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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FIFTY-FIRST MEETING

Held at Headquarters, New York,
on Wednesday, 29 September 1965, at 11.5 a.m.

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PRESENT:

Chairman:	Mr. LACHS	(Poland)
Members:	Mr. COCCA	Argentina
	Sir Kenneth BAILEY	Australia
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	Mr. LITVINE	Belgium
	Mr. de MEDICIS	Brazil
	Mr. YANKOV	Bulgaria
	Mr. KINGSTONE	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. DABROWA	Poland
	Mr. GLASER	Romania
	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

CONSIDERATION OF THE DRAFT CONVENTION 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)

The CHAIRMAN suggested that the Sub-Committee should consider first the question of where liability for damage rested, classing the various cases in the following order: launching in which only one State was involved, joint launching, launching by an international organization. It could then consider the question of joint liability where several States were involved.

The simplest case, where one State only was involved, was envisaged in the first sentence of article 3 of the Belgian draft, in article II, paragraph 1, of the United States draft, and in article VI, paragraph 1, of the Hungarian draft. It was clear that the problem of liability for damage caused by objects launched into outer space was intimately connected with the question of the definition of "launching State". The Sub-Committee should therefore consider the latter question then and there, but without forgetting that for the moment it was considering only the case where a single State was involved.

Mr. GLASER (Romania) said that the Sub-Committee should agree on a definition of "launching State". He felt that the one which appeared in the United States draft lacked precision, since it characterized as launching States certain entities which might not be States, to wit, the international organizations.

To define "launching State" meant, in fact, seeking to establish who in the final analysis was to bear a certain liability for damage caused on the occasion of the launching of a space object. Questions to be answered in that regard were what criterion should be adopted, should it be restricted to the material fact of the launching, and should the fact of a State's having used its territory for the launching be taken into account? The last-mentioned element involved sovereignty and necessarily ruled out international organizations which, by definition, had no territory and must therefore undertake launchings from the territory of a State. Of course, consideration might also be given to the hypothetical case of a launching from territory which was not part of any State, or which was not even part of the terrestrial globe.

If the Sub-Committee was to do really useful work, it would have to ask itself whether the criterion of the State which carried out the launching was the appropriate one, and also whether or not the criterion of territory should be

(Mr. Glaser, Romania)

introduced into the definition of "launching State" and even whether a number of other elements which might give rise to liability should be taken into consideration. The definition of "launching State" must, in fact, be given the widest possible scope.

The CHAIRMAN noted that there were two possible ways of defining "launching State". The first, the subjective method, was to consider the subject participating in launching activities. The second, the objective method, was to consider the activities themselves. Basing itself on the three drafts before it, the Sub-Committee could thus decide on the criteria by which the "launching State" might be defined: who had carried out the launching, who had procured the launching, who had used certain facilities for the launching and, lastly, who exercised control over the orbit or trajectory of an object?

Mr. SOHIER (United States of America) said that some aspects of the question of defining the "launching State" were settled by paragraph 8 of the Declaration of Legal Principles, which provided that each State which launched or procured the launching of an object into outer space, and each State from whose territory or facility an object was launched was internationally liable for damage caused by such object. The United States draft was directly based on that principle. Moreover, the three drafts before the Sub-Committee agreed or coincided on many points. They all recognized the responsibility of the State carrying out the launching. They all regarded attempted launchings as equivalent to launchings. They all took into consideration the criterion of territory. On the other hand, only the Hungarian and United States drafts mentioned facilities. As far as the procurement of launchings was concerned, the United States draft was the only one to take it into account, although that was presumably what was intended by the expression "a common undertaking" used in the Hungarian draft.

Mr. ROSSI-ARNAUD (Italy) recalled that his delegation had put forward an amendment (A/AC.105/C.2/L.8/Rev.1) to article I of the second version of the United States draft. According to that amendment, "launching State" meant the State which had notified the Secretary-General of the United Nations of the launching of a space device and given the data necessary for its identification for the purpose of entry in the registry kept by the Secretariat for that purpose.

(Mr. Rossi-Arnaud, Italy)

There was no doubt that the territorial element played a very important role in the definition of "launching State". His delegation had nevertheless been impelled to submit its amendment, which did not include the criterion of territory, because it had had occasion to note that that criterion could sometimes give rise to difficulties. Thus, when an Italian satellite had been launched recently by a United States launching device from a base in the United States, the question had arisen as to which State should register the launching. Italy and the United States had agreed to leave it to Italy. Moreover, in a few months' time the San Marco operation would be repeated with a satellite to be launched from a platform off the coast of Africa. Territorial considerations would no longer enter in, but other elements would take their place: the launching device would be American, the space device itself would be Italian, and the African State off whose shores the launching was to take place would also co-operate in the undertaking.

His delegation had not forgotten that the registration of launchings was not yet obligatory, but that did not detract from the pertinence of its proposal. It was perfectly prepared to modify it, taking into account suggestions that might be put forward by other delegations.

Mr. GLASER (Romania) said that, whatever might be the future development of international law, the obligation to register launchings did not at present exist. However, even if such an obligation should be imposed, the definition of "launching State" could not be made dependent on compliance with a legal obligation which might not be respected. It would not be advisable to introduce into the definition an element alien to the substance of the problem.

Mr. ZEMANEK (Austria) said that the proposal for defining the launching State as the State which had notified the launching was unacceptable, whether one or several States were involved. Even if the registration of launchings was obligatory, there was nothing to prevent a State from defaulting on that obligation and failing to notify, for the purpose of registration, a launching which it had carried out.

Mr. USTOR (Hungary) pointed to the case where a launching was carried out on the high seas. As far as the Italian representative's proposal was concerned, another consideration seemed to militate against it. The question of the registration of launchings would present problems similar to that raised by the registration of vessels.

Mr. LITVINE (Belgium) did not think it advisable to introduce the idea of the registration of launchings into the draft Convention. There were indeed good reasons for establishing a system of registration, but that was an entirely different problem from the one facing the Sub-Committee.

Mr. ROSSI-ARNAUD (Italy) said that his delegation was prepared to take account of the observations which had been made; it would not, however, withdraw its proposal before receiving instructions to that effect.

Mr. YAMAZAKI (Japan) said he supported the Italian representative's idea that provision should be made for the registration of launchings. His delegation had put forward the same suggestion in connexion with the obligation to return space objects.

Mr. USTOR (Hungary) said that he did not deny the usefulness of registering launchings as such; he simply doubted whether a link could be established between registration and liability.

Sir Kenneth BAILEY (Australia) said that the concept of registration should not be introduced into the Convention as a key element in liability but only as one of the ways of settling factual questions on which liability would depend (ownership of launching facilities, territory, etc.). By registering a device, a State would furnish one element of identification. In any event, he could not agree that registration should be the sole criterion of liability. He preferred in that regard the enumeration which appeared in article I of the United States draft.

Mr. LEMAITRE (France) said that he did not think it would be appropriate to make provision for registration in the case of a launching by a single State, where liability was easy to determine. It would be well, however, to bear the Italian proposal in mind in cases where more than one State was involved.

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The CHAIRMAN invited the Sub-Committee to suspend the debate on registration and to take up the question of attempted launchings, which were placed on the same footing as launchings in article VI of the Hungarian draft.

Mr. LITVINE (Belgium) pointed out that, under the terms of article 2 of the Belgian proposal, the word "launching" expressly covered attempted launchings.

Mr. SCHIER (United States of America) observed that article I (b) of the United States draft also stipulated that the term "launching" included attempted launchings. The three drafts were thus in agreement on that point.

The CHAIRMAN said he assumed, therefore, that the Sub-Committee regarded attempted launchings as launchings for the purpose of determining liability.

He invited the members of the Sub-Committee to take up the question of joint launching by two or more States (article 3 of the Belgian draft; article I of the United States draft; article VI of the Hungarian draft).

Mr. ZEMANEK (Austria) believed that two methods could be envisaged. One of the participating States (e.g., the State whose territory was used for the launching) might be expressly designated as being liable and would be given the responsibility of agreeing with the other participating States on the apportionment of the liability. Alternatively, the applicant State might be allowed to decide to which of the participating States - all such States being liable - it would make its claim, and the latter States would be responsible for apportioning the liability among themselves. His delegation was inclined to favour the first alternative, which appeared to be the more practical, but the second solution would enable the injured State to choose from among the States that were liable the one which would be best able to bear the material burden of the liability.

The CHAIRMAN said that he felt a decision should first be reached on the criteria for determining which State was the launching State in cases where two or more had participated in the operation.

Mr. ZEMANEK (Austria) said he was not sure that it would be practical to establish several criteria for defining the launching State.

The CHAIRMAN pointed out that the three drafts used several criteria.

Mr. USTOR (Hungary) agreed that, in theory, the representative of Austria was right. In practice, however, there would probably never be a case where a single criterion would be decisive.

Mr. SOHIER (United States of America) noted in that connexion that it did not appear from the Declaration of Legal Principles that a single participating State should be considered liable.

Mr. LITVINE (Belgium) felt that the three drafts were very close to one another on that point. Through a combination of the definitions in article 2 and the content of article 3, the Belgium draft was designed, for practical reasons and also in order to ensure the payment of compensation for damage, to leave a broad range of alternatives open to the applicant State. Wealthiness should not be the determining factor, but the fact was that when two or more States took part in a launching in different capacities, it was difficult to fix the liability.

Mr. DARWIN (United Kingdom) said that, if some States failed to accede to the Convention, it might happen that a State party to the Convention would use the territory of a non-party State. Provision should therefore be made for holding the former responsible by adopting criteria other than the purely territorial criterion, and hence it would be worth while to broaden the range of criteria to be applied in determining the launching State.

Mr. RYBAKOV (Union of Soviet Socialist Republics) noted that much that was positive and deserving of study had emerged from the debate; that was true, in particular, of the remarks made by the representative of Romania. Although they contained some divergent elements, the three drafts had many points in common, and there was unanimity on the method of resolving certain specific issues, such as determining which was the respondent State and which States were liable for launchings. Nevertheless, the Soviet delegation preferred the Hungarian text. While, moreover, it was difficult to determine liability in the case of a joint launching by two or more States, it must be borne in mind that some useful elements had already been provided in the Convention on Rescue, which contained an agreed definition of the launching State. In any event, the debate had given the members of the Sub-Committee some useful points for reflection concerning the problem of liability for launching.

Mr. LEMAITRE (France) said that if "launching State" meant the State to which the claim for compensation would be presented, his delegation was in favour of the largest possible number of liable States. With regard to the substance of the question, however, it reserved its position, as it did not wish to prejudge the question of joint liability.

Mr. SOHIER (United States of America) said that it was necessary to define the degree of participation on the basis of which a State would be considered liable as a launching State. He wondered whether, for instance, a State which had sent a technical observer to cover a launching, or which had taken advantage of a launching in order to carry out experiments on insects, would bear equal liability. Too broad a definition might affect international co-operation in the exploration of outer space. The meaning of substantial participation should be defined; the Italian-United States San Marco operation was a good example. On the other hand, if State A had built a space vehicle and State B had purchased it, paid for it and launched it, there could be no basis for saying that State A was liable.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said he did not think that it would be particularly difficult to define the States participating in a joint enterprise in outer space. All the members of the Sub-Committee considered it necessary to determine the basic criteria by which participating States could be defined. A study of the different projects showed that the positions were very close to one another. It would be easy to find a solution in the cases mentioned by the United States representative if the attitude adopted by the Soviet delegation in connexion with the question of rescue was taken as a basis. A participating State might be defined, for instance, as one which had announced its participation in a launching. What needed to be done, however, was to determine the essential criteria.

Mr. LITVINE (Belgium) said that he had little liking for subjective formulae which, so far as the participation of a State was concerned, would be based on the notion of substantial participation or, in other words, of a quantitative determination of participation. He continued to believe that if States agreed

(Mr. Litvine, Belgium)

on a launching operation, they should be allowed to make their own arrangements among themselves concerning liability. What was needed was a solution which would facilitate action by the applicant State.

The CHAIRMAN, summing up the debate, stated that, without prejudice to the substantive issue of liability, a number of criteria had been advanced, which for the purposes of definition might be listed as follows: (1) territory; (2) facilities used; (3) the question of who exercised control over the orbit or trajectory; (4) ownership or possession of the space object. Those criteria were to be found in the three texts.

Mr. SOHIER (United States of America) proposed the addition of two criteria which appeared only in the United States draft and might be key factors in determining liability, namely, those of procuring the launching and participating in the launching.

Mr. LITVINE (Belgium) said that the concept of "procuring the launching" fell within the very broad meaning which the Belgian draft gave to the word "participation".

Mr. DARWIN (United Kingdom) said that, while he was in agreement with most of the criteria employed, he was still in doubt as to the precise scope of the word "participation".

Mr. SOHIER (United States of America) said that he was somewhat uncertain about the concept of the ownership of a space object.

The CHAIRMAN pointed out that the Sub-Committee was merely attempting to draw up a provisional list of criteria for defining the launching State which would meet with the satisfaction of all. The relative importance of each criterion in determining liability would be discussed separately.

Mr. LEMAITRE (France) said that he would like to mention another, purely practical criterion. When a device or part of a device fell in the territory of a State and caused damage, the best way for the applicant State to determine to whom it could present its claim (without prejudice to the question of ultimate

(Mr. Lemaitre, France)

liability) was to be guided by any markings which might have been placed on the device, either by the launching State or as a result of international registration.

Mr. USTOR (Hungary) said that that would be simply a piece of evidence rather than an actual characteristic of the device or the launching.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that he was opposed to the idea of taking markings on space objects into consideration in identifying the launching State. A better criterion had been adopted in connexion with the agreement on the rescue of crews, and it would be preferable to adhere to that.

He also wished to observe that, while the three drafts before the Committee were very similar in some respects, the very real differences in emphasis which still existed should be borne in mind.

Mr. YAMAZAKI (Japan) said that it would be useful to take account of the international registration of the space object, and pointed out that the legal significance of international registration might be very different from that of national registration.

Mr. COCCA (Argentina) said that, in the light of precedents in air law, he felt there would be more advantages than disadvantages in using registration as a criterion, provided that account was taken of the very useful distinction made by the Japanese representative.

The CHAIRMAN invited the Sub-Committee to take up the question of the liability of international organizations as such and of the liability of members of such organizations.

Mr. COCCA (Argentina) cited paragraph 5 of General Assembly resolution 1962 (XVIII) which provided that, when activities were carried on in outer space by an international organization, responsibility for compliance with the principles set forth in the Declaration was to be borne by the international organization and by the States participating in it. The key to that provision was the interpretation of the word "and", and in that connexion a distinction should be made between two types of international organizations.

(Mr. Cocca, Argentina)

When the United Nations, one of its specialized agencies or a similar organization generally recognized as having international status was involved, the liability of the organization took precedence over that of its members. In other words, the latter were required to answer for the activities of the organization only if it did not do so itself.

If, on the other hand, a more limited organization which did not have the same international status was involved, the organization and its members were simultaneously liable.

There were already a number of organizations of that type, which had been established for the specific purpose of promoting co-operation in space activities. Since they had no international legal status, they were bound only by their statutes and their declarations were authoritative only inter partes and not erga omnes; some of them, such as COMSAT, had not yet set up any machinery to ensure compensation for those affected by any damage which they might cause on land.

It was essential that the proposed convention should take account of the existence of that new type of international organization in seeking to define the liability of international organizations and their members.

Mr. YAMAZAKI (Japan) said that the Sub-Committee should declare itself in favour of the principle that international organizations were liable as such.

Mr. GLASER (Romania) said that international organizations should be regarded as being liable. In the present instance, however, there was in any case an obligation to make good the damage caused by a launching, without regard to any convention. That would obviously be true in a case where a launching had been carried out not by a State but - as would unquestionably soon be possible - by one or more individuals, whether or not they were associated with an international non-governmental organization. If the launching caused damage, the person or persons in question would obviously be liable not by virtue of a convention but under the general legal principle that anyone causing damage was obligated to make it good. Thus, the international convention, when it came into existence, would not establish that obligation but merely define its scope. Otherwise, it would be necessary to secure accession to the convention by all international organizations

(Mr. Glaser, Romania)

and even by all individuals who were likely at some time to carry out launchings, since non-signatory organizations and individuals, like States not parties to the convention, could regard themselves as not being automatically bound by its provisions.

From a practical standpoint, other problems arose if the liability of international organizations and that of their member States were placed on an equal footing, as was done by the Declaration of Legal Principles. First of all, international organizations having a number of influential member States which were not parties to the convention would be under heavy pressure by them not to pay compensation as quickly as it should and could be paid by the States which were primarily liable for launchings. Furthermore, international organizations might not have resources equal to those of their member States for the purpose of meeting claims for compensation.

In order to prevent States from evading the obligations which would normally devolve upon them by invoking the liability of the international organizations to which they belonged, the convention could either specifically emphasize the obligations of States or prescribe a claim procedure which would enable the claimant to seek compensation directly from the other States involved, without having first to apply to all the States jointly. That aspect of the problem would have to be clarified in any event before a decision was taken on the substance of the matter.

Mr. GOTMANOV (Czechoslovakia) said that the Hungarian draft, as amended to take account of the observations made at the previous session, had the merit of reaffirming, with regard to international organizations, the principle of liability set out in General Assembly resolution 1962 (XVIII) and also of specifying that an organization and its member States would be held jointly liable for any damage caused.

The CHAIRMAN noted that only the locus standi of international organizations was at issue at the present time and that the question of joint liability would be considered separately.

The meeting rose at 12.55 p.m.