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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

SUMMARY RECORD OF THE TWENTY-FIFTH MEETING

Held at Headquarters, New York,
on Tuesday, 30 April 1963, at 11 a.m.

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Chairman:	Mr. LACHS	(Poland)
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	Mr. COOK	Australia
	Mr. MARSCHIK	Austria
	Mr. LITVINE	Belgium
	Mr. MEDICIS	Brazil
	Mr. MOLEROV	Bulgaria
	Mr. PARRY	Canada
	Mr. PRUSA	Czechoslovakia
	Mr. LEMAITRE	France
	Mr. PRANDLER	Hungary
	Mr. NARENDRA SINGH	India
	Mr. AMIRMOKRI	Iran
	Mr. ATTOLICO	Italy
	Mr. MATSUI	Japan
	Mr. HAKIM	Lebanon
	Mr. CAVILLO-TREVIÑO	Mexico
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	Mr. TABITI	Morocco
	Mr. WYZNER	Poland
	Mr. JUCU	Romania
	Mr. KAREFA-SMART Mr. PEARCE	Sierra Leone
	Mr. HEDIN	Sweden
	Mr. TIMERBAEV	Union of Soviet Socialist Republics
	Mr. FAHMY	United Arab Republic
	Miss GUTTERIDGE	United Kingdom of Great Britain and Northern Ireland
	Mr. MEEKER	United States of America
Secretariat:	Mr. SCHACHTER	Secretary of the Sub-Committee

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CONSIDERATION OF LEGAL PROBLEMS ARISING FROM THE EXPLORATION AND USE OF OUTER SPACE (A/C.1/879, 881; A/AC.105/L.3-L.6; A/AC.105/C.2/4; A/AC.105/C.2/L.6, L.7) (continued)

Miss GUTTERIDGE (United Kingdom) said that she wished to draw attention to some of the many factors which would have to be taken into account before an international agreement on liability for space vehicle accidents could be concluded. Current space activities included the firing of sounding rockets with instrumented packages into the upper atmosphere, the placing of manned or unmanned vehicles in orbit around the earth and deep space probes beyond the earth's gravitational field. The Sub-Committee was at present mainly concerned with the second of those activities - the projection of vehicles into space by means of a rocket-propelled launcher, and the question of liability for injury or damage to persons or property, caused outside the territory of the launching State by accidents to such vehicles.

In the first place, account should be taken of the fact that such vehicles might be launched either from national territory or from some place outside the territory of any State. The territory from which they were launched might be selected for reasons of geographical convenience and would not necessarily always be the territory of the launching State.

Secondly, it was necessary to bear in mind that the State which carried out the launching and was the owner of the launching apparatus might not always be the same as the State which owned and operated the space vehicle itself. Furthermore, international organizations and private commercial entities were already engaging in activities in outer space and were likely to do so increasingly in the future. Various combinations of interests might therefore be involved in an outer space project and one should not think only in terms of a State which owned both the launching apparatus and the space vehicle.

One or two examples might serve to illustrate the possible combinations of interests, of which there were many. The most obvious case was that of two States, one which provided the launching apparatus and facilities for the other's space vehicle. A variation of that was the case where space activities were carried out

(Miss Gutteridge, United Kingdom)

by a group of States. Such States might have equal interests in both the launching apparatus and the space vehicle, or one might provide the launching apparatus for a vehicle owned by one or more of the others. It was also possible that an international organization might provide the launching apparatus for a State or group of States, or for another international organization.

It would thus be no easy task to devise a simple formula for the assignment of liability for space vehicle accidents arising out of activities involving more than one participant, or to decide whether responsibility for launching the vehicle, effective control over its subsequent operation, or ownership of the vehicle ought to be the criterion for determining liability.

It would be necessary to test in the light of the consideration she had mentioned the various formulae included in the drafts submitted to the Sub-Committee. The formula presented in the United States proposal (A/AC.105/L.5) was that States and international organizations responsible for the launching of space vehicles should be liable internationally for injury, loss or damage resulting from space vehicle accidents. However, it was doubtful whether that formula would work satisfactorily in the case where an international organization launched a space vehicle for a State which was not a member of the organization, but the organization itself had no control over the subsequent operation of the vehicle. Nor would the formula used in paragraph 6 of the United States draft declaration of principles (A/C.1/881, page 3) seem to be applicable in every case. For example, it did not appear to be appropriate in the case where the State whose territory was used for the launching was merely providing a convenient launching site and was not in any way concerned with the vehicle's subsequent operation.

The formula used in paragraph 11 of the Soviet draft declaration of basic principle (A/AC.105/C.2/L.6, page 3) also appeared to cause certain difficulties because of its very broad formulation. It could be interpreted as applying to the State providing the launching apparatus even though that State would have no

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control over the vehicle's subsequent operation or to a State which merely provided its territory for the launching. She wondered, incidentally, whether the word "responsibility" in that formula was intentionally used or whether it should not be replaced by the word "liability". That difference of wording might be important in considering whether an international organization could be held to be liable for the consequences of space vehicle accidents even if its international responsibility was, for other purposes, of a limited nature, or whether, as the USSR draft suggested, the States composing the organization should always be held to be directly liable for an injury or damage caused by a space vehicle. The answer, which could not easily be found, must depend, to some extent, upon the purposes for which the organization existed and the provisions of its constitution. Prima facie, it would seem that an international organization introducing into space an object which subsequently caused injury or damage should itself be held liable in the first place. The individual States members of the organization would not be directly liable but under the organization's constitution might be required to make a payment to enable the organization's liability to be discharged.

Other legal problems would have to be considered. One was the question whether liability should be absolute, or should be dependent upon proof of negligence or fault. There appeared at present to be general agreement in the Sub-Committee that liability should be absolute. In cases where more than one State or an international organization was involved, the question whether or not a particular State or member was concerned in the operation of the vehicle at the time of the accident might have to be considered in apportioning liability between the members of the organization or group of States. Such considerations would be the internal concern of the group of States or of the organization against which the claim was lodged and need not preclude the application of the principle of absolute liability.

The question of liability for space vehicle accidents was therefore a complex one and there were dangers in attempting to state in too general a manner the principles which should govern it.

(Miss Gutteridge, United Kingdom)

The very interesting draft contributed by the Belgian delegation (A/AC.105/C.2/L.7), which deserved careful study, took into account several of the difficulties to which she had referred. Thus, it had given the State whose national had suffered injury or damage the choice of presenting a claim either to the launching State or to the State which was the owner of the space vehicle in the case in which the two were not the same. It also appeared to envisage the possibility of the registration of space vehicles since the possibility of a claim against the "flag" State was also provided for.

There appeared to be considerable support in the Sub-Committee for the view that liability for space vehicle accidents should rest on the launching State. It would, however, be necessary to consider whether that criterion fitted all circumstances and whether it was always more satisfactory as a basis for liability than other criteria such as ownership, jurisdiction or effective control. Her delegation therefore believed that before formulating any general principle as a basis for liability, certain facts and circumstances should be borne in mind and it should be asked whether any particular general principle would always apply in relation to such facts and circumstances.

Mr. LITVINE (Belgium) said that the working paper submitted by his delegation on the unification of certain rules governing liability for damage caused by space devices (A/AC.105/C.2/L.7) was intended to crystallize certain ideas and focus attention on problems which would not necessarily be covered by a statement of general principles.

Article 1 of the working paper defined the problem at issue. It excluded damages caused on the territory of the launching State, on that of the flag State or on that of the State or States claiming ownership of the device. Such damage was not of an international character since, if the launching State was not the same as the flag State, the States concerned would have to settle any problems that arose through bilateral and not multilateral channels. The article mentioned "device or devices" and thus covered damage caused by collisions. The term "person" was intended to cover States as well as para-Statal or other bodies. An extensive definition of the word "territory" was given, to cover ships and aircraft, whether or not carrying space devices. The definition of "space device"

(Mr. Litvine, Belgium)

was particularly important. His delegation did not accept the idea of a space boundary and thought that space law should apply to space devices whether moving in controlled air space, in uncontrolled air space or in outer space; otherwise a space device could be subject to either air law or space law, depending on the altitude at which it was moving. Lastly, the national law of the injured person should determine the nature of the damage conferring entitlement to compensation and the extent of liability, so that the compensation could take into account the economic and social factors involved.

Article 2 specified that it was States which were liable. If private individual, or public entities were authorized by a State to launch space devices, the State authorizing such activities would be liable for any resulting damage to third persons. At the same time, the possibility of actions being brought directly by individuals against the State which was liable was excluded. The plaintiff State was given the choice of submitting the claim for compensation either to the launching State, or to the flag State, or to the State or States claiming ownership or co-ownership of the space device or devices. It was not a question of chain liability, nor of joint and several liability. Only one State could be a defendant, unless several devices for which different States were responsible simultaneously caused damage to third persons.

Article 3 stated that the national law of the person injured should determine the relationship of cause and effect between the event causing the damage and the damage itself. The cause of the damage was not only the descent to earth of all or part of a space device, with all the direct or indirect consequences which that might entail; the actual launching and the motion of all or part of a device could also be causes of damage. For example, an aircraft might cause damage when descending to the earth because its crew had tried to avoid a collision with a space device or because it had been struck by a space device or part of a device, even though the latter itself disintegrated and caused no direct damage. The Belgian delegation favoured recourse to the national law of the person injured rather than an internationally accepted definition, which could only be an arbitrary and unsatisfactory common denominator.

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Article 5 specified that the procedure to be followed in actions for liability should be that of amicable settlement; if that failed, a judgement would be sought from the International Court of Justice.

By submitting its working paper the Belgian delegation had wished to make a contribution to the work of the Sub-Committee which permitted - possibly at a later stage - a more direct approach to the problems of legal technique, in accordance with the views expressed by the Committee and the General Assembly.

Mr. HAKIM (Lebanon) said that the Sub-Committee could only engage in a preliminary discussion of the questions of liability and assistance and return and would not have time to draw up international agreements on those two questions. In any case, before drafting any agreement, the Sub-Committee would need legal advice on those extremely technical matters. He therefore suggested that the Secretary-General should be requested, after consulting a panel of jurists to be appointed by the Secretary-General himself to submit a report to the third session of the Sub-Committee, including recommendations for draft international agreements on the questions of liability for space vehicle accidents and assistance to and return of astronauts and space craft. The recommendations should take into consideration the proposals submitted by the delegations of Belgium, the Soviet Union and the United States and the views expressed in the Sub-Committee. That procedure would not commit the Sub-Committee to adopting any particular text or provisions. If the suggestion was approved, at its next session the Sub-Committee would be in a better position to make progress on the two specific matters concerned as well as in the formulation of a declaration of basic principles.

Mr. ATTOLICO (Italy) said that his delegation welcomed the working paper submitted by the Belgian delegation (A/AC.105/C.2/L.7), which deserved detailed study, and supported the suggestion made by the Lebanese representative.

Mr. PRUSA (Czechoslovakia) said that his delegation considered that the Sub-Committee should concentrate primarily on the drafting of basic principles to govern activities in outer space. Such principles could include broad provisions concerning liability for space vehicle accidents and assistance to and return of space vehicles and their personnel. Agreements on basic principles would greatly facilitate and might even be essential for negotiation of those specific questions. His delegation believed, however, that an exchange of views on the questions of liability and assistance and return would be useful.

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With regard to the question of liability for damage caused by space vehicles, it would be necessary first to decide what categories of damage should be covered by an agreement. The United States draft proposal (A/AC.105/L.5) was broader than the Belgian working paper (A/AC.105/C.2/L.7) in that it did not specify where such damage occurred and could therefore be deemed to cover the case of damage caused by space vehicles within the earth's atmosphere. Neither text covered damage caused by one space vehicle to another in outer space or damage caused by explosions or other experiments conducted at very high altitudes. Those were points which his delegation believed should be covered, in view of the generally agreed principle that all States should have equal right to explore and use outer space.

The principle of absolute liability embodied in the United States and Belgian drafts was not in accordance with the current practice of States as illustrated by articles 20 and 21 of the Warsaw Convention and by the provisions of the Brussels Convention on liability of nuclear ships. Existing provisions concerning liability in maritime and air transport were not, of course, altogether applicable to the case of liability of States for damage caused by space vehicle accidents, but he believed that States should be fully or partially relieved of liability in case of vis major, e.g. collision with a meteorite. They should also be relieved of liability if the damage was due to harmful acts of other States, such as the causing of explosions in space or the launching of uncontrollable objects. Liability should rest in such cases with the State responsible for the explosion or launching.

The existing Conventions governing liability in the maritime and aviation fields were primarily concerned with claims of individuals or bodies corporate, as relations in those fields were essentially between such entities. However, where outer space activities were concerned, all delegations appeared to favour the principle of the liability of the State. In fact, a number of delegations considered that only States as such should engage in outer space activities.

On the assumption that liability was to rest with States, it would be necessary to decide upon an appropriate claim procedure. The principal procedure would obviously be direct negotiations between the State in which the damage was caused and the State causing the damage. The United States and Belgian drafts provided

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for ultimate recourse to the International Court of Justice, but the inclusion of such a provision might be unwise as the Court's jurisdiction would not necessarily be recognized by all States.

Those were some of the points which would have to be clarified in the light of current international practice, national legislation and a study of relevant provisions of maritime and air law. It seemed to be generally agreed that provisions concerning liability for space vehicle accidents should be embodied in an international agreement. The arguments in favour of that form of instrument appeared to his delegation to apply also in the case of the basic principles to govern the exploration and use of outer space, the drafting of which he still regarded as the Sub-Committee's most urgent task.

Mr. TIMERBAEV (Union of Soviet Socialist Republics) said that elaboration of the basic principles to govern the activities of States in outer space was the Sub-Committee's main task. Until that task was accomplished, the Sub-Committee would be unable to establish the necessary legal basis for dealing with the specific problems arising from the exploration of outer space.

His delegation attached great importance to the question of the rescue of astronauts and spaceships making emergency landings. Its position was clearly stated in paragraph 10 of its draft declaration of basic principles (A/AC.105/C.2/L.6), which provided that States should regard astronauts as envoys of mankind in outer space, should render all possible assistance to spaceships and their crews making emergency landings, and should return spaceships, satellites or capsules to the launching State. Astronauts and the components of spaceships should assuredly be returned. His delegation stressed the relevant provisions of the declaration of basic principles, because it was convinced that an international agreement could not be worked out unless the Sub-Committee was guided by a precisely defined principle regarding the subject of the agreement. Until it accepted the general principle set out in the USSR draft declaration, the Sub-Committee could not go on to elaborate detailed provisions concerning the rescue and return of astronauts and spaceships. A draft international agreement on that subject would inevitably have to draw upon other basic principles as well. For

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instance, treatment of the problem of return must be based on the principle that States retained their sovereign rights over objects they launched into outer space, and that rights of ownership in respect of objects launched into outer space and their components remained unaffected while in outer space or upon their return to the earth (A/AC.105/C.2/L.6, paragraph 8). The duty to render all possible assistance to astronauts and spaceships which might make an emergency landing was dictated not only by humanitarian considerations but also by the principle that the exploration and use of outer space should be carried out for the benefit and in the interests of the whole of mankind (ibid., paragraph 1). In his delegation's opinion, therefore, the adoption of basic principles governing the activities of States in outer space was essential to the success of the Sub-Committee's work on the problem of rescue and return. As the Mexican representative had said, it was logical to lay down basic principles first and only thereafter to determine the specific issues. In supporting that view, his delegation did not wish to belittle the importance of the question of rescue; indeed, it had initiated the international discussion on that issue. It simply wanted to establish the correct relationship between the preparation of the basic principles and the drafting of an international agreement on rescue.

His delegation had consistently maintained that the document to be drawn up on the question of assistance to astronauts and spaceships should be an international agreement, just as the questions of safety of life at sea and in the air had always been dealt with by international conventions. It was pleased to note that the members of the Sub-Committee generally supported that view. The United States delegation, which had long doubted the need for such an international agreement, had been obliged to acknowledge the validity of the position adopted by the USSR. The United States delegation, however, had not entirely discarded its former approach to the matter, as could be seen from its statement at the twentieth meeting that what was needed was some general expression of the widely felt humanitarian concern for the well-being of astronauts in distress, and that the subject should be dealt with in a General Assembly resolution, followed at a

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later stage by a detailed international agreement. There had always been humanitarian concern for the well-being of sailors and airmen throughout the world, but traditions of assistance in themselves had not solved all the problems of safety of life at sea or in the air, and therefore a detailed system of rules concerning the safety of sailors and airmen had been laid down in multilateral and bilateral agreements. The United States itself was a party to certain bilateral agreements on rescue in the air and on the sea, listed in document A/AC.105/C.2/2.

The first general international agreements on safety at sea had come into existence as a consequence of loss of the S.S. Titanic. Because of that tragic experience, agreements on rescue of and assistance to airmen had been adopted soon after the early successes in aviation. In the present case the precedent of air law should be followed, in the sense that possible emergency landings by spacecraft and astronauts should be anticipated and the necessary measures for rendering them all possible assistance worked out. One mishap had already occurred: the United States astronaut Carpenter, who had landed in the sea far from the target area, had had to wait for three hours before being taken on board ship. That fact alone showed the urgency and importance of the problem of rescue and assistance.

Article 1 of the USSR draft international agreement (A/AC.105/L.3) provided that each State should render assistance to crews of spaceships which met with an accident and should take steps to rescue astronauts making an emergency landing, and to that end should employ every means at its disposal. That provision reflected the wide-spread conviction of the need to guarantee the safety of space flights.

If an unexpected difficulty arose during a space flight, the astronaut would try to inform the earth; his message might be received first by radio stations in States other than the launching State - and perhaps only by those stations. In such cases, where very prompt assistance from earth might be required, the States receiving the distress signals should use every available means of communication to notify the launching State without delay. A State discovering an accident to astronauts who had returned from orbit should, of course, do the same. The general rule was stated in article 2.

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As provided in article 3, if astronauts made an emergency landing on the territory of a foreign State, that State should not only inform the launching State of the occurrence but should also take all possible steps to rescue the astronauts and render them the necessary assistance.

In view of the general interest of mankind in the conquest of space, his delegation considered that there should be a rule of international law requiring each State to concern itself with the well-being of foreign astronauts landing on its territory as if they were its own citizens. That meant specifically that, should the astronaut land in a remote area, the State must employ every means it deemed feasible to search for the astronaut and render him assistance. When a landing at sea was planned, the astronaut might land outside the target area or in a place which could not be reached rapidly by the rescue ships or aircraft of the launching State. In such a situation, the ships or aircraft nearest to the astronaut - whatever their flag - should be used to render assistance. When captains of ships or pilots of planes detected the landing of a foreign spaceship, they would be under a duty to render assistance under articles 1 and 5. If they were in the area but did not observe the landing, they would have to undertake the search as soon as they were requested to do so by the launching State.

It followed from the principle that States retained their sovereign rights over objects they launched into outer space and that rights of ownership in respect of objects launched into outer space remain unaffected while in outer space and on return to earth that there was a duty to return astronauts and spaceships landing in another country to the launching State. While there was no distinction in principle between the return of manned spaceships and the return of unmanned spaceships or components of such ships, there might be a considerable difference in practice. If there was no one on board the ship, no announcement of the flight and no identification marks, how could the spaceship be identified? Two States might lay claim to the same vehicle; or there might be no claimant to the vehicle, at all, yet it might have caused damage and expenses might have been incurred in securing it. For that reason, it was most essential to place identification marks on space vehicles. The USSR also considered that States should comply strictly with the provisions of General Assembly resolution 1721 (XVI) concerning registration of space flights. Those two points were covered in article 7.

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The second paragraph of article 7 followed directly from the principle that the use of artificial satellites for the collection of intelligence information in the territory of a foreign State was incompatible with the objectives of mankind in its conquest of outer space. It could not be seriously supposed that a State finding a spy satellite with equipment containing photographs of strategic objects on its territory would return that satellite untouched to the launching State, since the return of the satellite would adversely affect the security of the State in which it had landed.

Lastly, article 8 provided that the expenses incurred by a State in returning astronauts and foreign spaceships, satellites and capsules should be reimbursed by the launching State.

His delegation was prepared to give careful consideration to any comments on its draft, with a view to the elaboration of a comprehensive text.

Turning to the question of liability, he pointed out that the USSR had included a paragraph on liability in its draft declaration of basic principles (A/AC.105/C.2/L.6) in the hope that it would meet the wishes of those States which had shown a special interest in that problem and thus make it easier to reach agreement on the draft declaration as a whole. His delegation considered that agreement on the general principle establishing the responsibility of States for damage caused by their activities in space was an essential prerequisite for the preparation of a detailed international agreement on liability. His delegation had not had time to study the Belgian working paper (A/AC.105/C.2/L.7), but the mere fact that it had been submitted indicated that some document other than the United States draft proposal (A/AC.105/L.5) on the question of liability was needed. In his delegation's view, the United States draft proposal was deficient on a number of points. For example, it was wrong to place the liability of States and international organizations on the same plane; such an approach might make the international organization a device for relieving Member States of all responsibility. As for the provision in the United States draft proposal concerning the compulsory jurisdiction of the International Court of Justice, the position of his Government on that issue was well known.

Mr. MEEKER (United States of America) supported the Lebanese representative's suggestion that the preparation of draft international agreements on the two questions of liability for space vehicle accidents and assistance to and return of astronauts and spaceships should be referred to a panel of jurists. It was clear from the statements just made by the representatives of Czechoslovakia and the USSR that there were a large number of difficult problems in those two fields which required further study. The United States draft proposal on liability (A/AC.105/L.5) laid down guide-lines which might be used in the preparation of a draft international agreement on that subject. In the interests of facilitating the work of the Legal Sub-Committee, the United States was prepared to agree that this question of liability should be referred to a panel of experts without substantive guide-lines. Secondly, although the United States proposal on assistance to and return of space vehicles and personnel (A/AC.105/L.4) was cast in the form of a General Assembly resolution, the United States delegation, in the interest of advancing the Sub-Committee's work, was prepared to agree to arrangements for the drafting of an international agreement on that subject too. The panel of jurists would have before it all the proposals submitted to the Sub-Committee, and its terms of reference would not favour any particular proposal. He hoped that all members would agree to the Lebanese suggestion so that the Sub-Committee might have draft agreements on those two important questions before it at its next session.

The meeting rose at 12.35 p.m.