

RESOLUTION OF THE COUNCIL OF THE EUROPEAN SPACE AGENCY
ON THE AGENCY'S LEGAL LIABILITY
(ESA/C/XXII/RES.3, 13 DECEMBER 1977)

The Council of the Agency, meeting at the 13 December 1977,
CONSIDERING that the execution of a programme or activity of the Agency may involve the legal liability of the Agency, of its Member States and of States participating in one of its programmes,
WISHING to define the principles applicable where the legal liability of the Agency, of a Member State, or of a State participating in one of its programmes is involved, as well as the modalities for the distribution of the financial burden,
HAVING REGARD in particular to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies which entered into force on October 1967 and to the Convention on International Liability for Damage Caused by Space Objects, which entered into force on 1 September 1972, hereinafter referred to as "the United Nations Convention", and in particular Article XXII thereof,
NOTING that the Declaration of Acceptance of the United Nations Convention by the Agency is operative since 20 September 1976,
HAVING REGARD to Article X.4.f. of the Convention for the establishment of a European Space Research Organisation, opened for signature in Paris on 14 June 1962,
HAVING REGARD to Article XI.5.f. of the Convention for the establishment of a European Space Agency, opened for signature in Paris on 30 May 1975,
AGREES to adopt the following principles:

The purpose of this Resolution is:

(A) to define the consequences-of the Agency's legal liability in the event that the execution of its space programmes or space activities, by the Agency itself or on its behalf, causes damage (which expression in this Resolution includes death, injury, loss and prejudice)

(i) one of its Member States,

(ii) State participating in one of the Agency's space programmes or space activities (hereinafter referred to as a "participating State"),

(iii) a third-party State, or to a natural or juridical person any of these States may represent.

(B) to define the directives to be followed by the Agency when bodies render to it launching services or it provides services.

A - I

1. The Agency shall indemnify Member States and States participating in its space programmes or activities against liability incurred by them as a result of the execution of such programmes or activities

(a) if the States are held liable in their quality of "launching States" within the meaning of the United Nations Convention;

(b) if the Agency has so agreed by virtue of a special agreement concluded between the Agency and the State concerned.

2. However, where a Member State or a participating State performs services for Agency for the execution of the space programmes or space activities of the Agency and, in particular, if it is designated in this respect as the "launching State" within the meaning of the United Nations Convention, that State shall refund to the Agency the amount of compensation charged to the Agency if the damage resulted from gross negligence or a deliberate act Or omission on the part of that State or of persons acting on its behalf.

II

1. Where any claim for compensation for damage caused by a space object of the Agency, is presented to the Agency, the Agency shall conduct the proceedings;

2. (a) Where a claim for compensation is addressed to a Member State or a State participating in a programme of the Agency that State shall consult the Agency without delay, and

(i) the Agency may join in the proceedings if the applicable law so permits and may substitute itself for the State involved if the latter so requests;

(ii) any Member State or a participating State may join the State involved or the Agency in the proceedings if the applicable law so permits;

(iii) any State involved shall follow the directives jointly agreed between the Agency and that State both in respect of proceedings and settlement

(b) A Member State or a State participating in a programme shall always present its claim for compensation firstly to the Agency.

3. All Member States or participating States and the Agency shall be bound by the judicial or arbitral findings or by the settlements negotiated by the States concerned with the agreement of the Agency whether they have joined in the relevant proceedings or not.

III

1. The amount of compensation fixed shall be paid by the Agency, provided that the provisions contained in paragraph 11.2 have been applied.

2. The Agency shall advance the funds needed for payment of the compensation that may be charged to a Member State or a participating State as the result of proceedings or settlements if that State so requests and if the above procedures have been observed. If the said State has paid the amount of compensation for which it was held liable or for which the claim was settled with the agreement of the Agency, without having obtained the advance, the Agency shall refund the whole of that amount to it. The Council will lay down the detailed provisions for implementation of this paragraph.

3. Irrespective of any ceiling agreed upon with respect to their participation, the expenditure made by the Agency in respect of compensation for damage will be charged to the States participating in the programme concerned, proportionately to their financial contributions to the said programme on the date when the damage occurred if it occurred during the programme, or on the date of termination of the programme if the damage occurred after that date. Where the risk is covered by insurance, the corresponding premium shall be charged to the programme.

4. The amounts refunded to the Agency under the provisions of paragraph 3 shall be credited to the budget concerned.

IV

In agreements on the participation of a non-member State in a programme of the Agency, the latter shall insert a clause wherein the said State explicitly accepts the principles contained in this Resolution. As regards agreements already concluded up to the date of this Resolution, the Agency shall use its best endeavours that they are amended accordingly.

B-I

1. Where the Agency, a Member State or a State participating in the programme concerned may incur international liability in connection with the launching of space objects and execution of associated services, by a State which is not a Member State or a State participating in the programme concerned or a body under the jurisdiction of the said State, the Agency shall ensure that the launch agreement or contract reflects the following principles:

(a) Where a claim for compensation is presented to the said State or body, the Agency shall be authorised to follow, or to join in, the proceedings.

(b) If the claim is presented to the Agency, the Agency shall ask the said State or body to join in the proceedings.

(c) The amount laid down for compensation shall be shared between the Agency and the State or body in question proportionately to their respective responsibilities for the damage, it being agreed that the Agency shall under no circumstances be liable for damage, caused by gross negligence, or a deliberate act or omission on the part of the said State or body.

2. The Council may in certain cases authorise by unanimous decision the Agency to conclude agreements or contracts derogating from the above principles.

II

1. When the Agency performs a launching service, it shall ensure that the beneficiary takes out an insurance policy covering his own and the Agency's liability for any damage that may result from that service. However, the Agency will remain liable for any damage resulting from gross

negligence or a deliberate act or omission on its own part or on the part of persons in-its service subject to the provisions of paragraph B.1.2.

2. As regards other services performed by the Agency, the relevant provisions will be laid down by the Council later.