2/69/3/Add.2)

Paragraph 13a

The CHAIRMAN observed that the words "Include in the final report the following text" at the beginning of the paragraph should be deleted. The Secretariat would make some minor editorial changes in paragraphs 13a, 13b, 13c and 13d which would not affect their substance.

Paragraph 13c

Mr. MILLER (Canada) proposed that the word "questions" in the fourth line should be replaced by the word "subjects".

It was so agreed.

Mr. VENCATASSIN (France) proposed that the French text of the fourth line should be amended to read "... pourrait examiner, entre autres, les sujets suivants:".

It was so agreed.

Mr. RYBAKOV (Union of Soviet Socialist Republics) requested that the Russian text should also be brought into line with the English text.

Paragraph 13d

Mr. RYBAKOV (Union of Soviet Socialist Republics) proposed that in the third line the words "the delegation of Sweden observed" should be replaced by the words "agreement was reached".

Mr. PERSSON (Sweden) said that although he had no objection in principle to the USSR proposal, he had had the impression that the Sub-Committee as a whole had not agreed with the observation concerned.

He proposed that in the fourth line the words "under this item" should be inserted after the word "that"; and that in the last line the word "broadcast" should be amended to read "broadcasting".

The amendments proposed by the Swedish representative were adopted.

Mr. VENCATASSIN (France), who was supported by Mr. MILLER (Canada), said that he could agree with the USSR proposal if, in the fourth line, the words "could consider also" were amended to read "could also consider", and if the words ", if it saw fit," were inserted after the word "consider". Those proposals would take into account the fact that the Committee had established a working group on direct broadcasting which was to submit a report on the subject.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said he could accept wording proposed by the French representative provided it was made clear that the Sub-Committee would consider the matter under the agenda item referred to.

Mr. BOYD (United States of America) said he considered that at that stage it would be premature for the Sub-Committee to take a decision concerning the consideration of questions relating to direct broadcast from satellites; he was therefore unable to associate himself with an observation purporting to come from the Sub-Committee as a whole. He therefore proposed that the text should read "the delegation of Sweden and certain other delegations observed....".

The proposal was adopted.

Paragraph 13d, as amended, was approved.

Mr. MILLER (Canada) proposed that paragraph 13c should be placed immediately after paragraph 12.

Mr. BOYD (United States of America) proposed that the original paragraphs 13a, 13b and 13d should be combined.

The proposals were adopted.

Mr. MILLER (Canada) proposed that the full statement made by the Deputy Secretary-General of ITU at the Sub-Committee's 113th meeting should be annexed to the report.

Mr. SLOAN (Director, General Legal Division) reminded the Sub-Committee that before a decision was taken to reproduce the full text of any statement the financial implications must be made known. In the present case the cost involved was not expected to exceed \$200 as the text was already available in three of the four working languages.

The Canadian representative's proposal was adopted.

UOS/C.2/69/3/Add.3

Paragraph 14

Mr. KRISHNAN (India) suggested that in the ninth line the words "for future consideration" should be deleted, as they gave the impression that the revised Indian draft was intended for consideration at some specific time in the future, whereas it had merely been submitted to facilitate the Sub-Committee's work and would not be considered at the current session. He also suggested that in the twelfth line the symbol A/AC.105/C.2/L.32/Rev.1 should be inserted in brackets after the word "India" to make clear that the draft referred to was not the one in document A/AC.105/C.2/L.32/Rev.2.

It was so decided.

Mr. FREELAND (United Kingdom) suggested that in the eighth line the word "further" should be inserted before the word "revised", as an earlier revised draft convention submitted by India was already mentioned in the sixth line.

It was so decided.

Paragraph 14, as amended, was approved.

Paragraph 15

Mr. TOKUHISA (Japan) pointed out that the words "and Corr. 1" should be inserted after the symbol in the brackets at the end of the paragraph.

Paragraph 15, as thus corrected, was approved.

Paragraph 16

Mr. PERSSON (Sweden) said that the present wording gave the impression that the two principles agreed upon were all that was needed for the preparation of an appropriate text on applicable law, and that no more principles remained to be agreed. Paragraph 17 included a reference in brackets to the principles on which agreement had not been reached, and he suggested that the following sentence should be added in brackets to paragraph 16: "No agreement was reached on the question of which other law, if any, should supplement international law in determining compensation."

Mr. VENCATASSIN (France) said that, while agreeing with the substance of the Swedish representative's suggestion, he thought that if a reference was made to another law, it should be stated that the application of that law would be parallel, not supplementary, to that of international law. He suggested, instead, that the word "certain" at the beginning of the paragraph should be replaced by the words "some of the".

Mr. RYBAKOV (Union of Soviet Socialist Republics) recalled that the kind of reference suggested by the Swedish representative had been included in paragraph 17 because a similar statement had appeared in earlier drafts on the question of international organizations. No such statement had been made in connexion with applicable law, and no agreement had been reached on its inclusion in the report. He therefore appealed to the Swedish representative not to press his suggestion or to reopen the discussion on that issue. He supported the French representative's suggestion.

Mr. RIHA (Czechoslovakia) said he also preferred the French representative's suggestion to the Swedish representative's, as he was not sure that any other law should supplement international law, or whatever law was regarded as applicable.

Mr. COCCA (Argentina) thought that the present wording used in paragraph 16 might be taken to mean that international law should apply in all cases. He therefore suggested that the word "also" should be inserted before the words "be applied" at the end of the paragraph.

Mr. VRANKEN (Belgium) said he was in favour of retaining the present wording of paragraph 16, which had been agreed upon after a long discussion, with the amendment suggested by the representative of France.

The amendment proposed by the representative of France was adopted.

Mr. BOYD (United States of America), recalling an earlier decision to use the word "should" in preference to "shall" in the text of agreed principles, suggested that the word "shall" after the word "convention" should be replaced by "should".

It was so decided.

Paragraph 16, as amended, was approved.

Paragraph 17

Mr. BOYD (United States of America) suggested that the word "shall" after the word "claim" should be replaced by "should".

It was so decided.

Paragraph 17, as amended, was approved.

Paragraph 18

Mr. BOYD (United States of America) suggested that the fourth sub-paragraph should include a reference to the working paper submitted by his delegation in document PUOS/C.2/69/WG.1/CRP.16.

It was so decided.

Mr. RYBAKOV (Union of Soviet Socialist Republics) suggested that the fourth sub-paragraph should include a reference to the working paper submitted by his delegation under the symbol PUOS/C.2/69/WG.1/CRP.15, as well as to CRP.15/Rev.1, which was a joint draft. It should also be made clear that PUOS/C.2/69/WG.1/CRP.12 contained a proposal, whereas CRP.15 and CRP.15/Rev.1 were working papers.

It was so decided.

The CHAIRMAN said that the words "Convention, and the question" at the top of page 3 should read "Convention, and to the question".

Paragraph 18, as amended, was approved.

Paragraph 19

Mr. O'DONOVAN (Australia) suggested that the phrase "formulated by the Working Group" should be inserted after the word "texts" in the first line.

It was so decided.

Mr. BOYD (United States of America) suggested that the heading "Article ..." should be deleted for the sake of consistency, as that heading did not appear above the other texts in the draft report.

Mr. PETRAN (Hungary) supported that suggestion.

It was so decided.

Paragraph 19, as amended, was approved.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTY-FIRST (CLOSING) MEETING
held on Friday, 4 July 1969, at 3.20 p.m.

Chairman:

Mr. WYZNER

Poland

ADOPTION OF THE REPORT (PUOS/C.2/69/3 and Add.1 and Add.1/Con.1 and Add.2-4) (concluded)

The CHAIRMAN invited the Sub-Committee to resume its examination of paragraph 19 of the draft report (PUOS/C.2/69/3/Add.3).

Field of application and exemptions from provisions of agreement: question of absolute liability and exoneration from liability

The text was approved.

Question of joint liability

The CHAIRMAN pointed out that the text appearing in document PUOS/C.2/69/3/Add.4 should be inserted.

Mr. VENCATASSIN (France) proposed that the following sentence should be added between brackets after the text: "No agreement was reached on whether the State whose territory or installations were used for the launching of a space object incurs only residual liability".

Mr. RYBAKOV (Union of Soviet Socialist Republics) proposed that the text of the French proposal should be slightly amended to read: "No agreement was reached on whether the State which has provided its territory or its installations should or should not be deemed a partner in a joint launching or on whether it incurs principal or residual liability".

Mr. O'DONOVAN (Australia) said that he accepted that text and proposed that it should be inserted as a footnote.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that he would prefer the text to form a separate paragraph.

After an exchange of views in which Mr. RYBAKOV (Union of Soviet Socialist Republics), Mr. O'DONOVAN (Australia), Mr. SOUZA e SILVA (Brazil) and Mr. MILLER (Canada) took part, the CHAIRMAN suggested that the text agreed upon at the Sub-Committee's seventh session, recorded in paragraph 10 of the Sub-Committee's report, (A/7285, annex III) followed by the addition proposed by the Soviet Union representative, should be included as a separate paragraph.

It was so decided.

The text relating to the question of joint liability, as amended, was approved.

Presentation of claims by States or international organizations and on behalf of natural or juridical persons

The text was approved.

Joinder of claims

Mr. MILLER (Canada) suggested that the sub-paragraph in question should form a separate paragraph.

It was so decided.

The CHAIRMAN pointed out that the paragraph would have to be preceded by the following sentence: "The Sub-Committee approved the following decision of the Working Group".

The text, as amended, was approved.

Presentation of claims for compensation through diplomatic channel

The text was approved.

Time limits for presentation of claims

The text was approved.

Pursuit of remedies available in respondent State or under other international agreements

The text was approved.

Paragraph 19 as a whole was approved.

After an exchange of views in which Mr. FREELAND (United Kingdom), Mr. MILLER (Canada) and Mr. O'DONOVAN (Australia) took part, the CHAIRMAN suggested that, in order to ensure that the report should proceed in logical sequence from the approval of a principle to the approval of texts, paragraph 18 should be followed by the new paragraph reproducing the text agreed upon at the seventh session in relation to joint liability, with the addition proposed by the USSR representative, then by the new paragraph embodying the decision concerning the joinder of claims and lastly by the existing paragraph 19, renumbered accordingly.

It was so decided.

Mr. RIHA (Czechoslovakia) proposed that the statement made by the Chief of the Outer Space Affairs Division should be annexed to the report.

Mr. SLOAN (Director, General Legal Division) said that the General Assembly had expressed the desire that documents already issued should not be reproduced in another form either in a report or elsewhere. The question, therefore, was whether the Sub-Committee's report should include not only all the texts submitted during the eighth session, in accordance with established practice, but also certain texts issued

during previous sessions and the comparative tables of the various draft conventions. With regard to the proposal made by the Czechoslovak representative, the cost of reproducing the statement made by the Chief of the Outer Space Affairs Division as an annex to the report was estimated at \$100.

Mr. COCCA (Argentina) considered that the Sub-Committee's report should reproduce all the documents submitted at the eighth session, as also the statement by the Chief of the Outer Space Affairs Division, which embodied some valuable information. It would also be well to reproduce once more the comparative tables of the various revised drafts, since they constituted an extremely useful working paper.

The CHAIRMAN suggested that the statement by the Chief of the Outer Space Affairs Division should be annexed to the Sub-Committee's report but that, generally speaking, the report should reproduce only the documents which had not been published in the reports of previous sessions.

It was so decided.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that he, too, thought that all the documents submitted during the session should be reproduced in the report. He pointed out, however, that the Sub-Committee still had before it five different drafts, all of which should be reproduced in the report, together with the amendments that had been submitted to them.

Mr. FREELAND (United Kingdom) said that, in view of the General Assembly's wishes, he did not think that the comparative tables and the text of all five drafts submitted should both be reproduced. Of the two, his delegation would be inclined to favour the comparative tables.

Mr. PETRAN (Hungary) considered that the five different texts before the Sub-Committee should all be reproduced in the same way. On the other hand, the comparative tables made it much easier to compare the texts. His delegation therefore formally proposed that the text of the five drafts should appear in the body of the report and that one comparative table reproducing all the drafts should be annexed to it.

Mr. O'DONOVAN (Australia) said that his delegation was anxious that the wishes expressed by the General Assembly should be respected and saw no need to include the same text in two different parts of the report. His delegation would prefer that all the draft conventions should appear in a comparative table annexed to the report.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that, in that case, he would like the draft convention submitted by Hungary (A/AC.105/C.2/L.10/Rev.1 and Corr.1 and A/AC.105/C.2/L.24 and Add.1), which was the text that the Soviet Union supported and which was different from the other four draft conventions submitted, to be reproduced as an annex to the Sub-Committee's report, even if the sponsors of the other drafts did not press for similar treatment.

Mr. MILLER (Canada), supported by Mr. FREELAND (United Kingdom), pointed out that if the two comparative tables (A/AC.105/C.2/W.2/Rev.4 and Rev.4/Add.4) were annexed to the report, the entire text of the Hungarian draft would be reproduced. He asked the Soviet Union representative to reconsider his suggestion.

Mr. RYBAKOV (Union of Soviet Socialist Republics) maintained his point of view that, for the sake of balance and simple fairness, it was absolutely essential that all the drafts which were based on different concepts of the convention on liability should be annexed to the report. If the latest versions of the Italian and Indian drafts which had been submitted at the eighth session, and which represented two different concepts of the convention, were annexed to the report, the Hungarian draft which reflected a third concept, must also be reproduced. The comparative table was not enough, for it was merely a technical document emanating from the Secretariat and not from a government. If the Sub-Committee wanted to have a clear idea of the position concerning its work on the drafting of the convention, it must have the latest texts of the five draft conventions which were still before it annexed to the report or reproduced in comparative tables, or in both those forms.

Mr. BOYD (United States of America), supported by Mr. RIHA (Czechoslovakia), pointed out that the existing comparative tables would no longer be of any use in view of the progress that the Sub-Committee had made in its work. It would therefore be enough to have the latest versions of the five draft conventions reproduced as an annex to the report.

The CHAIRMAN said that he too thought that the comparative tables would be of little real use without a very costly effort to bring them up to date. He suggested that, in view of the latest comments of the representatives of the Soviet Union, the United States and Czechoslovakia, the Sub-Committee should decide that only the five draft conventions still before it should be reproduced in an annex to the report.

It was so decided.

The draft report as a whole (PUOS/C.2/69/3 and Add.1/Con.1 and Add.2-4), as amended, was adopted unanimously.

CLOSURE OF THE SESSION

The CHAIRMAN said that he was aware that all the members of the Sub-Committee were deeply disappointed that they were reaching the end of the eighth session without having been able to complete the text of the convention on liability for damage caused by the launching of objects into outer space. The results achieved were, however, far from negligible. Apart from three major questions on which opinions still needed to be brought closer together and a few minor points, agreement had been reached on all matters of substance. Many provisions had been improved in form and many others had been the subject of an agreement in principle. Such a result would scarcely have been possible without a great deal of mutual understanding and sincere co-operation. The questions that were still outstanding should now be placed before the Governments, in an effort to have them settled in the near future. As far as the study of questions relating to the definition and utilization of outer space was concerned, in the short time at its disposal the Sub-Committee had begun to examine some of the problems to which the rapid rate of technical progress was already giving rise or was likely to give rise one day and it had taken five decisions, the importance of which would undoubtedly be recognized by the Committee and the General Assembly.

He thanked the representatives of the Secretary-General, the Chief of the Outer Space Affairs Division and all the members of the Secretariat, who had given their unfailing assistance throughout the session.

Mr. IWAI (Japan) said that it was regrettable that the Sub-Committee had been unable to complete the draft convention on liability. He would point out to all those who thought that damage caused by the launching of objects into outer space was still a matter for the future that, according to the Japanese Press, a Japanese cargo boat off the coast of Siberia had been damaged on 5 June 1969 by fragments from a device launched into outer space and that five sailors had been injured. It was therefore important that a convention directly concerned with the victim and providing a procedure for the compulsory settlement of disputes by a third party should be drawn up as soon as possible. His delegation would have no objection to the countries concerned holding unofficial consultations if that would help towards the adoption of a text. It wished to point out that the interpretation of a convention on liability must of necessity be determined during the drafting of the convention, in order to prevent any disputes arising from the application of its provisions.

The CHAIRMAN observed that the accident to the Japanese cargo boat showed how urgent it was that the convention on liability should be given final form.

Mr. COCCA (Argentina), speaking on behalf of the Mexican delegation as well as his own, and Mr. KRISHNAN (India), speaking on behalf of the delegations of the United Arab Republic, Lebanon and Iran as well as his own, thanked the Chairman, who had conducted the discussions with outstanding competence and a valuable sense of fairness. They also thanked all the members of the Secretariat for their help.

The CHAIRMAN declared the session closed.

The meeting rose at 5.20 p.m.