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COMMITTEE ON THE PEACEFUL USES OF
OUTER SPACE

Legal Sub-Committee

Working Paper submitted by the Italian delegation
draft convention concerning liability for damage caused
by the launching of objects into outer space

Preamble

The Contracting Parties,

Recognizing that activities in the peaceful exploration and use of outer space may on occasion result in damage,

Recalling the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies signed on 27 January 1967,

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

Believing that the establishment of such a procedure will contribute to the growth of friendly relations and co-operation among nations,

Agree as follows:

Purpose of the Convention

Article 1 The purpose of this Convention is to govern the international liability of States for damage caused in the exercise of their space activities to another member State and the natural or juridical persons that it represents, in accordance with the Washington Treaty of 27 January 1967.

Definitions (Launching State - Space Object - Damage)

Article 2

(1) Launching State shall be understood to mean the State which launches or procures the launching of a space object, entered in its own registers or registered with the United Nations Secretariat (which must in any case be notified beforehand of the launching and be provided with all the information necessary to identify the object in question);

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- (2) The State whose territory or facility is used for the launching shall be deemed to be the Launching State, if it does not state that it is the actual launching State or if the latter is not a party to the Convention, even if the State whose territory or facility is used does not participate actively and substantially in the launching, transit control and descent of the space object;
- (3) The international organizations referred to in Article 6 below shall be treated for the purpose in the same way as States;
- (4) Space object means any man-made object designed to reach outer space and to move there (either) naturally or by means of radio-electric signals or the control exercised by pilots on board;
- (5) For the purposes of this Convention, the component parts of space objects that become detached or are made to detach during transit, and objects thrown or launched from space objects, shall be deemed to be space objects;
- (6) Damage means loss of life, personal injury or impairment of health and destruction or damage to property caused by space objects.

Field of application of the Convention

Article 3

- (1) This Convention shall apply to all damage caused by space objects; (a) on the earth; (b) in the earth's atmosphere; (c) in outer space, including other celestial bodies;
- (2) However, the present Convention shall not cover damage caused in the territory of the Launching State and in particular damage sustained at the time and in the area of launching and return of space objects by persons playing a part in the operations related thereto, or damage sustained from endogenous causes by space objects and their personnel during launching, transit or descent. For this purpose, social labour legislation and agreements between the parties concerned shall be paramount in the assessment of compensation.

Nature of and grounds for liability in the various cases of damage on the earth, in the earth's atmosphere and in outer space

Article 4

- (1) Damage caused on the earth, even in the case of circumstances beyond control shall constitute grounds for compensation by the very fact that the damage has occurred and was caused by a space object;

- (2) Damage caused in the earth's atmosphere to aircraft shall be presumed to be due to the fault of the space object; if, however, the damage is caused by one space object to another space object, it shall be presumed to be attributable to common fault.

Both cases shall be open to proof of the contrary;

- (3) In the case of damage caused by a space object in outer space, liability shall rest with the Launching State if a fault on its part is proved;
- (4) When two or more space objects have collided or interfered with each other in transit and damage to third parties on the ground has resulted, the damage shall be presumed to be attributable to the common fault of the said objects and the Launching States shall be jointly liable;
- (5) The Launching State which has had to pay the entire compensation shall have the right to appeal against the other jointly liable States.

Liability for damage (States)

Article 5

- (1) The Launching State shall be liable for the damage caused by a space object.
- (2) When the space object is jointly launched by several States or by States and international organizations (referred to in Art.6), they shall be jointly and severally liable for the damage caused by the space object.

The sums paid to the victim of the damage shall be shared equally by the parties liable in accordance with previous agreements, and if no such agreements exist, it shall also be apportioned equally.

Liability (International Organizations)

Article 6

- (1) If an international organization which conducts space activities has transmitted to the Secretary-General of the United Nations a declaration that it accepts and undertakes to comply with the present Convention, all the provisions of the Convention, except articles 13, 16, 17 and 18, shall apply to the organization as to a State which is a Contracting Party;
- (2) Consequently, if the organization launches, or procures the launching of a space object, and that object causes damage, the organization, like any Launching State, shall be directly liable for the damage vis-à-vis the victims.
- (3) Should the organization fail to pay the amount of the compensation already agreed to or fixed, the States members of the organization can be called upon as guarantors within the period and under the conditions referred to in Article 11 below.

Extinction or reduction of liability

Article 7 If the damage has been caused, either wholly or partially, by an act or omission on the part of the victim, the liability of the Launching State may be extinguished or reduced according to the gravity (fraud or fault) of the act or omission.

Assessment of Liability

Article 8 The compensation which a State shall be liable to pay under this Convention for the damage it has caused shall be determined in accordance with applicable principles of international law, justice and in view of the singular nature of the matter, equity.

Rules of procedure; claims for compensation

Article 9 (1) The State which has sustained damage (Applicant, (Presenting) (Claimant) State) can present a claim for compensation to the State that is liable, hereinafter called the Respondent State.

The same claim can be presented by the State for damage caused anywhere to its own nationals and to natural or juridical persons permanently domiciled in its territory;

(2) The presentation of a claim under this Convention shall not require exhaustion of any remedies which might otherwise exist in the Respondent State;

(3) A claim shall be presented through the diplomatic channel within one year of the date when the damage and the State liable for it became known.*

(4) The same procedure shall apply when the claim is presented by or against an international organization. The representation of the international organization, for the purposes of this diplomatic procedure, may then be assumed by one of the States members of the organization.

* NOTE: If it is desired to introduce a time limit or an expiry date, the following formula can be adopted:

"In any case, three years after the date of the occurrence that caused the damage, the claim shall cease to be maintainable."

Arbitration Commission for the settlement of claims for compensation

Article 10 (1) If a claim presented under this Convention is not settled amicably within one year from the date on which documentation is completed, the Applicant (Presenting), (Claimant) State may request the establishment of an arbitration commission to decide the claim.

The competence of such commission shall extend to any dispute arising from the interpretation or application of this Convention. The Respondent State and the Applicant (Presenting) (Claimant) State shall each promptly appoint one person to serve on the commission, and a third person, who shall act as chairman, shall be appointed by the President of the International Court of Justice.

If the Respondent State fails to appoint its member within three months, the person appointed by the President of the International Court of Justice shall be the sole arbitrator.

(2) No increase in the membership of the commission shall take place where two or more Applicant (Presenting) (Claimant) States or Respondent States are joined in any one proceeding before the commission. The Applicant (Presenting) (Claimant) States so joined shall collectively appoint one person to serve on the commission in the same manner and subject to the same conditions as would be the case for a single Applicant (Presenting) (Claimant) State. Similarly, where two or more Respondent States are so joined, they shall collectively appoint one person to serve on the commission in the same way.

If the Applicant (Presenting) (Claimant) State or the Respondent State fails to appoint its member within three months, the person appointed by the President of the International Court of Justice shall be the sole arbitrator.

(3) The Commission shall take its decisions according to law in conformity with Article 8 above. It shall determine its own procedure and arrive at its decision by majority vote. Such decision shall state the views of the members of the commission.

(4) The decision of the commission shall be rendered expeditiously. It shall be final and binding upon the parties.

(5) The expenses incurred in connexion with any proceeding before the Commission shall be divided equally between the Applicant (Presenting) (Claimant) and Respondent States.

As an
alternative
to (2) above

If in the same dispute there are two or more Applicant (Presenting) (Claimant) States and (or) two or more Respondent States, they shall agree to appoint one person to represent them on the commission, which shall thus always comprise three members.

Procedure relating to International Organizations which
do not pay compensation for damages

Article 11 (1) If, within one year of the date on which compensation has been agreed upon or otherwise established pursuant to Article 10, an international organization has failed to pay the amount of such compensation, the States members of the organization shall, upon service of notice of such default by the Applicant (Presenting) (Claimant) State within three months of such default, be obligated to pay the amount of compensation, each in proportion to its contribution to the budget of the organization: and if this contribution is not known, the member States shall be jointly liable for the entire compensation;

(2) In no circumstances may the member States question the justification for or the amount of compensation due by the organization.

Procedure under ordinary law

Article 12 This Convention shall not prejudice the rights of victims to institute proceedings before the ordinary courts of the Applicant (Presenting) (Claimant) State or the Respondent State, or to choose any other international procedure, with a view to obtaining compensation for damage.

However, in such a case, the Applicant (Presenting) (Claimant) State may no longer have recourse to the procedures referred to in Articles 9, 10 and 11 above; but the normal diplomatic intervention with a view to bringing about an amicable settlement between the parties to the dispute shall not be excluded.

Settlement of disputes

Article 13 Any question arising from the interpretation or application of this Convention, which is not previously settled by other peaceful means of their choice, may be referred by any Contracting Party thereto to the International Court of Justice for decision.

Amendments

Article 14 A Contracting Party may propose amendments to this Convention. An amendment shall come into force for each Contracting Party accepting the amendment on acceptance by a majority of the Contracting Parties, and thereafter for each remaining Contracting Party on acceptance by it.

Withdrawal

Article 15 A Contracting Party may give notice of withdrawal from this Convention five years after its entry into force by written notification to the Secretary-General of the United Nations. Such withdrawal shall take effect one year from the date of receipt of the notification by the Secretary-General. A State withdrawing from this Convention shall not thereby be relieved of any obligation or liability with respect to damages arising before withdrawal becomes effective.

Signature and accession

Article 16 This Convention shall be open for signature by all States. Any State which does not sign this Convention before its entry into force pursuant to Article 18 below may accede to it at any time.

Ratification: Depositary

Article 17 This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Secretary-General of the United Nations.

Entry into force

Article 18 This Convention shall enter into force thirty days following the deposit of the fifth instrument of ratification or accession. It shall enter into force as to a State ratifying or acceding thereto upon deposit of its instrument of ratification or accession.

Obligation of depositary

Article 19 The Secretary-General of the United Nations shall inform all signatory and acceding States and all organizations which have made declarations under Article 6, paragraph 1, of signatures, deposits of instruments of ratification or accession, declarations of acceptance referred to in Article 6, paragraph 1, the date of entry into force of this Convention, proposals for amendments, notifications of acceptances of amendments, the date of entry into force of each amendment, and notices of withdrawal, and shall transmit to those States and organizations certified copies of each amendment proposed.

Article 20 This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies of each to the Governments of all the signatory and acceding States.

Annex to the Draft Convention concerning the liability
of States for damage caused by space devices

submitted by the delegation of Italy

In preparing this draft, we took into consideration the four draft conventions on this subject known to us, namely, the three drafts (those of the United States, Belgium and Hungary) submitted at earlier sessions of the Legal Sub-Committee of the United Nations Committee on the Peaceful Uses of Outer Space, and the preliminary draft submitted by France to a working party established by the European Conference on Outer Space.

We selected the best ideas and formulations from these four drafts, most of them having been taken from the United States and French drafts, which in our opinion are fuller and more coherent.

The method chosen for formulating the articles of this draft is the one best suited to the legal tradition of Latin countries, namely, the adoption of general, comprehensive texts providing for the largest possible number of cases likely to arise in practice, while taking into account general legal principles.

We have also tried to "depersonalize" the draft as much as possible by including concepts and formulas put forward by delegations of other countries in various international forums, so as to meet as far as possible universal aspirations and desires and make the draft more generally acceptable.

To clarify these points further we have set out below some comments on the various provisions of the draft convention.

Preamble

The whole of the preamble has been taken from the United States draft, which has the merit of codifying "uniform rules of liability and a simple procedure".

Article 1 - Purpose of the Convention

None of the drafts at present being considered by international bodies contains such an article. However, this article seems necessary as the discussions held at the international level have given the impression of a lack of uniformity in the interpretation of the limits and character of international liability.

Article 2 - Definitions

(1) Launching State. The purpose of this paragraph was to emphasize the now urgent need for precise individual identification of space devices (registration) and for codifying the procedure for notifying the United Nations Secretariat of the launching and of its characteristics.

(2) This paragraph reproduces the principle embodied in the French draft (article 1 (3)) and is designed to permit in all cases the identification of the State responsible for the launching, on the basis of objective data.

Article 3 - Field of application of the Convention

(2) This has been based on the corresponding articles of the United States draft, with some minor additions or changes.

Article 4 - Nature and basis of liability

This article involves the complete rejection of the system advocated in the United States draft, whereby the principle of objective liability is applied in all cases. This system is not only unfair, but can sometimes result in anomalies, as in the case of damage caused by collision or impact.

The French draft also rejects the principle of objective liability in all cases, but the system adopted in the present draft seems more comprehensive.

(1) This paragraph reproduces the wording adopted in the conventions on air navigation.

(3) The wording adopted is similar to that of the French draft.

Article 6 - Liability (international organizations)

(1) The wording of the United States draft was adopted as it seemed to be the best.

Article 8 - Assessment of liability

This article reproduces the substance of article IV of the United States draft. However, the words "in view of the singular nature of the matter" have been added, to justify the reference to equity.

Article 9 - Rules of procedure: Claims for compensation

(4) These rules were considered necessary, since it might be desirable for a member State to represent an international organization which has no headquarters or diplomatic representation stricto sensu.

Article 10 - Arbitration commission for the settlement of claims for compensation.

This article reproduces, with some variations, article X of the United States draft, which is very long and perhaps unnecessarily detailed.

The possibility of simplifying it along the lines of the corresponding article in the French draft, or of the draft proposed by India might be worth considering.

Article 12 - Procedure under ordinary law

This article is based on the general principle of electa una via non datur recursus ad alteras.

Articles 13 to 20 - Final and formal clauses

The final and formal clauses of the United States draft have been adopted, with some modifications notably in Articles XII and XV of that draft.

In Article 13 (XII in the United States draft) the opening phrase "subject to prior recourse to proceedings under Article X" has been omitted for the following reasons:

(a) Even where no dispute exists, it would seem advisable at the request of a member State to obtain an authoritative interpretation of one or other of the articles of the Convention, which has given rise to dispute or has been interpreted in different ways.

(b) A final arbitral award may conflict with the different (authoritative) interpretation subsequently adopted on the basis of a new protocol.

Article 16 (XV in the United States draft) reproduces the wording of the corresponding article 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 (better known as the Space Treaty or Washington Treaty) of 27 January 1967. With this wording the present Convention would be open for signature or accession by all States.