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INTERNATIONAL ORGANISATIONS AND SPACE LAW:
THEIR ROLE AND CONTRIBUTIONS

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General Conclusions

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Director, Institute for Legal Studies on the International Community (CNR)

l. At the conclusion of this momentous event, preciously enlightening and rich in providing stimulus for further thinking and analysis, dear Friends and Colleagues, let me draw some observations in form of general remarks on the main issues dealt with in the course of our two-days Perugia Colloquium. We all have tried to focus the evolution prospects of space law and, specifically, the role of international organisations in this context. Our common premise has been that space law has known a deep evolution since when it saw the light more than 30 years ago. We talk today about space activities and globalisation and underline the profoundly changed global framework: on the one hand, the new paths and inputs, the evolution that space activities have been testing and experimenting since the conclusion of the general agreements in a number of fields following to scientific and technological development; new applications of space technologies; increased number of States involved with space activities; commercialisation and privatisation of space activities; private investment flows in space technologies; inter-State partnership and partnership amongst States and international organisations and private subjects; on the other hand, the consolidation of new sectors where space. activities have an impact: protection of the environment and natural resources management, prevention of natural disasters and those directly caused by human activity; global communications and right to information; development of space industry as a drive to growth. We certainly had the opportunity to listen to valuable and significant analyses of the broad spectrum of practices in space law sectors over this venue.

It was commonly felt during our work that all the above aspects require enhancement of international cooperation and greater attention towards the interaction between public and private space activities. It is in light of these elements that we evaluated the role of international organisations in the elaboration and development of space law and it is in this context that UNISPACE III will be held. One of the main perspectives for forthcoming workings of the UNCOPUOS Legal Sub-Committee will be, as an item on the agenda, co-operation. The 1996 Declaration of the Legal Sub-Committee on International Co-operation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries (UNGA, Res. 51/122, 13 December 1996) bears witness of how the use of space technologies for advancing socioeconomic and cultural development appears of particular moment in this line of thought.

Thus, these are the challenges for space community at the dawn of the third millenium.

2. But let's proceed with order. The Colloquium articulated in two days. The first day workings were devoted to the analysis and evaluation of the practice of international space organisations. We had three different sessions oriented to deepen the analysis of 1. participation of international organisations to space activities (ESA, Eutelsat, Eumetsat, Intersputnik); 2. the engagement of international organisations with space regulatory, policy-making and related activities (UN, ICAO, WIPO, ITU), and 3. the problems arising from the privatisation of international space organisations (Inmarsat, Intelsat, Eutelsat). The second day concentrated on scrutiny of new trends in the role for international organisations in the development of space law within contemporary international law: contributions through treaties and agreements; contributions in the main sectors of space activity, i.e. living and working in space, space transportation systems, telecommunications and navigation.

All intervened moved by the observation that, from the international law perspective, the original feature of this branch of international law in the commencing of the space era was the almost totally State-oriented character of space activities[1]. Space law could not help reflecting this structural given.

Although States were the principal actors, the 1967 Outer Space Treaty yet recognised the role of international organisations in performing space activities. Article VI foresees in fact activities carried out in outer space by international organisations, provided that responsibility for these activities shall be borne also on States member of the organisation beside the organisations themselves. In the course of the negotiations specifically of Article VI, some States challenged firmly that international organisations be equate to States as for their role in the context of space law[2]. Also Italy shared this point- of view although only initially. In this perspective, it is more than a coincidence that this international Colloquium on the role of international organisations be held in Italy, as an evidence of the evolution occurred meanwhile and to witness the nowadays totally different attitude of my Government, as also recently expressed within the analysis presented to COPUOS on the main obstacles to ratification of the five general treaties on outer space. In fact, Italy has stressed how the treaties were prepared at a time where space activities were essentially carried out by States whereas nowadays they are mostly conducted by international organisations and/or private entities. In this sense, it is more easy to understand why bilateral agreements or restricted multilateral agreements, together with domestic legislation, seem to be more respondent and adequate to the activities of such entities[3].

The international scene has thus changed profoundly since 1967, when the Outer Space Treaty was signed. International organisations have gained a core competence in the field of space law. By consequence, the approach adopted by the OST, wherein international organisations are considered limitedly to their role of co-responsible with States for space activities, has fallen out from being a sufficient one. The relation between States on the one hand, and international organisations on the other hand, has thus to be reviewed, in light of

the daily contribution that the latter has offered to space law, from both the law-making and the law-development perspective.

In front of the new, essential role of international organisations we have noted that, as persons of international law, they are however different from States and this difference must not be forgotten. The international legal personality of international organisations is in fact of a functional nature, as observed by Justice Ago in his Separate Opinion to the Advisory Opinion rendered by the International Court of Justice on interpretation of the 25 May 1951 Agreement between the WHO and Egypt: *"Une organisation internationale est, comme un Etat, un sujet de droit international, mais possédant une capacité juridique internationale restreinte et surtout, à la différence de l'Etat, elle est dépourvue de toute base territoriale"*[4]. This concept has been recently restated by the International Court of Justice in the advisory opinion of July 1996 concerning the use of nuclear weapons in armed conflicts: international organisations are persons of international law but, differently from States, do not have general competencies. They are regulated by the principle of speciality and are endowed with functional competencies normally detailed in the founding treaties. The scope of activity of an international organisation is thus determined by the pertinent rules of the organisation itself: in the first place the institutive instrument and the acts adopted, on the ground of the latter, by its collective organs.

3. This brings to the well known situation according to which international organisations are not entitled to become Parties to general treaties on the same footing as States. However, each of the four general space treaties that followed the OST provide that international organisations carrying out space activities, and whose majority of members be Parties to the relevant treaty and to OST, may accept, by an *ad hoc* Declaration, the rights and obligations set by the treaty. It is through this very mechanism that general treaties can also be applied to space organisations. The above may lend itself to the problem of defining the status of the organisations in the treaty, a sort of *sui generis* or limited membership, and identifying which norms of the treaties set rights and obligations also in respect to the organisations.

Some speakers, particularly Dr. Hulsroj and Prof. Kerrest, have noted how the Declaration mechanism be essentially outdated in consideration of both the significance of the role of international organisations in space activities and general developments in international law. Dr. Lafferranderie also illustrated on this point, observing how the treaties limit themselves to provide for this mechanism but fail to go into deeper detail.

But how is the practice of international organisations directed, towards which orientations? The declarations of acceptance presented seem to be rather few.

Lack of any more specific detail within the wording of the articles information yields some uncertainties with respect to the form which the Declaration should be expressed in: also on this point Dr. Lafferranderie brought some models followed by the practice in ESA, for acceptance of rights and obligations from the Registration Convention, the Rescue Agreement and the Liability Convention. Significant here is also the case of EUTELSAT, brought to our attention by Mr. Roisse, whose Declaration of acceptance of the Liability Convention took the form of a Resolution of the Assembly of the Parties.

The Declaration system implies the condition to be met that majority of States member of the organisation are also members of the treaty whose rights and obligations are declared accepted. The application of this principle can create some difficulties. We heard that EUTELSAT made the declaration of acceptance of the Convention on Liability, but could not do so in respect of the Registration Convention, notwithstanding correspondence of respective norms of the treaties especially from the application point of view.

4. These difficulties and the limits related to the mechanism of the Declaration of acceptance derive from that the participation of international organisations to international treaties demands some requirements to be necessarily satisfied. First of all, a transfer of competencies by member States to the organisation itself; second, that the majority of member States to the organisation are also Parties to the treaty in question.

The 1991 adhesion of the European Community to the Food and Agriculture Organisation of the United Nations (FAO) followed the difficult plight where EC members experimented a blockage within FAO of the exercise of those competencies transferred on an exclusive basis on to the EC in consistency with the Rome Treaty. At the same time, also on competencies transferred on a concurrent basis odd circumstances had been long occurring. Negotiations paved the way to the recognition of a new, tailored form of membership of the EC, consisting of a comprehensive sheaf of rights, powers and obligations.

The competence machinery is the rationale also in the practice of the so-called "mixed agreements". The concept includes those treaties where both the organisation and one or more member States are parties to; those upon which the organisation and member States share competence, even if only member States can be parties, and, lastly, the agreements that bring to the fore specific financing or voting aspects[5]. Mixed agreements are also very common in the environmental context. Annex IX to the Montego Bay UN Convention on the Law of the Sea clearly states in articles 1 and 2 that participation of an international organisation to the Convention relies unavoidably on transfer of relevant competencies to the organisation by member States and participation of majority of these to the Convention. EC become also member to the Statute of the International Tribunal of the Sea.

As for the effects of participation/adhesion or acceptance of rights and obligations mechanisms, it is clear that rights and obligations deriving by the treaty can only be exercised by the organisation concerned on an alternative basis with its members also Parties to the treaty, in order to avoid any extra-power within the context of the treaty regime.

In the space sectors these requisites may be satisfied. There should hence be no major obstacles hampering a more expanded use of declarations.

5. We noted that acceptance yields assimilation. But this, on its turn, poses the question of adequacy of notions and definitions as set in the treaties. A most discussed issue was the necessity to review notions in space law, that were made with reference to State, in light of the role acquired by international organisations.

Dr. Lafferranderie, recalling that ESA accepted the Registration Convention, pointed how it acts as a "launching State" both when procuring the launch to others and when undertaking the launch through its own facilities. The question arises of the interpretation of article 2 of the Convention on Registration, in the case where an international organisation has made a declaration of acceptance, as for the notion of "launching State", as also observed upon by Dr. Schrogl.

Dr. Jasentuliyana and Prof. Faramiñan-Gilbert underlined how re-examination of notions of space law is of a more general character as an issue. Launching State, space object, space debris and so forth. The implications at the legal level of narrow- or wide-oriented notions are considerable. Just to limit ourselves to one aspect, may debris be considered space objects? The point is of significance, also in relation to protection of the space environment, referred to by Prof. Kopal.

6. The fact that international organisations are not considered as Contracting Parties to the five general treaties on space but can acquire rights and undertake obligations, touches onto the question of responsibility for space activities, as noted by many speakers, particularly Prof. Kerrest and Prof. Malanczuk.

It is true that, notwithstanding specific conventional principles in space law, general norms of international responsibility for wrongful acts also apply to space activities. According to article VI of the OST, State Parties hold the responsibility for national activities in outer space carried out either by governmental entities or by private persons. In the latter event, according to the general principles of international law, States are responsible for controlling that private activities be in conformity with the norms sets by the Treaty. Article VI, para. 3, of the OST extends responsibility to international organisations carrying out activities in outer

space and declares the States participating to the organisations responsible on an equal footing for those activities, thus clearly sets the joint State -international organisation responsibility.

These principles are confirmed by the 1971 Liability Convention that establishes a special dual regime. As for damages caused by space objects to earth surface or flying aircraft, responsibility for the launching State is absolute. With respect to damages against spots other than earth surface, or to space objects or persons and/or goods onboard, responsibility of the launching State is engaged only to the extent that injury is due to fault of the State or persons whom the State is to be held responsible for. Finally Article XXII, para. 3, specifies the modalities of the joint State-international organisation responsibility.

As the Colloquium showed, however, a whole set of problems remains open, particularly on the "sharing" aspects of responsibility between organisations and States parties to them.

7. Many speakers have also recalled, and not without grounds, that particular fault of space law consisting of the absence of a mandatory mechanism for the settlement of disputes deriving by the interpretation and application of treaties.

Due to that space is more and more scarce as a resource, we know that an increasing of the number of controversies related to space activities is most likely in the near future. This is already happening in the sector of telecommunications given the expanding of the number of launching States. Recent practice shows some cases of international disputes (such as the dispute arisen between Indonesia and Tonga for the occupation by an Indonesian satellite, overlooking co-ordination procedures set by ITU, of a slot previously assigned to Tonga) and a decisive prevalence of litigations related to the execution of contracts concluded between private persons and/or persons of different legal systems. In this context many cases were submitted to the American Courts: *M. Marietta v. Intelsat, Appalachian Insurance Co. v. McDonnell Douglas Corp.* and *Lexington Insurance Co. v. McDonnell Douglas Corp., Hughes Galaxy Inc. v. US Govemment*, and others.

Another relevant aspect upon which speakers focused due attention is the question of conflicts of jurisdiction or choice of applicable norms in the context of growing commercialisation and privatisation of space activities, as also remarked by Mr. Roisse from EUTELSAT. The necessity to clarify the diverse aspects connected to this subject also brings in, as we have heard, the practice of the conclusion of agreements amongst States, organisations and national agencies involved with the realisation of the different projects.

8. But the point put in most value by this Colloquium is the richness of the contribution of international organisations to the development of international space law, all organisations with either universal or specialised character. On the ground of the practice of space law as enlightened by lawyers, we sought to identify the new role of international space organisations within the more general context of international law: how organisations have contributed? to which extent? how can they contribute through the formation of agreements and treaties and through their own regulations?

The role of international organisations within the context of international law seems to be double: implementing general treaties provisions through their activities and creating, by doing so, new normative frameworks. In this context it is worthy of note the law-making role in space and space-related sectors of the United Nations Committee on Peaceful Uses of Outer Space COPUOS and other organisations such as the International Telecommunications Union (ITU), the International Civil Aviation Organisation (ICAO) and the World Intellectual Property Organisation (WIPO).

At the global level, the activity of the UN has been of fundamental importance for space law, for the UN has been the cradle where the basic principles and concepts of space law have been enshrined in the general founding treaties of this specialised branch of space law. The role of the UN is not certainly over, for by virtue of their universality and overall competence the UN form the most suitable environment to promote harmonisation of space law principles with evolution of international law through the activity of COPUOS and its Legal Sub-Committee.

Dr. Jasentuliyana stressed how the Legal Sub-Committee will be confronted, over next gathering within UNISPACE III, with mainstreaming solutions to a number of problems cutting across the international community and seriously hampering the ratification of the five general treaties, especially by the faring States.

The practice by the Legal Sub-Committee however is undoubtedly oriented towards the formulation of non-binding principles that detail and specify rights and obligations as provided for by treaties rather that further codification. Such trend is of a broader character in the UN system. I will come back later on the role of the COPUOS Legal Sub-Committee in the field of technical norms.

To pass on to the other organisations of sectoral scope, we have heard how the organisations are able to create norms and regulatory frameworks. We have also heard how they can do this through both rules of more internal and external scope. As far as conventional rules are concerned, the IGASpace Station Intergovernmental Agreement was signed on 29 September 1988 by the US, Canada, Japan and nine European States member of ESA. IGA was completed by a second layer of international instruments comprising three bilateral Memoranda

of Understandings (MOUs) concluded between NASA, the Cooperating Agencies of the European Partner (also comprising ESA) and Canada on the same day.

Other sectorial organisations are endowed with the power to adopt binding-effect acts for members. We actually had here the opportunity to gain a more detailed knowledge and almost thorough comprehension of the functioning of ITU, referred upon by Dr. Noll, and ICAO, according to Dr. Huang's presentation.

The last session of this Colloquium elucidated on most recent developments in specific sectors of space law: Dr. Ferrazzani addressed the issue of satellite navigation whilst Dr. Howell talked on satellite communication. Indeed, it is particularly with respect to the new issues the space international community is confronting with, the "new frontiers" that we heard scrutiny of by the best experts here, that the law-developing role of international organisations comes at the fore.

9. I have already underlined that a most debated aspect has been that of technical legislation. Technological progress and current practice in international space activities render it indispensable to review, according to an evolutive dimension, the legal principles applicable.

I share the opinion expressed by Prof. Kerrest that COPUOS and its Legal Sub-Committee, as political bodies, are unlikely to play a decisive role in this context. However, the idea put forward by Dr. Jasentuliyana of the drafting by both COPUOS sub-committees on an ordinary functional basis of international recommendations and standards is certainly fascinating. As the experience of specialised institutions shows, a real drive in this sense can come by technical norms. Specialised agencies have truly contributed, and continue to do so, to the evolution of law, by means of regulatory standards and recommended practices. Some of them have binding effectiveness, some others have to be implemented by States through domestic acts.

Let me mention, referring also to the illuminating presentation of Mr. Huang, to the recommended standards and practices of ICAO adopted in the form of annexes to the founding treaty following the opting-out procedure, which constitute sources of norms in international law. In a different context, we recall the *Codex Alimentarius* FAO/WHO joint system for the setting of food standards and fair practices in food trade, wherein a varied degree of acceptance by member States is based on distinction between full acceptance, target acceptance and acceptance with specific deviations[6]. Let me also mention in this context the regulatory frameworks of the WHO.

Another interesting experience consists of the technical annexes to a number of environmental treaties, like

the 1987 Montreal Protocol on Substances Depleting the Ozone Layer. The acceptance mechanisms by member States are adequately grounded, in all these cases, on the opting-out machinery.

10. Another important point stressed on has been the fact that space organisations' practice in operational activities, carried out with either member or non-member States, provided it be generalised, may lead to the formation of international customary norms and so to contribution to international law development. These are norms that impose also on non-member States for their force reaches beyond the limits of a given organisation's activity. We have heard by Dr. Hulsroy how there is a whole set of intuitively followed procedures amongst international space organisations, and how some of the written norms may not encounter as generalised an application as the conducts spontaneously expressed by the community of intergovernmental organisations themselves.

Lastly, let me touch briefly on the interaction and interrelations between international law and domestic laws institutes. Prof. Venturini has stressed on this particularly point recalling that, as for space transportation systems, the UNCOPUOS Legal Sub-Committee should not neglect regular surveys of State legislation and practice in order to keep high dissemination of information and awareness of developments occurring in these activities. Aside from this, a specific orientation is mainstreaming, in the *de lege ferenda* perspective, towards the creation of a uniform law or, at least, the harmonisation of domestic legislations in the space sector. The need for national space legislation has also been frequently evoked.

11. Let me pass in rapid overview on to a few interesting points raised in the course of the debate. As for commercial aspects of space activities, in the context of WTO, either in a direct or indirect way, a number of agreements amidst the Uruguay Round agreements touch upon commercialisation of space activities, especially the General Agreement of Services (GATS) and the annexed agreement on telecommunications, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Aside from this, at the European level, enlargement of EC competencies o the one hand, and commercial uses of space technologies on the other hand, have undeniably being forcing involvement of the EC in space, which appears to be a useful element in the perspective of evolution of space law (although limited to member States). The EC/ESA co-operation waged in 1991 keeps on grounding today over consultation mechanisms and is rather reluctant to lend itself to a co-operation agreement, still possible however, between the two bodies. Growing in process overlapping of competencies, together with lack of any formal conventional co-ordination,

worsens the thorny and critical aspect of incompatibility between ground-principles of respective systems and, hence, rights and obligations of members as set in basic treaties.

On the intellectual property issue, we have also heard by Dr. Miyamoto how WIPO deems that there is no need to formulate principles or rules specifically designed for protection of intellectual property in space; but there is certainly a need to clarify some points, some aspects related to the implementation of norms in the case of inventions realised or utilised in the space sector.

12. But the very "last frontier" the very new and unprecedented experience space law community is to deal with, is privatisation of space activities. The phenomenon does not relate to modifying the legal nature of international organisations, that remain inter-governmental bodies and persons of international law. Privatisation pertains, instead, to tools for exercise of segments of activities and the creation of new legal instruments that could impact on internal structure of the organisations.

Commercial space activities are yet extensively privatised. International organisations cannot compete with private subjects for their decision-making mechanisms are excessively slow and burdensome in respect of the need of a rapidly changing and dynamic market. Also the issue of applicable law is part of the problem, together with the aspect of immunities of international persons, both at the fore in case of dispute. In fact, one of the reasons in favour of privatisation of space organisations is the need to remove the obstacle hampering the exercise of internal jurisdictions.

As a matter of consequence, some organisations with an intensive commercial activity have resorted to new operational mechanisms. We have heard, for instance, of the 15 April 1997 Joint Venture Formation Agreement between Lockeed Martin Overseas Corporation and Intersputnik, that allowed the latter to become one of the major actors in satellite communications.

More radical is certainly the case of INMARSAT, which we have also been educed on. From the strictly legal point of view, after the 1998 amendments to the founding treaty, the international organisation has not certainly come to an end. In fact, the base Convention is still in force with respect to the 84 State Parties; the plenary organ, the Assembly of the Parties, continues and is sided by the Secretariat; the organisation maintains the "international" competencies (co-operate with the UN, COPUOS and specialised agencies; watch over respect of ground principles to which all activity must conform).

But a holding company and a number of operating companies with limited liability are established under the

English law, and are permitted to use the name INMARSAT and will take over the commercial space segment of the organisation. Both the organisation and the companies will conclude an agreement obligating the companies to respect fundamental principles, whereas the organisation will be endowed with the power of imposing respect.

Even though it is not possible to foresee the conclusion of this process, the impression has been raised that it could lead to a complete transformation of space organisations into private law entities, at least as for those organisations with strictly operational tasks.

13. All the above aspects were brought in for further consideration and analysis to be made in the near future.

Ladies and Gentlemen, Friends and Colleagues, even though I could not mention all speakers, let me say that all of you have enriched this venue with valuable and unique contribution: we can be proud and satisfied of the very positive results in our hands.

Before giving the floor to Dr. Lafferranderie, let me please spend a few more words to thank again all intervened in this Colloquium, the organising institutions: the University of Perugia, the Italian National Research Council and its Institute for Legal Studies on the International Community, the European Space Agency and the European Centre for Space Law; the Ministry of Foreign Affairs, the Mayor of Perugia, the Region Umbria, all speakers and audience. Thanks also to the interpreters that made a valuable work.

I hope that our common effort will be rewarded by the conscience of having advanced enlightenment and awareness on evolution of such an important branch of international law as space law is.

Thank you again.

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[1] See P. MALANCZUK, *Actors: States, International Organisations, Private Entities,* in Outlook on Space Law over the next 30 Years, The Hague, 1997, p. 23-36; also F. POCAR, *The Normative Role of UNCOPUOS,* ibidem, p. 415-421, and N. JASENTULIYANA, *The Newest Branch of International Law,* in Annals of Air and Space Law, vol. XXII, 1997, p. 1.

[2] Cfr. P. MALANCZUK, *Actors,* quoted, p. 30.

[3] UNCOPUOS, Note of the Secretariat, 2 March 1998, A/AC. 105/C.2/L.2 10.

[4] In *Rivista di diritto internazionale,* 1981, p. 122. As mentioned in the Openings, the Court reiterated this concept in the 1996 Advisory Opinion on the use of nuclear weapons in armed conflicts.

[5] See D. McGOLDRICK, *International Relations Law* of *the European Union,* New York, 1997, p. 78-88.

[6] See J.P. DOBBERT, in *United Nations Legal Order,* Schachter-Joiner editors, Cambridge, 1995, vol. 2, p. 945-955.

The Participation of International Organisations in Space Treaties

Viviana Iavicoli*

l. Within the framework of a reflection on the legal aspects of the current role of international organizations - the issue that we are discussing here - it may be useful to focus on the participation of organizations in Space Treaties and on the limitations they meet as a result of its provisions.

Notwithstanding the importance of the role that international organisations have taken on in the field of space activities, it is evident that they were not a point of major interest for the negotiators of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (OST). Nor were they included in subsequent Treaties, even though the matter was one of the most complex and difficult to solve during the negotiations.

Art. VI of the OST, that notably provides for the framework for carrying out space activities and also take into account the role of intergovernmental organisations, is the outcome of a compromise between the US stance, on the one hand, and the Soviet standpoint, on the other. Whilst the former was favourable to recognising international organisations as juridical subjects, enabled to undertake autonomous activities and to be responsible for wrongful acts, the latter was rather keen on having the activities carried out by the international organisations referable to its members States. In art. VI, (that has been much debated over the years), the responsibility - of intergovernmental organisations for space activities is asserted in line of principle and it materializes only inasmuch as it is related to the responsibility of the States that are parties to the Treaty and members of such intergovernmental organisations. Essentially, the responsibility of international organisations emerges only indirectly, trough the participation of its member States parties to the Treaty.

It is unnecessary to emphasize that international organisations undertaking space activities are, in general, subjects of international law, hence they are able to act autonomously from member States considered individually.

Art. XII extends the scope of application of the provisions of the Treaty with respect to international organisations in that it provides for the applicability of OST to party States for the activities that they carry out

within intergovernmental organisations. State Parties commit to resolve any question arising in relation with the activities carried out by international organisations both within their scope and through cooperation with States that are parties to the Treaty.

The above mentioned provision does not go as far as outline an adhesion mechanism of international organisations to OST. It will be the subsequent Conventions: the Agreement on the Rescue of Astronauts, the Convention on International Liability, the Convention on Registration of Objects Launched into Outer Space and the Agreement on the Moon and Other Celestial Bodies that will provide participation of international organisations through the mechanism of Declaration of acceptance of the rights and obligations deriving from the Conventions themselves. Some pre-requisites will have to be met in order for this mechanism to be put into effect: namely the majority of States members of the organisation must also be parties to the 1967 OST Treaty and to the specific Convention which the Declaration refers to.

It is to be noted, indeed, that the concurrent practice of Declarations of acceptance is rather poor in examples, due to the limited number of Declarations made. ESA is actually the sole organisation that has formally accepted the rights and obligations deriving by the Rescue Agreement, the Registration Convention and the Liability Convention, whereas the latter received, *inter alia,* the Declaration of EUTELSAT.

The examination of juridical. aspects concerning the Declaration is a rather complex task, because of the convergence of numerous elements, especially the controversial and discussed nature of unilateral acts and the issue as whether the *status* of third parties to the Treaties persists for the Organisations notwithstanding the Declaration.

2. As to the first point, a study about legal qualification of unilateral acts gains relevance especially with regard to the legal effects that they perform. Indeed, identifying an act as international agreement demands the application of a series of principles concerning ìts validity, entry into force, and interpretation, as set forth in the 1969 Vienna Convention on the Law of Treaties.

The Declaration whereby the Organization accepts the rights and obligations deriving from the Convention is deemed by some as being a unilateral act of the Organisation, as it has to do above all with the formal manifestation of will of a single legal entity. This approach, however, is not accepted by those authors who consider such act as acceptance of an offer contained in the treaty. Hence the Declaration is viewed as the coming together of wills, as is typical of an agreement.

The second assumption is mainly promoted by Suy *(Les actes juridiques unilateraux en droit international public*, Paris, 1962), who warns against describing some juridical documents as being unilateral because they are only formally so, because they are a manifestation of a will that is not a fully autonomous will. This refers to the cases in which a bi- or multilateral treaty contains clauses providing for new juridical relationships between the parties to the Treaty, owing to the underwriting of an optional Declaration. With regard to this the Author cites the case of the optional clause contained in the Statute of the International Court of Justice concerning the acceptance of the obligatory jurisdiction of the Court. However, this example departs from the case at hand because the manifestation of will emanates from the very Parties to the treaty, whereas the international organizations that sign the declaration of acceptance of Space Agreements are third parties with respect to the contracting parties. In accordance with a general principle, accepted later in Article 34 of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, Suy deems that a unilateral act cannot produce obligations vis-à-vis third Parties. Indeed, Article 34 of the Vienna Convention sets forth the principles whereby a treaty has no effect with third parties *(pacta tertiis nec nocent nec prosunt).* Hence, there cannot ensue rights and obligations for such third party other than as a result of the latter's participating in the treaty.

In the case at hand, the participation of the international organizations in multilateral Space Agreements concluded by the States does not materialize in the adhesion of the organizations taking part in the agreement. Instead, such Conventions outline a mechanisin which is equivalent, in practice, to that of a concept of limited adhesion, which envisages the possibility of there deriving individual rights to be enjoyed or individual obligations to be taken on by the organizations involved. The declaration made by the third party in relation to concrete clauses contained in bior multilateral treaties are defined by Suy as "*actes d'exécution facultatifs d'un accord international",* since they have the characteristic of being envisaged by the treaty which conditions and determines their existence and the effects they produce. Hence Space Agreements may be said to "optional clauses" whose enforcement is subject to the will of accepting them, a will that materializes when the organization makes its Declaration. The fact that the Declaration takes the form in practice of a non autonomous manifestation of will with respect to other similar manifestations, favours the assumption that has just been described, because the circumstance of an act emanating from a single subject is not a sufficient condition for describing it as a unilateral act.

3. And now, coming to the form of the Declaration, one fact is immediately clear; Space Treaties do not contain any indications on this, except for the fact that the acceptance of rights and obligations by the international organisations is explicitly expressed by means the Declaration. We have already spoken of the applicability of the Vienna Convention on the Law of Treaties and also about the 1986 Convention. With regard to the

acceptance of rights and obligations by third parties, both make a distinction between obligations, that can be accepted only in writing (Article 35), and rights, that are presumed to apply implicitly "unless the treaty otherwise provides" (Article 36). Now, the latter is precisely the case of the Space Conventions, all of which consider that their provisions (or at least some of them) will apply to the organizations provided that such organisation declare they accept all the rights and obligations deriving therefrom. Presumed acceptance is hence ruled out, nor can it be inferred from conclusive attitudes. Acceptance must be manifested concretely.

As to the ways in which the manifestation of will is expressed to the acceptance of the rights, there are no specific indications in the wording of the relevant provisions. Indeed, acceptance in writing is not expressly requested, but it is undoubtedly desirable. This fact is confirmed by practice, albeit small, even though in line of principle one could not rule out the case in which the organizations may make a declaration, for instance at an international conference.

The practice followed thus far is hence of critical importance. The Declarations of accepting the rights and obligations deriving from the Registration Convention, from the Rescue Agreement and from the Liability Convention formulated by the ESA are somewhat less articulated with respect to the Declaration that EUTELSAT has presented in relation to the Liability Convention. All the cases state, as provided for by the Treaty, that most member States are parties to the OST Treaty and to the above mentioned Convention.

In the EUTELSAT Declaration relative to the Liability Convention, mention is made of Article XXII, para. 2, of the same Convention, which engages the member countries that are parties to the treaty to take steps prompting the organization to make the Declaration. This delineates the role played by Member States that are parties to the Organization in promoting the acceptance of the rights and obligations deriving from the Convention for the Organization.

One last aspect has to do with the identification of the body that is competent to make the Declaration. Once the Declaration is accepted as being a no unilateral act, then the provisions of the above mentioned 1986 Vienna Convention will apply, in particular Article 6, which with regard to the capacity of the international organisations to conclude treaties states: 'The capacity of international organizations to conclude treaties is governed by the rules of that organization".

In this case as well, the practice concerning the EUTELSAT Declaration, relative to the Liability Convention confirms the application of general rules. For determining which body is competent, A calls on Article IX of the constitutive Convention and in particular it calls on the body that it suggests as being competence, *inter alia*, to make decisions on external relations ("Recognizing that the Assembly of Parties of EUTELSAT is

empowered by Article IX a) vi) of the EUTELSAT Convention, *inter alia,* to take decisions on formal relations between EUTELSAT and States whether or not Parties to the Eutelsat Convention

4. Finally, we shall now look at the juridical effects deriving from the Declaration. Doctrine has long since explored the issue, in particular the consequences deriving from the Declaration in matters of liability, highlighting the existence of many problematic aspects and prospecting a variety of solutions. As these issues have been dealt with by authoritative authors, we can focus on other more general issues which seem to be interesting in the setting of this Colloquium. In particular, we would prefer to deal not with the scope of application of the Declaration but rather with the provisions concerning the fields from which the Declaration is expressly excluded.

It is well known, indeed, that as a result of the Declaration, all the provisions of the Convention to which it refers become applicable to the organization that issued the Declaration, except for some articles that are expressly mentioned. The provisions of the Space Conventions - except for the Rescue Agreement -- which envisage a Declaration of acceptance by the international organizations, expressly rule out that the so-called "protocol" rules should apply to the latter. Article XXII, para. 1 of the Liability Convention, Article VII of the Registration Convention and Article 16 of the Moon Agreement exclude that the provisions concerning the signing, ratification, entry into force, amendment and review of the Agreement should apply to the International Organizations. In particular, reference being made to Articles XXIV-XXVII of the Liability Convention, of Articles VII-XII of the Registration Convention and of Articles 17-21 of the Moon Agreement. This is tantamount to saying that the organizations are not to receive notices relative to, nor propose amendments or reviews, nor withdraw from the Conventions.

In order to skirt around such limitations, some "remedies" have at times been suggested, which should allow the organizations to obtain the same results that the Convention attributes only to the States. By virtue of such measures, the limitations imposed by the Treaties on the organizations are not a major limitation to the powers of such bodies (the denial of these powers has no great effect), with the consequence according to this Author (Hurwitz. *State Liability for Outer Space Activities,* Dordrecht, Boston, London, 1992), that the Declaration of acceptance of the rights and obligations of the Convention is equivalent *de facto* to ratification or accession.

In fact, we can agree on the little importance of the fact that the organization is excluded from the notices concerning the agreement, since the member States, Parties to the Agreement can make up for this shortcoming.

Likewise, in the case of amendments or review, the organization should skirt around its exclusion deriving from the Conventions by asking one of its Members that are parties to the Agreement to submit the proposals drawn up by the organization. The likelihood of promoting a review of the Convention is subject to the will of the Member States to propose and negotiate the amendments, unless it is felt that such States are obliged to do so in pursuance of the principle of co-operation underlying all the Treaties that establish organizations.

Another issue is that of withdrawal, envisaged for the States but expressly denied to the organizations. According to some opinions, the same result could be reached "by submitting a statement which is the opposite to the statement of adhesion. lf the non-unilateral nature of the Declaration is accepted, its revocation must likewise be envisaged, at least in the case in which circumstances were to change in a fundamental manner.

The issues related to "compulsory revocation" raises the assumption that, as a result of the withdrawal of the States that are members of the Organization, the very pre-requisite of the Declaration no longer subsists, namely that a majority of the members be parties to the Treaty.

Having recourse to tricks enabling the organization to obtain results similar to those obtained by the States does not seem to adequately make up for the ambiguities relative to the status of the organizations as outlined in the Space Treaties. This makes it difficult to share the statement according to which partial or limited adhesion expressed in the Declaration may be “equivalent to ratification or accession”, even only at the factual level and, to a limited extent, to the “Protocol” rules.

In conclusion its now seems inevitable that, a review of the Space Treaties should provide for the full participation of Organizations in the Treaties on a par with the contracting States, as occurs also in other areas of International Law.

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Optional Binding Settlement of Disputes on International Liability for Damage Caused by Space Objects

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l. The Convention on International Liability for Damage Caused by Space Objects[1] was adopted by the General Assembly with resolution 2777 (XXVI) of 29 November 1971 upon recommendation of the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS), and entered into force on September 1, 1972.

This paper will not deal with the legal regime governing damage caused by space objects, which is the subject of sound and authoritative doctrinal studies[2]. Rather, it will focus on the dispute settlement procedure provided for in the Convention - which represents a remarkable achievement in the field of space law and of international law in general - and in particular on declarations through which States, when becoming parties to the Convention, can accept in a general way the compulsory arbitral competence of the Claims Commission over future disputes, in relation to any other State accepting the same obligation, according to paragraph 3 of resolution 2777 (XXVI) of the General Assembly.

The special weight that the dispute settlement machinery bears in the Liability Convention depends upon the very nature and content of the Convention itself: indeed, the settlement of claims is at the heart of every juridical regime of liability. As stated in General Assembly resolution 2733 B (XXV) of 16 December 1970, the Liability Convention was drafted with a view to determine «the principles of a full measure of compensation to victims and effective procedures which would lead to prompt and equitable settlement of claims». According to the Preamble of the Convention itself, its main purpose is "to elaborate effective international rules and procedures concerning liability for damage caused by space objects and to ensure, in particular, the prompt payment under the terms of this Convention to victims of such damage». It is clear that the establishment of an effective claims settlement procedure is absolutely crucial in order to ensure an effective regime of liability and therefore a prompt compensation of the victim.

Recently, the impact of State recognition of the binding force of the decisions of the Claims Commission upon the effectiveness and reliability of the dispute settlement system, and therefore of the whole Convention, has been expressly underlined within the COPUOS Legal Sub-Committee under the item of the Agenda entitled to the "Review of the status of the five international legal instruments governing outer space", which is also discussed on the basis of the views and comments submitted by member States concerning the obstacles impeding the ratification of the five treaties on outer space[3]. In this context, the need for a more extended resort to the optional declaration provided for in paragraph 3 of General Assembly resolution 2777 (XXVI) has been highlighted: indeed, out of 80 States which are Parties to the Liability Convention, only 9 have made such declarations up to now (Austria, Canada, Denmark, Greece, Ireland, New Zealand, Sweden, Norway and The Netherlands). States are therefore invited to consider seriously making such a declaration, especially in

view of UNISPACE III, also considering that making the decisions of the Claims Commission binding on a base of reciprocity would be in keeping with more recent developments in international law doctrine[4].

2. Before examining the optional mechanism establishing the compulsory arbitration of the Claims Commission, a general survey of the two-phased system for the settlement of disputes provided for in the Convention is needed.

The first stage is represented by the diplomatic procedure: according to Article IX, “a claim for compensation for damage shall be presented to a launching State through diplomatic channels”. An important characteristic of the diplomatic phase is that, according to Article XI, the previous exhaustion of local remedies is not required, unlike under general international law, before a State can present a diplomatic claim for compensation for damage caused upon its nationals by space objects. Moreover, under the Convention, the fact that a claimant has resorted to local remedies and found them wanting by international law standards would not prevent his claim from being afterwards presented in accordance with the terms of the Convention.

The *ratio* of the immediate access to the international level in order to trigger liability, lies in the commendable concern of sparing the victim an excessively long procedure. It is fair, indeed, that spatial activities are placed on their proper level, a planetary one, and their singularity recognised also on the juridical plan[5].

Subsequently, if diplomatic means fail, procedures will continue via the establishment of a Claims Commission. This second stage of the dispute settlement system is provided for by Article XIV, according to which “If no settlement of a claim is arrived at through diplomatic negotiations as provided for in article IX, within one year from the date on which the claimant State notifies the launching State that it has submitted in the documentation of its claim, the parties concerned shall establish a Claims Commission at the request of either party".
This Commission shall be composed of three members, one appointed by the claimant State, one by the launching State and a third member, the Chairman, to be chosen by both parties jointly (Article XV).

It is noteworthy that the Convention provides for a device which is able to overcome the usual weakness of institutional means for dispute settlement such as conciliation and arbitration, that is the necessary co-operation of all States parties in order to establish the competent institution. Indeed, the establishment and functioning of the Commission is warranted by article XVI, providing that “if one of the parties does not make its appointment within the stipulated period of two months of the request for the establishment of the Commission, the Chairman, appointed by the Secretary-general of the United Nations, shall, at the request of the other party,

constitute a single-member Claims Commission". A claimant State is thus enabled to initiate an independent process which will be able, with or without the co-operation of the launching State, to arrive at a definitive conclusion on the question of liability and the amount of compensation, if any, determined in accordance with the terms of the Convention.

3. As regards the nature and extent of the competence of the Commission - a point of major interest - Article XIX provides that the Claims Commission shall decide the merits of the claim for compensation and determine the amount of compensation payable, if any. But the Claims Commission is only competent to render recommendatory awards which the Parties will consider in good faith. Indeed, Article XIX states that "the decision of the Commission shall be final and binding if the parties have so agreed". Therefore, failing the consent of the parties, the procedure before the Claims Commission can only be considered as conciliation[6], and the settlement of the claim will ultimately depend on the willingness and co-operation of the States involved.

During negotiations, the option of third-party settlement of claims has been a point of major controversy, the last and probably the most crucial issue which held up the conclusion of the Liability Convention. The solution finally reached is the result of a compromise hardly achieved. While the States within the Soviet bloc resolutely rejected the inclusion of arbitration in the dispute settlement system, the other States within the Legal Sub-Committee regarded compulsory third-party settlement of claims as the most crucial element of the proposed agreement, without which an agreement would hardly be worth having.

The agreement, provided for in paragraph 2 of Article XIX, on the binding decision of the Claims Commission upon a dispute, can be concluded before or after the exhaustion of the diplomatic procedure. But the wording of the provision is generic enough to read in it the possibility, although not explicitly provided for, that the parties commit themselves to accept as binding, beforehand and abstractly, the decision of the Commission in relation to any future dispute which might arise on liability for damage caused by space objects. The General Assembly took this view in paragraph 3 of resolution 2777 (XXVI), "noting that any State may, on becoming a party to the Convention, declare that it will recognise as binding, in relation to any other State accepting the same obligation, the decision of the Claims Commission concerning any dispute to which it may become a party".

This formula - providing States Parties to the Liability Convention with the option of accepting the compulsory arbitration of the Claims Commission on a reciprocal basis - clearly echoes the Optional Clause provided for

in article 36, paragraph 2 of the Statute of the International Court of Justice, which relates to the compulsory jurisdiction of the Court upon all, or classes of, future juridical disputes involving declaring States.

Because of the strict analogy with the Optional Clause, a comparative analysis of the declarations of acceptance of the compulsory jurisdiction of the ICJ seems to be a convenient way of studying declarations recognising as mandatory the settlement of claims by the Claims Commission under the Liability Convention.

4. As regards the juridical nature of such declarations, the wide doctrinal debate arisen on the same point in relation to unilateral declarations regarding the jurisdiction of the ICJ allows to conclude that the relationship they create among declaring States is essentially contractual and therefore binding, although of a *sui generis* character, which doesn't make their subjection to the law of treaties absolute and automatic. Each declaration represents an undertaking of the obligation to abide, on a reciprocal basis, and when a dispute arises and diplomatic means fail in solving it, to the decision rendered upon it by the Claims Commission. Such an undertaking is an offer, bound to meet and combine with parallel and equivalent declarations of other States, amounting to acceptances of the offer. On a practical plan, the concrete effect of the contractual link thus created among declaring States will most probably assume, over a specific dispute unsettled through diplomatic channels, a bilateral dimension, between the claimant State and the launching State.

The contractual nature of such declarations is also confirmed by the wording of Article 3 of resolution 2777 (XXVI), which doesn't provide for a new juridical source of competence of the Commission: indeed, the Assembly simply "notes" that States can make such declarations, and seems therefore to consider such instruments as one of the possible means for States to *agree* upon the final and binding effect of the decision of the Commission, according to Article XIX, paragraph 1.

It is therefore of no substantial relevance the fact that, while declarations establishing the arbitral competence of the Claims Commission are provided for in a General Assembly resolution, declarations on the compulsory jurisdiction of the ICJ are provided for directly in the Statute of the World Court, which is an international treaty.

Moreover, a closer examination of declarations recognising the binding effect of the Commission's awards reveals that, compared to the Optional Clause, they're subjected to a stricter juridical regime, and are therefore endowed with a higher degree of certitude. First of all, no provision in the Liability Convention or in resolution 2777 allows for a time limitation to the effectiveness of declarations; while, as regards declarations made by States under the Optional Clause, the inclusion of formal conditions providing for their limited duration is provided for in paragraph 3 of Article 36 of the Statute of the ICJ, which has been interpreted by States as

giving them complete freedom even to formulate termination clauses providing for the right to withdraw from the Optional Clause system without previous notification.

On the contrary, it must be presumed that time-limits of declarations relating to the Claims Commission decisions are governed by the relevant provision of the Liability Convention dealing with withdrawal, that is Article XXVII, according to which "any State Party to this Convention may give notice of its withdrawal from the Convention one year after its entry into force by written notification to the Depositary Governments. Such withdrawal shall take effect one year from the date of receipt of this notification". It is uncertain, however, if declarations though subjected, as far as possible, to the same juridical regime of the Convention - can be treated as instruments constituting a separate agreement on arbitration, and therefore be separately terminated, or if, once made, they follow through and through the fortune of the treaty to which they relate. The first option should be preferred, since it gives the mechanism a degree of flexibility which can make States less reluctant to use it, as the experience of declarations under Article 36 paragraph 2 of the ICJ Statute teaches.

This very consideration should be made when contemplating on whether States are allowed to formulate any reservation in declarations recognising as binding the decisions of the Claims Commission. At the moment, the point is purely academic, since none of the declarations actually in force contains reservations of any kind. But it is not inconceivable, for example, that States, though accepting the idea of a compulsory settlement of claims relating to damage caused on the surface of the earth or to aircraft in flight (which gives rise to absolute liability according to Article Il of the Convention), would not be disposed to yield completely their control upon disputes stemming from the liability regime established for damage involving only space objects elsewhere than on the surface of the earth (Article III). The fact that paragraph 3 of resolution 2777 (XXVI) doesn't provide for reservations is not an absolute obstacle to their admissibility in declarations, since, according to Article 19 of the Vienna Convention on the Law of Treaties, failing provisions concerning reservations in a treaty, States can formulate reservations unless they are incompatible with the object and purpose of the treaty. It can be mentioned here, by way of precedent, that reservations are widely resorted to in unilateral declarations relating to the compulsory jurisdiction of the World Court. In order to enhance the popularity and effectiveness of the mechanism, a better definition of the point, with the explicit identification of admissible reservations, would be appropriate. Indeed, the elaboration of a more detailed juridical regime for this kind of declarations is something that lawyers and experts of the Optional Clause have been calling for for some time.

Anyway, as mentioned above, the consideration of the possibility of applying limited sorts of reservations to declarations provided for in resolution 2777 (XXVI) might induce other States to make them.

5. The last section of this paper is devoted to the position of international organisations vis-à-vis the claims settlement procedure under the Liability Convention, and to the prospects that such organisations might have to recognise as binding the decisions of the Claims Commission upon disputes to which they may be parties.

As pointed out by an authoritative scholar in international space law, "the way in which international organisations have been allowed to participate in the Convention without actually becoming contracting parties represents a significant breakthrough on both the doctrinal and practical fronts, especially in international relations on a world scale"[7].

Indeed, according to Article XXII, references to States in the Convention - with the exception of articles dealing with signature, ratification, entry into force and withdrawal - shall be deemed to apply to any international intergovernmental organisation carrying out space activities if the organisation declares its acceptance of the rights and obligations provided for in the Convention, and if a majority of member States are also States Parties to the Liability Convention and to the 1967 Treaty Governing the Activities of States in the Exploration and Use of Outer Space.

This provision is especially welcome, providing that, nowadays, a conspicuous number of international intergovernmental organisations effect launches, among which all international organisations operating in the field of telecommunications, and the European Space Agency, which has declared its acceptance of the Liability Convention in 1976. However, it must be said that most of these organisations do not seem to be intentioned to follow the example of ESA. Moreover, the current trend towards commercialisation of space activities and privatisation of satellite communications organisations raises serious doubts about the future perspectives of the international visibility of launching "subjects" and of a regime of international liability for damage caused by space objects.

The possibility given to international organisations by the Liability Convention to make use of its provisions will be examined here with reference to the second stage of the claims settlement system.

It may in fact occur that an international organisation having declared its acceptance of the rights and obligations provided for in the Convention be party in the procedure before the Claims Commission.

One may therefore wonder if the optional mechanism basing the compulsory arbitration of the Commission can be acceded to by international organisations as well. Do references to States in the Convention - which according to Article XXII are applicable to intergovernmental organisations - include the reference in

paragraph 3 of General Assembly resolution 2777 (XXVI) providing for declarations of States recognising as binding the decisions of the Claims Commission? Since, as we have seen, paragraph 3 of the resolution does not constitute a separate clause to which States may accede, but only makes an explicit notation of a possibility implicitly provided for in paragraph 2 of Article XIX (declarations are in fact constitutive instruments of an agreement on the mandatory character of decisions of the Claims Commission), it must be presumed that it can be related also to international organisations, under paragraph 1 of Article XXII.

If so, declarations through which States can recognise as final and binding the decisions of the Commission can be made by international organisations as well.

However, it is necessary to test if the same conclusion can be reached under the other provisions in the Convention regulating the position of international organisations. Since the relevant articles are silent about the point of declarations concerning binding settlement of claims, a reading between their lines shall be required.

Some hints are given by paragraph 4 of Article XXII, stating that when a damage has been caused to an international organisation which has made a declaration in accordance with paragraph 1 of the same article, any claim for compensation shall be presented by a State member of the organisation which is also a State Party to the Convention. This fact considerably mitigates the meaning and extent of the interchangeability between States and international organisations in the Convention provided for in Article XXII, paragraph 1. Indeed, a direct access to the second stage of the procedure in the Convention relating to claims settlement is precluded to international organisations, as well as to private entities[8], which have to rely on a State Party acting on their behalf in order to make use of it. If this is certain when the international organisation is the claimant, it is not so clear in the case, dealt with by paragraph 3 of Article XXII, of an international organisation being respondant. The related provision is completely silent about the eventuality of fallure of the diplomatic stage of settlement of a dispute involving an international organisation as defendant: one may therefore ask if the organisation would still have to be represented, before the Claims Commission, by a member State Party to the Convention, or if it can defend itself autonomously. A better regulation of the question would be welcome.

Any-way, and coming to our main point of concern, the fact that the representation of claims of international organisations has to be handled by a State Party doesn't seem to affect the possibility - completely theoretical up to now[9] - for international organisations having accepted the rights and duties established in the Convention to recognise further the compulsory arbitration of the Claims Commission.

Such process would not be without precedents: an analogous device is to be found, again, within the system of the International Court of Justice, in the procedure, provided for in resolution 9 (1946) of 15 October 1946 of the Security Council, allowing States which are not parties to the Statute to accede to the Court upon a declaration by which they "accept the jurisdiction of the Court and undertake to comply in good faith with the decisions of the Court". Such declarations may be either particular or *general*, and therefore establish the compulsory jurisdiction of the Court in respect of all disputes or of classes of disputes which may arise in the future, in the same terms as declarations under Article 36, paragraph 2 of the Statute.

Similarly, international organisations, which are not and cannot be parties to the Liability Convention, might be explicitly given the opportunity to recognise as binding the decisions of the Claims Commission.

A resolution of the General Assembly providing for this chance, and inviting international organisations to take into consideration the possibility of making declarations of the kind referred to in paragraph 3 of resolution 2777 (XXVI) would be an appropriate step towards an improvement of the dispute settlement system under the Liability Convention.

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[1] *United Nations Treaty Series*, Vol. 961, p. 187.

[2] See HURWITZ *B.A., State Liability for Outer Space Activities in Accordance with the 1972 Convention on International Liability for Damage Caused by Space Objects*, Dordrecht-Boston-London, 1992 and bibliography annexed; PEDRAZZI *M., Danni causati da attività spaziali e responsabilità internazionale*, Milano, 1996; LAFFERANDERIE G., CROWTHER D. (eds.), *Outlook on Space Law over the next 30 Years*, The Hague, 1997, 161-200.

[3] See UN Doc. A/AC. 105/C.2/L.206/Rev. 1.

[4] See, in particular, the comments submitted by Austria with reference to the item on the Agenda of the Legal Sub-Committee on the Peaceful Uses of Outer Spaces entitled "Review of the Status of the five intemational legal instruments governing outer space", doc. A/AC. 105/C.2/L.210/Add. 1, p. 4.

[5] MARTIN, P.M., *Droit des activités spatiales,* Paris-Milan-Barcelone-Bonn, 1992, 66-67.

[6] BOCKSTIEGEL K.-H., *The Settlement of Disputes Regarding Space Activities After 30 Years of The Outer Space Treaties*, in LAFFERANDERIE, CROWTHER (eds.), *Outlook on Space Law over the next 30 Years*, The Hague, 1997,241.

[7] CHENG *B., Studies in International Space Law, Oxford, 1997, 355.*

[8] See VAN TRAA ENGELMANN, *Commercial Utilization of Outer Space,* Dordrecht- Boston- London, 1993, p. 347.

[9] Apparently, a debate is actually taking piace within the ESA upon a proposal, which will be formally discuss in June 1999, that ESA, in the name and on behalf of its member States, recognize as binding, on a reciprocal basis, the decisions of the Claims Commission concerning any dispute to which the Agency may becorne a party under the Liability Convention. Were this proposal to be accepted by ESA Member States and adopted through an act of the Organisation, the Agency would be the first and sole international organization having made such Declaration under paragraph 3 of resolution 2777 (XXVI).