

COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE

Legal Sub-Committee

INDIA: PROPOSALCONVENTION CONCERNING LIABILITY FOR DAMAGE CAUSED
BY THE LAUNCHING OF OBJECTS INTO OUTER SPACEThe Contracting Parties

Recognizing the common interest of mankind in the peaceful exploration and use of outer space,

Recalling the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, adopted by the United Nations General Assembly on 13 December 1963 as resolution 1962(XVIII),

Believing that the exploration and use of outer space should be carried on for the betterment of mankind and for the benefit of States irrespective of their degree of economic or scientific development,

Desiring to contribute to broad international co-operation in the scientific as well as in the legal aspects of the exploration and use of outer space for peaceful purposes,

Believing that such co-operation will contribute to the development of mutual understanding and to the strengthening of friendly relations between States and peoples,

Recalling resolution 1884(XVIII), calling upon States to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kind of weapons of mass destruction or from installing such weapons on celestial bodies, which was adopted unanimously by the United Nations General Assembly on 17 October 1963.

Having regard to United Nations General Assembly resolutions 2260(XXII) of 3 November 1967 and 2345(XXII) of 19 December 1967 which inter alia called upon the Committee on the Peaceful Uses of Outer Space to complete urgently the preparation of the draft of an agreement on Liability for Damage Caused by the Launching of Objects into Outer Space,

Bearing in mind the Treaty on Principles Governing the Activities of States in Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, and the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space,

Recognizing that activities in the exploration and use of outer space may from time to time result in damage,

Seeking to establish uniform rules of liability and a simple and expeditious procedure governing financial compensation for damage,

Agree as follows:

ARTICLE I

For the purpose of this Convention

(a) "Damage" means loss of life, personal injury or other impairment of health; or damage to property of States or their persons, natural or juridical, or to property of international organizations.

(b) "Launching" includes "attempted launching" whether or not it fulfils the expectations of those responsible therefor.

(c) "Space Objects" mean space ships, satellites, orbital laboratories, containers and other devices designed for movement in outer space and sustained there by means other than reaction of air, as well as the means of delivery of such bodies and any part thereof.

(d) "Launching State" means the State which launches a space object or procures the launching by another State of a space object.

(e) "Claimant" means the State that presents a claim for compensation to a respondent.

(f) "Respondent" means a Launching State from which compensation is sought under this Convention.

ARTICLE II

Unless otherwise provided in the Convention a Launching State shall be absolutely liable for damage caused by its space object whether during launching or thereafter.

ARTICLE III

1. Unless otherwise provided in the Convention exoneration from absolute liability shall be granted to the extent that the respondent establishes that the damage has resulted either wholly or partially from gross negligence or from an act or omission

done with intent to cause damage on the part of the claimant or of a natural or juridical person it represents. No exoneration whatever shall be granted in cases where the damage results from activities conducted by the respondent which are not in conformity with international law, in particular; the Charter of the United Nations and the Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

2. The provisions of this Convention shall not apply to damage sustained by
- (a) nationals of the Launching State
 - (b) foreign nationals in the immediate vicinity of a planned launching or recovery area as a result of an invitation by the Launching State.

ARTICLE IV

In the event of damage being caused to a space object of one State or to persons or property on board such a space object by the space object of another State, the latter State shall be liable only if the damage is due to its fault or the fault of the persons for whom it is responsible.

If in the case referred to in paragraph 1, damage is caused to a third State Party to this Convention or to its physical or juridical persons, the States mentioned in paragraph 1 shall be jointly and severally liable. The burden of compensation for such damage shall be apportioned between those States in accordance with the extent to which they were at fault; if the extent of the fault of each of those States cannot be established, the burden shall be apportioned equally between them.

ARTICLE V

If damage is caused as a result of the launching of a space object under a joint programme the parties concerned shall, jointly and severally, be liable.

In cases where the territory or facilities of a State were used for the launching of a space object by another State or States, both the former and the latter are jointly and severally liable for the damage caused.

ARTICLE VI

The amount of compensation payable under this Convention shall be determined in accordance with any national law which is agreed upon between the claimant and the respondent. If the claimant and respondent do not agree on a national law to be applied, the amount of compensation payable shall be determined in accordance with international law and taking account of the national law of the claimant State.

ARTICLE VII

1. A Contracting Party which suffers damage or whose natural or juridical persons suffer damage, may present a claim for compensation to a respondent.
2. A Contracting Party may also present a claim in respect of damage sustained by its nationals or by persons permanently resident in its territory who are not nationals of the respondent and in respect of whom the State of nationality has not presented a claim or notified its intention of presenting a claim.
3. A claim shall be presented through diplomatic channels. A claimant may request another State to present its claim and otherwise represent its interests in the event that it does not maintain diplomatic relations with a respondent.
4. Presentation of a claim under the Convention shall not require the prior exhaustion of any local remedies that may be available to the claimant or to those whom the claimant represents.

Nothing in this Convention shall prevent a claimant or any natural or juridical person that it might represent from pursuing a claim in the courts or administrative tribunals or agencies of a respondent. A claimant shall not however be entitled to pursue claims under this Convention in respect of the same damage for which a claim is being pursued in the courts or administrative tribunals or agencies of a respondent, or under another international agreement which is binding on the claimant and the respondent.

ARTICLE VIII

1. A claim may be presented not later than one year following the date of the occurrence of the accident or the identification of the party that is liable.
2. If the claimant does not know of the facts giving rise to the claim within the aforementioned one-year period, it may present a claim within one year following the date on which it learned of the facts; however, this period shall in no event exceed one year following the date on which the claimant could reasonably be expected to have learned of the facts through the exercise of due diligence.
3. The above-mentioned time limits shall apply even if the full extent of the damage may not be known. In this event, however, the claimant shall be entitled to revise its claim and submit additional documentation beyond the above-mentioned time limits until one year after the full extent of such damage is known.

ARTICLE IX

Sums due in compensation for damage shall be fixed and payable in the currency of the claimant or in a freely convertible currency unless the Parties agree otherwise.

ARTICLE X

There may be joinder of claims where there is more than one claimant in respect of damage due to the same event or where more than one State is liable in respect of damage.

ARTICLE XI

1. In case of disagreement between the claimant and respondent, the two parties shall endeavour to arrive at a settlement through diplomatic negotiations.

2. If no settlement is arrived at within one year of the presentation of the claim, either party may invoke the provisions of the compulsory Protocol on the Settlement of Disputes, annexed to this Convention.

ARTICLE XII

1. This Convention which includes the Compulsory Protocols on International Organizations and Settlement of Disputes as integral parts shall be open to all States for signature. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force upon the deposit of instruments of ratification by five Governments including the Governments designated as Depositary Governments under this Convention.

4. For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession to this Agreement, the date of its entry into force and other notices.

6. This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

ANNEX I

Compulsory Protocol on International Organizations

The Contracting Parties,

Bearing in mind Article XIII of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies,

Taking note of the possibility that practical difficulties might arise, relating to the subject-matter of the present Convention, insofar as international organizations are concerned,

Desiring to establish an expeditious procedure for the solution of any such difficulties in the light of the relevant provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies,

Agree as follows:

Article I

The provisions of this Convention shall apply, with the exception of Articles XI to XIV, to each international intergovernmental organization which conducts space activities, provided that that organization declares its acceptance of the rights and obligations provided for in the Convention and a majority of the States members of that organization are Contracting Parties to this Convention and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.

Article II

General Rule

If an international organization to which Article I of this Protocol applies is responsible in terms of the provisions of the Convention for damage caused by its space object, both the organization and its members are jointly and severally liable.

Article III

Procedure

1. Claims in respect of damage due to the space activities of such an international organization shall be first presented to the organization. If the organization is unable to settle the claim within six months, the claimant may proceed against any one or more of the members of the organization which are also parties to the Convention.
2. The claim of an international organization to which Article I of this Protocol applies may be presented directly to the respondent. If the latter so desires, the claim shall be re-submitted by one or more States members of the organization to be chosen by the organization itself.

ANNEX II

Compulsory Protocol on Settlement of Disputes

The Contracting Parties to the Convention on Liability for Damage Caused by Objects Launched into Outer Space,

Bearing in mind the provisions of Article XI of the Convention, pertaining to the settlement of disputes,

Seeking to establish a procedure for the definitive settlement of disputes which may arise between claimants and respondents with regard to claims to compensation for damage,

Agree as follows:

Article I
Enquiry Commission

1. If a claim remains unsettled for more than six months after its presentation, the claimant and respondent shall establish an Enquiry Commission on the basis of parity, within one month of a request by either claimant or respondent for its establishment.
2. The Enquiry Commission shall, taking into account the positions of the respective parties, make recommendations with regard to the settlement of the claim, within six months of its establishment.
3. The Enquiry Commission shall determine its procedure.

Article II
Claims Commission

1. A Claims Commission shall be established upon request of either party if:
 - (i) the Enquiry Commission is not established as provided for in Article I (1);
 - (ii) the Enquiry Commission is unable to arrive at any recommendations within the period specified in Article II (2).

Article III

1. The Claims Commission shall be composed of one nominee each of the claimant and respondent and a third member, the Chairman, to be chosen by the claimant and respondent jointly. The nominees of the claimant and the respondent shall respectively be designated within two months of the request for the establishment of the Claims Commission. If no agreement is reached on the choice of the Chairman within four

months of the request for the establishment of the Claims Commission, the Secretary-General of the United Nations may be requested by either party to nominate the Chairman. The nomination made by the UN Secretary-General shall be binding.

2. If one of the parties fails to designate its nominee within the stipulated period, the person appointed by the UN Secretary-General at the request of the other party shall constitute a single member Claims Commission.
3. Any vacancy which may arise in the Claims Commission by way of death, ill-health or resignation of one or more members shall be filled by the same procedure adopted for their original nomination.
4. The Claims Commission shall determine its procedure.
5. The Claims Commission shall determine the place or places where it shall sit and all administrative matters connected therewith.
6. All decisions of the Claims Commission shall be by majority vote, except in cases where a single member Commission is established.

Article IV

No increase in the membership of the Claims Commission shall take place where two or more claimants or respondents are joined in any one proceeding before the Commission. The claimants so joined shall collectively nominate one member of the Commission in the same manner and subject to the same conditions as would be the case for a single claimant. When two or more respondents are so joined, they shall collectively nominate one member of the Commission in the same way. If the claimants or respondents fail to nominate their member within the stipulated period, the nominee of the Secretary-General of the UN shall constitute a single-member Commission.

Article V

1. The Claims Commission shall have competence only with regard to the specific claim before it. The Commission's sole function shall be, in the light of the respective contentions of the claimant and respondent and of the facts of the case as made available to it, to decide on the merits of the claim for compensation and to determine the amount of compensation payable, if any.
2. The Commission shall not have the competence to render an authoritative interpretation of the Convention.

Article VI

1. The Commission shall be guided by the provisions of Article VI of the Convention insofar as the law to be applied by it is concerned.
2. The Commission shall state the reasons for its decision, which shall be final and binding.

Article VII

The expenses in regard to the Claims Commission shall be borne equally by the parties.

