

COMMITTEE ON THE PEACEFUL
USES OF OUTER SPACE
Legal Sub-Committee

BELGIUM: PROPOSAL FOR A CONVENTION ON THE UNIFICATION OF CERTAIN
RULES GOVERNING LIABILITY FOR DAMAGE CAUSED BY SPACE DEVICES TO
THIRD PARTIES ON THE SURFACE OF THE EARTH AND TO AIRCRAFT IN FLIGHT
(Revision of document A/AC.105/C.2/L.7/Rev.2)

The Contracting Parties,

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

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

Recognizing the need to establish rules governing liability with a view to
ensuring that compensation is paid for damage thus caused,

Have agreed as follows:

Article 1

- (a) The provisions of this Convention shall apply to compensation for
damage caused to persons or property by a space device or space
devices. They shall not apply to compensation for damage caused
in the territory of the Launching State or suffered by its nationals
or permanent residents, or for damage caused by a space device to
another space device,
- (b) The occurrence of the event causing the damage shall create a
liability for compensation once proof has been given that there is a
relationship of cause and effect between the damage, on the one
hand, and the launching, motion or descent of all or part of the
space device, on the other hand.

- (c) If the damage suffered results either wholly or partially from an act or omission on the part of the Applicant State or of natural or juridical persons that it represents and such act or omission has been committed, either with intent to cause damage or rashly and in full knowledge that damage will probably result, the liability of the Launching State to pay compensation under this Convention shall, to that extent, be wholly or partially extinguished.

Article 2

"Damage" shall be understood to mean loss of life, bodily injury or damage to property for which compensation may be claimed and assessed under the national law of the person injured, or if not, under applicable principles of international law.

"Launching" shall be understood to mean an attempted launching or a launching operation proper, whether or not it fulfils the expectations of those responsible therefor.

"Space device" shall be understood to mean any device intended to move in space and sustained there by means other than the reaction of air, as well as any constituent element of such device or of the equipment used for its launching or propulsion.

"Launching State" shall be understood to mean the State or States which carry out the launching of a space device or, when the Applicant State is not able to determine the said State or States, the State whose territory is used for such launching.

"Applicant State" shall be understood to mean the State which has been injured, or whose nationals, whether natural or juridical persons, or whose permanent residents have been injured, and which presents a claim for compensation.

Article 2*

The Launching State shall be held liable for compensation for damage caused in the circumstances stated in article 1 and defined in article 2. If several States participate in the launching of a space device, they shall be held jointly liable.

* The Belgian delegation reserves the right to submit an amendment dealing with the principle enunciated in this article.

Article 4

- (a) Within two years after the occurrence of the damage, or after the identification of the State liable under article 1, the applicant State shall present through the diplomatic channel, to the State which it holds liable, all claims for compensation concerning itself and its nationals and residents. A Contracting Party may request another State to present its claim and otherwise represent its interest in the event that it does not maintain diplomatic relations with the Launching State.
- (b) If the applicant State or a person represented by it brings an action for compensation before the Courts or administrative organs of the State receiving the claim, it shall no longer be able to present a claim for compensation for the same damage under the provisions of this Convention. The said provisions shall not be considered to require, by implication, the prior exhaustion of such remedies as may exist under the rules of ordinary law in the State receiving the claim.
- (c) If the State receiving the claim has not taken, within six months after being approached, a decision considered satisfactory by the applicant State, the latter may have recourse to arbitration.

Within ninety days of the date of the request addressed to it by the applicant State, the State receiving the claim shall appoint one arbitrator, the applicant State shall appoint a second and the President of the International Court of Justice a third. If the State receiving the claim fails to appoint its arbitrator within the prescribed period, the person appointed by the President of the International Court of Justice shall be the sole arbitrator.

The Arbitration Commission shall take its decisions according to law */ and by majority vote. It shall make an award within six months after the date of its establishment and its decisions shall be binding.

- (d) Sums due in compensation for damage shall be fixed and payable either in the currency of the applicant State or in a freely transferable currency.
- (e) The periods specified in this article shall not be subject to interruption or suspension.
- (f) There shall be joinder of claims where there is more than one applicant in respect of damage due to the same event or where more than one State is liable and the damage was caused by more than one space device.

*/ An alternative might be "take its decisions ex aequo et bono"

Article 5

This Convention shall be open for signature by States Members of the United Nations or any of the specialized agencies or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention. Any such State which does not sign this Convention may accede to it at any time.

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

This Convention shall enter into force thirty days after the date of the deposit of three instruments of ratification, approval or accession.. For each State which deposits its instrument of ratification, approval or accession after the entry into force provided for in the preceding paragraph, this Convention shall enter into force on the date of deposit of such instrument.

Article 6

International organizations which undertake to comply with this Convention shall have the same rights and obligations as States. The States members of the said international organizations shall be held jointly liable for the obligations of the latter, whether or not such States are parties to the Convention. The accession of an international organization shall be accompanied by a notification of the joint obligations so assumed by the States members of the organization concerned.

The claims referred to in article 4 (a) may, in the case of the international organization, be presented through the Secretary-General of the United Nations.

Article 7

Each Contracting Party may notify the Secretary-General of the United Nations of its withdrawal from this Convention not less than five years after its entry into force. Such withdrawal shall take effect one year after receipt of the notice, which must be in writing. Such withdrawal shall not relieve the Contracting Party concerned of any obligation or liability arising from damage inflicted before its withdrawal takes effect.

Article 8

This Convention may be amended or supplemented at the proposal of one or more Contracting Parties. Such amendments shall take the form of additional protocols which shall be binding on such Contracting Parties as ratify, approve or accede to them. Such protocols shall enter into force when the majority of the Contracting Parties to this Convention have thus accepted them.

Article 9

The Secretary-General of the United Nations shall inform signatory States, and those which ratify, approve or accede to this Convention, of signatures, the deposit of instruments of ratification, approval or accession, the entry into force of this Convention, proposals for amendments, notifications of acceptance of additional protocols, and notices of withdrawal.

Article 10

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 true copies to all signatory States and to any State Member of the United Nations which so requests.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Convention.

Done at _____ on _____