

SPACE LAW AND POLICY  
WITH SIMULATED NEGOTIATIONS  
[6]

## THE LIABILITY CONVENTION OF 1972 [3]

16 MAY 2016  
YURI TAKAYA (PH.D)  
LECTURER, KOBE UNIVERSITY

### SPACE NEWS:

CNN News:

#### **Boeing falls behind SpaceX in next space race**

13 May 2016

Both Boeing and SpaceX have contracts with NASA to take astronauts to the International Space Station. The two companies are also in a space race to go to Mars. SpaceX CEO wants to have an unmanned mission to Mars as soon as 2018, and to send the first humans to Mars sometime "around 2025." While SpaceX is working with NASA on its Mars mission plans, it is not under contract with the agency on that project. Boeing however is working on developing a rocket for NASA known as the Space Launch System, which the space agency plans to use to go to Mars by the 2030's.

<http://www.space.com/32881-boeing-starliner-test-article-literally-coming-together-video.html>

LIABILITY CONVENTION OF 1972  
[ARTICLE VIII-XIII]

CONVENTION ON INTERNATIONAL LIABILITY FOR DAMAGE CAUSED BY SPACE OBJECTS

3

1. CLAIMS

◆ Who can claim? [Article VIII]

1. A State which suffers damage, or whose natural or juridical persons suffer damage
2. If the State of nationality has not presented a claim, another State may, in respect of damage sustained in its territory by any natural or juridical person
3. If neither the State of nationality nor the State in whose territory the damage was sustained → another State may, in respect of damage sustained by its permanent Residents

◆ How? [Article IX]

1. Through diplomatic channels
2. No diplomatic relation? → request another states / UN Secretary-General

4

## 1. CLAIMS

### ◆ Until when?

No later than 1 year since...

1. following the date of the occurrence of the damage or the identification of the launching State which is liable.
2. following the date on which it learned of the aforementioned facts (however, no event exceed one year following the date on which the State could reasonably be expected to have learned of the facts through the exercise of due diligence.)
3. The time-limits apply even if the full extent of the damage may not be known.  
→ Additional documentation is allowed after the expiration of such time-limits.

## 2. CLAIMS COMMISSION

◆ If diplomatic channel does not result into solution of the issue,  
A claim commission would be established (Article XIII)

◆ 3 members (Article XIV)

- 1 appointed by the claimant State / 1 appointed by the launching State
- 1 Chairman, to be chosen by both parties jointly.

If no agreement is reached on the choice of the Chairman within 4 months of the request for the establishment of the Commission, either party may request the UN Secretary-General to appoint the Chairman within a further period of two months

## 2. CLAIMS COMMISSION

### ◆ Problem 1: Binding? Or Recommendatory Opinion?

The decision of the Commission shall be final and binding if the parties have so agreed; otherwise the Commission shall render a final and recommendatory award, which the parties shall consider in good faith. The Commission shall state the reasons for its decision or award.

### ◆ Problem 2: Membership of the Commission

The Commission has member from the parties involved in the case.

7

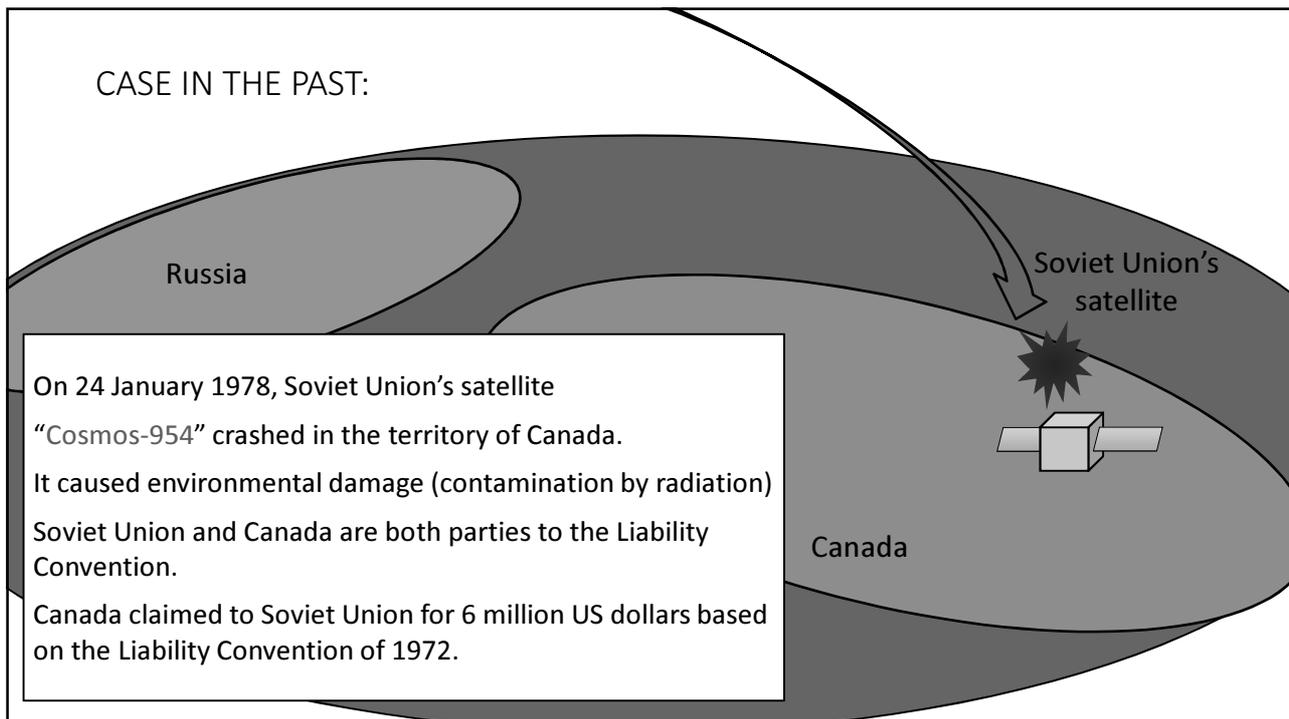
## 2. CLAIMS COMMISSION

### ◆ Problem 3: no provision concerning International Court of Justice

Reason: Only states are entitled to bring a case to ICJ (no international organization)

Art. 34 of ICJ Statute

1. Only states may be parties in cases before the Court.
2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.
3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization<sup>8</sup> concerned and shall communicate to it copies of all the written proceedings.



CASE IN THE PAST:

On the other hand, Soviet Union suggested to offer assistance based on the Rescue Convention of 1968 (Article 5 (2)) and rejected to pay 6 million US dollar. Canada received assistance from US, but rejected the offer from Soviet Union.



Soviet Union insisted that the definition of damage does not include environmental damage.



Finally, Canada agreed to receive 3 million dollars (thought 14 million dollars loss) not by establishing a Claims Commission but through diplomatic channel.

NATIONAL SPACE LAW AND POLICY OF JAPAN

PRESENTED BY MARINE

SIMULATED NEGOTIATION

Time Table:

16:00 ~ 16:15 Group Discussion

16:15 ~ 16:35 Presentation

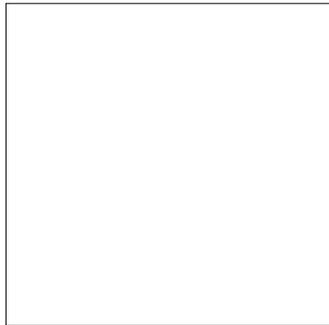
THEME  
"WHAT ARE SOFT-POWER OBTAINABLE FROM SPACE COOPERATION?"  
SOFT POWER ⇔ HARD POWER

You are working in a space agency, pursuing a civil space program.  
As Department of Defense is increasing its budget to strengthen national security by developing space weapons,  
you need to convince the government to increase the budget for civil space program.  
Please make a proposal for UN-based space (international) cooperation that strengthens your country's soft-power.

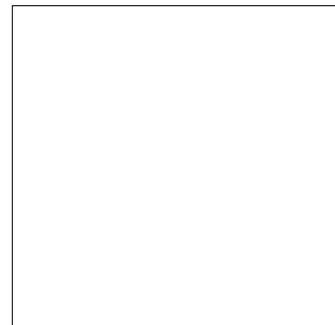
TEAM A

1. Title of the program
2. Which UN organization?
3. Content
4. What kind of soft-power is obtainable from that program?

TEAM B



TEAM C



END