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COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE

Legal Sub-Committee

INDIA: PROPOSAL

Convention concerning liability for damage caused
by the launching of objects into outer space

The 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,

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Having regard to United Nations General Assembly resolutions 2260 (XXII) of 3 November 1967, 2345 (XXII) of 19 December 1967, and 2453 (XXIII) of 20 December 1968 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 the 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) the term 'damage' means loss of life, personal injury or other impairment of health; or loss of or damage to property of States or of persons, natural or juridical, or property of international organizations and includes both nuclear and non-nuclear damage;

(b) the term 'launching' includes 'attempted launching';

(c) the term 'launching State' means:

1. the State which launches, attempts to launch or procures the launching of the space object;
2. the State from whose territory or facility the space object was launched;

(d) the term 'Claimant' means the State that presents a claim for compensation to a respondent;

(e) the term 'Respondent' means a launching State from which compensation is sought under this Convention;

(f) the term 'Space Objects' includes component parts of the space object as well as its launch vehicle and parts thereof.

ARTICLE II

Unless otherwise provided in the Convention, the launching State shall be absolutely liable to pay compensation for damage caused by its space object on the surface of the earth and to aircraft in flight.

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 natural or juridical persons it represents. No exoneration, however, 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.

The provisions of this Convention shall not apply to damage caused by the space object of a launching State to:

- (a) Nationals of that launching State;
- (b) Foreign nationals during such time as they are participating in the operation of that space object from the time of its launching or at any stage thereafter until its descent, or during such time as they are in the immediate vicinity of a planned launching or recovery area as the result of an invitation by that launching State.

ARTICLE III

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

If in the case referred to in paragraph 1, damage is caused to a third State or to its physical or juridical persons, the States mentioned in paragraph 1 shall be jointly and severally liable. The burden of compensation for the damage shall be apportioned between those States in accordance with the extent of the fault 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 IV

1. Whenever two or more States jointly launch a space object, they shall be jointly and severally liable for any damage caused.
2. The State which has paid compensation for damage shall have the right to present a claim for indemnification to other participants in the joint launching. The participants in a joint launching may conclude agreements regarding the apportionment among themselves of the financial obligations in respect of which they are jointly and severally liable. Such agreements shall be without prejudice to the rights of the State sustaining damage caused by the space object.

ARTICLE V

A launching State shall be liable to pay compensation without limit for all damage caused to other States.

ARTICLE VI

If there is agreement between the claimant and the respondent on the applicable law regarding the amount of compensation payable under this Convention, then that law should be applied. If the claimant and the respondent do not agree on the applicable law, the amount of compensation shall be determined in accordance with international law, taking into consideration the law of the claimant State and, where considered appropriate, the law of the respondent State. In case of conflict, international law shall prevail.

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. Subject to the provision of paragraph 1, a Contracting Party may also present to a respondent a claim in respect of damage sustained by any natural or juridical person in its territory.
3. A Contracting Party may also present a claim for damage sustained by its permanent residents in respect of whom neither the State of nationality nor the State in which the damage was sustained has presented a claim or notified its intention of presenting a claim.
4. No claim may be presented under this Convention in respect of the nationals of the respondent.

ARTICLE VIII

1. 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.
2. 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.
3. 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 IX

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 State 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 State 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 State 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 X

Unless the parties agree otherwise, compensation for damage caused by a space object shall be payable in the currency of the State presenting the claim.

ARTICLE XI

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 XII

1. In case of disagreement between the claimant and the respondent, the two parties shall endeavour to arrive at a settlement through diplomatic negotiations.
2. If no settlement is arrived at within six months 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 XIII

1. The provisions of this Convention shall apply to each international inter-governmental organization which conducts space activities, provided a majority of the States members of that Organization are Parties to this Convention.
2. If an international inter-governmental organization is responsible in terms of the provisions of this Convention for damage caused by its space object, both the organization and its members are jointly and severally liable.
3. Claims in respect of damage caused 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 one year, the claimant may proceed against any one or more of the members of the organization which are also parties to the Convention.
4. Any claim, pursuant to the provisions of this Convention, for compensation in respect of damage caused to the property of an international inter-governmental organization may be presented by one of the State members of that organization which are parties to this Convention.

ARTICLE XIV

1. This Convention which includes the Compulsory Protocol on Settlement of Disputes as an integral part 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 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.

ARTICLE XV

Any State Party to the Convention may propose amendments to this Convention. Amendments will enter into force for each State Party to the Convention accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party to the Convention on the date of acceptance by it.

ARTICLE XVI

A Contracting Party may give notice of its withdrawal from the Convention one year after its entry into force by written notification to the Depositary Governments. Such withdrawals shall take effect one year from the date of receipt of this notification.

ARTICLE XVII

This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

ANNEX I

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 XII 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 no settlement of the claim is arrived at through diplomatic negotiations as provided for in Article XII of the Convention, the claimant and the 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 in article I (1);
 - (ii) the Enquiry Commission is unable to arrive at any recommendations within the period specified in article I (2) or its recommendations are not implemented within a period of two months.

ARTICLE III

1. The Claims Commission shall be composed of one nominee each of the claimant and the respondent and a third member, the Chairman, to be chosen by the claimant and the 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.

2. 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 respective Chief Justices of the two parties or other judicial officers or jurisconsults of the two parties shall nominate the Chairman within a period of two months.

3. If no agreement is forthcoming on the choice of the Chairman under the procedure provided for in paragraph 2, the Secretary-General of the United Nations or some other person of similar standing may be requested by either party to nominate the Chairman within a period of two months. The nomination so made shall be binding.

ARTICLE IV

1. If one of the parties fails to designate its nominee within the stipulated period, the Chairman shall, at the request of the other party, constitute a single member Claims Commission.

2. 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.

3. The Claims Commission shall determine its procedure.

4. The Claims Commission shall determine the place or places where it shall sit and all administrative matters connected therewith.

5. All decisions of the Claims Commission shall be by majority vote, except in cases where a single member Commission is established.

ARTICLE V

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 the respondents fail to nominate their member within the stipulated period, the Chairman shall constitute a single-member Commission.

ARTICLE VI

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 the 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 VII

1. The Commission shall be guided by the provisions of Article VI of the Convention in so far 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 VIII

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