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WHAT ROLE FOR INTERNATIONAL ORGANISATIONS IN THE CENTURY AHEAD?

G. Lafferranderie
ESA, Paris

It might be considered presumptuous to wish to discuss the possible role of the international organisations in the century ahead, when such organisations are "mortal" too - they may merge, be absorbed by some larger entity, acquire broader objectives or develop new working methods as they interact with other players, etc.

However I do not intend to expound a thesis or discuss the substance of legal concepts that are now well understood. My comments will be based on current events, with reference to the basic principles contained mainly in the five outer space treaties formulated under United Nations auspices.

I. A brief description of developments

The Outer Space Treaty (and supplementary agreements) places heavy emphasis on international cooperation as a means of achieving aims, as an operational method and also as an end in itself. There can surely be no better expression of international cooperation than the "international organisation".

(a) The term "international organisation", as used in the above-mentioned treaties in particular, covers international intergovernmental organisations formed by sovereign States, which define the remit and operational mechanisms and provide the resources needed for the remit to be fulfilled. These organisations go on to develop their own law - internal law and international relations law, and agreements and contracts drawn up with Partners (States, international organisations or industry).

(b) Second feature: the treaties concern international organisations "conducting activities in outer space", which originally meant R & D activities. In view of the resources required, space programmes can only in rare instances be accomplished by one country alone. Cooperation between States is therefore an absolute necessity, for political and financial reasons as well as for legal reasons (liability for damage, participation in the operation of space systems, procedures applicable to scientific and technical results, the setting-up of major development programmes). The outcome has been regional cooperation, as with ELDO and ESRO, which are now ESA. At the time, it was the Member State delegations of ESRO and ELDO which strove to include

in the treaties provisions concerning their "acceptance" by international organisations (ESRO and ELDO having been the first organisations to receive observer status in COPUOS).

(c) So R & D was the starting-point and is inevitably an ongoing objective (complementary or new developments). Then there is the exploitation and use of operational space resources, which are also entrusted to intergovernmental organisations (Intelsat, Intersputnik, Eutelsat, Eumetsat and Arabsat), followed by the role of operators, not forgetting the construction of a "space" industry. Development and change is now the order of the day, with certain established intergovernmental organisations being "privatised" to better handle "commercial" activities. Public-private partnerships are being set up for the purpose of sharing risks and responsibilities. Each of the initial international organisations is at present evolving in its own special way, like a chrysalis. I will not dwell here on other international organisations, such as ITU, which is undergoing change, as are WMO, FAO, WIPO, UNESCO and WTO. Nor will I detail the various scientific bodies, such as COSPAR.

(d) At the same time, another trend is becoming apparent, characterised by the setting up of non-institutional cooperation mechanisms - adoption of "charters" - between various public and private players (non-creation of legal bodies, flexible consultation mechanisms for formulating recommendations, this being done now at the global rather than regional level; an example is CEOS). This solution is used in particular in the case of operational systems exploiting Earth observation satellites.

(e) State cooperation still takes place and will continue to do so, in the form of multilateral intergovernmental agreements, for large-scale undertakings requiring huge investment, such as the international space station (ISS) and, later, a lunar base and manned mission to Mars. This avoids having to constitute a juridical person under international law, independently of the founding States. A treaty always takes a long time to negotiate (privileges and immunities, complex financial mechanisms and inappropriate voting rules are the main arguments put forward by those opposed to the procedure). There exists however, in the case of the space station, a complex structure in the form of an intergovernmental agreement (IGA 1988-91) which outlines the cooperation in question, making reference to the basic principles contained in the above-mentioned treaties (in particular "jurisdiction and control" and international liability for damage). The IGA refers to memorandums of understanding between space agencies designated by the States parties to the Treaty, those MOUs being themselves supplemented by "implementing arrangements" - a structure leaving the management and control of the international

undertaking to the main contributor. To this setup will be added provisions defining the rights and obligations of experimenters and users; exploitation is expected to be "privatised". It is likely that these types of instruments will continue to be used, though they will be adapted in line with developments in the various space activities (R & D into new space facilities; new propulsion systems, new commercial applications such as satellite navigation and major new areas to be tackled by the international community, such as the management of high risks, the threat of asteroids, etc.) not to mention environmental protection, information (the Internet) and so on, which are all areas beyond the responsibility and competence of a single international organisation but require constant, close cooperation between them.

II. How can the treaties respond to this trend?

1. Whatever the shape and form of the final actors, States retain responsibility for conducting and controlling activities in outer space. These activities create a risk for the entire community, beyond those directly involved. The international community must be given the assurance that compensation will be received in the event of damage and that certain basic principles will be adhered to by the actors, whoever they turn out to be, in terms of international relations, access to the "benefits" and intellectual property, as expressed in various texts (UN Charter etc.). The action being taken by COPUOS and its Legal Subcommittee to urge as many States as possible to become parties to the Outer Space Treaty and the supplementary Agreements, in particular the Convention on international liability for damage caused by space objects and the Convention on registration, must be given support and encouragement.

Articles I, II, III and IX of the Treaty set out fundamental basic obligations, which I consider to be applicable to all States, even those that are not legal parties to the Treaty. Those principles simply reflect the UN Charter and numerous other Resolutions. It follows, in my view, that any State conducting activities in outer space, by itself or via a private firm under its jurisdiction, is also morally bound by those basic principles (nowadays these would be known as ethics) and should do its best to act on them. Otherwise, confusion would arise in international relations, which have a need for legal security.

Broader accession to the space treaties should be accompanied by the introduction of specific national legislation, together with its inclusion in cooperation agreements at all levels, primarily of course in agreements establishing international organisations and agreements concluded by those organisations.

2. At this stage, I would like to draw your attention to one of the

consequences of the privatisation under way in certain international space organisations. As you know, these organisations can state that they accept the treaties without becoming parties to them (which I regard as a shortcoming with respect to the development of international law). ESA has accepted the Agreement on the rescue and return of astronauts, the Convention on registration and the Convention on liability and adopted various measures to implement them. Eutelsat has accepted the Convention on liability for damage. In the case of Inmarsat, a draft Declaration was prepared, though no further action was taken as the voting conditions were not met. Intelsat has found no particular advantage in following those examples. What effect will privatisation have? Eutelsat will retain a public core and its acceptance should therefore stand, but it will need to be reflected in the text that is concluded between Eutelsat and the new operating firm which will be created. This situation presents the risk, not only that there might be no provision in the national headquarters' law, but that the State with jurisdiction might be a party neither to the Outer Space Treaty nor to the supplementary Conventions or that the founders of the private operating firm might seek a "flag of convenience".

Resolution 110 (II) of the UN's General Assembly of 3 November 1947 is recognised in the 1967 Treaty as being applicable to outer space. It would be appropriate to identify other Resolutions that have also been found applicable by the UN General Assembly and which States should therefore incorporate in their national laws.

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To sum up, international cooperation will continue to be essential for a variety of reasons - political, financial, management or regulatory - which may lead to an excessive number of organisations and a heavy demand for consultation between them, without necessarily going as far as to set up an organisation for organisations. Various forms of international cooperation will continue to exist side-by-side for the benefit of activities in outer space, including that of the international intergovernmental organisation. As stated in Article VI of the Treaty, the Member States of an organisation will continue to ensure there is compliance with the provisions of the Treaty.

Shortcomings will remain, in particular regarding informal consultation structures ("soft law"). The effects of that situation could be attenuated by acceding to the treaties and adopting national regulations. This seems particularly appropriate in view of the trend towards public-private partnerships. Organisations for coordinating national regulations or willing and able to adopt community regulations would help to foster the development of and consistency in international space law. I have not mentioned the creation of a world space organisation; that is because I consider COPUOS and its Legal Subcommittee to be qualified to carry out the legal coordination that is bound to become more and more

necessary (I would like to mention here the recent changes to the agenda of the Legal Subcommittee, which will now have to be kept informed of the activities of the various international organisations).

International organisations are likely to remain the best mechanism for pursuing the objectives of space activities laid down in the Treaty.

The international community should endeavour to limit the number of structures, with or without a juridical personality, and seek out structures through which the various players can be heard.

The COPUOS Legal Subcommittee should be given a leading role with respect to the legal coordination of the actions of all involved.

Thank you for giving me your attention.