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COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE

Legal Sub-Committee

United States of America: Proposal

CONVENTION CONCERNING LIABILITY FOR DAMAGE CAUSED
BY THE LAUNCHING OF OBJECTS INTO OUTER SPACE

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 January 27, 1967,

Seeking to establish a uniform rule of liability and a simple and expeditious procedure governing financial 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:

ARTICLE I - Definitions

For the purposes of this Convention

(a) "Damage" means loss of life, personal injury, or damage to property, whether partial or total.

(b) The term "launching" includes attempted launchings.

(c) "Launching State" means a Contracting Party, or an international organization that has transmitted a declaration to the Secretary-General under Article V, paragraph 1, of this Convention, that launches or actively and substantially participates in the launching of an object into outer space, or from whose territory or facility an object is launched into outer space, or that exercises control over the orbit or trajectory of such an object.

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(d) "Presenting State" means a Contracting Party, or an international organization that has transmitted a declaration to the Secretary-General under Article V, paragraph 1 of this Convention, that presents a claim for compensation to a Respondent State.

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

ARTICLE II - Liability

1. The Launching State shall be absolutely liable to pay compensation to the Presenting State, in accordance with the provisions of this Convention, for damage shown to have been caused by the launching, transit or descent of all or part of a space object.

2. If the damage suffered results either wholly or partially from a wilful or reckless act or omission on the part of the Presenting State, or of natural or juridical persons that it represents, the liability of the Launching State to pay compensation under paragraph 1 of this Article shall, to that extent, be wholly or partially extinguished.

3. There shall be no liability under this Convention for damage caused to persons and property within a launch facility or immediate recovery area for participation in or observation of the launch or recovery, or to space objects and their personnel during launching, transit or descent.

ARTICLE III - Multiple Respondent States

1. If under paragraph 1 of Article II or paragraph 3 of Article V two or more Launching States would be liable to pay compensation, the Presenting State may proceed against any or all such States individually or jointly for the total amount of damages.

2. When the Presenting State proceeds against less than all possible Respondent States, the State or States proceeded against shall within three months give formal notice to any other Launching States which may be involved, and the States so notified shall also become Respondent States and shall participate in the settlement or other disposition of the claim.

3. When a claim has been presented to only one Launching State and it does not notify and join other Launching States under paragraph 2 of this Article, it shall pay the entire compensation which is found to be due. If any Launching States are originally joined, or if a Respondent State notifies and joins the other Launching States, any settlement, agreement or judgment shall specify the apportionment of liability among the several Respondent States.

4. If a number of Contracting States co-operate in a launching, and if they reduce the terms of their co-operation to writing and file a copy thereof with the Secretary-General of the United Nations, Presenting States shall be on notice as to those terms and shall be bound to observe the proportionate shares of liability assumed by the several Contracting States. If payment of the specified proportionate share has not been made by one or more Respondent States six months after the amount of overall liability has been ascertained, a Presenting State may demand payment from any other Respondent State as provided in Article III, paragraph 6.

5. The amount recoverable by the Presenting State from any one Respondent State shall be reduced to the extent of any compensation received in respect of that claim by the Presenting State from any other Respondent State, so that in no case shall the aggregate of the compensation paid in respect of any one claim exceed the amount which would be payable under this Convention if only one Respondent State were liable.

6. If any one of several Respondent States fails to pay its proportionate share of the overall liability within six months of the date of the ascertainment of the amount due, the Presenting State may demand payment from any or all of the other Respondent States.

7. A Respondent State which has not paid its proportionate share of the overall liability to the Presenting State shall be obligated to reimburse the other Respondent States for their payments in excess of their proportionate shares.

8. The periods specified in this Article shall not be subject to interruption or suspension.

ARTICLE IV - Measure of Damages

The compensation which a State shall be liable to pay for damage under this Convention shall be determined in accordance with applicable principles of international law, justice and equity.

ARTICLE V - International Organizations

1. If an international organization which conducts space activities transmits to the Secretary-General of the United Nations a declaration that it accepts and undertakes to comply with the provisions of the present Convention, all the provisions except Articles XII, XV, XVI, and XVII, shall apply to the organization as they apply to a State which is a Contracting Party.

2. The Contracting Parties to the present Convention undertake to use their best endeavours to ensure that any international organization which conducts space activities and of which they are constituent members is authorized to make and will make the declaration referred to in paragraph 1 of this Article.

3. If within one year of the date on which compensation has been agreed upon or otherwise established pursuant to Article X, an international organization fails to pay such compensation, each member of the organization which is a Contracting Party shall, upon service of notice of such default by the Presenting State within three months of such default, be liable for such compensation in the manner and to the extent set forth in Article III.

ARTICLE VI - Presenting a Claim

1. A Contracting Party which suffers damage referred to in Article II, paragraph 1, or whose natural or juridical persons suffer such damage, may present a claim for compensation to a Respondent State or States.

2. A Contracting Party may also present to a Respondent State a claim of any natural person, other than a person having the nationality of a Respondent State, permanently residing in its territory. However, a claim of any individual claimant may be presented by only one Contracting Party.

3. A claim shall be presented through the diplomatic channel. 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 a Respondent State.

4. Notice of a claim must be presented within one year of the date on which the accident occurred or, if the Presenting State could not reasonably be expected to have known of the facts giving rise to the claim, within one year of the date on which these facts became known to the Presenting State even if the nature or extent of the damages may not be known to the Presenting State.

ARTICLE VII - Nationals

A State shall not be liable under this Convention for damage suffered by its own nationals or nationals of other Respondent States or by juridical persons beneficially owned by such nationals, to the extent of such ownership.

ARTICLE VIII - Limitation of Liability;
Apportionment

1. The liability of the Launching State or States shall not exceed _____ with respect to each launching.
2. If the total amount otherwise payable with respect to the claims presented exceeds the limit of liability provided by this Article, the following rules shall apply:
 - (a) If the allowable claims are exclusively in respect of loss of life or personal injury, or exclusively in respect of damage to property, such claims shall be reduced proportionately.
 - (b) If the allowable claims are both in respect of loss of life or personal injury and in respect of damage to property, three fourths of the total sum distributable shall be appropriated preferentially to meet claims in respect of loss of life and personal injury and, if insufficient, shall be distributed proportionately between the claims concerned. The remainder of the total sum distributable shall be distributed proportionately among the claims in respect of damage to property and the portion not already covered of the claims in respect of loss of life and personal injury.

ARTICLE IX - Exhaustion of Remedies

1. The presentation of a claim under this Convention shall not require exhaustion of any remedies which might otherwise exist in a Respondent State.
2. If, however, the Presenting State, or a natural or juridical person whom it might represent, elects to pursue a claim in the administrative agencies or courts of a Respondent State or pursue international remedies outside this Convention, the Presenting State shall not be entitled to pursue such claim under this Convention against such Respondent State.

ARTICLE X - Claims Commissions

1. If a claim presented under this Convention is not settled within one year of the date on which documentation is completed, the Presenting State may request the establishment of a 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 Presenting 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 constitute the member of the commission.

2. No increase in the membership of the commission shall take place where two or more Presenting States or Respondent States are joined in any one proceeding before the commission. The Presenting 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 Presenting 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 Presenting or Respondent States fail to appoint their member within three months, the person appointed by the President of the International Court of Justice shall constitute the sole member of the commission.

3. The commission shall determine its own procedure.

4. The commission shall conduct its business and arrive at its decision by a majority vote. Such decision shall state the views of the members of the commission.

5. The decision of the commission shall be rendered expeditiously and shall be binding upon the parties.

6. The expenses incurred in connexion with any proceeding before the commission shall be divided equally between Presenting and Respondent States.

ARTICLE XI - Currency

Payment of compensation shall be made in the currency of the Presenting State or a currency convertible readily and without loss of value into the currency of the Presenting State.

ARTICLE XII - Settlement of Disputes

Subject to prior recourse to proceedings under Article X, any dispute arising from the interpretation or application of this Convention, which is not previously settled by other peaceful means, may be referred by any contracting Party thereto to the International Court of Justice for decision.

ARTICLE XIII - Amendments

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.

ARTICLE XIV - Withdrawal

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.

ARTICLE XV - Signature and Accession

The Convention shall be open for signature by States Members of the United Nations or of 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. Any such State which does not sign this Convention may accede to it at any time.

ARTICLE XVI - Ratification; Depositary

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.

ARTICLE XVII - Entry Into Force

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 thereafter upon deposit of its instrument of ratification or accession.

ARTICLE XVIII - Depositary's Duties

The Secretary-General of the United Nations shall inform all States referred to in Article XV and all organizations which have made declarations under Article V, paragraph 1 of signatures, deposits of instruments of ratification or accession, declarations referred to in Article V, 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 proposal.

ARTICLE XIX

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 States mentioned in Article XV.

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