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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Ninth Session

SUMMARY RECORDS OF THE ONE HUNDRED AND THIRTY-SECOND TO THE ONE HUNDRED AND FIFTY-FIRST MEETINGS

held at the Palais des Nations, Geneva,
from 8 June to 3 July 1970

The list of representatives attending the session is found in the report of the Sub-Committee to the Committee on the Peaceful Uses of Outer Space on the work of its ninth session (A/AC.105/85, Annex III).

Chairman: Mr. HYZER Poland

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SUMMARY RECORD OF THE ONE HUNDRED AND THIRTY-SECOND MEETING

held on Monday, 8 June 1970, at 3.15 p.m.

Chairman: Mr. WYZNER Poland

OPENING OF THE SESSION

The CHAIRMAN declared open the ninth session of the Sub-Committee.

TRIBUTE TO THE MEMORY OF MR. CEZARY BEREZOWSKI

The CHAIRMAN said that it was with deep sorrow that he had to inform the Sub-Committee of the death of Mr. Cezary Berezowski, who had long represented Poland on the Sub-Committee.

On the proposal of the Chairman, the members of the Sub-Committee observed a minute's silence in tribute to the memory of Mr. Cezary Berezowski.

Mr. O'DONOVAN (Australia), Mr. ANGUELOV (Bulgaria), Mr. AMBROSINI (Italy), Mr. PIRADOV (Union of Soviet Socialist Republics), Mr. CHARVET (France), Mr. AZIMI (Iran), Mr. COCCA (Argentina), Mr. FREELAND (United Kingdom), Mr. EL REEDY (United Arab Republic), Mr. HARASZTI (Hungary), Mr. PERSSON (Sweden), Mr. CESKA (Austria), Mr. VRANKEN (Belgium) and Mr. JACHEK (Czechoslovakia) paid tribute to Mr. Berezowski and expressed their condolences to his family and the Polish delegation.

Mr. OSIECKI (Poland) thanked those delegations which had expressed sympathy on the death of Mr. Berezowski. Their condolences would be forwarded to the Polish Government and the bereaved family.

ADOPTION OF THE PROVISIONAL AGENDA (A/AC.105/C.2/L.70)

The provisional agenda was adopted.

STATEMENT BY THE CHAIRMAN (agenda item 1)

The CHAIRMAN recalled that, in its resolution 2601 B (XXIV), the General Assembly had urged that the draft convention on liability for damage caused by objects launched into outer space should be completed in time for final consideration at its twenty-fifth session. Both before and after the adoption of that resolution, extensive consultations and negotiations had taken place on the main outstanding issues among members of the Committee on the Peaceful Uses of Outer Space in New York and Geneva. Those consultations had led to a further clarification of positions and a certain rapprochement of views, and he was sure that the Sub-Committee would wish to express its sincere appreciation to the Chairman of the Committee and all those who had participated in the negotiations. A resumé of the results of the recent consultations held in Geneva had been circulated as an official document of the Sub-Committee (A/AC.105/C.2/8).

The completion of the draft convention had also become a matter of urgency because of the impending celebration of the twenty-fifth anniversary of the United Nations. The Sub-Committee could surely make no better contribution to the celebration than a finalized liability convention which the Organization could claim as an additional achievement. While the Sub-Committee had made substantial contributions to the conclusion of the Outer Space Treaty in 1967 and of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space in 1968, six years of effort had so far failed to produce a liability convention. The Sub-Committee would therefore no doubt wish to accord the highest priority to its completion.

In discussing item 3(a) of the agenda, the Sub-Committee would have before it a background paper (A/AC.105/C.2/7) prepared by the Secretariat. With regard to agenda item 3(b), the report of the Working Group on Direct Broadcast Satellites on its 1970 session (A/AC.105/83), which, in accordance with the decision of its parent body, the Sub-Committee was to examine if time permitted, would shortly be available. In addition, the observations which the Scientific and Technical Sub-Committee had been requested to make on the technical aspects of the registration of objects launched into space were contained in that Sub-Committee's report (A/AC.105/82).

STATEMENT BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL

Mr. STAVROPOULOS (Representative of the Secretary-General) said he wished to begin by associating the Secretariat with the tribute paid to Mr. Berezowski.

The Sub-Committee's ninth session was of great importance in view of the urgency of adopting a draft liability convention and the imminent celebration of the twenty-fifth anniversary of the United Nations. He was sure that the Sub-Committee would wish to respond to the appeal made by the General Assembly in its resolution 2499 (XXIV) and to mark that anniversary by the submission of a draft liability convention through its parent body. The Secretary-General had asked him to convey the hope that the recent adoption of an important declaration of principles by the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States would be accompanied by a similar achievement on the part of the Sub-Committee. The Secretary-General also wished to convey his most cordial wishes and his special interest in the Sub-Committee's work. The Secretariat would spare no time or effort in order to assist that work as effectively as possible.

ORGANIZATION OF WORK

The CHAIRMAN recalled that the Committee on the Peaceful Uses of Outer Space had recommended that its sub-committees should consider the question of summary records

at the outset of their 1970 sessions. At the Sub-Committee's previous session, it had been decided that summary records of plenary meetings should be maintained, but that no records should be prepared of the meetings of the Working Group. In the absence of any objection, he would assume that the Sub-Committee wished to continue that practice.

It was so agreed.

The CHAIRMAN said that, to judge by preliminary consultations, there was a consensus in the Sub-Committee in favour of starting work with the draft liability convention, both in plenary and in the Working Group and of continuing such work for at least two weeks.

Mr. VRANKEN (Belgium) said that the completion of the draft liability conventio was of such importance that work on it should continue until it was finished. Even if one or two issues remained unresolved, they could be specified so that the work could be completed by the Sixth Committee of the General Assembly.

Mr. BETTINI (Italy) agreed that the Sub-Committee should do its utmost to complete the draft convention. The situation should, however, be reviewed at the end of two weeks.

The CHAIRMAN pointed out that the drafting of articles on which there was no substantial disagreement could continue in the Working Group even if another item was being discussed in plenary. The Sub-Committee might therefore start work on the draft convention and take a further decision on the organization of its work at the end of two weeks.

It was so agreed.

The meeting rose at 4.15 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTY-THIRD MEETING

held on Tuesday, 9 June 1970, at 10.50 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5) (continued)

Mr. CHARVET (France) observed that the previous discussions of the Sub-Committee, although difficult, had none the less produced substantial results, since the only two major questions on which views were still sharply divided were the applicable law and the settlement of disputes.

It was vital that the Sub-Committee should reach agreement during 1970, so as to be able to submit to the Committee and the General Assembly a complete and satisfactory draft international convention. States had been awaiting such an instrument ever since they had signed the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (known as the 1967 Treaty, and the 1968 Agreement on the Rescue of Astronauts the Return of Astronauts and the Return of Objects Launched into Outer Space (known as the 1968 Agreement). Moreover, the submission of the draft would be a positive way of marking the twenty-fifth anniversary of the United Nations.

Having found it impossible to arrive at an ideal text of the convention within a reasonable period, the Sub-Committee ought at least to prepare a draft which was in keeping with the interests of the international community as a whole. If it really wished to succeed, it should take care not to think of its work in isolation. A few years previously, when the major space Powers had asked all countries to sign the 1967 Treaty and the 1968 Agreement with a view to reducing the danger of anarchy and fostering the harmonious and peaceful conquest of outer space, many States had immediately responded to that request and had offered such co-operation as seemed to them to be in the interests of international peace. They had entered into commitments which, given the disproportion in the space capacity of the various States, were still somewhat one-sided. In making that important gesture of international co-operation, however, they had expressed the desire that the two agreements establishing the fundamental principles of space law should be followed up by a text offering them compensatory safeguards. So far, no such document had been forthcoming.

In 1969, his delegation had compared international space law to a legal edifice founded on three things: the 1967 Treaty, the 1968 Agreement and the future convention

on liability. Until such time as a convention was drawn up which was satisfactory to the international community as a whole, a community including an overwhelming majority of non-space Powers, the edifice would remain unstable.

An additional effort was therefore required immediately to meet the legitimate claims of the States that had agreed to treaties encouraging the development of space techniques in which they had no share and the benefits of which had not yet reached them.

Since his delegation had often stated its position on the matters still outstanding, he merely wished to recall that, for reasons of equity and in the desire to make practical arrangements for victims of accidents caused by space devices, France had always favoured lex loci as the applicable law and compulsory arbitration for the final stage in the settlement of disputes. It was not in favour of those solutions for their own sake however, but as a means - the surest and most effective means - of providing comprehensive protection for persons and property against the sort of damage that might be caused by devices returning from outer space. His delegation considered the total and effective protection of property essential and would insist on it particularly since the risk of accidents was increasing daily with the growing number of space devices.

But the protection of persons was even more important. Full respect for the physical person was provided for satisfactorily in national and international law, whether relating to the sea, the air or the land. It was therefore difficult to see why, in the name of what principles or morality, victims of space devices should be expected to content themselves with less protection and inadequate safeguards. It was essential that the victims of such devices should be, if not treated in the same way, at least entitled to receive the same guarantee as victims of other accidents. If no such guarantees were given, it would be easy to imagine the plight of victims of accidents caused by objects launched into outer space: they would depend for compensation entirely on the good-will of the party responsible, which might well adopt delaying tactics, whereas victims of road accidents could expect reasonably prompt compensation. It was essential, to avoid discrimination and to find, in one way or another, a means of granting to victims of space devices the prompt and equitable compensation recommended by the General Assembly.

Having said that, his delegation would as always remain ready to make concessions on specific points if the States which did not share its views as regards the applicable law and the settlement of disputes would yield something of their intransigence and concede enough to avoid obstructing the aim sought more or less unanimously by members

of the international community, namely, to secure the total and automatic compensation of victims.

The unofficial meeting held in Geneva in April 1970 had raised certain hopes, and those hopes must be realized. His delegation would regret to see the problems that still divided the Sub-Committee referred back to the Committee and to the General Assembly. It therefore hoped that the Sub-Committee's work would produce positive results.

Mr. BETTINI (Italy) said he fully agreed with the French representative: the two most important questions, on which the success of the Sub-Committee's work depended, were of the applicable law and the settlement of disputes. He therefore proposed that priority should be given to the consideration of those questions.

Mr. O'DONOVAN (Australia) supported the Italian representative. Since both questions had already been discussed at length, it should be possible to arrive at a compromise. In the circumstances, the best course might be to allow delegations to explore that possibility thoroughly by meeting unofficially and independently of the Working Group.

Mr. BETTINI (Italy) supported the Australian representative's suggestion.

Mr. COCCA (Argentina) agreed with the Italian and Australian representatives.

The proposal of the Italian representative and the suggestion of the Australian representative were adopted.

The CHAIRMAN said that the Sub-Committee should also work out the final form of the articles on which it had already agreed. The Working Group could, for instance, sit as a drafting group and finalize, inter alia, the articles relating to the currency in which compensation was to be paid. It might also work out the text of an article embodying the solution to which the Committee had agreed in principle on the question of international organizations.

Mr. EL REEDY (United Arab Republic) said he believed that all concerned were agreed on the need to produce the final text of the convention, and begged them to do all in their power to complete it during the present session. Although he agreed with the Chairman's suggestion, he thought that delegations should be allowed to reflect on the matter until the following day.

The meeting rose at 11.35 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTY-FOURTH MEETING

held on Wednesday 10 June 1970, at 10.50 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5) (continued)

Mr. COCCA (Argentina) said he would confine his remarks to the two subjects to which the Sub-Committee had given priority: the settlement of disputes and the applicable law.

As to the settlement of disputes, it was, he thought, essential, in view of the most recent advances in the science of law, which were by no means lagging behind those of space technology, that any legal instrument to be drawn up should institute a jurisdiction binding on all parties. In preference to a procedure for referring disputes to the International Court of Justice, he favoured the use of arbitration, which was a commoner method of resolving disputes between States. If arbitration was to provide adequate guarentees of rapid and sure operation of the law, it seemed indispensable that the tribunal should already be in existence when the dispute arose. That did not mean it was necessary to establish a permanent tribunal for the settlement of disputes arising from liability in outer space, with all the organizational and operating expenditure that that would entail; it was more a question of forming a group of legal experts who would represent the legal systems of the whole world and who would be called upon to preside over the arbitration tribunals that would have to be set up in the case of disputes, as provided, for example, in the Washington Supplementary Agreement of 4 June 1965, which for the first time instituted arbitration tribunals for the settlement of disputes caused by space activities.

To arrive at a right understanding of how his delegation envisaged the study and solution of the problem of an international jurisdiction for the settlement of such disputes, a number of considerations had to be borne in mind. Firstly, the dispute to be dealt with should be an international one, in which one of the parties was asserting its claims against the claims of the other, or one of them was claiming the right to receive a benefit from the other and being refused. Secondly, it should be legal in character and not political. The aim was full reparation of the damage caused, in other words, adequate and satisfactory indemnification of the injured party. No questions of a political nature were involved, as they were in the case of a frontier dispute or a dispute in which the parties' vital interests were at stake. Thirdly, the legal dispute

should be justiciable, in other words, it must be brought before an organ having jurisdiction. That clearly presupposed the prior and explicit consent of the parties; in other words, it implied that they were prepared to refer the settlement of the dispute to the judicial body previously set up by them. Fourthly, besides respecting the wishes of the parties, the judicial procedure in question enhanced and further strengthened the notion of the sovereignty of States, for any judicial procedure was based on the "princi of autonomy", and at the same time it involved the assumption that all the parties were amenable to international law. Fifthly, the judicial procedure should be applicable onl to international conflicts which were disputes, since its sole and exclusive aim should be the solution of disputes in accordance with recognized international practice, and no the prevention or discussion of them, which States were not prepared to accept.

The outcome of the settlement had to be in accordance with international law, and this led him to the second subject: the applicable law. It followed from what he had already said that the applicable law was first and foremost international law; and sinc any dispute implied evidence of the existence of law, it was necessary to apply, besides international law, a law that was certain and unquestionable, that of the place in which the damage took place. For a given dispute, States could, being sovereign and acting on the "principle of autonomy", agree on any other law if they so decided in that particula case and in specific circumstances. The applicable law must be based on the principles of justice and equity; and other remedies might be available to the parties, in particular that of amending the law in force by means of an express agreement made between th prior to the setting up and intervention of the court of arbitration; but it was essential that the text of the convention should at least mention the application of international law and of the law of the place in which the damage took place, since that was the only way to give reality to the concept of a justiciable legal dispute.

He thought it was worth adding that the procedure proposed - and its rejection woul constitute a retrograde step in relation to what seventy-five States had agreed on five years earlier - was meant to be without prejudice to the use of statutory procedures suc as diplomatic negotiation, good offices, mediation, enquiry and consiliation, or, in other words, all the peaceful means prescribed by, among other multilateral internationa instruments, Article 33 of the Charter of the United Nations and article 21 of the Pact of Bogotá. The judicial procedure should therefore be established "unless the parties decide otherwise", or "unless disputes are settled in some other way".

ORGANIZATION OF WORK

Mr. FREELAND (United Kingdom) proposed that the work should be divided between meetings of the Working Group and informal discussion on the settlement of disputes and the applicable law. The Sub-Committee could, however, meet every day in plenary session to hear and, possibly, adopt delegations' proposals, or to settle questions submitted to it by the Working Group. The Working Group would take up questions in the order in which they appeared in the comparative table, leaving till last those raised by the preamble and the definitions.

Mr. CHARVET (France) supported the United Kingdom representative's proposal.

Mr. de SOUZA e SILVA (Brazil) asked whether or not the question of the applicable law and that of the settlement of disputes could be dealt with in plenary session.

The CHAIRMAN said he thought the United Kingdom proposal did not rule out consideration of those two subjects in plenary. Observing that the procedure described by the United Kingdom representative had won general approval, he proposed that it should be adopted.

It was so decided.

The meeting rose at 11.10 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTY-FIFTH MEETING

held on Thursday, 11 June 1970, at 10.45 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2)(A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/WG(IX)/L.1; PUOS/C.2/70/WG.1/CRP.1) (continued)

Organization of work

The CHAIRMAN drew the attention of the members of the Sub-Committee to two new working documents, the text on the field of application of the Convention (A/AC.105/C.2/WG(IX)/L.1) which had been approved the previous day by the Working Group, and a proposal which the United States delegation had submitted to the Working Group for consideration (PUOS/C.2/70/WG.1/CRP.1).

As he had no speaker on his list for the plenary meeting, he wondered whether the members of the Sub-Committee would not wish to meet directly as a Working Group the following day.

Mr. de SOUZA e SILVA (Brazil) said it had been his understanding that the programme of meetings proposed by the United Kingdom representative was to be reconsidered at the end of the first week's work.

The CHAIRMAN said that in that case the Sub-Committee might meet the following day in plenary to reconsider the organization of work.

It was so decided.

The meeting rose at 10.50 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTY-SIXTH MEETING
held on Friday, 12 June 1970, at 10.55 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/WG(IX)/L.2 to L.5; PUOS/C.2/70/WG.1/CRP.1 to CRP.4) (continued)

The CHAIRMAN drew attention to the new working documents before the Sub-Committee, namely, three working papers, one submitted by Bulgaria on the liability of international intergovernmental organizations which launched space objects (PUOS/C.2/70/WG.1/CRP.2), another submitted by Bulgaria and Hungary on the currency in which compensation should be paid (PUOS/C.2/70/WG.1/CRP.3) and one submitted by the United States on joint liability (PUOS/C.2/70/WG.1/CRP.4), and four documents containing texts approved by the Working Group (A/AC.105/C.2/WG(IX)/L.2 to L.5).

Mr. ANGUELOV (Bulgaria), introducing the working paper submitted in French by his delegation (PUOS/C.2/70/WG.1/CRP.2), requested the Secretariat to ensure that the English, Spanish and Russian versions of the first paragraph corresponded to the original. In the last paragraph, the words "shall be" should be substituted for the words "must be".

The first, second and fourth paragraphs differed little from the corresponding points in the recommendations and decisions adopted by the Committee at its last session (A/7621/Add.1, para.8(h)(iv)). The Committee's conclusion had been that the victim of damage caused by the space activities of an international intergovernmental organization could present a claim for compensation to one or more of the States members of that organization only when the organization had not "paid, within a specified period, the sum due". The text proposed by Bulgaria was simpler in that the victim could from the outset address a claim to the organization itself or to one or more of its member States. It would have the advantage of avoiding any complications which might arise should the victim not recognize the international intergovernmental organization responsible. Moreover, it was understood that all claims for compensation could be made jointly.

Mr. FREELAND (United Kingdom) said that he was not yet in a position to make detailed comments on the Bulgarian working paper, which had only just been distributed. The principles which might constitute a basis for a solution on the issue of

international intergovernmental organizations had been outlined in detail in the text of the statement made by the Chairman of the Committee on the Peaceful Uses of Outer Space on 5 December 1969, which had been approved by the Committee. That text said, in particular, that "if an international intergovernmental organization is liable for damage under the convention, claims must first be presented to the organization and only when it has not paid, within a specified period, the sum due, may the claim be presented to one or more States members which are contracting parties to the convention" (A/7621/Add.1, para.8(h)(iv), third point).

The third paragraph of the Bulgarian proposal was substantially different from the passage which he had just quoted and on which agreement had been reached in the Committee. A proposal on the same question had been made to the Sub-Committee the previous year by the United Kingdom and a number of other delegations. He would therefore like to consult the other delegations concerned to see whether they wished to re-submit that text or present a variant of it.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that his delegation would give careful consideration to the proposal of the Bulgarian delegation in the light of the views previously expressed and the proposals of several delegations referred to in the documents of the previous session.

However, before giving his position on all the matters at present before the Committee, he would wait until his delegation's working paper on the structure of the proposed convention had been circulated.

Mr. AMBROSINI (Italy) said that while the Bulgarian proposal admittedly offered certain advantages, his delegation, too, would like a little more time to reflect on the question. Since international organizations had legal personality it appeared to him natural and reasonable that the victims of space activities undertaken by such organizations should, in the first place, address their claim for compensation to the organization itself. The Bulgarian proposal differed radically from that concept. If the victim was given the right to present a claim either to the organization responsible or to any of the States members of that organization, the organization and member States would become jointly and severally liable vis à vis the victim.

Moreover, the international organizations engaged in space activities were always insured in respect of any damage for which they might be liable. That was why there seemed to be no need to amend the draft convention as suggested by the Bulgarian delegation. In any event, the small countries belonging to the organization responsible would be unable to pay the large amounts of compensation which might be due after some particularly serious accidents. The simplest solution was, therefore, for the victim to address a claim to the international organization responsible. The latter would, in turn, apply to its insurance company, which would pay the compensation as soon as the amount had been fixed.

The meeting rose at 11.20 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTY-SEVENTH MEETING

held on Monday, 15 June 1970, at 10.45 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/WG(IX)/L.1; PUOS/C.2/70/WG.1/CRP.1 to 8) (continued)

Mr. SEPULVEDA (Mexico) said that his delegation recognized the need to adopt the draft convention on liability as soon as possible. It accepted the General Assembly's recommendation, adopted at its twenty-fourth session, urging the Sub-Committee to complete its work before the end of the year. It appealed to all representatives to continue the negotiations to show greater flexibility and to recognize the advantages of proposals which would provide the greatest possible protection for the victim and ensure him adequate, prompt and fair compensation. That was the basic principle which should guide the Sub-Committee in its work and which should be embodied in the rules adopted.

Considerable progress had been made in drawing up rules governing liability in space activity. Whereas in 1968, when he had first participated in the Sub-Committee's work, there had still been wide differences of opinion and the principles had been in the rudimentary stage, the progress made since then was obvious. Provisions which had been somewhat confused had now been formulated clearly and precisely and the draft convention had gained in coherence as a result.

One of the questions still to be settled was the problem of international organizations. Agreement had been reached on a number of points. It was recognized that international organizations were responsible for damage caused by their space activities. It was also recognized that in the event of damage to the property of an international organization by a space object, that organization was entitled to compensation. His delegation, moreover, considered that the Convention should contain a rule protecting the staff as well as the property of an international organization, since damage to property would most probably involve loss of life and bodily injury or other damage to the health of international staff inside or in the vicinity of damaged buildings.

It could be argued that claims for compensation should be presented by the State of which the international official was a national, but such a rule would disregard the status as a legal entity that most international organizations possessed. Moreover, such reasoning was contrary to the 1949 opinion of the International Court of Justice concerning compensation for damages incurred during service with the United Nations and was inconsistent with a dynamic interpretation of the law of international organizations.

He therefore proposed that in the second paragraph, under the heading "Points on which provisional agreement was reached" (A/AC.105/C.2/W.2/Rev.5, p.15) the first line should be redrafted on the following lines: "If damage is caused by a space object to an international intergovernmental organization ....". "Damage would have the same meaning as in the Convention, in accordance with the definition already agreed upon, and there would thus be no restriction on the term."

It had already been agreed that claims for compensation could be presented by a State member of the international intergovernmental organization which was a party to the Convention. The Mexican delegation considered, however, that the claim might also be submitted by the international organization itself and that the text should provide for a choice between the two possibilities. He accordingly proposed that the second part of the same paragraph should be redrafted on the following lines: "... the claim shall be presented by the competent organ of the organization in question or by a State member of the international intergovernmental organization which is a party to the present Convention." That option had the advantage of enabling the organization itself to claim compensation, and at the same time providing some latitude in case the organization found it inconvenient to make the claim directly or was not in a position to exercise its rights.

The Mexican proposal, submitted as a working paper (PUOS/C.2/70/WG.1/CRP.8), was consistent with principles which had already been accepted in general terms. In particular, it invoked the principle whereby the relevant provisions of the Convention would apply to international intergovernmental organizations accepting the rights and obligations set forth in the Convention, when the majority of their member States were Contracting Parties to the Convention and to the 1967 Treaty.

Moreover, recognition of the right of the international intergovernmental organization itself to claim compensation directly was a corollary of its obligation to compensate damage caused by its own space activities. Having accepted responsibility in the one case, it should be able in the other to claim compensation for damage caused to it by space activity. For a variety of reasons, it was also desirable that a State which was a member of the organization and a party to the Convention should be able to put forward the claims of the organization which had suffered damage.

The meeting rose at 11.15 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTY-EIGHTH MEETING

held on Tuesday, 16 June 1970, at 10.50 a.m.

Chairman: Mr. WYZNER, Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5 and Rev.5/Corr.1; A/AC.105/C.2/WG (IX)/L.2 to L.7/Rev.1; PUOS/C.2/70/WG.1/CRP.1 to 12) (continued)

Mr. FREELAND (United Kingdom) introduced a working paper concerning international organizations sponsored jointly by Belgium, France, Italy, Sweden and the United Kingdom (PUOS/C.2/70/WG.1/CRP.11). That joint proposal was directly based on a text proposed by the same delegations at the eighth session of the Sub-Committee (A/AC.105/C.2/L.60 and Add.1), which itself derived from a proposal submitted at the 1968 session by the same delegations together with the delegation of Austria (A/AC.105/C.2/L.41) but which incorporated a number of amendments that the sponsors had accepted as a practical matter and for the purpose of securing general agreement on the main issues. The present proposal largely reproduced that of 1969, except for paragraph 4 and some drafting changes at the beginning of paragraph 3. His delegation believed it would be helpful to compare, paragraph by paragraph, the joint proposal with the proposals submitted by Bulgaria (PUOS/C.2/70/WG.1/CRP.2) and by Mexico (PUOS/C.2/70/WG.1/CRP.8) as well as with the relevant part of the agreed statement read out by the Chairman of the Committee on the Peaceful Uses of Outer Space on 5 December 1969 (A/7621/Add.1, paragraph 8, sub-paragraph (h) (iv)).

The first paragraph of the three proposals contained certain points in common, which coincided also with the Committee's agreed statement: all of them recognized the need to provide that participation by international intergovernmental organizations should be on the basis of declarations made by the organizations concerned. Certain differences, however, should be noted. The Mexican proposal stated that the international organizations "shall be liable" for the damage caused, but it did not confer any entitlement to rights under the Convention. The Bulgarian proposal specified that the provisions of the Convention would be applicable to international intergovernmental organizations but did not specify which provisions or the manner in which they would be applied. In contrast, the joint proposal which his delegation was introducing provided that, with the exception of certain articles to be specified later in the blank spaces left for the purpose (articles on final clauses, signature etc.), all the provisions of

the Convention should apply to international intergovernmental organizations "in the same manner as they apply to a State". The paragraph would therefore provide a reference point from which to determine how the substantive provisions of the Convention, both as to rights and as to obligations, were to be applied in the case of international intergovernmental organizations. It matched the true intent of the relevant part of the Committee's agreed statement.

Paragraph 2, as it appeared in the proposals submitted by Bulgaria and Mexico, would impose upon the States members of an organization which were Parties to the Convention an obligation to take the steps necessary for the making of a declaration by the organization accepting the rights and obligations of the Convention. His delegation felt that those provisions went beyond the scope of an obligation which could reasonably be imposed since a Party or Parties to the Convention might not be in a position - for example, because of the constitutional structure of the organization - to ensure that the organization made such a declaration. The proposal of which the United Kingdom was a co-sponsor provided that the States members of the organization which were Parties to the Convention would support in the organization the making of a declaration. That went as far as it appeared reasonably possible to go, as a legal matter, and closely matched, in any case, the corresponding principle contained in the Committee's agreed statement. Perhaps the best assurance that organizations would, in fact, make declarations of acceptance was, in any event, likely to be the existence of clear provisions in paragraph 1 that they should enjoy rights under the Convention as well as become subject to its obligations.

Paragraph 3 of the joint proposal was closely similar to the text proposed in 1969 (A/AC.105/C.2/L.60 and Add.1). The 1969 text had, however, significantly differed in that respect from the text proposed in 1968 (A/AC.105/C.2/L.41). Under the latter text, the organization alone was liable initially and the States members were jointly and severally liable only if the organization had not fulfilled its obligations within six months of the presentation to it of the claim for compensation. In the new text, on the other hand, as in that of 1969, the sponsors had accepted as a compromise that both the organization and those of its members which were Parties to the Convention should be jointly and severally liable from the outset, with the proviso that the claim for compensation would be presented first to the organization and that the claimant could invoke the liability of the members only in the event of failure of the organization to pay the compensation within six months of its becoming due. The corresponding Mexican proposal did not make clear the nature of the liability incurred by the organization and

its members. The Bulgarian proposal placed the organization and the member States on the same footing and gave the claimant the right to decide to whom he would present his claim for compensation. In introducing his text, the Bulgarian representative had argued that such a provision would simplify the procedure in practice. The United Kingdom delegation doubted the force of that argument, since there was no reason to expect that the organization, to which the claim would under the joint proposal fall to be presented, would in practice do other than pay any compensation due. More important, however, the formula proposed by Bulgaria would in that respect necessitate a further concession going beyond what was envisaged in the corresponding part of the Committee's agreed statement and beyond what the United Kingdom could accept.

Lastly, paragraph 4 of the present conference room paper differed in substance from the text proposed in 1969, where it was stated that a claim for compensation in respect of damage caused to an organization must be presented by the State on whose territory the organization had its seat, or if that State was not a Party to the Convention, by a State member of the organization which was such a Contracting Party. Taking into account the decision taken by the Sub-Committee in 1969 and the corresponding passage of the Committee's agreed statement, the paragraph in the five-Power proposal provided that the claim for conpensation in respect of damage caused to an organization should be presented by a State member of the organization which was a Contracting Party to the Convention. The procedure proposed in paragraph 5 of the Mexican proposal could certainly be defended in principle but he wondered how the "competent organ" of the organization could submit the claim direct without encountering considerable difficulties in practice. It seemed preferable to require that the claim should be presented by a member State.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said he was glad to note that a number of specific proposals had now been made following the general solutions which had been found, at the last session of the Committee, for the very complex question of international organizations. Consultations had already taken place among the delegations of the socialist countries with regard to the new elements contained in the proposals submitted by Bulgaria and Mexico; the proposal which had just been introduced by the United Kingdom representative would be examined in the same manner

Mr. PERSSON (Sweden), referring to the scope of application of the Convention, said that he wished to make a few comments on the definition of "space object". The Swedish delegation considered such a definition desirable but felt that the discussion so far in the Sub-Committee offered little hope of finding a formula that would meet both present and future needs. It believed, however, that the efforts in that direction

should be continued. The 1967 Treaty and the 1968 Agreement already contained several expressions such as "space vehicle", "an object launched into outer space", "spacecraft" and "space object or its component parts". Moreover, installations were already operating on the moon and stations and other structures, manned and unmanned, would som day be operating on the moon and other celestial bodies. It was therefore important t determine whether such installations or stations on the surface of a celestial body should or should not be covered by the Convention in case of their being damaged by a space object belonging to another State. That aspect of the question did not appear t have been examined so far, but the Committee should give a clear indication, in one direction or another, for the future guidance of Governments in the application or interpretation of the Convention. Such an indication was all the more necessary becau article VII of the 1967 Treaty did not make any distinction in that respect and provid simply that "Each State Party ... is internationally liable for damage ... by such obje or its component parts on the earth, in air space or in outer space, including the Moon and other celestial bodies."

The answer which the Sub-Committee would give to that question also had a bearing the drafting of paragraph 3 of the agreed text (A/AC.105/C.2/W.2/Rev.5, page 11). That paragraph covered two situations: first, damage caused elsewhere than on the surf of the earth to a space object, which included in its terms a space object landed or constructed on the moon; secondly, damage caused to persons or property on board such a space object - and one thought obviously of a spacecraft in motion - but the text did not appear to apply to persons working, for example, in a station on the moon or to property located on the moon, inasmuch as it could not be regarded as a space object.

The Swedish delegation did not yet have any text to submit on the matter but it believed that the question could perhaps be discussed during the present session in connexion with the consideration of the legal rules which would govern human activities on the moon and other celestial bodies.

Mr. AMBROSINI (Italy) said that the Swedish representative's comments on an important question which had not previously been raised reflected a concern which had also been expressed by the Italian delegation in the working paper it had submitted (PUOS/C.2/70/WG.1/CRP.12).

It was necessary to decide also whether liability should be based on negligence o whether it should be absolute, in other words, whether it would in all cases rest with the party causing the damage, even if there was negligence on the part of the victim.

His delegation considered the situation on the surface of celestial bodies to be comparable with the situation on the surface of the earth; it therefore seemed logical to apply the principle of absolute liability in the first case as well as in the second. His delegation might perhaps redraft its working paper along those lines. In general, it was of the opinion that the Sub-Committee could already consider the question and take a decision, since the practical possibility of such cases arising could no longer be doubted.

Mr. COCCA (Argentina) said that if the Convention was to cover all possibilities and fit into the framework of the 1967 Treaty, it should apply not only to damage caused on the surface of the earth and to aircraft in flight but also to that caused on the surface of celestial bodies, as the Italian delegation had proposed (PUOS/C.2/70/WG.1/CRP.12). He also thought that the principle of absolute liability should be adopted.

His delegation appreciated the concern of the Swedish delegation regarding the definition of the term "space object". Having always favoured general definitions and believing that a law could not be applied satisfactorily if it was not clearly understood, his delegation had proposed a definition of the term "space object" in 1967 and, together with other delegations, was preparing to submit one which would include in the term "object" component parts which had become detached from or had been torn from it. It was essential to avoid the error committed in the 1968 Agreement on the rescue of astronauts, in which even the term "astronaut" was not defined.

Mr. RAO (India) said that he wished to propose some amendments to the joint proposal by Belgium, France, Italy, Sweden and the United Kingdom (PUOS/C.2/70/WG.1/CRP.11). He proposed that, in paragraph 1, the words "conducts space activities" should be replaced by the words "launches a space object" and that, in paragraph 2, the words "support in the organization the making of" should be replaced by the words "take all appropriate steps to ensure that the organization makes". Lastly, he proposed that sub-paragraph 3(b) should be replaced by the following text: "only where the organization has failed to settle the claim, within a period of six months, may the claimant present the claim to one or more States Members of the organization which are Contracting Parties to this Convention".

Mr. SEPULVEDA (Mexico) said there was considerable similarity between his delegation's proposal (PUOS/C.2/70/WG.1/CRP.8) and the joint proposal submitted by Belgium, France, Italy, Sweden and the United Kingdom (PUOS/C.2/70/WG.1/CRP.11).

However, there was an important difference between paragraph 5 of the former and paragraph 4 of the latter. Whereas, under the Mexican proposal, the claim for compensation could be presented either by the competent organ of the international organization which had suffered the damage or by a State member of the organization which was party to the Convention, under paragraph 4 of the joint proposal, the claim for compensation had to be presented by a State member of the organization which was a Contracting Party to the Convention. His delegation would find it difficult to accept that any State member of the organization and Party to the Convention could present the claim for compensation. It was not inconceivable that the party responsible for the damage might be a State member of the organization which had suffered the damage and, if the hypothesis were taken to its logical extreme, it was not inherently impossible to suppose that it might be precisely the very State which had caused the damage, taking it upon itself to do so, which presented the claim for compensation. It was in order to avoid an extremely delicate situation of that kind that his delegation was proposing to give priority, for presentation of the claim, to the competent organ of the organization. Both his delegation's proposal and the joint proposal would probably be improved if they required the claim to be presented by the competent organ of the organization or by a State member of the organization which was a party to the Convention and had been authorized by the said competent organ to make the claim. In that way, there would be no danger of the State which had caused the damage being at once respondent and claimant.

Commenting on the Indian amendments to the joint proposal, he noted that the second amendment strongly resembled paragraph 2 of the Mexican proposal (PUOS/C.2/70/WG.1/CRP.8).

Mr. AMBROSINI (Italy) observed that his delegation had proposed a very broad definition of the term "space object" (PUOS/C.2/70/WG.1/CRP.10) so that it might be applicable even to space devices which man had not yet designed.

Mr. CHARVET (France), referring to the first Indian amendment to the joint proposal (PUOS/C.2/70/WG.1/CRP.11), said he thought it preferable to retain the existing wording of paragraph 1 since, in his view, the formula proposed by India was too restrictive. His delegation considered it wiser to continue to speak of an international intergovernmental organization which conducted space activities and not to refer only to the launching of objects. as the Indian delegation had suggested.

The French delegation endorsed the Italian suggestion that the question of liability for damage caused on the surface of the moon or other celestial bodies should be studied. In that connexion, the Sub-Committee would have to choose between liability without establishment of negligence, liability for damage due to negligence and the decision to deal separately, i.e. in another convention, with the question of liability on the surface of the moon.

Mr. FREELAND (United Kingdom), commenting on the Indian amendments to the joint proposal (PUOS/C.2/70/WG.1/CRP.11), said he found the amendment to paragraph 1 too restrictive, for the reasons already given by the French representative. He would not be opposed to the rewording of paragraph 2, on condition that the formula proposed by India were made more flexible. As for the amendment to sub-paragraph 3 (b) of the joint proposal, he doubted that it constituted an improvement, in view of the difficulty of determining when the period of six months began.

Mr. ZAMANEK (Austria) pointed out that, taken literally, the first Indian amendment to paragraph 1 of the joint proposal would mean that an organization which "launches a space object" could not claim compensation under paragraph 4 unless damage were caused to that space object. Paragraph 4 was, however, also intended to protect launching pads, for instance.

With regard to the Italian amendment (PUOS/C.2/70/WG.1/CRP.12) to paragraph 1 of the agreed text on the field of application of the Convention, it seemed to him that its adoption would make it necessary to amend paragraph 3 of that text by inserting the words "or of celestial bodies" after the word "earth".

Mr. GOGEANU (Romania) said that, to remove all misunderstanding, his delegation thought that the Convention should lay down the principle that, where the space activities of an international intergovernmental organization caused damage, the organization itself and its member States were jointly and severally liable.

Mr. AMBROSINI (Italy), replying to the Austrian representative, pointed out that the Italian delegation, in its working paper (PUOS/C.2/70/WG.1/CRP.12), had said it was in agreement with the substance of the article relating to the field of application of the Convention (A/AC.105/C.2/W.2/Rev.5, p.11): the amendments it had submitted to the agreed text thus related solely to its formulation.

His delegation thought that paragraph 3 of that article was intended to cover cases of collision, which were well known in sea and air law, for instance, and that the text would be more satisfactory if it contained the word "collision". Collisions raised extremely complex problems of liability. In addition to cases where negligence was

manifestly attributable to one of the parties, there were also cases of joint negligence and those in which the causes of the collision remained unknown. To eliminate any uncertainty, all the possible cases should be covered by paragraph 3 and the procedure for settlement clearly indicated. A solution could, of course, always be reached by analogy with sea or air law, but it would be desirable for the Sub-Committee to take up a position in the matter.

Mr. RAO (India), replying to the comments made on his delegation's proposed amendment to paragraph 1 of the joint proposal (PUOS/C.2/70/WG.1/CRP.11), said he was prepared to replace his initial text by the wording: "engages in the launching of space objects".

Mr. CHARVET (France) said he could not see the need to restrict paragraph 3 of the article concerning the field of application to cases of collision, as the Italian representative was requesting. Damage to a space object or to persons or property on board it might well be due to other causes, such as jamming of or interference with transmission frequencies.

Mr. AMBROSINI (Italy) said that the concept of collision, as used in sea and air law, covered both collisions properly so-called and cases in which ships or aircraft were impeded in their movement and manoeuvres.

Mr. VRANKEN (Belgium), speaking as a sponsor of the joint proposal (PUOS/C.2/70/WG.1/CRP.11), said that his delegation would consider the amendments proposed by the Indian representative and see whether they were acceptable.

With regard to the question raised by the Swedish representative concerning possible damage to persons, property or objects on the surface of the moon or other celestial bodies, his delegation would, on reflexion, opt for the third possibility suggested by the French representative, namely, making such damage the subject of another convention, since the one the Sub-Committee was considering was, as its title indicated, restricted to objects launched into space.

Moreover, the Sub-Committee would be called upon to discuss the problems posed by property, persons and activities on the surface of celestial bodies, within the context of its agenda and of its future work. If, in the convention now in preparation, it opted forthwith for absolute liability in the event of damage to the surface of the moon and of celestial bodies, as the representative of Italy was requesting, it would have tied its hands before it had even begun the study entrusted to it.

Mr. CHARVET (France) said he entirely agreed with the representative of Belgium.

Mr. SEPULVEDA (Mexico) said he thought that there were two possibilities open to the Sub-Committee with respect to damage which might be caused by a space object on the surface of the moon or other celestial bodies: either to leave the question aside, although it would have to be settled sooner or later at a subsequent conference or else to deal with it and set out the rules and principles of liability for the solution of a problem which would certainly arise at some stage. His delegation would prefer the second solution.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said he agreed with the representatives of Belgium and France. There were many very interesting problems which could be linked up in one way or another with the basic problems before the Sub-Committee but the trend which was emerging did not encourage optimism. Interesting though theoretical questions might be, the Sub-Committee should not allow itself to be diverted from its course. For the moment, what was important was to consider the specific texts which various delegations had submitted and whose discussion would yield more positive results.

The problem of activities on the surface of the moon and of celestial bodies could be considered at the appropriate moment. Until then, the Sub-Committee should be guided by the resolutions of the General Assembly, which had instructed it first to complete the convention on liability for damage caused by objects launched into outer space.

Article VII of the 1967 Treaty had been mentioned during the discussion. Reference to that article would show that its wording was extremely clear and that both the moon and the celestial bodies formed part of outer space. It would hardly be advisable to re-open that question in connexion with the convention now in preparation, particularly as it had already been settled in paragraph 3 of the agreed text for the article relating to the field of application (A/AC.105/C.2/W.2/Rev.5, p. 11).

The CHAIRMAN suggested that the working paper submitted by Italy (PUOS/C.2/70/WG.1/CRP.10), together with the Mexican proposal on the definition of a space object which would be circulated very shortly. should be referred to the Working Group.

Mr. VRANKEN (Belgium) said that the French text of working paper PUOS/C.2/70/WG.1/CRP.10 did not correspond to the English. The Working Group had already wasted time because of discrepancies between the versions of working papers in the different languages. It was absolutely necessary that all the texts submitted should correspond.

Mr. COCCA (Argentina) reminded the Sub-Committee that his delegation had also announced its intention of submitting a draft definition of a space object.

Mr. ZEMANEK (Austria) said that the definition of a space object could not be usefully considered unless all the draft definitions were circulated shortly.

The CHAIRMAN said that the comments by the representatives of Belgium and Austria would be noted. He proposed that consideration of the working paper on international organizations (PUOS/C.2/70/WG.1/CRP.11) should be postponed until the amendments proposed by the delegation of India had been circulated.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that consultations were in progress on that extremely complex question. He was concerned at the turn the work was taking in view of the fact that certain delegations gave the impression of wishing to re-open the agreement reached on controversial matters. The Sub-Committee should attempt to find specific formulae for the particular matters referred to it.

Mr. AMBROSINI (Italy) said he thought the moment had come for the Sub-Committee to take up the really controversial matters. Once they had been settled, the others would be easily disposed of.

Mr. ZEMANEK (Austria), speaking as a member of the delegation of Austria whose permanent representative in New York was the Chairman of the Committee, said he wished to draw attention to the following passage of the Committee's agreed statement: "On the issue of international intergovernmental organizations, it appeared that, if all other problems in dispute are settled, agreement might be possible on a provision which would be based on the following principles ..." (A/7621/Add.1, paragraph 8 (h)(iv)).

The meeting rose at 1.20 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND THIRTY NINTH MEETING
held on Wednesday, 17 June 1970, at 10.50 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/WG.2/Rev.5; A/AC.105/C.2/WG(IX)L.1-6 and L.7/Rev.1; PUOS/C.2/70/WG.1/CRP.1-3, CRP.4/Rev.1, CRP.5-9, CRP.10/Rev.1 and CRP.11-16 (continued)

The CHAIRMAN drew the Sub-Committee's attention to the new documents which had just been distributed in all working languages, namely, the amendments proposed by India (PUOS/C.2/70/WG.1/CRP.15) to the text on the liability of international organizations submitted by Belgium, France, Italy, Sweden and the United Kingdom (PUOS/C.2/70/WG.1/CRP.11), two working papers on the definition of a space object, one submitted by Mexico (PUOS/C.2/70/WG.1/CRP.14) and the other by Argentina, Belgium and France (PUOS/C.2/70/WG.1/CRP.16), and a working paper on the field of application of the convention submitted by the Soviet Union (PUOS/C.2/70/WG.1/CRP.13).

With regard to the organization of work, a number of delegations had suggested that, in order to enable unofficial consultations to continue, neither the Sub-Committee nor the Working Group should meet that afternoon. In the absence of any objection, he would take it that that suggestion was accepted.

It was so decided.

In reply to a question by Mr. AMBROSINI (Italy), the CHAIRMAN said that the Sub-Committee had decided at its previous meeting that the question of the definition of a space object should be discussed by the Working Group. If, however, some delegations wished to make statements on that matter in the Sub-Committee itself, they were free to do so.

The meeting rose at 11 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FORTIETH MEETING

held on Thursday, 18 June 1970, at 10.45 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/WG(IX)/L.1 to L.8; PUOS/C.2/70/WG.1/CRP.1 to 16) (continued)

The CHAIRMAN suggested that, since no delegation wished to speak, the Sub-Committee should meet as a Working Group.

It was so decided.

The meeting rose at 10.50 a.m.

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SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-FIRST MEETING

held on Friday, 19 June 1970, at 10.50 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/WG(IX)/L.1 to L.9; PUOS/C.2/70/WG.1/CRP.1 to CRP.17) (continued)

The CHAIRMAN drew the Sub-Committee's attention to two new documents which had just been issued in all working languages. One was the text on time-limits for presentation of claims, approved by the Working Group the day before, (A/AC.105/C.2/WG(IX)/L.9), and the other, a proposal that the delegation of the USSR was submitting for the Working Group's consideration on the liability of the State from whose territory or facility the space object was launched (PUOS/C.2/70/WG.1/CRP.17).

The Sub-Committee would now continue its work as a Working Group.

The meeting rose at 10.55 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-SECOND MEETING

held on Monday, 22 June 1970, at 11.20 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/WG(IX)/L.1-6, L.7/Rev.1, L.8, L.9 and L.9/Corr.1; PUOS/C.2/70/WG.1/CRP.1-3, CRP.4/Rev.1, CRP.5-9, CRP.10/Rev.1 and CRP.11-18) (continued)

The CHAIRMAN proposed that in view of the informal consultations which had just been held, the Sub-Committee should continue its consideration of agenda item 2 during the coming week in the same way as before and should take stock of the situation at the end of the week.

It was so decided.

The CHAIRMAN recalled that the Sub-Committee had decided, some time previously, to set up a drafting group to prepare the final text of the draft convention.

Having consulted the various delegations and groups of delegations in the Sub-Committee, he proposed that the drafting group should consist of eight members, seven of whom would represent Belgium, France, Hungary, India, the USSR, the United Kingdom and the United States of America respectively, while the eighth place would be occupied part of the time by Argentina and part of the time by Mexico, which would alternate by mutual agreement.

It was so decided.

The CHAIRMAN proposed that the Sub-Committee should, in essence, instruct the Drafting Group to prepare texts for all the provisions on which substantive agreement had been reached either in the Working Group or the Sub-Committee itself. The Drafting Group would also have to study the following questions: the definitive title of the convention and preamble, the titles of the articles and the final clauses.

The Working Group and the Sub-Committee would, of course, remain free to deal with those questions, if they deemed it necessary, as well as with the structure of the convention.

All proposals on which agreement was reached in the Drafting Group would be submitted for approval either to the Working Group, which would then refer them to the Sub-Committee, or directly to the Sub-Committee.

The Chairman's proposal was adopted.

The CHAIRMAN proposed that the Drafting Group should hold its first meeting that same morning, immediately after the meetings of the Sub-Committee and the Working Group.

It was so decided.

The meeting rose at 11.30 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-THIRD MEETING

held on Tuesday, 23 June 1970, at 11 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/WG(IX)/L.1 to L.5, L.6/Rev.1, L.7/Rev.1, L.8, L.9; PUOS/C.2/70/WG.1/CRP.1, CRP.2 and Corr.1, CRP.3, CRP.4, CRP.4/Rev.1, CRP.5 to 9, CRP.10/Rev.1, CRP.11 to 19) (continued)

Mr. COCCA (Argentina) explained that his delegation wished to introduce its working paper on the question of joint liability (PUOS/C.2/70/WG.1/CRP.19) at a plenary meeting of the Sub-Committee, because Argentina was at present one of the only two countries possessing sounding rocket launching bases which had been placed under the sponsorship of the United Nations. The other country was India, where the Thumba base had set an excellent example of international co-operation. By a resolution adopted in 1969, the General Assembly had placed the CELPA Mar del Plata base under United Nations sponsorship in accordance with the principles set forth in its resolution 1802 (XVII). That meant that the launching sites and facilities of the Mar del Plata base, like those of the Thumba base, could be used by any of the 126 States Members of the United Nations which satisfied the prescribed conditions and which had concluded an agreement to that effect with Argentina or with India.

In a wider setting of international co-operation, it was quite possible that all Member States -- or the vast majority of them - would sign an agreement to that effect and that, as a result, if the launching took place from the Mar del Plata base it would be carried out from Argentine facilities in Argentine territory. Under the terms of the text approved by the Working Group (A/AC.105/C.2/WG(IX)/L.6/Rev.1), Argentina would then be jointly liable with the State or States which carried out the launching. The principle stated in Article VII of the 1966 Treaty, which was concerned with liability "internationally", had been broadened, for the Sub-Committee was now concerned with joint liability and joint launching. At the previous session some delegations had expressed the view that liability should be residual when a State merely lent its territory or facilities, but nothing had been decided until the adoption of the text just approved by the Working Group.

Since the States participating in a joint launching could conclude agreements regarding the apportioning of the damage or of the financial obligation in respect of

compensation, and since they were free as sovereign States to set such conditions as they deemed appropriate for each launching, in the light of their legitimate interests, without being in any way bound or limited by the provisions of the 1966 Treaty or by those of the convention on liability, his delegation considered that the texts approved by the Sub-Committee should be supplemented by a reference to Article 102 of the United Nations Charter. Article 102, paragraph 2, provided that no party to any treaty or international agreement which had not been registered in accordance with the provisions of paragraph 1 of that Article might invoke that treaty or agreement before any organ of the United Nations. His delegation considered it essential that agreements regarding the apportioning of the financial obligation in respect of damage for which the participants in those agreements were jointly liable should be registered with and published by the United Nations Secretariat.

Such a reference added legal precision to the text and would be the means of ensuring the publicity that was essential to space activity; it would also encourage international co-operation, for there were a good many States which would be reluctant to lend their territory or facilities if the joint liability they had accepted was not duly delimited by agreements in respect of each launch. The question was one of substance and was of particular concern to his delegation, but the Sub-Committee should take it into consideration and resolve it.

Mr. AMBROSINI (Italy) said that he fully supported the Argentine proposal, especially since Italy also possessed launching bases which were used mainly by international organizations. It was essential that the question should be settled so as to preclude any possibility of misunderstanding.

Mr. ROBERTSON (Canada) said that he would comment on the proposal in detail in the Working Group.

The meeting rose at 11.15 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-FOURTH MEETING

held on Wednesday, 24 June 1970, at 10.50 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/WG(IX)/L.1 to 5, L.6/Rev.1, L.7/Rev.1 and Rev.1/Corr.1, L.8 and L.9; PUOS/C.2/70/WG.1/CRP.1, CRP.2 and Corr.1 CRP.3, CRP.4 and Corr.1 and Rev.1, CRP.5 to 9, CRP.10/Rev.1 and CRP.11 to 19; PUOS/C.2/DG(IX)/1) (continued)

The CHAIRMAN drew the Sub-Committee's attention to two new documents. The Argentine delegation had submitted a draft agreement on the principles which should govern activities involving the use of the natural resources of the Moon and other celestial bodies (A/AC.105/C.2/L.71), which came under agenda item 3. The Drafting Group had submitted a working paper (PUOS/C.2/DG(IX)/1), containing the articles of the draft Convention in a new order. It was a provisional document. The Group had not yet considered either the text or the titles of the articles, nor had it yet taken a decision on the desirability of giving titles to the articles. Its work had thus dealt only with the general outline of the draft convention, the draft articles having been reproduced as they stood from documents A/AC.105/C.2/WG(IX)L.1 to L.9, with their revisions and corrigenda. If new articles were proposed, their place in the draft convention would be decided later. The Drafting Group had also held an exchange of views on the final clauses of the draft Convention, but without reaching any decision.

The meeting rose at 11.5 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-FIFTH MEETING

held on Thursday, 25 June 1970, at 11.10 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/L.71; A/AC.105/C.2/WG(IX)/L.1 to 5, L.6/Rev.1, L.7/Rev.1, L.8, L.9; PUOS/C.2/70/WG.1/CRP.1, CRP.2 and Corr.1, CRP.3, CRP.4, CRP.4/Rev.1, CRP.5 to 9, CRP.10/Rev.1, CRP.11 to 19; PUOS/C.2/WG(IX)/1 and 2) (continued)

The CHAIRMAN informed the Sub-Committee that the Drafting Group had examined the text of article I on "Definitions" in all four working languages, and had approved it with the following drafting changes. In sub-paragraphs (c) and (d), the term "the space object" should read "a space object". The change did not affect the Russian text. In points 1 and 2 (the figure to be placed in brackets), of sub-paragraph (c), the French, Russian and Spanish texts should follow the corresponding wording of article VII of the 1967 Treaty. In sub-paragraph (a) the word "dommages" in the French text and the word "daños" in the Spanish text should be put in the singular. In the Spanish text, the word "convención" should be replaced by the word "convenio", and the term "estado de lanzamiento" should be replaced by the term "estado lanzador". In the English text, the word "purpose" in the introductory phrase should be in the plural.

The Drafting Group had also decided that the term "juridical persons" should be rendered in Spanish by the term "personas morales" whenever it appeared in the convention.

Lastly, the Group had decided that wherever reference was made to the convention, the expression "this Convention" would be used, as in the introductory phrase of article I.

The Chairman suggested that the Drafting Group should meet immediately to continue its work.

It was so decided.

The meeting rose at 11.15 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-SIXTH MEETING
held on Friday, 26 June 1970, at 10.45 a.m.

Chairman Mr. WYZNER Poland

ORGANIZATION OF WORK

The CHAIRMAN said he would like to have the Sub-Committee's views on two points. Firstly, the Drafting Group had informed him that of the twelve articles it had been asked to prepare in the four working languages -- a task requiring very careful consideration - four had now been completed, although some points still needed further thought. The Drafting Group wished to proceed to a second reading of all the articles it had prepared so as to ensure uniformity in the matter of terminology. But it would be difficult for it to report to the Sub-Committee at each stage of its work, as it would sometimes have to go back over old ground. Consequently, it would prefer to submit a general report towards the end of the session on all the drafting changes made in the articles.

Mr. ZEMANEK (Austria) said that if that were done it would need only one delegation to object in plenary to a simple drafting change for the whole draft to be rejected.

The CHAIRMAN pointed out that in any case the texts prepared by the Drafting Group would be submitted to the Sub-Committee for approval and that the Sub-Committee alone would be able to decide on the final text to be included in the report.

Mr. ROBERTSON (Canada) asked whether the texts produced by the Drafting Group would still have to go through the Working Group before being submitted to the Sub-Committee for approval.

The CHAIRMAN said that the Sub-Committee had only six working days left and that it would need two for the adoption of the report. As the text of the articles had already been considered and approved by the Working Group before being referred to the Drafting Group, it would save time if the Drafting Group were to submit the texts direct to the Sub-Committee.

Mr. ROBERTSON (Canada) said that he did not think it would make any substantial difference, from the point of view of time, whether the final text of the articles was approved in the Working Group or in plenary. His question had been prompted by the Austrian representative's remark: perhaps it would be better if the document prepared by the Drafting Group was first considered in the Working Group, so that any objections to which it might give rise would not lead to its rejection outright. The Sub-Committee could then adopt it officially.

Mr. SOUZA e SILVA (Brazil) agreed. It would be preferable to give delegations which did not belong to the Drafting Group an opportunity to review the texts in the Working Group before they were officially submitted to the Sub-Committee for adoption.

The CHAIRMAN suggested that the Drafting Group should be asked to submit its conclusions in the first place to the Working Group.

It was so decided.

The CHAIRMAN noted that it had been agreed at the end of the second week of the session to devote three weeks to the study of agenda item 2 and to decide at the end of the third week whether it was necessary to take up the study of agenda items 3(a) and (b), and if so, how much time should be devoted to them.

Mr. PERSSON (Sweden) said that in his opinion the Sub-Committee should continue to devote all its efforts to the study of agenda item 2 with a view to reaching agreement if possible on a draft convention. He reminded members of the actual words used by the Chairman of the Committee on 23 January 1970: "In accordance with General Assembly resolution 2601 B (XXIV) as well as pertinent previous resolutions of the General Assembly, the Legal Sub-Committee should give first priority to the completion of a draft convention on liability for damage caused by the launching of objects into outer space. Every effort should be made by the Sub-Committee to complete the draft convention at its session from 8 June to 3 July 1970. After completion of the draft convention on liability, the Sub-Committee should continue to study the questions relative to the definition of outer space and the utilization of outer space and celestial bodies, including the various implications of space communications. Other matters should be given attention only if time permits" (A/AC.105/PV.84).

If the Sub-Committee did not follow those very precise directives it might be exposed to keen reproaches at the next General Assembly. It was therefore necessary to devote one or two working days, in any event, to agenda item 2, for if there were in fact any problems remaining to be settled, it would not be impossible to arrive at a result at the current session.

Mr. COCCA (Argentina) said that although his delegation had already submitted a draft convention on agenda item 3 (A/AC.105/C.2/L.71/Rev.1) and proposed to submit another it was ready to support the idea that consideration of agenda item 2 should be continued with a view to reaching an agreement, even if agenda item 3 had to be deferred to the Sub-Committee's next session.

Mr. CHARVET (France) said that he was also in favour of that idea. The Sub-Committee must do all it could to reach agreement on the draft convention. Only then would it be able to turn to other problems if it still had time.

Mr. SOUZA e SILVA (Brazil) said he was astonished that although three-quarters of the time at its disposal had now gone, the Sub-Committee had still not done anything in plenary to solve the two major problems on which, according to the wish expressed by the General Assembly and the Committee, it was to take a decision at the current session: the settlement of disputes and the applicable law.

His delegation was aware that multilateral consultations were in progress and that such consultations had their usefulness in international diplomacy. Nevertheless, they could not take the place of official negotiations in the organ which had been legally designated for that purpose. There was no reason why the Sub-Committee should depart in that respect from the practice followed by all other United Nations bodies. It might therefore seem surprising that with three out of the four weeks of the session gone, the summary records contained no mention of those two cardinal questions to which it had been agreed to give priority.

It should not be forgotten that already in April 1970 Governments had delegated representatives to take part in informal talks, at which a certain degree of agreement had emerged, several texts having been suggested and discussed. At the end of those talks Governments had given careful consideration to the opinions and suggestions put forward and had instructed delegations at the Sub-Committee's ninth session accordingly. His delegation had thought that those results might serve as a point of departure for fresh negotiations. However, the texts in question had not even been submitted to the Sub-Committee. Thus the Sub-Committee might be said to have taken a step backwards from the results achieved in April. His delegation appealed to the members of the Sub-Committee to stop evading the discussion in plenary of the two important problems that it had been requested to solve.

The CHAIRMAN thanked the Brazilian representative, who was also the Rapporteur of the Sub-Committee, for the pertinent remarks he had just made. He fully shared his surprise. Despite repeated appeals by the Chair at the beginning of each of the Sub-Committee's plenary meetings, no delegation had unfortunately seen fit in the course of those three weeks to ask to speak on those two essential questions, to which those same

delegations had nevertheless decided at the beginning of the session to give priority. Again like the Brazilian representative, he could only regret the fact that delegations had not seen fit to request the circulation of the written proposals based on the results of the earlier informal meetings.

In any event the suggestion that the Sub-Committee should continue its consideration of agenda item 2 with a view to arriving at a final draft of the convention and take up agenda item 3 only if it still had time seemed to meet with general approval. He therefore proposed that that suggestion should be adopted.

It was so decided.

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/WG(IX)/L.1 and L.1/Corr.1, L.2-5, L.6/Rev.1, L.7/Rev.1 and Rev.1/Corr.1, L.8, L.9 and L.9/Corr.1; PUOS/C.2/70/WG.1/CRP.1; CRP.2 and CRP.2/Corr.1, CRP.3, CRP.4 and CRP.4/Corr.1 and CRP.4/Rev.1 CRP.5-9, CRP.10/Rev.1, CRP.11-17, CRP.18/Rev.1, CRP.19/Rev.1; PUOS/C.2/DG(IX)/1, 2; PUOS/C.2/DG(IX)/R.1) (continued)

Mr. ROBERTSON (Canada) said that his statement would be concerned with the two major problems - the applicable law and the settlement of disputes - concerning which the Canadian delegation had already made its position clear at previous sessions. On 17 June 1969, in particular, it had stressed that its approach to the Convention was victim-oriented and that its aim was to secure agreement on provisions which would enable those persons, natural or juridical, who might suffer damage caused by space objects to be compensated in the most rapid, comprehensive and practical manner. To be fully effective, the convention should therefore be as clear, as precise and as complete as possible. In respect of the determination of the amount of compensation payable, his delegation doubted whether it would be appropriate to refer to the law of the State whose space object caused damage and had strongly argued that, in the case of any unresolved dispute, the question of the compensation to be paid should be governed by a provision for compulsory third-party settlement. If the convention failed to institute an effective procedure for the settlement of disputes by means of an impartial machinery, capable of rendering decisions binding upon the parties, it would be of little value, particularly to the non-space States for whose protection it was especially intended.

His delegation had not changed its views on that point. It had not been possible to reach agreement on a text at the eighth session of the Sub-Committee. At the current session, private and informal efforts had been made since the very beginning, and some progress had been achieved by the Working Group and, more recently, by the Drafting Committee, even if nothing had emerged in the summary records of the meetings of the Sub-Committee. However, those intensive consultations, aimed at bridging the gap between the two fundamentally different approaches adopted by the members of the Sub-Committee concerning the purpose of the convention, had not yet been successful. In those circumstances, and in view of the little time which remained before the end of the session, his delegation now considered it not only appropriate but absolutely essential to record its views in public.

Having already outlined the basic approach of his delegation to both basic issues, he wished to explain the manner in which his country considered that the legal texts should be implemented. Firstly, on the question of the applicable law or to be more precise, the method by which compensation for damage should be determined, the fundamental elements could be stated in the form of a simple rule of law, which would read as follows: "the compensation which a launching State shall be liable to pay for damage under this convention shall be based on the rule that each person, natural or juridical, State or international organization on whose behalf a claim is presented is to be restored in full to the condition equivalent to that which would have existed if the damage had not occurred. In giving effect to this rule, account shall be taken of the law of the place where the damage occurred and of relevant principles of international law".

That formulation was designed to ensure that if a person, whether natural or juridical, suffered damage, then that person would be compensated in accordance with the standards of the place where he was injured. In the case of property damage, either the compensation should enable the damage to be made good without any loss being entailed or, if it could not be made good, payment equal to the loss of value of the property attributable to the damage would have to be made. In the case of injury or death to natural persons, similar standards would be applied, such that the whole of the financial loss, direct and indirect, actual and future, resulting from the damage would be compensated, either to the person or, if he was killed, to his dependents or heirs. It would not be sufficient simply to grant to a person who had been injured a sort of token pension or partial payment in respect of his loss. So far as Canada was concerned, the principle of restoration in full was essential, just and equitable.

With regard to the settlement of disputes, it was again the victims' interests which should be the primary concern. That was why, failing agreement between the parties, provision should be made for an impartial method of examining the relevant facts, assessing the merits of the claim and establishing the amount of compensation. The decisions resulting from such an impartial process should be of such a nature that the State declared responsible would consider itself obliged to pay that compensation promptly and in full.

His delegation felt that that was the least which the community of nations, most of which would be more likely to suffer than to cause damage, could expect from the convention. It might still be possible to reach agreement at the current session, but it should not be agreement at any price. In particular, agreement must not be reached at the expense of potential victims. If a satisfactory solution was not found in the next few days, his delegation, together with those delegations which shared its views, would officially submit a document setting forth the principles he had just stated.

Mr. PERSSON (Sweden) expressed the views of his delegation concerning the two key articles of the convention, relating respectively to the assessment of compensation and the competence of the Claims Commission, and said that those views corresponded fully with what had just been said by the delegation of Canada.

With regard to the assessment of the compensation due, his delegation saw no reason why damage caused by a space object should be assessed according to standards other than those applicable to damage caused in any other way in the same place, for example, damage caused at a particular place by a foreign aircraft or motor vehicle. The problem was one of compensation for damage caused by a State engaging in an inherently or potentially dangerous activity, for which activity it had to bear the responsibility. It was only fair that a victim should be fully compensated so as to be placed as far as possible in the same financial position in which he would have been if the accident had not taken place. It followed that the social and economic conditions prevailing in a particular State should have a direct bearing on the measure of compensation to be received by the victim. For that reason, the lex loci delicti commissi should prevail. If the example was taken of a space object which hit a factory, causing personal injuries and bringing the factory to a standstill for several months, it was clear that the physical persons should be compensated not only for hospital and medical costs, but also for their financial losses, such as the loss of earnings during hospitalization or medical treatment; in the event of permanent disablement, the victims should receive a life pension. If the victim was a bread-winner the wife and minor children should receive full financial compensation in conformity with the legal system of the country in which they lived. As for the factory, the compensation should include not only the cost of reconstructing the buildings and replacing machinery, but also the loss of profit during the reconstruction period. The modern trend in international conventional law was for the application of the lex loci as a guide to ensure full compensation and international law as applied by international arbitration tribunals had not given priority to the law of the State liable for the damage.

With regard to the competence of the Claims Commission, the convention should provide for automatic and compulsory referral to machinery in the composition of which neither the claimant State nor the respondent State should have a decisive influence. His delegation therefore urged that a three-member commission should be appointed, the chairman of which would be designated by an independent authority, such as the Secretary-General of the United Nations, in the event that the members chosen by the parties failed, within a reasonable time, to agree on the choice of a third member. If the convention contained such provisions, it was most likely that a great majority of the non-space Powers would, like Sweden, undertake to abide by the decisions arrived at by an impartial commission thus constituted. In those circumstances, was it too much to ask that the space Powers, whether potentially respondent or claimant States, should also abide by such decisions, particularly since they would not be of a political nature? His delegation felt that that was the only means of giving a reliable guarantee to those - mostly private citizens - who might be exposed to damage caused by space objects, that they would receive the compensation to which they were entitled within a reasonable time. It had been argued by some delegations that an obligation to abide by such a decision would encroach upon State sovereignty. His delegation held that, on the contrary, such an obligation in no way differed from any other obligation embodied in an international agreement freely entered into by a State. In that connexion, he would remind the Sub-Committee of one of the principles embodied in the report of the Drafting Committee of the 1970 Committee on Principles of International Law Concerning Friendly Relations and Co-operation among States, which had been unanimously adopted, and which stated: "International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality". (A/AC.125/L.86, page 7).

The meeting rose at 11.45 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-SEVENTH MEETING

held on Monday, 29 June 1970, at 10.50 a.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2)(A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/L.71-73; A/AC.105/C.2/WG(IX)/L.1 and L.1/Corr.1, L.2-5, L.6/Rev.1, L.7/Rev.1 and Rev.1/Corr.1, L.8, L.9 and L.9/Corr.1; PUOS/C.2/70/WG.1/CRP.1, CRP.2 and CRP.2/Corr.1, CRP.3, CRP.4 and CRP.4/Corr.1 and CRP.4/Rev.1, CRP.5-9, CRP.10/Rev.1 and CRP.11-19; PUOS/C.2/WG(IX)/1 and 2; PUOS/C.2/DG(IX)/WP.1; PUOS/C.2/DG(IX)/R.1-3 (continued)

Mr. ELIZONDO (Mexico) after pointing out how rapidly space activities had developed in less than fifteen years, stressed the urgency of the task of drawing up the draft convention which had been entrusted to the Sub-Committee. More than a thousand space objects were already orbiting the Earth and the number would undoubtedly go on increasing. In the circumstances, it was logical to consider the damage they might cause and to take steps to ensure possible victims wide protection, by establishing precise and immediately applicable principles, based on the rule that the launching State which caused the damage should assume full and entire responsibility for it, and that the victim, whether another State or a natural or juridical person, should be fully compensated and restored to a position equivalent to that which he would have had if he had not suffered any damage. It was therefore also necessary to recognize the need, in the event that diplomatic negotiations failed or investigations dragged on for a long time without the parties reaching agreement to establish a suitable procedure offering the victim a remedy at law which would enable him to obtain satisfaction in respect of his claim in so far as it was justified. The only procedure could be the submission of the claim for decision by a competent authorized and impartial body.

The preparation of the convention had already taken too long. His delegation recognized that substantial progress had been made at the current session with regard to definitions, general questions and other subjects, but not on the essential aspects of the draft. It had participated in the innumerable consultations and negotiations that had taken place, but was concerned to note that the Sub-Committee had only five meetings left until the end of the session. It would therefore once again urge other delegations to make a fresh effort to bring the matter to a successful conclusion and enable the Sub-Committee to turn to other, equally important problems such as the boundary between air space and outer space, the legal régime governing direct broadcast satellites, the utilization of celestial bodies and other questions urgently requiring consideration.

Mr. de SOUZA e SILVA (Brazil) said that so far there had been two stumbling blocks in the way of an agreement: the applicable law and the settlement of disputes. Every delegation should be ready to make concessions. After so many meetings, discussions and negotiations no-one could be under the illusion that, for the settlement of disputes, the convention could establish an arbitral commission which would be entitled to impose its decisions even against the will of the interested Parties. His delegation had already proposed, at the last session of the Committee on the Peaceful Uses of Outer Space, a formula which would enable the Parties to choose the nature of the decision, in the event that it was decided to set up a compensation commission or an arbitral commission. According to that proposal, the commission's decision would be final and binding on the Parties if they so decided. But in practice, the efficacy of a decision taken by an arbitral commission could only depend on the good faith of the Parties concerned. In the absence of any coercive power, there would be no possibility of enforcement. Of course, if the decision was not binding on the Parties, the conclusions of the claims commission would have to be given all possible moral and political weight, for example by publishing the decision, or by inserting a provision whereby the Parties would undertake in good faith to abide by the commission's conclusions.

As regards the applicable law, his delegation had advocated that damage should be compensated in accordance with the principle of lex loci delicti commissi. It still thought that that would be a logical and reasonable solution, but would be prepared, if it was impossible to reach agreement on that principle, to consider any other objective rule which would ensure full compensation for damage.

Mr. VRANKEN (Belgium) said that at the end of the previous year, his delegation had had the distinct impression that three of the five questions outstanding had been settled and that only two remained - the applicable law and the settlement of disputes. That impression was confirmed by several official documents, most recently by the summary of the informal negotiations held in April 1970. His delegation had reason to fear, however, that fresh difficulties might arise with regard to the agreement of principle reached on the three problems which had apparently been settled. Should those fears prove founded, it wished to state that such a manner of proceeding was unacceptable and that it would decline all responsibility in the matter.

As regards the nature of the decision of the commission for the settlement of disputes, his delegation supported the argument put forward by the Canadian and Swedish delegations among others, considering that the commission's decision should be final and binding on the parties. The absence of such a decision would create a legal vacuum and be harmful to the interests of the victim. Appreciating the arguments of those who had invoked such considerations as the sovereignty and equality of States, his delegation, in the spirit of compromise, had thought it could be satisfied with what had been called a decision which was binding, not legally, but from the political and, as it were, moral standpoints. It was regrettable that certain delegations had not even been able to accept that minimum, and were also raising objections to the publication of decisions. It was legitimate to ask, in the circumstances, what remained of the principle that the convention should be oriented towards a prompt and equitable compensation of the victim as recommended by the General Assembly. The abandoning by his delegation of the principle of the binding settlement of disputes had represented a fundamental and important concession, both legally and politically. To go further would be to abandon completely the interests of non-space States, which were potential victims of space activities.

On the subject of the applicable law, or more precisely the rule to be applied for the assessment of compensation, his delegation had proposed in its draft convention a simple rule entirely in favour of the victim. The first paragraph of article 2 of the draft prescribed the application of the national law of the injured party or, failing that, the applicable principles of international law. That rule avoided any discussion which might arise as to the exact place of the accident or the absence of any rule of international law. It also ensured the restoration of the victim's position in his own economic and social environment, in short the status quo ante. During the informal negotiations that had taken place in the previous weeks, his delegation had expressed its willingness to accept an even more flexible wording. But whereas the majority of delegations had always taken the view that the victim should be restored to the status quo ante, which covered indirect damage and lucrum cessans, some delegations, particularly those of the socialist countries, maintained that the victim would be entitled only to compensation calculated in relation to his position in the society or community to which he belonged. It was not made clear, moreover, who would decide the importance of his position. Obviously, such a rule led not just to ambiguity, but to arbitrariness. Its advocates would do better to say clearly that the non-space

States were at the mercy of the launching States, since the latter did not want to be tied down, but actually wanted to apply whatever law they chose. Belgium, for its part, would categorically refuse to be bound by such an international instrument, which ran counter to the principle of the sovereignty and even more the equality of States.

His delegation still thought that the State responsible should assume at least a political and moral commitment vis à vis international public opinion; that a well-established procedure was necessary in order to guarantee the necessary equity and impartiality; that the victim should be able to invoke all legal arguments tending towards the re-establishment of the status quo ante. If the major space Powers were unable to guarantee the victims of space activities that minimum protection, they would be called to account at the next session of the United Nations General Assembly. It would be extremely difficult for them to explain the absence of any tangible result after several years of negotiations and despite the good will of the vast majority of delegations representing the non-space States which were potential victims. The Belgian delegation had spared no effort to reach the objective which the Sub-Committee had been set and its conscience was clear. But it noted with regret that the current session seemed to mean the end of its hopes with regard to the preparation of a convention, thus making it impossible for the Belgian Government to ratify either the 1967 Treaty or the 1968 Agreement.

Mr. CHARVET (France) referred to the considerable efforts made at unofficial meetings to solve the two questions still outstanding - the applicable law and the settlement of disputes - efforts which unfortunately were not recorded in the summary records or the Sub-Committee's report. Now that a deadlock had been reached, he felt compelled to go over the ground covered, showing his delegation's original position and the important concessions it had been prepared to make.

From the time that the Sub-Committee had started its work, France had always held the view that a convention on liability should set aside all political considerations and be concerned primarily with the protection of victims of accidents caused by the activities of States, whose rights and obligations had already been established by the 1967 Treaty and the 1968 Agreement. In its view, victims of accidents caused by space objects should receive the same treatment as victims of other accidents. To grant the victim less legal protection in the field of space activities than in other spheres would be to place a restrictive interpretation on article VII of the 1967 Treaty, which established the principle of the unconditional liability of States.

His delegation had been one of the first to regard the application of lex loci and the use of compulsory arbitration as the best procedure for safeguarding the interests of victims of space activities. As a country that itself launched objects into space, France took all necessary technical measures to reduce the possibility of accidents, but was ready to assume full responsibility in the event of damage. Victims under its legal system would be compensated, and the amount of the compensation would be established through application of the law of the territory in which the damage occurred, whatever that law was and whatever the territory. France did not believe that legal systems could be exported. Its primary aim was to safeguard the interests of victims of accidents and to restore them to the situation in which they would have been if the damage had not occurred.

Although that had been its initial basic position, his delegation had stated its willingness to consider any compromise solutions for the compensation procedure, provided that the rights of the victim were not in practice endangered. Accordingly, it had decided not to insist on compulsory arbitration. In the same spirit of conciliation it had accepted a settlement procedure which seemed to make for longer delays in the compensation of victims. It had also conceded that the applicable law need not be lex loci or national law. It might further accept that the procedure for settling disputes could lead merely to a recommendation or conclusions, provided that the settlement commission was composed in such a way as to ensure complete impartiality and complete effectiveness, comprising an arbitrator appointed by each party, and a third appointed either by the parties or by a person possessing high moral authority, such as the Secretary-General of the United Nations. In addition, any such recommendation or conclusions would have to be published. If the decision was not at all binding, it was essential to make it public in order to give it greater moral weight in the eyes of public opinion. The prospect of having the decision made public might also encourage the parties to reach agreement by direct negotiation. Finally, it must be stipulated that the commission's decision, the reasons for which would be given, would be final.

As to the applicable law, his delegation could accept that there should be no reference to national law, or even to international law and the principle of justice and equity, provided that the convention included a clause to the effect that compensation would be based on the principle of fully restoring the victim to a situation equivalent to that which would have existed if the damage had not occurred. That, in his delegation's view, was the heart of the matter: if the convention were to have only one article, it should be that one.

The brief account he had given showed the steps taken by his delegation in the direction of a compromise. Many other delegations had moved in the same direction. It was essential that the United Nations should be fully informed both of the desire of the great majority of States to ensure full and proper compensation of victims and of the important concessions that those States were prepared to make in their very sincere desire to finally arrive at a convention, in 1970.

Mr. BETTINI (Italy) said that his delegation also had to admit that in spite of the work accomplished and in spite of the efforts made by the Chairman, the Sub-Committee seemed to have failed in its mission. The reason for that failure was that it had been unable to overcome the difficulties arising with regard to the applicable law and the settlement of disputes.

As to the applicable law, Italy had several times indicated informally that it was in favour of a procedure that would restore the victim to a situation exactly equivalent to that which would have been the case if the damage had not occurred. Such a procedure would be in accordance with the interests of all members of the Sub-Committee and all Members of the United Nations. On the question of the settlement of disputes, his delegation had submitted a text in 1969 based on the idea that any settlement procedure must be enforceable or it would be worthless. His delegation was still convinced that any procedure for the settlement of disputes should be governed by that principle, and, in particular, that the settlement should be final, conclusive, binding and published.

At first sight, it might be thought that such a requirement was contrary to the interests of the major space Powers; but his delegation did not believe that that opinion was justified. Although those Powers might at present see some advantage in not being bound by a tribunal, it was perfectly conceivable that there would come a time when any country of a certain size or possessing certain resources would be able to engage in space exploration, with a resulting proliferation of space Powers; the States that would then be most vulnerable to damage would in fact be the major Powers of today.

His delegation, therefore would again make an urgent appeal to all members of the Sub-Committee to use the last week of the session to reach agreement at all costs, on those two essential questions, so as to complete the draft convention.

He also wished to make a comment about the participation of delegations in the Drafting Group. As the Group was composed of only eight delegations, he wondered whether the other delegations should not be able to attend its meetings when they had

questions to raise which might lead to a re-opening of the discussion in the Working Group or in plenary or which they might feel it preferable to consider in a less official setting. Perhaps the Chairman could give a ruling on the matter, because the summary records did not seem to indicate that any definite decision had been taken.

The CHAIRMAN said that it did not appear from the summary record of the 142nd meeting of the Sub-Committee that the participation of delegations which were not members of the Drafting Group in the work of that Group had been envisaged. He proposed that the Italian representative's suggestion should be adopted with a view to speeding up the work of the Group.

It was so decided.

Mrs. DINU (Romania) said that although her delegation had not yet spoken at a plenary meeting, that did not mean that it was not concerned with the extremely important questions of the applicable law and absolute liability.

Her delegation had always recommended that the convention on liability should incorporate the principle of full compensation for damage. Just as the appearance of dangers connected with air navigation had warranted the introduction of a system establishing liability in that sphere, it was now necessary to set up a system establishing liability in connexion with space activities. The liability of States or international organizations launching objects into outer space which were liable to cause damage to third parties or aircraft in flight should be defined in the same terms as the liability of the owner of an aircraft. The Romanian air laws embodied the principle of complete responsibility for damage caused to third parties on the ground.

Her delegation also supported the idea of full compensation for damage. The amount of the compensation should be fixed according to the lex loci, which would ensure complete indemnification of the victim while at the same time respecting the sovereignty of States. With those points in mind, her delegation thought that the wording proposed by the Canadian representative deserved consideration. Her delegation was prepared to study with all due care the proposals which had already been made or which might still be submitted on the question of the applicable law, and to co-operate with all delegations present with a view to arriving at a universally valid convention.

Mr. AZINI (Iran) said that although his country was not yet in a position to take part in the exploration of outer space, it was nevertheless greatly interested in space exploration and in its various practical applications. As a possible victim of

damage which might be caused by devices launched by space Powers or by inter-governmental or international organizations, Iran saw the importance and necessity of an international convention on liability. The major space Powers themselves, moreover, were liable to become victims of damage caused by the launching or re-entry of space objects.

At previous sessions of the Sub-Committee, his delegation had already stated its view that the liability of States or international organizations which launched space objects into outer space should be total: it began at the launching and continued until re-entry or the landing of the object on earth, and remained total during the space flight. Any damage should be made good by the person or persons who caused it, equitably and with the minimum delay. The applicable law could only be the law of the country in which the damage occurred, applicable to the whole of the territory of that country, including territorial waters and air-space, in accordance with the accepted principles in the case of damage caused by any other object. Indemnification should be total and equitable. In the event of a dispute, the best procedure would be to appoint a special arbitration commission composed of three members, one chosen by each party to the dispute and the third chosen by the first two members. If either party refused, the third member could be designated by the Secretary-General of the United Nations. As to the competence of the arbitration commission, the Swedish delegation's proposal seemed to offer a logical solution and deserved to be given consideration.

The CHAIRMAN said that the progress made on questions other than the two important problems outstanding was very encouraging, particularly on joint liability, time-limits for presentation of claims and the form of compensation, which meant that there were good hopes that it would be possible, in the time available, to produce a text prepared with all due thoroughness for the twelve articles which formed the essential part of the convention. Moreover, on the basis of the proposals made by Hungary and by the United Kingdom, and the five proposals included in the comparative table, it seemed very likely that agreement could be quickly reached on the preamble. Likewise, it should be possible to solve the question of international organizations without too much difficulty, on the basis of what had been agreed at the New York meeting. Finally, in the light of the precedents that existed, it should not be difficult to complete the final clauses. Thus as soon as agreement was reached on the two major questions outstanding, the Sub-Committee should be in a position to complete the draft convention very quickly. He once more earnestly appealed to delegations to make good use of the few working days still available to the Sub-Committee, with a view to reaching agreement on those questions.

The meeting rose at 12.5 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-EIGHTH MEETING

held on Tuesday, 30 June 1970, at 10.50 a.m.

Chairman: Mr. LYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/L.72 and L.74; A/AC.105/C.2/WG(IX)/L.1 and L.1/Corr.1, L.2 to L.5, L.6/Rev.1, L.7/Rev. 1 and Rev.1/Corr.1, L.8, L.9 and L.9/Corr.1; PUOS/C.2/70/WG.1/CRP.1, CRP.2 and CRP.2/Corr.1, CRP.3, CRP.4 and CRP.4/Corr.1 and CRP.4/Rev.1, CRP.5 to CRP.9, CRP.10/Rev.1 and CRP.11, to CRP.19; PUOS/C.2/WG(IX)/1 and 2; PUOS/C.2/WG(IX)/R.1 to R.5; PUOS/C.2/WG(IX)/WG.1 and WG.2) (continued)

Mr. TOKUHISA (Japan) referred to the progress achieved inthe past six years on the question of liability, as a result of which the questions on which differences still existed had been reduced to two - measure of compensation and procedure for the settlement of claims - making it hopeful that success would soon be achieved. His delegation was extremely saddened to see that after three weeks of effort and innumerable informal meetings, both bilateral and multilateral, there was a possibility of the current session of the Sub-committee coming to an end without bringing about agreement on those issues. That was all the more regrettable in view of the strong wording used by the General Assembly in resolution 2601 B (XXIV), particularly operative paragraph 4, the essential part of which he quoted.

Paragraph 5 of the same General Assembly resolution emphasized that the convention under preparation was intended "to ensure, in particular, the prompt and equitable compensation for damage" to the victims of accidents caused by objects launched into space. There, in his delegation's view, lay the key to the whole problem. It must be emphasized that the overwhelming majority of the countries of the world were non-space Powers, and that it was predominantly they who were vulnerable to damage from objects launched into outer space by the space Powers.

The principle of absolute liability for the damage caused by the launching of an object into outer space had been accepted in the draft convention, which showed a general recognition that space activities were intrinsically of an ultra-hazardous nature. When non-launching States co-operated in those dangerous activities by launching States, they clearly accepted a considerable risk, for, despite all the precautions taken by the launching State, it was not excluded that damage might be caused to a totally innocent third party who was a national of the non-launching state. In such a case, it was only just and proper that the non-launching State which had accepted these activities should be entitled correspondingly to expect that the victim

of the damage would be restored to the position that he would have been in had the damage not occurred. That was nothing more than what elementary justice required. What was at stake was the life and the property of victims who suffered damage from hazardous activities for which neither they nor their country had the least responsibili The question of liability for damage was essentially a humanitarian one, just like the rescue and return of the astronauts.

Those were the main considerations underlying the proposal by Argentina, Canada, Japan and Sweden (A/AC.105/C.2/L.74). In the view of the sponsors, the question of the applicable law and that of the settlement of disputes were merely two different aspects of one and the same problem, namely, how to ensure in the convention the protection of the legitimate interests of the victim by prompt and equitable compensation. They proposed in simple terms that the basic principle to be applied for the measure of damage should be to restore the victim in full to a condition equivalent to that which would have existed if the damage had not occurred. They would certainly have preferred to make a general reference to "lex loci delicti commissi"; the law which was generally recognized to be most equitable and proper in a case of that kind by predominant theories and State practice. But in view of the difficulties that such a reference would apparently create for certain delegations, they had been content to spell out the essentials of the substantive principle which should serve as the basis for the measure of compensation. In practice, the effect of their proposal would be that in all cases where the damage was solely material, the victim would be restored in full to his former condition by having returned to him, in money or in kind an amount corresponding to the original value of the property damaged. In all cases where the damage went beyond the material destruction or loss, such as the injury to or death of a person, restoration in full would include such compensation as an amount equivalent to the assessed prospective loss of income or an amount necessary to make good what the dependents of the deceased had financially or morally suffered. It would clearly be necessary to have an objective guarantee that the final outcome of the procedures for the settlement be faithfully carried out by the respondent State. That was the essential minimum which any convention of that kind should satisfy in order to qualify as serious. If not, it could be said without exaggeration that the whole point of having a convention on the question of liability for damage caused by space objects would be totally lost. That was precisely the object of the settlement procedure provided for in the article entitled "Competence of the Claims Commission" which was also to be found in the proposal by Argentina, Canada, Japan and Sweden (A/AC.105/C.2/L.74).

The sponsors had put forward their proposal at the present stage of the Sub-Committee's work in order to clarify their basic position: what mattered was the substance and not the words. Once agreement had been reached on the substantive questions - the type of cases to which the convention would apply, the extent of the damage, the proposition that the compensation for damage assessed in accordance with the prescribed procedures would be paid in full in all cases - the drafting should not present insuperable obstacles. With that conviction in mind, his delegation, together with other like-minded delegations, had been trying everything possible throughout the three weeks of informal consultations and negotiations, with a view to reaching an understanding on those basic points of substance. His delegation for its part had been prepared to go even beyond the wording employed in the joint proposal and had been greatly disappointed to find that for the time being at least there was no possibility of agreement among the delegations on those points of substance. That being so, it would be better to face the situation squarely. That was why Argentina, Canada, Japan and Sweden had felt that the time had come to make their position as to the substance clear and to put forward their proposal, which was neither new nor drastic in the light of the arguments advanced during the informal consultations and negotiations.

Mr. OSIECKI (Poland) said his delegation had not been able to take much part in the work of the session, and would therefore confine itself to comments of a general nature. It would be pleased if the draft convention could be completed during the present session. Like the other delegations, it wished to ensure the best possible protection of the interests of natural and juridical persons who might be injured as a result of the space activities of States, and regarded such protection as the primary purpose of the instrument being drafted.

That purpose could not be achieved unless the convention contained the proper elements, such as the principle of absolute liability, the principle of joint liability, the liability of international organizations in addition to that of member States, a broad definition of the term "damage", the possibility of States presenting claims for indemnification on behalf of natural or juridical persons in their territory, the possibility of the presentation of claims for indemnification before the exhaustion of remedies available to the claimants in their own countries, and adequate time-limits for presentation of claims. The fact that those elements had been included in the draft convention showed that there was general agreement on the need to give a high degree of protection to the rights of injured persons. It also proved that the Sub-Committee had done a very thorough and valuable job.

Unfortunately, certain problems remained on which opinions differed. But the differences related to aspects that were more basic and more complex than the protection of the interests of injured persons. In fact, they concerned principles of a general nature, such as the settlement of disputes and the applicable law, which went beyond the scope of the convention and could hardly be made dependent on specific issues.

While not ruling out the possibility of a compromise, if one could be reached without violating the principles he had mentioned, his delegation favoured flexible solutions which would allow the States concerned to select any particular procedure for settlement of disputes that was effective and acceptable to all parties. That did not mean that the State at fault would take advantage of the flexibility of settlement arrangements to evade its responsibilities, but simply that it could not be forced to accept a system which it regarded as incompatible with its sovereignty. In that connexion, the proposals submitted by Brazil during the consultations held in April would constitute a satisfactory basis for further discussion.

The question of the applicable law required a similar approach. Solutions should be sought on the basis of international law, which, in his delegation's opinion, constituted a flexible and adequate basis for settling the question of compensation. The Italian delegation had presented a constructive argument which could serve as the basis for practical discussions. But his own delegation thought that the draft submitted by Hungary was the most realistic solution to the problem as a whole.

It was clear that the procedure governing compensation for damage was extremely important, but it would be advisable to look at the problem in its entirety and to balance the need to indemnify persons suffering injury against the legitimate requirements of States in certain spheres of international law, in order to find a solution acceptable to all.

Mr. O'DONOVAN (Australia) said that since the adoption of the 1967 Treaty, only three major substantive issues had been involved in the formulation of a convention. The first, relating to the nature of the liability of the launching State, had been resolved in principle relatively quickly, and draft texts to give effect to the Sub-Committee's conclusions on it had been available for some time. Those texts might consist simply of statements of existing international law, at least in so far as they imposed absolute liability for damage on the surface of the earth or to aircraft in flight, but, in other respects, they made new law, and the Australian delegation was glad to note that, on that issue, the Sub-Committee had not hesitated to adopt wise principles for the protection of potential victims against damage resulting from activities in the use and exploration of outer space.

On the other hand, the other two issues - the assessment of damage or the law applicable to the measure of compensation and the settlement of disputes - were still not resolved. A number of delegations, including his own, had thought that solutions would be more readily found in informal consultations and negotiations, and the records naturally contained no trace of their work. But agreement had not been achieved, and his delegation had come to the conclusion that the best way of making progress at the present juncture was to discuss outstanding questions in plenary meeting.

A study of the provisions of the 1967 Treaty showed that the rights guaranteed by articles I and II needed to be balanced by the obligations set forth in article VII. The rights conferred by article I included the right for each State to launch objects into space and over-fly, in outer space, the territory of other States. But, in the case of space activities, every State and its people were at risk from space accidents, which was why Australia had always stressed the need to provide in the convention just, impartial, simple and effective procedures for compensation of victims. Although the convention provided for claims between States, Australia considered that its basic aim was to ensure that innocent victims suffered no financial loss as a result of injury or damage by space objects. That aim could not be achieved without clear and precise texts governing the assessment or measure of compensation payable and the settlement of disputes. The principles adopted by the Sub-Committee on the nature of the liability of a launching State would, in themselves, have little value if the convention did not also include adequate rules for the assessment of equitable compensation and adequate machinery for the ultimate settlement of claims by an impartial tribunal.

Australia had constantly supported the view that when damage was caused on the surface of the earth or to aircraft in flight, compensation should be assessed in accordance with the law of the place where the damage occurred, it being understood that in the case of damage to aircraft in flight or to ships on the high seas, the applicable law was that of the State of registration. Compensation fixed onthat basis would be just in the vast majority of cases. Australia could continue to approach the problem along those lines if that was the wish of the majority, although it believed that a more satisfactory solution was to hand. That solution would consist of stating a rule of general application upon the basis of which compensation would be assessed. That rule was set out in the proposal by Argentina, Canada, Japan and Sweden (A/AC.105/C.2/L.74). The concept of "full restoration" embodied in that rule would involve taking a number of elements into consideration in assessing the total compensation due. Thus, where damage was to property, the compensation would be the amount necessary to make good the damage and to ensure that the owners of the damaged property did not suffer financial

loss in consequence of the damage; in cases where the damage could not be made good, the victim would receive an amount equal to the amount by which the value of the damaged property at the date of damage was diminished. In the case of injury to a person, the compensation would be an amount equal to the financial loss resulting from the damage, including an amount that was the capital equivalent of the assessed loss of income of the victim. Finally, in the case of death, the compensation would be an amount equal to the expenses arising out of the injury and death of the victim, together with an amount necessary to ensure that his dependants did not suffer financial disadvantage.

The great advantage of a text along those lines was that it provided a uniform rule of universal application. Moreover, it would avoid possible difficulties which might arise from the adoption of a formula based on the "lex loci delicti commissi" if the national laws of some States were found to include elements of compensation that appeared to have little or no rational justification.

With regard to the settlement of claims, the Australian delegation had consistently urged the incorporation in the convention of a procedure for just, final and prompt settlement. Without an adequate provision to that end, States that suffered damage through no fault of their own would almost certainly be unable to obtain just compensation promptly, and might, in some cases, be unable to obtain compensation at all.

The Australian delegation could accept a three-stage procedure along the lines proposed by India, but the procedure proposed was too complex to be prompt and, besides, the proposal had lost its value as a compromise solution as it had not been accepted by those States that opposed compulsory third-party settlement. His delegation would prefer a two-stage procedure consisting first of diplomatic negotiations, followed, in the event of failure, by the establishment of a claims commission. In its view, such a commission should consist of three members, two to be appointed by each party or group of parties involved and the third, who would be the chairman, to be appointed either by mutual agreement or, failing such agreement, by the Secretary-General of the United Nations or some other impartial person. It should be constituted in that way irrespective of the powers that might be vested in it or of the status that might be accorded to its decisions. A just settlement would not be possible if claims were to be settled by a tribunal which did not include an independent chairman.

As to the competence of the claims commission, the Australian delegation agreed entirely with the proposal submitted by Argentina, Canada, Japan and Sweden (A/AC.105/C.2/L.74) and with the suggestions dealing with the appointment and procedures of the commission outlined in the footnote thereto.

No State was required to engage in space activities, but all were free to do so. States which had accepted, with the 1967 Treaty, the concept of total freedom in the peaceful use and exploration of outer space with its concomitant obligation of liability for damage had not foreseen that States exercising the freedom guaranteed under that instrument would attempt, in one way or another, to cut down their liability for damage by attempting either to exclude damage caused by nuclear devices, or to limit the scope of liability, or to secure acceptance of rules for the assessment of compensation which were obscure or unsatisfactory to claimant States, or to deny to claimant States a right to have their claims finally settled by an impartial tribunal.

The States which believed that the Convention should be oriented towards the protection of victims did not assert that those who suffered damage from objects launched into outer space should obtain a profit at the expense of the launching State. That would not happen. What was required was that those suffering damage should not also suffer financial loss or be required to wait indefinitely for just compensation.

Finally, the Australian delegation was convinced that no reservations to the convention should be permitted. Under the existing rules of international law, it would not be permissible for a State to adhere to a convention of that kind subject to reservations. It seemed totally unthinkable that a State should be able to become a party to a convention on liability for damage caused by space objects subject to reservations to the provision which imposed absolute liability in the case of damage on the surface of the earth or to aircraft in flight, or to the provisions dealing with the measure of compensation or the settlement of claims. The convention was designed to provide substantive and procedural rules for the prompt and equitable payment of just compensation for damage caused by objects launched into outer space, and reservations would render it ineffective.

Mr. ANGUELOV (Bulgaria) welcomed the fact that the Drafting Group, under the enlightened guidance of the Chairman, had almost entirely completed the text of the convention. His delegation welcomed the fact that the representative of France, when discussing the establishment of a conciliation and arbitration commission, had emphasized, not the binding nature of the commission's decisions from a strictly legal point of view, but rather their moral and political effect. It was also glad to note that the French representative had chosen to speak of recommendations and conclusions rather than decisions. The French representative had rightly stressed the need to publish and give the grounds for the recommendations so as to strengthen their moral and political effect. The recommendations or conclusions would be regarded as final and not subject to appeal, which would exclude any possibility of revising them, without altering their substance and their legal nature.

The representative of Brazil had also thought that the decisions of the arbitration commission would be binding to the extent to which the parties concerned had decided, which meant that they would only be applied with the goodwill of the liable State. Such a similarity of ideas between the two delegations seemed encouraging, notwithstanding the apparent difference in their points of departure. That encouraged him to think that, even on the most difficult of points, such as the settlement of disputes, there was a hope of finding a text acceptable to all delegations.

Like the Brazilian delegation, his delegation asked that all proposals made and considered to date during the bilateral and multilateral consultations should be submitted in writing.

Mr. MOTIE (United Arab Republic) noted with regret that the Sub-Committee was still far from the possibility of arriving at an agreement on the draft convention during the current year. The adoption of the draft convention in its final form was particularly urgent for a number of reasons: space activities were developing rapidly and were likely to increase; only when the draft had been completed could the Sub-Committee settle down to other, equally important tasks; and the submission of the draft would be a praiseworthy contribution to the celebration of the twenty-fifth anniversary of the United Nations.

As to the two questions still outstanding, his delegation thought that the Sub-Committee should set itself two main objectives: on the one hand, victims should receive adequate compensation and, on the other, they should be sure of getting it. Admittedly, views differed as to the legal ways and means of achieving those two objectives, but that was only to be expected in view of the complexity and novelty of the problem. The Sub-Committee should persevere, however, with patience, determination, flexibility and imagination. His delegation still hoped that agreement would be reached on a text worthy of the efforts the Sub-Committee had made.

Mr. FREELAND (United Kingdom) noted that the session was drawing to a close and that the Sub-Committee, despite the General Assembly's exhortations, had not yet completed the draft convention. Admittedly - and particularly after the efforts made by the Working Group and the Drafting Group - the final form and content of the convention were much clearer and there should be no under-estimating the degree of goodwill and spirit of compromise which had permitted the solution of such awkward questions as liability in the case of joint launchings. Nonetheless, the fact remained that no common ground had been found on the two basic questions of the applicable law and the settlement of disputes.

As to the first question, which would be better defined as the measure of compensation, his delegation considered that the convention should prescribe the

complete restoration of the situation which would have existed had no damage occurred. Such a rule would be more likely to guarantee prompt and fair compensation to victims of damage caused by an object launched into outer space than a more complex formula, requiring the application of more than one system of law and the reconciliation of any differences between them. It could properly cover any real or expected pecuniary loss caused by the damage. His delegation was happy to associate itself with Argentina, Canada, Japan and Sweden, the sponsors of a draft article on the measure of compensation (A/AC.105/C.2/L.74), who had wisely followed the statement of the rule with a stipulation that in giving it effective account should be taken of the law of the place where the damage occurred and of relevant principles of international law.

But the principle of prompt and fair compensation should also apply to the settlement of claims. To that end, the procedure of appeal to a Claims Commission, as proposed by the same delegations (A/AC.105/C.2/L.74) and therefore also by his own, should afford suitable protection against any obstruction or undue delay and, through the interposition of an independent third party and by the majority vote rule, should offer all the necessary safeguards. To have independent and impartial judges was one way of ensuring equitable remuneration for the victim. Publication of the Commission's decisions would also assure the victim of further safeguards, as would the rule that the Commission's decisions should be final and binding.

He regretted the fact that members had not given their approval to the proposal made in April by his delegation to remove the impression that acceptance of the Commission's decisions might jeopardize State sovereignty, or to the compromise proposal submitted earlier by the French delegation, with which his own delegation would have been prepared to associate itself. It was particularly regrettable that other delegations had not been moved by the same spirit of conciliation.

His delegation therefore favoured any solution which might guarantee the full restoration of a situation equivalent to that which would have existed had no damage occurred. As to the settlement of claims, no solution would be acceptable unless it held the assurance that a State whose liability was recognised by the claims commission would respect the commission's decision and grant compensation in accordance with the arbitral award.

Mr. BETTINI (Italy) said that after carefully studying the joint proposal (A/AC.105/C.2/L.74) and listening to the explanations given by the Japanese and

United Kingdom representatives, his delegation felt that the broad lines of the proposed text were in line with the principles and position maintained by Italy both at previous sessions and at the present session, and seemed to provide a fair and equitable solution to the two major questions still outstanding. It therefore requested the Secretariat to add its name to the list of countries sponsoring the proposal.

Mr. PERSSON (Sweden) observed that his delegation, a sponsor of the proposal under consideration, had fully supported the ideas expressed by the Canadian representative at the Sub-Committee's 146th meeting, on which the proposal was based.

All delegations members of the Sub-Committee were agreed that the convention should be drafted with the interests of the victim in mind; in other words, its basic aim should be to give possible victims the assurance that, first, the rule relating to the evaluation of the losses sustained by them would guarantee complete compensation, taking into consideration the legal and social systems to which they belonged, and, second, that they could if necessary apply to an impartial body for a decision on the compensation due to them. Such were the objectives of the joint proposal.

From the first of those objectives, it followed that an accident occurring in a given country could give rise to compensation which might be either higher or lower than that payable in another country in respect of the same accident. Conversely, there was no convincing argument to support the idea that the damage caused might be evaluated differently depending on whether the accident was caused by a space object or by some other means in one and the same country.

With regard to the settlement of disputes, or in other words the competence of a claims commission, it was frankly impossible to state that the victim's rights would be safeguarded if the State responsible for the damage could claim to be in the last resort solo judge of the activities for which it was responsible. It was therefore essential that the Commission's decisions should be final if the convention was to be applied effectively.

Unless the Sub-Committee incorporated those two safeguards in the convention, all the work done so far, would be practically worthless and the Sub-Committee would be condemned for its failure not only by the General Assembly but also by public opinion as a whole; moreover, it would have to reckon with the disappointment which Governments would experience when they came to study the summary records of all those fruitless meetings, particularly those which had relied on the solemn assurances, given at the time when the 1967 Treaty and the 1968 Agreement were adopted, to the effect that those instruments would be rapidly followed by a convention on liability.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that his delegation appreciated the work that had been done during the session and was convinced of the need to seek a generally acceptable formula which would enable the two major questions still outstanding to be solved.

It was unavoidable to ask why it had not been possible to settle those two controversial questions. Progress meant going forward, but his delegation had been sorry to note that some members of the Sub-Committee were marking time or even actually going back on what had already been agreed. That retrograde trend had been discernible, inter alia, in the fact that delegations were trying to call in question, texts already approved by the Sub-Committee. For instance, the Sub-Committee had reached agreement on a text concerning the applicable law, but, just when it was supposed to be completing the draft convention as quickly as possible, there had been a general tendency to query both that compromise text and the positive results of the consultations held at New York and Geneva.

At the start of the present session, his delegation had in all sincerity expected proposals reflecting whatever basis for a compromise might have been found. In fact, only the Bulgarian delegation had submitted such a proposal. Despite two weeks of unofficial consultations, no real progress had been made. Not only words but deeds, too, were needed if a compromise was to be reached.

The arguments advanced by some delegations to explain their position on the two major questions still outstanding, and particularly that of the applicable law, were scarcely convincing. Moreover, everybody was perfectly familiar with them, having had eight years to listen to and study them. The Soviet delegation had its own arguments, too, and they were equally well known, though it saw no point in restating them just to turn the discussion into a vicious circle which would render the work of the Sub-Committee completely negative. Some delegations had claimed to propose a compromise solution, but their proposal was not consistent, since they were not all agreed as to whether compensation should be complete or not. So far as his own delegation was concerned, it went without saying that any damage caused by a space object must be compensated. The difficulty, therefore, was not whether compensation should be paid in respect of certain types of damage and not others, but to find a solution which in no way infringed State sovereignty. If the Sub-Committee still wished to make good use of the time it had left, it must turn its attention to the substance of the problem, tackling it in a firm and realistic manner and refusing to allow itself any illusions. Surely it was obvious that no draft convention capable of securing the support of all countries could be arrived at so long as one group of countries wanted to bind others

by imposing their own system upon them, refusing to take account of the fact that countries had different juridical, economic and social systems. If all delegations were prepared to adopt a realistic attitude on that point, it might yet be possible to submit to the next General Assembly a draft convention which would mark the twenty-fifth anniversary of the United Nations in a fitting way.

Mr. ZEMANEK (Austria) said that he proposed to give a short analytical account of what had happened during the session, partly in order to correct the negative impression that might be given by the summary records of the plenary meetings, which did not reflect the unofficial consultations, and partly to acquaint those Members of the United Nations which were not represented on the Sub-Committee with the efforts made to achieve a compromise and with the positions adopted by each Member.

His delegation fully supported the joint proposal (A/AC.105/C.2/L.74) and would be prepared to accept it immediately; it realized, however, that it had little chance of being adopted unanimously. The Austrian delegation had made every endeavour, in New York and Geneva, to find an acceptable formula. The importance of the results achieved at the April consultations, however, should not be exaggerated; the consultations had really not done more than bring about better understanding of the respective positions, so that it had been hoped that delegations might receive new instructions which would enable them to reach agreement at the current session.

The informal consultations had been resumed at the beginning of the current session; after an intensive exchange of views, three delegations - including his own - had made an assessment of the basis on which they felt a compromise might be achieved, even if some delegations could not, on their present instructions, accept it. It did not seem impossible that those instructions might be changed, should the basis assessment meet with general approval.

According to that assessment, it had been recognized that, on the issue of applicable law, neither reference to any particular national law nor just to international law could lead any further. The only solution was to propose a substantive rule of law to be embodied in the Convention, based on the concept of restoring the victim (be it a natural or juridical person, a State, or an international organization) to the condition equivalent to that which would have existed if the damage had not occurred. It would then no longer be a question of "applicable law" but of "measure of compensation".

On the other hand there were two opposite points of view on the nature of the decision to be taken by the claims commission; the majority of delegations wished the decision to be final and binding, whereas others conceived it only as a recommendation

to the States parties to the dispute. Unless one side or the other would abandon its position, which appeared unlikely, it had been necessary to find a compromise formula which omitted any reference to the nature of the decision. That had been done.

Unfortunately, that assessment of the situation had not been generally accepted. Some delegations had been opposed to a substantive role on the measure of compensation which, intheir opinion, went beyond what internationa law, from their point of view, enabled them to accept. Those delegations, together with another important delegation, thought that the nature of the claims commission's decision should be defined by a provision that would make it clear that the decision was final and binding if the parties so agreed; the implication would be that in the absence of such agreement the decision would be neither final nor binding. As it seemed impossible to find ground for a consensus, the three delegations had terminated their self-appointed mission.

A further attempt had however been made to solve at least the issue of the measure of compensation. The idea had been put forward that the term "full compensation" should be used rather than "full reparation" and that the victim should be restored to the physical condition which had existed prior to the date of the damage, instead of restoring it to the conditionthat would have existed if the damage had not occurred. Many delegations - including his own - had objected to that idea because it excluded compensation for indirect damage, lucrum cessans, interest, etc. Once again no common ground had been found.

It thus seemed probable that the recent informal consultations had achieved no more than those in April. It might be assumed that, as far as possible all delegations now knew what was perhaps the final position of all the other delegations, but that had not been the task assigned to the Sub-Committee and the grounds for hope were extremely slight.

Mr. DASHTSEREN (Mongolia) said that his delegation had not spoken much in the debate because it did not think it necessary to reitorate its position, which was well known to everyone. It was however also guided by the desire to reach agreement as soon as possible and felt that, although progress had been slow, the time spent by the Sub-Committee would not have been lost. The Working Group and Drafting Group had been able to produce agreed texts on most items of the draft Convention.

Only two important questions remained, and on them his delegation's views were well known. The extent of the disagreement on those issues had narrowed considerably during the previous session of the Sub-Committee, and it must continue to try to find

a solution on the basis of the area of agreement which had been reached. His delegation therefore appealed to all other delegations, and especially those which were engaged in intensive consultation, to use the remaining three days to reconsider their positions and to submit a compromise text. A compromise was however only possible if delegations took due account of the different legal and social systems of the various countries. It was to be hoped that they would succeed and that it would be possible to adopt the draft Convention, which would be the best contribution the Committee could make to celebrate the twenty-fifth anniversary of the United Nations.

Mr. AZIMI (Iran) said that, in view of the statements made by the representatives of Japan, the United Kingdom, Australia and Sweden, his delegation wished to support the joint proposal (A/AC.105/C.2/L.74), the content of which was very close to the ideas it had expressed at the preceding meeting.

The meeting rose at 1.5 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-NINTH MEETING

held on Wednesday, 1 July 1970, at 10.50 a.m.

Chairman Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/L.71-74, L.74/Add.1, L.75 and L. 76; A/AC.105/C.2/WG(IX)/L.1 and L.1/Corr.1, L.2-5, L.6/Rev.1, L.7/Rev.1 and Rev.1/Corr.1, L.8, L.9, L.9/Corr.1 and L.10; PUOS/C.2/70/WG.1/CRP.1, CRP.2 and CRP.2/Corr.1. CRP.3, CRP.4 and CRP.4/Corr.1 and CRP.4/Rev.1, CRP.5-CRP.9, CRP.10/Rev.1 and CRP.11-19; PUOS/C.2/DG(IX)/1 and 2; PUOS/C.2/DG(IX)/R.1-R.5; PUOS/C.2/DG(IX)/WP.1 and 2) (continued)

Mr. HARASZTI (Hungary) said that his delegation had been one of the first to recognize the importance of the problem of the international liability of States for damages which might be caused by objects launched into outer space. Anxious to make its own contribution to the solution of that problem, it had submitted a proposal which was still before the Sub-Committee.

After many years of fruitless efforts, the statements which had been made at the Sub-Committee's last two meetings had shown beyond all possible doubt that the only serious obstacle to the completion of a draft convention was the question of the applicable law. There were two schools of thought on the subject: according to some, the applicable law was the national law of the claimant State, while according to others - including Hungary - it should be the law of the liable State. However, as the French representative had rightly pointed out, law could not be exported, especially at the present time, which was marked by the co-existence of States belonging to two fundamentally different social and economic, and hence legal systems. Clearly, any attempt to get States which belonged to one of those two systems to accept the rules of law contained in the legal order of States belonging to the other system was doomed to failure. That was what was happening at present in the Sub-Committee. The texts submitted (officially or otherwise) contained detailed rules which were intended to govern relations between States, but which, although that was not expressly stated, were nothing more than the rules contained in the legal order of a particular State or States. In the circumstances, the only way to get out of the deadlock and return to a system which was acceptable to all States, was to have recourse to international law, which was designed to regulate relations between States. That idea was not new, having already appeared in a draft submitted at an earlier stage by the United States, but it was practically impossible after so many years to invent original solutions.

The text submitted by Bulgaria, Hungary and the USSR (A/AC.105/C.2/L.75) proposed such a return to international law, which, moreover, would not exclude the possibility of the claimant State and the respondent State agreeing on a national law which would be applicable to a specific case. The sponsors had emphasized that the aim in view was to compensate the entire damage caused to a contracting party or to natural or juridical persons. Their proposal, together with the text which the Drafting Group had just prepared for the preamble (A/AC.105/C.2/WG(IX)/L.10), in which the contracting parties recognized the need to ensure prompt and equitable compensation for victims of damage, might serve as a basis for the reasonable compromise desired by a large number of delegations. The argument frequently invoked that international law did not contain any rules which were applicable to the compensation of damage and particularly to the measure of compensation, did not stand up; it was an established fact that the different international tribunals and conciliation commissions which had had to give decisions in questions of that nature had experienced no difficulty in finding adequate solutions on the basis of existing international law.

The three delegations mentioned had also submitted a text on the settlement of disputes (A/AC.105/C.2/L.75) by conciliation, a procedure which was laid down in the Vienna Convention on the Law of Treaties. Compared with his delegation's original draft, the new and more detailed proposal provided that the conciliation commission should end its proceedings by stating its conclusions, and that the parties to the dispute could decide whether those conclusions should be final and binding upon them.

Mr. RAO (India) noted with regret that the informal consultations which had just taken place, and in which his delegation had actively participated, had been more useful than productive. Despite sincere efforts to approach the two major outstanding problems from a different angle, it had been impossible to achieve any progress. What was more, the divergency of views on the question of the measure of damage seemed to be still wider than at the beginning of the consultations.

The Working Group and the Drafting Group had undoubtedly achieved some far from negligible results on other points: articles concerning the form of compensation and joint liability, the preamble, the title, etc. The Soviet Union and United States delegations, in particular, had played a constructive part in arriving at those agreed texts. Nevertheless, the two questions which it had been impossible to solve touched upon the very essence of the convention and progress in other spheres would remain meaningless until they had been settled.

It had always been the Indian delegation's principle to recognize and respect the different social and legal systems in different countries, but in an international

matter, particularly of a humanitarian nature, the aim should rather be to reconcile the different systems with the demands of justice and equity. At the Sub-Committee's last session, his delegation had submitted a draft (A/AC.105/L.32/Rev.1), which included in annex 1 a protocol for the settlement of disputes. It maintained that proposal. It did not consider compromise an end in itself. At the consultations held in April 1970 it had cited several cases where Governments which had persistently opposed the establishment of arbitral bodies or claims commissions had finally accepted those procedures. It was therefore realistic to think that such a solution would be possible in the present case, which concerned an essentially humanitarian problem, as the victims could not await the pleasure of the launching State. Since the joint proposal submitted by Argentina, Canada, Italy, Japan, Sweden and the United Kingdom (A/AC.105/C.2/L.74 and Add.1) reproduced the main ideas of the Indian proposal, adding that a certified copy of the decision of the claims commission should be transmitted to the Secretary-General of the United Nations for publication, his delegation had no hesitation in supporting it. The principle whereby the launching State was required to compensate in full the entire damage caused would lose all interest, in practice, if the convention did not establish a procedure for the final settlement of disputes.

With regard to the measure of compensation, the joint proposal (A/AC.105/C.2/L.74 and Add.1) also seemed to offer a firm basis for agreement, having regard to the differences of view on the subject, which the recent informal consultations had made more understandable. The principle it contained was accepted in international practice, as was shown by certain judgments of the International Court of Justice.

Finally, in the absence of a generally acceptable convention on liability, the Indian Government would be obliged to reserve its position as regards its accession to the 1967 Treaty and the 1968 Agreement.

Mr. COCCA (Argentina) noted with satisfaction that despite the difficulties which still prevented an entirely positive solution of the problem, the proposal submitted jointly by his delegation and several others (A/AC.105/C.2/L.74 and Add.1) had been supported by the representatives of Australia, Austria, Iran and India. The discovery of a common denominator for legal systems as widely different as the systems of those countries, was already an achievement. The proposals submitted by Bulgaria, Hungary and the USSR (A/AC.105/C.2/L.75 and 76) sprang from another conception, and an effort must now be made to reconcile those positions with a view to finding a new basis of discussion leading to proposals which would deserve thorough study. Those different conceptions had one point of contact. The settlement of the kind of dispute

in question did not raise any problems of political or territorial claims, or touch upon the field of international relations, since the victims would be almost invariably natural or juridical persons. If the victim was the State itself, it would not be in its capacity as a sovereign State. In other words, the question belonged to private international law. Obviously there were differences between the legal and social systems of States. It was the task of jurists to surmount those obstacles and arrive at a formula which would be satisfactory to all, eliminating considerations of a political nature and keeping strictly to the legal field. In that connexion, it was worth noting that Soviet law contained excellent provisions whereby if an international agreement to which the USSR was a party established different rules from those contained in Soviet civil legislation, the rules of the international agreement would prevail.

Thus Soviet legislation contained a principle which was the same as that to be found in all other legal systems. That was a point of contact of capital importance, which ought to make a solution possible. As the Belgian representative had stated in the Committee, if an international treaty could override Soviet civil law within the Soviet Union, it could do so a fortiori in private law relations with foreign countries. Why did the Committee not avail itself of those provisions of Soviet positive law as a basis for reaching unanimous agreement? All delegations which had submitted joint proposals had taken account of similar provisions in their national law and had made concessions in relation to the positions adopted by them at previous sessions and even at the present one. His delegation was therefore convinced that the key which would enable the Sub-Committee to find a way out of the deadlock lay in the existence of those common provisions.

Where the settlement of disputes was concerned the Argentine delegation feared that the procedures so far proposed represented a step backwards in relation to the provisions of the treaty of 8 May 1871, which had been applicable in the matter for a century.

Finally, it should not be forgotten that in dealing with space law the Legal Sub-Committee had to break new ground and could not be satisfied with adapting rules from totally different spheres of space activity. If difficulties arose, it was for the Sub-Committee to establish the relevant principle and formulate the corresponding rule.

Mr. KOLCHAKOV (Bulgaria) said that his delegation which, together with Hungary and the USSR, had submitted two proposals (A/AC.105/C.2/L.75 and L.76), considered that theoretical problems could not be solved by drafting texts. Such a method, which was not to be recommended in national law, was even less justified in international law. The proposals in question contained all the necessary information for the practical solution of any particular case both as regards assessing and fixing the amount of damage and as regards settling any dispute. Furthermore, the two texts

did not pre-suppose any specific legal or social conception which might constitute a reason for theoretical divergencies.

The Bulgarian delegation had also submitted a working paper (PUOS/C.2/70/WG.1/CRP.2) concerning the application of the convention to international organizations. It had taken as its point of departure sub-paragraph (h) (iv) of the agreed statement of the Committee on the Peaceful Uses of Outer Space (A/7621/Add.1, pp.3-4) and in order that the first two principles spelt out in that text should receive their logical and complete realization it had drafted a compromise formula. For some years past, difficulties had arisen on the purely theoretical question of the juridical nature of international organizations and more especially on the possibility of considering them as subjects of international law on an equal footing with States. According to certain juridical conceptions international organizations could not be placed on the same level as States. Others tended in the opposite direction, even going so far as to recognize international organizations as subjects of international law with a supranational or supra-state character. His delegation felt that its proposal gave each State or group of States the possibility of establishing its relationship with an international organization as it saw fit. Since the fundamental aim of the convention of liability was to protect the rights of the victim where it was a natural or juridical person, or a State, it was the claimant State which should be left the discretionary right or option to apply either to the organization or to one or more of its member States. The State concerned could thus apply solely to the organization, or conversely the international organization and the member States could be held jointly liable. Lastly, the internal relationships in the international organization, including the possibility of counter-claims, did not depend on the status of the victim. That, in his delegation's view, was the main advantage of its proposal.

Mr. RHINELANDER (United States of America) thought that the holding of informal consultations during the first three weeks of the session had been justified by the complexity of the two outstanding issues - the measure of compensation and the settlement of disputes - and by the close links between them, but that the records of the session should none the less reflect the progress made and the differences which still persisted.

The preferred position of his delegation was that the measure of compensation payable under the convention should be based on the national law of the claimant State. It had also proposed (A/AC.105/C.2/W.2/Rev.5, page 40, article X) that the decisions of the three-party claims commission should be binding. Realizing the unlikelihood of achieving a consensus on a text embodying those two principles, however, it had explored with other delegations other possible areas of agreement.

After the April consultations, his delegation had prepared a draft article on the measure of compensation, which made no reference to national law. Instead, compensation was to be measured in accordance with international law and the principles of justice and equity in order to provide full reparation in respect of the damage, and thus restore the person a natural or juridical person, State or international organization on whose behalf the claim was presented, to a condition equivalent to that which would have existed had the damage not occurred. In so doing, it had based itself on a proposal by the Italian delegation. The consultations of the past few weeks had confirmed that for a large number of delegations, including his own, that principle of full restoration of the victim to the condition which would have existed had the damage not occurred went to the very heart of any truly victim-oriented convention. It served as a standard for measuring the compensation during the diplomatic negotiations by which most claims would be settled and throughout the rest of the procedure for settling claims.

A fully independent and impartial claims commission with the following principal features was also a vital part of the convention. Any party to a dispute would be able to request that a three-member commission should be established. If the parties failed to agree on the third member, who would serve as chairman, the Secretary-General of the United Nations would appoint the third member at the request of a State involved in the proceedings from among qualified nationals not involved in the proceedings. If, however, one party failed to appoint its member, the Secretary-General would appoint a single member from among qualified nationals not involved in the proceedings who would serve as a single-member commission. It would logically follow from those procedures that the commission should proceed by majority vote, and that its decision should be final so as to ensure prompt compensation. In the context of such a claims commission his delegation would be prepared to accept a provision to the effect that the decision would be binding only if the States involved in the dispute so agreed, provided the decision be made available for publication. His delegation believed that that kind of settlement procedure would in the context of the rest of the convention give rise to the reasonable expectation that claims would be paid in accordance with the decision of the commission.

The Sub-Committee had agreed on a number of provisions which were a considerable advance over article VII of the 1967 Treaty. For instance, there was the basic principle of absolute liability for damage caused on earth, the principle of fault liability for damage caused elsewhere than on the surface of the earth, the principle

of joint and several liability (including States from whose territory or facility a space object has been launched), the right of the claimant State to have compensation paid in its own currency or the currency of the launching State, the procedures for the presentation of claims, commencing with diplomatic negotiations, and the waiver of any rule relating to the exhaustion of local remedies prior to proceeding with diplomatic negotiations. Those substantive and procedural rules were designed to further the goal of the convention, which was to ensure prompt and equitable settlement of claims in the event of damage caused by a space object.

Mr. OSIECKI (Poland) said his delegation was prepared to support the proposals submitted by Bulgaria, Hungary and the Soviet Union concerning the applicable law (A/AC.105/C.2/L.75) and the settlement of disputes (A/AC.105/C.2/L.76), because they offered a flexible and realistic solution to the outstanding issues and took account of the differences between States' social and political systems.

Mr. JACHEK (Czechoslovakia) added that his delegation supported both of the proposals presented by Bulgaria, Hungary and the Soviet Union (A/AC.105/C.2/L.75 and L.76), because they were stamped with the seal of realism and in keeping with the generally recognized principles of international law.

Mr. AMBROSINI (Italy) said his delegation entirely agreed with the United States representative and felt that the convention should provide for the assessment of damage caused and for the manner of resolving any differences which might arise regarding settlements.

As to the applicable law, Italy had prepared an informal proposal, to which several delegations had referred, and was happy to note that the part of that text which provided that the victim should be fully compensated for the damage caused had been accepted. His delegation remained firm on that point, which had gained the acceptance of all delegations, including those of Bulgaria, Hungary and the Soviet Union, the aim of whose proposal concerning the applicable law (A/AC.105/C.2/L.75) was "to compensate according to the Convention the entire damage caused to a contracting party...".

The text proposed by Bulgaria, Hungary and the Soviet Union was insufficient, however, since it made no mention of the means by which that aim might be attained. The problem of the applicable law thus remained.

Both in the draft it had submitted and in its informal proposal, Italy had asked that the applicable law should be international law, including the general principles adopted by civilized States and nations, which had always been recognized as one of the sources of international law. It should not be forgotten that there were already recognized rules in international law, and particularly in private international law,

which was more especially concerned with the problems at present being studied by the Sub-Committee: although States might sustain damage, it was above all individuals and private corporations that were likely to suffer from space accidents, the consequences of which should be dealt with under private international law.

The proposal submitted by Bulgaria, Hungary and the Soviet Union (A/AC.105/C.2/L.75) was similar in intent, since it provided that the compensation payable "should be determined in accordance with international law". His delegation took the view that that provision should be retained in whatever text was adopted, though it felt that its own proposal should be added, namely, that the victim should receive full compensation so as to be restored to the condition which would have existed had the damage not occurred.

On the subject of the applicable law, some delegations had taken refuge behind arguments concerning sovereignty. Almost all civilized countries, however, recognized that international treaties should prevail over the domestic laws of the signatory countries; some, such as Italy, had even included that principle in their constitutions. There could therefore be no question of invoking national sovereignty as an argument against solutions which many members of the Sub-Committee had already accepted. Moreover, the national sovereignty argument invoked by the countries which did not want to accept those solutions, had already been invalidated by the fact that the countries concerned had signed and ratified the 1967 Treaty and thus recognized an international obligation with regard to damage caused by space objects (article VII). It was therefore difficult to understand how the question could be reopened when they had already accepted the obligation which it was proposed to include in the convention.

He stressed the need for a clear, precise and unambiguous convention and asked that the text drawn up by the Drafting Group should be submitted to the Sub-Committee to enable delegations to comment on it and, if necessary, improve upon the proposed wording.

In that connexion, his delegation had made a number of observations concerning articles of the draft convention prepared by the Working Group. First, it had pointed out that article I (d) (PUOS/C.2/DG(IX)/R.2) made no mention either of parts and pieces which might break away from a space object, or of objects which might be ejected from space objects and cause damage. That was a question which should be looked into.

In article II of the draft (PUOS/C.2/DG(IX)/R.2), the Drafting Group had considered the nature of liability in the event of damage caused by a space object on the surface of the earth or to aircraft in flight. His delegation hoped that article III of the draft convention would generally recognize liability in respect of damage not only

"elsewhere than on the surface of the earth", but also in the event of damage caused in outer space and in the atmosphere, as in article II, on the basis of the already accepted principle that the launching State should be held liable only if it was at fault. The text of article III was too limited, moreover, since though it did not say so it was actually concerned with cases of collision between space objects. Damage might, however, occur for reasons other than collision. His delegation therefore took the view that a rule generally applicable to all cases of that nature should be envisaged.

There was much to be said for the proposed new wording of article IV (PUOS/C.2/DG(IX)/R.4), which provided for two cases - damage caused on the surface of the earth or to an aircraft in flight and damage caused elsewhere than on the surface of the earth. It also envisaged the question of the joint liability of States jointly responsible for damage. Presumably that could relate solely to cases of collision. Damage caused on the surface of the earth, of course, implied absolute liability and, consequently, joint liability, since there could be no question of liability according to fault: once damage had been caused on the surface of the earth by a space object, the launching State was obliged to make compensation for it. On the other hand, in the event of damage caused by collision to a third State, the rule was different and the principle of fault liability had to be applied. One object might, for instance, collide with another through no fault of its own; in such cases, the State which had launched the unoffending object could not be held jointly liable with the other State on which the fault devolved. Only in the event of joint fault in the case of a collision between two or more space objects could joint liability be admitted, it being understood that the States jointly responsible would share the burden of compensation.

Some delegations had expressed regret that the Sub-Committee might once again end its session without having agreed on a final text for submission to the General Assembly. Personally, he felt that the time had not been wasted since there was now a better understanding of the scope and purpose of the draft convention. Liability was an extremely complex and delicate matter, but the text eventually adopted would enable the judges and arbitrators to solve equitably whatever problems were referred to them. His own delegation felt sure that the Sub-Committee would eventually work out a draft which would arouse no criticism from scholars or the public, as had been the case with the 1968 Agreement.

Mr. VRANKEN (Belgium) said that his delegation could not support the proposals made by Bulgaria, Hungary and the Soviet Union (A/AC.105/C.2/L.75 and L.76), since they did not seem to provide a solution. In order to avoid any misunderstanding as to its position, it wished to co-sponsor document A/AC.105/C.2/L.74.

Mr. O'DONOVAN (Australia) said that his delegation, too, wished to co-sponsor document A/AC.105/C.2/L.74.

Mr. CHARVET (France) said that, having previously stated the concessions it was prepared to make, his delegation wished to make it clear that it regarded those concessions as being subject to two conditions: first, that the convention should expressly provide that the victim of damage should be restored to the condition in which he would have been had the damage not occurred, and, second, that the commission should consist of two members chosen by each of the parties and a third member either chosen by agreement between the parties or, failing that, by an authority of high moral standing, such as the Secretary-General of the United Nations. If those two principles were not clearly set out in the draft convention, his delegation would reserve the right to reconsider the concessions it had made.

The meeting rose at 12.25 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTIETH MEETING

held on Wednesday, 1 July 1970, at 5.35 p.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/C.2/W.2/Rev.5; A/AC.105/C.2/L.71, L.72; A/AC.105/C.2/WG (IX)/L.1 to 5, L.6/Rev.1, L.7/Rev.1, L.8, L.9, L.10; PUOS/C.2/70/WG.1/CRP.1, CRP.2 and Corr.1, CRP.3, CRP.4, CRP.4/Rev.1, CRP.5 to 9, CRP.10/Rev.1, CRP.11 to 19; PUOS/C.2/WG (IX)/1 and 2) (continued)

The CHAIRMAN invited the Sub-Committee to consider the text of the draft convention on international liability for damage caused by space objects, as approved by the Drafting Group (A/AC.105/C.2/WG(IX)/L.10).

Mr. VENTACASSIN (France) said that his delegation could accept the text of the draft Convention subject to one reservation which related to articles II and III. Those two articles raised two problems in connexion with the interpretation of article VII of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. The first was one of terminology. Article VII of the 1967 Treaty referred to liability for damage "on the Earth", whereas articles II and III of the draft Convention referred to liability for damage "on the surface of the earth". The normal practice would be to follow the wording of the 1967 Treaty and his delegation therefore considered that the words "on the surface of the earth" in articles II and III should be replaced by the words "on the earth".

The second problem was one of substance and concerned an omission in the draft Convention. Article VII of the 1967 Treaty referred to liability for damage "on the Earth, in air space, or in outer space". Articles II and III of the draft Convention, however, covered only two of those spheres of damage, article II referring to liability for damage "on the surface of the earth or to aircraft in flight" and article III to damage "elsewhere than on the surface of the earth". There was a third and very important sphere which was not covered in the draft Convention, namely, damage caused in the air other than to aircraft in flight. Such damage, which his delegation regarded as extremely important, might take the form of the pollution or contamination of air space and was likely to become an acute problem as a result of technical developments and the use of nuclear devices. His delegation accordingly considered that the words "in air space" should be inserted after the words "of the earth" in article II.

If his proposal was not incorporated in the final text, the draft Convention would not give effect to all the provisions of article VII of the 1967 Treaty. In those circumstances, his delegation would be compelled to draw two conclusions. In the first place, the title of the draft Convention should refer to certain rules governing liability and not merely to liability. In the second place, in the event of damage in the form of pollution or contamination being caused in air space by space objects and of such damage including damage on the earth, article II would be applicable, in other words, the liability of the launching State for such indirect damage would be absolute.

Mr. FREELAND (United Kingdom) said that his delegation could approve the draft Convention, as revised only if satisfactory agreement was reached on the main outstanding issues. In particular, the text approved by the Drafting Group would present no difficulty if satisfactory provisions were agreed regarding international organizations, making it plain that the substantive provisions of the Convention would be applied to such organizations which declared their acceptance of the Convention in the same manner as they were applied to a State. If, however, the Convention contained no provisions on international organizations, his delegation would consider that substantial redrafting was needed before its provisions could be properly applied to international organizations.

Mr. ALCARAZ (Mexico) said that he entirely agreed with the representative of France that article II of the draft Convention should include damage caused in air space. It was a matter of great importance to humanity. He also agreed with the United Kingdom representative that the Convention should contain provisions concerning international organizations. In that connexion he drew attention to the Working Paper submitted by his own delegation (PUOS/C.2/70/WG.1/CRP.8).

Mr. O'DONOVAN (Australia) said that on reading through the draft Convention, he had been struck by the many compromises which it embodied, at least on the part of his own delegation. The text was not perfect, but it was difficult to satisfy all delegations or indeed any delegation. He could, however, accept the draft Convention subject to one reservation, namely, that it was clearly understood that the main outstanding issues would be resolved.

Mr. COCCA (Argentina) said that his delegation, too, would accept the draft Convention subject to reservations. Articles II and III limited the scope of application of article VII of the 1967 Treaty, without apparent reason. Apart from

the strong arguments given by the representative of France against such a situation, there was a risk of conflicts arising in the application of the provisions of the two instruments.

Where damage in air space was concerned, his delegation was in favour of absolute liability.

He welcomed the inclusion as article XIII of the Belgian proposal in document A/AC.105/C.2/L.72, which partly met Argentina's problem concerning the position of countries making available their territory or facilities under United Nations auspices. He would, however, have preferred a more explicit text.

He also considered that article 1 omitted an essential definition, namely, that of space damage, despite the fact that such a definition had obtained the approval of a large number of delegations.

His delegation would approve the Working Group's text in general, but would have some comments to make on the applicable law, on settlement of disputes and on international organizations when the Sub-Committee reverted to those topics.

Mr. AZINI (Iran) said that he agreed with the French representative's comments on absolute liability in article II. He also agreed with the United Kingdom representative's reservation concerning international organizations.

The draft Convention on International Liability for Damage Caused by Space Objects (A/AC.105/C.2/WG(IX)/L.10), as amended by the Working Group, was approved.

The CHAIRMAN said that he agreed with the representatives of Australia and other countries that the text was not perfect: it would be almost impossible to produce a text which would meet with the approval of twenty-eight countries. The text was the result of a compromise, and even if future experts on international and space law found shortcomings in it, the Sub-Committee could be satisfied that it had done its best.

The meeting rose at 6.5 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTY-FIRST (CLOSING) MEETING

held on Friday, 3 July 1970, at 10.45 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.2/70/1, Add.1 and Add.2)

Mr. KUTAKOV (Under-Secretary-General for Political and Security Council Affairs) observed that the Sub-Committee had achieved some positive results during the session that was coming to an end, even though it had not completed the task entrusted to it by the General Assembly under resolution 2601 B (XXIV). He welcomed the results obtained so far and hoped, with the members of the Sub-Committee, that the goal that had been set would soon be reached. The Sub-Committee's session would undoubtedly prove to have been a positive contribution to the success of the twenty-fifth anniversary of the United Nations.

The CHAIRMAN suggested that the Sub-Committee should proceed with the consideration of the draft report (PUOS/C.2/70/1 and Add.1 and 2).

Paragraphs 1 to 11 (PUOS/C.2/70/1)

Mr. ALCARAZ (Mexico) requested that the word "convención" should be replaced by the word "convenio" throughout the Spanish version of the draft report.

It was so decided.

Paragraphs 1 to 5

Paragraphs 1 to 5 were adopted.

Paragraph 6

Mr. O'DONOVAN (Australia) proposed that the word "published" at the end of the first sentence of the English test should be replaced by the word "issued".

Paragraph 6, as thus amended, was adopted.

Paragraphs 7 to 11

Paragraphs 7 to 11 were adopted.

Paragraphs 12 to 23 (PUOS/C.2/70/1/Add.1)

Paragraphs 12 to 15

Paragraphs 12 to 15 were adopted

Mr. OWADA (Japan) suggested that a new paragraph should be inserted between paragraphs 15 and 16 to the effect that the two main issues - settlement of claims and the applicable law - to which the proposals contained in documents A/AC.105/C.2/L.74, 75 and 76 related had been extensively discussed by the Sub-Committee, that no agreement had been reached on them and that they had been left pending. That statement would be followed by a brief outline of the various arguments put foward.

Mr. PIRADOV (Union of Soviet Socialist Republics) thought that the paragraph proposed by the Japanese representative would make the report unduly long without giving a true picture of the debate, and would encourage other delegations to request that their views should also be included; that might considerably delay the adoption of the report. His own delegation understood the Japanese representative's wish that the session's work should be readily intelligible, but that was exactly the purpose served by the summary records, which gave an account of the way the debate had developed and the positions taken by each delegation. He hoped the Japanese representative would withdraw his proposal.

Mr. FREELAND (United Kingdom) thought that the Japanese proposal was actually twofold. The first intention was to ensure that the report gave an accurate impression of the outcome of the Sub-Committee's work. The Japanese representative was right in thinking that the draft report as it stood did not give a true picture of what had resulted in relation to the two main issues. This should be remedied by the insertion of a statement on the lines suggested by the Japanese representative. The second aspect of the proposal involved the addition of a summary of arguments put forward in debate. As to this there might be differing views, since, as the representative of the USSR had pointed out, the summary records would reflect the views put forward by the delegations in the Sub-Committee.

Mr. OWADA (Japan) said that the United Kingdom representative had perfectly understood the two-fold intention of his delegation's proposal: to secure the inclusion in the report of a concise description of the situation so that readers could understand what had taken place without having to refer to the summary records, and, as was customary, to outline the views expressed on either side. It was the more important to carry out that second intention since the views in question sometimes diverged considerably. He was, however, more concerned to achieve the first intention, and provided the report showed clearly what kind of discussion had taken place in the Sub-Committee and the results it had yielded, his delegation would not insist on the report's also including a summary of the arguments.

Mr. O'DONOVAN (Australia) said that while he understood the Japanese representative's concern, he was also aware of the difficulty of condensing in a few lines opinions which were already given in shortened form in the summary records. The Sub-Committee could, he thought, give the Japanese representative satisfaction by adopting the text he had proposed and placing after it, not a summary of delegations' divergent views, but an asterisk referring the reader to the summary records of the debates.

Mr. ROBERTSON (Canada) said that while he also realized the difficulty of summarizing the various delegations' statements, he nevertheless thought the text proposed by the Japanese delegation was worth inserting.

Mr. BETTINI (Italy) said he also thought the Sub-Committee might accept the text proposed by the Japanese representative, but that it should not be followed by a summary of delegations' views.

Mr. PIRADOV (Union of Soviet Socialist Republics) said he agreed to the insertion of the Japanese proposal, provided the new paragraph did not contain a summary of the divergent views.

The CHAIRMAN observed that the Sub-Committee was in favour of the Japanese proposal, provided the text was accompanied by an asterisk referring the reader to the summary records. An appropriate new paragraph would be inserted between paragraphs 15 and 16 of the existing text.

It was so decided.

Paragraph 16

Mr. O'DONOVAN (Australia) proposed that "international" should be inserted before "organizations" in the first line of the sixth paragraph of the list.

Mr. COCCA (Argentina) pointed out that the joint proposal submitted by Argentina, Belgium, France, Italy and Mexico (PUOS/C.2/70/WG.1/CRP.18/Rev.1) did not concern the definition of space objects, but the damage caused by a space object. The second paragraph of the list should be amended accordingly.

Paragraph 16, as thus amended, was adopted.

Paragraph 17

Paragraph 17 was adopted.

Paragraph 18

Mr. VRANKEN (Belgium) proposed that the following text should be added to the paragraph: "A decision on proposals concerning inter-governmental international organizations was deferred, and the matter will be considered again when the two basic problems mentioned in paragraph 15 have been solved."

Paragraph 18, as thus amended, was adopted.

Paragraph 19

Mr. FREELAND (United Kingdom) proposed that the following text should be inserted at the end of the paragraph: "It was understood in the Drafting Group that this order would be provisional pending agreement on the placing of eventual articles on issues not yet settled."

Paragraph 19, as thus amended, was adopted.

Paragraph 20 - 22

Paragraphs 20 - 22 were adopted.

Paragraph 23

Mr. OWADA (Japan) recalled that the Chairman, in introducing the Drafting Group's draft text to the Working Group, had supplied additional particulars, some of which were already incorporated in the report. It might be helpful to add the other information given at that time by the Chairman, especially that concerning the terminology used in the draft convention reproduced in the report.

Replying to questions by Mr. ROBERTSON (Canada), Mr. ZEMANEK (Austria) and Mr. COCCA (Argentina), and bearing in mind the Japanese representative's suggestion, the CHAIRMAN proposed that the following text should be added to the end of paragraph 23:

"It was the view of the Drafting Group that:

(a) since the term "State" as used in the draft convention necessarily means a State Party to the Convention, it would be sufficient to use the term "State" instead of terms "State Party to the convention" and "Contracting Party";

(b) whenever a term used in the draft Convention is identical with the corresponding term used in the 1967 Treaty, the draft Convention would be brought into line with the 1967 Treaty in all languages;

(c) throughout the draft Convention the term "State presenting a claim" should be used instead of the terms "claimant State", "claimant" or "presenting State"; and the term "launching State" instead of the terms "respondent" or "respondent State".

The Chairman's proposal was accepted.

Paragraph 23, as thus amended, was adopted.

Paragraphs 24 - 27 (PUOS/C.2/70/1/Add.2)

Paragraph 24

Paragraph 24 was adopted.

Paragraph 25

Mr. O'DONOVAN (Australia) thought that the opening sentence of paragraph 25 did not faithfully reflect the Sub-Committee's decision, for when the Drafting Group's report had been presented in plenary, after examination by the Working Group, his delegation, after briefly reviewing the many compromises that had been reached, had stated its position, namely, that it would be prepared to approve the texts presented only if the two main issues outstanding were subsequently solved. He believed the delegations of Argentina, the United Kingdom and other countries had spoken in similar vein. A paragraph and a footnote drafted as follows would therefore he thought, be more in keeping with the facts:

"25. The Sub-Committee, at its 150th meeting on 1 July 1970, approved all the texts which are set out below, its approval being conditional upon agreement being reached subsequently on texts dealing with the main outstanding issues (see paragraph 9 above).3/"

Mr. COCCA (Argentina) said that in his delegation's view the draft convention did not really stand on its feet and had some large gaps in it. His delegation could approve it only with reservations, and conditionally, its agreement in principle being confined to the progress made by the Sub-Committee and being associated with the hope that satisfactory solutions would be found to the capital problems which the draft had not solved, and which, as was apparent from his delegation's statement at the 150th meeting, did not consist only of the two to which the Australian representative had referred.

Mr. PIRADOV (Union of Soviet Socialist Republics) said he could not accept the Australian representative's suggestion, which opened the way to an endless series of amendments from all the delegations which considered that their approval should be subject to reservations or conditions.

Mr. VENTACASSIN (France) recalled that his own delegation, like those of the United Kingdom and Argentina, had expressed reservations with regard not only to the two main issues outstanding. He therefore considered that the following sentence and footnote should be added after the first sentence of paragraph 25: "Some delegations however, approved these texts subject to reservations.4/"

Mr. ALCARAZ (Mexico), Mr. PIRADOV (Union of Soviet Socialist Republics) and Mr. AZIMI (Iran), supported that proposal.

Mr. OWADA (Japan) said that although he understood the reasons for the French representative's proposal, he felt it might place some delegations, such as his own, in an embarrassing situation: obviously, approval of the texts presented had, for all delegations, been subject to reservations similar to those just mentioned, and concerned only those items on which agreement had been reached. In its desire to save time, however, his own delegation had not stated any express reservations at the

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3/ See A/AC.105/C.2/SR.150.

4/ See A/AC.105/C.2/SR.150.

150th meeting. The summary record of that meeting therefore contained no reference to the Japanese position, though that did not mean that its approval was not implicitly subject to certain conditions. His delegation was therefore unable to support the French proposal.

Mr. O'DONOVAN (Australia) explained that in approving at the preceding meeting the texts presented by the Drafting Group and amended by the Working Group, his delegation had not really expressed any reservation; it had merely approved the texts on the understanding that other texts relating to the questions still outstanding were to be added to them. Moreover, it had prefaced that condition with a reference to the compromise solutions and concessions which had enabled the texts presented to be worked out. To say that a text had been approved "with reservations" did not necessarily mean that reference was being made to any possible weaknesses in the text; but it was precisely on account of those weaknesses that his delegation had made its approval conditional. In fact, the question was closely bound up with the notion of general assent or consensus by which the Sub-Committee's work had been governed and according to which delegations must reach unanimous agreement, the understanding being that unanimous agreement had been reached when no objections were raised. It was a fact that the position defined by his delegation had not given rise to any objection. Perhaps, in order to avoid slowing up the Sub-Committee's work, a number of delegations, such as that of Japan, had implicitly shared the view of the Australian delegation but had refrained from saying so in as many words because that view had not given rise to any objection. Although the French proposal was understandable in substance, therefore, it was difficult to accept because it did not state the nature of the reservations referred to. The best course might be to revert to the Australian proposal, deleting the reference to "main" issues and to paragraph 9 of the report.

Mr. ROBERTSON (Canada) said that his delegation was in the same position as that of Japan: although it had made no express reservation at the 150th meeting of the Sub-Committee, its approval of the text presented had in fact been subject to certain conditions and reservations. It would therefore be in favour of the Australian proposal in the form just propounded; the footnote accompanying the amendment might perhaps refer to the summary records of both the 150th and the 151st meetings of the Sub-Committee.

Mr. PIRADOV (Union of Soviet Socialist Republics) proposed the following wording, which, he said, would take account of the objections and suggestions that had

been made: "25. The Sub-Committee, at its 150th meeting on 1 July 1970, approved all the texts which are set out below, taking into consideration the statements made by the delegations of a number of countries.3/

Mr. O'DONOVAN (Australia) objected to that proposal on the grounds that it erroneously implied an unqualified, unconditional and unreserved approval.

Mr. PIRADOV (Union of Soviet Socialist Republics) suggested an alternative wording: "... taking into consideration the positions adopted by the various delegations, which are reflected in document...".

Mr. ZEMANEK (Austria) moved the suspension of the meeting to enable delegations to work out a compromise text.

The meeting was suspended at 12.15 p.m. and resumed at 12.25 p.m.

Mr. VENTACASSIN (France), referring to the consultations that had just taken place, proposed a compromise solution whereby the following sentence would be added after the opening sentence of paragraph 25: "Some delegations, however, approved these texts subject to conditions or reservations". To that sentence a footnote would be added reading as follows: "See the summary records of the 150th and 151st meeting (A/AC.105/C.2/SR.150 and 151)".

That proposal was adopted.

Mr. RAO (India) said that in view of the amendment just adopted, his delegation felt in duty bound to state that it approved the text of the draft convention contained in the draft report, subject to satisfactory settlement of the two main outstanding issues.

Mr. PIRADOV (Union of Soviet Socialist Republics) thought that the report might more clearly reflect the Sub-Committee's work if the text of the draft convention was placed in an annex instead of in the main body of the report.

Mr. O'DONOVAN (Australia) said he disagreed: it was most important that the text should immediately follow the opening words and the sentence referring to the reservations that had been made.

Mr. PIRADOV (Union of Soviet Socialist Republics) withdrew his suggestion.

Mr. PERSSON (Sweden) asked that the summary record should show that his delegation's position regarding the proposed text was the same as that stated by the representatives of Australia, Canada, Japan and India.

3/ See A/AC.105/C.2/SR.150 and 151.

Mr. ALCARAZ (Mexico) said he would like to make it clear that his delegation would regard the draft convention as final only when it had been supplemented by the articles relating to the basic issues still outstanding, namely, the questions of inter-governmental international organizations, the measure of compensation and the settlement of disputes.

Paragraph 25, as amended, was adopted.

Paragraph 26

Mr. PERSSON (Sweden) proposed that the following phrase be added at the end of the first sentence: "... as well as the report of the Working Group on Direct Broadcasting Satellites on its third session (A/AC.105/83)".

It was so decided.

Mr. PIRADOV (Union of Soviet Socialist Republics) asked whether the Russian version of the paragraph under consideration had been brought into line with the other languages; for although the Sub-Committee had had the documents and proposals indicated placed before it, it had not discussed them.

The CHAIRMAN said that the secretariat would bear that observation in mind in drafting the final text of the report.

Mr. COCCA (Argentina) requested that, in the second sentence, the words "including the various implications of space communications" should be added after the words "in the use of the natural resources of the Moon and other celestial bodies", so as to bring the text into line with both the title of the part of the report under consideration and the corresponding agenda item.

It was so decided.

Paragraph 26, as amended, was adopted.

Paragraph 27

Mr. VENTACASSIN (France) said that, in its report, the Sub-Committee should not overlook the question of the agenda of its next session. He therefore proposed the addition of the following sentence at the end of paragraph 27: "At its 151st meeting on 3 July 1970, the Sub-Committee expressed the hope that the questions coming under this item of the agenda should take priority on the agenda of its next session in so far as agreement has been reached meanwhile on a draft convention concerning international liability for damage caused by space objects".

That proposal was adopted.

Mr. PERSSON (Sweden) proposed that the second sentence of paragraph 27 should be replaced by the following: "Consequently, neither the question relating to the definition of outer space nor the question relating to the utilization of outer space, including the report of the Working Group on Direct Broadcasting Satellites on its third session, which two questions figure as item 3 of its agenda, were considered by the Sub-Committee at its present session".

That proposal was adopted.

Paragraph 27, as amended, was adopted.

The CHAIRMAN suggested that the following paragraph should be inserted at an appropriate point in the report: "At its 151st meeting, the Sub-Committee heard a statement by Mr. Kutakov, Under-Secretary-General for Political and Security Council Affairs".

It was so decided.

The report as a whole, as amended, was adopted.

CLOSURE OF THE SESSION

The CHAIRMAN said that despite the efforts everybody had made throughout the session, whether in the Sub-Committee itself, in the Working Group or Drafting Group or during informal consultations, the Sub-Committee had not achieved the goal it had originally set itself. That was the more the pity since the General Assembly had urged the Committee on the Peaceful Uses of Outer Space to do all it could to ensure that a draft text was submitted to the General Assembly at its twenty-fifth session. It only remained to be hoped that the Committee itself would find a solution at its September meeting. Personally, he thought the Sub-Committee's efforts had helped to make such a possibility more likely: some considerable progress had been made during the session, and both the structure and the drafting of the text on which the Sub-Committee had agreed were taking on the appearance of a treaty. In that connexion, the Drafting Group was to be congratulated on the speed and care with which it had worked.

The contribution made by the Working Group was also worth mentioning, since that body had, within the time allotted to it, examined a number of aspects which were either new or complementary to the problem under consideration.

It was to be hoped that the spirit of co-operation and compromise which had prevailed throughout the session would endure, so as to permit the rapid completion of work on the final text of a draft convention.

After thanking the members of the Sub-Committee and all the Secretariat staff, whose collaboration had contributed to the success of the session, he declared closed the ninth session of the Legal Sub-Committee.

The meeting rose at 1.25 p.m.