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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FIFTY-FIFTH MEETING

Held at Headquarters, New York,
on Friday, 1 October 1965, at 11.20 a.m.

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PRESENT:

Chairman:

Mr. LACHS

Poland

Members:

Mr. NACO

Albania

Mr. COCCA

Argentina

Sir Kenneth BAILEY

Australia

Mr. ZEMANEK

Austria

Mr. LITVINE

Belgium

Mr. de MEDICIS

Brazil

Mr. YANKOV

Bulgaria

Mr. TURNER

Canada

Mr. DOUBANGAR

Chad

Mr. GOTMANOV

Czechoslovakia

Mr. LEMAITRE

France

Mr. USTOR

Hungary

Mr. SAJJAD

India

Mr. ROSSI-ARNAUD

Italy

Mr. YAMAZAKI

Japan

Miss AGUIRRE

Mexico

Mr. GLASER

Romania

Mr. WILLIAMS

Sierra Leone

Mr. KELLBERG

Sweden

Mr. RYBAKOV

Union of Soviet Socialist Republics

Mr. IBRAHIM

United Arab Republic

Mr. DARWIN

United Kingdom of Great Britain
and Northern Ireland

Mr. SOHIER

United States of America

Secretariat:

Mr. SCHACHTER

Director, General Legal Division

Miss CHEN

Secretary of the Committee

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CONSIDERATION OF THE DRAFT AGREEMENT ON LIABILITY FOR DAMAGE CAUSED BY OBJECTS LAUNCHED INTO OUTER SPACE (A/AC.105/21; A/AC.105/C.2/L.8/Rev.3 and L.10/Rev.1; A/AC.105/C.2/W.2/Rev.3) (continued)

In the absence of further comments on the question of compensation for damage, the CHAIRMAN invited the Sub-Committee to hold a brief exchange of views on the possible limitation of liability to a specific amount, as proposed in article IX of the United States draft and article II, paragraph 1, of the Hungarian draft.

Mr. LITVINE (Belgium) recalled that his delegation's draft did not provide for any limitation of liability. However, there was no question of principle involved and he was prepared to reconsider his position, but on two conditions: that the proposed ceiling should be specified, and that the draft proposals should also contain some machinery for determining liability for damage caused to property and persons respectively, as well as personal liability. A provision for limiting liability could only be admissible if it was absolutely explicit.

Mr. ZEMANEK (Austria) said that he would be unable to reach a decision on the question of the limitation of liability until he knew the possible extent of the damage, particularly damage which might be caused by nuclear-propelled space objects. He proposed that the Sub-Committee should request its Chairman to seek the opinion of the Scientific and Technical Sub-Committee on that subject.

Mr. KELLBERG (Sweden) supported the Austrian representative's proposal.

Mr. USTOR (Hungary) said that the problem of liability and that of the possible exclusion of damage caused by nuclear devices were closely linked and could not be considered separately.

Mr. de MEDICIS (Brazil) reiterated the position expressed by his delegation during the previous session of the Sub-Committee against the establishment of limitation of liability.

Mr. LEMAITRE (France) said that on the substance of the question his delegation's position was very close to that of Belgium. He supported the Austrian representative's proposal that the opinion of the Scientific and Technical Sub-Committee should be sought. It was unfortunate that the French text of the synoptic table was still not available.

Mr. COCCA (Argentina) stressed that the question of the limitation of liability was linked with other problems which had not yet been clarified, such as those of compensation, the amount of liability, possible consequences of the use of nuclear-propelled devices, etc. He was therefore unable to reach any conclusions. He suggested that other conventions concluded in the field of nuclear energy should be used as a guide. As the matter had to be discussed in connexion with the question of absolute liability, the Sub-Committee could not for the moment reach any agreement on the substance.

Mr. DARWIN (United Kingdom) said that it should be considered whether, if it was decided to impose a limit on the amount of liability, a breakdown should be made of the different categories of damage, as the Belgian representative had suggested. Furthermore, it was not entirely clear from the United States text that the limit in that draft represented the total amount of compensation to be paid by all the launching States together. He too thought it would be useful to study other conventions dealing with nuclear questions. Merely by way of example, and without committing his delegation in any way, he suggested that the members of the Sub-Committee should consider the sum of \$100 million, the figure adopted for the convention on nuclear ships. However, the Sub-Committee must not prejudge the method of dealing with the question of damage caused by nuclear devices. It was, moreover, possible that certain provisions of the present convention touched on areas already dealt with in other conventions, and consideration should be given to ways of solving the problems to which that might give rise.

Mr. ZEMANEK (Austria), in reply to a question from the Chairman, said that he would formally submit his proposal only if it met with the approval of the Sub-Committee as a whole.

The CHAIRMAN noted that the Sub-Committee did not wish to study the substance of the question at the present time. He invited delegations to express their views on the Austrian proposal that a preliminary request for technical information should be addressed to the Scientific Sub-Committee, bearing in mind the close connexion between the question of the amount of compensation which could be claimed under the convention and the question whether or not the convention would apply to nuclear damage, and of course the arguments which had already been put forward for and against the inclusion in the convention of a provision limiting the amount of liability.

Mr. ZEMANEK (Austria), in reply to a question from the Romanian representative, explained that he wanted the Scientific Sub-Committee to be asked whether it was technically possible to assess the scale of the damage that could be caused by a space object either on the ground or to an aircraft or another space object and, if so, whether the Scientific Sub-Committee could give an approximate estimate of that damage.

Naturally, if the Scientific Sub-Committee replied in the negative to the first question, there would be no point in considering the question of the limitation of the amount of liability.

Mr. SOHIER (United States of America) said that the Scientific and Technical Sub-Committee should also be asked whether the risk of damage due to the use of nuclear propulsion was so disproportionately great that it should be excluded from the scope of the Convention. That was a question on which jurists had little technical information, and a nuclear propelled device which fell without exploding might in fact cause less damage than a space vehicle powered by chemical fuel.

Mr. GLASER (Romania) said that there was not necessarily any connexion between the possibility of assessing the amount of damage that might be caused by a space object and the question whether the Convention would set a limit to the amount of compensation which could be sought.

It was therefore essential to make it clear that the questions put to the Scientific and Technical Sub-Committee would in no way prejudice the decision to be taken regarding the limitation of liability.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that he shared that view. It was for the Legal Sub-Committee and it alone to decide whether or not the Convention would apply to nuclear damage and whether or not there would be any limitation of liability. Those were strictly legal questions, and the Sub-Committee could find it useful, moreover, to refer to other similar agreements in order to see how those questions were dealt with. In any event, however, no request for information should prejudice the final decision.

Mr. ROSSI-ARNAUD (Italy) said that, while he fully understood that reservation, it was in fact unnecessary, for no one disputed the Sub-Committee's competence in legal matters.

Mr. GLASER (Romania) said he was not afraid that the Scientific and Technical Sub-Committee would seek to influence the decision of the Legal Sub-Committee, but he did not wish the latter to appear to be making its decision dependent in advance upon the reply that it would receive.

Mr. DARWIN (United Kingdom) observed that in many fields in which the principle of a limitation of liability was accepted, the ceiling fixed was in fact independent of the extent of possible damage. For collisions at sea, for example, the ceiling was fixed according to the size of the responsible vessel. Instead of asking the Scientific and Technical Sub-Committee to indicate the possible amount of damage - which might vary considerably and the financial evaluation of which was outside its competence - the Legal Sub-Committee should request it rather to provide general information on the type of damage likely to be caused.

Mr. ZEMANEK (Austria) said that he expected the Scientific and Technical Sub-Committee to provide only average figures. He stressed that his proposal was not unusual and that IAEA, for example, had obtained technical advice when it had examined the Convention on civil liability for nuclear damage.

The CHAIRMAN noted that, in principle, the members of the Sub-Committee agreed that it would be useful to ask the Scientific and Technical Sub-Committee for its views regarding the damage that might be caused by space objects. It was clearly understood that whatever reply might be received, it could not bind the Legal Sub-Committee or prejudice its decision concerning the principle of limitation or non-limitation of liability or the amount to be fixed.

From the point of view of the procedure to be followed in the matter, the question should be noted in the Sub-Committee's report to the plenary Committee, which would transmit it to the Scientific and Technical Sub-Committee. The report would mention the reservations expressed by certain delegations. There was no need, however, to include those reservations in the question itself, which he would ask the Austrian representative, as the sponsor of the proposal, to draft.

Mr. SOHIER (United States of America) said that he would like the report to mention also that on one question a different approach had been taken in the various drafts: that of the procedure for settling claims for compensation. The United States draft drew a distinction between the procedure for settling claims

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(Mr. Sohler, United States)

for compensation and the procedure for settling disputes; in particular, with regard to the procedure for settling claims for compensation, the United States draft and that of Belgium provided for an ultimate solution of the claim, whereas the Hungarian draft made the settlement dependent upon the agreement of the parties. Those were important differences, which should be stressed.

Mr. DARWIN (United Kingdom) associated himself with the observations made by the United States representative.

Mr. USTOR (Hungary) said he considered that that was indeed a question worthy of the Sub-Committee's attention which it had been unable to settle or even examine during the session. It was to be hoped that at the next session the question could be given all the attention it deserved.

Mr. GLASER (Romania) said that if the report was to mention that, besides a certain number of points on which exchanges of views had been possible, other important questions had not been examined, the Romanian delegation would wish it to be stated that neither the question of the procedure for settling claims for compensation and the procedure for settling disputes nor the vital question of the right of accession to the Convention had been examined.

Mr. RYBAKOV (Union of Soviet Socialist Republics) shared the views which had just been expressed.

Mr. YANKOV (Bulgaria) considered that questions relating to jurisdiction, competence and settlement procedures, whether settlement of claims for compensation or settlement of disputes, were fundamental problems that would have to be examined in detail. It was questionable, however, whether there was any point in mentioning in the report that questions had merely been raised and had not been the subject of an exchange of views.

The CHAIRMAN suggested that the report should state that owing to lack of time the Sub-Committee had been unable to discuss certain questions.

It was so decided.

The meeting rose at 12.30 p.m.

