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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fourth Session

SUMMARY RECORD OF THE FIFTY-SECOND MEETING

Held at Headquarters, New York,
on Wednesday, 29 September 1965, at 3.30 p.m.

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PRESENT:

Chairman:

Members:

Mr. LACHS	(Poland)
Mr. COCCA	Argentina
Sir Kenneth BAILEY	Australia
Mr. ZEMANEK	Austria
Mr. LITVINE	Belgium
Mr. de MEDICIS	Brazil
Mr. YANKOV	Bulgaria
Mr. KINGSTONE	Canada
Mr. GOLSALA)	Chad
Mr. DOUBANKAR)	
Mr. GOTMANOV	Czechoslovakia
Mr. LEMAITRE	France
Mr. USTOR	Hungary
Mr. SAJJAD	India
Mr. ROSSI-ARNAUD	Italy
Mr. YAMAZAKI	Japan
Miss AGUIRRE	Mexico
Mr. DASHTSEREN	Mongolia
Mr. WYZNER	Poland
Mr. BOTA	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. SOHLER	United States of America
Mr. SCHACHTER	Director, General Legal Division
Miss CHEN	Secretary of the Committee

Secretariat:

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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/W.2/Rev.3) (continued)

Sir Kenneth BAILEY (Australia) said that the first issue to be settled in considering the question of the liability of international organizations was whether an international organization as such, as distinct from the members constituting it, should be regarded as liable. There seemed to be general agreement that that question should be answered in the affirmative. As the representative of Argentina had pointed out at the previous meeting, the General Assembly had stated, in item 5 of the Declaration of Legal Principles (resolution 1962 (XVIII)), that responsibility for compliance with the principles set forth was to be "borne by the international organization and by the States participating in it".

A further question, which was answered differently in the various drafts under discussion, was how the principle of such liability could be applied in practice. It seemed clear that neither the United Nations nor the contracting parties to the convention could simply impose legal liability on any international organization which conducted space activities, although that seemed to be the assumption behind the text proposed by Hungary. A more satisfactory approach was taken in article III of the United States draft, under which all the provisions of the convention, except for certain articles which were not applicable to international organizations, became binding on an organization once it transmitted to the Secretary-General a declaration accepting the obligations involved. Australia would not want to be thought to take the view, now rather obsolete, that only States could be subjects of international law. But that was not the point, in any case; the United States proposal simply provided a procedure whereby an international organization could assume obligations under the convention, obligations which could not be imposed by a fiat of the contracting parties. The solution proposed by the United States was in accord with precedent. While there were other possible procedures by which an international organization could become the subject of rights and duties, they would not be as simple and satisfactory as the method proposed in the United States draft.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that it seemed to follow from the Declaration of Legal Principles that international organizations must be liable for damage, as well as States. Item 5 of the Declaration made it clear that responsibility for compliance with the principles could rest with

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entities other than States, and reference was made even to non-governmental entities. It seemed plain that the principle of liability for damage also applied to such bodies.

The question then arose whether organizations should specifically assume obligations under the convention now under consideration. His delegation considered that they should do so, but that they should not become parties on the same footing as States, since the question of the status of international organizations as subjects of international law might prove controversial. He would regard the approach adopted in the Hungarian draft as being the correct one, in conformity with the spirit and the letter of the Declaration. The United States approach was not acceptable, for the reasons he had stated.

The solution to the problem must be based on a consideration of its practical aspects. At the previous session, the USSR had made a proposal, in connexion with the draft agreement on assistance and return of astronauts and space vehicles, which might be relevant: the text in question, proposed as an additional article, was to be found in the Sub-Committee's report on the second half of its third session (A/AC.105/21, annex I, page 12). The procedure suggested in that article could be applied to the question of compensation. It was a solution which would enable the practical problem to be dealt with without raising the controversial issues he had mentioned earlier.

Mr. DARWIN (United Kingdom) said that the question under discussion was an important one and that the Sub-Committee's approach must be based on practical realities. The fact was that few States were in a position to conduct space activities on their own; it was natural that joint ventures should be undertaken, often through the procedure of setting up international organizations. Any solution concerning liability must take fully into account the existence of such organizations. Another background element was the General Assembly's Declaration of Legal Principles. In that connexion, he noted that the Soviet Union representative had mentioned the reference in item 5 of the Declaration to "non-governmental entities"; it seemed, however, that it was the last sentence of item 5 which was immediately relevant. In that sentence, the General Assembly stated that responsibility for compliance with the principles was to be borne "by the international organization and by the States participating in it". The Declaration had thus recognized the importance of the activities of international organizations in outer space.

(Mr. Darwin, United Kingdom)

The Hungarian proposal seemed to raise a number of difficulties. One was that the convention to be drafted did not simply state liability as a principle, as the Declaration did, but was intended to prescribe detailed procedures for the presentation of claims. It was important that its provisions should apply to claims against organizations as well as claims against States. However, the fact that some of the members of an organization might not be parties to the convention must be taken into account if the organization was to be covered by the convention, and some procedure for acceptance of obligations by the organization as such was appropriate.

There was also a question of justice. It would seem unjust to impose rather detailed obligations on an organization without conferring any rights on it. The correct procedure seemed to be to assimilate the organization as far as possible to a State, which was what the United States draft tried to do. He fully supported the remarks made by the Australian representative in that connexion, and considered the United States draft to represent an equitable solution to the problem.]

Mr. KELLBERG (Sweden) said that the subject was important to his country as a member of a European organization for space research. Some delegations had expressed the view that only States could accede to an international convention, on the basis of the principle that States alone could have sovereign rights - a principle that would be challenged by no one. The real issue, however, was whether one was to hamper scientific progress by placing obstacles in the way of smaller States which wished to pool their resources for the purposes of space research. If international organizations were not allowed to accede to the convention and to shoulder primary responsibility for compensating damages, smaller States might hesitate to engage in research through the intermediary of such organizations, and all would suffer. Such an approach might even have the result of deterring States from ratifying the convention. His interpretation of the United States draft would be that primary responsibility rested with the international organization and not with the constituent members. If that was not the principle accepted, his delegation was bound to express concern. The wording of the Declaration of Legal Principles would not exclude the recognition of the primary liability of the organization, with participating States bearing only a subsidiary liability. His delegation had reluctantly accepted the principle of joint and several liability in relation to the subsidiary liability of members, but that liability must be subsidiary.

Mr. YANKOV (Bulgaria) said that there seemed to be general agreement on the question of the liability of international organizations, but no generally acceptable approach towards their relationship to the provisions of the Convention appeared to have been found. The matter of the status of organizations should not be approached merely academically, but in the immediate context. The question was not whether the recognition of international organizations as having certain legal capacities endangered the principle of State sovereignty. It was a fact that contemporary international relations were characterized by the development of the role played by international institutions. Nor could it be regarded as a question of granting justice to international organizations. The question was whether it was advisable to allow international organizations to become parties on the same footing as States. In his view, [a convention which was trying to take the first step of codification in a new sphere should not be over-ambitious, and should recognize the fact that international law as it related to international organizations was not sufficiently developed. If one considered the question of institutional provisions for settling claims, it could be seen that the different legal status of contracting parties could have practical legal implications. Leaving aside political considerations, there were many purely legal and technical considerations which made it impossible to place States and international organizations on the same footing. It would seem more prudent to take the course proposed in the Hungarian draft, which provided a practical solution to the problem of the liability of international organizations. While affirming the liability of organizations, it differentiated between them and States in a way which seemed wise at the present stage.]

Mr. USTOR (Hungary) observed that, under article III, paragraph 1, of the United States proposal, an international organization "which conducts space activities" could participate in the convention. He wondered whether such organizations must have already conducted space activities, or whether their declared intention to do so was sufficient to admit them to the convention. The Belgian proposal was somewhat more restrictive, opening the convention to an international organization only if it was invited to accede to the convention by the General Assembly of the United Nations.

(Mr. Ustor, Hungary)

There was a logical connexion between the provisions on accession of international organizations and on accession of States. Both the United States and Belgian proposals limited the circle of possible States parties to the convention on the ground that it was sometimes difficult to determine whether a certain country was a State for the purpose of international agreements. It would be far more difficult, however, to establish whether certain organizations or arrangements - for instance, "joint ventures" in outer space - constituted international organizations in that sense. Delegations supporting the United States and Belgian position would therefore understand his delegation's reluctance to open the convention to international organizations generally.

The Hungarian proposal was based on the notion that international organizations could undertake obligations and acquire rights under the convention. Clearly, if an international inter-governmental organization undertook space activities, some kind of arrangements must be made with it, and in that connexion the USSR representative had aptly drawn attention to a related Soviet amendment, which his delegation would consider for incorporation in its text. It could not for the time being accept the ideas set forth in the United States and Belgian proposals.

Mr. LITVINE (Belgium) said that one of the main purposes of the Belgian provisions concerning international organizations was to enable and encourage States which were not parties to the convention to participate in it by joining an organization which was a party.

Mr. ZEMANEK (Austria) said that his remarks would relate solely to international inter-governmental organizations, since there seemed to be no justification for the participation of private or non-governmental international organizations. Two quite distinct questions were involved. The first was whether international organizations in the abstract could possess international personality and corresponding legal capacities, to which the answer was definitely affirmative, if their charter conferred on them the necessary competence to incur international obligations or exercise international rights. The second question was the more complicated one of the practical treatment of such organizations in relation to an international agreement. The crux of the problem was the extent to which recognition was accorded to an organization that, legally at least, had international personality. The United Nations and the specialized agencies

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certainly had international personality so far as their member countries were concerned; the question was whether they did vis-à-vis non-members as well.

The International Court of Justice had given an advisory opinion, in connexion with reparations for damages suffered in the service of the United Nations, to the effect that fifty or more States could create an international personality which was valid also for non-members. That view had been severely criticized for its quantitative approach, but it did make one thing clear: if the problem was difficult in the case of a world-wide organization, it would be more difficult still in the case of regional organizations.

All three proposals before the Sub-Committee were deficient in that they treated the problem only in the abstract. They spoke of international organizations without specifying what an international organization was for the purposes of the convention. Some solution should be sought, difficult though the problem was. It might be possible to devise a wording that was at once more subtle and more precise than was to be found in the present proposals. In any case, he firmly opposed the Hungarian text, since its implications went far beyond the framework of the convention and would create obligations which his country, for one, could not accept. Austria did not assume responsibility as an individual State for the activities of the International Atomic Energy Agency, of which it was a member and the host country; that was stated in the headquarters agreement. Similarly, Switzerland had denied responsibility for the activities of the League of Nations during the Second World War.

Mr. RYBAKOV (Union of Soviet Socialist Republics) said that the problem as he saw it was one of ensuring compensation for damage in cases where States conducted space activities within the framework of an international organization. The best course, consistent with the Declaration of Legal Principles and the practice of States in the field of outer space, would be to assign responsibility both to the individual State and to the international organization. The State should make certain that before the organization launched a space device, a suitable system of compensation in the event of damage had been worked out. That would settle the problem for all States participating in common undertakings, including the smallest States, and it was in fact the method which was used in practice. If the international organization alone was regarded as liable, a country might succeed

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in evading its responsibility as a member. Countries might even be prompted not to sign the convention, but to limit their participation to membership in a signatory organization. Before coming to any final decision on the question, the Sub-Committee should carefully consider the merits of placing responsibility for damage on the State simultaneously with the organization to which it belongs.

Mr. SOHIER (United States of America) said that while it was true that under article IIII of the United States proposal the primary responsibility for compensation of damage was placed on the international organization, paragraph 3 of that article provided very clearly for the eventuality of default by the organization, in which case the members of the organization became fully liable. He therefore failed to see how the procedure laid down in article IIII could be seen as encouraging irresponsibility on the part of an organization's members.

Mr. KINGSTONE (Canada) said that the United States text recognized and gave effect to the relevant provisions of the Declaration of Legal Principles, item 5 of which confirmed the principle that international inter-governmental organizations possessed international personality, even if that personality was not identical with the international personality possessed by a State. It was beyond dispute that an international organization could have the capacity to enter into international agreements. It was that capacity which concerned the Sub-Committee at the moment.

The United States draft would enable international organizations to exercise their capacity to enter into agreements while at the same time avoiding complications arising out of the difference between them and States. In keeping with the Declaration, the United States draft placed primary responsibility on international organizations, with secondary responsibility falling on the member States.

Mr. RYBAKOV (Union of Soviet Socialist Republics) pointed out that article III, paragraph 3, of the United States proposal provided that in case of default by an international organization, responsibility would fall upon "each member of the organization which is a Contracting Party". Thus, if a member was not a party to the convention, it would not become liable.

Mr. LEMAITRE (France) said that the role of international organizations was particularly important in the field of outer space and should be duly taken into account in the convention. By international organizations he meant inter-governmental organizations, for non-governmental organizations were generally subject to national law and their activities thus formed part of the State's activities. He recognized the force of the argument that no organization had the same standing as a State but he felt that the United States text met that argument, since it provided for a form of participation by organizations which was more limited than that of States. It excluded organizations from the application of certain provisions which were relevant only to States. Indeed, as the Sub-Committee proceeded from article to article, it might wish to confirm whether or not the particular provisions were applicable to international organizations.

The matter raised two very difficult questions: to what extent could it be guaranteed that members of an organization would accept ultimate liability, and how could States which were members of an organization but not parties to the convention be made liable under the convention?

Mr. ROSSI-ARNAUD (Italy) said that his delegation was fully in favour of the accession of international organizations to the convention. Even those who took the contrary view seemed to have softened their stand somewhat, arguing simply that international organizations were not yet ripe for accession. They did not deny the importance of such organizations in space activity, and indeed for the smaller countries it was only through organizational arrangements that any activity in space became possible. His delegation endorsed article III of the United States proposal and welcomed the United States representative's statement that while primary responsibility rested with the organization, liability devolved upon the members in the event of default.

Sir Kenneth BAILEY (Australia) said that his delegation could not accept the doctrine on which the Hungarian text was based, namely, that contracting parties to the convention were legally able to impose liability on an international organization conducting space activities because the General Assembly in the Declaration of Legal Principles had declared that such organizations should be liable. Under international law, parties to an agreement could not impose liability on an international organization, whether they were members of that organization or

(Sir Kenneth Bailey, Australia)

not. International law had evolved no simpler procedure than the one embodied in article III of the United States draft: only the separate, concurring initiative of the international organization itself could bring it under the scope of an international agreement. The United States text was based squarely on the most contemporary practice in the United Nations and no better way of securing the implementation of item 5 of the Declaration - which was precisely the task of the Sub-Committee - had been proposed.

Mr. COCCA (Argentina) agreed with the French representative that further consideration should be given to the exceptions listed in article III, paragraph 1, of the United States draft. His delegation wished to emphasize the importance of the point made in article 6 of the Belgian draft, that States members of the organization concerned should accept joint liability. Article VI of the Hungarian draft likewise stressed the joint liability of States participating in a common undertaking. All three drafts contained ideas that were very similar and he hoped that it would prove possible to bring them closer together and reach a consensus.

Mr. USTOR (Hungary) said that his delegation had some misgivings about article III of the United States draft. If the Secretary-General of the United Nations received a declaration of the kind referred to from an individual State, his duties were clear; if, however, he received the declaration from an international organization, he would have to ensure that it had been made in accordance with the basic rules and procedure of the organization in question. The difficulty was recognized in the Belgian text, which required that the international organization should signify that its member States were willing to accept the obligations assumed by the organization. It would be preferable, in his delegation's view, to return to the idea that only States could accede to the convention.

Mr. DARWIN (United Kingdom) said that the capacity of international organizations to assume obligations and obtain rights under the convention was not disputed in any of the three proposals. The only question was whether such organizations needed to take any procedural step in order to come within the scope of the convention. The problem was not only that of the responsibility of an international organization as such, but also that of the responsibility of States

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members of that organization and parties to the convention. It was likely that in the future launchings by an international organization would take place from a State which was a party to the convention and which would therefore be classed as a launching State for the purposes of the convention. Its responsibility as a State member of the organization would therefore be a secondary one. There would, however, be great procedural economy if the international organization itself was regarded as the launching State, since it would clearly be in the best position to deal with claims. If the international organization did not give satisfaction as first debtor, there would of course be a residual right against individual States parties to the Convention.

The CHAIRMAN, summing up the discussion, said that there was general agreement in the Sub-Committee on the concept of the liability of international organizations, as laid down in the Declaration of Legal Principles. There also appeared to be general agreement that the term "international organizations" referred only to inter-governmental organizations. On the question of the personality of an international organization, however, opinion was divided as to how the liability of such an organization was to be established. Some held that there was no need for an international organization to become a party to the convention, others that it should become a party to the convention or, at least, establish some kind of status or relationship with the convention for the liability to have legal effect. That question needed further consideration before an agreement could be reached. Further consideration was also needed on the question of the relationship between the liability of an organization and the liability of its member States. The crucial issue was how to interpret the word "and" in the last sentence of item 5 of the Declaration; in other words, to determine whether or not the Declaration placed primary responsibility on the international organization.

Mr. SOHIER (United States of America), supported by Mr. DARWIN (United Kingdom), said that his delegation did not feel that there was general agreement in the Sub-Committee that, for the purposes of the convention, international organizations meant only inter-governmental organizations. It was not clear exactly what was meant by an inter-governmental organization: was the consortium involved in communication satellites, for example, to be considered an inter-governmental organization?

The CHAIRMAN said that it would be recorded in the report that the issue of the nature of the international organization had been explored but that no conclusion had been reached. He invited the Sub-Committee to begin consideration of the question of the joint liability of States participating in a joint undertaking and drew its attention to the relevant provisions in the three drafts.

MR. LIEVINE (Belgium), commenting on the provision in article 3 of the Belgian proposal, said that the text had been drafted so as to avoid the use of controversial language, such as "joint and several liability", but that the underlying idea was the same.

Mr. SCHIEF (United States of America) said that article III, paragraph 3, of the United States proposal attempted to spell out what was meant by the concept of joint and several liability. That concept varied somewhat even in different jurisdictions within the United States itself and procedures varied widely in the different common-law countries. All three proposals were based on the same concept of liability but the United States proposal specified how the amount of liability was to be established and how compensation was to be collected from the various liable States. Its intention was to specify that the presenting State should proceed for the total amount at one time and not make a series of separate actions for various amounts of damage against different States; once the amount had been established, the presenting State might seek payment of any amount from any of the liable States within any time period.

Mr. USTOR (Hungary), commenting on article VI, paragraph 2, of the Hungarian draft, said that there was general agreement on the concept of joint and several liability where two or more States were involved. The joint participation of a State and an international organization was, however, a different question.

Sir Kenneth BAILEY (Australia), introducing his delegation's draft amendment (WG-II/50) to article II, paragraph 3, of the United States proposal, said that his delegation agreed with the United States representative that, because different legal systems had different procedures for joint and several liability, it would be preferable to avoid referring to that concept as such and to set out exactly what procedure should be followed.

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Under the terms of the United States proposal, where two or more launching States - and launching State had to be understood as defined in the convention - were liable, the presenting State could proceed against any or all such States individually or jointly for the total amount of damages. Once that amount was agreed upon, each of the respondent States was liable to pay the full amount, provided however that the total amount paid to the presenting State did not exceed the amount payable under the convention if only one respondent State were liable. There was no need to go into the question whether that really constituted "joint and several liability". The Sub-Committee's task was to formulate a practical and just procedure. His delegation had submitted an amendment to the United States text with a view to clarifying not only the end result but the procedure by which that result would be reached, if the presenting State proceeded against more than one respondent State. The last sentence of article II, paragraph 3, of the United States text, with the proposed amendment, would read: "Once the amount of that liability is agreed upon or otherwise established, each such State proceeded against shall be liable to pay that amount, subject, however, to the condition that the amount recoverable by the Presenting State from any Respondent State shall be reduced to the extent of any compensation received in respect of that claim by the Presenting State from any other Respondent State, to the intent that in no case shall the aggregate of the compensation paid in respect of any one injury exceed the amount which would be payable under this Convention if only one Respondent State were liable."

Mr. ZEMANEK (Austria) welcomed the Australian amendment as a valuable addition to the United States text. His delegation had already stated its preference for specifying in the convention the procedures to be followed in the case of joint and several liability, because it was convinced that only the method of procedure was in dispute, not the principle itself.

Mr. LITVINE (Belgium) said that the Australian proposal was based on the assumption that a limitation of liability existed, but no decision had yet been reached on that point. He also regretted the use of the term "jointly" in the text, since it was a possible source of controversy. His own delegation's proposal had been drafted in such a way as to avoid such controversial terms. There were

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more important points than that of the aggregate compensation; it was essential, for example, to ascertain the proportion of damage applying to persons and property. In the United States draft proposal, damage was defined as "loss of life, personal injury, or destruction or loss of, or damage to, property", yet in the text of the Australian amendment the more restrictive term "injury" was used.

The meeting rose at 5.55 p.m.

