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Chairman: Mr. Milko TARABANOV (Bulgaria).

AGENDA ITEMS 33 AND 92

International co-operation in the peaceful uses of outer space: report of the Committee on the Peaceful Uses of Outer Space (A/8420)

Preparation of an international treaty concerning the Moon (A/8391)

GENERAL DEBATE

1. The CHAIRMAN (*interpretation from French*): The Committee will now begin its consideration of agenda items 33 and 92. I call on the representative of Austria, Mr. Waldheim, Chairman of the Committee on the Peaceful Uses of Outer Space.

2. Mr. WALDHEIM (Austria): As Chairman of the Committee on the Peaceful Uses of Outer Space I have the honour to present to the General Assembly the Committee's report on its fourteenth session [A/8420].

3. As members can see from the report, the Committee held its 1971 meetings from 1 to 10 September in New York. The Committee's deliberations were mainly based on the activities of its Legal Sub-Committee and its Scientific and Technical Sub-Committee, which held their sessions in Geneva and New York respectively earlier this year.

4. The period under review has been one of renewed progress in international co-operation in the peaceful uses of outer space. In this regard the Committee on the Peaceful Uses of Outer Space and its Sub-Committees have again proved to be the most important and valuable organs within the United Nations system for taking decisive steps in the establishment of a legal order for the exploration and use of outer space and in acting as a focal point, co-ordinator and initiator of programmes in the broad field of the practical applications of space technology.

5. At its twenty-fifth session the General Assembly, in its resolution 2733 B (XXV), again urged the Committee on

the Peaceful Uses of Outer Space to make a decisive effort to complete a draft convention on liability for damage caused by objects launched into outer space. After many years of detailed study and extensive negotiations in the Legal Sub-Committee and in the Main Committee on the many complicated problems involved, the Sub-Committee was this time able to agree upon a final text. It therefore gives me great pleasure to report that the outer-space Committee is herewith transmitting to the General Assembly a complete draft convention for consideration and final adoption. Through this convention a reasonable expectation of prompt and fair compensation will be offered to those who might be injured or suffer damage through space activities. I do not want to go into the substance of the draft before the Committee. In this context I wish to draw attention to the statement by the Chairman of the Legal Sub-Committee, Mr. Wyzner, at the 98th meeting of the Main Committee, on 1 September 1971. I am sure that that statement, the text of which is annexed to the present report, will provide the members of the General Assembly with a most comprehensive, detailed and clear description and analysis of the draft convention. I also understand that Mr. Wyzner will comment on the draft in greater detail following my brief remarks.

6. As many representatives have pointed out in the course of the outer-space Committee's session, the Convention is certainly not absolutely perfect, but it is, to my mind, undoubtedly the best possible convention one can realistically expect at the present stage. The draft was unanimously adopted by the Committee. However, a few delegations have expressed reservations concerning certain provisions of the draft. Those reservations are properly reflected in the report, which presents a clear and balanced picture to the whole membership of our Organization. In commending the draft convention to the General Assembly for final adoption I would at the same time express hope for the widest possible adherence to this convention.

7. As can be noted from paragraphs 36 to 40 of the report before us, the Committee has also to a greater extent dealt with its future activity as far as other legal matters are concerned. The Committee has recommended to its Legal Sub-Committee that priority be given to matters relating to the registration of objects launched into outer space for the exploration or use of outer space, as also to questions relating to the moon. This decision therefore provides the basis for detailed consideration by the Legal Sub-Committee of the new item proposed by the Soviet Union, "Preparation of an international treaty concerning the Moon". However, this priority order does not preclude the discussion of other items on the agenda of the Sub-Committee, such as the various implications of space communications or matters relating to the definition or delimitation of outer space and outer space activities.

8. The Committee's recommendations and decisions on scientific and technical matters are contained in paragraphs 10 to 29 of the report. Here the most important step taken by the Sub-Committee concerned was the establishment of a Working Group on Remote Sensing of the Earth by Satellites, as authorized by the General Assembly at its twenty-fifth session in its resolution 2733 C (XXV). The Working Group was convened for its first organizational meeting in the course of the Committee's session. Its discussions were fruitful and have pointed the way from the preliminary stage to the substantive work of the group in the years to come.

9. Of equal importance in the scientific and technical field is the resolution adopted by the Committee with respect to the programmes on the promotion of applications of space technology for the benefit of developing countries as contained in paragraph 15 of the report. It was agreed that the various activities, carried out mainly by the Expert on Space Applications, Mr. Ricciardi, should continue.

10. I think the report that I am presenting herewith testifies to the fact that the Committee on the Peaceful Uses of Outer Space has again focused its attention in the past year on many problems of primary importance within the wide range of the promotion of international co-operation in outer space.

11. I hope that the General Assembly at its present session will continue to encourage these activities and lay down guidelines for the establishment of new and even more meaningful programmes in the future.

12. The CHAIRMAN (*interpretation from French*): I now call on the Chairman of the Legal Sub-Committee of the Committee on the Peaceful Uses of Outer Space.

13. Mr. WYZNER (POLAND): Mr. Chairman, I am indeed privileged to take the floor under your guidance after the lucid introduction of the report of the Committee on the Peaceful Uses of Outer Space [A/8420] by its Chairman, Ambassador Waldheim. The report contains the text of the draft convention on international liability for damage caused by space objects, as drafted by the Legal Sub-Committee, and I should like to make a few observations relating to that text.

14. The Legal Sub-Committee completed its work on the draft convention at its tenth session in July of this year at Geneva. The provisions of the draft convention were reviewed and endorsed by the Committee on the Peaceful Uses of Outer Space at its fourteenth session in September in New York. Both the Sub-Committee and the Committee adopted the draft convention unanimously, although some delegations have expressed reservations regarding two provisions, on which I shall make certain comments later in my remarks.

15. As the First Committee is aware, the draft convention contains the results of several years of work. For all of us, and indeed for all the members of the Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee, I am sure this is a most memorable occasion and a notable achievement.

16. The fact that the draft convention on liability is now before you is, in a very real sense, a tribute to all the members of the Legal Sub-Committee and the Committee on the Peaceful Uses of Outer Space, who, representing as they do varying points of view and different schools of legal thought, none the less earnestly endeavoured to define in mutual understanding and compromise the broadest possible area of agreement on a complex subject. Thus, behind the draft convention there lies a wide-based and collective effort.

17. The purpose of the draft convention is stated in its preamble. The preamble recognizes the common interest of all mankind in furthering the exploration and use of outer space for peaceful purposes; reflects the consideration that, notwithstanding the precautionary measures taken in the launching of space objects, damage may on occasion be caused; and further recognizes "the need to elaborate effective international rules and procedures concerning liability for damage caused by space objects and to ensure, in particular, the prompt payment under the terms of this Convention of a full and equitable measure of compensation to victims of such damage".

18. The operative provisions of the draft convention seek to achieve this purpose by prescribing, in articles I to VIII, rules of international liability for damage caused by space objects; and by further providing in the text a procedure for the presentation and settlement of claims. These provisions of the draft convention deal, accordingly, with the numerous matters relevant to the formulation of a system of liability and a procedure for compensation. They include such matters as: the meaning to be given in the convention to such terms as "damage", "launching", "launching State" and "space object"; the nature of a launching State's liability for damage caused; the joint and several liability of two or more launching States; the circumstances in which a launching State will be exonerated from the rule of absolute liability for damage caused on the surface of the earth or to aircraft in flight; the non-application of the convention to damage caused to nationals of a launching State; the right of a State which suffers damage—or whose natural or juridical persons suffer damage—to present a claim to a launching State for compensation for such damage; the procedure for the presentation of claims; and the time-limits for the presentation of claims. The subsequent articles deal with the question of the applicable law or, in other words, the question of the measure of compensation; the form of compensation and, in this connexion, the currency in which compensation is to be paid; the procedure to be followed should settlement of a claim not be arrived at through diplomatic channels; the establishment of a claims commission and the nature of the award of the claims commission; and, finally, the application of the convention to international intergovernmental organizations which conduct space activities.

19. In introducing the draft convention to the Committee on the Peaceful Uses of Outer Space in September this year, I had given an account of each of the above provisions, which is available to the members of the First Committee as an annex to the report of the Committee. While I do not propose to review those provisions once more in any detail, I should like briefly to draw your attention to certain essential features of the draft convention.

20. The corner-stone of the system of liability prescribed in the draft convention is the rule of absolute liability, which the convention would establish for damage caused by space objects on the surface of the earth or to aircraft in flight. A launching State, in terms of article II of the draft convention, will be absolutely liable to pay compensation for such damage. A launching State, in other words, will be liable under the convention for damage caused by its space object, on the surface of the earth or to aircraft in flight, quite irrespective of whether or not in the particular case there was any fault on its part. Thus, to succeed in its claim for compensation a State incurring damage would not, for example, be required to show that the damage resulted from the negligence of the launching State. To establish the presence of negligence in cases of this kind would naturally place a very considerable burden on a claimant State. It would be sufficient for the claimant State, in order to establish its claim, to show that the space object of the launching State caused the damage.

21. There are, however, two rather exceptional situations in which a launching State would be granted exoneration from the rule of absolute liability. The two situations are defined in paragraph 1 of article VI. The first situation is where a launching State establishes that the damage resulted in fact from gross negligence on the part of the claimant State. The second situation is where a launching State establishes that the damage resulted in fact from an act or omission on the part of the claimant State done with intent to cause damage. However, article VI makes it abundantly clear that no exoneration whatever shall be granted a launching State where "the damage has resulted from activities conducted by a launching State which are not in conformity with international law including, in particular, the Charter of the United Nations and the treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies".

22. The introduction and establishment of the principle of absolute liability is, in my view, a very significant development at this formative stage of the international law of outer space. By eliminating certain hitherto prevailing concepts such as the limitation of the amount of compensation and the concept of fault, the principle of absolute liability, as reflected in the draft convention, constitutes a very decisive step in favour of a potential victim of a space accident.

23. Members of this Committee will recall that the General Assembly last year noted in its resolution 2733 B (XXV) that there were differences of opinion on two main issues, namely, the legal rules to be applied for determining compensation payable to the victims of damage and the procedure for settlement of claims. These were the two subjects among the outstanding issues on which the most determined search for solution and the closest consultation in the Legal Sub-Committee were undertaken. These consultations, both formal and informal, led to the adoption, in a spirit of compromise and understanding, of the provisions contained in articles XII and XIX of the draft convention. Article XII provides for the determination of compensation payable "in accordance with international law and the principles of justice and equity, in order to provide such reparation in respect of the damage as will

restore the person, natural or juridical, State or international organization on whose behalf the claim is presented to the condition which would have existed if the damage had not occurred".

24. Article XIX provides among other matters that the decision of the claims commission shall be final and binding if the parties have so agreed, that otherwise the commission shall render a final and recommendatory award, which the parties shall consider in good faith, and that the commission shall state the reasons for its decision or award, which shall be made public.

25. I have mentioned at the outset that the manner in which these two questions were resolved in the draft convention was not entirely to the satisfaction of a few delegations, which expressed certain reservations both in the Legal Sub-Committee and in the Main Committee. However, those delegations did not press their reservations to the point where adoption of the convention by acclamation would not be possible. This was due on the one hand to the commendable spirit of co-operation and flexibility demonstrated by the delegations in question, and on the other hand to the position taken by a majority of the members in favour of the text of the convention, worked out as a result of long and meticulous negotiations.

26. The final clauses of the draft convention are similar to those of the outer space Treaty of 1967¹ except for the addition of a new article which deals with the review of the convention after a certain period of time. They provide for the right of participation in the convention by all States.

27. I believe that the members of the First Committee will find in the draft convention on liability a carefully considered and formulated instrument. Its provisions were drafted through many long hours of negotiations between, as I have already noted, delegations holding different views and representing different schools of legal thought, yet endeavouring to arrive at the broadest possible area of agreement. I believe that the First Committee will find in the draft convention a useful and thorough elaboration of the basic principle of liability for damage caused by space objects, which, the Committee will recall, was first embodied by the General Assembly in 1963 in the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space [resolution 1962 (XVIII)], and thereafter was incorporated in 1967 in article VII of the outer space Treaty.

28. The draft convention is not an instrument, of course, that could be said to reflect in each of its provisions all that each delegation would have wished to see included in the convention. In that sense it may not be an ideal instrument. Yet its provisions achieve an important elaboration of the law of outer space. It is, as such, an instrument in the progressive development of international law, as defined in article 15 of the Statute of the International Law Commission, whereby "progressive development of international law" means "the preparation of draft conventions on subjects which have not yet been regulated by international

¹ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (resolution 2222 (XXI), annex).

law or in regard to which the law has not yet been sufficiently developed in the practice of States”.

29. There is, however, another important element which, in my opinion, determines the future success or failure of a newly elaborated treaty in this pioneering field of international law. This element is the document's ability to become a widely accepted and widely adhered to *lex specialis* of outer space, combining those qualities which will make it acceptable to both space and non-space Powers. Judging from the support the draft convention met with among States members of the outer space Committee, I believe we have reason to expect that, if approved by the General Assembly, the convention will also meet with wide support and adherence among other States.

30. With the ever-growing development of science and technology in outer space and with the constantly increasing number of space objects in orbit, we must assume that there is also a growing danger of a space object falling on earth and inflicting loss of life, injury or loss or damage of property. Though we hope that it will never be necessary to use it, the convention on liability is an indispensable instrument providing an innocent and unsuspecting victim a guarantee that his claim will be promptly and effectively processed with a view to ensuring a full measure of compensation.

31. For all those reasons I join Mr. Waldheim in commending the draft convention to the members of the First Committee.

32. Now, with our work on the liability convention complete, I should like, on behalf of the Legal Sub-Committee, to express appreciation to our parent Committee, its officers and in particular its Chairman, Mr. Waldheim, for their guidance and valuable assistance in bringing this work to fruition. I also wish to express again my deep gratitude to all the devoted and highly competent members of the Secretariat who have greatly contributed to the successful fulfilment of the task entrusted to us by the General Assembly.

33. Finally, a few brief remarks on the future work of the Committee on the Peaceful Uses of Outer Space in the legal field. Since the completion of the 1968 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space [resolution 2345 (XXII), annex], the Legal Sub-Committee, because of

its preoccupation with the preparation of the draft convention on liability, has not been in a position to consider in a detailed manner other problems entrusted to it by the General Assembly, namely, questions relative to the definition of outer space and to the utilization of outer space and celestial bodies, including the various implications of space communications.

34. At the request of the Sub-Committee, the Committee on the Peaceful Uses of Outer Space at its last session in September recommended a list of priorities for the future work of the Legal Sub-Committee. It is my belief that the recommendations as approved are of great value and provide useful guidelines to the Sub-Committee. The priorities recommended include such urgent topics as matters relating to the registration of objects launched into space for the exploration or use of outer space, and questions relating to the moon.

35. At this juncture, speaking on behalf of the Polish delegation, I should like to welcome the recommendation of the Committee providing for priority to be given to problems of the moon. My delegation, in the Sub-Committee, along with the delegation of Argentina, was among the first to suggest that these questions be considered as early as possible. For those reasons the Polish delegation gives its full support to the proposed treaty concerning the moon, submitted by the Soviet Union [A/C.1/L.568]. Taking into account the fact that the moon is the earth's only natural satellite and the most probable area of man's further ventures into outer space, we consider this initiative timely and welcome.

36. With its work on the liability convention finalized and the plans for future work and priorities being drawn up, the outstanding group of jurists composing the Legal Sub-Committee will, I am sure, carry on with ability and dedication the formidable task of formulating new chapters of the international law of outer space.

37. The CHAIRMAN (*interpretation from French*): I have noted that the Committee on the Peaceful Uses of Outer Space, under the direction of Mr. Waldheim, and the Legal Sub-Committee, under the direction of Mr. Wyzner, have done substantial work in advancing the preparation of the respective conventions, and we are therefore very pleased.

The meeting rose at 4 p.m.