



PROCEEDINGS  
GENERAL ASSEMBLY  
MEMORANDUM

UNITED NATIONS  
GENERAL  
ASSEMBLY



Distr.  
LIMITED  
A/AC.105/C.2/L.40/Rev.1  
6 June 1969  
ENGLISH  
Original: FRENCH

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 (in accordance with the Treaty of 27 January 1967), to another member State or the natural or juridical persons which it represents.

Definitions (Launching State - Space Object - Damage)

Article 2

(1) Launching State shall be understood to mean:

(a) 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);<sup>1/</sup>

<sup>1/</sup> The words appearing between brackets in this draft may, if it is considered desirable, be deleted.

(b) the State whose territory or facility is used for the launching, even if it does not participate actively in this operation, where it does not indicate which State has actually launched the space object or where the latter is not a party to this Convention.

(2) The international organizations referred to in article 6 below shall for this purpose be treated as States.

(3) 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).

(4) For the purposes of this Convention, the component parts of space objects which become detached or are made to detach during transit, and objects which have fallen or are launched from space objects, shall also be deemed to be space objects.

(5) Damage means loss of life, personal injury or impairment of health, and destruction of 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 force majeure, shall constitute grounds for compensation by the very fact that the damage has occurred and was caused by a space object in transit;

(2) Damage caused in the earth's atmosphere or in outer space shall constitute grounds for compensation if negligence on the part of the Launching State is proved.

(3) When two or more space objects have collided (or interfered with each other in transit), none of the Launching States shall be entitled to claim compensation from any of the others, if the cause of the collision cannot be established or if the collision is attributable to joint negligence or force majeure.

(4) Damage caused by collision to aircraft in flight shall be presumed to be due to the fault of the space object; but it shall be open to proof of the contrary.

(5) If the collision has caused damage to third parties on the surface of the earth, such damage shall be presumed - vis-à-vis the victims - to be attributable to joint negligence and the States which launched the space objects involved in the collision shall be jointly liable;

#### Liability for damage (States)

#### Article 5

(1) The Launching State shall be liable for damage caused by a space object.

(2) When the launching is carried out jointly by several States or by States and international organizations (referred to in article 6), they shall be jointly and severally liable for the damage caused by the space object.

The responsibility for compensation of the victim of the damage shall be shared by the parties liable in accordance with the agreements previously concluded between them, and if no such agreements exist, it shall be apportioned equally.

#### Liability for damage (International organizations)

#### Article 6

(1) If an international governmental 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 in the same way as to any Contracting State.

(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 may be called upon to pay within the period and under the conditions referred to in article 10 below.

Extinction or reduction of liability

Article 7 If the damage was caused, either wholly or partially, by an act or omission on the part of the victim, the liability of the Launching State may in the case of a wilful act be extinguished or in the case of negligence be reduced, according to the gravity of the act or omission.

Determination of compensation

Article 8 The compensation which the Launching State shall be required to pay under this Convention for the damage it has caused shall be determined in accordance with international law, unless the parties agree that it shall be determined in accordance with equity or by applying the national law of their choice.

Rules of procedure; claims for compensation

Article 9

(1) The State which has sustained damage (hereinafter referred to as the Claimant State) may present a claim for compensation to the State which is liable (the Respondent State).

The same claim may be presented by the State for damage caused 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 all the remedies which may be available in the Respondent State;

(3) A claim shall be presented through the diplomatic channel within six months reckoned from the date when the damage and the identity of 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 governmental organization, for the purposes of this diplomatic procedure, may then be assumed by one of the States members of the organization.

Arbitral Commission for the settlement of compensation claims

Article 10

(1) If a claim for compensation presented under this Convention is not settled amicably within a period of six months reckoned from the date on which it is presented together with all supporting evidence, the Claimant State may request the establishment of an arbitral commission to rule on the matter.

The Respondent State and the Claimant State shall each promptly appoint one member of the Commission, and a third member, who shall act as chairman, shall be appointed by the President of the International Court of Justice or, by agreements between the parties, by any other scientific legal organization.

If the Respondent State fails to appoint its member within three months, the person who was to act as chairman shall be the sole arbitrator.

(2) If in the same dispute there are two or more Claimant States and (or) two or more Respondent States, they shall appoint by agreement between them one person to represent them on the Commission, which shall thus always comprise three members.

(3) The Commission shall establish its own rules of procedure. It shall take decisions by majority vote on the basis of article 8 above.

Its decisions shall be final and binding upon the parties.

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

Article 11 (1) If, within six months reckoned from the date on which compensation has been agreed upon or determined pursuant to article 10, an international organization has failed to pay the amount of such compensation, the States members of the organization shall, upon receiving notice of such default from the Claimant State, be jointly obligated to pay the amount of the compensation.

(2) Once the amount of the compensation payable by the organization has been agreed upon or determined, the member States may in no circumstances question the justification for or the amount of the compensation.

Procedure under ordinary law

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

In such a case, the Claimant State may not have recourse to the procedures referred to in articles 9, 10 and 11 above, unless the parties concerned waive their right to take such action.

Settlement of questions relating to the interpretation of the Convention

Article 13 Any question relating to the interpretation or application of this Convention which is not previously settled by other peaceful means or by the arbitral commission may be referred by the Contracting Parties 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 its acceptance by a majority of the Contracting Parties, and thereafter for each further Contracting Party accepting 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 depositary States. Such withdrawal shall take effect one year from the date of receipt of the notification by one of the said Governments. A State withdrawing from this Convention shall not thereby be relieved of any obligation or liability with respect to damage occurring before its withdrawal.

#### 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 the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

#### Entry into force

Article 18 This Convention shall enter into force thirty days after the deposit of the fifth instrument of ratification. It shall take effect for any State subsequently ratifying or acceding to it at the time of the deposit by the State of its instrument of ratification or accession.

#### Obligation of depositary

Article 19 The Depositary States shall inform all the signatory and acceding States and all the 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 amendment, notifications of acceptance of amendments, the date of entry into force of each amendment, and notices of withdrawal, and shall transmit to the said 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 States referred to in article 17 which shall send a certified copy of each text to the Governments of all the signatory and acceding States.

#### ANNEX

#### Preliminary note

This new version of the Italian draft has been prepared with a view to correcting the mistakes which crept into the version submitted to the June 1968 session of the Legal Sub-Committee, and, above all, in order to take account of the discussion and of the decisions taken at that session.

The Italian delegation hopes, with this draft, to make a useful contribution to the structure and final text of the draft convention on the international liability of States with regard to their space activities.

The purpose of the following notes is to ensure a better understanding of the texts proposed and to indicate the reasons why they were chosen.

#### Ad article 1: Purpose of the Convention

None of the drafts at present before the Sub-Committee contains such an article. It would seem useful, however, to specify at the outset the scope of the convention, which is concerned only with the liability of States and not with liability in general. At certain international meetings, such as the recent Conference on Outer Space at Vienna, one had the impression that there is no uniform interpretation of the real scope of the convention.

#### Ad article 2: Definitions

(1) Launching State. According to this paragraph, the Launching State is the one in whose registers the space object is entered. The reasons for this are well known, since they have been explained on numerous occasions, not only by the Italian delegation but also by the French delegation; the main purpose is to enable the victim of the damage to identify, rapidly and on the basis of reliable information, the State which is liable, and, in addition, to secure codification of the rules governing registration, which is now urgently needed.

The Italian delegation prefers the term "Launching State" to the term "Launching Authority". It is pointed out in this connexion that the basic Treaty of 27 January 1967 does in fact use the term "Launching State".

(2) International organizations. It is considered that this paragraph ("The international organizations ... shall for this purpose be treated as States") will facilitate the application of many of the provisions of the convention.

(3) Space object. The provision that the space object must be man-made is intended to exclude all natural objects, such as meteorites, etc.

(4) Damage. This definition refers to damage in general, without any exception. Consequently, nuclear damage should be considered as being included.

Ad article 3: Field of application of the Convention

(2) It is customary (except in the case of conventions which aim to unify legal rules for the purpose of their incorporation in the national legislation of the member States) for all conventions dealing with liability not to apply to damage caused in the territory of the State responsible for the damage.

The Italian draft is based on this principle and thus rejects the provision adopted in other drafts, according to which the Convention would not apply "to damage suffered by nationals of the Launching State". The Italian delegation considers this principle unacceptable; it is difficult to see why nationals of the Launching State, who happen to be, even on a permanent basis, in the territory of another State and who sustain damage there, should not be compensated under the convention, if they so desire. Otherwise, such nationals would be forced to follow longer, more complicated and more burdensome procedures. It would undoubtedly be much simpler for them to apply to the authorities of the State in which the damage was sustained, and that State could then represent them in any claim against the Launching State.

Moreover, in such a case, it is appropriate to take as a basis the universally accepted principle of private international law "lex loci delicti commissi".

Article 3, paragraph (2), also excludes from the field of application of the convention damage sustained by equipment and personnel connected with the space object, but only where damage is the result of endogenous causes, i.e. defects of construction or of handling of the space object in question. This is logical, because the space object belongs to the Launching State and the personnel involved are, consequently, protected by the labour legislation of the State in question and, in any event, by agreements previously concluded between them and the State.

On the other hand, paragraph (2) does not take into consideration any possible harm caused to persons invited to attend the launching or recovery of the space object, since the State issuing the invitation would normally take care to specify the conditions under which the invitation is given, conditions which might vary from one case to another. In any event, this aspect is of no particular relevance to the purposes of this convention.

Ad article 4: Nature of and grounds for liability

This is the key article of the Italian draft and particular attention is drawn to it.

The Italian delegation based its draft on the fundamental principle that, in determining the nature of liability in the different cases, the paramount consideration should be the place where the damage was sustained: on the earth, in the earth's atmosphere or in outer space, including other celestial bodies.

Until its 1968 session, the Sub-Committee seemed to favour the application of the principle of absolute or objective liability in all cases, without taking into account the place where the damage was sustained. At the 1968 session, however, it decided to apply, in the case of outer space, the contrary principle of liability through negligence.

The formula which was adopted in that respect (see the summary record of the twenty-third meeting, page 150) does not, however, seem to be satisfactory, since it relates only to damage caused by one space object to another space object, without specifying the cause of the damage or where it took place.

On the other hand, in the text submitted by the United States on that question, specific mention is made of collision (A/AC.105/C.2/L.34 and the summary record of the twenty-third meeting, page 164), but the text refers only to damage caused "to third parties" (on the surface of the earth?).

The Italian delegation believes that the Legal Sub-Committee has not yet arrived at a clear and full conception of the problem. It therefore takes the liberty of drawing the Sub-Committee's attention to the text of article 4 of the Italian draft, which:

(a) endorses, so far as outer space is concerned, the principle of liability through negligence, which is in accordance with the decision of the Sub-Committee; but the text in question is worded in a more general way, so that it may also be applied to other cases, such as, for example, damage caused by a space object to persons or objects on a celestial body other than the earth;

(b) deals separately with the case of collision, which calls for special and more detailed provisions, as is demonstrated by maritime and air law, since damage resulting from collision is not restricted to "third parties", as provided in the United States proposal referred to above, but concerns primarily the owners and users of the space objects involved in the collision. In drawing up regulations with regard to such damage, it is important to take into consideration:

- (i) The case of exclusive negligence on the part of one of the space objects concerned, where it would be sufficient to apply the general formula referred to above;
- (ii) The case - and this would be one of the most frequent cases - where it is impossible to establish the cause of the collision and, consequently, impossible to prove negligence; and the case of force majeure. For such cases, the Italian draft provides that each of the objects must bear the cost of the damage it has sustained, without being able to claim any compensation;
- (iii) Finally, the case of joint negligence in respect of which the Italian draft, utilitatis causa, i.e. because of the difficulty of establishing the extent to which each of the objects involved in the collision has been negligent, also provides that each of the objects in question must bear the cost of the damage it has sustained.

In the view of the Italian delegation, without these three specific points, it is impossible to draw up reasonable provisions to govern the case of collision. Their omission would lead to absurd legal and economic consequences, frequently mentioned by the Italian delegation in previous discussions. All this is confirmed by the very interesting paper submitted by Professor Dembling to the recent Conference on Outer Space at Vienna (Doc. A/Conf.34/IX.4).

The foregoing relates solely to damage caused in outer space. Damage can, however, also be caused in the earth's atmosphere as a result of a collision between space objects, or between space objects and aircraft (so far as the earth's atmosphere is concerned, it is difficult, if not impossible, to imagine any cause of damage other than collision).

So far, no precise approach to the framing of provisions governing the relative responsibility for such damage has emerged from the debates and decisions of the Sub-Committee. Even at the last session, in 1968, many delegations supported, in such a case, the principle of absolute responsibility, while the texts proposed or provisionally approved seemed to indicate the contrary.

The Italian draft applies here, as in the case of outer space, the principle of negligence, since identical cases can be governed only by the same principles. The Italian draft merely introduces a presumption juris tantum, according to which, in the event of a collision between aircraft and space objects, there is a presumption of negligence on the part of the latter (article (4), paragraph 4).

Finally, we should like to add that article 4, paragraph (5) of our draft accepts, as do all the other drafts, the principle of the absolute and joint liability of the Launching States whose space devices, involved in a collision, have caused damage on the surface of the earth.

The purpose of this paragraph in the Italian text is to make clear that, viz-à-vis the victims of the damage, joint negligence on the part of those States is presumed. This justifies joint liability and does not oblige those entitled to compensation to establish whether there was negligence on the part of the space objects involved in the collision or which of the objects was negligent.

In this last case, the acceptance of the principle of absolute liability is quite understandable, whereas if this principle - which is in itself exceptional - were applied indiscriminately, or without special reason, as would be the case for damage caused in outer space, it would undermine the rule of law, since it would encourage the persons responsible not to apply the necessary diligence in the exercise of their activities.

#### Ad article 6: International organisations

The Italian delegation considers that, for this purpose, the formula used in paragraph (1) of this article, which is taken from the United States draft, is undoubtedly the best. In its view, it is not necessary for the majority of the member States of the organization to be parties to the present convention or to the Treaty of 1967, as proposed by Belgium, France, Sweden and the United Kingdom (A/AC.105/C.2/L.4). Once the organization has decided, by the majority required under its statute, to accept the rights and obligations arising from the convention, it goes without saying that the organization is bound in toto.



Ad Article 8: Applicable law for determining the amount of damages

The question of which criterion to apply in determining the amount of compensation payable to the victim of the damage is, in itself, a fairly simple one, but the extensive discussions of the subject have succeeded in making it a complicated and a difficult one to solve.

The stages through which the question has gone are well known; some maintained that it should be solved in accordance with the principles of international law, while others asserted that, on the contrary, the law of the State responsible for the damage should apply.

Efforts are currently being made to reach a compromise on the basis of two proposals, one by the United States delegation and the other by the USSR delegation.

In this connexion, the Italian delegation considers that the USSR proposal is too complicated and too detailed and, above all, too restrictive, and that it would therefore be difficult to apply.

The United States proposal, on the other hand, is much simpler and closer to Italian thinking, with the exception of one of its phrases ("taking into account the law of the presenting State"), which is very vague and of which it would be difficult to obtain a precise legal understanding.

Consequently, the Italian delegation proposes the following formula, which, while taking up the United States proposal, eliminates the above-mentioned vague phrase: "The compensation which a State shall be required to pay under this Convention for the damage it has caused, shall be determined in accordance with the principles of international law, unless the parties agree that it shall be determined in accordance with equity or by applying the national law of their choice".

Ad Articles 9 to 12: Rules governing claims for compensation and recourse to the Arbitral Commission

These articles are taken from the United States draft, but the drafting has been slightly simplified (it was perhaps too long and too detailed) and changes have been made on some points of substance, in particular:

(a) the time limit of one year has been reduced to six months, in conformity with the view expressed in the Sub-Committee.

In the view of the Italian delegation, if a simple and rapid procedure for settling disputes is to be arrived at, the duration of the procedure must be shortened and the number of decision-taking organs must be limited.

This is why the Italian delegation is unable to accept the Indian proposal, based on the Hungarian draft, under which an advisory committee would be introduced between action through the diplomatic channel and the action of the arbitral commission. That would result in lengthening the procedure for settling compensation and would increase its cost.

(b) A reference to international organizations had been added in article 9, paragraph (4), and provision has also been made for such organizations to be represented by one of their member States, since international organizations do not have diplomatic representation stricto sensu.

(c) Article 10, paragraph (3) specifies that the arbitral commission shall take its decisions in conformity with article 8 and that they shall be final and binding upon the parties concerned.

(d) Ad Article 11, paragraph (1). The Italian delegation accepts the principle of the joint liability of the States members of the organization, but only from the time at which notification is received that the organization has failed to pay the amount of compensation due for the damage it has caused. Moreover, an addition has been made to the effect that the member States may not question the justification for, or the amount of the compensation, if this amount has been agreed upon amicably or determined by the arbitral commission.

(e) Ad Article 12. The Italian delegation has always considered this article to be essential, since the Italian Constitution, like nearly all Constitutions, guarantees the right of all its citizens to institute proceedings in its courts; it wished, however, to make it perfectly clear that if the parties concerned waive their right to institute proceedings before the ordinary courts, the State concerned could have recourse to diplomatic procedure to obtain financial compensation for the damage.

(f) Ad Article 13: We think it useful to add this article which makes it optional, and not obligatory, for the parties to refer to the International Court of Justice whenever it is not found possible to settle a question of the interpretation of the provisions of the Convention by peaceful means or whenever the arbitral commission considers it desirable for them so to do.

In this connexion, we must point out that the other Indian proposal, under which, if we have understood correctly, the arbitral commission would be barred from interpreting the provisions of the Convention, is unfortunately not acceptable. It is obvious that, if he is to take his decisions, any judge has the right and the duty to interpret the law upon which his decision is based. It would be neither rational nor practical to provide otherwise.

Ad Articles 14 to 20: Final Clauses

The Italian delegation has no specific comment to make on these clauses. It simply wishes to propose that the convention should be opened for signature by all States, in the same way as the Treaty of January 1967 and the Agreement on assistance to astronauts. It also proposes that the Depository States should be the same as those specified for the above-mentioned instruments.

NOTE. The Italian draft does not include any article concerning what is known as the "limitation of liability". This means that the Italian Government is opposed to any limitation whatsoever.

However, if the Sub-Committee should decide to include the principle of limitation, the Italian delegation requests that a provision be adopted whereby, in the case of damage caused wilfully, the responsible party shall not be entitled to benefit from the limitation.