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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Tenth Session

SUMMARY RECORDS OF THE ONE HUNDRED AND FIFTY-SECOND TO THE ONE HUNDRED AND SIXTY-NINTH MEETINGS

held at the Palais des Nations, Geneva,
from 7 June to 2 July 1971

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 tenth session (A/AC.105/94, annex II).

Chairman: Mr. WYZNER Poland

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ABBREVIATIONS

ITU	International Telecommunication Union
UNESCO	United Nations Educational, Scientific and Cultural Organization
WIPO (BIRPI)	World Intellectual Property Organization

Note

The report of the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space on its ninth session has been issued as document A/AC.105/85.

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTY-SECOND (OPENING) MEETING

held on Monday, 7 June 1971, at 3.20 p.m.

Chairman: Mr. WYZNER Poland

OPENING OF THE SESSION

The CHAIRMAN declared open the tenth session of the Legal Sub-Committee.

TRIBUTE TO THE MEMORY OF MR. KRISHNA RAO

The CHAIRMAN said that it was his painful duty to inform participants of the death of Mr. Krishna Rao. His passing away had deeply saddened all those who had known him personally or who had worked with him in various United Nations bodies where, for many years, he had represented India with rare skill and with great power and conviction. In the Sixth Committee of the General Assembly, at the United Nations Conference on the Law of Treaties, or in the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, all had admired the wisdom and energy of that outstanding personality. All his colleagues remembered how tirelessly he had worked in the pioneering field of the international law of outer space and his persistent efforts to find suitable solutions to complex legal questions. His effective influence was certainly behind every major achievement of the Committee on the Peaceful Uses of Outer Space.

He wished to convey the condolences of the Sub-Committee and of the Polish delegation to the family of the deceased, and to the Indian delegation.

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

Mr. PIRADOV (Union of Soviet Socialist Republics), Mr. EL REEDY (United Arab Republic), Mr. DARWIN (United Kingdom), on behalf of the United Kingdom delegation and several Commonwealth delegations, Mr. CHARVET (France), Mr. COCCA (Argentina), Mr. VRANKEN (Belgium), Mr. KARASSIMEONOV (Bulgaria), Mr. GONZALEZ GALVEZ (Mexico), Mr. DJAHANNEMA (Iran), Mr. HARASZTI (Hungary), Mr. OKAWA (Japan), Mr. ZEMANEK (Austria), Mr. PISK (Czechoslovakia), Mr. de SOUZA e SILVA (Brazil), Mr. GOGEANU (Romania), Mr. PERSSON (Sweden), Mr. CAPOTORTI (Italy) and Mr. ERENDO (Mongolia) paid tribute to Mr. Krishna Rao and expressed their sympathy to his family and to the Indian delegation.

Mr. KRISHNAN (India) thanked all the delegations for their expressions of sympathy on the occasion of the death of Mr. Krishna Rao and assured them that their condolences would be conveyed to the Indian Government and to the family of the deceased. The greatest tribute that could possibly be paid to the memory of Mr. Rao would be to

arrive at an agreement on the draft convention on liability for damage caused by objects launched into outer space, in the cause of which Mr. Rao had not spared himself and which he regarded as a step towards the achievement of still higher goals.

ADOPTION OF THE PROVISIONAL AGENDA (A/AC.105/C.2/L.78)

The provisional agenda was adopted.

STATEMENT BY THE CHAIRMAN (agenda item 1)

The CHAIRMAN noted that since the Legal Sub-Committee's ninth session there had been further important accomplishments in the exploration of outer space. On the day before the opening of the tenth session, the Soviet Union had successfully placed in orbit a spacecraft, "Soyuz-11", with three cosmonauts aboard, which was intended to continue the scientific experiments of Soyuz-10 and to link up with the Salyut orbital station. In January 1971, three United States astronauts had carried out the Apollo-14 mission, which had scored another success in the exploration of the moon. Those were two examples of the continuous exploration of outer space, which was the field of application par excellence of the convention on which the Legal Sub-Committee was working.

The Sub-Committee, at its ninth session, had approved the title, the preamble and thirteen articles of the draft convention on liability for damage caused by objects launched into outer space. Although that was no small achievement, it was a matter for regret that agreement had not been reached on such questions as the procedure for settlement of claims and the question of the applicable law, and that subsequent efforts in the parent Committee on the Peaceful Uses of Outer Space and at the twenty-fifth session of the General Assembly had likewise been unsuccessful in resolving outstanding issues.

In its resolution 2733B (XXV) of 22 January 1971, the General Assembly affirmed "that the early conclusion of an effective and generally acceptable convention on liability should remain the firm priority task of the Committee on the Peaceful Uses of Outer Space"; it expressed the view "that a condition of a satisfactory convention on liability is that it should contain provisions which would ensure the payment of a full measure of compensation to victims and effective procedures which would lead to the prompt and equitable settlement of claims"; and it urged the Committee to make a decisive effort to reach early agreement on texts embodying those two principles, with a view to submitting a draft convention on liability to the General Assembly at its twenty-sixth session. That mandate was clear: the General Assembly expected the Sub-Committee to complete the elaboration of the draft at its present session.

In resolution 2733C (XXV), the General Assembly requested the Committee "to continue to study questions relative to the definition of outer space and the utilization of outer space and celestial bodies, including various implications of space communications". In resolution 2723A (XXV) it recommended that the Committee should study, through its Legal Sub-Committee, "the work carried out by the Working Group on Direct Broadcast Satellites, under the item on the implications of space communications." Those were the main tasks facing the Legal Sub-Committee at its tenth session.

ORGANIZATION OF WORK

The CHAIRMAN observed that the Legal Sub-Committee had decided, at its ninth session, to maintain the practice of having summary records of plenary meetings. If there was no objection, he would take it that the Sub-Committee wished to continue that practice.

It was so decided.

The CHAIRMAN recalled that the Sub-Committee, at its previous session, had set up a working group of the whole and a smaller drafting group. With regard to the order of consideration of the agenda items, he suggested that, in view of the priority which attached to the consideration of the draft convention on liability for damage caused by objects launched into outer space, and to meet the wishes of several delegations, that no decision on organizational matters should be taken for a day or two, and that the Sub-Committee should consider forthwith the draft convention on liability for damage caused by objects launched into outer space (agenda item 2).

It was so decided.

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/85)

Mr. REIS (United States of America) said that his delegation believed the Legal Sub-Committee should complete the preparation of the draft convention during the session, especially in view of the favourable political conditions indicated by Mr. Breznev's statement at the twenty-fourth Congress of the Communist Party of the Soviet Union concerning co-operation in space questions and the practical programme of co-operation between the United States and the Soviet Union in space activities. On January 21, 1971, following intensive discussions, a delegation of the United States National Aeronautics and Space Administration and a Soviet delegation had initialled a document providing, inter alia, for the development of compatible space rendezvous and docking techniques, the exchange of lunar soil samples, an investigation of the possibility of co-ordinating the weather satellite systems of both countries and the exchange of detailed medical information concerning man's reaction in the space environment.

The United States delegation took the opportunity to congratulate the USSR on the successful launching of Soyuz 11 and express its good wishes for the success of that mission.

It would do all it could to achieve similar substantial progress in completing the draft liability convention. The month before, the United States Embassy in Moscow had again conveyed to the USSR Ministry of Foreign Affairs that the United States knew it was in the interests of both countries to conclude a satisfactory convention without delay.

In its resolution 2733 (XXV), the General Assembly had rightly expressed its deep regret that the Committee had not yet finished drafting a liability convention and had affirmed that conclusion of the convention was still "the firm priority task" of the Committee and therefore of its Legal Sub-Committee.

Such a convention involved some difficult legal problems, but the Committee had already successfully dealt with far more difficult matters. The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies had been negotiated within three years, and the 1967 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space even more rapidly. It was therefore difficult to understand why the liabilities convention was so long delayed.

In the draft liability convention, four matters remained to be dealt with by the Legal Sub-Committee: applicable law, settlement of disputes, international organizations and final clauses.

With regard to applicable law, considerable progress had been made during and after the consultations in April 1970, when several drafts - including the Italian and United States proposals - had been discussed. More recently, the Belgian delegation had circulated informally a text that had met with a favourable response from the Soviet Union, which had said that it regarded the Belgian text as an acceptable basis for compromise, subject to satisfactory provisions on the settlement of claims.

The settlement of claims had received particular attention from the late Mr. Krishna Rao and his colleagues who had drawn up the draft Compulsory Protocol on Settlement of Disputes submitted by India. The Sub-Committee would do well to take that text, which had already served as the basis for the fairly wide agreement reached in the Committee in November 1969, as its starting point. The Committee had agreed that the injured party should be able to have recourse to arbitration without having to seek the consent

of the launching State. Similarly, all had agreed that it should be within the jurisdiction of the arbitral tribunal to decide, first, whether the space activities of the launching State had in fact caused the damage and, secondly, if so, the amount of compensation which that State should have to pay under the rules of the convention. The United States hoped to continue to make concrete proposals for the drafting of further provisions relating to the settlement of claims.

With regard to the liability of international organizations conducting space activities, all that remained to be done was to put into proper form the detailed provisions to which all delegations had agreed at the 1969 consultations. This had in fact been done, since a text to that effect submitted by several western European countries at the ninth session of the Sub-Committee did not appear to have given rise to any strong objections.

As for the final clauses on such matters as signature and accession, they could be agreed upon without difficulty as soon as agreement on the substantive provisions was in sight.

Thanks to the concessions made by various delegations, it seemed that a complete and generally acceptable convention could be drawn up in the course of the session. The Sub-Committee should even be able to complete the work in less than four weeks so that it might take up the other items on the agenda. Every provision of the convention could not, of course, be expected to receive the unreserved support of all delegations, but a reasonable balance of mutual concessions for mutual advantage appeared to be within view.

The meeting rose at 4.30 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTY-THIRD MEETING

held on Tuesday, 8 June 1971, 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.105/85) (continued)

Mr. PISK (Czechoslovakia) said his delegation fully supported the provision in General Assembly resolution 2733 B (XXV) that the conclusion of an effective and generally acceptable liability convention should remain a priority task of the Committee on the Peaceful Uses of Outer Space. Such a convention, together with the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 1967 and the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space of 1968, would complete the partial system of "cosmic treaties".

At the thirteenth session of the Committee on the Peaceful Uses of Outer Space and at the twenty-fifth session of the General Assembly, the Czechoslovak delegation had expressed the view that the text of the preamble and all thirteen articles of the draft convention approved by the Legal Sub-Committee at its ninth session was acceptable. With regard to two outstanding issues, namely, the legal rules to be applied for determining the compensation payable to the victims of damage and the procedures for the settlement of claims, it had stated that it was necessary to find a solution which would be acceptable to all States and in conformity with their laws, irrespective of their social systems. The Czechoslovak delegation was prepared to seek a solution in the form of a generally acceptable compromise.

With regard to the question of the applicable law, the joint proposal of Argentina, Australia, Belgium, Canada, Italy, Japan, Sweden and the United Kingdom (see A/AC.105/85, annex I, p.3, document A/AC.105/C.2/L.74 and Add.1 and 2) provided that the determination of compensation for damage should be based on the law of the place where the damage occurred. That proposal seemed to reflect the views of some delegations which had been in favour of applying the principle of lex loci delicti commissi, but it did not satisfactorily answer the question of which substantive law should be applied. That principle could be interpreted in such a way that either the place where the act was committed or the place where the damage occurred could be decisive; the claimant or the court could thus choose between the two criteria. However, even if the reference was to the substantive law generally valid in the place

where the damage occurred, the criteria for determining the extent of the damage would not be clear in advance, since a complicated system of legal provisions concerning the extent of liability and types of damage was involved. It was necessary to take into account the fact that laws were subject to change and also to consider the situation that would arise if an accident was the cause of damage in several States. In such a case, the amount of compensation payable would be determined according to a number of different criteria. The provision, though clear at first glance, would therefore not provide precise rules on the scope of the rights and obligations of the contracting parties.

The joint proposal also provided that the decisions of the Claims Commission should be final and binding, against the will of one party to the dispute. The effect of such a provision would be to impose upon a contracting party legal rules with which it might not be familiar and which might even conflict with its public order; an intolerable situation between the respondent and the claimant would thus be created.

The Czechoslovak delegation therefore considered that efforts to impose certain legal rules upon the parties to the treaty would not provide a way out of the deadlock that had been reached in the discussion of the question. It would also be illusory to suppose that a solution could be found which was ideal for all parties.

In the opinion of the Czechoslovak delegation, the deadlock could be resolved by proceeding on the basis of international law and, at the same time, providing a suitable definition of the damage to be compensated. Such a solution had been sought in the joint proposal of Bulgaria, Hungary and the Union of Soviet Socialist Republics (ibid., p.4, document A/AC.105/C.2/L.75), which provided that compensation for damage should be determined in accordance with international law. That proposal also provided for agreement between the parties to the dispute on the particular law to be applied. It was close to the proposals of Italy and France, which required the restoration of the status quo ante for the victim of the accident, without insisting on the determination of the applicable law. The Czechoslovak delegation believed that those proposals provided a basis for a compromise.

With regard to the second outstanding issue concerning procedures for the settlement of claims, the Czechoslovak delegation appreciated the fact that some delegations which had held that decisions reached by arbitration should be binding (Belgium, the United States of America and France) had abandoned their positions.

If the legal Sub-Committee could come to an agreement on the two key issues of the applicable law and procedures for the settlement of claims, it would not be difficult to find a solution to the third outstanding question, which related to intergovernmental organizations. Some proposals had already been submitted on that question. Although the Czechoslovak delegation favoured the proposal of Bulgaria (ibid., p.9, document PUOS/C.2/70/WG.1/CRP.2 and Corr.1), which took into account different views on the subject of international organizations and gave each State the possibility of determining its relations with such organizations according to its position on the issue, in its opinion, all the proposals that had been submitted provided a reasonable basis for a solution which would be acceptable to all members of the Legal Sub-Committee.

The meeting rose at 11 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTY-FOURTH MEETING

held on Wednesday, 9 June 1971, at 10.50 a.m.

Chairman: Mr. WYZNER Poland

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN informed the Legal Sub-Committee that a cable had been received from Headquarters announcing that, in a letter dated 27 May 1971, the Minister for Foreign Affairs of the USSR had proposed for inclusion in the provisional agenda of the twenty-sixth session of the General Assembly an item entitled "Preparation of an international treaty concerning the moon". The Minister for Foreign Affairs had also asked that the text of the draft treaty accompanying the request should be brought to the attention of the Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee. The USSR proposal was to be circulated as a General Assembly document and would shortly be made available to the members of the Sub-Committee.

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/85) (continued)

Mr. DARWIN (United Kingdom) said his delegation wished to congratulate the USSR on the launching of the Soyuz-11 spacecraft and its successful docking with the Salyut space station, an outstanding achievement which deserved universal admiration.

The rapid progress of space technology, while increasing the benefits derived from it by mankind, also increased the dangers to which those on earth would be exposed if a space object went astray because of some mishap. The Legal Sub-Committee had done invaluable work the previous year and had drawn up thirteen articles and the preamble of a draft convention on liability for damage caused by objects launched into outer space. At its twenty-fifth session, the General Assembly had discussed the matter and adopted resolution 2733 (XXV). In his delegation's view, the Legal Sub-Committee should base its present discussion on resolution 2733 B (XXV), and particularly on operative paragraphs 3 to 5. It should allow no other work to distract it from the urgent task of completing the draft convention.

In operative paragraph 4 of that resolution, the General Assembly had noted that differences of opinion on two issues constituted the main obstacle to agreement: the legal rules to be applied for determining compensation payable to the victims of damage and the procedures for the settlement of claims. The question of legal rules had been extensively discussed in the Sub-Committee and it had been largely agreed that international law supplemented by justice and equity should be taken into account in establishing the rules for determining such compensation. Those were good but abstract criteria and the General Assembly had rightly directed attention to the objectives which

should be borne in mind by those who would apply the legal rules. The Assembly had expressed the view that the convention should contain provisions which would ensure the payment of a full measure of compensation to victims. His delegation had at times favoured a solution which would depend on the application of the local law, since a victim was likely to be an inhabitant of the country in which he suffered damage. That solution had, however, given rise to objections, some of which had related to the uncertainties concerning the content of the local law which might be applied under such a rule and others to the substantive content of that law. It had thus become clear that a solution based on the local law was not calculated to produce a convention which would be generally acceptable and therefore achieve the objectives sought by the General Assembly. Another reason why that solution had not proved acceptable was that it would involve the Sub-Committee in the technical details of the rules of law of specific legal systems. It therefore seemed unlikely that, in dealing with the question in purely legal terms, the Sub-Committee would arrive at a satisfactory solution within the limited time available to it. It would do better to avoid technicalities of language on which members would probably be unable to agree and to devote itself to a line of action that would take account of the circumstances of the incident concerned. No one could foresee the type of damage that might be caused by a space object which failed to follow its scheduled course. The matter must therefore be covered in general terms. It was however, surely right that the organ concerned should consider the facts in all their circumstances and should compensate the victims for the real and actual loss suffered. Only by adopting such a broad and common-sense approach would the Sub-Committee be able to reconcile the different systems and ensure that justice was done in cases which arose.

With regard to the procedures for the settlement of claims, his delegation considered that a satisfactory assessment could not be reached with sufficient reliability by a commission operating on a basis of parity. The countries concerned would undoubtedly endeavour to reach an amicable settlement through the diplomatic channel, a method which might be supplemented by a commission of parity. In his delegation's view, however, it was essential to build into the centre of the procedures being established an element which would be calculated to reach impartial conclusions. Measures must also be taken to deal appropriately with the course of the procedure after that stage. General Assembly resolution 2733 B (XXV) stipulated in operative paragraph 5 that the procedures should be effective and lead to prompt and equitable settlement of claims. His Government therefore considered that the award of a tribunal or commission

must be binding in international law in order to provide the best possible guarantee for the effective settlement of claims. Such procedures would in no way be incompatible with the sovereignty of States which freely adopted them. In that connexion, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations specifically stated that the prior acceptance of procedures for the settlement of disputes involved no derogation from the sovereignty of States. His Government had therefore consistently held that the procedures should lead to a binding award. It would be that principle, as set out in operative paragraph 5 of General Assembly resolution 2733 B (XXV), which would guide his delegation in the further consideration of the question.

With regard to the subject of international inter-governmental organizations, his delegation, together with those of Belgium, France, Italy and Sweden, had made a proposal (see A/AC.105/85, annex I, p.13, document PUOS/C.2/70/WG.1/CRP.11) to which the Indian delegation had submitted amendments. His delegation believed that it was possible to reach a satisfactory solution which would take full account of the fact that a significant part of space activities were at present being conducted by States through the medium of and in conjunction with their participation in international organizations. International organizations which themselves conducted space activities and accepted full responsibility for them must be appropriately integrated into the procedures which it was hoped to draw up at the current session.

His delegation considered that the final clauses should not be discussed at the present stage but during the concluding phase of the Committee's work when substantive matters had been disposed of.

Mr. COCCA (Argentina) said that, at the Sub-Committee's sixth session in 1967, his delegation had emphasized that the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, anticipated political and technological developments. It also reflected significant developments in the field of law, in particular, the recognition of mankind as a subject of international law and as the possessor of a common heritage (res communis humanitatis). That Treaty had not been just another instrument of international law but the first instrument of a new branch of international law, that of space law.

Before that law itself had become fully established, it had led to the emergence of another new branch of international law, that of the law relating to the sea-bed and the ocean floor beyond the limits of national jurisdiction. One of the basic principles

of space law was that outer space and the celestial bodies formed part of mankind's common heritage. That principle, which had been somewhat timidly formulated in the 1967 Treaty, had been clearly expressed in General Assembly resolution 2749 (XXV), containing the Declaration of Principles Governing the Sea-bed and the Ocean Floor, and the Sub-Soil Thereof, beyond the Limits of National Jurisdiction. There could therefore be no room for doubt in the future that mankind had a common heritage which should be used for the benefit of all peoples without exception or discrimination.

The Legal Sub-Committee had been criticized for its slow progress in codifying space law, despite the fact that it had been entrusted with the task of bringing about a major innovation in the field of international law. That innovation had not only been accomplished, but had led to consequences that had not been foreseen by experts in space law: it had provided guidelines for the law of the sea-bed and the ocean floor. Such a development was appropriate from the legal point of view, since both space law and the law of the sea-bed related to areas beyond the limits of national jurisdiction. The fact that the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor had followed the legal guidelines laid down by the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space reflected the high legal quality of the work of the Legal Sub-Committee and the need for similar standards in the two branches of law. The delegation of Argentina believed that criticism of the Legal Sub-Committee would be well-founded if the Sub-Committee delayed the codification of topics, which had already been adequately studied, such as the unification of certain rules governing liability for damage caused by space devices to third parties on the surface of the earth and to aircraft in flight, the natural resources of the moon and other celestial bodies, the activities carried out through remote-sensing satellite surveys of earth resources, and the registration of space objects.

With regard to the draft convention on liability for damage caused by objects launched into outer space, his delegation had come to the tenth session of the Legal Sub-Committee ready to offer its full co-operation in preparing the final text of the convention, which had to be transmitted to the Committee on the Peaceful Uses of Outer Space and to the General Assembly in 1971. However, such a spirit of co-operation did not imply any renunciation of the positions which Argentina had adopted during previous discussions. Legal opinions could not be sacrificed to political circumstances. The draft convention on liability for damage caused by objects launched into outer space must be a well-integrated combination of all the legal systems of the States represented in the Legal Sub-Committee, not a mere superposition of those systems; otherwise, the convention would not find the necessary support in the General Assembly and would not enter into force for lack of the required number of ratifications.

With regard to the two draft agreements submitted by Argentina at the ninth session of the Legal Sub-Committee (ibid., annex II, document A/AC.105/C.2/L.71 and Corr.1 and A/AC.105/C.2/L.73), his delegation shared the view of other delegations that consideration of those proposals could not be delayed. The draft agreement on the principles governing activities in the use of the natural resources of the moon and other celestial bodies (A/AC.105/C.2/L.71 and Corr.1) would supplement the 1967 Treaty, which was not sufficiently clear on that matter. The recent achievements of the United States of America and the Union of Soviet Socialist Republics in outer space were proof of the need to give that subject the highest priority in the Sub-Committee's future work. His delegation would give careful consideration to the draft treaty concerning the moon, which had recently been submitted by the USSR.

Consideration of the draft international agreement on activities carried out through remote-sensing satellite surveys of earth resources (A/AC.105/C.2/L.73) was also urgent, because, before the Sub-Committee's eleventh session, the United States would probably have launched the ERTS satellite to survey earth resources as part of a broad plan of international co-operation. If the proposal could not be considered during the current session, it might be necessary to convene a special meeting of the Sub-Committee. Another reason for that suggestion was that any space activity of direct interest to all States had been preceded by the preparation of an instrument of space law, either in the form of a treaty or of a General Assembly declaration or resolution. At present, there was no convention, declaration or resolution covering remote-sensing surveys of earth resources and the lack of such a document might detract from the Sub-Committee's reputation.

With regard to the need to register space objects, the Argentine delegation had wholeheartedly supported the proposal of the delegation of France and other countries, and thought that the question should be taken up at an early stage, especially in view of the fact that there were now 2,000 space objects in orbit and in view of the achievements of the USSR in the field of manned space stations, which also were space objects not yet covered by any legal rules.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that he was gratified by the progress made in establishing multinational co-operation in the exploration of outer space for peaceful purposes, as evidenced by the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space and the 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. The preparation of a liability convention represented a vital step forward in that respect and a significant development in the

youngest branch of international law. The preparation of such a convention bristled with legal difficulties, as the Sub-Committee was well aware, and several major issues still remained to be solved. However, as the United States representative had pointed out, the political climate was favourable to the conclusion of such a convention, and the Soviet Government, for its part, was ready to continue co-operating in matters relating to legislation on outer space, as indicated in the report of the General Secretary to the twenty-fourth session of the Central Committee of the Communist Party of the USSR. The Government considered that the development of international legislation on those lines would be a positive factor in preserving world peace, and in that spirit had just submitted a draft treaty on international co-operation on the moon to the Secretary-General of the United Nations for consideration at the twenty-sixth session of the General Assembly. He hoped that the provisional text of the treaty would shortly be available to the members of the Sub-Committee.

Developments in space technology were continually opening up new fields of action for the Sub-Committee and its parent body, with which they must try to keep pace. The expeditions to the moon had shown that it was essential for the agreement on the rescue of astronauts in the event of accident or emergency landing to be concluded without delay, and it was equally imperative to complete the preparation of the draft liability convention in view of the rapid and ever-accelerating rate of scientific progress. He was sure that the Sub-Committee would succeed in its task if it continued to be inspired by the same spirit of mutual understanding and compromise that had distinguished its work at the ninth session. His delegation was prepared to lend every assistance in the search for constructive solutions to the outstanding problems.

Mr. KRISHNAN (India) said that his delegation deeply regretted the fact that, after seven years, the Sub-Committee had still not succeeded in carrying out the mandate of the General Assembly to draft a convention on liability. The fact that, in the Lusaka Declaration on Peace, Independence, Development, Co-operation and Democratisation of International Relations (1970), the non-aligned countries had deplored the failure to finalize such a convention was evidence of the importance they attached to it. His delegation also hoped that the Sub-Committee would take note of the appeal which the non-aligned countries had made in that Declaration to all States, and in particular the space Powers, to co-operate in reaching such an agreement.

Although a great step forward had been taken at the ninth session of the Sub-Committee, when the preamble and thirteen articles of a draft convention had been approved, the two main outstanding issues touched upon the basic philosophy of the

convention. His delegation agreed with the representative of Czechoslovakia (153rd meeting) that if agreement could be reached on the question of the legal rules to be applied in determining the compensation payable to the victims of damage and on the procedure to be used for the settlement of claims, the other outstanding issues would present no difficulty and could be settled within the framework of the understanding reached at the seventy-eighth meeting of the Committee on the Peaceful Uses of Outer Space on 5 December 1969.1/

He wished to point out, however, that while his delegation was anxious to see the liability convention completed as quickly as possible, it was not prepared to accept any agreement for the sake of agreement. The convention to be prepared by the Sub-Committee should be acceptable to all States Members of the United Nations, which had already given their opinion on the matter in General Assembly resolution 2733 B (XXV), especially operative paragraphs 5 and 6. As it was imperative to ensure that the draft convention reflected the basic principles outlined by the General Assembly, the role of the Sub-Committee was in a sense that of a drafting group called upon to prepare a text to reflect those guidelines. That point of view was not confined to his delegation alone but was held by the vast majority of Member States.

The Indian delegation's views on the procedure for the settlement of claims were contained in its draft of the Compulsory Protocol on Settlement of Disputes submitted to the Legal Sub-Committee at its eighth session.2/ It was still convinced that unless a viable solution was found to that issue, the liability convention would be totally ineffective. His delegation was not firmly attached to the present wording of the Protocol, but wished to stress that the convention would fail in its purpose unless it made the decisions of the Claims Commission binding on the contending parties and set time-limits for the implementation of those decisions. If the powers of the Claims Commission were confined to making recommendations, it would be unable to perform its functions properly and would be obliged to act as a mediator rather than as an impartial adjudicating body. Such a restricted role would also be incompatible with the letter and spirit of a number of General Assembly resolutions on the subject.

With respect to the compensation payable to victims, his delegation was prepared to negotiate on the basis of any provisions which reflected the accepted

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1/ See A/AC.105/PV.78

2/ See the report of the Legal Sub-Committee on the work of its eighth session (Official Records of the General Assembly, Twenty-fourth Session, Supplement No.21 (A/7621, p.65).

legal principle that the compensation payable would be such as to restore the victims to the status quo ante.

Mr. CHARVET (France) congratulated the United States of America and the Soviet Union on the progress they had made in the exploration of outer space, which made it even more urgent for the Sub-Committee to conclude its task.

His delegation was unwilling to make any compromises over and above those it had already made at the previous session of the Sub-Committee, but was fully prepared to consider new proposals, especially with regard to the two main issues before the Sub-Committee. Its attitude to such proposals would depend on whether they provided for complete reparation of the damage and for the prompt and equitable compensation of victims and on whether they ensured adequate protection of victims, i.e. did not make the payment of compensation solely dependent on the goodwill of the persons responsible for the damage. His delegation was not prepared to sign a convention that avoided the major issues, or that dealt with certain aspects of them only, and until a satisfactory convention on liability had been worked out it was also unwilling to sign the agreement on the rescue of astronauts in the event of accident or emergency landing.

The meeting rose at 11.15 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTY-FIFTH MEETING
held on Thursday, 10 June 1971, 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.105/85) (continued)

Mr. GOGEANU (Romania) said it was essential for the Legal Sub-Committee to make every effort to complete a draft liability convention, as its failure to do so would be tantamount to accepting a situation in which progress in space technology was unaccompanied by the establishment of satisfactory legislation to govern the activities of States in outer space. Like the majority of States, Romania had always considered that the convention should provide effective protection for human beings who might suffer injury or damage as a result of those activities.

With regard to the two main issues which were blocking agreement on the draft convention, his delegation considered that the convention should provide for full compensation for victims of damage and for effective procedures ensuring prompt and equitable decisions on claims. The provisions on compensation should be such as to restore the victims to the status quo ante. Where the settlement of claims was concerned, his delegation shared the opinion that a compromise solution should be adopted whereby the parties to a dispute would be able to establish a Claims Commission whose decisions would be binding if the parties so agreed or would otherwise have the force of a recommendation.

Mr. CHAMMAS (Lebanon) said that his delegation wished to congratulate the Soviet Union on its latest successful venture in the development of space technology.

Eight years had elapsed since the United Nations had first become interested in the activities of States in outer space and had begun to establish guidelines for those activities. Although some progress had been made in codifying space law, his country, in common with all others in the developing world, deeply deplored the fact that a liability convention had not yet been completed. As the Sub-Committee's hopes of completing it in time for the twenty-fifth anniversary of the United Nations had been thwarted, the Sub-Committee should make every effort to bring its work to a successful conclusion at the present session. He had noted with satisfaction the expressions of goodwill by the representatives of the United States of America and of the Soviet Union in that respect. As the Sub-Committee was well aware, the problems before it were not purely legal or they would have been solved long ago. It was therefore essential for it to work in a favourable political climate in which compromise solutions could be reached that would be acceptable to all States.

With respect to two out of the four outstanding issues which still impeded the attainment of full agreement, namely, the applicable law and the settlement of claims, his delegation suggested that the Sub-Committee should consider drawing a distinction between damage caused to juridical or natural persons on earth or in the air space above the earth and damage caused in outer space proper. He realized that no precise definition of outer space had yet been established but the concept was sufficiently clear for such a distinction to be valid. Once it had been made, the Sub-Committee could then decide what law was applicable in the two cases.

As a developing country, Lebanon was concerned by the fact that the victims of damage on the earth itself were more likely to be in the developing regions in view of the vast area of the world that they covered, and it was precisely those regions whose resources were the smallest in comparison with those of the space Powers. It was therefore vitally important the applicable law should be founded on the principles of justice and equity, but if those were not to be empty words, their meaning must be clearly established. If such principles were to prevail, the law of the claimant should be applied in assessing damage caused on the earth or the air space above it by the activities of other States in outer space, just as it was applied in assessing damage caused by other means within the national boundaries. Any other approach would be illogical and would find no support in the existing principles of international law. Damage caused in outer space proper should be the concern of the Powers involved. His delegation thought that a general formula could no doubt be devised to cover both international organizations and Governments.

Once the problem of the applicable law had been resolved by making the distinction he had suggested, it would be easier for the Sub-Committee to come to an agreement on the settlement of claims. His delegation hoped that the decisions of any claims commission to be established would be regarded as binding, whatever the composition of the commission. It believed, however, that it should not consist solely of a representative of each of the two parties, since that would simply amount to formalizati of negotiations through the diplomatic channel, but should include an impartial adjudicator who would give an objective opinion in the light of the information made available to him by the other two members.

Mr. PERSSON (Sweden) said his delegation wished to congratulate the two space Powers on their remarkable achievements in the exploration of outer space since the Sub-Committee's ninth session.

Where the question of the liability convention was concerned, in his statement at the 152nd meeting the United States representative had enumerated four aspects of the question which had yet to be settled and other speakers had also dwelt on those aspects His delegation would limit itself to two of them, the problem of the applicable law and the settlement of claims. Those two questions were closely linked and the provisions dealing with them had been designated as the two key articles of the draft convention. His delegation's views on the question of the applicable law were well known to the members of the Sub-Committee. He could not but stress the need for the payment of full compensation to victims of damage caused by space objects. The fundamental rule of liability was laid down in 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, a provision complemented by several articles which had been agreed upon in the Sub-Committee and were now contained in the draft convention.

In assessing damage which had occurred in a certain place, it would be only just to take into account the social and legal systems obtaining in the country in which the damage had taken place. There were no reasons why financial compensation for injury to an individual, or even death, or damage to property caused by a space object should be based on norms other than those applicable to damage done to some other cause in the same place, such as an accident involving a foreign motor vehicle or aircraft. It therefore followed that the lex loci must play a dominate role in the restoration process. That was why it had been considered appropriate, in the proposal sponsored by the Swedish and several other delegations (see A/AC.105/85, annex I, p.3, document A/AC.105/C.2/L.74 and Add.1 and 2) to qualify the rule of restoration in full to the victim by an express reference to the law of the place where the damage occurred and to relevant principles of international law. If the Sub-Committee accepted the rule that reparation should restore the victim to the condition which would have existed had the damage not occurred, the amount of reparation must be fixed in relation to the social conditions obtaining in the country of which the victim was a national.

It was to be hoped that most cases of damage caused by space objects would be settled through negotiations between the interested parties. But if they could not resolve the dispute, the State party to the dispute should have the right to submit the case to an impartial body (called a "claims commission" in the text to which he had referred), entrusted with the task of deciding the merits of the claim for compensation and of determining the amount of compensation payable, if any. In that connexion, the

General Assembly had expressed the view in operative paragraph 5 of its resolution 2733 B (XXV) that a condition of a satisfactory convention on liability was that it should contain provisions which would ensure "effective procedures which would lead to the prompt and equitable settlement of claims". An effective procedure could not be said to be ensured if decisions by the claims commission merely had the force of recommendations.. The need was for machinery which was automatically available and whose final decisions would not be contested either by the claimant or the respondent State. Only an arrangement under which such decisions were binding on the parties could afford satisfactory protection against the risks inherent in space activities.

It had been argued that to impose an obligation on States to comply with decisions of an impartial claims commission would amount to encroachment on their national sovereignty or would be incompatible with their sovereign equality. His delegation did not share that view. Reference had already been made to the relevant passage in the unanimously adopted Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (resolution 2625 [XXV]). In his delegation's view, an undertaking voluntarily assumed by a State to abide by a verdict of an impartial arbitration tribunal constituted an expression of that State's sovereign power to act in the same way as the acceptance of any other obligation in a bilateral or multilateral convention or treaty. That thesis was borne out by the fact that a large number of States had agreed, in conventions or by legally binding declarations, to submit future disputes to compulsory third party settlements.

ORGANIZATION OF WORK

The CHAIRMAN said that he would like to know the views of members concerning the advisability of setting up working groups or drafting committees in accordance with previous practice. He would also welcome their views on the procedure for consideration of the various agenda items. Members were aware that extensive informal consultations were in process and he hoped that they would be fruitful. However, the Sub-Committee was not at present making full use of the time and facilities at its disposal. He therefore suggested that, from the beginning of the following week, the Sub-Committee should also take up agenda item 3 (Study of questions relative to: (a) the definition of outer space, (b) the utilization of outer space and celestial bodies, including the various implications of space communications) whenever time permitted.

After an exchange of views in which Mr. ZEMANEK (Austria), Mr. VRANKEN (Belgium), Mr. de SOUZA e SILVA (Brazil) and Mr. REIS (United States of America) took part, the CHAIRMAN said there appeared to be general agreement that the Sub-Committee should await the outcome of the informal consultations before establishing a working group or drafting committee.

With regard to the consideration of agenda item 3, he wished to make it clear that the liability convention - which constituted agenda item 2 - would have first priority. Delegations that wished to speak on the convention would take precedence over those that wished to speak on agenda item 3. He therefore suggested that the Legal Sub-Committee should agree to use some time beginning with the following week for consideration of agenda item 3, on the understanding that there would be no conflict of interest between the two agenda items.

It was so decided.

Mr. ZEMANEK (Austria) asked whether there was any order of priority for the discussion of the sub-items of agenda item 3.

The CHAIRMAN said that he thought it might first be necessary to have a general exchange of views on agenda item 3, especially since it had not been discussed for two years. Some delegations would probably wish to present their over-all points of view on the item, and, after that, the Legal Sub-Committee could perhaps try to pinpoint some specific problems. Consideration of the item should include a discussion of questions such as definitions, the registration of objects launched into outer space, man's activities on the surface of the moon and other celestial bodies, the legal status of substances, resources and products coming from the moon, earth resources surveys and the report of the Working Group on Direct Broadcast Satellites, as had been recommended in General Assembly resolution 2733 (XXV).

Mr. ZEMANEK (Austria) inquired whether the text of the USSR draft treaty concerning the moon would be officially considered by the Legal Sub-Committee.

The CHAIRMAN suggested that the answer to that question might be provided by the delegation of the Union of Soviet Socialist Republics. The Minister for Foreign Affairs of the USSR had asked in his letter to the Secretary-General of the United Nations that the text of the draft treaty should be brought to the attention of the Legal Sub-Committee, but he had not indicated in which form.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that, in his letter requesting the inclusion in the provisional agenda of the twenty-sixth session of the General Assembly of an item entitled "Preparation of an international treaty concerning the moon", the Minister for Foreign Affairs of the USSR had asked the Secretary-General to inform the Chairmen of the Committee on the Peaceful Uses of Outer Space and the Legal Sub-Committee of the contents of that letter. The L gal Sul-Committee had been duly informed of its contents. The General Assembly would discuss the proposed item at its twenty-sixth session and it was not therefore for the Legal Sub-Committee to take up the matter at its present session.

Mr. CAPOTORTI (Italy) said that, as the wording of agenda item 3 was rather vague, his delegation would like to have a list of the specific issues to be discussed under that item. It would also be helpful to have information on any relevant proposals.

The CHAIRMAN drew attention to the unofficial list of topics prepared by the Secretariat for informational purposes at the request of the Legal Sub-Committee, contained in annex III of the report of the Committee on the Peaceful Uses of Outer Space to the twenty-fourth session of the General Assembly,[1] which reproduced annex V of the report of the Legal Sub-Committee on its eigth session[2]. Some new proposals had been submitted at the Sub-Committee's last session, and they were contained in the report of that session.

The meeting rose at 12 noon.

1/ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 21 (A/7621), pp. 85-86.

2/ A/AC.105/58.

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTY-SIXTH MEETING

held on Friday, 11 June 1971, 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.105/85; A/AC.105/C.2/W.2/Rev.5) (continued)

Mr. CAPOTORTI (Italy) said his delegation wished to associate itself with the congratulations expressed to the Union of Soviet Socialist Republics on the successful launching and orbiting of a space station and the docking with it of the Soyuz space ship. That achievement confirmed the speed with which technical problems in the peaceful conquest of space were being solved. The solution of legal problems was, however, proceeding at a much slower pace. Members of the Legal Sub-Committee, must therefore do their utmost to carry out their task and complete during the current year the draft liability convention on which they had been working for so long.

The two main issues before the Sub-Committee were the applicable law for determining the amount of compensation and the procedure for the settlement of claims. He would not address himself to the question of international organizations or to that of final clauses, which, in his view, presented no serious difficulties.

It was clear that there could be no liability convention without rules on the applicable law and the settlement of claims and that the two questions were closely linked together. In that connexion, an impartial machinery for the settlement of claims could obviously not function unless legal criteria had been established in advance.

With regard to the applicable law, article 8 of the text submitted by his delegation at the eighth session of the Sub-Committee[1] remained relevant, since it indicated that the compensation which the launching State should be required to pay for the damage it had caused should in the first instance be determined in accordance with the principles of international law. During the informal consultations of April 1970, his delegation had submitted another text in which the mention of international law had been accompanied by a reference to the principles of justice and equity, as well as a rule containing an explicit indication of the nature and purpose of the compensation for damage. In his delegation's opinion, it was essential that the provision on the

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1/ See the report of the Legal Sub-Committee on the work of its eighth session (Official Records of the General Assembly, Twenty-fourth Session, Supplement No.21 (A/7621) [document A/AC.105/C.2/L.40/Rev.1], p. 50).

applicable law should contain a reference to international law and to justice and equity and that it should clearly specify the nature of, and grounds for, compensation.

With regard to the question of international law, it was his delegation's view that the liability for damage caused by the launching of objects into outer space was an international one. That liability already existed, having been established by article VII of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies The draft convention which the Sub-Committee was endeavouring to prepare came within the framework of that Treaty and his delegation considered it essential to ensure continuity between those two legal instruments. Articles II and III of the draft convention which had been approved at the Sub-Committee's ninth session, amplified the rule laid down in article VII of the Treaty, the former dealing with the case in which a launching State would be absolutely liable to pay compensation for damage caused by its space object and the latter with the case in which it would be liable only if the damage was due to its fault or the fault of persons for whom it was responsible.

The traditional theory of international liability presupposed the commission of an illegal act. Article II of the draft convention, however, dealt with the case of objective liability, on which there was no need to prove the violation of a rule or the fault of the State responsible. It was therefore necessary to establish a link between the general rule and the liability provided for in the draft convention. Such a link could be ensured by a formula more or less similar to that put forward by Italy the previous year, i.e. one which would make it clear that the primary objective of payment of compensation was to ensure full compensation and thus restore the victim to the condition which would have existed had the damage not occurred. In that connexion, he recalled the judgment given by the Permanent Court of International Justice on 13 September 1928 in the Case concerning the Factory at Chorzów, according to which the essential principle contained in the actual notion of an illegal act - a principle which seemed to be established by international practice and in particular by decisions of arbitral tribunals - was that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish situations which would, in all probability, have existed if that act had not been committed. In that regard, operative paragraph 5 of General Assembly resolution 2733 B (XXV) clearly

stated the principle of the payment of a full measure of compensation. That same idea had also been expressed in a text submitted in June 1970 by the delegations of Bulgaria, Hungary and the USSR (see A/AC.105/85, annex I, p.4, document A/AC.105/C.2/L.75). There therefore seemed to be general agreement on the objective of compensation for damage caused by space objects and on the need for a full measure of compensation.

The inclusion of a reference to justice and equity in a general rule of liability would make it possible for an arbitral commission to take into account the existing legal régime in the State in which the damage occurred. His delegation therefore considered it not essential for the liability convention to reproduce the statement in the text proposed by Argentina, Australia, Belgium, Canada, Italy, Japan, Sweden and the United Kingdom (ibid., annex I, p.3,document A/AC.105/C.2/L.74 and Add.1 and 2) that account should be taken of the law of the place where the damage occurred. A State could not, however, evade its responsibility under international law by invoking its municipal law. For that reason, the law of the launching State could not be taken into account inthe convention in question.

Where the settlement of claims was concerned, article 10 of the text submitted by his delegation at the eighth session of the Sub-Committee[2/] provided for the establishment of an arbitral commission whose decisions were to be final and binding upon the parties. In his delegation's opinion, such a commission could not be a parity body, but should in principle consist of three members. Provision should be made to ensure that it could be established at the request of one party only. Its decisions must be taken by majority vote. They must concern the substance of the matter or the amount of compensation, must contain a statement of the grounds for the decision and must be published. If such safeguards were guaranteed, the question of the nature of the effects of the arbitral commission's decision would lose some of its importance. His delegation thought it inconceivable that a State which had agreed to be bound by the rule establishing absolute liability would seek to evade compliance with the decision of such a commission. The State concerned would have had an opportunity to participate in the establishment of the body and, of course, to present its own case. In addition, the composition of the commission was such as to guarantee its objectivity. There

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2/ Ibid., p. 51.

could therefore be no question of its activities encroaching on the sovereignty of States and a launching State which was liable to pay compensation would have to do so on the basis of its award.

His delegation was convinced of the need to have a sound convention as soon as possible and, to that end, it intended to participate actively in the work of the Legal Sub-Committee and the General Assembly.

Mr. OKAWA (Japan) pointed out that the question of completing a draft convention on liability for damage caused by objects launched into outer space had been before the Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee for the past eight years. It was gratifying to find that considerable progress had been made towards the completion of such a convention. The differences of opinion that had existed on many points had been narrowed down to two key issues, namely, the question of the measure of compensation and the question of procedures for the settlement of claims.

However, it was also true that the slow progress towards the completion of a liability convention was creating a sense of despondency among States Members of the United Nations. That situation was clearly reflected in operative paragraph 2 of General Assembly resolution 2733 B (XXV), in which the General Assembly expressed "its deep regret that, notwithstanding some progress towards this objective, the Committee on the Peaceful Uses of Outer Space has not yet been able to complete the drafting of a convention on liability, a subject which it has had under consideration for the past seven years".

His delegation was of the opinion that completion of the task before the Legal Sub-Committee was long overdue. It was therefore fully prepared to co-operate fully in the final stage of negotiations, in order to complete the draft convention at the present session and thus to carry out the very important directive given by the General Assembly.

He wished, however, to make it clear that his delegation was not in a position to accept a convention that did not contain the provisions to which it had attached so much importance in the past, namely, the full compensation of victims to restore them to a condition equivalent to that which would have existed if the damage had not occurred, and effective, victim-oriented procedures for the settlement of claims. In the hope of ensuring that those provisions would be included in the liability convention

the delegation of Japan, on behalf of the delegations of Argentina, Australia, Belgium, Canada, Italy, Sweden and the United Kingdom, had submitted the proposal contained in document A/AC.105/C.2/L.74 and Add.1 and 2 at the Sub-Committee's ninth session.

In that connexion, he recalled that operative paragraph 5 of General Assembly resolution 2733 B (XXV) expressed the view "that a condition of a satisfactory convention on liability is that it should contain provisions which would ensure the payment of a full measure of compensation to victims and effective procedures which would lead to the prompt and equitable settlement of claims".

His delegation believed that in order to carry out the instructions of the General Assembly, the contents of the proposal in document A/AC.105/C.2/L.74 and Add.1 and 2 should be kept in mind during the discussions of agenda item 2. The final text concerning the procedures for the settlement of claims should contain some indication that the decision of the claims commission was to be final and binding, while the text relating to the measure of compensation should be largely inspired by the consideration that the victims should be restored in full to a condition equivalent to that which would have existed if the damage had not occurred. The delegation of Japan would make more detailed comments on those questions during the course of the discussions.

Mr. MENZIES (Australia) said his delegation sincerely hoped that it would be possible for the Legal Sub-Committee to agree at the present session upon a liability convention which the Committee on the Peaceful Uses of Outer Space could submit to the General Assembly at its twenty-sixth session and which would command widespread support in the Assembly. In that respect, he was encouraged by the positive tone of the statements made so far in the general discussion and, in particular, by the coincidence of view between the representatives of the United States of America and the Union of Soviet Socialist Republics, both of whom had expressed the view that it would be possible to achieve agreement at the present session. His delegation shared that view and would work with all the means at its disposal to promote agreement.

In resolution 2733 B (XXV), the General Assembly had laid down useful guidelines for the future work of the Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee. In particular, three provisions of that resolution pointed the way to agreement on a liability convention, namely, the affirmation that the early conclusion of an effective and generally acceptable convention on liability should remain the firm priority task of the Committee on the Peaceful Uses of Outer Space; the statement that the main obstacle to agreement lay in differences of opinion on two main issues: the legal rules to be applied for determining compensation and the

procedures for the settlement of claims; and the view that a condition of a satisfactory convention was that it should contain provisions which would ensure the payment of a full measure of compensation and effective settlement procedures. The resolution had also urged the Committee on the Peaceful Uses of Outer Space to make a decisive effort to reach agreement on texts embodying those principles, with a view to submitting a draft convention on liability to the General Assembly at its twenty-sixth session. In his delegation's opinion, those instructions gave Legal Sub-Committee a clear mandate for action at its present session.

It seemed essential that the work of the Legal Sub-Committee should be concentrated upon the preparation of satisfactory and generally acceptable texts on the two outstanding issues, and that until that objective had been achieved, the other aspects of the convention should be put aside. The adoption of such a procedure would be consistent with General Assembly resolution 2733 B (XXV), and would offer the best chances of success. In that connexion, there was much to commend in the suggestion made by the representative of India (154th meeting) that the task of the Legal Sub-Committee was now akin to that of a drafting group for the preparation of texts.

The legal rules to be applied in determining compensation and the procedures for the settlement of claims obviously lay at the heart of an effective and workable convention, and it was only fair that the nature of those provisions should be such as to guarantee to the victims of damage caused by space objects a full measure of compensation for the injury they had suffered. Any formula which did not bring about that result would contain the seeds of injustice.

The Legal Sub-Committee should never lose sight of the fact that its ultimate responsibility was to human beings who might suffer death or injury as a result of the activities of States in outer space. Agreement upon a liability convention that accorded with the spirit of General Assembly resolution 2733 B (XXV) would enable the Legal Sub-Committee to discharge its responsibility to the victims of damage, and his delegation hoped that the work of the present session would result in a convention that did accord with the spirit of that resolution.

The CHAIRMAN agreed with the previous speakers that it seemed possible to bridge the existing gaps that had prevented the completion of a liability convention. He was sure that a sound, victim-oriented convention, which would secure the principles laid down in General Assembly resolution 2733 B (XXV), could be successfully completed at the present session of the Legal Sub-Committee.

The meeting rose at 11.35 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTY-SEVENTH MEETING

held on Monday, 14 June 1971, 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.105/85) (continued)

Mr. KARASSIMEONOV (Bulgaria) said that his delegation agreed with many other delegations that the Legal Sub-Committee had entered upon a decisive phase of its work. The General Assembly had appealed to the Committee on the Peaceful Uses of Outer Space and to the Legal Sub-Committee to overcome the final obstacles to the completion of the convention on liability for damage caused by objects launched into outer space, and to submit the text of the draft convention to the General Assembly at its twenty-sixth session. It was unusual for the General Assembly's instructions to be so categorical and clear-cut as operative paragraph 6 of resolution 2733 B (XXV), in which the Committee on the Peaceful Uses of Outer Space was urged "to make a decisive effort to reach early agreement on texts embodying the principles outlined in paragraph 5 above with a view to submitting a draft convention on liability to the General Assembly at its twenty-sixth session". The delegation of Bulgaria therefore thought it was urgently necessary to complete the draft convention on liability at the present session of the Legal Sub-Committee. A certain amount of optimism was justified in that respect because the basic principles of the convention had already been worked out.

It was, however, true that two very important legal problems still had to be solved, namely, the question of the applicable law and the question of the procedure for the settlement of claims. The delegation of Bulgaria was of the opinion that the discussion of those two outstanding issues could not be separated from other aspects of international relations. It wholeheartedly agreed with those delegations which, in referring to certain important political events, had stated that the time was now ripe for international negotiations, and that, given the necessary political will, the Legal Sub-Committee could successfully complete the task before it. In that connexion, the delegation of Bulgaria agreed with the representative of Lebanon (155th meeting) that political will was the most important factor in the present discussions.

The Legal Sub-Committee could also be encouraged by the progress of the United States of America and the Union of Soviet Socialist Republics in the conquest and exploration of outer space. The delegation of Bulgaria wished to take the opportunity of expressing its sincere congratulations to the USSR on the docking of the first manned orbital space station.

The favourable international situation and the progress made in outer space should spur the Legal Sub-Committee to complete the last phase of its work on the liability convention as soon as possible. The delegation of Bulgaria would contribute with all the means at its disposal to the attainment of that goal. It had actively participated in the preparation of the texts relating to the question of the applicable law and to the question of the procedure for the settlement of claims. At the last session of the Legal Sub-Committee, it had collaborated with the delegations of Hungary and the Union of Soviet Socialist Republics in submitting specific proposals on those two questions. It was gratified that many delegations agreed with the major guidelines contained in those proposals. With regard to the applicable law, the principle that "the compensation which the respondent State shall be required to pay should be determined in accordance with international law" lay at the heart of the proposal by the delegations of Bulgaria, Hungary and the USSR (see A/AC.105/85, annex I, p.4, document A/AC.105/C.2/L.75). The second principle on which the Bulgarian position was based was that of a full measure of compensation.

In addition, the delegations of Bulgaria, Hungary and the USSR had proposed a flexible procedure for the settlement of claims (ibid, annex I, p.4, document A/AC.105/C.2/L.76). The key idea of that proposal was the setting up of a procedure for the settlement of claims which would exhaust all the available possibilities of enabling the parties to the dispute to reach a just and equitable solution.

The Bulgarian delegation was prepared to consider other proposals based on principles similar to those embodied in the proposals he had mentioned and on the instructions of the General Assembly. It also wished to express its satisfaction at the submission by the Union of Soviet Socialist Republics of a draft treaty concerning the moon, which would be discussed by the General Assembly at its twenty-sixth session and which opened up new perspectives for the Sub-Committee's work.

Mr. DJAHANNEMA (Iran) congratulated the space Powers on their recent successes in the exploration of outer space.

The delegation of Iran regretted that the Legal Sub-Committee had been unable to complete its work on a liability convention at previous sessions. It was, however, gratified to note that some progress had been made towards the achievement of that goal at the present session.

His delegation's position had been made known at previous sessions of the Legal Sub-Committee and had not since undergone any substantial change. As a State not

engaged in space activities, Iran wished to be assured that damage caused by space objects would be fully compensated by the country responsible for the damage. The launching State should be fully liable for all damages, and the decisions of the claims commission should be final and binding. In accordance with General Assembly resolution 2733 B (XXV), the convention on liability should contain provisions which would ensure the payment of a full measure of compensation to victims and effective procedures which would lead to the prompt and equitable settlement of claims.

The delegation of Iran agreed with other delegations that if agreement could be reached on the two key issues of the applicable law and the procedures for the settlement of claims, it would not be difficult to find a solution to the third outstanding issue concerning international organizations.

His delegation might wish to speak again during subsequent discussions of those issues. It was prepared to give close consideration to any proposals that might enable the Legal Sub-Committee to find solutions to the outstanding issues under discussion.

STUDY OF QUESTIONS RELATIVE TO:

(a) THE DEFINITION OF OUTER SPACE

(b) THE UTILIZATION OF OUTER SPACE AND CELESTIAL BODIES, INCLUDING THE VARIOUS IMPLICATIONS OF SPACE COMMUNICATIONS (agenda item 3) (A/AC.105/85; A/AC.105/C.2/7)

The CHAIRMAN said that, at the request of various delegations, he would briefly review the origins of the subjects to be examined under agenda item 3 and outline the course of their previous consideration, if any, by the Legal Sub-Committee.

The question of the definition and/or the delimitation of outer space had first been discussed by the Legal Sub-Committee at its sixth session in June 1967. As a result of its deliberations, the Legal Sub-Committee had adopted a questionnaire in which it had requested the Scientific and Technical Sub-Committee to draw up a list of relevant scientific criteria. After consideration of the questionnaire and the working papers on the definition of outer space submitted by France and Canada, the Scientific and Technical Sub-Committee at its fifth session in August-September 1971, had reached the consensus that it was not possible at that time to identify scientific and technical criteria which would permit a precise and lasting definition of outer space.

The question of the definition of outer space had been further considered at the seventh and eighth sessions of the Legal Sub-Committee in June 1968 and June 1969. At the end of its eighth session, the Legal Sub-Committee had adopted a resolution in which it had requested its parent body to invite the Secretary-General to prepare a background

paper on that question. The paper had subsequently been prepared by the Secretariat for the ninth session of the Legal Sub-Committee in June-July 1970 and was contained in document A/AC.105/C.2/7. The question of the definition had not been considered at that session.

With regard to the question of the registration of objects launched into space, of 20 December 1961 - concerning international co-operation in the peaceful uses of outer space - General Assembly resolution 1721 B (XVI) had called upon "States launching objects into orbit or beyond to furnish information promptly to the Committee on the Peaceful Uses of Outer Space, through the Secretary-General, for the registration of launchings". The resolution had also requested the Secretary-General to maintain a public registry of the information thus provided. Pursuant to those provisions, a public registry had been maintained by the Secretary-General, and the information contained in documents bearing the symbol A/AC.105/INF was circulated by the Secretariat.

At the seventh session of the Legal Sub-Committee in June 1968, the delegation of France had submitted a "draft convention concerning the registration of objects launched into space for the exploration or use of outer space".[1] At its eighth session in June-July 1969, after some discussion of the provisions of that draft convention, the Legal Sub-Committee had adopted a resolution in which it had recommended to the Committee on the Peaceful Uses of Outer Space that the Scientific and Technical Sub-Committee be invited to study the technical aspects of the registration of objects launched into space, for the exploration and use of outer space.[2] That resolution had been endorsed by the Committee on the Peaceful Uses of Outer Space. Accordingly, the Scientific and Technical Sub-Committee had considered the matter at its seventh session in April 1970 and had reached certain conclusions which were set out in its report on that session.[3]

In September 1970, the Committee on the Peaceful Uses of Outer Space had taken note of the findings and conclusions of the Scientific and Technical Sub-Committee and had

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1/ See Official Records of the General Assembly, Twenty-third Session, Agenda item 24 (A/7285) [document A/AC.105/C.2/L.45], p. 197.

2/ Ibid., Twenty-fourth Session, Supplement No. 21 (A/7621), p. 20.

3/ A/AC.105/82. For the conclusions of the Scientific and Technical Sub-Committee, see Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 20 (A/8020), pp. 8-9, para. 34.

stated that in "considering the question of the registration and identification of objects launched into outer space at its future meetings, the Legal Sub-Committee should take into consideration the findings and conclusions of the Scientific and Technical Sub-Committee ..."[4] The question of registration had not been considered by the Legal Sub-Committee at its ninth session in June-July 1970, which had been devoted to the draft convention on liability.

Two proposals on the question of man's activities on the moon and other celestial bodies and substances originating therefrom had been submitted to the eighth session of the Legal Sub-Committee in June 1969: one by Poland concerning the elaboration of rules relating to man's activities on the surface of the moon and other celestial bodies;[5] and the other by Argentina concerning future study by the Legal Sub-Committee of the question of the legal status of substances, resources and products coming from the moon.[6] The two proposals had later been combined into a single proposal.[7] As a result of a proposal by Argentina, France and Poland[8] and after a brief discussion, the Legal Sub-Committee had agreed that, under agenda item 3, it could examine the following questions, inter alia: "Questions relating to the legal rules which should govern man's activities on the moon and other celestial bodies, including the legal régime governing substances coming from the moon and from other celestial bodies".[9]

At the ninth session of the Legal Sub-Committee in June 1970, at which agenda item 3 had not been considered, the representative of Argentina had submitted a draft agreement on the principles governing activities in the use of the natural resources of the moon and other celestial bodies (see A/AC.105/85, annex II, pp. 1-2, document A/AC.105/C.2/L.71 and Corr. 1).

The draft treaty concerning the moon which had recently been submitted by the USSR had been brought to the attention of the Legal Sub-Committee, at the request of the

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4/ Ibid., p. 9, para. 36.

5/ Ibid., Twenty-fourth Session, Supplement No. 21 (A/7621) [document A/AC.105/C.2/L.53], p. 30.

6/ Ibid. (document A/AC.105/C.2/L.54), p. 30.

7/ Ibid. (document A/AC.105/C.2/L.66), p. 32.

8/ Ibid. (document A/AC.105/C.2/L.69), p. 32.

9/ Ibid., p. 21, para. 14(b).

Minister for Foreign Affairs of the USSR. The text of that draft treaty would be circulated to the Legal Sub-Committee as soon as possible, but it would be mainly a topic for consideration by the General Assembly at its twenty-sixth session.

As he had indicated earlier in his statement, agenda item 3, in which reference was made to "various implications of space communications", had been included in the agenda of the Legal Sub-Committee in 1967. At the Sub-Committee's seventh session (in June 1968), the representative of Czechoslovakia had introduced a proposal concerning the utility of the elaboration of the legal principles on which the creation and functioning of space communication should be based, reproduced in the report of the Sub-Committee on its eighth session.[10] In its report on its seventh session, the Legal Sub-Committee had noted the statement of the representative of Czechoslovakia that he would not press for an immediate decision on his proposal and the Legal Sub-Committee had subsequently adopted the proposal of Sweden, as modified by the USSR, in which it had recommended to the Committee on the Peaceful Uses of Outer Space that it request the Scientific and Technical Sub-Committee to consider the question of direct broadcasting satellites, with a view to preparing a study of the technical problems involved.[11]

The Committee on the Peaceful Uses of Outer Space had considered that recommendation at its eleventh session in October 1968, together with General Assembly resolution 2260 (XXII) of 3 November 1967, in which the General Assembly had requested the Committee "to study the technical feasibility of communications by direct broadcasts from satellites and the current and foreseeable developments in this field, as well as the implications of such developments". The Committee had also been aware of the widespread interest in the potential of direct broadcasting satellites aroused at the United Nations Conference on the Exploration and Peaceful Uses of Outer Space (1968).

In the light of those developments, the Committee had decided that a Working Group should be set up to study and to report to it on the technical feasibility of communications by direct broadcast from satellites and the current and foreseeable developments in that field, as well as the implications of such developments, including social,

10/ Ibid. (document A/AC.105/C.2/L.46), pp. 29-30.

11/ Ibid., Twenty-third Session, agenda item 24 (A/7285), p. 136, para. 15.

cultural, legal and other questions. The Working Group on Direct Broadcast Satellites had held three sessions in February 1969, July-August 1969 and May 1970. The Working Group's report on its first session was not of immediate interest, since, at that session, it had been concerned with technical aspects of broadcasting from satellites. At the two subsequent sessions,[12] it had considered a number of relevant social, cultural and legal questions.

After considering the report of the Committee on the Peaceful Uses of Outer Space on its thirteenth session, together with the report of the Working Group on its third session, the General Assembly, in operative paragraph 5 of resolution 2733 A (XXV), had recommended, inter alia, that "the Committee on the Peaceful Uses of Outer Space should study through its Legal Sub-Committee, giving priority to the convention on liability, the work carried out by the Working Group on Direct Broadcast Satellites, under the item on the implications of space communications".

The convention on liability and the report of the Working Group on Direct Broadcast Satellites were the only two matters on which the General Assembly, at its twenty-fifth session, had requested specific action by the Legal Sub-Committee. He therefore thought that the Sub-Committee should take the General Assembly's request into account and examine the report of the Working Group as thoroughly as possible.

With regard to the survey of earth resources by means of satellites, at the ninth session of the Legal Sub-Committee in June-July 1970, the representative of Argentina had submitted a proposal for a "draft international agreement on activities carried out through remote-sensing satellite surveys of earth resources (see A/AC.105/85, annex II, p.2, document A/AC.105/C.2/L.73). The draft agreement had not, however, been discussed at that session.

It should be noted that, in that connexion, the General Assembly, in operative paragraph 8 of resolution 2733 C (XXV), had requested "the Scientific and Technical Sub-Committee, as authorized by the Committee on the Peaceful Uses of Outer Space, to determine at its next session whether, at what time and in what specific frame of reference to convene a working group on earth resources surveying, with special reference to satellites, and in so doing to take into account the importance of appropriate co-ordination with the Committee on Natural Resources, established under

12/ For the report of the Working Group on Direct Broadcast Satellites on its second session, ibid., Twenty-fourth Session, Supplement No. 21A (A/7621/Add.1), annex IV. For the report of the Group on its third session, see A/AC.105/83 and Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 20 (A/8020), paras. 48-59.

Economic and Social Council resolution 1535 (XLIX) of 27 June 1970". The Scientific and Technical Sub-Committee would begin its next session early the following month in New York, and the question of convening a working group on earth resources surveying, with special reference to satellites, was on its provisional agenda.[13/]

The five subjects which he had just reviewed were those in respect of which formal proposals had been submitted to the Legal Sub-Committee or in respect of which it had received a specific mandate from the General Assembly. At the 155th meeting he had mentioned an unofficial list of topics compiled by the Secretariat in 1969 for informational purposes at the request of the Legal Sub-Committee.[14/] Some of those topics had now been covered by the subjects he had reviewed. While delegations were free to make suggestions or proposals on any of the remaining topics or even on any other topics, he thought it was clear that the Sub-Committee already had a heavy work load with all the subjects it had to consider under agenda item 3. He therefore suggested that there should first of all be a general debate on agenda item 3 and that one or more subjects under that item might be taken up later for more detailed consideration.

Mr. CHARVET (France) said that his delegation considered the registration of space objects to be the most urgent of the questions covered by agenda item 3.

The draft convention on the subject submitted by his delegation in 1969 had sought to explore what had been a new area at the time with the result that it had been described by some as premature. His delegation believed, however, that the document had indicated the proper course to be followed and it had since become even more convinced of the urgent need for a registration convention. In fact, the increasing number of space vehicles made it more necessary than ever for the Sub-Committee to undertake that task. In that connexion, he pointed out that all transport vehicles, including ships, automobiles and aircraft, were registered, and there was no reason why space vehicles should constitute an exception.

The arguments raised against such registration were unconvincing. Some were based on technical grounds, such as those presented in the report of the Scientific and

13/ A/AC.105/C.1/L.33.

14/ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 21 (A/7621), pp. 85-86.

Technical Sub-Committee entitled "Information on the technical aspects of the registration of objects launched into outer space,[15/] but it should be pointed out that the experts had not been in unanimous agreement. His delegation recognized that identity plates might present some difficulty from the standpoint of weight, although commemorative plaques and emblems had been transported to the moon without endangering the spaceships concerned. It failed to see how micro-engraved plates could cause difficulties. It was known that firms placed their trademarks on the components of spaceships. It was also known that when space probes were recovered, those markings were still visible on the protected part of the nose cone. Another not very convincing objection was that it would be necessary to have a large number of identification marks on the space object. It would be sufficient, however, to mark only the most important components, as was done in the case of aircraft. A further argument put forward was that, with announcements by launching States, the registration of launchings with the Secretary-General of the United Nations, and the existence of tracking facilities, identification of space objects and of the responsible party presented no problem. However, that objection was based on a confusion between identification and registration. The purpose of registration with the Secretary-General was to ensure that publicity was given to launchings, in accordance with article XI 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. However, the purpose of his delegation's draft convention was entirely different: it was intended to give effect to a principle already agreed upon and incorporated in article V of the Treaty, which clearly mentioned the State of registry of the space object and in article VIII, which referred to the registry in which the vehicle was carried. The registration which his delegation was requesting reflected a legal concept expressing a relationship between an object and the State and conferring a nationality upon that object. In other words, it linked the object with a specific legal system. The establishment of a national register open to the public, would make it easier to establish ownership in case of an accident.

15/ A/AC.105/L.52

It was precisely because the experts had expressed the view that the identification of space objects no longer presented any difficulty, that his delegation considered that those objects should be registered. The technical experts had discharged their task and it was now for the Legal Sub-Committee to resolve the legal aspects of the question of registration as soon as possible. His delegation hoped, therefore, that those representatives who were still hesitant or sceptical would proceed to a more detailed examination of the matter so that a consensus could be reached regarding the study of that question which, after the convention on liability, was the most urgent matter before the Sub-Committee.

The meeting rose at 11.35 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTY-EIGHTH MEETING

held on Tuesday, 15 June 1971, at 10.45 a.m.

Chairman: Mr. WYZNER Poland

STUDY OF QUESTIONS RELATIVE TO
(a) THE DEFINITION OF OUTER SPACE
(b) THE UTILIZATION OF OUTER SPACE AND CELESTIAL BODIES, INCLUDING THE VARIOUS IMPLICATIONS OF SPACE COMMUNICATIONS (agenda item 3)
(A/AC.105/85, A/AC.105/C.2/7) (continued)

Mr. COCCA (Argentina) said that the Chairman's statement at the 157th meeting had enabled representatives to take stock of the most urgent topics for consideration under agenda item 3. In his delegation's view, four matters deserved priority consideration.

The first concerned the legal questions connected with the use of direct broadcast satellites. The important legal, economic, social, cultural and other problems dealt with in the report of the Working Group on Direct Broadcast Satellites on its second session[1/] and the legal criteria on which there had been general agreement had not been adequately reflected in the report's conclusions and recommendations. The problems concerned could be summarized as follows: the need to draw up basic legal principles rather than a code of rules; the need to follow technological developments with due regard for their political, legal, cultural, economic and other consequences; the need to give separate consideration to community and individual reception of direct broadcasts; conformity with basic instruments such as the Charter of the United Nations, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, the International Telecommunications Convention, the Universal Declaration of Human Rights and the relevant General Assembly resolutions; respect for the sovereignty and fundamental rights of States, families and individuals and for the spirit, culture, history and national development of peoples; recognition of the limited means naturally available for the use of the geostationary orbit; the need for new and more complete forms of international co-operation at all levels among the specialized agencies of the United Nations, regional organizations and national bodies; the need to make the use of the geostationary orbit available to developing countries and to assign frequencies to those countries; the importance of obtaining the consent of States to direct broadcasts made to them and their participation in the preparation and planning of programmes or in the administration and functioning of any regional system.

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1/ A/AC.105/83. See also Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 20 (A/8020), paras. 48-59.

The report of the Working Group and its annexes could form a useful starting point for the drawing up by the Legal Sub-Committee of principles to govern the use of direct broadcast satellites. Such principles might be set forth either in a declaration of the General Assembly or in the more specific form of an international agreement.

The second important matter to which priority consideration should be given related to man's activities on the moon and the need for their regulation. The soil and subsoil of the moon had been subject to exploration both directly by man and by remote mechanical means and some of its natural resources had already been brought back to earth. Measures to regulate the exploitation of such resources deserved urgent attention.

Thirdly, the legal regulation of the use of satellites with remote sensors in surveying, planning, developing and conserving the natural resources of the earth should also be given full consideration. He drew attention in that respect to General Assembly resolution 2600 (XXIV) on international co-operation in the peaceful uses of outer space and to the selective bibliography on remote sensing[2] drawn up by the Committee on the Peaceful Uses of Outer Space, which had called for the submission of fuller information on the subject by Member States. The permanent sovereignty of peoples and nations over their natural resources, which was a basic element of the right to self-determination as set forth in General Assembly resolution 1314 (XIII), could be seriously prejudiced in the absence of proper legal safeguards in that respect. The working group provided for in operative paragraph 8 of General Assembly resolution 2733 C (XXV) should deal from the outset with all the technical, political, legal, economic, social and other aspects of the matter, as the Working Group on Broadcast Satellites had done.

The fourth question which deserved special attention was the registration of space vehicles. Of more than two thousand space vehicles launched so far, none had yet been registered, despite the fundamental legal principle that all vehicles moving beyond the frontiers of the States to which they belonged should be registered. He supported the French representative's comments on that point. The question was not merely one of regulating more appropriately the matters dealt with in articles V and VIII of the Outer Space Treaty; a precise legal framework was required to enable space activities to continue unhampered. An unregistered space vehicle was in the same category as a

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2/ A/AC.105/L.56

person with no legal status. The reasoning in the report of the Committee on the Peaceful Uses of Outer Space on its thirteenth session[3] was unconvincing and his delegation did not entirely agree with the Committee's conclusions. The question of registration had a direct relationship with that of the liability convention and it would be good legal practice to deal with it at an early date as a corollary to that convention.

It had been estimated that by the end of the century only four countries would be self-sufficient in natural resources. As one of those countries, Argentina intended to deal conscientiously with a problem that affected the world as a whole and for which there could be no other solution than one provided by law.

Mr. VRANKEN (Belgium) said his delegation also wished to congratulate the United States of America and the Union of Soviet Socialist Republics on their activities in outer space since the ninth session of the Legal Sub-Committee. His delegation hoped that developments in space law would be comparable to those technological and scientific achievements and that the convention on liability would be successfully completed in 1971. It also hoped that the unofficial discussions in which it had participated would lead to results that were satisfactory to the majority of the delegations represented in the Sub-Committee. It was, however, rarely possible to draw up an international convention which would be fully satisfactory to all States and co-existence naturally called for compromises and sacrifices.

Since the discussions in the Legal Sub-Committee had for many years been centred on the convention on liability, other problems relating to outer space had been neglected. The list of those problems had continued to grow and now included fourteen topics, as was shown in an annex to the report of the Sub-Committee on its eighth session.[4] The Belgian delegation attached great importance to the problem of telecommunications and believed that the report on that question by the Working Group which had met in 1969 and 1970 should perhaps be examined to see whether the time was not ripe for a detailed study

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3/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 20 (A/8020), paras. 33-36.

4/ Ibid., Twenty-fourth Session, Supplement No. 21 (A/7621), pp.85-86.

of the question. In view of the complexity of the problem, however, close collaborati with other international organizations, particularly the International Telecommunicati Union, was required.

With regard to the definition of outer space, the problem involved was extremely complex because of the absence of agreement on the legal as well as on the scientific and technical aspects and because of the rapid advances in space and aviation technolo Two developments were making a definition of outer space more and more necessary: the increasing number of objects being launched into space and the growing number of States taking part in space activities, both of which considerably increased the possibilities of conflicts and accidents.

Although the Belgian delegation was not requesting absolute priority for the consideration of that part of the agenda item, it nevertheless thought it inconceivab that the sphere of application of space law could not be determined with a reasonable degree of certainty. Since neither physical nor technical criteria could offer a satisfactory solution, man's activities in space might provide a criterion for a definition or a reasonable delimitation of outer space. The document prepared by the Secretariat (A/AC.105/C.2/7) described the two basic approaches to the problem of the definition of outer space: the spatial approach and the functional approach. Considera of that document clearly showed that the functional approach was the more appropriate and, in particular, that the objections to that approach were weaker than those to the spatial approach. In the Belgian delegation's opinion, the soundest solution would be to adopt the functional approach, basing it on three main factors, namely, the aim pursued, an idea also put forward by the French delegation, the means used, thus eliminating the whole field of aeronautics, and respect for air law with regard to the passage through atmospheric space, in other words, the harmonization of air law and spa law in atmospheric space. Thus, while a well-defined sphere would be created for the applicability of space law, the sovereignty of States, as established by other branches of law, would also be respected.

The second problem covered by agenda item 3 concerned the utilization of outer space, which had been the subject of two draft conventions submitted by the delegation of Argentina (see A/AC.105/85, annex II, pp. 1-4, documents A/AC.105/C.2/L.71 and Corr. and A/AC.105/C.2/L.73). Apart from the draft treaty concerning the moon submitted by the Union of Soviet Socialist Republics, the Belgian delegation was of the opinion that three questions should be considered by the Legal Sub-Committee in connexion with that problem: the legal status of space substances, the use of space objects for tele-communications, and earth resources surveying by space objects. It also thought that

the suggestions made by the delegations of Poland and Argentina on the legal status of space substances[5] should be given priority during the discussions since the definition of that status would serve as a basis and a framework for any future work in the field of space law.

The Belgian delegation drew the attention of the Legal Sub-Committee to the parallel work being done by the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor. That Committee was faced with the similar problem of the legal status of the sea-bed, which was to be determined on the basis of General Assembly resolution 2749 (XXV), containing the Declaration of Principles Governing the Sea-bed and the Ocean Floor, and the Sub-soil Thereof, beyond the Limits of National Jurisdiction. It would certainly be useful to take account of that Committee's work during the consideration of the legal status of outer space.

The Legal Sub-Committee and the Scientific and Technical Sub-Committee had also discussed another problem mentioned in the list of topics prepared by the Secretariat, namely, the registration of objects launched into outer space. The French delegation had submitted a draft convention[6] and the delegations of Canada and the United States had prepared working papers[7] on that question. The Belgian delegation had already stated that it had not been fully satisfied by the response to the Legal Sub-Committee's request contained in the report of the Scientific and Technical Sub-Committee on the work of its seventh session.[8] Although the Legal Sub-Committee had requested a report primarily on the technical aspects of the registration of space objects and secondarily on their identification, the Scientific and Technical Sub-Committee had concentrated on the problem of identification and had referred only incidentally to the problem of registration. The Belgian delegation therefore agreed with the observations made by the French delegation in that connexion at the 157th meeting. In international society, it was normal that means of communication should be registered, even if such registration did not fully guarantee identification. Although certain obstacles to the registration of objects launched into space would have to be overcome, the Belgian delegation was confident of the Sub-Committee's ability to carry out such a task.

The meeting rose at 11.25 a.m.

5/ Ibid., Supplement No. 21 (A/7621 [document A/AC.105/C.2/L.66], p. 32.

6/ Ibid., Twenty-third Session, agenda item 24 (A/7285 [document A/AC.105/C.2/L.45], p. 197.

7/ A/AC.105/C.1/L.30 and A/AC.105/C.1/L.31.

8/ A/AC.105/82. See also Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 20 (A/8020), Part II, section A.

SUMMARY RECORD OF THE ONE HUNDRED AND FIFTY-NINTH MEETING

held on Wednesday, 16 June 1971, at 10.50 a.m.

Chairman Mr. WYZNER Poland

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN, recalling the request by the Government of the Union of Soviet Socialist Republics for the inclusion of an item in the provisional agenda of the twenty-sixth session of the General Assembly entitled "Preparation of a treaty concerning the Moon", informed the Legal Sub-Committee that the letter containing the request as well as the accompanying text of the draft treaty were now available to members in document A/8391.

STUDY OF QUESTIONS RELATIVE TO:

(a) THE DEFINITION OF OUTER SPACE

(b) THE UTILIZATION OF OUTER SPACE AND CELESTIAL BODIES, INCLUDING THE VARIOUS IMPLICATIONS OF SPACE COMMUNICATIONS (agenda item 3) (A/AC.105/85; A/AC.105/C.2/7) (continued)

Mr. CHARVET (France) said that his delegation had already made known its views on the definition of outer space in a working paper[1/] submitted to the Scientific and Technical Sub-Committee at its fifth session in August 1967. That document had pointed out that the difficulty of a definition arose solely in the vicinity of the earth where it was linked with the question of the altitude which marked the delimitation between air space, over which States exercised sovereignty, and outer space, in respect of which the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies provided for freedom of exploration and utilization by all States. The difficulty of establishing a boundary was increased by the growing number of ballistic missiles, and even aircraft, whose trajectories passed through outer space and which could obviously not be considered as coming within the scope of outer space law. As a satisfactory definition based on scientific criteria had appeared to be impossible, his delegation had stressed the need to adopt an arbitrary or conventional definition, a view which now seemed to be gaining increasing support.

A definition of outer space was essential in order to establish the exact realm in which the space law drawn up in the 1967 Outer Space Treaty was to be applied, i.e., in order to determine where the sovereignty of subjacent States ceased. Such a definition would also be necessary in order to ensure the consistent application of the

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1/ A/AC.105/C.1/WP.V.1.

convention on liability for damage caused by objects launched into outer space, which provided for two types of liability: an objective liability based on risk, in respect of accidents occurring on the earth or in air space, and a subjective liability based on fault in respect of accidents occurring in outer space.

For all those reasons his delegation maintained its earlier proposal that an altitude boundary, established by consensus, should be proposed by the Sub-Committee. States could reach agreement, as they had done in maritime laws with respect to territorial waters, on the altitude beyond which they would not claim sovereignty. Even at the present stage, an agreement would be highly useful. In order to meet the objections of those who might consider such a step premature, it would be sufficient merely to provide for a review at the end of five years.

His delegation also believed that an agreement on the definition of space should be complemented by a definition of space activities, without which any definition of outer space would merely be an academic exercise. His delegation had already proposed a formula which seemed to cover the essential aspects of the problem, namely, that space activity should be taken to mean "any activity involving the sending into space of an object designed to permit the exploration and utilization of outer space". The expression "sending of an object" would make it possible to exclude activities, such as astronomy and radio-astronomy, which also related to outer space but were carried out exclusively on the earth. The term "space" in that context was to be understood in the broadest sense, i.e. as covering both air space and outer space, thus making it possible to include activities which took place in air space but which were of primary importance for the exploration and utilization of outer space, such as exploratory balloons and rockets. Since the essential purposes of a space activity were defined as the exploration and utilization of outer space, it would be possible to exclude aircraft and ballistic missiles, which were essentially connected with activities taking place on earth, even if the highest point of their trajectory entered outer space.

In his delegation's opinion, those criteria were clear and realistic and their adoption would greatly facilitate the implementation of the Outer Space Treaty as well as of the liability convention which the Sub-Committee was preparing. It would also make it easier to formulate a large number of definitions which had so far given rise to difficulties, such as that of a space craft. His delegation therefore hoped that substantial progress would be achieved in respect of that point during the current year.

Mr. COCCA (Argentina) said that his delegation wished to draw particular attention to the points which the Inter-American Committee for Space Research (IACSR) considered it fundamental to take into consideration in regard to the delimitation of outer space and which were set out on pages 10 and 11 of the annex to the working document prepared by the Secretariat (A/AC.105/C.2/7). In that connexion, he recalled that that Committee's comments, which his delegation endorsed, had been transmitted to the Secretariat by the National Space Research Commission of Argentina. His delegation considered that the task of fixing the boundary between air space and outer space should be entrusted to the Legal Sub-Committee.

In conclusion, he congratulated the Secretariat on the excellent quality of working document A/AC.105/C.2/7.

ORGANIZATION OF WORK

The CHAIRMAN said that a number of delegations had approached him concerning the Sub-Committee's discussion of the final clauses. They had suggested that it might be desirable to re-establish the drafting group to consider the question on the understanding that all members of the Sub-Committee might attend its meetings if they so wished. In the absence of any objection, he would take it that that procedure was acceptable to the Sub-Committee.

It was so decided.

The CHAIRMAN suggested that the Sub-Committee should also decide to re-establish the Working Group of the Whole and to convene it whenever it was considered necessary.

It was so decided.

The meeting rose at 11.15 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTIETH MEETING

held on Thursday, 17 June 1971, at 10.45 a.m.

Chairman Mr. IZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/85) (resumed from the 157th meeting)

Mr. KHATTABI (Morocco) said that the adoption by the Legal Sub-Committee the previous year of the preamble and thirteen articles of the draft convention on liability marked an important step forward and should encourage the Sub-Committee to redouble its efforts to reach a consensus of opinion on the outstanding issues without delay. It was all the more essential for the Sub-Committee to establish internationally acceptable rules to govern man's activities in space in that the continuous progress in outer space technology was raising increasingly complicated questions of a legal nature and in the domain of inter-State relations. Moreover, the General Assembly, in its resolution 2733 B (XXV), had expressed deep regret that the Sub-Committee had so far failed to complete the drafting of a convention on liability.

With regard to the issues that had still to be solved before the draft convention could be completed, his delegation, which fully accepted the principle that the convention should ensure full, prompt and equitable compensation of victims, believed that the provisions embodying that principle in the convention should lay down clearly-defined rules that would be generally applicable and involve no infringement of the sovereignty of States parties or of the rights of victims. The legal rules to be applied in determining the amount of compensation payable to victims of damage should therefore guarantee reparations to the full amount of the damage caused.

His delegation also considered that the convention should contain a provision establishing an appropriate arrangement for assistance between States parties in the event of the damage caused being so extensive and serious as to make it difficult to restore the victim to the status quo ante, a situation particularly likely to arise in a country with limited resources. It was evident that, in some cases, compensation might be inadequate, and some form of international co-operation should therefore be envisaged. Such an arrangement would be in keeping with the principles and objectives 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.

With regard to the procedures for the settlement of claims, and, in particular, the proposed claims commission, his delegation was of the opinion that, in principle, no sovereign State could be obliged to accept the verdict of such a commission without the previous and explicit consent of its legislative authorities in accordance with its constitutional provisions. He thought, however, that an acceptable formula could be found to ensure that the commission's decisions would be observed without prejudice to the various interests involved.

Where the question of international organizations was involved, his delegation doubted whether it was desirable for a specialized agency of the United Nations family, such as the International Telecommunication Union or the World Meteorological Organization to be placed on the same footing as States parties for the purpose of applying the provisions of the convention. In coming to a decision on that point, it was necessary to bear in mind that such agencies undertook their activities on behalf of the international community as a whole and that the application of the convention to them might result in an additional financial burden that would be too heavy for some countries to bear.

He congratulated the USSR on the successful establishment of the first inhabited space station and the United States on the landing of Apollo 14 on the moon. He hoped that the explorations of the two space Powers would help to strengthen international co-operation in the peaceful utilization of outer space.

STUDY OF QUESTIONS RELATIVE TO:

(a) THE DEFINITION OF OUTER SPACE

(b) THE UTILIZATION OF OUTER SPACE AND CELESTIAL BODIES, INCLUDING THE VARIOUS IMPLICATIONS OF SPACE COMMUNICATIONS (agenda item 3) (A/AC.105/C.2/7) (continued)

Mr. ROBERTSON (Canada) said that, at the present stage, the Sub-Committee was presumably attempting to set out a scheme of future priorities and to determine which topics would be most suitable for inclusion in the agenda of its eleventh session. Five topics appeared to be of special interest to members of the Sub-Committee: direct broadcasting satellites; registration of objects launched into space; man's activities on the moon; the legal status of lunar resources; and satellites designed to survey the resources of the earth.

His delegation considered that the question of registration should be accorded the highest priority. Many of Canada's views on that subject had already been set out in the paper which it had submitted to the Scientific and Technical Sub-Committee in

April 1970.[1] In that paper, it had explained why it believed that there was a need for an effective registration system and why it supported the principles underlying the draft convention submitted by the French delegation at the Legal Sub-Committee's seventh session in 1968.[2] The need for a registration system was closely connected with the general international objective of promoting the orderly and responsible exploration and utilization of space. Canada believed, in particular, that the establishment of such a system would facilitate the identification of space objects or their components, which was essential not only for the effective legal regulation of space activities but also for dealing with the legal consequences of such activities. There was thus a direct link between registration and the Sub-Committee's present work on a liability convention, since any such convention would be incomplete without an effective system that would help to identify the authors of any damage caused. As in the case of automobiles, ships, aircraft and railways, a registration system was necessary for the purpose of imputing liability for injury, loss or damage, and for determining jurisdiction over particular vehicles. In addition, a system of registration of space objects could expedite the return of astronauts and objects and would, in general, contribute to orderly international traffic and communications in the realm of outer space.

His delegation considered the register which had already been set up and which was maintained in the United Nations Secretariat to be inadequate in various ways. Canada had therefore been prepared to support the original initiative taken by the French delegation in proposing a draft convention on registration. The question had since been before the Scientific and Technical Sub-Committee and the Legal Sub-Committee and in the course of its consideration four principal means of identifying space objects had been proposed: special markings; structure, components and materials; frequency of transmitters; and flight trajectories. It was his delegation's firm view that the need for an effective system of registration had become even greater in view of the ever-increasing number of objects being launched into outer space. It accordingly

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1/ See A/AC.105/C.1/L.31.

2/ See Official Records of the General Assembly, Twenty-third Session, agenda item 24 (A/7285) [document A/AC.105/C.2/L.45], p. 197-198.

associated itself with the French, Argentine, Belgian and other delegations in urging the Legal Sub-Committee to take up that important topic. Members could well begin by discussing the French draft as a basic text and proposing whatever amendments they thought necessary.

In his delegation's view, a registration system should be fully accessible and a convention should stipulate that States would have to register all objects promptly after launching. The registry should contain full details relating to the four principal means of identification; in addition, it should be continually brought up to date and the parties should be obliged to furnish all the necessary information to that end.

Canada's views on direct broadcast satellites might surprise the members of the Sub-Committee in view of Canada's extremely active role in the establishment of the working group on that subject. Its special experience in that field had, however, led it to conclude that it would be premature for the Sub-Committee to take up the recommendation made by the General Assembly in operative paragraph 5 of resolution 2733 A (XXV) at the present stage. Its reasons were, firstly, that there was as yet little of substance that the Sub-Committee could usefully discuss and, secondly, that in taking up the matter, the Sub-Committee might duplicate or even act in opposition to the work which was already being done by the International Telecommunication Union and the United Nations Educational, Scientific and Cultural Organization in regard to the legal aspects of the protection of satellite transmission and the technical aspects of direct broadcasting in response to operative paragraphs 6 and 8 of the same General Assembly resolution.

With regard to the definition of outer space, Canada was still of the opinion that, at the present time, an arbitrary demarcation of outer space would serve no practical purpose and that further detailed consideration by the Legal Sub-Committee should be postponed until the subject had been given more thought by Governments and by the Scientific and Technical Sub-Committee.

Canada had not yet come to any definite decision as to the relative priorities to be allocated to the questions of resources satellites, man's activities on the moon and lunar resources, but in doing so it would take fully into account the opinions of the delegations that were especially interested in those questions.

The meeting rose at 11.10 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-FIRST MEETING

held on Friday, 18 June 1971, at 10.45 a.m.

Chairman: Mr. WYZNER Poland

STUDY OF QUESTIONS RELATIVE TO:

(a) THE DEFINITION OF OUTER SPACE

(b) THE UTILIZATION OF OUTER SPACE AND CELESTIAL BODIES, INCLUDING THE VARIOUS IMPLICATIONS OF SPACE COMMUNICATIONS (agenda item 3)(A/AC.105/85; A/AC.105/C.2/7) (continued)

Mr. PERSSON (Sweden) said that for the present he would concentrate on the definition of outer space, the registration of space objects and the question of direct broadcast satellites. The Legal Sub-Committee had discussed the question of definition and/or delimitation of outer space at some length at its eighth session. The French delegation had advocated a lower boundary of about 80 km and a definition of space activities based on a functional approach. Other delegations had spoken in favour of a boundary line of higher altitude, and the so-called von Karman line had also been mentioned. The Hungarian delegation had taken the position that astronautics were concerned only with flights of objects in orbit round the earth or beyond.

The Outer Space Affairs Division of the United Nations Secretariat had provided an interesting background paper for the Sub-Committee at its eighth session, giving extracts from a number of printed sources which showed that the views of experts on the question differed widely. The Scientific and Technical Sub-Committee had stated in 1967 that there were no scientific or technical criteria to permit an undisputed or lasting line to be drawn between air space and outer space. That Sub-Committee had since given the subject no further consideration. The background paper prepared by the Secretariat at the request of the Legal Sub-Committee (A/AC.105/C.2/7) was a useful contribution to its work.

The problem was a complex one, on the different aspects of which States laid varying degrees of emphasis. It did not appear possible at present to find an all-purpose definition of outer space, since any definition or boundary line was likely to be rapidly outdated by advances in science and technology.

From the point of view of international law, his delegation had concluded that States in general, including his own, were not yet ready to adopt a common upper demarcation line of sovereignty over the air space above their territory, the establishment of which demarcation would have far-reaching consequences in many areas of vital interest to the individual State. The question of national sovereignty over

air space should perhaps be dealt with in a wider framework than the Committee on the Peaceful Uses of Outer Space and should be considered in co-operation with other United Nations bodies. His delegation therefore upheld its view that further thorough study of the matter was needed and that it was premature to seek a definitive solution. It would suggest that the question should remain on the Sub-Committee's agenda pending further developments, inter alia, in the scientific and technical fields.

With reference to the useful papers before the Sub-Committee on the registration of objects launched into space and to the French proposal for a draft convention on the subject,[1] his delegation would admit that a complete and public up-to-date register of spacecraft would be of value. Mandatory international registration of all objects launched into space would establish order in traffic and communications in an area of activities which necessarily went beyond national borders. Such registration would create a formal link between the spacecraft and the launching State, authority or other entity and would thereby indicate ownership and/or jurisdiction over the craft. It would also complement the provisions of article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies. One of its main purposes would no doubt be that of identification for purposes of imputing liability for damage.

A full parallel could not be drawn between such registration and the registration of aircraft, ships and motor vehicles, which was a national responsibility and on which any superimposition of international rules was made with the sole object of permitting the unhampered use of such means of transport in international traffic.

A space object returning to earth through controlled descent should offer no problem of ownership or return, whether entered in an international register or not. Registration and appropriate marking would in most cases be of little help in identifying a part of a space object or fragment of its launching vehicle and in returning it to the launching authority in conformity with article V of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. If some types of space object, such as military types, were excluded the value of the registration system would be reduced. It had also been observed that liability for damage caused by a space object was placed on the launching State and was

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1/ See Official Records of the General Assembly, Twenty-third Session, agenda item 24 (A/7285) [document A/AC.105/C.2/L.45], pp. 197-199.

not dependent on registration. There were a number of institutions in various parts of the world which kept a close watch on all objects launched into space or in orbit round the earth. Analysis of alloys, manufacturers' marks and similar signs had proved a reliable means of tracing the origin of debris. In the case of damage to persons or property, the time of impact gave an additional clue to identification. The Sub-Committee should examine carefully whether the labour and cost that would be involved in attempting to create and maintain an elaborate, complete and accurate register in addition to the present means of tracking and identifying orbiting space objects would be justified.

With regard to direct broadcast satellites, Sweden had valued its co-operation with Canada in preparing documents for the meetings of the Working Group on Direct Broadcast Satellites. The Group's three substantial reports and the results of its discussions had fully justified its establishment.[2]

Despite the recommendation of the Committee on the Peaceful Uses of Outer Space, endorsed by the General Assembly in operative paragraph 5 of resolution 2733 A (XXV), that the Sub-Committee should study the work carried out by the Working Group on Direct Broadcast Satellites under the item on the implications of space communications, it was his delegation's considered view that the Sub-Committee should at present limit itself to taking note of the report of the Working Group. The Group itself had noted that other international bodies were engaged in programmes directly related to the matter in question , the outcome of which would have a considerable bearing on matters considered in the report. Little or no advance could therefore be made at present by a detailed examination of the report from a legal point of view. Particular importance could be attached to the discussions at present taking place in the World Administrative Radio Conference for Space Telecommunications (WARCST), in which it was intended to decide, inter alia, on the allocation of frequency bands and the technical conditions under which satellite communications generally, including broadcast systems, would operate. That world conference might be followed by regional planning conferences. New technical developments and administrative techniques might well diminish or change the political, legal, social or other implications. UNESCO and the World Intellectual

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2/ For the report by the Working Group on Direct Broadcast Satellites on its first session, see Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 21A (A/7621/Add.1), annex III. For the report of the Group on its second session, ibid., annex IV. For the report of the Group on its third session, see A/AC.105/83 and Official Records of the General Assembly, Twenty-fifth Session, Supplement No.20 (A/8020), paras. 48-59.

Property Organization (WIPO) were engaged in a study of problems arising from television transmissions via satellites, including direct broadcasting, in relation to copyright and related rights and of the question of legal protection against unauthorized use of satellite transmission. The Committee on the Peaceful Uses of Outer Space could also be expected to profit from the survey being conducted by UNESCO among broadcasting organizations on experience and methods adopted for the efficient exchange of programmes.

The report of the Working Group was the result of contributions from a large number of highly qualified experts from many countries with thorough knowledge of such matters as technology, sound broadcasting, development aid, copyright and education. It would hardly be possible to tackle all those questions profitably from a legal point of view without the assistance and advice of specialists.

It was commonly recognized that enormous potential benefits were to be derived from broadcasting-satellite services. The Working Group's report showed that for the next fifteen years or so satellite broadcasting would be practicable only for community reception, mainly for domestic coverage; but even if it were operated by regional or continental systems, Governments would retain a significant degree of control over such broadcasting. The Committee on the Peaceful Uses of Outer Space and its Sub-Committees would thus have ample opportunity in the next few years to consider problems of reception by individual augmented or unaugmented home receivers and no time would be lost by awaiting more complete documentation from specialized agencies of the United Nations and other competent international bodies.

Study of the records of the three sessions of the Working Group showed that that body was capable of speeding up and facilitating work on direct broadcast satellites. The possibility of reconvening the Working Group at an appropriate time, in accordance with operative paragraph 4 of General Assembly resolution 2733 A (XXV), should therefore be kept in mind.

Mr. DARWIN (United Kingdom) said that, when it had concluded its all-important work on the draft convention on liability, the Sub-Committee might wish to give close attention to the question of natural resources of the moon, to which the Argentine representative had referred (158th meeting).

His delegation had noted that no clear reference was made in the Argentine draft agreement (see A/AC.105/85, annex II, pp. 1 and 2, document A/AC.105/C.2/L.71) to freedom of scientific research, which was a matter of great importance and had indeed so far been man's only activity on the moon. It was obviously appropriate in dealing

with the resources of the moon to expand somewhat on the brief reference to freedom of scientific investigation made in article 1, paragraph 3, of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and he hoped the Argentine delegation would consider making express provision in that respect.

His delegation's technical services had pointed out that article 2 of the Argentine draft agreement appeared incorrectly possibly to cover the case of meteorites falling to earth from outer space. That seemed unwise. That was one of the types of question that would require careful examination when specific proposals were examined. There was some similarity of language between the Argentine proposals and proposals made in connexion with the sea-bed and the ocean floor beyond the limits of national jurisdiction. His delegation would not wish to decide at present to what extent the two subjects were in fact similar, since so little study had so far been given to the question of natural resources of the moon in the context of the Argentine proposals, but it had certainly never been suggested that the question of the use of the natural resources of the sea-bed could be dealt with in an agreement of only five articles. Any industrial activity concerned with moon resources would rest on the great efforts made in scientific research and other aspects of space activity in which countries had so far participated. Discussion of activities in the use of natural resources could not proceed in isolation but must be based on technical examination. His delegation would be happy to collaborate in discussion of the question on that basis, with the benefit of its technical services and of the results of work carried out in United Kingdom establishments on the moon samples placed at their disposal by the United States authorities.

He was glad that the Soviet Minister for Foreign Affairs had requested that the draft treaty submitted by the Government of the USSR (A/8391) for consideration by the General Assembly at its twenty-sixth session should be brought to the Sub-Committee's attention. Article 11, on liability, was particularly important for the Sub-Committee. If the General Assembly decided to include the matter as an item on its agenda, it was obviously important to ensure that the provisions of any treaty on the moon were fully co-ordinated with those of the draft convention on liability for damage caused by objects launched into outer space. That would in turn require that the convention on liability should be in clear and well-ordered form so that its precise and detailed provisions could be taken into account in work on the article on liability in the treaty concerned. That was a further reason why the Sub-Committee should ensure that a satisfactory and balanced convention on liability was completed during the current year.

The question of registration should be approached with the practical aspects clearly in mind. It would obviously be unwise to recommend a registration scheme in the absence of a clearly established need for such a scheme. The reasons for the registration of other means of transport were clear. In the case of road vehicles, for example, registration was closely concerned with taxation and licensing regulations and with identification of vehicles involved in accidents or criminal offences and there were other similar considerations in the case of ships and aircraft, which had no relevance to space vehicles. Many space vehicles were so constructed that the initial craft was converted into several space vehicles of objects as the various stages required for particular tasks separated. Such vehicles might be abandoned in outer space or might travel for an indefinite distance beyond the concern of the registering authority. His delegation shared the view held by a number of delegations in the Scientific and Technical Sub-Committee that no significant difficulty was to be expected in identifying space objects orbiting or surviving re-entry, and that for economic and other reasons a marking scheme was not practicable at present. In that connexion, he referred to paragraph 34 of the report of the main Committee to the General Assembly at its twenty-fifth session.3/ The Scientific and Technical Sub-Committee had concluded that prompt and accurate identification was the primary purpose of registration, and even the opponents of the majority view then appeared to recognize this. His delegation would support that conclusion, which had been reached on cogent technical grounds and which had commanded a wide measure of support in the parent Committee.

His delegation was not convinced that the time had come to attempt to establish a formal definition of outer space. The Scientific and Technical Sub-Committee had had difficulty in identifying scientific and technical bases for such a definition. The establishment of international law must proceed cautiously and on a sound basis, not least because it was more difficult to correct errors once established in international law than was the case with municipal legal systems. The United Kingdom saw no need for the establishment of a definition of outer space at present and no reasonable basis on which to make such a definition.

Any work carried out by the Sub-Committee on earth resource satellites should be co-ordinated with that carried out on the subject by other United Nations bodies, in particular the Committee on Natural Resources established by the Economic and Social Council.

3/ See Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 20 (A/8020), para. 34.

The question of direct broadcast satellites had been followed closely by United Kingdom delegations in the relevant United Nations bodies. The reports of the Working Group on Direct Broadcast Satellites had been given thorough study. It had perhaps been useful to examine whether it was appropriate for the Legal Sub-Committee to carry out further work on the subject in accordance with operative paragraph 5 of General Assembly resolution 2733 A (XXV). A detailed legal discussion had, however, been held in the Working Group on Direct Broadcast Satellites and the whole question had in fact been considered in that working group precisely in order that all aspects, including the legal aspects, could be considered together. His delegation therefore shared the view of the Canadian and Swedish delegations (160th meeting) that the Sub-Committee could not usefully deal with a matter that had been considered at length by that body.

Mr. ISMAIL (United Arab Republic) said that his delegation, which attached considerable importance to the question of direct broadcast satellites, had noted with satisfaction that the Sub-Committee had already amassed a vast amount of background material. In its report on its third session, the Working Group on Direct Broadcast Satellites pointed out in paragraph 3 of the conclusions that several delegations considered that the existing legal principles and instruments should be complemented by the adoption of general principles which would favour the development of television broadcasting via satellites in accordance with the interests of all States, but that other delegations thought that such an effort was premature and might hinder international co-operation in that domain. While appreciating the point of view held by the second group, his own delegation endorsed the first approach and felt that the existing legal instruments which were relevant to direct broadcast satellites, in particular the United Nations Charter and 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, should be supported by the following five general principles: (1) strict observance of the principle of State sovereignty over the national territory and of non-interference in internal affairs; (2) the consent of the Government of the State receiving direct broadcasts via satellites and the recognition of its right to protect its citizens and institutions; (3) the need to provide guarantees against the abuse of broadcasting from satellites; (4) the importance of making the benefits of the new techniques of space communications available to the developing countries; and (5) the need to act in accordance with the principles governing friendly relations among States.

DBS

While individual Governments would no doubt be able to exercise a significant degree of control over regional or global broadcasting from satellites, the possibility of doing so would depend on the availability of the necessary means, which would differ from one country to another depending on the stage of technological development each one had reached. Developing countries might not have the expertise to control direct broadcast programmes from satellites, and their only source of protection would be legal principles restraining the abuse of that form of broadcasting. It had been pointed out that new legal principles in those respects might prove irrelevant in the future, but his delegation felt that, even if that were so, the proposed legal instrument could include clauses or amendments for the adaptation of the principles it embodied to future developments.

His delegation congratulated the Secretariat on its paper on the definition and/or delimitation of outer space (A/AC.105/C.2/7). Although the problem of definition was obviously highly complex because of technical considerations and the dearth of factual data, his delegation thought that the Legal Sub-Committee should continue to explore the legal aspects of the subject. Until binding legal rules had been drawn up to ensure the peaceful nature of activities in outer space, the question of definition was, in the opinion of his delegation, of both legal and political importance.

The Sub-Committee should bear in mind that the spatial approach in the document, which was intended to fix a boundary between air space and outer space, and the second approach, which concentrated on the definition of outer space activities, were not necessarily contradictory. Space activities could be defined pragmatically as they developed, while the spatial approach could be regarded as the ultimate goal to be attained once space activities and the relevant data had reached a certain stage of development. As it was incumbent on the Sub-Committee to prepare and codify outer space legislation, agreement on the point where such legislation began to be applicable necessarily fell within its purview.

Another question to which his delegation attached great importance was the survey of earth resources. As a developing country, the United Arab Republic hoped that the new techniques would help to promote the economic and social development of the whole world. In view of the legal and political aspects of the question, his delegation welcomed the draft international agreement submitted by Argentina on activities carried through remote-sensing satellite surveys of earth resources (see A/AC.105/85, annex II, pp. 2-4, document A/AC.105/C.2/L.73). Among its significant provisions were articles 1 and 3, in which it was stressed that such techniques should be used in close international co-operation for the benefit of all mankind, with special

reference to the interests and needs of the developing countries. Satellite surveys of earth resources should take full account of the principle of the permanent sovereignty of States over their own natural resources, including resources in their territorial waters, and of their absolute right to have access to the findings of such surveys. It was essential for non-space States, and the developing countries in particular, to share the benefits of those new techniques when applied within their national boundaries or in areas recognized as the common heritage of all mankind. His delegation also considered it of paramount importance that States conducting such surveys should be guided by the letter and spirit of the principles of the United Nations Charter concerning friendly relations among States.

With regard to the registration and identification of objects launched into outer space, his delegation welcomed the draft convention on the subject submitted by the French delegation, which endorsed the principle of full access to information on activities in outer space and was of considerable practical value with regard, for instance, to the implications of liability for damage. While his delegation recognized the technical difficulties of registration and identification, as expounded by the Scientific and Technical Sub-Committee in its report on its seventh session,[4/] it felt that their legal importance was such that the subject should be maintained on the Legal Sub-Committee's agenda. In that respect his delegation was happy to see that the parent Committee had requested the Scientific and Technical Sub-Committee to keep the question under review in the light of the development of space technology.

His delegation welcomed the draft treaty on the moon submitted by the USSR, which should be closely studied by the Legal Sub-Committee at the appropriate time.

Mr. CHAMMAS (Lebanon) congratulated the Soviet Union and the United States of America on their remarkable exploits in the exploration of outer space, which he hoped would contribute to the maintenance of peace in the world.

On the question of registration and identification of space objects, his delegation supported the view expressed by the French delegation that a convention on the subject should be considered as soon as the convention on liability had been concluded. The draft convention submitted by France several years earlier afforded an excellent basis for drawing the necessary distinction between registration and identification. He hoped that the Legal Sub-Committee would take up the matter at its eleventh session and complete the draft text for submission to the General Assembly.

4/ A/AC.105/82.

With regard to the draft convention on liability, his delegation deeply regretted that the Working Group would not be meeting that day to make a progress report for any further delay would prevent the Sub-Committee from completing its task within the limited time allotted to it for the present session. He understood that certain delegations had already arrived at a consensus on the final clauses of the convention. It was essential that their views should be made available to the other delegations as soon as possible. He urged them to issue a document that would both reflect the compromise position adopted and explain why delegations which had originally disagreed with that position had eventually decided to support it. Unless those delegations were given an opportunity to explain their position, it would be difficult for them to make any further concessions that might be required.

The CHAIRMAN said that, although the discussions on agenda item 3 had been most fruitful, something more than an exchange of views was needed. He therefore suggested that the Sub-Committee should draft a resolution or proposals expressing its views on the topics discussed and making recommendations for its future work.

He agreed with the representative of Lebanon that it was necessary to avoid further delay in concluding the draft liability convention, but, in view of the fact that no text had yet been made available on the final clause in question and that certain delegations were still awaiting instructions from their Governments, it had been thought preferable not to hold a meeting of the Working Group, which would be open to all members of the Sub-Committee, until the following Monday.

The meeting rose at 12.30 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-SECOND MEETING

held on Tuesday, 22 June 1971, 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.105/85; A/AC.105/C.2/L.79) (resumed from the 160th meeting)

Mr. VRANKEN (Belgium), speaking on behalf of the delegations of Brazil and Hungary as well as his own, introduced their joint proposal relating to articles XIV to XXII of the draft convention on international liability for damage caused by space objects (A/AC.105/C.2/L.79). The proposal was the result of the considerable efforts made over the past four years and, like any compromise, it was delicately balanced and sought to cover all the legal possibilities. The text included several phrases in respect of which the Legal Sub-Committee had already expressed its agreement. The proposal was designed to complement the existing proposals and provisions with a view to the preparation of a final text which might command general support.

With regard to article XXII on the assessment of damage and the determination of compensation, he said that three proposals had originally been submitted on the subject: the Hungarian proposal,[1] which had referred to the law of the respondent State; the United States proposal,[2] which had mentioned the principles of international law, justice and equity; and the Belgian proposal,[3] which had referred in the first instance to the national law of the person injured and, secondly, to international law.

Subsequently, two new draft conventions had been submitted: an Indian text,[4] which referred to the concept of agreement on the applicable law and, in the absence of such agreement, the principles of internatiaonal law, taking into consideration the law of the claimant State and, where appropriate, the law of the respondent State, but according priority to international law; and an Italian text,[5] which referred the matter to international law in the event of the parties being unable to agree on the application of the principle of equity or of any particular national law.

In 1969 and 1970 the Sub-Committee had agreed that reference must first be made to international law and that the applicable law could be that acceptable to the parties.

1/ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No.21 (A/7621) [documents A/AC.105/C.2/L.10/Rev.1 and Corr.1, A/AC.105/C.2/L.24 and Add.1], p.43.

2/ Ibid. (documents A/AC.105/C.2/L.19 and A/AC.105/C.2/L.58), p.37.

3/ Ibid. (document A/AC.105/C.2/L.7/Rev.3), p.33.

4/ Ibid. (document A/AC.105/C.2/L.32/Rev.2), p.59.

5/ Ibid. (document A/AC.105/C.2/L.40/Rev.1), p.47.

Although the major difficulties relating to the problem of the applicable law were well known to all the delegations which had participated in the deliberations of the Sub-Committee, he wished to give a brief outline of the problem in order to bring out more clearly the importance of the new proposal for determination of the compensation for damage.

In jurisprudence, liability comprised three components: namely, damage, fault or risk, and cause. As the question of cause had already been dealt with in other articles already adopted by the Sub-Committee, he would merely point out that, according to the rules generally adopted in the matter, cause had to be direct in order to allow the presentation of a claim.

The second component was fault or risk, and that matter had been dealt with specifically in articles II, III and VI. It should be noted that those articles referred to two different elements, depending on the circumstances: fault or culpa, and risk or alea.

The most characteristic system of liability based on fault was the French Civil Code, as set out in article 1382, while the most outstanding system of liability based on risk was to be found in article 403 of the Civil Code of the USSR. The most modern system, i.e. that based on risk, had been applied in all countries in several specific fields of jurisprudence, in particular in air law and public law. The importance of that phenomenon lay in the fact that compensation for damage was determined far more strictly in the case where liability arose from risk than where compensation was based on liability arising from fault. With particular regard to public law, that development was in keeping with the retrogression of the individual factor compared to the social factor.

With regard to the third component of liability, namely damage, there were many theories about the characteristics and content of damage and in the absence of legal provisions the judicial precedents of particular countries had often filled the gaps. It should be noted from the outset that there was no consistent system which had been universally accepted.

Jurisprudence recognized four characteristics of damage, whatever its nature. Firstly, the damage should be sustained by the person - natural or juridical - claiming compensation. Secondly, compensation for the damage must not have been paid already. Thirdly, the damage should affect an acquired right, which meant that the victim should have a legitimate interest. In order to know what constituted a legitimate interest, all the de jure and de facto elements of each particular case must be considered; it was clear, however, that an interest could be legitimate in Moslem law and not be so in

Scandinavian law. Fourthly, the damage should be certain, i.e. natus et presens. That qualification provided a clear-cut delimitation of the damage: it must be direct, on the basis of the first component of liability, i.e. cause; and it must be certain, i.e., it must be clearly manifest and any hypothetical damage must be eliminated. Each individual case should therefore be examined in order to establish the certainty of the damage.

With regard to the content of the damage, there were many different views. In the great majority of countries, such content was established by case law which, incidentally, was far from unanimous. Any hope, therefore, of establishing a universal and uniform rule on the subject would have been in vain. The concept of restitutio in integrum in Roman law was, moreover, interpreted and applied in different ways according to the different legal systems in the world.

In view of the de jure and de facto situation, therefore, his delegation, together with those of Brazil and Hungary, had sought to draft a general text, with three considerations in mind: firstly, the rule should be "victim-oriented"; secondly, the injured party should be able to make use of every factor calculated to restore the status quo ante; thirdly, the text should be in keeping with the spirit, if not the letter, of General Assembly resolution 2733 B (XXV) on international co-operation in the peaceful uses of outer space.

The first part of the proposed article XXII referred to the principles which should govern the preparation of the case to be presented by the claimant: international law, both public and private, justice and equity. The two branches of international law came into play by virtue of the fact that the parts of the Convention that had already been approved related to both direct and indirect liability. Direct liability covered the acts of State organs, including parastatal bodies, and indirect liability covered the acts of persons who, while not part of the State authorities, came under the authority of the State. The rules of international law could be applied in the first instance if they were accepted by the legal system of the parties concerned and, secondly, if the parties could agree on a compromise between their different rules of international law. With regard to equity and justice, the sponsors had sought to enable the parties concerned, as also the bodies entrusted with the task of hearing the disputes, to refer to standards drawn from jurisprudence, common sense, ex aequo et bono, insurance law and case law, thus making it possible to ensure the equitable application of existing law or to provide a useful complement to that law.

In that way, the applicable law would enable account to be taken of all the elements of the legal situation, so that the parties concerned could make the compensation as "victim-orientated" as possible, at a level which would be achieved by a reasonable balance between the rules of law of the parties concerned.

The second part of the proposal on the applicable law established the aim to be pursued: the restoration of the status quo ante.

Thus the proposed text would make it possible to invoke all the rules existing in jurisprudence with a view to obtaining the greatest possible satisfaction for the victim in a given situation.

The document he had introduced also proposed the text of articles XIV to XXI, governing the procedure for the settlement of disputes. The three draft conventions on liability which had been submitted to the Sub-Committee as working papers had included the following provisions. The United States draft provided in article X for an arbitration procedure that would lead to a binding decision. The Belgium draft, too, provided, in article 4, for an arbitration procedure which would result in a binding decision but it specified that the commission would take its decisions according to law or ex aequo et bono. The Hungarian draft provided in its article XI for a two-stage procedure: a first stage involving an arbitration procedure on a basis of parity, and a second stage providing for any other international method of settlement, including arbitration, acceptable to the parties. With regard to the two draft conventions introduced subsequently, the Italian draft provided in article X for an arbitration procedure leading to a binding decision, and the Indian draft proposed diplomatic negotiations, in article XII, but then referred to a compulsory Protocol on the Settlement of Disputes. The protocol provided for two stages: an Enquiry Commission to be established on a basis of parity, and a Claims Commission handing down binding decisions.

The result of the discussions held on the question in 1968 and 1969 had been reflected in the Addendum to the report of the Committee on the Peaceful Uses of Outer Space on its twelfth session,[6] and more particularly in the statement made by the Chairman at the 78th meeting of the Committee (5 December 1969).[7] In particular, the Chairman pointed out that all delegations had agreed to a first stage of diplomatic

6/ Ibid., Supplement No. 21A (A/7621/Add.1).

7/ Ibid., para. 8.

negotiations and a second stage in which a commission of inquiry would be established on a basis of parity.[8] With regard to the establishment of the claims commission a solution had been considered in so far as an agreement could be reached on the nature of the decision. At that moment, a consensus had emerged regarding the procedural structure, on the basis of the document drawn up by the Indian delegation.

The proposal which he was now submitting was based in large measure on existing agreements and on the proposals made by the delegations of India, France and Brazil. It sought to reconcile the divergent trends which had emerged in the Sub-Committee and bore three essential conditions in mind: the State responsible should at the very least undertake a political and moral commitment to provide reparation to the injured party; a well-established procedure was essential to guarantee the desired equity; and the two super Powers should be able to endorse the formula proposed. In the sponsors' view, the text of articles XIV to XXII met those conditions.

Article XIV provided for an inquiry commission on the basis of parity; the primary aim of such commissions was to avoid open confrontations between the parties on any question relating to the application of a convention.

Articles XV to XXI, which governed the arbitration procedure, provided for a tripartite commission, a decision, with reasons, to be made public, and a decision to be binding if the parties so agreed or of a recommendatory nature in the absence of such agreement.

The decision to be taken would therefore be of a highly political and moral nature, although not a juridical one. Several delegations had been unable to agree to a juridical or binding solution. Even if the decision was binding, however, it would be a mistake to think that it could be put into effect automatically, for international law had no organized executive power and hence no compulsory implementation. It was clear from even a superficial study of international law that the international community was not yet prepared to accept such a development. Indeed, few States had unreservedly chosen to have recourse to the compulsory jurisdiction of the International Court of Justice. In the present state of international law, it was unrealistic to seek to introduce compulsory legal decisions, especially in the matter of compensation, a field in which reference must be made to the principles of private international law. There were States, both large and small, which refused to accept any encroachment on their sovereignty and so long as the political will of States remained unchanged, it was unlikely that the Sub-Committee would be able to gain acceptance for the idea of compulsory legal decisions.

8/ Ibid, para. 8 (h) (i).

Articles XIV to XXI, however, provided for the introduction in the convention of binding legal procedure. Article XX, which dealt with the award was, from the legal standpoint, much closer to compulsory arbitration than to conciliation on a parity basis, but from the political and moral point of view it established an obligation of an international nature which could hardly be disregarded.

No human endeavour was perfect and, in establishing the rule of law, account must be taken of man, a social animal by definition. A convention, whether legal or not, should come within the international social context; in other words, it should take account, on the one hand, of universally accepted rules and, on the other, of the legal systems existing in the international community.

If the Sub-Committee wished to establish a universal convention, it should prepare a text which would be acceptable to the largest possible number of its members and, later, to the General Assembly, including the Powers with a special responsibility in the matter, and which could satisfy the delegations representing States that might any day become victims.

Mr. HARASZTI (Hungary) said that the draft articles submitted jointly by his delegation and those of Belgium and Brazil should provide a way out of the deadlock which had existed for a number of years. The present compromise text differed substantially from the text of the draft convention originally submitted by his delegation, which, while not renouncing its fundamental ideas, had recognized the necessity of making concessions to facilitate the conclusion of so important a convention.

After the Belgian representative's able introduction of the text, he would confine himself to some brief comments on the applicable law and on settlement of disputes.

With regard to the applicable law, members of the Sub-Committee had from the outset held conflicting views on whether the law of the State responsible for the damage or that of the State in which the damage was sustained should be applied. Since it was now clear that neither idea would be acceptable to all delegations, there could be no other solution than recourse to international law as provided for in the draft convention submitted to the Sub-Committee at its sixth session by the United States delegation and accepted by his delegation. The draft submitted to the Sub-Committee in 1970 by the delegations of Bulgaria, the USSR and Hungary (see A/AC.105/85, annex I, p.4, document A/AC.105/C.2/L.75) was based on the same idea.

The argument that international law provided no detailed rules on compensation for damage, particularly concerning the determination of the extent of such compensation, did not stand up to examination, since the international judicial organs and the conciliation commissions responsible for deciding such cases had had no difficulty in finding adequate solutions based on customary international law. In addition to the Chorzow factory case already cited in the Sub-Committee, he would mention the Corfu Channel case, in which the International Court of Justice had applied detailed rules for determining the amount of compensation. There were other cases, too, in which it had been possible to find an adequate solution to the problem of compensation based on international law.

Whatever gaps might remain to be filled, the fundamental idea of the re-establishment of the status quo ante and the principles of justice and equity on which the text before the Sub-Committee was based should guide the parties concerned or the bodies responsible for making recommendations to those parties or for making decisions.

The sponsors of the draft text had proposed a compromise solution with regard to the settlement of claims as the only possible common denominator of the widely differing points of view held by the various delegations and the only means of achieving the conclusion of the long-sought convention. An effective procedure was proposed in three stages: direct diplomatic negotiation between the parties, the establishment of an inquiry commission on the basis of parity and the establishment of a claims commission presided over by an impartial chairman.

Since certain delegations, including his own, could not accept mandatory arbitration, the parties to the dispute could agree that the decision would be binding or, in the absence of such agreement, the commission would render a recommendatory award, which would be made public.

He hoped that delegations would realize that the text before them offered perhaps the last opportunity of reaching agreement on the problems and of submitting to the Committee on the Peaceful Uses of Outer Space the draft convention on liability called for by the General Assembly in resolution 2733 B (XXV).

Mr. OKAWA (Japan) said that, while congratulating the sponsors on their efforts in drawing up the text before the Sub-Committee, his delegation had serious difficulty with regard to its provisions, which fell far short of meeting the important points of substance made by his delegation and others.

The joint efforts of members of the Sub-Committee in the past had led to important achievements, including agreement on the principle of absolute liability on the part of the launching State embodied in article II of the draft convention - an entirely new concept of State responsibility in any such convention.

It should be noted that exoneration from absolute liability was limited in article VI "to the extent that a launching State establishes that the damage has resulted either wholly or partially from gross negligence or from an act or omission done with intent to cause damage on the part of a State presenting a claim or of natural or juridical persons it represents" (see A/AC.105/85, p.8) Article VII of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies, was enhanced by the provisions on joint liability.

There were grounds for satisfaction with the area of agreement reached so far from the point of view of granting maximum compensation to victims. If, in its attempts to settle the two outstanding issues, the Sub-Committee was to be guided by the same ideas as had inspired its past achievements, it would be necessary for the final text on the procedures for the settlement of claims to indicate that the decision of the claims commission should be final and binding.

Unless the text concerning the extent of compensation was so worded as to ensure the restoration to the victims of conditions equivalent to those that would have existed if the damage had not occurred, the convention would lose much of its usefulness. In the light of his delegation's basic position on that point, the draft articles now before the Sub-Committee left much to be desired. Reference to the lex loci delicti commissi had entirely disappeared, while the concept of full compensation had been watered down, and his delegation felt considerable apprehension concerning the degree of protection that would be afforded to the victims of damage under such a formula.

With regard to the procedures for the settlement of claims, his delegation, which had vigorously advocated that the award of the claims commission should be final and binding, was particularly disturbed that the draft text under consideration clearly provided that such award should be only of a recommendatory nature. Such provision was incompatible with the terms of operative paragraph 5 of General Assembly resolution 2733 B (XXV).

It was important to achieve an equitable balance of rights and obligations as between launching and non-launching States in the convention on liability. Such balance could hardly be secured by the text under consideration, the provisions of which, in his delegation's view, were not sufficiently victim-oriented.

In drawing up the convention on liability for damage caused by space objects, the Sub-Committee should bear in mind that it might be necessary in the future to consider drawing up conventions on other like matters and care should be taken to ensure that the first text of its kind on absolute liability should not serve as a bad precedent.

His delegation would closely follow future developments and would continue to collaborate with other delegations in as constructive a manner as possible.

Mr. CHAMMAS (Lebanon) said that, although the draft proposals of the Belgian, Brazilian and Hungarian delegations fell short of what many delegations would have wished, the Sub-Committee should attempt to keep the substance of the draft intact with a view to reaching agreement on the outstanding issues at its current session.

His delegation had been happy to note that the Sub-Committee now appeared to have the political will to reach agreement, which had been absent from its earlier sessions. He considered the text under consideration to be a serious expression of such political will and, despite its shortcomings, a good basis for reaching eventual agreement.

The main purpose of the convention was to provide the fullest possible protection of the potential victim and his restoration to a condition equivalent to that which would have existed if the damage had not occurred. His delegation agreed with the Japanese representative that the desired objective could be attained by striking a balance between the obligations of the launching State and the rights of the victim State. It was necessary, however, to reach a consensus on the objective of the convention and the best means of achieving that objective. The necessary provisions governing the two main outstanding issues had now begun to take systematic and coherent form. He formally requested that the Belgian and Hungarian representatives' important statements on the subject should be fully reflected in the summary record of the meeting.

Some improvements could be made to the draft text without changing its substance. While his delegation basically held the same position as that of Japan, having always advocated that decisions by the claims commission should be final and binding, it was necessary to take a practical view and to seek a compromise solution as a progressive step towards reaching an agreement to that effect. His delegation would accordingly agree for the time being to making the decision of the claims commission of a recommendatory nature.

The inquiry commission proposed in draft article XIV might serve a useful purpose, but the action proposed for such a commission appeared to be the same as that which

would be taken through formal diplomatic channels. The informal proposals made in that connexion by the Indian delegation in the Working Group and supported by the Mexican delegation appeared to be sound, and he would propose that the authors of the draft text should consider the possibility of deleting the articles relating to the inquiry commission and providing directly for the establishment of the claims commission if the formal diplomatic negotiations were unsuccessful. Such a procedure would save time and would thus be in the interest both of the victim and of the launching State.

The second point he wished to make was in connexion with draft article XXI, which stated that the expenses in regard to the claims commission should be borne equally by the parties. In Lebanon's legal system, the basic principle was that the State at fault found by the Court to be guilty should bear all the costs. That legal principle could not be completely disregarded. The delegation of Lebanon therefore proposed that, while the essence of the proposal should be maintained for the sake of agreement, some changes should be made to enable the claims commission to decide otherwise than on the basis of the equal sharing of the expenses by the parties to the dispute. It hoped that agreement along those lines would not be difficult.

In his statement, the representative of Belgium had gone into the question of applicable law. With regard to one particular aspect of that question, his delegation felt that a distinction should have been made in the draft proposal between damage caused by activities in outer space and in open air space and damage caused within the national jurisdiction of a State.

For the first category of damage, if there was no agreement between the parties on the law to be applied, then surely the applicable law should be international law and the principles of justice and equity. In this instance, both the laws of the launching State and of the claimant State will be equally relevant. For the second category of damage - i.e. damage caused within the national jurisdiction of a State - the laws of the claimant State cannot but be relevant, together with international law and the principles of justice and equity.

His delegation agreed with the representative of Hungary that, for the sake of compromise, mutual concessions should be sought. Such mutual concessions were not to be found in the first part of article XXII of the joint proposal but could be found in the second part of that article, in the words "in order to provide such reparation in respect of the damage as will restore the person, natural or juridical, State or

international organization on whose behalf the claim is presented to the condition which would have existed had the damage not occurred". Since the basic objective of article XXII was that the victim should be restored to the condition which would have existed if the damage had not occurred, and since the delegation of Lebanon was of the opinion that the main objective of the convention on liability should be to protect the interests of the victim and to provide for a full measure of compensation, it would not find it difficult to support article XXII.

It felt, however, that some of the gaps in the proposal as a whole needed to be filled. The experience gained at previous sessions of the Legal Sub-Committee could be drawn upon for that purpose. The provisions of the draft convention on liability were supposed to be implemented in good faith. He therefore hoped that the sponsors of the joint draft would respond positively to the proposals of some delegations which had suggested that, in the section on the procedure for the settlement of claims, there should be a specific provision that would require the parties to carry out promptly and in good faith their obligations under the convention on liability and to take note of the decisions of the claims commission.

His delegation would welcome the inclusion of a provision for the periodic review of the convention. It was aware that such a provision did not fail within the purview of the two outstanding issues under discussion, but it wished to state that it would support the inclusion of such an article in the draft convention on liability.

In conclusion, he expressed the hope that the basis for agreement offered by the proposal of Belgium, Brazil and Hungary would not be wasted and that it would be possible to complete the drafting of the convention on liability for submission to the General Assembly at its twenty-sixth session.

Mr. DJAHANNEMA (Iran) said that his delegation was aware of the obstacles that had prevented the Legal Sub-Committee from completing the drafting of the convention on liability at previous sessions. It was of the opinion that the conciliation of different points of view was extremely difficult to achieve and it therefore wished to congratulate the delegations of Belgium, Brazil and Hungary on the compromise proposal which they had submitted to the Legal Sub-Committee and which might serve as a basis for the discussion of the outstanding issues that still had to be agreed upon by the Legal Sub-Committee.

The proposal did not, however, satisfy his delegation, whose position was and always had been that the victims of damage caused by objects launched into outer space should be fully compensated. His delegation therefore associated itself with other

delegations which thought that the proposal needed improving. It would be prepared to examine any suggestions designed to improve the compromise proposal, in the hope that such improvements would lead to a reasonable and acceptable solution of the two main outstanding problems.

Mr. GONZALEZ GALVEZ (Mexico) thanked the delegations of Belgium, Brazil and Hungary for the compromise proposal they had submitted to the Legal Sub-Committee and congratulated the representative of Belgium on his clear and concise presentation of the background of that proposal.

The delegation of Mexico had examined the draft convention on liability as part of the system of rules which also included the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. The Mexican Government would therefore consider the desirability of continuing to be a party to that Agreement in the light of the effectiveness of the convention on liability.

At the meeting of the Working Group of the Whole, he had stated that the proposal by Belgium, Brazil and Hungary provided a good basis for discussion, but at the present time his delegation could not accept that proposal. It suggested that the rest of the work of the Legal Sub-Committee should be devoted to informal negotiations, for it was convinced that, in that way, a draft convention on liability acceptable to the majority of States represented in the Legal Sub-Committee could be completed.

The representative of Belgium had said that the international community was not prepared to accept a procedure for the settlement of claims that would be final and binding, and had based that opinion on the fact that a limited number of States had recourse to the International Court of Justice. There was a difference, however, between the International Court of Justice and the international community. The International Court of Justice applied a body of laws which, in general, did not reflect the interests of the international community, since they had been created at a time when some 60 to 70 per cent of the members of the international community had not yet begun to take part in international life. When the international community drew up a convention on liability, however, there was no reason why a procedure to make the decisions of the claims commission final and binding could not be accepted if it was approved by the majority of the States taking part in the drafting of the convention. If the international community agreed on standards to determine what it considered to be the applicable law, any conflict that might arise between States could be settled

in a final and binding way on the basis of such standards. His delegation therefore continued to maintain that the decisions of the claims commission should be final and binding, but it was prepared to discuss other suggestions.

In conclusion, he suggested that the drafting of a convention on liability which would be acceptable to a large majority of the States represented in the Legal Sub-Committee could be most successfully completed in the informal atmosphere of a working group.

Mr. VRANKEN (Belgium) said that the proposal by Belgium, Brazil and Hungary was not final and that, if any improvements could be made in it, they would be gratefully accepted.

The meeting rose at 12.15 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-THIRD MEETING

held on Wednesday, 23 June 1971, at 10.45 a.m.

Chairman: Mr. WYZNER Poland

STUDY OF QUESTIONS RELATIVE TO;

(a) THE DEFINITION OF OUTER SPACE

(b) THE UTILIZATION OF OUTER SPACE AND CELESTIAL BODIES, INCLUDING THE VARIOUS IMPLICATIONS OF SPACE COMMUNICATIONS (agenda item 3) (A/AC.105/85, A/AC.105/C.2/7) (resumed from the 161st meeting)

Mr. SOMMERLAD (United Nations Educational, Scientific and Cultural Organization), speaking at the invitation of the Chairman, said that he wished to inform the Legal Sub-Committee of several activities in UNESCO's current programme which were relevant to agenda item 3 on the various implications of space communications.

At its third session the Working Group on Direct Broadcast Satellites had reaffirmed the request it had made at a previous session that UNESCO and BIRPI (now WIPO) should continue to study the problems arising from direct broadcasting by satellites in the fields of copyright and neighbouring rights and the question of the legal protection of satellite transmission against unauthorized use.[1]

In April 1971, a Committee of Governmental Experts on problems in the fields of copyright and the protection of performers, producers of phonograms and broadcasting organizations had been convened by UNESCO and WIPO to study problems raised by radio and television transmissions via satellite in the field of copyright and in the field of the protection of performers, producers of phonograms and broadcasting organizations, and to specify whether the protection of television signals transmitted by communication satellites required modification of existing conventions or the preparation of a new international instrument. At that meeting, three possible alternatives had been considered, namely, the use of the ITU Radio Regulations in order to protect the signals from unauthorized uses, a modification and extension of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961) and the preparation of a new convention dealing with the question of the protection of broadcast signals.

1/ For the report of the Working Group on Direct Broadcast Satellites on its third session, see A/AC.105/83 and Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 20 (A/8020), p.11.

The Committee of Governmental Experts had dismissed the possibility of using the ITU Radio Regulations for that purpose. At the World Administrative Radio Conference for Space Telecommunications now being held in Geneva, there had been no submissions for amendment to the Radio Regulations to achieve that objective.

There had been a substantial difference of opinion in the Committee on whether the Rome Convention was the appropriate instrument, or whether a new convention should be drafted. The Rome Convention had a comparatively small number of adherents and a large number of delegations had felt that it offered no possibility of meeting the requirements of the situation because it was accepted by so few countries. On the other hand, the States which were adherents to the Rome Convention had pressed strongly for the use of that instrument because of what they had called the balance of interest it achieved between the performers and producers of phonograms, and the broadcasters. In addition, a considerable number of international organizations attending the meeting as observers, had given their support to the proposal for the use of the Rome Convention.

The Committee of Governmental Experts had considered a draft text that had been prepared for a new convention. A working group had reviewed the text in considerable detail and a copy of the text appeared in the report of the Committee of Governmental Experts which was now being circulated. The matter would be considered by the UNESCO Executive Council, which was to meet in October 1971.

One of the problems in trying to promote international agreement on the use of space communications was to find a balance between the desire, on the one hand, to increase the flow of information and the dissemination of education and cultural programmes, and, on the other, to adhere to the generally acceptable principles of respect for national cultures and State sovereignty. That was both a cultural and a political problem and no one would wish to impose a common uniformity on the world through the destruction of the diversity of peoples and cultures. Because they cherished the rights of freedom of expression laid down in the Universal Declaration of Human Rights, broadcasters recognized that freedom of the air waves and responsibility in programming were inseparable.

With a view to encouraging further professional co-operation among broadcasters, UNESCO was conducting a survey on the methods used for programme exchanges among broadcasting organizations and on the criteria for determining acceptable programme content. The results of the survey would be discussed at the meeting of broadcasting and news experts which would be held in Paris in October 1971 to consider international professional arrangements for space broadcasting.

At its last session, the UNESCO General Conference, in November 1970, adopted a resolution for the formulation of a draft declaration of guiding principles on the uses of space communication for the free flow of information, the spread of education and wider cultural exchanges. Consultations on the subject were taking place with experts and professional broadcasting organizations, and in April 1972 a meeting would be held to draft a text, which would then be submitted to the UNESCO General Conference in 1972. Such a declaration would not constitute a binding legal instrument; it was intended as a statement of principle, supported by the international community, for guidance in the development and use of space broadcasting.

Mr. DAVID (International Telecommunication Union), speaking at the invitation of the Chairman, said that he wished to report to the Legal Sub-Committee a development that had taken place at the World Administrative Radio Conference for Space Telecommunications. A working group of one of the main Committees of the Conference - a group upon which most of the main countries concerned with activities in outer space were represented - had submitted a report to the Committee on the subject of the definition of outer space. It had proposed that the International Radio Consultative Committee of the International Telecommunication Union should be requested to re-examine the definition of deep space in connexion with a similar definition which might be advocated by other organizations dealing with space problems and consider the possibility of defining the lower limits of extra-terrestrial space in collaboration with the other organizations concerned, particularly with the appropriate United Nations committee. The secretariat of that Committee had informed him that it had every reason to assume that the report would be accepted by the Committee and that in due course a resolution on the definition would be adopted by the World Administrative Radio Conference. The work on that report, however, was not very advanced. He would report any developments that might take place to the Legal Sub-Committee before the end of its present session.

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/85; A/AC.105/C.2/L.74 and Add.1 and 2, A/AC.105/C.2/L.79) (continued)

Mr. ROBERTSON (Canada) recalled that, at the ninth session of the Legal Sub-Committee, his delegation had co-sponsored the texts of two draft articles on measure of compensation and on the competence of the claims commission (see A/AC.105/85, annex I, p.3, document A/AC.105/C.2/L.74 and Add.1 and 2).

The views of the Canadian delegation on the substance of the two main outstanding issues had not changed but it was glad to note that, at the present session, there had been some developments of a substantial nature on those questions. He congratulated the representatives of the two major space Powers upon their having been able to achieve a meeting of minds about the sort of texts on applicable law and settlement of claims which their respective Governments could accept in a liability convention. Thanks were due also to the other delegations which had worked so hard to bring about that result. His delegation, however, was by no means satisfied with the outcome of the negotiations which had led to the submission by Belgium, Brazil and Hungary of the draft convention on international liability for damage caused by space objects (A/AC.105/C.2/L.79), the defects of which he wished to point out.

With regard to the question of applicable law, the Canadian delegation had always been of the opinion that that part of the liability convention should protect the interests of the potential victim by ensuring the payment of a full measure of compensation and that such a requirement could best be met by a text on the legal rules to be applied for determining compensation that was as clear and as unambiguous as possible. For that reason, in the proposal sponsored by that delegation at the ninth session, a specific rule had been laid down to the effect that "each person, natural or juridical, State or international organization on whose behalf a claim is presented be restored in full to the condition equivalent to that which would have existed if the damage had not occurred". The text went on to include a directive, for the guidance of the Claims Commission, that in giving effect to the rule account should be taken of the law of the place where the damage had occurred and of relevant principles of international law. The rule, however, was primary, and the directive only secondary. There were few places in the world where some system of domestic law was not in effect and it had therefore seemed reasonable to the sponsors of the proposal that, since most of the damage suffered was likely to occur on earth, the most relevant legal system to be taken into account in determining the damage to be compensated should be that of the place where the damage had in fact occurred.

He regretted that, in place of that precise formulation, the new text referred only to international law and the principles of justice and equity. General Assembly resolution 2733 B (XXV) had stated in operative paragraph 5 that "a satisfactory convention on liability [...] should contain provisions which would ensure the payment

of a full measure of compensation to victims". The Canadian delegation regretted that the concept of restoration in full was not explicitly stated in the new proposal. Although the representatives of Italy and Belgium had done a great deal to amplify the possible content of the reference to international law, it should be borne in mind that there was no general or agreed body of international legal rules of a precise nature relating to the question of measure of compensation. Moreover, the meaning of the reference to justice in the proposal was hardly clear or precise, since it could imply a number of different things in different societies. Equity at least had a specific connotation in common law and in certain European legal systems. It was certain, however, that, even taken together, those three references to international law, justice and equity were less precise and might therefore offer less protection to a victim of damage than the proposal on measure of compensation in document A/AC.105/C.2/L.74.

With regard to the proposals on settlement of claims, set out in the proposal by Belgium, Brazil and Hungary as draft articles XIV to XXI, he stated that in the context of an article XX providing for binding settlement, his delegation would have welcomed the provisions of articles XIV to XIX since they rounded out the scheme outlined in the explanatory note appended to document A/AC.105/C.2/L.74. It could not, however, agree with article XX. Firstly, it was not possible to assert that the proposed settlement procedure, in particular the provision in paragraph 2 of article XX, bore any real relationship to the proposed Indian Protocol,[2/] the essential concept of which was that the result of the deliberations of any claims commission would be final and binding. Secondly, the sponsors of the proposal submitted to the ninth session of the Sub-Committee had wanted the convention on liability to be effective and had wanted the settlement of claims to be prompt and equitable, in accordance with operative paragraph 5 of General Assembly resolution 2733 B (XXV). By clearly categorizing the decision of a claims commission as recommendatory only, except in the case of agreement between the parties, paragraph 2 of Article XXII seemed to leave the implementation

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2/ Ibid., Twenty-fourth Session, Supplement No.21 (A/7621) [document A/AC.105/C.2/L.32/Rev.2, annex I], pp. 65-67.

of an award, in the strict legal sense, to the unilateral good will of the State that had caused the damage and seemed to promise no legal recourse should that State eventually decide either that it would not pay at all or that it would pay less than called upon to do by the decision of the claims commission. In the view of the Canadian delegation, that provision was not likely to ensure either effective or prompt payment in cases where there was a difference of opinion between the parties. Indeed, it did not really give legal assurance of payment at all. As the Canadian delegation had sought a clearly victim-oriented convention on liability, it found the new compromise text proposed by Belgium, Brazil and Hungary less than satisfactory. The two major space Powers admittedly concurred in the way in which they dealt with both applicable law and settlement of disputes, but it was those two Powers that were most likely to cause damage through their activities.

In addition to those specific objections, the Canadian delegation had some less substantive and less crucial reservations regarding certain other elements in the proposal. Some of those reservations, which were shared by other members of the Legal Sub-Committee, could probably best be examined in the Working Group. His delegation wished to place on record, however, its reservations on two points. The first concerned the inclusion, in the settlement proposal now advanced, of the possibility of recourse to an inquiry commission established on a parity basis. That concept had originally been included in the Indian Protocol[3/] as a concession to the views of the States which had been advocating a non-binding settlement procedure established on a parity basis, but the concession had been made in the context of an over-all scheme leading to binding settlement provisions. Its retention in an essentially recommendatory scheme appeared not only unnecessary but likely to give rise to undesirable procedural delays.

The second reservation of the Canadian delegation concerned the provision for publication set out in paragraph 3 of Article XX, which, although welcome, did not go far enough. In the settlement scheme sponsored by the Canadian delegation in 1970, it had been suggested that any decision or award of the claims commission should be forwarded to the Secretary-General of the United Nations for publication by him.

3/ Ibid., art. I, p.65.

His delegation could see no reason why such a scheme should not be included in the provisions of the proposal now under consideration. Since the obligation to go to a claims commission if called upon to do so would be one assumed by all States which became parties to the convention on liability, and since the Secretary-General already maintained the United Nations treaty register, it would seem only logical to request him to make public the decisions or awards arising out of that particular treaty obligation.

While the Canadian delegation was aware of the significance of the fact that the two major space Powers had finally been able to reach agreement on a compromise text, it did not feel bound to acquiesce in that compromise. It considered that it was the duty of the members of the Legal Sub-Committee to endeavour to protect the interests of the other States Members of the United Nations which were not represented on the Legal Sub-Committee. It was those States which were likely to suffer damage in the future and which would look to the liability convention for protection and compensation. His delegation had not yet been able to decide whether a convention based on the compromise proposals under discussion would adequately safeguard the interests of such States and whether it would significantly improve their existing rights under general principles of international law and the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. Canada would be reluctant to become a party to a treaty which did not meet the criterion of being genuinely acceptable, even if it was acceptable to the space Powers.

In conclusion, he recalled that the successful conclusion in 1968 of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space had been made on the understanding that it was to be followed by the elaboration of a generally acceptable convention on liability. Thus the final attitude of the Canadian delegation towards that Agreement would of necessity be affected by its appreciation of the inadequacies in the present text of the liability convention and by any improvements to it upon which the space Powers might in due course agree.

Mr. DARWIN (United Kingdom) said that the two most important matters before the Sub-Committee at the present session were the claims commission, particularly the status of its awards, and the applicable law for the determination of the compensation which the launching State or international organization responsible for the damage must pay.

His delegation was grateful to the delegations of Belgium, Brazil and Hungary for their joint proposal, which represented a valiant effort at a compromise and served to advance the work of the Sub-Committee. With regard to article XXII of that text, he was sure that the sponsors had had in mind not only the practice under civil law systems but also that under common law systems and other systems not represented among the sponsors. Since the instrument which the Sub-Committee was preparing was to be a world-wide convention, it should take account of all legal systems in the world.

In introducing the joint proposal, the Belgian representative had pointed out that its aim was to restore the victim to the condition which would have existed had the accident not occurred. Law must give way to facts, however; a destroyed house could not be rebuilt of the identical bricks in the old building, nor could the payment of compensation to the dependants of a dead man bring him back to them. As far as possible, however, the reparation should be complete and the condition which would have existed if the accident had not happened should be restored. He therefore doubted whether the Japanese delegation had been correct in some of its observations at the 162nd meeting. His own delegation's understanding of the text seemed to be justified by the Belgian representative's statement that the proposed text would make it possible to invoke all the rules existing in jurisprudence with a view to obtaining the greatest possible satisfaction for the victim in a given situation.

With regard to the claims commission, his delegation had always supported and would still wish to see a procedure leading to binding awards in all cases. In that respect, it agreed with the Japanese delegation. Nevertheless, with a view to reaching agreement in the near future, his delegation would reluctantly abandon that position of principle provided that a procedure was adopted which would ensure a substantial and detailed examination of all the issues and would result in a serious and well-considered award going into all aspects, all of which would be taken into account when the launching State gave effect to its obligation to compensate under the convention. Unless the parties decided otherwise, the award, and all its terms, would be recommendatory. That status would be maintained, but the whole award would no doubt be taken into account by the State concerned and none of it would be treated as a nullity unworthy of notice. His delegation did not believe that any State, after the formalities and procedures of establishing and appearing before the claims commission, would not study the award and take all its terms into account in accomplishing its obligation under the treaty.

At the 162nd meeting the representative of Mexico had welcomed the joint proposal as a basis for further discussion and the representative of Lebanon had said that it could be improved without altering the substance. The United Kingdom delegation fully supported the views of those representatives on the two points he had discussed and it welcomed many of the proposals made by the Indian delegation concerning the claims commission.

Mr. COCCA (Argentina) noted that the joint proposal submitted by Belgium, Brazil and Hungary reflected the views of a large number of delegations.

His delegation wished to express its appreciation to the sponsors for the considerable efforts they had made in producing a text of great merit. As had been pointed out, the joint proposal was a legal and diplomatic text. As such, it could be improved, particularly if due account was taken of the spirit which had guided the sponsors and of its fundamental orientation.

As far as the applicable law was concerned, other proposals had been submitted in the Sub-Committee, including those by Argentina (A/AC.105/C.2/L.74 and Add.1 and 2),4/ which offered a solution different from that in document A/AC.105/C.2/L.79. Such solutions, however, would not lead to unanimous agreement and would certainly not be accepted by the States whose space activities might cause damage and which might therefore become respondent States. In such a situation, it was the duty of the jurist to seek to achieve a reasonable balance between the parties in dispute. The formula in article XXII of the joint proposal seemed to come closest to such balance and he would be prepared to support it, not only because it had some points in common with his delegation's earlier proposals but also because of the interpretation which had been given in the Sub-Committee to the expression "in accordance with [...] the principles of justice and equity". That rule would make it possible to assess all the elements of the legal situation, written and unwritten law, common sense, judicial precedents and the social law which protected the victim in his own environment, since the victim should be restored to the condition "equivalent to that which would have existed if the damage had not occurred", a formula which appeared in the proposal submitted by Argentina, Australia, Belgium, Canada, Italy, Japan, the United Kingdom and Sweden (A/AC.105/C.2/L.74 and Add.1 and 2). In his delegation's opinion, the

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4/ Cf. ibid. (document A/AC.105/C.2/L.59), p.67.

formula in the text under consideration was better, in that it replaced the expression "condition equivalent" by the single word "condition", since any qualification weakened the obligation to provide reparation. In short, his delegation could support the wording of article XXII in the light of the interpretation given to the expression "principles of justice and equity" and of the obligation to restore the victim "to the condition which would have existed had the damage not occurred".

Many delegations considered that a provision should be added to ensure that the victim was paid a full measure of compensation, a proposal which his delegation supported and which would, moreover, be in keeping with operative paragraph 5 of General Assembly resolution 2733 B (XXV). Furthermore, that idea had been reflected in the expression "restored in full to the condition" in the proposal in document A/AC.105/C.2/L.74 and Add.1 and 2.

With regard to another difficult point, that of settlement of disputes, the Sub-Committee had had before it, in addition to document A/AC.105/C.2/L.79, a proposal by India and an anonymous proposal which reflected the views of several delegations. The Indian proposal suggested that articles XIV and XV should be replaced by a single article. At the 162nd meeting, many arguments had been heard in favour of eliminating the inquiry commission. In his delegation's view, that commission was not necessary and its functions could be covered through the preliminary stage of diplomatic negotiations. Another reason in favour of the elimination of the commission was the fact that operative paragraph 5 of General Assembly resolution 2733 B (XXV) provided that there should be effective procedures which would lead to the prompt and equitable settlement of claims. If a prompt settlement was to be achieved, unnecessary procedural stages had to be eliminated. It was for that reason that the Indian proposal laid down a time-limit. Since that stage of the process could be bypassed to the benefit of all, and particularly of the victim, his delegation supported the idea that the inquiry commission should be eliminated. Moreover, the preamble of the draft convention referred to "prompt and equitable compensation".

The wording of paragraph 2 of article XX was not appropriate in a legal or diplomatic document. Were it merely a diplomatic document, that paragraph would simply have read: "The Commission shall state the reasons for its decision." The jurist, however, had wished to go further and had reversed the order of the phrases. In his delegation's opinion, the rule had been taken as the exception, since in all legal systems and régimes, decisions, findings and awards were binding. His delegation did

not think it possible to harmonize the legal content with the diplomatic intention by merely changing the position of the words. The text of the paragraph, after the word "decision", should be amended to read: "which shall be final and binding; otherwise, if the parties have so agreed, the Commission shall render a final and a recommendatory award". Thus, the important principle of the will of the parties would be safeguarded and universal practice in the matter of decisions based on law would be respected, as would the principle in parem non habet imperium.

With regard to paragraph 3 of article XX, he noted that India had submitted an amendment, which had been further amended by the USSR and the United States of America. His delegation was in agreement with the principle that all judicial decisions should be given the greatest possible publicity, particularly those handed down in respect of space law. It was prepared to accept the Indian proposal, even with the limitations suggested by the delegations of the USSR and the United States of America.

Referring to article XXI, he noted that a number of delegations had submitted amendments, since it did not seem equitable that the expenses in regard to the claims commission should always be borne equally by the parties.

Mr. AL ARBI KHATTABI (Morocco) thanked the delegations of Belgium, Brazil and Hungary for the efforts they had made to find an area of compromise that would facilitate the drawing up of a draft convention. His delegation was convinced that the text offered a firm and reasonable basis for reaching agreement on the two outstanding issues.

His delegation attached particular importance to the prompt and equitable settlement of claims for compensation, in accordance with the General Assembly's wishes. The establishment of an inquiry commission might lead to undue delay in such settlement and it might therefore be advisable either to abandon the idea of such a commission or to reduce the time within which the commission should make its recommendations.

With regard to draft article XXI, his delegation would have some difficulty in agreeing that the expenses of the claims commission should be borne equally by the parties, since such procedure would be wholly incompatible with his country's domestic legislation. There were many reasons why such expenses should logically be borne by the launching State. Moreover, the use of space would for some time to come remain the exclusive province of the rich and highly industrialized countries which were devoting enormous resources to space research and exploration.

Draft article XX was in perfect accord with the spirit of compromise and respected the desire of States parties to the convention to guard against any infringement of their sovereign rights.

Although the reference to international law in article XXII might give rise to some ambiguity because of the gaps and divergences in such law, the formula as a whole was acceptable in view of its reference to "the principles of justice and equity, in order to provide such reparation in respect of the damage as will restore the person, natural or juridical, State or international organization on whose behalf the claim is presented to the condition which would have existed had the damage not occurred".

His delegation was prepared to consider any further relevant proposals made by other delegations.

It would be useful for the convention on liability to include a provision for appropriate assistance, in particular as between launching and claimant States. The launching of a space object might result in many casualties and considerable material damage in a vital sector of the country affected, and certain countries might find it difficult to carry out protection, rescue or reconstruction operations unaided. The convention should be an act of international co-operation of as comprehensive a nature as possible, and in his delegation's view it would be incomplete without a provision for appropriate assistance in such cases at the request of the State concerned. He hoped that the Sub-Committee would give that point favourable consideration.

Mr. GOGEANU (Romania) said that, in supporting the idea that the victim of damage caused by a space object should be restored to the condition which would have existed if the damage had not occurred, his delegation had departed from the position it had held three years previously when, in referring to the applicable law, it had supported the principle of lex loci delicti comissi. It had done so in a spirit of understanding and with a desire to facilitate a rapprochement of the various opinions expressed in the Sub-Committee over the years. His delegation was glad to note that the text under consideration had the same end in view and hoped that it would be accepted by the Sub-Committee.

With regard to the procedure to be followed in the case of disputes, his delegation was prepared to accept the compromise formula for the establishment of a claims commission, whose findings would be binding if the parties so agreed, or would otherwise be of a recommendatory nature.

His delegation had some doubts concerning the inquiry commission provided for in draft article XIV of document A/AC.105/C.2/L.79, since its establishment might lead to procedural delays and thus not be in accordance with the desire of delegations for a rapid and efficient procedure to restore the status quo ante to the victim.

The inclusion of an article providing for revision of the convention was particularly justified in the present case in view of the rapid progress of space technology, which might soon render some provisions obsolete. Such an article would obviously be without prejudice to the principle of stability of international treaties and conventions.

His delegation was prepared to hear the views of other delegations in a spirit of tolerance and mutual understanding.

Mr. REIS (United States of America) said that the division of States into space Powers and non-space Powers suggested by the Canadian delegation was an over-simplification. It was unjust and unrealistic to portray one group of States as space Powers which were smug and self-satisfied with regard to the convention and another group as non-space Powers which were badly dealt with.

His delegation was interested in the draft articles under consideration (A/AC.105/C.2/L.79) because it considered that their incorporation in a convention would substantially improve the existing situation. He would strongly reject the portrayal of the United States as a space Power which was trying to defend itself against possible future claims for damage caused to others by objects it had launched into outer space. He was far from satisfied with every portion of the convention and could foresee difficulties in its adoption, but if a choice had to be made between having such a convention immediately or having no convention at all for the next ten years, the former course was certainly preferable.

Mr. CHARVET (France) said that his delegation had hoped to see a more perfect convention, particularly in its provisions on arbitration and applicable law. In the circumstances it could only express the hope that the diplomatic negotiations would in most cases be successful and that, in the rare cases when an inquiry commission had to be established, its members would heed the General Assembly's call for prompt and equitable settlement of claims and would take into account the views of members of the Sub-Committee. He would have preferred the idea of an inquiry commission to be abandoned altogether in view of the delay in payment of compensation to the victim that would be occasioned by its establishment.

His delegation would support the inclusion of a provision for revision of the convention within a reasonable time to take account of changed situations resulting from scientific and technological developments.

Mr. PERSSON (Sweden) congratulated the Belgium representative on his lucid and helpful introduction of the draft articles under consideration.

His delegation had noted that the aim of the provision on the applicable law was to restore the status quo ante, which could not properly be done without taking fully into account the relationship between the damage caused and the social environment of the victim. It had also been emphasized that the rule in question was intended to be victim-oriented. He shared the Lebanese representative's views on the applicable law in that respect. He still had some doubts, however, whether the rights of the victim would be fully safeguarded by the rule in question.

Several delegations had difficulties concerning the provision that the claims commission would render a recommendatory award unless the parties agreed that its decisi should be final and binding. His delegation would support the suggestion for an addition to the effect that the parties to the convention undertook to implement its provisions promptly and in good faith. Its views in that respect were similar to those of the Canadian, Mexican and United Kingdom delegations. A similar provision had been incorporated in certain other international documents and such an addition would have a decisive influence on the decision his delegation would be instructed to take on the draft convention as a whole.

Mr. ROBERTSON (Canada), replying to the United States representative, said tha in his statement he had referred to the fact that the representatives of the two major space Powers had been able to achieve a meeting of minds about the sort of texts which their respective Governments could accept and later in his statement had said that it wa those two Powers that were most likely to cause damage through their activities. That w the considered view of the Canadian authorities and it was because they attached great importance to victim-orientation that they considered those facts to be significant.

Canada was already a space Power, though by no means a major one, and recognized that minor space Powers, which were more likely to be victims than States causing damage nevertheless had responsibilities as space Powers which would increase in the future. Polarization between space Powers and victim States was not intended to be a division of good and bad. Canada had rather attempted to assess judicially the quarters from which most damage was likely to emanate in the future.

The meeting rose at 12.15 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-FOURTH MEETING

held on Thursday, 24 June 1971, 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.105/85; A/AC.105/C.2/L.79) (continued)

Mr. CASSESE (Italy) congratulated the Belgian, Brazilian and Hungarian representatives on their constructive effort in drawing up the draft articles XIV to XXII of the draft convention on international liability for damage caused by space objects (A/AC.105/C.2/L.79), which could form a useful basis for discussion and negotiation. His delegation was particularly grateful to the Belgian representative for his clear introduction of the draft articles (162nd meeting). While the proposal did not entirely satisfy the requirement that the maximum protection should be given to victims of damage caused by objects launched into outer space, his delegation would try to reduce its objections to the minimum, in a constructive spirit and with a view to reaching a generally acceptable compromise.

With regard to the applicable law, his delegation had declared itself in favour of reference to international law, which comprised the sources referred to in Article 38 of the Statute of the International Court of Justice, namely international customary law, conventional law and the general principles of law recognized by States. It had added that it did not consider it necessary at present to refer explicitly in the draft convention on liability to the lex loci delicti commissi. The reference to the principles of justice and equity in draft article XXII would enable the claims commission to take into account the legal system in force in the State in which the damage had occurred, such reference obviously being in full conformity with the requirements of justice and equity and with the need to serve fairly the interests of the victim.

With regard to the nature and extent of compensation, his delegation had expressed the hope that full compensation would be made in accordance with operative paragraph 5 of General Assembly resolution 2733 B (XXV). The delegations of Belgium, Brazil and Hungary had substantially met his delegation's point in that respect in their draft article XXII. The Belgian representative had stated in his introduction that the text was intended to comply with the spirit of General Assembly resolution 2733 B (XXV) and that article XXII was based on the concept of restitutio in integrum of Roman law.

With regard to the settlement of disputes, his delegation was glad to note that the draft offered a number of procedural safeguards: the claims commission would not be a

parity commission, it could be established on the request of either party, its decisions and awards would be made by majority vote except when it was composed of only one member, it would decide on the merits of the claim for compensation and determine the amount of compensation payable, if any, and it would state the reasons for its decision or award and make its findings public. Those procedural safeguards were intended to ensure that there should be no undue delay in the establishment of the commission and that its work should be as impartial and objective as possible. His delegation therefore supported the provisions in question.

It was disappointed, however, with the part of draft article XX which provided that the commission's decision should be final and binding only if the parties had so agreed. His delegation had emphasized on several occasions that the decisions of such a body should be mandatory. Article 10 of the text which his delegation had proposed in 1969 at the eighth session of the Legal Sub-Committee[1/] was sufficient evidence of that. Nevertheless, in a spirit of conciliation and with a view to reaching a generally acceptable solution, his delegation was prepared to join in seeking a formula that might satisfy the sponsors of the draft articles (A/AC.105/C.2/L.79) and the delegations that would have wished the commission's decisions to be mandatory. To that end, his delegation would support the Lebanese (162nd meeting) and Swedish (163rd meeting) representatives' proposal for the insertion of a provision setting forth the principle of good faith and adding that the parties should take fully into account the decisions or awards of the claims commission. Reference to good faith was not superfluous in an international treaty. The authors of the Charter of the United Nations had seen fit to affirm that principle in Article 2 (2) and the Lebanese and Swedish representatives no doubt felt that reference to it would, by moral pressure, induce States responsible for damage to compensate the victims promptly and in full. That suggestion could be accepted in principle because it would not change the recommendatory nature of the awards of the commission when the parties did not agree that they should be final and binding. It would, moreover, be entirely compatible with the spirit of the Belgian, Brazilian and Hungarian proposal. In introducing that proposal, the Belgian representative had stated that from the political and moral point of view the substance of article XX established

1/ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No.21 (A/7621) [document A/AC.105/C.2/L.40/Rev.1], p.47.

an international obligation which could hardly be disregarded. Moreover, as the United Kingdom representative had pointed out at the 163rd meeting, the entire complex procedure envisaged in the draft text was based logically on the premise that States participating in it would do so with full confidence in the impartial nature of the commission and would abide fully by its conclusions. Reference to good faith would thus only make explicit what was already implicit in the procedure for the settlement of disputes.

His delegation would support the proposal to delete the provision for the establishment of an inquiry commission, for the reasons given by the Lebanese, Argentine, Canadian, French and Moroccan representatives, as the French and Romanian representatives' proposal for the insertion of a clause providing for revision of the convention (162nd and 163rd meetings). He hoped that the Sub-Committee would succeed in finding a compromise solution acceptable to all States. His delegation would, however, reserve its position if the Sub-Committee was regrettably unable to achieve fully satisfactory results.

Mr. NETTEL (Austria) said that the questions of the applicable law and the procedures for the settlement of claims were the two chief matters on which the interest of the Sub-Committee was centred. A number of proposals made on those matters over the years had been considered but had not been found to offer the necessary basis for reaching a consensus. The proposal now before the Sub-Committee, which was the result of extensive consultations, appeared to command the support of the major space Powers and of a number of other members.

Many delegations, including his own, which had strongly supported the concept of full compensation and of a binding decision by the claims commission found that the compromise text fell short of their expectations. Certain proposals had been made, particularly with regard to the applicable law, with a view to making it possible for States that were unable to accept the compromise at least not to oppose it, but those proposals had not been well received by the States which considered the Belgian, Brazilian and Hungarian joint proposal to be a way to break the deadlock and they had rejected most of the ideas advanced to that end.

Unless an acceptable compromise could be found within the next few days, the Sub-Committee would be unable to submit a draft convention on liability to its parent body for perhaps ten or twenty years to come.

He was reluctant to believe that Member States were unwilling to find a common solution to so important a problem. Although delegations that were not satisfied with the compromise had made many concessions, particularly concerning the provisions for the settlement of disputes, its sponsors and supporting delegations appeared to be adamant on the question of the applicable law. Compromise always meant taking a little and giving a little. Members of the group of States still hesitant to accept the compromise could not be convinced that the new formula was the only possible solution unless they could be shown that the ideas they advocated had found their way into the text of the convention. That did not necessarily mean that the text of article XXII had to be amended, but some provision should be found to satisfy those delegations that still had real difficulties.

Mr. KARASSIMEONOV (Bulgaria) recalled that at the 157th meeting he had stated that his delegation was optimistic about the possibility of the draft convention on liability being completed at the present session of the Legal Sub-Committee. He was now happy to note that such optimism had been justified, for the delegations of Belgium, Brazil and Hungary had submitted a proposal for the solution of the two outstanding problems: applicable law and settlement of claims. While thanking those three delegations for the proposal they had submitted, he pointed out that it was a compromise that had been made possible thanks to the political will of all the States represented in the Legal Sub-Committee. At the present time, circumstances were such that the majority of the States represented in the Legal Sub-Committee or in the United Nations were among the potential victims of damage caused by objects launched into outer space, but scientific progress and increasing international co-operation in the field of space activities could soon change that situation. It was possible that in the not too distant future the majority of States would be both among the potential victims and among those whose space activities could cause an accident on earth. He felt that one of the reasons that had made it possible to reach a compromise was that most of the delegations were convinced that the Legal Sub-Committee was drafting an international convention which was not simply in the interests of one group of States but in the interests of all mankind.

The Bulgarian delegation was of the opinion that the proposal by Belgium, Brazil and Hungary provided a good basis for the solution of the two outstanding problems. The Bulgarian delegation had had its own ideas on the questions of applicable law and

settlement of claims, reflected in the documents that it had submitted to the Legal Sub-Committee (see A/AC.105/85, annex I, p.4, documents A/AC.105/C.2/L.75 and A/AC.105/C.2/L.76). Consequently it was not altogether satisfied with the text submitted by Belgium, Brazil and Hungary, but it agreed with the representative of Belgium that the compromise proposal was delicately balanced and that it sought to cover all the legal possibilities.

With regard to the question of applicable law, the Bulgarian delegation had always maintained that the compensation which the respondent State would be liable to pay for damage should be determined in accordance with international law, or if necessary on the basis of any applicable law and any legal system which was acceptable to the two parties, and that the convention on liability should ensure the payment of a full measure of compensation for damage. It noted that those two points were reflected in the text submitted by Belgium, Brazil and Hungary.

With regard to the "principles of justice and equity" included in the proposal, the Bulgarian delegation considered that concept to be secondary and complementary to the principles of international law in the determination of the measure of compensation.

With regard to the text concerning the settlement of claims, his delegation had always been in favour of a procedure for negotiations, including arbitration if necessary, which would exhaust all possibilities in order to enable the parties to reach an equitable settlement. It therefore considered that the negotiation stage was the most important in the procedure for the settlement of claims. Negotiations could take place in various ways; they might, for example, result in the establishment of an inquiry commission with the participation of specialists and experts from both sides. The text submitted on that point was satisfactory to his delegation, which was, however, prepared to consider other suggestions made in the Working Group. It would also consider the suggestion that a date should be set for the termination of diplomatic negotiations; it was of the opinion that that would emphasize the important role of diplomatic negotiations.

Mr. de SOUZA e SILVA (Brazil) said that, after years of discussion and negotiation, the Legal Sub-Committee had now, for the first time, come close to the possibility of making a step forward in the direction of extending the field of application of the rules of international law to space activities.

The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, had been

completed in 1966. One year later, in spite of reluctance on the part of some non-space Powers, the General Assembly had adopted the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects launched into Outer Space. The Government of Brazil, like a number of other Governments, had decided not to sign that Agreement - which was primarily aimed at providing assistance to astronauts - until another legal instrument, aimed at providing compensation for damages caused by objects launched into outer space, had been adopted. The Brazilian position was very clear: just as the Agreement on the Rescue of Astronauts would benefit the space Powers, a convention on liability would protect the rights and interests of the non-space Powers.

For the past three years, negotiations on the convention on liability had been unsuccessful. Differences of opinion on national legal systems or the lack of political will on the part of the space Powers had been used to explain the slow progress made in the Legal Sub-Committee. Two main problems, namely, applicable law and the settlement of claims, had appeared to defy solution. On the first, opinion had been mainly divided between the States which favoured the application of the law of the launching State and those which favoured the application of the law of the State where the damage occurred. The Government of Brazil had strongly supported the latter position, namely, the principle of lex loci delicti commissi, Brazil being a large country with different levels of social and economic development. When the Brazilian delegation had come to the conclusion that its point of view would not prevail, it had agreed to co-sponsor a proposal that embodied the principle of a full measure of compensation. It did not find that formula fully satisfactory, but it had accepted it in a spirit of compromise because it was essential to have some rule of law for the compensation of damage caused by space objects.

The second problem, that of settlement of claims, also seemed to be insoluble. During the discussions held in 1969, those who had favoured the exclusive character of the binding award and those who had favoured the exclusive character of the recommendatory award of the claims commission seemed to have reached a deadlock. The delegation of Brazil had then submitted the following proposal: "The award of the commission shall be final and binding if the Parties have so decided, otherwise the commission will render a final and recommendatory award".[2/] That proposal had met with

2/ Ibid., Supplement No.21A (A/7621/Add.1), para.8 (h)(i).

a cool reception. The supporters of each of the conflicting views had still hoped to prevail in the course of negotiations. At the present session, however, all delegations realized that if either point of view had prevailed the resulting convention on liability would have been meaningless as far as the participation of some States was concerned.

With regard to the proposal submitted jointly by his delegation and those of Belgium and Hungary, he wished to reply to the delegations which had expressed their dissatisfaction with the final shape that the convention on liability would take if that proposal was adopted. Year after year, new and astonishing exploits in outer space were taking place. The rules of law which the Legal Sub-Committee was called upon to propose should follow those exploits, not precede them, but progress in creating rules of law was slow. He thought it advisable to go further in the exploration of outer space before laying down premature rules to govern space activities. For that reason, his delegation commended the proposal that a conference of the Contracting Parties should be convened a certain time after the adoption of the convention on liability. Experience and practice would then show whether any mistakes had been made.

The meeting rose at 11.30 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-FIFTH MEETING
held on Friday, 25 June 1971, 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.105/85; PUOS/C.2/WG(X)/L.2 and PUOS/C.2/WG(X)/L.4)

Mr. COCCA (Argentina) said that the reference to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies in the second preambular paragraph of the draft convention on liability (see A/AC.105/85, p.6) was not sufficient, since it merely recalled the Treaty instead of referring to it as the basic legal instrument. There should be a specific reference to Articles VI and VII of that Treaty, which constituted new developments in space law with regard to the question of liability for damage caused by objects launched into outer space. A clear reference to the liability of the State for space activities carried out by governmental agencies or non-governmental entities should appear in article 1 (ibid., p.7) or at least in the preamble.

The third preambular paragraph of the draft convention differed from the Treaty, Article VI of which simply spoke of international organizations, and not of international intergovernmental organizations. By departing from the text of the Outer Space Treaty, for no apparent reason, the draft convention limited the liability of international organizations to intergovernmental international organizations, a limitation which did not give sufficient consideration to the rights of victims. The limitation appeared even more clearly in relation to article VIII, paragraph 1, of the draft Treaty Concerning the Moon submitted by the Union of Soviet Socialist Republics (A/8391), which in referring to international organizations spoke of intergovernmental organizations and non-governmental organizations. It was obvious that the lack of any reference to non-governmental international organizations in the draft convention on liability was simply an oversight.

The words "to ensure, in particular, prompt and equitable compensation for victims of such damage" in the fourth preambular paragraph should be amended to read "which would ensure the payment of a full measure of compensation to victims and effective procedures which would lead to the prompt and equitable settlement of claims", in order to bring that paragraph into line with operative paragraph 5 of General Assembly resolution 2733 B (XXV).

Article I of the draft convention on liability would gain in clarity if it opened with the words "For the purposes of this Convention, and with regard to Article VII of the Outer Space Treaty". It should also include a sentence referring to the provisions of Article VI of the Outer Space Treaty, since the space activities referred to in that article did not seem to be covered in any way by the draft convention as it stood or by the reference in the preamble to the instrument which embodied the basic principle of the liability of States and international organizations.

Article VII of the draft convention, which was confirmed by paragraph 2 of Article IX (ibid., p.9) ran counter to the principle of full measure of compensation and affected the principle of equality by referring to the nationality of the victim.

With regard to international organizations, his delegation had repeatedly stated that, in the matter of space activities, the individual action of a State was the exception, since international co-operation entailed the joint activity of international organizations. Consequently, his delegation would support any provision that would embody that idea.

With regard to the final clauses, his delegation was of the opinion that the number of five States required to deposit their instrument of ratification was not sufficient for the entry into force of the convention on liability, which would be submitted to an Assembly of 127 States. Five States was less than 4 per cent of the total membership of the United Nations, and the percentage could be even smaller in view of the fact that the convention on liability would be open for signature to all States, whether or not they were Members of the United Nations or its specialized agencies. In that respect, it was encouraging to note that there was general agreement that it was not necessary to count the Depository Governments among the minimum number of States required for the entry into force of the convention. In addition to running counter to the principle of the sovereign equality of States, such a provision was tantamount to a kind of veto.

His delegation had been glad to note during the discussions the tendency on the part of the depositary governments to revert to the practice of the United Nations to the effect that the Secretary-General of the United Nations should be the single depositary of treaties. It hoped that the procedure that had been followed up to the present would receive more equitable and appropriate treatment in succeeding international instruments.

Mr. AL ARBI KHATTABI (Morocco) said that his delegation's proposal that some provision should be made in the draft convention for the possibility of rendering assistance to a State suffering damage was now before the Sub-Committee as a new draft article (PUOS/C.2/WG(X)/L.4). In making the proposal, his delegation had had in mind particularly the needs of States that were devoting all their meagre resources to economic and social development. It had also taken into account the rapid developments taking place in space technology.

The proposal was intended to provide a balance between the convention on liability and the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space.

His delegation would support the Australian proposal as amended by Belgium (PUOS/C.2/WG(X)/L.2). It would also support the Indian proposal in the same document but would like some explanation of paragraph 2: namely, whether in the event of the General Assembly deciding that the convention required revision, a conference of the Contracting Parties would be convened in the absence of a request by one-third of their number and the concurrence of the majority.

Mr. TSUTSUMI (Japan) said that it should be made clear in paragraph 2 of the Indian proposal whether the holding of the conference was to be limited to within the ten-year period or whether it could be held at any time thereafter.

Mr. CHARVET (France) said that his delegation approved the principle underlying the Moroccan draft article (PUOS/C.2/WG(X)/L.4). The question was a humanitarian one for which it was appropriate to make provision. Delegations would, of course, have to seek instructions from their Governments before making a final decision but such decision could no doubt be reached before the end of the present session.

Mr. de SOUZA e SILVA (Brazil) said that his delegation, too, considered the Moroccan proposal a useful and humanitarian one, a provision, moreover, that would give the convention the sense of an instrument of co-operation rather than of one for the mere settlement of claims. Even if the matter could not be settled at the current session, he hoped it would be raised again at the earliest appropriate time.

Mr. MENZIES (Australia) said that his delegation, too, was sympathetic to the Moroccan proposal, with two provisos: firstly, such assistance should perhaps be limited to cases of damage presenting serious and large-scale danger; secondly, it might be made clear that acceptance of the assistance envisaged would not prejudice the right of the receiving State to compensation under the convention.

The meaning of the phrase "vital centres" might need some clarification.

The CHAIRMAN said that any amendments to the two documents under consideration, which were Working Group documents, could most appropriately be made in the Working Group itself.

The meeting rose at 11.25 a.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-SIXTH MEETING

held on Tuesday, 29 June 1971, at 12.5 p.m.

Chairman: Mr. WIZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/85; A/AC.105/C.2/L.79; PUOS/C.2/DG(X)/2; PUOS/C.2/WG(X)/L.4/Rev.1; (continued)

The CHAIRMAN said that the Moroccan proposal (PUOS/C.2/WG(X)/L.4/Rev.1) as approved by the Working Group at its meeting on 29 June 1971 was to be incorporated as article XXI in the text of the draft convention on international liability appearing in document PUOS/C.2/DG(X)/2. If he heard no objection, he would take it that the Legal Sub-Committee approved the text of the draft convention, as supplemented by the Moroccan proposal.

It was so decided.

The CHAIRMAN said that the Legal Sub-Committee's approval of the draft convention represented an important stage in its eight years of deliberations. The draft convention was not perfect, since it had had to take into account many points of views and legal schools of thought represented on the Sub-Committee, but it was the first convention which had been drawn up and approved at a regular session of the Sub-Committee. He thanked all representatives for their efforts, in particular the sponsors of the various drafts submitted, and said that it was precisely the collective will of all delegations that had enabled the Sub-Committee to fulfil the mandate entrusted to it by the General Assembly.

Mr. ROBERTSON (Canada) said that, now that the Sub-Committee had decided to forward the text of the draft convention to the Committee on the Peaceful Uses of Outer Space for further consideration, he would like to place on record the views of the Canadian authorities on that text.

The essence of the Canadian position continued to be that, because the text did not incorporate provisions for a binding third-party settlement of claims, the Canadian delegation was unable to approve the substance of the draft convention as a whole and must reserve all its rights in that regard. It was only because the Sub-Committee worked by consensus that his delegation had raised no formal objection when that decision had been taken, for it had not wanted to stand in the way of the Sub-Committee's desire to transmit the text to the main Committee. It should be clearly understood, however, that the fact that it had not raised any formal objection should not be construed as having in any sense implied its approval of the substance of the draft convention. His delegation wished its position on the matter to be fully reflected in the report of the Legal Sub-Committee on its tenth session.

Mr. OKAWA (Japan) said that the fact that the majority of the members of the Sub-Committee had agreed on the text of a draft convention represented a remarkable achievement, for it had taken many years of hard work to achieve compromise solutions for a number of difficult problems. He expressed his delegation's appreciation to all the representatives who had worked so constructively in the final stages of the deliberations, and particularly to the Chairman whose excellent guidance had helped to make that achievement possible.

His delegation was unable, however, to welcome the achievement without some reservations, for it still considered that the draft convention had shortcomings in respect of an important point. Space activities were so hazardous that firmer protection was needed against possible damage. Without the assurance of final and binding decisions by the claims commission, his delegation could not but be seriously concerned that the Sub-Committee was not providing an adequate framework for satisfactory compensation for victims.

His delegation had seen fit to register its dissatisfaction and concern because it was only fair that the people of the world should know the exact nature of the draft convention. It hoped that its voice would serve as a warning and that greater attention would consequently be focused on the actual implementation of the convention so that, if any damage actually occurred, the vigilant attention of the members of the international community would induce the launching State to carry out its obligations under the convention. His delegation also hoped that the shortcomings of the convention would be found to relate only to form and that, in the actual application of the instrument - if and when it entered into force - his delegation's concern would prove to have been unnecessary.

His delegation had not raised any objection to the transmittal of the draft convention to the Outer Space Committee, because it did not want to hinder the wishes of a decisive majority of the Sub-Committee. It also recognized that the convention, even in its present form, had many commendable points. He asked that his delegation's views should be properly reflected in the Sub-Committee's report to the main Committee.

Mr. CHAMMAS (Lebanon) said that although the draft convention fell short of his delegation's expectations, it was a landmark in international law and international co-operation, and represented a position with which his delegation could agree at the present stage. His delegation had therefore whole-heartedly approved of the draft convention in the hope that it would serve as a basis for the future elaboration of principles in the fields of outer space and space law.

Although the convention was the result of the collective efforts of many representatives, his delegation considered that the Chairman had contributed more than any other representative. It therefore formally proposed that the Chairman should personally submit the draft convention on liability to the Committee on the Peaceful Uses of Outer Space at its session in September 1971.

Mr. PERSSON (Sweden) said that the significance of the draft convention lay in the fact that it served as the long-awaited complement to the two other international instruments relating to space activities, namely the 1967 Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and the 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. That was no mean achievement, in view of the fact that the United Nations had embarked upon the regulation of a totally new field of international law. It was obvious that legal instruments of that nature bore the imprint of compromises, since the most varied interests of the individual States has had to be reconciled in order to arrive at acceptable texts.

His delegation hoped that, once the draft convention had been finally adopted and had come into force, it would serve its purpose well. It was apparent from the discussions in the Sub-Committee that several delegations, including his own, had not been completely satisfied with the wording of some of the articles. For instance, throughout the consideration of the question of applicable law his delegation had maintained that a more precise wording of the relevant article would have been in the best interest of the international community. Reference to a national law, whether the law of the place where the damage occurred or the law of the claimant State, would have given more substance to the rule of applicable law.

As far as the provisions of the other controversial issue - the settlement of claims - were concerned, it was with regret that his delegation had to state its disappointment. Sweden had over the years been a staunch champion of the settlement of disputes among States by means of international arbitration or court proceedings. His delegation considered that international law had of late evolved in that direction through the recent adoption by the international community of the Convention on the Law of Treaties. It was convinced that the majority of States Members of the United Nations desired an automatically available machinery resulting in a final verdict binding on all the parties. That would have been preferable, since all the members

of the Sub-Committee were agreed on the presentation of a victim-oriented convention under which a certain sum of money was to be fixed as compensation for personal injury or property damage. The humanitarian aspect of the convention was its central theme and involved no political elements.

His delegation had not opposed the adoption of a text which was acceptable to the leading space Powers and commanded the support of a majority of members of the Sub-Committee. It would now be the duty of the parent Committee to examine the document and submit it to the General Assembly, which would then have to consider whether the mandate it had given to the Outer Space Committee in resolution 2733 B (XXV) had been correctly interpreted.

It had not been easy for his delegation to take the position he had described and he hoped that it would be regarded as proof of the same spirit of co-operation as had been shown by all other delegations. His delegation hoped that the report of the Sub-Committee would indicate that the draft convention in its present form represented the view of the majority of the members of the Sub-Committee and that the views of the minority, for which some of the provisions had presented certain difficulties, would be recorded in the report.

Mr. MENZIES (Australia) said that his delegation had always contended that there were at least two essential conditions of a satisfactory convention on liability. Firstly, it should be able to ensure the payment of a full measure of compensation to the victims of damage caused by space objects. Secondly, it should be capable of gaining the adherence of the two main space Powers. The basic problem in the Legal Sub-Committee had been to draft a convention that would satisfy both those requirements.

Early in the present session his delegation had been happy to learn that the United States of America and the Union of Soviet Socialist Republics had been able to agree on a package arrangement with regard to the four outstanding issues, namely, the questions of applicable law, settlement of claims, international organizations and the final clauses. Although that agreement met the second of the two requirements that he had mentioned, namely, that the draft convention should have the support of the two main space Powers, his delegation had felt that the agreement did not go far enough with regard to the first requirement, namely, that the convention should be genuinely victim-oriented. His delegation had therefore taken the view that the Legal Sub-Committee should try to see what improvements could be made to the package deal, in an effort to produce a convention that would be more widely acceptable, from the standpoint of substance, to the members of the Legal Sub-Committee and to all the States Members of the United Nations.

His delegation considered that the efforts to attain that objective had been at least partly successful and that, as a result, the draft convention that had been approved by the Legal Sub-Committee, although still not fully satisfactory, was a somewhat better instrument than the original package deal would have constituted.

In his statement at the 156th meeting, he had said that the General Assembly, in resolution 2733 B (XXV), had laid down useful guidelines for the future work of the Committee on the Peaceful Uses of Outer Space on the liability convention and that agreement upon a convention that accorded with the spirit of that resolution would enable the Legal Sub-Committee to discharge its responsibility to the victims of damage caused by space objects. His delegation had accordingly, wanted to see in the draft convention some reflection of the spirit of General Assembly resolution 2733 B (XXV) and it considered that that had now been achieved through the amendment of the fourth preambular paragraph, which should be read in conjunction with article XII dealing with applicable law. Although article XII represented a compromise that had been reached with a great deal of difficulty, a certain lack of clarity must be noted, and his delegation would have preferred a somewhat more explicit statement of the principles upon which compensation should be determined. In the discussion of the convention, however, several delegations had made useful interpretative statements on the question of applicable law, particularly those of Belgium, the United Kingdom, Argentina and Italy.

The articles on the settlement of claims represented a painfully negotiated compromise in another area where it had been difficult to reach agreement. The effect of those articles was that the claims commission would render a final and recommendatory award unless the parties to a dispute had been able to agree to the process of binding arbitration. His delegation deeply regretted that it had not been possible to include in the convention on liability a provision that would require the parties to a dispute to accept binding settlement. It was of the opinion that the acceptance of even the possibility that awards would not be binding constituted a major concession to the Powers that were active in launching objects into outer space. It understood, however, the argument that, if there was to be any convention at all, it would probably be necessary to accept this fact and settle for something a little less than binding arbitration.

As the draft convention stood, the decision or award of the claims commission would be made public and a certified copy would be sent to the Secretary-General of the United Nations, as well as to the parties to the dispute. The parties would be obliged to consider in good faith the findings of the claims commission. In the

light of the circumstances in which the draft convention had been negotiated, the international community had the right to expect that the parties would take seriously the obligation to consider the commission's findings in good faith.

The Australian delegation was glad that the draft convention included an article dealing with international intergovernmental organizations. The activities of some of those bodies in outer space were of increasing significance and it was reasonable to expect that those activities would continue. It was, therefore a matter of common sense that the draft convention on liability should apply to international intergovernmental organizations with interests in outer space, as well as to States. If it were not to do so, it would be incomplete.

The Australian delegation also considered that in a field where technology was advancing so rapidly it was reasonable to include an article that would facilitate a review of the convention if that was desirable. It was therefore pleased to support the inclusion of article XXV in the draft convention.

The Australian delegation would have preferred that an increased number of ratifications should be required to bring the convention into force, so as to ensure a wider acceptance by States not engaged in activities in outer space. It would have considered ten ratifications more appropriate than five.

The draft convention on liability was not perfect, but perfection was probably not attainable in the complex field of space law. The Australian delegation had concluded that the draft convention achieved useful clarification of international law in an important area, and for that reason it was prepared to agree that the Legal Sub-Committee should submit the text of the draft convention to the main Committee for consideration.

Mr. KRISHNAN (India) said that his delegation considered that the draft convention embodied a satisfactory set of rules on liability for damage caused by objects launched into outer space. It was regrettable that the draft convention was based on the principle of good faith, but perhaps that reflected a concession to reality within the context of present-day international relations.

His delegation welcomed, in particular, the following principles in the draft convention: the principle of absolute liability, the principle of no limit on liability, the principle that the convention should apply to all types of damage, including nuclear damage, the principle of joint and several liability of launching States and the principle that the convention should be kept under review.

INDIA

With regard to the questions of applicable law and settlement of claims, his delegation was grateful to the delegations of Belgium, Brazil and Hungary for their joint proposal on those two issues (A/AC.105/C.2/L.79). It was perhaps incorrect to say that international law did not provide principles relevant to the assessment of compensation for damage caused by space objects, but in his delegation's opinion the principles of positive law were not adequate to restore the victim to the condition which would have existed if the damage had not occurred. For that reason, it had always advocated the need to supplement the principles of international law by the law of the place where the damage occurred. Article XII of the draft convention did not refer explicitly to the law of the place where the damage occurred but it referred, inter alia, to the principles of justice and equity. In determining those principles, the law of the place where the damage occurred would have to be taken into account. His delegation considered that, read in conjunction with the fourth preambular paragraph of the draft convention, article XII offered a firm foundation for ensuring that victims of damage caused by space objects would receive justice.

His delegation, which attached great importance to the provisions relating to settlement of claims, was gratified to note that the provisions of the draft convention on that issue were to a large extent modelled on the Indian proposals made either at previous sessions or at the present session of the Legal Sub-Committee. The original Indian proposal had rightly maintained that the claims commission should be competent to deliver a final and binding decision, and the Indian delegation continued to maintain that such was the only correct approach. This approach represented the viewpoint of a vast majority of the Members of the United Nations as could be seen from General Assembly resolution 2733 (XXV) of 22 January 1971. Having found, however, that it would be practically impossible to reach agreement on the basis of binding settlement of claims, his delegation had proposed the incorporation of good faith obligations into the draft convention, as a minimum requirement. The compromise in article XIX was based on the premise that the concept of good faith lay at the root of all international obligations. Action in disregard of this concept would give rise to international responsibility. The provision that the parties to a dispute should consider in good faith the final and recommendatory award of the claims commission offered a reasonable guarantee that the launching State - or, for that matter, the claimant State - would not seek to ignore the award of the claims commission in an arbitrary manner.

Article XX relating to the expenses in regard to the claims commission introduced a new element, which his delegation welcomed. It would be unjust to require the claimant State to share the expenses equally with the launching State. Developing countries, in particular, would find it difficult to pay the large amounts of money - mostly in foreign currency - involved in international litigation. His delegation was confident that, in apportioning the expenses, the claims commission would bear in mind such factors as the nature of the case of the claimant State and its general economic position.

Article XIX required that a certified copy of the decision or award of the claims commission should be sent to the Secretary-General of the United Nations. His delegation had suggested that provision for a number of reasons. It was only proper that the Secretary-General should be kept informed of the outcome of the claims commission's deliberations. Notification of the award to the Secretary-General would also help to draw the attention of the States Members of the United Nations to the practical application of the convention on liability.

The draft convention on liability was by no means perfect, nor was it wholly satisfactory. His delegation had always realized, however, that viable solutions to problems in the area with which the Legal Sub-Committee was concerned could not be reached without the agreement of the main space Powers. It had therefore made important concessions to accommodate the point of view of those Powers, but it was not unmindful of the fact that they too had yielded on many vital points. It was to be hoped that the spirit of conciliation and good faith in which the draft convention had been negotiated would endure, and that the convention would help to promote the rule of law in the area that it sought to cover.

His delegation agreed with the Lebanese representative's proposal that the Chairman of the Legal Sub-Committee should be requested to submit the draft convention on liability to the Committee on the Peaceful Uses of Outer Space.

Mr. REIS (United States of America) said that he proposed to give his delegation's views on the draft convention on liability at a later meeting. He wished to state forthwith, however, that his delegation warmly supported the Lebanese representative's proposal that the Chairman of the Legal Sub-Committee should submit the draft convention on liability to the main Committee in person.

Miss CHEN (Secretary of the Legal Sub-Committee), speaking at the invitation of the Chairman, said that, according to the rules of procedure of the General Assembly, an estimate of the financial implications of the Lebanese representative's proposal was required before any decision could be taken. She would inform the Sub-Committee as soon as she had received that estimate.

The meeting rose at 1 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-SEVENTH MEETING

held on Tuesday 29 June 1971, at 3.30 p.m.

Chairman: Mr. WYZNER Poland

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/85; A/AC.105/C.2/L.79; PUOS/C.2/DG(X)/2) (continued)

Mr. CAPOTORTI (Italy) expressed his satisfaction with the positive results which the Legal Sub-Committee had at last obtained in completing the draft convention and which would not have been achieved but for the joint efforts and good will of all its members, under the wise guidance of the Chairman.

The draft convention had many good points. It established the principle of the liability of the launching State and the principle of solidarity in the matter of liability, and it was satisfactory in so far as international organizations were concerned. Article XII on the applicable law was substantially compatible with the position of the Italian delegation, in the light of the statements by a number of delegations on the way in which it should be interpreted. The provision should be considered in close connexion with the fourth preambular paragraph of the draft convention, which confirmed the principle of prompt payment of a full and equitable measure of compensation to victims, and it was all the more important in that it responded to the wishes of the General Assembly as expressed in operative paragraph 5 of resolution 2733B (XXV).

Most of the articles on the procedure for settlement of claims were acceptable to his delegation, since all the safeguards that it considered indispensable with regard to the composition of the claims commission, its mode of establishment, the time-limit of a year within which its decisions were to be given and the publicity that should be given to its decisions had been duly incorporated in the text.

There was one very important point, however, which his delegation would have liked to see settled in a different way; it felt, in common with other delegations, that it would have been preferable to give the awards of the commission binding force. That would not have prejudiced the sovereignty of States and would have been compatible with the principle of full compensation. His delegation hoped, however, that should the occasion arise, the parties to a dispute would agree to give the decision of the commission binding force. It was convinced that, even if the award rendered was merely recommendatory, the parties would be morally and politically obliged to abide by it. Moreover, under article XIX, paragraph 2, the parties were obliged to consider in good faith the final and recommendatory awards of the commission. His delegation took that to mean that the obligation to pay compensation should be fulfilled on the basis of the award rendered by the Commission and in conformity with it.

Mr. EL REEDY (United Arab Republic) said that his delegation considered that the final text of the draft convention represented the maximum that delegations could possibly accept at the present stage, and that, in that sense, it was a remarkable achievement to the credit of the Legal Sub-Committee. He supported the proposal by the representative of Lebanon that the Chairman of the Legal Sub-Committee, to whom that achievement was partly due, should submit the draft convention to the Committee on the Peaceful Uses of Outer Space in person.

Perhaps the greatest virtue of the draft convention lay in the fact that it had settled a number of outstanding issues of principle. With regard to the question of applicable law, in particular, article XII embodied the principle that compensation for damage should be such as to restore the person, natural or juridical, State or international organization on whose behalf the claim was presented to the condition which would have existed if the damage had not occurred. That provision, together with article XXI, was a sound foundation for adequate compensation and assistance. It was also satisfactory to note that the draft convention embodied the principle of absolute liability and joint and several liability.

There could be no doubt, however, that the draft convention was imperfect, but its shortcomings were due to the fact that the Legal Sub-Committee was powerless in the face of political realities and the interplay of forces both on earth and in outer space, as also to the fact that international law was still characterized by gaps and by a lack of codification in areas of vital importance. In addition, international law still reflected concepts and premises which belonged to the past, so that it was unable to provide solutions to problems that arose in the space age.

Furthermore, international law was still a self-regulatory mechanism operating in a decentralized community. Whether because of its content, which was unsatisfactory in various areas, or because of certain dominant interpretations, many States, from all geographical areas and of all ideological tendencies, had been compelled to guard closely their national sovereignty. The discussions in the Legal Sub-Committee had shown that there was a limit to what jurists could do, since States were not clear about how they should act within a system of international relations that was still fragile and improvised. It was thus inevitable that the Legal Sub-Committee should finally fall back once again on the principle of good faith.

The most important aspect of the draft convention, or, for that matter, of any international instrument establishing a set of legal rules, was the implementation of

the rules that had been laid down. All too often agreements considered watertight and foolproof had been seen to collapse like a house of cards under the pressure of actual events. Victims then had no other recourse than to appeal to international public opinion or, in other words, to the good will of all peoples. It was to be hoped that the draft convention on liability would not be subject to the same fate and that the space Powers would fully carry out their obligations under the convention.

With regard to the question of application, he agreed with the opinion expressed by the representative of India at the 166th meeting concerning article XX relating to the expenses in regard to the claims commission. The commission should take into account the situation of a claimant State which was a developing country, because such a country might very well find it impossible to bear such expenses. He hoped that in such cases the launching State would take the necessary action.

Mr. STRUCKA (Czechoslovakia) paid a tribute to the delegations of Belgium, Hungary, Brazil and India, whose proposals concerning draft articles XIII to XXII had enabled the Legal Sub-Committee to break the deadlock and to carry out the mandate entrusted to it in General Assembly resolution 2733 B (XXV). He emphasized that success would not have been possible but for the good will of all the delegations taking part in the work of the Legal Sub-Committee which had thus taken advantage of a favourable political climate.

The final text did not perhaps correspond completely to the Czechoslovak delegation's conception of an ideal convention on liability, but the text as a whole, and in particular the provisions concerning applicable law and settlement of claims, should make it possible for a fully satisfactory instrument to be adopted at a later date.

He supported the proposal that the Chairman of the Legal Sub-Committee should personally submit the draft convention to the Committee on the Peaceful Uses of Outer Space.

Mr. COCCA (Argentina) said that he would state what, in his opinion, were the truly positive points in the draft convention which gave it validity.

The draft convention embodied the principle of absolute liability. It provided for the liability of international organizations and defined their legal personality, their unlimited liability and the principle of full measure of compensation for victims.

The draft convention recognized the actual and potential rights of the victim in connexion with all kinds of damage, including nuclear damage. Some years earlier it had been decided that the field of application of the convention on liability that the Legal Sub-Committee had been called upon to draft should not extend to nuclear damage. In the opinion of the Argentine delegation, that had been a mistake, which fortunately had been corrected.

In addition, it was satisfactory to note that the text embodied the principle of the joint and several liability of the States causing damage, whether directly or indirectly.

It was also good that the Legal Sub-Committee had included a provision for the review of the convention and a provision for the publication of the decisions made.

The final text of the final clauses was an improvement, in that the requirement that the Depositary Government should also be signatories was no longer necessary for the entry into force of the convention.

The provision for the establishment of the claims commission was just and equitable. It was good that there was an explicit reference to the principles of justice, equity and good faith in the settlement of claims and that the convention embodied the principle of the priority of international law in the settlement of claims.

The draft convention was better worded and had a better legal content than the earlier instrument adopted in the same field, namely, the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space.

He was glad that the different stages in the procedure for the settlement of claims had been shortened, for that would lead to greater efficiency. He was also glad that the draft convention was designed to safeguard the interests of all mankind, and not only the interests of one State or one group of States.

Another positive aspect was the reduction of the victim's expenses, or even his total exoneration if the claims commission so decided.

The claims commission was assigned specific functions and was given great freedom of action. The Legal Sub-Committee had wisely deleted a number of unnecessary elements in the procedure for the settlement of claims, such as the inquiry commission.

The Sub-Committee had also given full meaning to the principle of self-determination of States and of their choice whether or not to adhere to the convention and other related instruments.

Many delegations had expressed reservations about the draft convention. The Argentine delegation had already made its reservations known. It was now advisable to concentrate more on the merits of the text. Those who would be entrusted with the implementation of the convention would be responsible jurists and in practice its defects would disappear.

He supported the proposal that the Chairman of the Legal Sub-Committee should personally submit the draft convention to the Committee on the Peaceful Uses of Outer Space.

Mr. NETTEL (Austria) said that the conciliatory attitude of all delegations had finally prevailed over all doubts. Although the draft might still be inadequate on some points, he hoped that the application of the provisions adopted would not make those inadequacies apparent.

Mr. DJAIANNEMA (Iran) said that, although the draft convention was not perfect and did not reflect the wishes and points of view of all members of the Sub-Committee, it nevertheless represented a positive achievement in terms of eight years of hard bargaining. His own delegation was dissatisfied, in particular with the provisions concerning the procedure for settlement of disputes and the applicable law. It had no objection, however, to the Sub-Committee transmitting the draft convention to the Committee, its parent body, for submission to the General Assembly.

Mrs. BALJINNYAM (Mongolia) said that only the political will of the members of the Sub-Committee had made it possible to draw up a complete draft convention. She was particularly grateful to the representatives of Belgium, Brazil and Hungary for their initiative in submitting proposals which had made agreement possible.

Mr. GOGEANU (Romania) said that he too thought that the draft convention clearly reflected the conciliatory spirit with which all delegations had been imbued.

The Romanian delegation was satisfied with the provisions concerning the applicable law and the procedure for settlement of disputes. It had had some doubts about the role originally conferred on international organizations in the draft convention but the improvements made to the text had made that quite satisfactory.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that he would refrain from mentioning the imperfections which were still to be found in the draft convention and preferred to recall only the positive features of the text finally agreed upon. He was particularly grateful to the Chairman of the Sub-Committee and to the representatives of Brazil, Hungary, India, Belgium and Argentina, whose tireless efforts and spirit of conciliation and collaboration had finally ensured the success of the Sub-Committee's efforts.

Mr. KARASSIMEONOV (Bulgaria) expressed his delegation's satisfaction at the adoption of the draft convention by the entire Sub-Committee after eight years of difficult negotiations. It now seemed appropriate to emphasize the positive features of the text and to point out that it reflected not just the interests of particular delegations or groups of States but those of the whole of mankind.

His delegation was deeply grateful to the Chairman of the Sub-Committee, who had greatly contributed to the success of the negotiations by virtue of his personal qualities and it supported the Lebanese proposal that the Chairman should himself present the Sub-Committee's report to the Committee on the Peaceful Uses of Outer Space.

Mr. VRANKEN (Belgium) expressed satisfaction at the positive outcome of the negotiations and paid a personal tribute to the Chairman, who had most skillfully guided the Sub-Committee's peaceful deliberations. He supported the Lebanese proposal that the Chairman should act as the Sub-Committee's spokesman in the Committee on the Peaceful Uses of Outer Space.

As co-sponsor of a joint proposal (A/AC.105/C.2/L.79), the Belgian delegation thanked all the delegations, especially those of Australia and India, for their understanding and their valuable co-operation.

In order to dispel a misunderstanding which had arisen among several delegations following a statement he had made at the 162nd meeting, he wished to point out that the parallel he had drawn to illustrate the difference between liability based on fault and that based on risk had not been intended to imply that there should be an element of coercion in the determination of compensation or reparation.

Mr. CHARVET (France) paid a tribute on behalf of his delegation to the Chairman and all those who had contributed to the conclusion of an agreement which was a new addition to the structure of space law. His delegation would have liked a better convention, especially in regard to applicable law, but it hoped that, on the basis of the compromise text just adopted, the arbitration court, having regard to the concepts of justice and equity, as also to that of a full measure of compensation as expressed in the preamble, would be able to ensure compensation for victims, taking into account to some extent the legal system which they usually applied.

Whatever inadequacies his delegation had felt obliged to point out, it welcomed the many novel features of international law incorporated in the draft.

Mr. HARASZTI (Hungary) said that his delegation was glad to see that many of the ideas underlying its original draft had been incorporated in the final text adopted by the Sub-Committee. The initiative, understanding and co-operation of many delegations and of the Chairman had contributed to the success of the negotiations.

Mr. ROBERTSON (Canada) thanked the Chairman and all those who had participated, intellectually and physically, in the preparation of the draft convention. In the statements they had made when the Sub-Committee had decided to transmit the text to the Committee, the delegations of Canada, Japan and Sweden had expressed the hope that the Sub-Committee's report would reflect their points of view. Those delegations had drafted a text, which they had tried to make as brief, simple and uncontroversial as possible, for insertion in the report.

Miss CHEN (Secretary of the Sub-Committee) suggested that the proposal, made by the Lebanese representative (166th meeting), if adopted, should be worded as follows: "The Sub-Committee decided to request its Chairman to attend the forthcoming session of the Committee on the Peaceful Uses of Outer Space in order to present the draft convention to the parent Committee and to provide such information relating to the draft convention as may be required." The financial implications of that decision would be about $1,500.

The CHAIRMAN said that, if there was no objection to that proposal, he would most gratefully accept the mission which the Sub-Committee had done him the honour of entrusting to him. He would defend the draft convention approved by the Legal Sub-Committee with conviction and with the hope that any amendments made to the text would be entirely justified.

STUDY OF QUESTIONS RELATIVE TO:

(a) THE DEFINITION OF OUTER SPACE

(b) UTILIZATION OF OUTER SPACE AND CELESTIAL BODIES INCLUDING THE VARIOUS IMPLICATIONS OF SPACE COMMUNICATIONS (Agenda item 3) (A/AC.105/C.2/7; A/AC.105/C.2/L.80) (resumed from the 163rd meeting)

Mr. CHARVET (France) said that his delegation, which had recently stated its position on the registration of space objects and the delimitation of outer space, noted with regret that the Sub-Committee showed little inclination to consider the legal aspects of those two problems forthwith; those problems, however, were of vital importance for the international community and more especially for States which were not space Powers and which, since they could not make history in outer space, would merely have to put up with its consequences unless there was a universally recognized law to protect them. His delegation had thought, however, that the coming of space vehicles could give occasion for further consideration of those two matters. Space technology was making such rapid progress that re-usable space vehicles could already be foreseen and in the terrestrial atmosphere, as well as in outer space, their

activities would resemble those of aircraft. That meant that a new air traffic problem would arise in atmospheric space, which was already encumbered with aircraft, and co-ordination with the services at present concerned with ordinar air traffic would be needed. It would seem impossible to settle the problem of possible damage caused by space-ships to aircraft if there was no definition of space, no system of registration for space vehicles and no definition of space activities or space vehicles.

It lay with the Sub-Committee to work out a space law genuinely worthy of the name; to that end, it should follow a logical sequence which might be more or less as follows: to take for the treaty framework the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, which defined the legal régime of outer space, and delimit outer space; next, define the régime for space vehicles exploring outer space; and lastly, draw up regulations for the use of space devices by man. If planning was nowadays a necessity for most States with a developing economy, it was just as desirable for the framing of an effective and coherent space law. For that reason, the Argentine and French delegations had jointly submitted a draft recommendation (A/AC.105/C.2/L.80) which listed the problems which seemed to them most urgent for the Sub-Committee to study and requested the Committee on the Peaceful Uses of Outer Space to establish a priority order for the Sub-Committee to follow.

In regard to direct broadcasting satellites, the French delegation had submitted to the third session of the Working Group on Direct Broadcast Satellites (May, 1970) a document on the legal principles to govern direct broadcasts from communications satellites.[1] The USSR delegation had done the same,[2] and there were many other delegations which thought that so potent a technique should not be allowed to develop unregulated. In operative paragraph 1 resolution 2733 A (XXV), the General Asembly had recommended international co-operation in the establishment and operation of regional satellite broadcasting services and/or in programme planning and production. His delegation therefore thought that the Legal Sub-Committee might at least state as a preliminary to a more detailed study the two main principles which seemed to be generally accepted: that any State was free to broadcast programmes directly from artificial satellites, provided it conformed to the rules of international law, including the United Nations Charter and the specific principles of space law, and provided it respected the sovereignty of States that did not want to receive those

1/ See A/AC.105/83, annex V

2/ Ibid., annex IV

broadcasts; and that any State whose territory was covered by a satellite should be able to make use of the television transmitters placed in the satellite, either for its own benefit or for the benefit of broadcasting institutes under its jurisdiction, on reasonable and equitable terms.

Other bodies, in particular ITU and UNESCO, should certainly be associated in that work, but it should be borne in mind that they could have only a partial view of the problem and that it behoved the Legal Sub-Committee to take the lead, to outline the broad principles and to ensure that, in keeping with the spirit of the Space Treaty, direct broadcasting was developed for the benefit of all countries. If it failed to do so, other jurists at other international meetings would accuse the Sub-Committee of having shied away from the difficulties of the task.

His delegation was also concerned about the question of the legal status of extra-terrestrial materials and had already raised that matter, jointly with the Argentine and Polish delegations, in 1969.[3] It could not therefore but approve, in principle, the initiative taken in the current year by the Argentine delegation. The Sub-Committee could base itself on the fundamental rules of the Outer Space Treaty, i.e., utilization for the well-being and benefit of all countries and non-appropriation, since in substance all that was required was an agreement on their application. The legal status of extra-terrestrial materials for industrial purposes could be left aside for the moment; the Sub-Committee should confine its study to the question of scientific research. The Space Treaty took the freedom of that research for granted. In short, an agreement on such materials should for the moment consist in specifying the obligations of the acquiring State vis-à-vis the international community, making it clear that the sub-soil of the heavenly bodies, like their ground surface, could not be the subject of any national appropriation or of private law ans providing for publicity to be given to the operations carried out and the knowledge acquired, perhaps through the Secretary-General of the United Nations.

The question of the surveying of earth resources by satellite was essentially a political matter, since it directly affected the sovereignty of the underlying States, but it had legal aspects, too, which should be considered carefully in order to ensure that the new technique did not, like others, become a source of international tension.

3/ A/AC.105/C.2/L.69

His delegation recognized the benefits that the surveying of earth resources by satellite might bring, but it should not be developed except in full agreement with the countries flown over and for the benefit of all. Basically, the technique merely transposed to outer space a problem that had already arisen in connexion with the law of the air, and which the Convention on International Civil Aviation (Chicago, 1944) had regulated. One of the first points to be taken up should be the question of access for underlying countries to any information and any data that might be collected by satellite. That was vital to safeguard the economic interests of the countries flown over, for otherwise firms in a satellite-launching State might be able to obtain concessions on highly advantageous terms, especially from developing countries, allowing them to exploit areas whose wealth was known in advance only to them, often to the detriment of the local economy. In drawing attention to that point, his delegation was merely conforming to the provisions of the Outer Space Treaty and the principles of classical international law. The General Assembly of the United Nations had already, in many resolutions, affirmed the sovereignty of States over their natural resources, thus pointing out the path to be followed.

Surveying by satellite also raised the question of the overflying of regions not belonging to any State. The case of the high seas, whose wealth was a common heritage, was particularly glaring. Any prejudice to fishing rights, on the basis of secret information, would unquestionably be a blow to the economy of countries for which fisheries were a main resource. The Sub-Committee should study all those problems in co-operation with the other bodies concerned, in particular the Committee on Natural Resources of the Economic and Social Council, preferably before any disputes arose.

In short, the Legal Sub-Committee should now draw up an order of priorities to enable it to take up the study of the problems affecting the greatest number of countries as soon as possible. It was important that legal rules for settling by international agreement the difficulties which could not fail to arise from the spectacular progress made in space technology and the proliferation of space vehicles should be drawn up without delay. In the face of those revolutionary changes, States could no longer protect their sovereign rights behind traditional frontiers as in former times and if they wanted to ensure that the progress through which mankind was entitled to hope for a better future did not instead become a new bone of contention, they must embark on the way of co-operation outlined for them, and in fact imposed on them, by the Outer Space Treaty and work out a genuine space law reflecting the interests and aspirations of the whole international community, a law which would be based on co-operation and ensure all States equality, justice and harmony.

The Sub-Committee was in a position to bring that challenging task to a successful conclusion, provided it was supported by the political will of all Governments; legal difficulties generally faded away when Governments wanted to agree.

Mr. ROBERTSON (Canada) said that he had no substantial objection to the draft recommendation by Argentina and France. He thought, however, that the text of the preambular paragraphs was not complete in that it did not accurately reflect the diversity of views which had become clear from the statements of delegations concerning agenda item 3. It might therefore be useful to add a sixth preambular paragraph that would note the fact that there had been no agreement on which subjects the Legal Sub-Committee should take up next but that there had been a number of subjects which most delegations had mentioned in that connexion.

With regard to operative paragraph 1, he pointed out that his delegation and some other delegations thought that some of the subjects should not be considered at the eleventh session of the Legal Sub-Committee. He therefore suggested that in the introductory sentence to operative paragraph 1, the words "Recommends the Committee ... to include" should be replaced by the words "Recommends that the Committee ... consider including" and that the decision should be left to the main Committee. He thought that the World Intellectual Property Organization, which had been mentioned by the representative of UNESCO in his statement, should be added to the list of international organizations in sub-paragraph A of operative paragraph 1.

Mr. VRANKEN (Belgium) recalled that the representative of ITU, reporting on the work of his organization (163rd meeting), had offered to inform the Sub-Committee of the conclusions reached. He would like to have the information in question which concerned some of the subjects listed in the draft recommendation by Argentina and France.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that, after a first reading of the draft recommendation, he felt that it was wrong to list the subjects to be included in the agenda of the eleventh session of the Legal Sub-Committee, since the purpose of the draft recommendation was to recommend to the main Committee the establishment of a priority order. To list the questions to be discussed in advance, and in a certain order, would be to prejudge the Committee's decision. He suggested that the letters A, B, C, D and E, as also the document symbols, should be deleted from operative paragraph 1 and that the text proposed by Argentina and France should be regarded not as a draft but merely as a list of subjects on which a decision should

be made. In addition, it would be unwise to combine two subjects which were as di
as the legal status of man's activities on the moon and the use of the natural re
of the moon and other celestial bodies, as was done in sub-paragraph D.

Mr. CHARVET (France) explained that the order of sub-paragraphs A, B, C,
and E was not an order of priority. It had been chosen for the sake of clarity and
would rest with the main Committee to establish the priority order.

Mr. COCCA (Argentina) corroborated the French representative's explanation
and accepted the suggestions of the USSR delegation.

Mr. VRANKEN (Belgium) wondered whether it would not be preferable to begi
first preambular paragraph with the words "Bearing in mind the completion of the
preparation of the draft convention", in order to show that the Legal Sub-Committee
had finished its work on the liability convention.

In sub-paragraph A of operative paragraph 1, it would be better to insert the
words "in particular" after the words "in the light of the work undertaken in that
field", so that the list of organizations would not be of a restrictive nature.

Mr. COCCA (Argentina) pointed out that, in sub-paragraph B of operative
paragraph 1, there was a difference between the French, Spanish and English texts;
the first referred to "définition ou délimitation", the second to "definición y
delimitación", and the third to "definition and/or delimitation", respectively. Th
three texts should be brought into line, by using the words "and/or", for example.

The CHAIRMAN said that the Secretariat would prepare a revised text on th
basis of the suggestions that had been made.

The meeting rose at 5.20 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-EIGHTH MEETING

held on Wednesday, 30 June 1971, at 10.45 a.m.

Chairman: Mr. WYZNER Poland

TRIBUTE TO THE MEMORY OF THE THREE SOVIET COSMONAUTS, GEORGY DOBROVOLSKY, VIKTOR PATSAYEV AND VLADISLAV VOLKOV

The CHAIRMAN said that it was with profound grief that he had learned of the tragic death of the three cosmonauts, Georgy Dobrovolsky, Viktor Patsayev and Vladislav Volkov, of the USSR. Having completed their heroic mission to the last detail, the three cosmonauts, who had been in communication with earth shortly before their descent, had been found to be dead when their space capsule had been reached by waiting helicopters at the planned place of descent. He wished to convey through the Soviet delegation the Legal Sub-Committee's deep and heartfelt condolence to the Government and people of the Soviet Union and to the families of the cosmonauts, who had died as true envoys of humanity, performing their duties to the last minutes of their lives.

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

Mr. EL REEDY (United Arab Republic) said that the death of the cosmonauts, who, as the Chairman had rightly observed, were envoys of mankind, was a tragedy for humanity. Many had given their lives to defend national causes, but the three cosmonauts had died for the sake of human progress, which transcended national causes. Their spectacular journey into space had made a unique contribution to scientific and technical knowledge and to the possibility of progress in the conquest of space.

His delegation and the Government and people of the United Arab Republic felt a deep sense of sympathy with the Soviet Union, which had proved a true friend and supporter of his country in difficult times. He expressed their sincere condolences to the Soviet Government and to the families of the three cosmonauts.

Mr. COCCA (Argentina) said that, at the opening meeting of the present session, the Legal Sub-Committee had acclaimed the achievements of the three cosmonauts and it was with a deep sense of shock that it had now received the news of their death. The delegations of Latin America expressed through him their sincere condolences to the Soviet delegation and to the Government and people of the Soviet Union and the families of the cosmonauts on their irreparable loss.

Mr. REIS (United States of America) said that his delegation had been stunned and saddened by the news which had just been received. It extended its sympathy through the Soviet delegation to the families of the cosmonauts and to the Soviet people. All were aware of the risks faced by space pioneers, but that did not lessen the sense of shock at the death of the three men. The painful memory of the death of the United States astronauts, Virgil Grissom, Roger Chafee and Edward White, in a fire on 27 January 1967 only intensified his Government's sympathy with the Soviet Union upon the death of Georgy Dobrovolsky, Vladislav Volkov and Viktor Patsayev.

Mr. GOGEANU (Romania) said that his delegation was deeply moved by the news of the catastrophe which had struck the Soviet Union after the remarkable success achieved by the three cosmonauts in their space mission. Their death was a loss to all mankind. He expressed his delegation's sincere sympathy to the Soviet Union and to the families of the three cosmonauts.

Mr. RAO (India) said that his delegation shared the deep emotions expressed by previous speakers. The three cosmonauts had offered their lives in the service of humanity as envoys of mankind. He asked the Soviet delegation to convey his delegation's deep sense of shock and heartfelt condolences to the Soviet people and Government.

Mr. CHARVET (France) said that his delegation shared the deep sense of shock at the tragedy that had struck not only the Soviet Union but the entire international community. He expressed the sincere condolences of his delegation and of the other delegations of Western Europe to the Soviet Government and people and to the families of the cosmonauts.

Mr. STRUCKA (Czechoslovakia) asked the Soviet delegation to convey to the Soviet Government and the families of the cosmonauts the deep sympathy of his delegation and of the delegations of Bulgaria and Hungary. The achievements of the three cosmonauts had made a great contribution to scientific knowledge and their death was a tragic loss to the Soviet Union and to all mankind.

Mrs. BALJINNYAM (Mongolia) said that her delegation had learned of the death of the three men with profound grief. She expressed to the USSR delegation, and through it to the people of the Soviet Union, her delegation's deep sympathy in their great loss. The three cosmonauts had given their lives in the cause of science and to further man's knowledge of space.

Mr. AZIMI (Iran) said that his delegation was greatly saddened by the news of the death of the cosmonauts after their remarkable achievements. They had given their lives in the cause of science and in the service of their country and of humanity as a whole. His delegation hoped that greater and better international collaboration would make it possible to reduce the number of such catastrophes in the future. It shared in the expressions of deep sympathy voiced by other delegations.

Mr. AL ARBI KHATTABI (Morocco) said that the world had been shocked by the terrible news of the death of the three cosmonauts after the successful accomplishment of their scientific mission. His delegation joined with others in expressing sincere condolences to the Soviet Government and people and to the families of the three men who had given their lives in the cause of science and space exploration.

Mr. PIRADOV (Union of Soviet Socialist Republics) said that he understood the feelings of deep sadness shared by all members of the Sub-Committee and was deeply grateful for their condolences, which his delegation would convey to the families of the cosmonauts and to the Soviet Government.

STUDY OF QUESTIONS RELATIVE TO:

(a) THE DEFINITION OF OUTER SPACE

(b) THE UTILIZATION OF OUTER SPACE AND CELESTIAL BODIES, INCLUDING THE VARIOUS IMPLICATIONS OF SPACE COMMUNICATIONS (agenda item 3) (A/AC.105/85; A/AC.105/C.2/7; A/AC.105/C.2/L.80/Rev.1) (continued)

Mr. MARIN BOSCH (Mexico) said that his delegation could support the draft recommendation of Argentina and France, as amended by Canada, the Soviet Union and Belgium (A/AC.105/C.2/L.80/Rev.1). All the matters listed in operative paragraph 1 deserved thorough study. The Sub-Committee should keep them on its agenda and not be discouraged by their scientific and technological complexities from discussing their legal aspects, which were particularly important.

His delegation supported the view that the highest priority should be given to matters relating to the registration of objects launched into space for the exploration or use of outer space, the French proposal submitted at the Sub-Committee's eighth session being taken as a basis for discussion.[1] Such registration, the urgent need

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1/ See Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 21 (A/7621) [document A/AC.105/C.2/L.45], p.27.

for which had been realized even at the time of conclusion of the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, was an even more pressing matter at a time when agreement on a convention on liability for damage caused by objects launched into outer space seemed to be near.

Mr. MOTT (Australia) said that Governments would have to consider the question of priorities in the light of developments in other international organizations. Some Governments, including his own, were not yet in a position to reach any conclusions on the matter.

His delegation was glad that the sponsors of the draft recommendation (A/AC.105/C.2/L.80/Rev.1) had agreed to take some proposed amendments into account with a view to ensuring that any recommendation to the Committee on the Peaceful Uses of Outer Space was tentative and would be considered in due course against a broader background. It might well prove difficult for the Committee to agree on a clear order of priorities. More consultation and discussion would be needed before a list could be drawn up and his delegation could see disadvantages in any attempt by the parent Committee to decide at its fourteenth session on a comprehensive list that might come to be regarded as finally determining the course of future work.

His delegation therefore suggested that operative paragraph 2 should be amended to read:

"Requests the Committee on the Peaceful Uses of Outer Space to consider the desirability of establishing a priority order for the different questions mentioned above and of keeping this under review in the light of developments".

That wording would have the effect of balancing operative paragraph 2 with the new wording of operative paragraph 1.

With regard to the question of remote sensing, if the Scientific and Technical Sub-Committee decided to set up a working group to deal with the matter, as it was empowered to do, the working group might be expected to meet in 1972. In that event there would be little purpose in taking up the question in the Legal Sub-Committee until the results of the working group's activities were available. The question might best be reviewed in the light of the Scientific and Technical Sub-Committee's action in the matter. The Argentine draft international agreement on the subject (see A/AC.105/85, annex II, p.2, document A/AC.105/C.2/L.73) should certainly be made available to any working group that might be established to deal with the subject.

Mr. HOSENBALL (United States of America) said that, in view of the USSR representative's suggestion at the 167th meeting that the listing of subjects should not appear to exclude other subjects which the Committee might wish it to consider, his delegation would propose the following addition at the end of operative paragraph 1:

"Any other subject which the Committee on the Peaceful Uses of Outer Space might deem appropriate for consideration".

He also proposed the deletion of the word "priority" in the first part of operative paragraph 1.

Mr. CAPOTORTI (Italy) said that he saw no need for the words "consideration of" to be repeated at the beginning of each of the sub-paragraphs of operative paragraph 1. He therefore suggested that they should be deleted.

Mr. COCCA (Argentina) said that he had no objection to either the Australian proposal or that of the United States, since he would not wish to preclude the possibility of considering other topics.

Mr. VRANKEN (Belgium) said that, if the Legal Sub-Committee wished to make a draft recommendation, it must specify what it was recommending. The Sub-Committee was seeking to draw the attention of the main Committee to a number of topics which, in its view, were important and should be examined. In his opinion, the United States proposal would negate the idea of a recommendation.

Mr. LAFFERRANDERIE (France) said that his delegation fully shared the views expressed by the Belgian representative. Among the topics recommended for consideration were some which had been on the Sub-Committee's agenda for years. Some of them had been postponed from year to year in order to allow the Sub-Committee to proceed with its consideration of the draft convention on liability. Now that the Sub-Committee had completed its preparation of the draft convention, it must seriously consider the evolution of space law in terms of the precise guidelines which his delegation had set out in introducing the draft recommendation at the 167th meeting. He was therefore unable to support the United States proposal. He could, however, accept the Australian proposal.

Mr. GILMOUR (United Kingdom) said that his delegation welcomed the draft recommendation, which reflected many of its own views. It also welcomed the Australian amendment. With regard to the United States proposals, his delegation considered that if the Australian amendment was accepted it would be inconsistent to propose the deletion of the word "priority" in operative paragraph 1 and then in operative paragraph 2 to request the Committee on the Peaceful Uses of Outer Space to consider the desirability of establishing a priority order.

Mr. HOSENBALL (United States of America) said that if, under the Australian amendment, the Committee was to keep the various topics under review in the light of developments, it was completely consistent to allow for the possible addition of other subjects. His delegation did not consider that its proposal would weaken the recommendation.

In reply to a point raised by Mr. RYBAKOV (Union of Soviet Socialist Republics), the CHAIRMAN suggested that the beginning of the third sub-paragraph of operative paragraph 1 should be amended to read "Matters relating to the registration ..." in order to bring it into line with the Russian text. If he had no objections, he would take it that the Sub-Committee accepted that suggestion.

It was so decided.

The CHAIRMAN suggested that the Sub-Committee should resume consideration of agenda item 2 and take up the question of the proposed amendments at a later stage. In the meantime, the sponsors of the proposals and any interested delegations should hold consultations and work out an acceptable text.

It was so decided.

DRAFT CONVENTION ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (agenda item 2) (A/AC.105/85; A/AC.105/C.2/10; A/AC.105/C.2/L.79; PUOS/C.2/WG(X)/L.4; (continued)

The CHAIRMAN drew attention to document E/AC.105/C.2/10, which reproduced the text of the draft convention on international liability for damage caused by space objects, adopted by the Sub-Committee at its 166th meeting.

Mr. MARIN BOSCH (Mexico) said that his delegation had from the beginning favoured a convention on liability which would provide maximum protection for potential victims of damage caused by space objects and which would create a balance between the obligations of the launching State and the rights of the claimant State. It had supported the idea that the decisionsof the claims commission should be not merely recommendatory but final and binding.

It would have preferred a broader definition of international intergovernmental organizations than that appearing in article XXII. In the proposal it had submitted at the ninth session of the Legal Sub-Committee (see A/AC.105/85, annex I, p.11, document PUOS/C.2/70/WG.1/CRP.8), the Mexican delegation had indicated that it preferred a provision which would allow the competent organ of the international organization which was a victim of damage caused by a space object to a claim.

With regard to article XII on applicable law, his delegation did not share the opinion of some delegations that the text should include the word "fully", since the concept of a full measure of compensation for victims was already explicitly stated in the preamble.

At the 162nd meeting, the Mexican delegation had said that the proposal by the delegations of Belgium, Brazil and Hungary (A/AC.105/C.2/L.79) provided a good basis for discussion. Subsequently, several delegations had submitted amendments to that proposal which, in his delegation's opinion, had improved the text without changing the substance. The Mexican delegation noted that several of the amendments that it had supported had been included in the final text of the draft convention. The idea of an inquiry commission had been eliminated; a cause relating to good faith had been included in article XIX, and paragraphs 3 and 4 of that article had been satisfactorily amended. The new wording of article XX relating to the expenses in regard to the claims commission had been modelled on an amendment supported by the Mexican delegation. His delegation also agreed with the changes that had been made in paragraph 3 of article XXIV concerning the entry into force of the convention, and in article XXVI relating to the question of review of the convention. It attached fundamental importance to article XXVI because it had always considered that the draft convention on liability formed part of a system of legal standards which included also the 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. The proposal by the delegation of Morocco (PUOS/C.2/WG.(X)/L.4), which had become article XXI of the draft convention, had brought about a better balance in that system of legal standards.

His delegation considered that the Legal Sub-Committee had finally succeeded in drafting a convention which, although it was not perfect, was less imperfect than the previous drafts had been.

Mr. GILMOUR (United Kingdom) said that, with regard to applicable law, his delegation noted with satisfaction that there had been a substantial measure of agreement in the Legal Sub-Committee to the effect that article XII of the draft convention, particularly when read in the light of the fourth preambular paragraph, correctly implemented the corresponding provisions of General Assembly resolution 2733 B (XXV).

With regard to the question of settlement of claims, however, his delegation continued to believe that only a convention which stipulated binding awards would adequately protect the interests of victims, but it agreed that the defects inherent in the present text of the draft convention would be to some extent ameliorated by the inclusion of the good faith provisions.

With regard to the final clauses, his delegation concurred with what the representative of the United States would say on that subject.

Mr. REIS (United States of America) said that his delegation considered that the text of the draft convention was sound and that, from a purely national standpoint, it offered a reasonable expectation of the prompt and fair payment of compensation to United States citizens who might be injured by fragments of space objects launched by another country. While the reasonable expectation of prompt and fair compensation might seem an easy goal, that had not been the case and the only existing assurance of compensation was the broad general concept of what in international law was termed the principles of State responsibility and the general rule of article VII of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies (1967).

The participants in the Outer Space Treaty negotiations had realized that, while there was need for a general statement on the responsibility of a State for any damage that its space objects might cause, the Treaty, as an instrument on principles, could not deal at length with the complex of rules and procedures that would be required if the liability of the launching State was to have any practical meaning. In short, article VII of the Treaty did not offer the prospect of fair and prompt payment of compensation. The draft convention on liability offered precisely that expectation.

To note only four of its substantive rules, the draft convention included, firstly, the principle that a launching State was absolutely liable for damage caused on the surface of the earth and to aircraft in flight. The text expressly contradicted what could otherwise be asserted to be a presumption that a victim or his heirs would be obliged to show negligence on the part of the launching State in order to be entitled to compensation. Secondly, the draft convention expressly overruled what might otherwise be thought to be the general rule that a State need not recognize a claim by another State on behalf of a citizen who had been injured unless that person or his heirs had pursued the legal and administrative remedies that might be offered them by the State causing the damage. Thirdly, the convention established the principle of joint and several liability as among participants in a joint space activity. Its practical effect was to make each participant fully

liable to the State whose citizen might be injured by a joint space activity; the claimant State would need to proceed against one participant only. Fourthly, the rule established in article XII of the draft convention should facilitate the payment of full compensation.

It was in a fifth area, however, that the draft convention achieved what amounted to a peaceful revolution in the existing law of protection of citizens. It included a set of detailed articles governing the settlement of claims that had not been settled to the satisfaction of claimant and launching States. It was known that international claims and their payment, which were customarily handled through diplomatic channels, were almost invariably extremely slow and often productive of a barely rudimentary justice. The draft convention, however, set a definite time-limit of one year on the period for diplomatic negotiations for a mutually acceptable settlement of a claim. Thereafter, if there had been no such settlement, either party might proceed, without asking the consent of the other, to an impartial arbitral tribunal whose task would be to determine whether the launching State had in fact caused the damage and, if so, the amount of compensation the claimant State might properly claim under the law of the convention. The convention provided that the arbitral procedure should culminate in the handing down of an award constituting a recommendation to the parties, which were required to consider it in good faith. It also reminded disputing States that, if they so wished, they might agree to regard the arbitral award as legally binding.

His delegation considered that the draft convention was desirable from the point of view of claimant and launching States alike. It offered the reasonable expectation of prompt and fair compensation but in no way sought to penalize a launching State whose particular space project had caused injury. It held the launching State liable for damage traceable directly to the launching, flight and re-entry of a space object or associated launch vehicle, but did not cover what some delegations had called remote or indirect damage and for which there was only a hypothetical causal connexion with a particular activity. It offered vindication to a claimant State that had been wrongly denied just compensation, but it also offered protection to a launching State against inflated or frivolous claims. It was a victim-oriented convention but one that was fair to and considerate of the challenges that faced countries engaging in space activities.

With regard to the final clauses, he pointed out that the provision under which all States could accede to the convention had been included in view of the fact that the convention complemented the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, which included a similar accession clause. It went without saying, however, that neither the clause providing for accession by all States nor any act of signature, ratification or accession under that clause could affect the status, position or claims of States or other political entities, in particular those in Europe.

At the first session of the Legal Sub-Committee, ten years previously, his delegation had proposed a brief set of principles to govern liability for damage caused by space accidents. In 1963 it had introduced the first complete treaty proposed on liability. While it was proud of its initiative, it recognized that those early proposals had been over simple and not adequate to cover the large variety of factual circumstances surrounding space activities and developing patterns of space co-operation. The Sub-Committee now had before it a complex convention that was both realistically detailed and, it was hoped, sufficiently flexible to allow justice to be done.

His delegation would review in greater detail the meaning and purpose of the provisions of the draft convention at the fourteenth session of the Committee on the Peaceful Uses of Outer Space, to be held in September.

STUDY OF QUESTIONS RELATIVE TO:

(a) THE DEFINITION OF OUTER SPACE

(b) THE UTILIZATION OF OUTER SPACE AND CELESTIAL BODIES, INCLUDING THE VARIOUS IMPLICATIONS OF SPACE COMMUNICATIONS (agenda item 3) (A/AC.105/85; A/AC.105/C.2/7; A/AC.105/C.2/L.80/Rev.1) (continued)

The CHAIRMAN said that the sponsors of the draft recommendation (A/AC.105/C.2/L.80/Rev.1) had accepted the following amendments. In operative paragraph 1 the words "as priority subjects" would be replaced by the words "as essential subjects" and the words "consideration of" at the beginning of each of the subjects listed in that paragraph would be deleted. Operative paragraph 2 would read: "Requests the Committee on the Peaceful Uses of Outer Space to consider the desirability of establishing a priority order for the different questions mentioned above and of keeping this under review together with the possibility of including other subjects in the light of developments".

Mr. VRANKEN (Belgium) said that his delegation had no objection to those amendments but still thought that the items listed in the draft recommendation should be given priority.

A member of the Belgian staff who was attending the World Administrative Radio Conference for Space Telecommunications at ITU had informed him that the amendment of the text of one of the space telecommunications conventions had been approved, with the result that a definition of space objects, outer space and satellites had been adopted. If the Legal Sub-Committee delayed discussion of those questions, all it would be able to do would be to accept what had been decided elsewhere. For that reason his delegation still felt that the questions listed in the draft recommendation by France and Argentina should have priority, but in a spirit of co-operation it would accept the amendments that had been proposed.

Mr. GILMOUR (United Kingdom) recalled that in a previous statement on agenda item 3 his delegation had indicated that it had doubts about the utility of studying some of the items listed in the draft recommendation by France and Argentina, not only on a priority basis but at all. It was not, therefore, in favour of including the word "essential" even to replace the word "priority" in operative paragraph 1 of the draft recommendation, and would prefer neither word to be included. It was of the opinion that the Committee on the Peaceful Uses of Outer Space should simply be informed of the fact that the work on the draft convention on liability had been completed and that the Legal Sub-Committee would be willing to consider such items as the Committee would wish to allocate to it in the future.

Mr. ROBERTSON (Canada) said that his delegation agreed with the views expressed by the United Kingdom representative. The delegation of Canada had been one of the first to propose that the word "consideration" should be included in operative paragraph 1 of the draft recommendation. In the light of the changes that had been agreed upon in operative paragraph 2, and for the same reasons as those mentioned by the United Kingdom representative, the Canadian delegation could not accept the inclusion of the word "essential".

Mr. VRANKEN (Belgium) said that, if the members of the Legal Sub-Committee could not accept the word "essential" to replace the word "priority", his delegation would be opposed to any draft recommendation which would be sent to the Committee.

Mr. CHARVET (France) said that his delegation's position on the matter was the same as that of the Belgian delegation.

The meeting was suspended at 12.25 p.m. and resumed at 12.30 p.m.

The CHAIRMAN suggested that the word "important" might replace the words "priority" or "essential".

Mr. VRANKEN (Belgium) said that his delegation would accept that suggestion. Nevertheless, it deplored the negative attitude of some delegations which could not agree on the importance of the items listed in the draft recommendation by Argentina and France.

The CHAIRMAN said that, if there were no objections to the substitution of the word "important" for "priority" or "essential" in operative paragraph 1, he would consider that the Sub-Committee accepted that amendment, together with the other amendments he had read out.

It was so decided.

Mr. COCCA (Argentina) said that his delegation thanked the delegations of the United Kingdom and France for the statements they had made at the 161st and 167th meetings concerning the Argentine draft agreement on the principles governing activities in the use of the natural resources of the moon and other celestial bodies (see A/AC.105/85, annex II, p.1, document A/AC.105/C.2/L.71 and Corr.1). His delegation agreed that it would be appropriate to expand somewhat on the reference to freedom of scientific investigation in article I of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies. Although the Argentine draft agreement was complementary to the provisions of that Treaty, his delegation was grateful for the observation made by the United Kingdom representative and thought that the reference to freedom of scientific investigation might be given more detailed treatment in a new article to be added to the draft agreement.

The United Kingdom representative had also pointed out that article 2 of the Argentine draft agreement appeared to cover the case of meteorites falling to earth from outer space. On that point the delegation of Argentina maintained that, although from the scientific point of view there could be some discussion on whether meteorites were substances coming from celestial bodies, that did not change the legal nature of the question. To his knowledge, scientists and jurists had made only one declaration on that subject up to the present, the declaration made at the First Symposium on Progress in Space Exploration and its Consequences for Mankind, held at Buenos Aires in 1966. On that occasion, the following general conclusions had been reached: meteorites were not celestial bodies in the sense of the United Nations resolutions and of the Treaty on the Principles Governing the Activities of States in the Exploration

and Use of Outer Space; the scientific value of meteorites was far superior to their economic interest, whatever might be their value in the hands of private persons; the scientific interest in meteorites on the part of humanity likewise exceeded the interest which a given State could have in depriving the international scientific community of possession for study and research; excluding the interest of private persons, the régime to be applied to meteorites should not be sought in unification by the amendment or enlargment of the civil law of States, but by means of an international agreement on a world-wide scale. The Legal Sub-Committee could usefully consider the legal rules to be applied to meteorites, in conjunction with the question of the natural resources of celestial bodies. It could thus make an important contribution in a field which had so far been the subject of only one scientific and legal declaration. That declaration might serve as a starting point for the Sub-Committee's discussions.

With regard to the analogy between the legal rules to be applied to the natural resources of the moon and other celestial bodies and those to be applied to the sea-bed and the ocean floor, the question seemed quite simple. Both the moon and other celestial bodies, and the sea-bed and ocean floor, were beyond the national jurisdiction of States. Thus everything seemed to indicate that the legal rules to be applied should be not only analogous, but perhaps identical, in order to maintain a balance in the recent decisions of legal science.

At the ninth session of the Legal Sub-Committee, his delegation had submitted two draft conventions, one of which was a draft agreement on the principles governing activities in the use of the natural resources of the moon and other celestial bodies (ibid.). If the Sub-Committee were to consider drafting an agreement on the use of the natural resources of the moon, his delegation would be glad if its draft agreement could provide a basis for the discussion.

His delegation hoped that the draft international agreement on activities carried out through remote-sensing satellite surveys of earth resources (ibid., p.2, document A/AC.105/C.2/L.73) that it had submitted at the ninth session of the Legal Sub-Committee would be given the priority it deserved by the Committee on the Peaceful Uses of Outer Space, especially in view of the fact that the United States of America and the Union of Socialist Soviet Republics, inter alia, had agreed on the importance of the subject of remote-sensing satellites.

The meeting rose at 12.55 p.m.

SUMMARY RECORD OF THE ONE HUNDRED AND SIXTY-NINTH (CLOSING) MEETING

held on Friday, 2 July 1971, at 10.45 a.m.

Chairman: Mr. WYZNER Poland

MESSAGE FROM THE SECRETARY-GENERAL

Miss CHEN (Secretary of the Legal Sub-Committee), speaking at the invitation of the Chairman, said that she had been requested by Mr. Stavropoulos, the United Nations Legal Counsel, to convey the following message to the Legal Sub-Committee: "On behalf of the Secretary-General, I wish to congratulate you most warmly on the adoption of the draft convention on liability for damage caused by objects launched into outer space. Through the spirit of compromise which has prevailed at your present session and the strenuous efforts of your Chairman and all members of the Legal Sub-Committee, you are in a position to report to the Committee on the Peaceful Uses of Outer Space and, through it, to the General Assembly the completion of this priority task. It is with satisfaction that we anticipate this liability convention taking its place along side the Outer Space Treaty and the Agreement on the Rescue and Return of Astronauts and the Return of Space Objects as landmarks in the law of outer space".

ADOPTION OF THE DRAFT REPORT OF THE LEGAL SUB-COMMITTEE ON THE WORK OF ITS TENTH SESSION TO THE COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE (PUOS/C.2/71/1 and Add.1 and 2)

The CHAIRMAN requested the Legal Sub-Committee to consider its draft report to the Committee on the Peaceful Uses of Outer Space (PUOS/C.2/71/1 and Add.1 and 2).

Paragraphs 1 to 13 of the draft report (PUOS/C.2/71/1 were adopted.

The CHAIRMAN drew attention to paragraph 7a (PUOS/C.2/71/1/Add.2), which recorded the tribute paid to the memory of the three Soviet cosmonauts.

Paragraph 7a (PUOS/C.2/71/1/Add.2) was adopted.

The CHAIRMAN requested the Sub-Committee to consider the remaining paragraphs of the draft report (PUOS/C.2/71/1/Add.1).

Paragraphs 14 to 22 were adopted.

Paragraphs 23 and 24

Mr. AZIMI (Iran) said that, when the Legal Sub-Committee had considered the final text of the draft convention on liability for damage caused by objects launched into outer space, his delegation had explained its position on the questions of applicable law and settlement of claims (167th meeting). Its position was similar to that of the delegations of Canada, Japan and Sweden but was not reflected in the draft report. He thought that his delegation's position should be indicated in paragraph 23, along with the names of Canada, Japan and Sweden.

The CHAIRMAN pointed out that it was not usual to give a summary of the views of the various delegations in the draft report, since those views were to be found in the summary records. It was at the specific request of the five delegations named in paragraphs 23 and 24 that their views had been included in the draft report.

Mr. AZIMI (Iran) said that he would like his delegation's name to be included in the first sentence of paragraph 23.

Mr. COCCA (Argentina) said that, in view of the fact that the delegations of Canada, Japan, Sweden and Iran had requested that their views should be mentioned specifically in paragraph 23, his delegation too would have to request that paragraph 23 should show that it had made similar observations on the question of settlement of claims, although not on measure of compensation.

The CHAIRMAN said that, in deciding on the new requests by the delegations of Iran and Argentina, it was necessary to take into account the fact that a large number of delegations had submitted proposals which were naturally different from the final text of the draft convention. If every delegation which had made a proposal at some stage in the discussion or which had expressed misgivings about certain articles in the draft convention wished to have its position recorded, the draft report would be overloaded.

The understanding had been that only delegations with serious problems of principle concerning the final text of the draft convention would have their positions described, as briefly as possible, in the draft report, as had been done in paragraphs 23 and 24.

Mr. CHARVET (France) thought that his delegation's reservations on certain articles in the draft convention would be made sufficiently clear in the summary records. As a compromise measure, he suggested that it might be possible to refer, in paragraph 23 of the draft report, to the summary records.

Mr. ROBERTSON (Canada), referring to paragraph 23, explained to the representatives of Iran and Argentina that there had been a substantive difference between the views of the three delegations mentioned (i.e. Canada, Japan and Sweden) and all the other delegations in the Legal Sub-Committee. During the informal negotiations prior to the adoption of the final text of the draft convention, those three delegations had made it clear that the only option they had was to have their views set out in the draft report in order to show that they had not been able to support the substance of the final text of the draft convention. Failing that, they would not have been able to

agree to the final text being forwarded to the Committee on the Peaceful Uses of Outer Space. The inclusion of their names in paragraph 23 was therefore the result of a compromise that had been designed to ensure that the final text of the draft convention on liability would be submitted to the Committee.

Mr. COCCA (Argentina) said that reference to specific delegations in paragraphs 23 and 24 would weaken the value of the draft convention and his delegation would have preferred the customary reference to "certain delegations", with a cross reference to the appropriate summary record as proposed by the French representative. Nevertheless, if specific delegations were to be mentioned, his delegation, which had been among the first three sponsors of the proposal in document A/AC.105/C.2/L.74 and Add.1 and 2 (see A/AC.105/85, annex I, p.3) and the first delegation to express a dissenting view on the provision for settlement of claims, should be among them.

Mr. REIS (United States of America) pointed out that specific reference to the Argentine proposal was made in paragraph 16. He proposed that, to take account of the French representative's proposal, the following paragraph should be added after paragraph 22:

> "All delegations noted that their positions, views, proposals and suggestions could only be determined from a careful review of the records of the Outer Space Committee and the Legal Sub-Committee since discussion of the liability convention began. Their positions should be regarded as fully reserved".

Mr. CAPOTORTI (Italy), referring to paragraph 24, proposed that in the first sentence the words "did not object to" should be replaced by the word "accepted" and the words "applicable law" by the words "measure of compensation"; and that, in the second sentence, the words "with regard to the provision on the settlement of claims," should be inserted after the word "However," and the words "in article XIX, paragraph 2" should be deleted.

It was so agreed.

Mr. MENZIES (Australia) proposed that the words "The delegations of Italy and the United Kingdom" at the beginning of paragraph 24 should be replaced by the words "Some delegations" and that the word "they" in the second sentence should be replaced by the words "these delegations".

Mr. GILMOUR (United Kingdom) and Mr. CAPOTORTI (Italy) accepted that amendment.

Paragraph 24, as amended, was adopted.

Mr. COCCA (Argentina) said that the amendments to paragraph 24 had not affected the wording of paragraph 23, to which his delegation maintained its objection. He appealed to the delegations of Canada, Iran, Japan and Sweden to agree that paragraph 23

should be amended to bring it into line with the wording of paragraph 22 and of paragraph 24 as amended. The position of delegations was clearly shown in the relevant summary records and it would be a dangerous innovation to mention those delegations by name in the report.

Mr. OKAWA (Japan) and Mr. PERSSON (Sweden) said that their delegations had received explicit instructions from their Governments to request that specific reference should be made in the report to their positions on the matters referred to in paragraph 23.

The CHAIRMAN said that, in view of the Legal Sub-Committee's earlier decision to allow specific reference to the positions of the delegations concerned to be made in the report, it would not now be proper to remove that reference. He appealed to the Argentine representative not to press his point, particularly since the delegations concerned would have no opportunity at that late stage to seek instructions from their Governments.

Mr. COCCA (Argentina) said that his delegation still considered it unjust for Argentina to be omitted when other delegations were mentioned by name. Nevertheless, in a spirit of understanding, his delegation would be prepared to withdraw its objection provided that the words "together with other delegations" were inserted after the word "proposed" in the second sentence of paragraph 23.

That proposal was approved.

Paragraph 23, as amended, was adopted.

Paragraphs 25 to 28

Paragraphs 25 to 28 were adopted.

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

CLOSURE OF THE SESSION

After an exchange of courtesies, the CHAIRMAN declared the tenth session of the Legal Sub-Committee closed.

The meeting rose at 12.25 p.m.