INTELSAT Conference Issues

Major Organs of the Organization

Issue

What should be the structure of the organization? What organs should the definitive arrangements provide for?

Position the U.S. Has Taken

Our October 1967 proposals suggest the establishment of three major organs in the INTELSAT structure: (1) a Governing Body, (2) an Assembly, and (3) a Manager. We would have the Governing Body succeed and take over functions of the Interim Committee, retaining roughly its present size (18 members) and performing basic planning and decision-making for INTELSAT. We propose an annual Assembly of Members with review functions and generally of low key importance in the total framework. For Manager, we propose to continue with ComSat, at least for the present, and to work toward achievement of internationalization of the Manager.

Views of Others

In general, other members who have addressed the issue of organizational structure suggest a three-tier structure like ours. Although called by varying names, the basic three levels would be these:

(1) A decision-making body with weighted voting that runs the organization, plans its programs, supervises its operations and authorizes contracts and other expenditures as necessary. It is variously called "Board of Directors", "Governing Body", or "Executive Committee". Everyone agrees that the organization needs a competent body, succeeding the ICSC, to make decisions on a timely basis.

(2) Some form of annual, biennial, or triennial assembly of all the members is proposed by everyone. The French, at one point, suggested two such assemblies; one to handle financial matters and the other to be a sort of annual stockholders meeting to review progress, bless policy, and sprinkle holy water on future plans.

This portion of the organization is referred to as a "General Conference", "Assembly of Members", or "General Assembly". There is practical unanimity on the need for some annual or biennial assembly to be the pensive overseer.

(3) The organization must have an operating manager. On this question opinions vary widely. We propose ComSat, but with the possibility of change. Others propose an international secretariat. The French have suggested possibly having both--ComSat as technician and a secretariat as policy implementer and financial manager.

Most proposals, including the U.S. paper, have not been entirely clear as to whether members of an assembly should be representatives of (a) governments or (b) designated telecommunications entities or (c) both. Australia has proposed an Assembly along the lines of other proposals, and, in addition, a separate periodical conference of governments, which would consider broad policy and possible amendment of the Agreement.

DISCUSSION

There seems to be general agreement on a three-body structure, except for suggestions of (a) separate assemblies or conferences of governments and designated telecommunications entities and (b) a secretariat separate from the Manager. This points to two specific issues, whether the Assembly should be a meeting of governments or entities or both, or there should be two Assemblies, and whether there should be a secretariat separate from the Manager. More important is the question of the powers of the Assembly and the Governing Body. All of these questions are more readily considered in separate discussions of the prospective three bodies.

Discussion of the Governing Body

Although names for this organ vary there is clearly consensus approaching unanimity on what it will or should do. Putting aside the fact that Canada apparently favors giving some functions now performed by the ICSC to the Assembly, there is general agreement that the Governing

Body will take over ICSC functions. This particular organ should not generate much debate.

The consensus can be summarized to the effect that the Governing Body should be the organization's executive body with all the powers and functions necessary to carry out the purposes of the organization and direct its business. Thus it would supervise design, development, construction, establishment and operation of the space segment of the system. Most major contributors on this question (Canada, U.K., Australia and the U.S.) have itemized functions of the body. If the ICSC does not produce a satisfactory list of functions, we should make an effort to obtain agreement on one by several major countries as a starting point for discussion in the Conference. This list should not pose any major confrontations.

A more delicate but possibly less complicated issue in this area is the matter of voting in the Governing Body. Voting should be determined largely on the basis of the outcome of the investment question. Assuming that investment will be related to use and voting will be tied to investment, we would assume that voting in the Governing Body would reflect the level of investment for each member country.

We have submitted for ICSC consideration, however, certain modifications of this principle: (1) We have suggested that no nation be accorded a voting right in excess of 50% of the total voting power in the organization; (2) We have suggested that non-using countries which desire membership in the system be accorded a minimum investment level (and commensurate voting power) of .05%; and (3) We have suggested that the very small using countries with actual use amounting to less than .05% have the option of maintaining their level of investment at their level of use, or investing at the rate of .05% in order to achieve parity with the non-using members of the system.

It is not clear that .05% will be the ultimately agreed upon minimum investment share. In our October 1967 paper we proposed a minimum investment share of .025%. However, in light of the ICSC's practice, consistently applied since early 1966, of admitting new small countries at a .05% investment share regardless of actual use

projections, we have modified our October 1967 paper to increase the minimum share to .05%. This increased minimum level of investment has been accepted by ICSC in response to continued urging by small countries to have more than a token of membership. In fact, since INTELSAT's creation almost all members have expressed a desire at one time or another to increase their relative shares of investment. It is anticipated that the minimum investment share will be considered a topic for negotiation in the 1969 Conference unless a clear consensus approaching unanimity on a specific figure is established prior to release of the ICSC report on definitive arrangements.

Another USG proposed modification which has some relevance to the voting question is our suggestion contained in ICSC-32-46, dated June 3, 1968 which would permit the seating of a joint representative for any five member countries in the Governing Body of INTELSAT regardless of their level of investment (voting strength). We carried over in our October 1967 proposal the provision under which a minimum investment level of 1.5% is required of a member or group of members to sit in the Governing Body. If we followed this principle strictly we could exclude many potential member countries in Africa, Latin America and the Asiatic/Pacific area because, with minimal levels of actual system use, at least during the next 3-5 years, they would be unable to amalgamate 1.5% total shares without massive grouping such as there is now by thirteen Arab countries. Under our proposed rule of any five, this group would be able to seat two representatives in the Governing Body, but these representations would be limited in voting power to the actual level of investment of the countries they represented.

As long as the Governing Body is the organ which will consider and establish fiscal, technical and operational policy for the global system, it seems appropriate to have voting in the Governing Body reflect the relative levels of investment of the members. This may be acceptable to other countries if the veto question is resolved, though there will be pressures for reduction in one way or another of U.S. voting power.

The Veto

In the Governing Body, if voting is proportional to use, for at least the next three to five years we may expect the United States to have a vote in excess of one-third of the total vote. In our October 1967 paper we proposed that "important" decisions relating to major financial, technical, and operational policy matters be taken by a two-thirds majority. This would maintain a U.S. veto with respect to such matters. There has been considerable discussion of the appropriateness, desirability (from both the United States and non-United States points of view), and political feasibility of retaining negative control through a veto mechanism.

It is clear that there will be strong objection to a U.S. veto. The CETS countries in their October 1968 paper on the definitive arrangements said the difference in voting weight between the member with the largest investment share and the member with the lowest share should not be as large as the difference between their respective shares and that "in no case should one country or a combination of two or three countries having the largest investment share be able to prevent or impose a decision on the basis of their weighted votes".

It is argued by some that retention of the veto by the United States will substantially alienate the European group, as represented in the CETS, and the Latin American group, and will discourage any consideration of participation by Soviet bloc countries. This view is based on the contention that a veto in the hands of the United States is an excessive measure of control for any single country in a truly international organization.

It is argued on the other hand that the United States, for the reasons which justify its high level of investment, is justified in retaining at least this level of negative control during the initial period of operation under the definitive arrangements. From this viewpoint, the veto power of the United States in INTELSAT is an inescapable consequence of the leadership position and motivating influence of the

United States in the organization. In this view, surrender of the veto power should not be made gratuitously. If, in response to political pressure, a decision is made to surrender our veto control, every effort should be made to obtain a suitable quid pro quo, equivalent, for example, to assurances that ComSat will continue as Manager for a designated period of years.

Whatever the merits of these arguments from a logical standpoint, it appears clear that permanent arrangements including a U.S. veto are not obtainable - the objections of the Europeans and probably others will be too strong - and the practical questions are what alternative provisions would be obtainable and in our best interest. This is not to dismiss the question of quid pro quo. Certainly serious consideration should be given as the Conference approaches and the negotiations develop to the best tactical use of surrender of the veto.

As to possible alternatives, there are two broad possibilities, to reduce our voting power and simply to directly provide for no veto by one or two or three members. The second of these would be very much preferable in the interest of the U.S. since it would not reduce our affirmative voting strength. Obviously it would be best to keep the number to a minimum. Probably a formula banning a veto by any two members would not seriously prejudice our interests since we almost certainly could always find two or more other members that would not be willing to try to overrule the U.S. in an important matter.

Discussion of the Assembly

The first question that might be addressed here is who should be represented in the proposed Assembly. The U.S. paper suggested "members". The intended meaning of the term is not clear. Some thought it meant signatories of the Special Agreement, others that it was intentionally vague and would leave the composition of delegations to the Assembly as a matter of discretion within each member country. When the question was considered in the ICSC in November there was about equal support for an assembly of signatories and for leaving the option to each government. However, it seems clear that the ultimate determination of who should sit in the Assembly should reflect and be reflected in the responsibilities and powers accorded the Assembly.

If it is to be the place where amendments to the intergovernmental agreement are considered, it clearly will have to involve governments. It also could reasonably include governments if it is to be a general policy reviewing body. On the other hand, if it is a more functional body with powers affecting the programs and operations of the system, the entities clearly must be involved. If it has some functions appropriate only for governments and other functions appropriate only for entities then presumably it should include both, or there should be two separate bodies.

Assembly Functions

We have proposed that an Assembly of Members review reports from the Governing Body, act on a Governing Body recommendation as to change of Manager, and make recommendations to the Governing Body relating to operation of the system. These functions would require participation of signatory entities, but probably not of governments.

The CETS countries proposed an assembly "composed of the representatives of all signatory States", to be "the supreme organ of the organization with adequate power to lay down its broad policy, and take decisions of a political nature". This is not elaborated and it is not clear whether it is intended to mean much real encroachment on the powers of the Governing Body, but it clearly means governments would be involved.

The U.K. has proposed more specific functions, including (1) election of representatives to some of the seats on the Governing Body (to achieve equitable geographical representation), (2) act as arbitrator of disputes arising over the powers of the Governing Body, (3) review and authorize proposed investments exceeding any initial authorizations to the Governing Body, and (4) handle complaints from users of other matters referred to it by the Governing Body. These functions probably would require participation both of governments and of entities.

Canada would have the Assembly appoint the members of the Governing Body at two year intervals, appoint the Manager for renewable periods of service, determine

the kinds of services the organization would offer, approve initial quotas and quota revisions. In addition, Canada would empower the Assembly to consider grievances, require withdrawal of members for cause, and provide policy directives to the Governing Body. These Canadian proposals seem clearly to require substantial, though not exclusive, participation in the Assembly by operating entities, and Canada proposes that the Assembly comprise government representatives assisted as necessary by their operating entities.

As noted above, Australia has proposed a separate General Conference of Governments to amend the intergovernmental Agreement.

Since developments and circumstances which have not been anticipated are sure to arise, there needs to be some mechanism for amendment of both agreements, and governments must be involved in any amendment of the intergovernmental agreement. There normally are and probably must be two steps, (a) a meeting of parties to the agreement to consider, discuss, and collectively approve or reject an amendment proposal, and (b) referral to the parties for acceptance (ratification) by a predetermined number or majority. The two usual methods for step (a) are (i) to authorize some appropriate body to call a conference of parties to the agreement or (ii) to give the responsibility to the senior body of the organization or the one with the broadest representation.

An Assembly including governments, if it exists, probably would be the logical designee for either of these roles. It would be much more acceptable politically than the Governing Body as the forum for considering amendments since it would include representatives of all the parties. However, the Governing Body could also be given a role, both in initiating amendments to be considered by the Assembly and in advising the Assembly on amendments proposed by one or more parties.

A conference of parties called for the purpose is likely to be more difficult than a regularly scheduled assembly as a means of amending the agreement, so the method we prefer should depend in part on whether we

want to make the amendment process more or less difficult, but whether we will want more flexibility in this case is not easy to foresee. Certainly the intergovernmental agreement should not be written in such a manner that the need for amendment will arise easily.

There probably would be some value from a political standpoint, for the reasons we have proposed an Assembly, in giving it the amendment function, i.e., to make the Assembly seem more meaningful and give the smaller members an increased sense of participation.

If our partners are insistent on giving the Assembly governmental functions, or simply insist that it must include or be open to governments, and assuming that it will have functions appropriate to signatory entities, we are inclined to suggest an Assembly including both governments and entities. This could mean representation of the government or the entity, at the option of the former, or representation of both. Even in the latter case it would not mean two delegations for each country, but a delegation with two hats that would speak for both. The U.S. delegation, for example, would include a representative of ComSat, who would deal with "entity" business.

Such an Assembly might meet every one or two years. We proposed yearly meetings, mainly with the thought that this would please countries not represented or not participating actively in the Governing Body. We could agree to biennial meetings if the majority so prefer.

Probably any of the specific functions suggested above could safely be given to such an Assembly, though a few of them are borderline and might be better to avoid (notably the arbitration of disputes about the powers of the Governing Body and possibly determination of services to be offered). Our basic guidelines should be to give the Assembly anything we can to enhance its prestige and sense of reality without taking the basic decision-making power from the Governing Body. There might be some degree of exception with respect to new departures, particularly if amendment of agreements is involved.

An Assembly without much real power should vote on a one-nation, one-vote basis, and, politically, would

have to. We probably could live with an Assembly making more significant types of decisions if a majority want this, but in this case we might want to insist on the requirement of a weighted majority or a weighted two-thirds vote in addition to a numerical majority.

E/TD:SEDoyle/WKMiller:sp 11/15/68

INTELSAT Conference Issues (Revised 11/2/68)

Rules of Procedure - Voting

Issue

Draft provisional rules of procedure are attached. The most important issue is voting. How will the Conference conduct its business and approve and adopt its conclusions? (These questions need to be considered in the context of the question how the new agreements will be brought into effect, superseding the old, which is the subject of a separate paper.) There is also a question just what role observers will have.

Position U.S. Has Taken

The draft rules have not yet been circulated outside the U.S. and the U.S. has not taken any position on the voting issue or on the role of observers, except to say that we do not anticipate that non-members will vote at the Conference.

Views of Others

Several of our partners have concurred that non-members should not be allowed to vote and a few have taken the opposite position. Many have agreed that non-members should be allowed to be present as observers. We do not know our partners' views on voting requirements or the specific role of observers. Probably very few have considered the question.

Objectives

To conduct the business of the Conference effectively and reach conclusions supported by an acceptable majority of the members.

Discussion

The 1964 Conference operated on the basis of few and simple rules. There was no voting and decisions, including decisions on the texts of the agreements, were reached by consensus.

If this plan were workable it would be best. There would then be no basis for complaint by any member about the

new agreement and there might be less chance of serious difficulties with any member which eventually chooses not to participate in the new agreements.

The great difficulty with this plan is that it requires unanimity, or at least willingness of those thought to be in the minority to be silent. This worked well enough among a small number of countries, but is hardly likely to work among 63 countries with well established differences.

The questions then are what is an acceptable level of support for the agreements produced by the Conference and what voting procedure would give the best chance of obtaining this?

The size of and reasons for an "acceptable" majority are, of course, key questions. They relate mainly to the question of bringing the new agreements into effect, replacing the old. An acceptable majority must be, at minimum, large enough to avoid any reasonable impression that dissenting members have been required to accept something they oppose arbitrarily or by narrow margins.

With both efficient conduct of business and an acceptable level of support in mind, the following rules are suggested:

1. Member Governments only vote - no vote for non-members. This is logical in view of the nature of the Conference, a meeting of partners to organize and update their organization.

2. Each Government has one vote - no weighted voting. The Conference cannot succeed without a very substantial numerical majority and any proposal by the U.S. for weighted voting would be resented by our partners as well as advertised as proof of intent by the U.S. to dominate INTELSAT.

3. As many decisions of all kinds as possible would be reached by consensus. Voting would be used only in the absence of consensus or on the request of a delegation.

4. Voting by show of hands, or by roll call if the show of hands is inconclusive or if a delegation so requests.

5. Procedural decisions by majority vote of those present and voting for or against. The intent is simply to have a means of decision in order to be able to proceed.

6. Substantive decisions (decisions on the content of the agreements), except for final approval of agreement texts or parts of texts after they have been reported to the plenary by the Editorial Committee, by a two-thirds majority of those present and voting for or against.

7. Plenary decisions on the final texts or parts thereof by a two-thirds majority of the delegations participating in the Conference.

The majority requirement for procedural matters and two-thirds for substantive votes are common to many conferences and organizations. (It is also noteworthy that the INTELSAT Special Agreement provides for amendment with the approval of two-thirds of the signatories.) Relating these requirements to those present and voting for or against, i.e. excluding absentees and abstainers, is intended to avoid giving absence and abstention a negative effect and to make it easier for the conference to do business. However, the requirement of two-thirds of the participating delegations for final votes would avoid the possibility of decision by a small group.

An alternative way of meeting this point would be to require a vote of two-thirds of those present and voting, provided the affirmative vote constitutes a simple majority of the participating delegations. The two-thirds requirement as applied to the total is the more usual arrangement, however, and does not seem to be an excessive requirement.

It has also been proposed that a three-fourths margin should be required for the final votes. This would have the advantage over two-thirds of being clearly a requirement for a greater degree of consensus than is normally required. However, it also would afford greater possibilities for relatively small groups to block approval of the agreements or parts of them and thereby carry inordinate weight in decisions on content.

It is important in connection with any proposed voting arrangements requiring less than unanimity to make clear that we contemplate providing for buying out on an equitable basis any INTELSAT member that does not choose to accept the new agreements. No member should be in the position of being overruled on the content of the new arrangements without the option of selling his investment share on a fair basis.

As to the role of observers, one view, reflected in the attached draft rules of procedure, is that they should not be allowed to vote, but should be allowed, at the invitation of the Chairman, to submit written comments and speak on relevant matters. This is traditional practice in most international organizations and conferences. There is a presumption that observers will be present because of an interest in the possibility of joining the organization, and it would make their role more meaningful if they can be given an opportunity, within reason, for expression.

The other view is that observers should be present to observe only and should not be afforded an opportunity to speak or submit papers. The objective would be to avoid potentially disruptive intrusions. However, there appears little reason to think the usual observer's role would be abused and there probably would be considerable difficulty with some of our partners if we try to minimize the observer role. This also would be in some conflict with the avowed aim of universality.

Attachment:

Draft rules of procedure.

E/TD:WKMiller:sp 11/2/68

PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM
(INTELSAT Conference)

PROVISIONAL RULES OF PROCEDURE

I - PURPOSE

1. This Plenipotentiary Conference, called to consider the report and recommendations of the Interim Communications Satellite Committee concerning the definitive arrangements for the international global commercial communications satellite system, shall be known as the Plenipotentiary Conference on Definitive Arrangements for the International Telecommunications Satellite Consortium. It may be referred to in brief as the INTELSAT Conference.

II - REPRESENTATION

2. Participation in the Conference shall be open to Governments signatory to the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System and to duly designated communications entities signatory to the Special Agreement. Each participating Government and its duly designated communications entity, if any, shall be represented by a delegation (a single delegation for each country) composed of a Representative and such Alternate Representatives and Advisers as may be deemed necessary. Their names shall be communicated to the Secretary General of the Conference by or on behalf of the Minister of Foreign Affairs of such Governments at least 24 hours prior to the opening of the Conference. An Alternate Representative or an Adviser may act as a Representative.

III - OBSERVERS

3. Invited Governments which are not signatories to the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System and invited international organizations may be represented at the Conference

by observers. The names of such observers shall be communicated to the Secretary General of the Conference by or on behalf of the Minister of Foreign Affairs of such Governments, or in the case of international organizations, by the Secretary General of the organization, at least 24 hours prior to the opening of the Conference. Observers shall not have the right to vote, but, at the invitation of the Chairman, may submit written comments and may speak on matters relevant to the work of the Conference.

IV - OFFICERS

4. A representative of the host Government shall be the Temporary Chairman and shall preside until the Conference elects a Chairman.

5. The Conference shall elect from among the Representatives a Chairman and four Vice Chairmen. The Chairman shall designate a Vice Chairman to preside in the event of his absence, who in such a case shall have the same powers as the Chairman.

V - SECRETARIAT

6. The Secretary General of the Conference, appointed by the Government of the United States of America, shall provide and direct such technical and administrative staff as may be required by the Conference. He shall be responsible for making all arrangements for the sessions of the Conference, its committees or working groups and generally shall perform all other work which the Conference may direct or require.

VI - COMMITTEES

7. The Conference, to facilitate its work, shall establish a Steering Committee, a Credentials Committee, and an Editorial Committee, and may establish any other committees or working groups it deems necessary for the performance of its functions, and may define their terms of reference. The Steering Committee shall be chaired by the Conference Chairman or his duly designated Vice Chairman, and shall be composed of the Conference Chairman, the four Conference Vice Chairmen and the Chairman of each Conference committee.

Revised draft article for
Provisional Rules of Procedure

VII - SESSIONS

9. The inaugural and closing sessions of the Conference shall be held in public unless the Conference shall determine otherwise. Other plenary sessions and meetings of committees and working groups shall be closed unless the meeting shall determine otherwise. Such plenary sessions and meetings of substantive committees of the whole shall, however, be open to attendance by observers unless the meeting shall determine otherwise. Meetings of other committees and of working groups may be open to attendance by observers if the meeting shall so determine.

(Underlined words added to draft of 11/4/68)

11/20/68

8. The committees shall operate under the rules of procedure of the Conference, to the extent that they are applicable.

VII - SESSIONS

9. The inaugural and closing sessions of the Conference shall be held in public unless the Conference shall determine otherwise. Other plenary sessions and meetings of committees and working groups shall be closed unless the meeting shall determine otherwise. Such sessions and meetings shall, however, be open to attendance by observers unless the meeting shall determine otherwise.

VIII - CONDUCT OF BUSINESS

10. The Chairman shall exercise the powers of his office in accordance with customary practice. In the exercise of his functions, he shall remain under the authority of the Conference.

11. Except as otherwise provided, the Chairman shall call upon speakers in the order in which they signify their desire to speak. The Chairman may call a speaker to order if his remarks are not relevant to the subject under discussion. The Chairman may limit the time to be allowed to each speaker on a question and the number of times each speaker may speak on the question. When the debate is limited and a speaker has used his allotted time, the Chairman shall call him to order without delay.

12. A Representative may at any time move the closure of the debate on the question under discussion, whether or not any other Representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

13. A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any Representative.

14. When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the Representatives present and voting, so decides. Permission to speak on the motion to reconsider

shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

15. Any delegation may designate another delegation to speak on its behalf, but no delegation may cast a vote on behalf of another delegation.

16. During the discussion of any matter, a Representative may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with the rules of procedure. A Representative may appeal against the ruling of the Chairman. A Representative rising to a point of order may not speak on the substance of the matter under discussion.

17. The following motions shall have precedence in the following order over all other proposals or motions before the meeting:

a) To suspend the meeting;

b) To adjourn the meeting;

c) For the closure of the debate on the question under discussion.

18. The order of precedence, when applicable, shall be by Government in accordance with the alphabet in the English language.

19. Proposals and amendments shall normally be introduced in writing in a working language of the Conference and submitted to the office of the Secretary General, which shall circulate copies to the delegations.

20. Voting

a. Definitions

For the purpose of these rules, the phrase "Representatives present and voting" means Representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

b. Quorum

A quorum shall be two-thirds of the Representatives to the Conference.

c. Decisions shall be taken as follows:

1. Each delegation represented at the Conference shall have one vote.

2. The rules of procedure and any amendments thereto shall be adopted by a two-thirds majority of the Representatives present and voting.

3. Decisions on matters of substance, except as otherwise provided in section d of this Paragraph, shall be taken by a two-thirds majority of the Representatives present and voting.

4. Decisions on matters of procedure, except as otherwise provided in this Paragraph, shall be taken by a simple majority of the Representatives present and voting.

5. If a question arises whether a matter is procedural or substantive, it shall be decided by the Chairman. Challenges to the Chairman's rulings shall be considered substantive.

d. Adoption of texts of the Definitive Arrangements

In voting upon the proposed final texts of the definitive arrangements presented to the Conference by the Editorial Committee, the Conference shall endeavor to act unanimously. In the event that the Conference is unable to act unanimously, the proposed final texts and amendments thereto shall be considered adopted when they have been approved in plenary session by two-thirds of the Representatives participating in the Conference.

e. Method of Voting

1. The Conference shall normally vote by a show of hands, but may vote by roll call if the show of hands does not indicate a clear result or if any Representative requests a roll call. The roll call shall be taken in the English language alphabetical order of the names of the Governments participating in the Conference.

2. The Chairman shall announce the beginning of voting. No Representative shall interrupt the voting except on a point of order in connection

with the actual conduct of the voting. The Chairman may permit Representatives to explain their votes after the voting. The Chairman may limit the time to be allowed for such explanations.

3. A Representative may move that parts of a proposal or of an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favor and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to a vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

4. When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

5. If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

IX - LANGUAGE

21. English, French and Spanish shall be the official and working languages of the Conference.

22. Any Representative or spokesman may speak in a language other than an official language. However, in such cases, he shall provide for interpretation into one of the official languages.

X - RECORDS

23. The Secretary General shall have prepared summary records of the plenary sessions, and of such committee meetings as the Conference Chairman may determine.

24. Conference documents and summary records shall be made available in the official languages of the Conference.

25. Any Representative shall have the right to have circulated as a Conference document any statement relative to an item under discussion. Such statements shall be submitted to the Secretary General in writing in an official language of the Conference.

XI - FINAL ACT

26. After the final texts of the definitive arrangements have been adopted by the Conference, they shall be opened for signature.

INTELSAT Conference

Draft Provisional Agenda

1. Adoption of the Agenda.
2. Adoption of Conference Rules of Procedure.
3. Election of officers.
4. Organization of the Conference.
5. Credentials Committee Report.
6. Consideration of the report and recommendations of the ICSC and of definitive arrangements for INTELSAT.
7. Signing of definitive arrangements.

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11/13/68

INTELSAT Conference Issues

Introduction

These papers have been prepared for the purpose of assisting in developing and sharpening positions in preparation for the 1969 Conference on definitive arrangements for INTELSAT. They set forth issues that must be dealt with, various recorded views on these issues, and possible ways of resolving them. The materials contained herein are drawn from several sources, primarily (1) contributions by INTELSAT members, orally and in writing, to the discussion of definitive arrangements in the Interim Communications Satellite Committee (ICSC) of INTELSAT, (2) discussions with foreign government officials in Washington and abroad, and (3) reports by ComSat's European representatives on their talks in Europe.

Approaches to the definitive arrangements vary in different areas and countries of the world. Some countries, notably France, may have political motivations which are not in the best interest of the early and effective development of a universal organization for global commercial communication by satellite. Many other countries appear to be operating on the primary thesis that INTELSAT should be made to work to help maximize quality, efficiency, redundancy and versatility in international telecommunication. Some among these, principally in western Europe, also have an interest in using INTELSAT to support and sustain technological and industrial development in the astronautical field. Some of the European countries, while not in sympathy with French views, are reluctant to oppose them.

With this variety of motivations at work, it is clear that negotiation of definitive arrangements will involve a mix of political and economic factors which will generate confusion of issues and complicate the process of agreement.

Many suggestions for changes of the status quo have been made. However, many of these appear to be based upon intuitive attitudes (frequently deeply felt) rather than analysis of the implications that would follow. A notable exception is the UK. The British have clearly done some thinking about the renegotiation.

It is clear that the Europeans have failed to come up with a full response to the U.S. position (as expressed in the paper ComSat introduced into the ICSC in October 1967) not only because they have been unable to arrive at a common position, but also because they, individually, are not quite clear what should go into such a counter position.

The question whether there should be a "global system" is a threshhold question in the sense that the kind of international agreement we end up with is fundamentally affected by the decision made on this question. An important and possibly continuing difficulty in working out the many problems involved in the negotiation is the inability of the Europeans to arrive at a common answer on this question. The French alone have been actively opposed to the single global system concept although they have had some support from the Belgians. The other Europeans are quite convinced of the desirability of a global system, and are (with the

possible exception of the Germans) quite hostile to the French opposition to it. However, they have been reluctant to overtly oppose France and have not yet found a way of resolving the issue.

It is now clear that the Interim Committee report will not resolve many of the difficult questions. This reflects in part simply the human desire to postpone decisions or showdowns, and in part the feeling that the Interim Committee is simply the wrong forum with the wrong level and kind of representation. There have also been suggestions that the 1969 Conference should be considered as only the first of a series. However, most of our partners probably would agree on the desirability of trying very hard to reach agreement in one conference. To do so it would be desirable to lay before it a draft agreement having fairly wide acceptance or at least with only a few well-defined issues. The prospect would be helped by considerable work internationally between the publication of the Interim Committee report and the beginning of the Conference.

E/TT:FELoy
E/TD:SEDoyle/WKMiller:sp
10/17/68

INTELSAT Conference Issues

Participation in the Conference

Issue

Should participation in the Conference be confined to INTELSAT members, or should non-members be invited? If so, under what circumstances and in what capacity, i.e. as full participants or as observers? What non-members?

Position U.S. Has Taken

We have told our INTELSAT partners that our tentative view, which would be reviewed in the light of their reactions is that

a) only members should be invited as full participants, but

b) we would notify non-members who are members of the UN and its Specialized Agencies of the meeting in such a way that if they express an interest in attending because they have a serious interest in the possibility of becoming INTELSAT members they would be invited to attend in non-member (non-voting) status.

At the same time we reiterated widely invitations to non-members to join INTELSAT in time for the Conference.

Our instructions to our embassies to convey these views are set forth in CA-11051 of September 23.

Views of Others

Prior to setting forth the views briefed above we had heard from only one of our INTELSAT partners, the UK, which thought the Conference should be confined to INTELSAT members.

The responses to our tentative views are far from complete and they mostly represent tentative reactions to the extent that they are substantive at all. However, it probably is not too soon to draw some fairly solid conclusions:

a) Nearly all of our partners who express views agree that only members should vote and that

non-members, if they are invited, should participate only in an observer capacity. A very few, mostly "neutrals", may advocate full (voting) participation by non-members.

b) Nearly all of our partners are agreeable to attendance by non-members as observers. Many are strongly affirmative, others apparently have no strong views.

c) One (Portugal) is against non-member attendance. (The U.K. seems to have changed its position.)

It appears, therefore, that our tentative views have been generally accepted, and, further, that there would be substantial opposition to either full participation (voting) or complete exclusion of non-members.

Few of our partners have commented on the question of circumstances under which non-members would be invited (as observers), i.e. whether we should,

a) invite them outright, or

b) inform them in the sense we have suggested and then invite only those that express an interest,

and there have not been enough clear reactions on this point to draw any conclusions as to our partners' views.

As to what non-members, there probably would not be much quarrel with our formula (UN and Specialized Agencies). Some would argue for ITU members only, but this probably would not be a strong and prevalent view with respect to conference attendance as it would be with respect to INTELSAT membership. None has suggested "all states".

Objectives

a) An effective conference with a maximum chance for conclusion of definitive arrangements satisfactory to the U.S. and to as many as possible of our partners.

b) The maximum impression of global availability of INTELSAT, i.e. that it is not an exclusive club, dominated by the U.S. This objective is also prerequisite to the full accomplishment of the first objective.

c) The widest possible acceptability of the results of the Conference.

Alternatives

After a decent interval to be sure we have read out partners' views correctly, we could -

1. invite only members; or

2. proceed as we have tentatively proposed; or

3. inform non-members of the Conference, indicating that they will be invited as observers if they are interested in attending, without any requirement that they express "a serious interest" in joining INTELSAT; or

4. invite non-members as observers in the first instance, without a previous notice and without an indication of interest in attending; or

5. invite non-members without indication of their status, leaving it to the Conference to decide whether they are full participants.

Discussion (Numbers are keyed to above five alternatives)

1. If we follow this course we presumably would give the explanation that some members object to the attendance of non-members. However, there probably would be strenuous objection by some members, who would, correctly, assert that this is not the majority view. While the exclusion of non-members might make the work of the Conference easier if nearly all members agreed that they should be excluded, in the actual circumstances the repercussions of this course probably would be seriously adverse to the success of the Conference.

It would dismay some "neutralists" who are basically favorably inclined to our INTELSAT views but very anxious to avoid making this look like an anti-eastern European organization.

It would worry several others who have said that inviting non-members will help spread the global reach of the organization by making it easier for non-members afterwards to join.

It would provide ammunition for those who argue that a "single" global system does not make it possible to have a truly global system at all, but that the latter is only achievable by a French-type federation, parts of which are acceptable to all major powers.

2. We can reasonably say that there is a consensus in favor of this course of action. Hence it would have the best basis in the views of our partners (though they have been led by our views).

There appear to be differences of opinion on the likelihood of non-member observers disrupting the Conference. However, it is unlikely that dissident observers could do as much harm to the Conference as members upset by the exclusion of outsiders. Certainly non-members can make their views known without attending, and to attend and take an active disruptive role would tend to discredit the non-member who is doing this.

At the same time the notice formula we have suggested does not encourage attendance by non-members.

3. Leaving out the "serious interest in joining" qualification would be at least a minor step toward encouraging broader attendance and is subject to all the pros and cons that go with this. It would be slightly better for the global objective than our formula, but less defensible as the formula accepted by our partners.

4. Inviting non-members in the first instance without even an expression of interest in attending would be a small step further in the same direction, with slightly stronger pros and cons. It would be more gracious, but could result in wider acceptance.

5. Alternative 5 would be a further step in the same direction, with the pros and cons accordingly stronger, also involving uncertainty as to the role of the non-members. We could be criticized by our partners if we took any of these last three courses without further consultation, and the likelihood of adverse reaction presumably would be stronger the further we moved from our original proposal.

Recommendation

Follow the line we have proposed (alternative 2). Specifically -

(i) notify non-members which are members of the UN or the Specialized Agencies in the terms we have proposed, and

(ii) invite as observers those which respond that they are interested in attending.

If any non-members are invited to attend we should also invite as observers the ITU and any other UN Specialized Agencies with direct interests in INTELSAT.

E/TD:WKMiller:sp 10/16/68

INTELSAT Conference Issues (Revised 11/12/68)

How to Bring New Agreements into Effect, Replacing the Interim Agreements

Issue

How should the new agreements be brought into effect, replacing the interim agreements?

Position U.S. Has Taken

None.

Views of Others

Unknown - not discussed.

Discussion

The Interim Agreements remain in effect until entry into force of the definitive arrangements (Article XV of the governmental Agreement). However, they make no provision as to how the definitive arrangements become effective; Article IX of the governmental Agreement requires the U.S. to convene a conference and calls on all the parties to the Agreement to "seek to ensure that the definitive arrangements will be established at the earliest practicable date, with a view to their entry into force by 1st January 1970", but the Agreement does not say how. The Special Agreement provides in Article 15 for amendment upon recommendation by the Interim Committee approved by two-thirds of the signatories.

Unanimous agreement at the Conference to bring the new agreements into effect would answer the problem, but this hardly seems possible since delegations are unlikely to be authorized to do this. Unanimous agreement at the Conference on provisions (less than unanimity) to bring the new agreements into effect, followed by the necessary acceptances or ratifications, also would solve the problem. This might possibly be attainable, though it seems unlikely since only one dissident could block action.

The best sequence of steps that appears likely to be obtainable might be something along these lines:

1. The U.S. circulates in advance of the Conference proposed rules of procedure providing for

a) acceptance of the rules of procedure by a two-thirds majority, and

b) other voting rules, including acceptance of final texts by a two-thirds majority.

2. The Conference accepts the proposed rules of procedure, by consensus or by a two-thirds vote, or, preferably, unanimously.

3. The agreement approved by the Conference by the agreed required vote, or by consensus, or, preferably, unanimously, provides that it comes into effect upon acceptance by a stated number of parties to the interim Agreement (e.g. two-thirds).

4. The necessary number of parties accept the new agreement.

Since the interim Agreement provides for its own demise, no further step would be needed to accomplish this, although there would have to be some provision for settlement with any member which does not accept.

The flaw in this procedure is that a dissident objecting to the rules of procedure and at each subsequent stage could argue that he is not bound. Counterarguments could be developed. There are, for example, the fact that replacement by definitive arrangements clearly is contemplated in the Interim Agreements (Article IX of the intergovernmental Agreement) and the provision of the Special Agreement for amendment by recommendation of the Interim Committee and approval by two-thirds of the signatories. However, reliance probably will have to be placed more on avoiding a situation where there is a dissenter with strong enough views to take this line. This suggests efforts to meet dissenting views, large majorities, and the assurance of liquidation on reasonable conditions of the interest of any ultimate non-participant. A separate paper is to be prepared on buying out any non-participants.

E/TD:WKMiller:sp
10/17-11/8/68

11-14-68

LIMITED OFFICIAL USE

INTELSAT Conference Issues

Nature and Structure of the Organization

Legal Personality

Issue

Should INTELSAT have a legal personality under the definitive arrangements? Must "personality" be accorded to the whole organization, or should it be accorded to its Governing Body or an internationalized Manager? How does "personality" affect the 1969 negotiations at all? What would be the results of giving INTELSAT or its Manager a legal personality?

Position U.S. Has Taken

In our October 1967 paper we proposed an overall structure for INTELSAT as follows:

> As under the Interim Arrangements, the INTELSAT consortium would be an unincorporated joint venture. It would have three organs - a Governing Body, with functions corresponding to those of the Committee (ICSC); an Assembly of Members; and a Manager with functions similar to those exercised by ComSat as Manager under the Interim Arrangements.

We did not elaborate the "unincorporated joint venture" aspect of our proposal.

Views of Others

The major proponents of establishing a legal personality for INTELSAT are the CETS countries, collectively, in their May and October 1968 papers, and the UK, Switzerland, and France, in independent submissions. Reasons urged supporting this position are (1) to facilitate identification of an organization officer who can act (contract) legally on behalf of the entity; (2) to give INTELSAT the status of an international organization which can enjoy privileges and immunities; and (3) to enable the organization to function legally in its own right, in contrast to the present arrangement under which all contracts, agreements and arrangements are undertaken by the Manager (ComSat) on behalf of the consortium.

France and the UK apparently would be content if the "international manager" (to be created) would have sufficient legal identity and capacity to act. Australia suggests giving the Governing Body a legal identity and capacity to contract. The Japanese position is in support of an unincorporated joint venture initially, with appropriate steps on legal personality to be taken if and when deemed necessary.

There were 12 ICSC votes in favor of a legal personality at the November meeting.

Objectives

We have no strong preconception of the answers to these questions, which should depend on a realistic appraisal of the needs of the developing structure and the views of our partners. Unless there is very strong reason to the contrary, however, it would be desirable to avoid creation of a legal personality concept that would require definitive arrangements to be a treaty from the standpoint of U.S. law. Our specific objectives should be the following:

1. Keep the organization in the U.S.
2. Satisfy the minimum requirements of our partners.
3. Avoid, if possible, the need for a treaty.

Discussion

The Swiss and French have been the primary agitators for establishing an INTELSAT legal personality. However, it appears that they will be supported by the other European countries and that the Europeans collectively have taken a rather firm position.

The Swiss and French argue that a legal personality is justified as a means of preempting any domestic regulatory agency from interfering in INTELSAT programs once they are formulated and agreed (as occurred in the INTELSAT III case). They argue that the possession of legal personality will enhance the status of INTELSAT under any member's domestic law and, therefore, in some measure, would affect the degree of FCC involvement in INTELSAT affairs, assuming ComSat continues as INTELSAT's Manager.

Perhaps the most likely implication of a legal personality is that INTELSAT would become an inter-governmental organization, with, so far as the U.S. is concerned, treaty-based immunities. The U.S. as host country probably could provide necessary tax privileges and immunities without a treaty, but it is less clear that it could give the desired regulatory immunity or join such an organization without a treaty. To clarify the question we are raising about regulatory immunity, if the U.S. no longer maintains a veto under the definitive arrangements and the INTELSAT governing body decided to proceed with a procurement program over U.S. objections based on FCC refusal to issue an authorization, could ComSat participate in this program? The use of the treaty procedure might be used to clarify the answer to this question.

However, there may be other ways of meeting the European aims. All of these questions need further study.

Both Japan and Australia generally support an unincorporated joint venture approach, but go on to say, in one case, the organization may ultimately need a legal personality, and in the other, give a legal personality to the governing body.

Our interests do not compel insistence upon a legal personality for INTELSAT. Whether unincorporated or not, we would expect that the privileges and immunities accorded INTELSAT in the U.S. at present by Executive Order could be accorded under definitive arrangements.

Whether or not INTELSAT should continue to maintain its seat in the U.S. has not become an issue, although the Swiss have clearly implied on several occasions that the organization might be happier and more comfortable in Geneva. We have recently succeeded in having legislation adopted to exempt INTELSAT members from federal taxation in the U.S. and we are seeking similar exemption by legislation from the laws of D.C.

In areas where FCC/INTELSAT relations have generated difficulty we have moved to eliminate the problems. ComSat has been expressly exempted from FCC regulations concerning hardware procurement when acting as Manager for INTELSAT. In addition an interagency coordination mechanism has been created to facilitate providing ComSat with USG guidance on appropriate issues and in a timely fashion.

From the foregoing, it can be concluded that no legitimate complaint has been raised regarding the locus of INTELSAT's seat in the U.S. which has not been readily resolved in a manner that eliminated the source of the complaint. Therefore possession or non-possession of legal personality would not appear to be a controlling or even significant issue in determining whether or not INTELSAT will or should continue to reside in the U.S.

It would appear to be sufficient to meet the minimum requirements of our partners to have in the INTELSAT structure some organ or office capable of legally acting on behalf of the organization.' Such "legal action" might involve contract signing or, eventually, the conduct of direct relations with other international organizations. An example of the latter might be INTELSAT's filing its own frequency notifications to the IFRB and perhaps even belonging to the ITU. This power might be accorded to the governing body by the terms of the Intergovernmental Agreement, as has been suggested by Australia. France and the UK suggest assigning these powers to the Manager (to be internationally constituted), but the total internationalization of the Manager and separation from ComSat clearly is not feasible in the near future. Therefore, it appears that agreeing that the governing body should have the power to act on behalf of the organization, through its Chairman or through the Manager as the governing body may decide, would be a reasonable resolution of this issue and would not appear to require that the definitive arrangements be concluded as a treaty or that INTELSAT itself be a "legal personality".

Some further study will have to be given to the question of how the assignment of legal powers to the governing body might affect the role of ComSat as Manager. There appears to be no reason why we cannot wait on this issue to see how positions of other members develop.

In view of the European support for the position that INTELSAT should have a legal personality, we should request clarification of the reasons requiring such a decision and then make a point-by-point evaluation of the reasons proposed on their merits.

E/TD:SEDoyle/WKMiller:sp
11/14/68

DEFINITIVE ARRANGEMENTS POSITION PAPER

LEGAL STATUS OF THE ORGANIZATION

I. Present Position

Comsat's present position with respect to the legal status of the organization that will succeed INTELSAT is that an unincorporated joint venture, with appropriate privileges and immunities but without legal personality, provides the most effective structure for the achievement of the recognized objectives of the organization. This position implies a continuation of the present manner of conducting the organization's business: through the manager (assuming the manager is a legal entity), one of the signatories, or in the name of the organization in those instances where it is recognized as possessing certain legal capacities under either general or specific municipal laws of the state concerned.

This position is confronted by two difficulties. First, while with this structure, the organization would have certain legal capacities to act in its own name within the United States under applicable principles of partnership law or as a result of an appropriate Executive Order issued under the International Organizations Immunities Act (22 USCA §288, 59 Stat. 669), the municipal laws of many countries do not provide for such legal capacities. This disparity among the laws of potential member countries would preclude the organization from adopting as a normal mode of doing business that which would appear most desirable -- operation in the name of the organization; at the least it could be a source of some confusion among the Parties. Second, probably as a consequence of the above disparity and the consequent necessity of often acting through one of the signatories the weight of opinion in the Interim Communications Satellite Committee is that the successor organization must, in some fashion, have uniformly recognized juridical capacities which would allow it to conduct business in its own name.

II. Alternatives

A. INTELSAT

One alternative to the unincorporated joint venture

structure is to endow INTELSAT with legal personality. Considering the national laws of all potential members, the best means of ensuring that INTELSAT possesses such personality in all member states is to include in the intergovernmental agreement a provision specifically conferring juridical personality upon the organization. Attached is a draft article on status, privileges and immunities for inclusion within the intergovernmental agreement which includes an endowment with legal personality (paragraph 2) and also, by way of example, some specific privileges and immunities that might be appropriate for the organization (paragraphs 3 through 8).

It is important to note that under international law there are no significant prescriptions upon the structure or upon the privileges and immunities that may be possessed by an organization established by an intergovernmental agreement. INTELSAT need not be a "corporate" form to be endowed with legal personality and appropriate privileges and immunities. Rather, the states party to the agreement may establish for INTELSAT a form tailored to its functions and objectives.

In considering the legal efficacy of the above approach, attention was given to the possible effect of the dichotomy between executive agreements and treaties that exists under United States law. A careful examination of this matter has led to the conclusion that the provision discussed above, granting to INTELSAT certain capacities, privileges, and immunities, would be equally effective in terms of United States law whether included within an executive agreement or a treaty. (When the U. S. participates in an international organization under a treaty or a congressionally authorized executive agreement, the President is empowered to grant to that organization, by Executive Order issued under the International Organizations Immunities Act, certain privileges and immunities. Since U. S. participation in INTELSAT is authorized by the Satellite Act of 1962, the President may grant the privileges and immunities set forth in the attached Draft Article by such an Executive Order.) This is an important point, as the use of a treaty would require shifting the legal basis of the United States' continued participation in INTELSAT, thereby engendering undesirable delay and controversy in the process of Senatorial review. It should be noted, of course, that the treaty-executive agreement dichotomy is peculiar to the United States law and is not, therefore, an issue before the international conference.

B. Manager

Consideration must also be given to the question of whether the management body should have legal personality and capacities separate from INTELSAT. This depends on the form which the management body is to take. If the management body is set up as an organization apart from INTELSAT, then it would need legal personality and capacities which could be provided by a provision in the intergovernmental agreement specifically endowing the Manager with such personality. If, however, as seems more likely, the management body is not a separate entity but is an organ within the INTELSAT organization, it is not necessary to endow the management body with separate legal personality.

III. Recommendations

A. INTELSAT

Comsat recommends, in the event our present position is non-negotiable, that INTELSAT, as an international joint venture, be endowed with legal personality and that this be accomplished by the inclusion in the intergovernmental agreement of a suitable provision as shown in paragraph 2 of the attached Draft Article.

B. Manager

Comsat recommends that unless the management body is to be an international entity separate from INTELSAT, it is not necessary to specifically endow it with legal personality.

DRAFT ARTICLE ON STATUS PRIVILEGES & IMMUNITIES

1. To enable INTELSAT to fulfill the functions with which it has been entrusted, the capacities, privileges and immunities set forth in this Article shall be accorded to INTELSAT in the territories of each Government Party to this Agreement.

2. INTELSAT shall possess juridical personality to the extent necessary for the exercise of its functions and the achievement of its purposes, and, in particular, the capacity to:

   (i) contract;

   (ii) acquire and dispose of real and personal property;

   (iii) institute legal proceedings.

3. No Government Party to this Agreement or Signatory of the operating Agreement shall bring an action against another Party or Signatory on a matter concerning the design, development, construction, establishment, operation or maintenance of the space segment, except where such Party or Signatory stands in the position of an independent third-party contractor with respect to INTELSAT.

4. Property and assets of INTELSAT, wheresoever located and by whomsoever held, shall be immune from all forms of search, requisition, confiscation or expropriation by executive or legislative action unless this immunity is expressly waived by INTELSAT.

5. The archives of INTELSAT shall be inviolable.

6. The property and assets of INTELSAT shall be immune from taxation in the territories of the member states.

7. No customs duties, tariffs, or border taxes shall be levied by any Government Party to this Agreement upon the property or assets of INTELSAT.

INTELSAT CONFERENCE ISSUES

Single Global System or Federated Regions

Issue

Should the global commercial communication satellite system now in existence be continued in essentially its present form or should it be restructured under the definitive arrangements in the form of a federation of separately owned regional satellite systems?

Position US Has Taken

In our October 1967 proposals and throughout INTELSAT's existence we have promoted and supported a single global system concept for INTELSAT. Among other views we have expressed on this issue are the following excerpts from our October 1967 paper:

"The INTELSAT structure has provided an excellent institutional framework to achieve the objective of co-operative administration of international commercial communications satellite facilities, compatible with international understandings concerning use of the radio frequency spectrum. It accurately reflects the fact that satellites are facilities ideally suited for joint use by many States and that extensive international cooperation is required to assure the success of a worldwide communications satellite system.

"But in addition to meeting the communications objectives set forth above--and perhaps even more important--INTELSAT has demonstrated that it is possible for many States to combine together to develop efficiently and quickly a most advanced technology, to use wisely scarce international resources, and to operate, in a businesslike fashion, a complicated system providing a needed service."

Views of Others

There is in the ICSC a consensus approaching unanimity on this issue. With the exception of France, every member that has addressed this issue has supported the concept of a unified global system. There were 16 affirmative votes in favor of this concept at the November ICSC meeting, with one committee member absent and one abstention (France). This is

not a consensus that INTELSAT should be the only communication satellite system in the world, but it is agreed that there should be one global system. The possible establishment of separate regional systems coexisting with the global system is treated in another paper.

The position which France put forward earlier and apparently still formally adheres to envisages the establishment of several "regional" groups of satellite owners. It is proposed that a coordination function be retained by INTELSAT, but that the financing, operational control, manufacturing and arrangements for launch of satellites be undertaken on a regional basis by the countries proposing or expecting to use a given satellite, and those countries alone control procurement, financing and operation. The several regional groups that would emerge would coordinate systems plans and technical compatibility through INTELSAT, but INTELSAT, as such, would have authority to make recommendations only, no hard decisions.

Whether the French still advocate this seriously is not clear. They voted for this concept at the November ICSC meeting, and, as noted above, abstained on the global concept. However, the CETS paper of October 28, 1968 does not reflect their position, and it was accepted by the French participants except for the definition of acceptable regional satellite systems outside INTELSAT. The French would like to permit broader regional systems outside the global system, an idea which is related to but separable from opposition to a real unified global system.

Objectives

Our objectives were spelled out in our October 1967 submission to the ICSC (pages 1-2) and they have not changed. So far as the global v. regional question is concerned, we want a global system, providing high quality communications to all at the lowest possible cost. This implies avoiding any unnecessary duplication.

Discussion

The French position has been described in Europe as being totally politically motivated. The concept is

consistent with DeGaulle's political concepts. The French have talked about one regional system dominated by the US, one dominated by Europe, one dominated by the Soviet Union, and one owned and dominated by the Asians and operating in that part of the world. A related objective which fits well with this concept is the control in Europe of procurement for a European system, for the benefit of European industry and technological development.

As is implied above, it is not clear whether, or how seriously, the French will continue to pursue their ideas. In the September - October meeting of the ICSC they weakened their position to some extent by implication in ceasing outright opposition to the INTELSAT IV program, and they certainly weakened it further by acceptance of the October CETS paper, even with a reservation on the regional question. Earlier a representative of the French CNES (the French NASA) said privately that the French view could be maintained.

The French position may be tied in with the Intersputnik proposal since it can be argued that the regional concept will accommodate a Soviet regional system in INTELSAT and that there is no other way to bring the Soviets in and accomplish a real world system.

The US for its part certainly must insist on the global concept. Politically, the US has a substantial stake in the success of INTELSAT, an institution which it fathered and which it has supported at every level with great vigor over the last four years. More fundamentally, however, the US view is based on the underlying rationale and economics of international communication by satellite.

There are several simple technical facts at the bottom of the US view. First, an earth station can look at, or work with, only one satellite at a time. Thus, participating in two systems may require an avoidable duplication of earth stations. Whether two systems make sense depends on whether the second system does something the first one can't. Efficient satellites in the future will have large capacity, be flexible (in the sense that any earth station can talk through one satellite to a number of other stations), very expensive in terms of procurement cost, but cheap in terms of costs per channel. Procurement and operation on a global basis certainly will be more economical than separate systems. These factors and the economic consequences leading from

them, lead us to believe that a global system is essential for the US, for Europe and most importantly, for the LDCs.

The adverse impact of the French approach would be greatest on the LDCs. Under the present system, with one earth station (the most recent one cost $2.75 million, down substantially from early cost figures) and a small (about $50,000) investment in the satellites, many smaller countries can establish direct foreign communications never before technically or economically possible. These countries, under the global system, have facilities that permit them to communicate with other countries in the same area, with the United States, or Europe, or, in the case of Latin America, with all of North and South America, Europe, Africa, and the Middle East, simultaneously, via one set of facilities -- the global system.

The end result of the French proposal is what may be called a global federation of regional satellite systems. Such a concept could readily involve one country in two, three or more "regional systems," each involvement requiring financial commitments proportionate to the use of each satellite and a separate earth station to work with that satellite. It would appear to be calculated to continue indefinitely the traditional hegemonies in international communications which permit the large volume traffic countries to control the means of communications with several smaller countries through domination of investment and resultant control in each regional system.

As noted above, there is no known support for the French concept; the global system concept is certain to be accepted if other issues are satisfactorily resolved and it appears clear that we do not need to consider seriously optional approaches to the basic concept.

There is a more serious question as to the attitude we should take on outside regional systems which might be permitted along with a global system. This question and its bearing on the question of the global system are discussed in a separate paper. Another important question which also has a bearing on acceptance of the global system is the functional scope of INTELSAT. This too will be discussed in a separate paper.

E/TD:SEDoyle/WKMiller:fbp 11/19/68

INTELSAT Conference Issues (Revised 12/19/68)

The Manager

Issue: How to resolve the political problems caused by the present management arrangements without jeopardizing the efficient management of the organization.

Position U. S. Has Taken

In our October 19, 1967 submission to the ICSC, we proposed that Comsat be designated as Manager in order to provide the necessary continuity under the definitive arrangements and to make use of the experience Comsat has accumulated under the interim arrangements. We stated that Comsat would obtain the services of qualified personnel from member countries to ensure maximum internationalization of the management function.

We proposed that Comsat as Manager would function subject to the general provisions and specific determinations made by the Governing Body and that a management contract be concluded between the Governing Body and the Manager in order to define clearly the scope of the Manager's activities, the line of the Manager's authority, the standard of service required of the Manager and the remuneration of the Manager.

Finally, we proposed that the management contract would be reviewed and negotiated periodically and that the Manager could be changed if the Assembly of Members approved a change proposed by the Governing Body.

Views of Others

Several INTELSAT Members have submitted proposals dealing with the Manager and almost without exception they have recognized that only Comsat has the capability to provide INTELSAT with technical and operations management services. Most of these contributions, however, have also raised the issue of the potential conflict that may arise when a signatory provides the total management services for the organization.

Suggestions to resolve this issue have ranged from the establishment of an internationally staffed Secretariat performing some administrative management functions with a single entity (presumably Comsat) performing technical and operations management functions (Japan, Canada, Australia, United Kingdom), to the establishment of an International Management Body staffed with international civil servants which would gradually assume over the years all of the management functions performed by Comsat under the interim arrangements. (CETS paper; however, there is reliable information that the United Kingdom, Italy, Spain and Belgium are not bound by the CETS proposal on the Manager.) It is important to note that proposals on the Manager submitted by our partners have failed to discuss any of the problems associated with the implementation of their suggestions for the management arrangements under the definitive arrangements. This factor is crucial in evaluating their positions and emphasizes the political motivation of such recommendations.

The LDCs have not evidenced a great concern about the Manager issue. The only contribution considered representative of the LDCs, the Asia/Pacific contribution, did not address the problem. Reliable information, however, indicates that the Latin Americans and Asia/Pacific Group would have no difficulty supporting a proposal for the Manager similar to the Japanese proposal.

Objectives

(1) an efficient management body, and

(2) the maximum degree of U.S. control of and through the Manager compatible with the views of our partners and the reputation of INTELSAT as a genuinely international organization, not dominated (or not excessively dominated) by the U.S.

Discussion

Virtually all of Comsat's partners have been satisfied with its performance as Manager under the interim arrangements and recognize the need to ensure that its capabilities are available to INTELSAT under the definitive arrangements. For political reasons, however, many of them are opposed to retaining the same management arrangements under the definitive arrangements. The United States proposals for the Manager (ICSC 28-40) have attempted to accommodate their dilemma.

First, the U.S. has proposed the use of personnel from other countries as an internationalization measure.

Second, our proposal for a management contract to define clearly ComSat's role as Manager and the relationship between the Manager and the Governing Body is intended to make it evident that the Governing Body will play the dominant role.

Finally, an Assembly which would have the authority to approve a Governing Body recommendation to change the Manager gives INTELSAT the option of acquiring new management if it is unsatisfied with Comsat, or, in the future, there should be another organization capable of providing the caliber of management that INTELSAT must have.

It is unlikely that a great many of Comsat's partners will find the management arrangements proposed by the United States acceptable. An arrangement leaving the designation of the Manager to the Governing Body, with the approval of the Assembly, without naming Comsat in the definitive arrangements, probably would produce the same result and might be more acceptable. However, for this proposition to stand any chance of widespread acceptability there would have to be voting arrangements, or at least a clear understanding, that the U.S. could not decide the issue alone in the Governing Body.

If the opposition of Comsat's European partners should require the United States to consider changes in the substance of the management arrangements it has proposed, the following proposal would still achieve the objectives of the United States listed above.

The definitive arrangements would provide for the establishment of an international Secretariat. The Secretatiat would be subject to the control of the Governing Body, be internationally staffed, and perform some of the administrative management functions performed by Comsat under the interim arrangements. The definitive arrangements would provide that Comsat perform the technical and operations management functions for INTELSAT under the terms of a contract to be negotiated between the Governing Body and Comsat. It would also be possible to allow the Secretariat to provide the Governing Body with some form of independent appraisal of Comsat's performance of the technical and operations management functions. The definitive arrangements would also provide that the Assembly could approve a change of the contract Manager if recommended by the Governing Body.

A variation of this proposal would leave the original selection of an entity to perform technical and operational management functions up to the Governing Body with the approval of the Assembly, i.e. without naming Comsat in the definitive arrangements. This might be more satisfactory to some of our partners from a political standpoint. Another step that could be taken would be to separate within Comsat the part of the corporation that represents the U.S. on the Governing Body from the part which acts as the technical and operations contractor.

The issue of the management of INTELSAT goes directly to the future success of the organization. For this reason the United States cannot afford to allow the technical and operations management functions to be assumed by the international management organization staffed with international civil servants. The United States is becoming more and more dependent upon satellite communications. It cannot, therefore, afford to allow the management of the organization providing such facilities to decrease in efficiency. Such would almost inevitably be the case should total management of the organization be assumed by an international organization. The Europeans themselves are on record concerning their dissatisfaction with the management capability of both ELDO and ESRO and it is therefore likely that even though our European partners have expressed the strongest opposition to the continuation of Comsat as Manager, they would support the retention of Comsat as the designated contract Manager for technical and operations.

Between the United States position on the Manager stated in ICSC 28-40 and the position beyond which the United States cannot afford to go, there is considerable room for negotiation. The United States should be cautious, however, in withdrawing from its position stated in ICSC 28-40 without obtaining significant concessions in other areas of the negotiations since it is obvious that INTELSAT needs the management capabilities of Comsat and that this fact is fully realized by our partners in 1968 as it was in 1964.

The Manager question has been discussed in some detail in two earlier papers, one prepared by DTM, dated May 27, 1968, and one by FCC dated, May 29, 1968. The present paper should be read along with them.

Both of the earlier papers describe options in substance, in terms of arrangements that would finally emerge, rather than procedurally, how the matter can be handled by the

Conference and in the prospective agreements. We add below a brief discussion based on a procedural approach, what we could do at the Conference to arrange for an answer as much as the substance of the answer. From this standpoint, the options include the following:

1. Insist on our proposal, Comsat to be named in the agreement as Manager, but with provision for change by proposal of the Governing Body with the approval of the Assembly.

The real substance of this proposal is that Comsat continues as Manager until the Governing Body wishes other arrangements. Since it is generally recognized that Comsat is needed for a transition period, this might be obtainable, provided there is a definite understanding that a change is anticipated. There might also have to be an understanding on the nature of the anticipated change. In any case, the substance of this arrangement probably would be more readily obtained and with better feeling on the part of many of our partners if the question of the identity of the Manager is left to the Governing Body and not named in the agreement (see below).

2. Provide in the agreement for management arrangements to be made by the Governing Body with the approval of the Assembly.

This provision could and probably would produce exactly the same result as above, but possibly with less offense to the political sensitivities of some of our partners. There would have to be an understanding that a change is anticipated, possibly to the concept set forth above, of separating technical and operational functions from other management responsibilities. Acceptance also would depend on voting arrangements, or at least a clear understanding, that would not enable the U.S. to decide the issue alone in the Governing Body.

This would protect our interests and probably is the best arrangement that might be obtainable. Hence, we should be prepared to accept it, with the timing and circumstances subject to tactical considerations, i.e. making our view known at or before the Conference when we can best use whatever concession is involved.

3. .We could go beyond this and accept in the agreement provisions for internationalization of appropriate parts of the management function.

This would be acceptable if it should be necessary and if transition provisions and timing are sufficiently flexible.

In general, we believe it would be best to leave management arrangements, particularly details, as much as possible to the Governing Body. The Conference will have more than enough to do without extensive work on this subject, and, more important, acceptable arrangements probably will be easier to obtain in the Governing Body than in the Conference. This is both because we will have a larger voice and because the representatives of other countries on the Governing Body are more likely to be oriented toward practical, business-like arrangements and less motivated by political concerns than representatives at the Conference. However, there probably will have to be, at minimum, some degree of understanding at the Conference on the outlines of an intended management arrangement. If it were useful to meet the wishes of our partners, there could be a resolution of the Conference calling on the Governing Body to consider the question and develop plans, or, if necessary, outlining the concepts to be considered. Such a resolution would be regarded as a guideline, but should not bind the Governing Body beyond broad guidelines.

E/TD;WKMiller:sp 10/18/68-12/19/68

INTELSAT Conference Issues

Functional Competence of the Organization

Issue

What functional scope should INTELSAT have under the definitive arrangements? Should there be a monopoly on the various types of services within INTELSAT's competence?

Position U.S. Has Taken

Under our October 1967 proposals "INTELSAT would have authority to furnish all kinds of services, not only traditional long distance communications services, but indeed all services which can be provided by means of communications satellites. It is fully anticipated that the capabilities of the global system will be enhanced with time, as technology advances and the traffic requirements of its participants increase. It is contemplated that the needs which the space segment will be expected to meet will become increasingly diversified, and that INTELSAT will provide a variety of needed services."

We have not explicitly proposed that INTELSAT have exclusive competence in any area, though we have proposed that under definitive arrangements "INTELSAT members would obligate themselves to meet their satellite communications requirements in accordance with the provisions outlined" in our October 1967 proposals. However, none of the arrangements we have proposed would affect the right of each member to establish satellites to meet "unique and vital governmental needs".

The present U.S. position is that members' commercial communication satellite traffic should go through INTELSAT facilities if they are available, unless the traffic is domestic, in which case a dedicated INTELSAT satellite or a special domestic satellite may be established to handle it. Of course, as now, domestic traffic may transit INTELSAT satellites.

The United States has not addressed the question of specialized services or regional services in any of its

INTELSAT submissions to date. We have, in our position supporting broad competence for INTELSAT, implied that any specialized or regional services should be obtained through the INTELSAT space segment. More detailed discussion of this particular point is contained in a separate paper on regional systems.

Our position is that INTELSAT should be thought of as a developer and supplier of facilities. As such, it should have the competence to provide any kind of service that anyone wants from it. Whether it should be the only competent organization in a particular field such as aeronautical communications is a different question, and we have not pushed the exclusive competence issue.

Views of Others

In all relevant documents submitted to the ICSC the view is expressed that INTELSAT should be competent to provide public international telecommunication services and there was a unanimous vote at the November ICSC Meeting in favor of this as the organization's primary objective. These services are variously described (point-to-point, traditional, classical, conventional, commercial), but the term "public international telecommunication services" may be read to include telephone, telegraph, telex, facsimile and data transmission, radio and television relay, and leased circuits for any of these purposes.

Views vary as to (1) whether or not the organization should be the exclusive provider of such services by satellite, (2) whether or not it should be required to provide such services, and (3) whether or not the organization should be limited to such services. The CETS countries collectively argue against an exclusive INTELSAT competence in any service, but Australia suggests INTELSAT should be required to provide them. The CETS countries say INTELSAT should not be allowed to provide services other than conventional point-to-point telecommunications without amendment of the definitive arrangements. The Asia/Pacific nations collectively suggest that INTELSAT competence be unrestricted and non-exclusive. In the ICSC Meeting in November there were 6 votes in favor of authorizing specialized services and 9 votes (mostly of the European countries) against such services without amendment of the definitive arrangements.

We know from discussions in the Interim Committee and from their written submissions, that the French particularly have wanted to establish the principle that INTELSAT is not competent to provide services in fields other than traditional or conventional point-to-point communications. This French position may be a product of the general French view that a strong INTELSAT, dominated by the U.S., is undesirable on political grounds. In addition, we know the French aeronautical authorities believe that the French PTT should stay out of the business of communications involving air traffic control and navigational assistance (position fixing). How strongly the other CETS countries feel on this issue is not clear.

Discussion

There are three points of view as to what the functional scope of INTELSAT should be:

(1) It should be the sole authority to provide all satellite telecommunications relay facilities for its members.

(2) It should be specifically limited to providing commercial or public telecommunications relay facilities employing those frequencies allocated by the ITU for communication satellite services.

(3) It should, in addition to commercial or public facilities, have the latitude to provide satellite relay facilities for other applications.

In the present scheme of international frequency allocations of the ITU, the public international telecommunication services may be provided via satellite in designated frequency bands. Aeronautical, navigational and meteorological services, on the other hand, are allocated to other frequency bands. It is possible, therefore, to distinguish the traditional, point-to-point services from the more specialized aeronautical, navigational and meteorological services by reference to the frequency allocation scheme of the ITU. This is the rationale behind position (2) above.

A discussion of INTELSAT's functional scope calls for a clear understanding of the functions that INTELSAT actually performs. While it is true that communications satellites are referred to as supplying telephone, telex, TV and data services, actually all that they provide is bandwidth for the end user. INTELSAT provides a transmission medium for the various services, and that is where its technical and operational competence lies. With this concept, it is not difficult to envisage the role INTELSAT might play in the aeronautical, maritime, broadcasting or other services - it could provide the transmission link for the end user to use as he saw fit. The end user might be served through earth stations owned and operated either by the present communication entities, by other common carriers, or by the end user himself, e.g., a broadcasting station, an aeronautical authority, or an aircraft. INTELSAT offers only a space relay for electronic signals, not a functional service, and would neither own nor operate earth stations. Given the requirements of the end user in terms of power, bandwidth, and other technical and performance specifications, INTELSAT should be in a position to offer relay transmission facilities for any type of service. It is not, however, the forum for determining what the end user requires to meet his operational needs, although close consultation to interrelate capabilities with requirements would be necessary.

The first of the alternatives listed above may be dismissed on the ground that there is no significant support for such a position and there is strong opposition to it. On the other hand, when INTELSAT is viewed as a provider of a space relay rather than as a provider of a service, it would be illogical to so circumscribe its activities by the second alternative that only one group of users could have access to those facilities and its technical competence. The potentialities of communications satellites for fulfilling the requirements of various groups of end users is far from clear at the present time. Technology is developing more rapidly than an understanding of how it can be applied most effectively and economically. Whether the trend will be toward large spacecraft carrying relays for various types of services or toward the development of specialized satellites for different services is an open question involving technical, economic and operational considerations. To bar INTELSAT from being able to offer space relay facilities to meet

the requirements of various services would be detrimental to the interests of both INTELSAT and the end users, since one cannot predetermine the way future services could be most efficiently and economically provided. This does not mean, however, that INTELSAT must be the sole source for procurement of space relay facilities.

It is thus clear from our viewpoint that INTELSAT should have the latitude to offer communications satellite relay facilities for all services. A country, a group of countries or a specialized service group should be free to approach INTELSAT with their communications requirements and special communications problems, to consult concerning the possibilities of meeting their needs through satellites, to request INTELSAT to propose how and at what cost it could satisfy them, and to contract with INTELSAT for the provision of the space relay and whatever operational arrangements might be appropriate. For example, if the aeronautical authorities of the North Atlantic region wished to secure space relay facilities for communications with aircraft, they should determine their requirements through appropriate aeronautical institutions and request INTELSAT to come up with a proposal for meeting them.

The provision of the space relay by INTELSAT could be either as part of a multipurpose satellite or with specialized satellites, and who would own and control the space relay would be negotiated as part of the arrangement. Since INTELSAT would not own or operate earth stations or mobile stations, the actual operation of the service would be for the aeronautical authorities to work out among themselves in the same way the present communications entities handle their operations.

In light of this analysis, the third alternative is unquestionably the course that we would like to follow. In order to meet the objections that have been raised to the inclusion of all services, we could propose that the furnishing of services other than those using frequencies allocated by the ITU for communication satellite services could be handled in the definitive arrangements by adding a provision somewhat along the lines of the proposed provision for domestic satellites, with options for financing and establishment of relay

facilities either by INTELSAT or the group of countries involved. Such a proposal would very likely be supported by Australia, and probably by others, including Canada, Japan, and some LDCs. However, it would be necessary to recognize that the provision of aeronautical services would probably be a regional function financed and operated on a regional basis by the countries using the satellite. If these requirements should be met by specialized satellites rather than multipurpose satellites, the result would be a regional satellite system for a special purpose within the INTELSAT global system.

It is important, in view of the uncertainties concerning the most economical and efficient means of establishing space relay facilities in the future, that there be the option of using INTELSAT as the contractor to provide such facilities. Whether or not that option is exercised would be a matter for those desiring facilities for a specialized service and for the INTELSAT governing body to decide. It could be established as a matter of policy by INTELSAT members that they will offer INTELSAT the opportunity to make proposals for meeting their special requirements before considering other alternatives, but they would retain the right to reject such proposals. This would indicate support for INTELSAT and a recognition of its technical competence without commitment to a specific course of action for the establishment of special communications services.

NASA:WRadius
E/TD:SEDoyle:sp 11/19/68

INTELSAT Conference Issues (Revised 12/12/68)

Regional Systems

Issue

The question is whether there should coexist with a unified, global satellite system (i.e., the successor to the present INTELSAT system) other systems which are separate from but related to the global system and which serve international traffic requirements. These systems would be separate in the sense that the decision to establish the satellites would be made by some but not all INTELSAT members, which would finance the project, own it and determine questions of price, nature of service, procurement, etc., issues which are at present determined by the ICSC for all communications satellites. The relationship with INTELSAT could take on a variety of forms. Thus far, a majority of the Committee has agreed that some sort of "technological coordination" is required, (i.e., coordination to avoid frequency interference), and that a determination is necessary that the system to be established will not be competitive with the INTELSAT system.

Thus conceived the issue is different from the issue whether, indeed, there should be a unified (in terms of ownership and control) global INTELSAT system at all.

If it is assumed that separate regional systems should or will be permissible under the definitive arrangements, there are additional issues, including the following:

(1) How should the acceptable coverage of such a system be defined? Is the CETS regional definition satisfactory? Should we seek a more specific understanding as to what it means as applied to Europe?

(2) What role should INTELSAT or its governing body have in the consideration of proposed regional systems?

Position US Has Taken

The first public statement was made by the President in his message to the Congress of August 14, 1967, in which he said:

> "If the regional satellite is to carry international traffic as well, [as distinguished from a satellite that provides domestic services to more than one nation, which the President's message treats the same as pure domestic satellites] INTELSAT--the international communications consortium--has an important stake in the result. Adequate provisions must be made so that an international traffic which is diverted will not jeopardize the economic efficiency of the INTELSAT system or limit its extension to developing countries."

The background of this position is relevant here. In connection with USG thinking on definitive arrangements it had been decided that it was both logical and desirable from the US point of view to provide for satellite systems serving domestic needs that would be "separate" in the sense defined above. This was largely based on our feeling that we and maybe others would not want to depend upon international decisions for utilizing satellite services for domestic purposes. In our thinking (which became the October 1967 US position paper) we provided for three different degrees of separateness of domestic system, the first of which was not really separate at all but involved INTELSAT simply providing a satellite for such purpose. The third was quite separate, but took account of the inherent international characteristics of satellites by providing that INTELSAT would have to in essence approve of the frequency utilization plan and orbital position of any such domestic satellite.

Already then some Europeans had suggested that there should be provisions (perhaps similar ones) for regional satellites. While we did not accept the logic of this equation between domestic and regional systems, there was general recognition that there would be considerable political drive in that direction. After some further thought we concluded that any reference to regional systems ought not only to require the minimal technical coordination which we believe would be necessary for domestic satellites, but also require some protection against economic damage to the INTELSAT system. That is the purpose of the President's language.

The US October 1967 submission to the ICSC said nothing about regional satellites. This was a deliberate omission based on at least four considerations: i) we felt that regional satellites did not make any communications or economic sense, and, therefore, it was illogical to propose them; ii) we felt that it would be difficult to devise a structure of an agreement that would assure that the test of

no economic harm would be met; iii) we believed that some of our partners probably would be opposed to regional satellites (for generally the same reasons as we were), and in view of this we saw no reason why we should either propose such a scheme or try to defend it when we really didn't want it; and iv) tactically, we believed that there might come a time when we would want to bargain with the Europeans for something we wanted in exchange for a retreat from our essentially negative position on regional satellites.

Since that time we have told the Europeans that we continue to think a test of economic damage to the global system should be applied to any regional satellite proposals. We have, however, added that it might well be that a satellite limited, for example, to television distribution inside Europe might well meet the test of no economic damage to INTELSAT. This was in distinction to systems of wider, intercontinental scope.

Views of Others

There has been in Europe a widely-shared belief that the INTELSAT agreements must provide for the possibility of regional satellites. This is reflected in the CETS October paper, which proposes that "provisions should be made for the establishment of separate satellites...by a group of parties to the arrangement to meet their regional needs." The term "regional" is stated to refer to "a geographically compact group of countries linked together by cultural or economic ties." The French reserved on the definition of "regional." The CETS paper also says the group of countries planning a regional system would have to consult the governing body of the Organization, which could "pass recommendations" concerning technical compatibility with the Organization's plans and economic compatibility with the global system.

At the November meeting of the ICSC a majority of the Committee members (including the U.S.) informally recommended in connection with the preparation of the Committee's Report to Governments on the definitive arrangements that regional be defined as referring to "communications in relations between a geographically compact group of countries linked together by cultural or economic ties."

While discussing the rights and obligations of the parties to the definitive arrangements at the November meeting, a majority of the Committee (including the U.S.) recommended that each member should obligate itself not to establish or join in the establishment of a system in competition with the INTELSAT system.

A majority of the Committee (not including the U.S.) recommended that groups of members should have the right to establish an independent regional system, provided they comply with international regulations, such as those of the ITU, and provided that they submit their plans to the Council of the Organization for its opinion.

The U.S. and five others joined to recommend that regional systems could be established, provided the provisions of the agreement were met. Since a majority of the Committee had previously recommended that no regional systems could be established that would compete, COMSAT's vote was consistent with the U.S. policy as set forth in the President's statement noted above.

The only clear view against regional systems expressed in the ICSC came from Japan, which, at an earlier date, opposed the creation of any independent regional satellite systems.

The French have discussed the issue in terms of extending the concept of separate domestic satellite systems.

It seems fair to say that the strongest argument for regional satellites in Europe stems from political and technical-scientific considerations, rather than communication ones. In fact, several Europeans--the Danes, the Germans and the Swiss, for example--have expressed misgivings about the common sense or economic wisdom of separate European satellite systems--particularly for television distribution, even though that is the most discussed form of regional system. They point to an extensive and underutilized microwave system built for this very purpose, and to the relative short distances involved in most European transmissions.

The two advantages the Europeans see to a regional system are: First, the establishment of a "protected zone" (Belgian phraseology) for European efforts in the field of space research, development, and production. Without such a protected zone Europe would continue to have to compete with the advanced Americans, and would never graduate from its present sub-contractor, junior-partner role. Second, a regional system is needed as a political or a psychological balance for a US domestic system.

For these reasons Europeans tend to favor an agreement providing for regional systems, even though they may doubt that such a system would in fact be established or that they would participate. The Italians (Telespazio) thought that the economics of a regional system looked so dismal that it figuratively and literally would not get off the ground if there were a good global system. The UK is generally confident that its space industry will do rather well, at little cost to the UK, by a continuation of the present process of INTELSAT procurement. There is a clearly discernible trend in INTELSAT toward procuring more and more complex hardware from Europe with each new family of satellites.

Discussion

It is clear that European pressure for regional systems will be a major force in the negotiations, and our job is to devise a way in which regional systems could be accomodated in a manner as consistent as possible with our objectives.

The risks of economic inefficiency really are of two kinds. The first stems from the fact that both satellites and earth stations appear to offer great economies of scale. Satellites are becoming increasingly more expensive and able to carry more traffic, though cheaper on a per circuit basis. Economies will be realized if there is no unnecessary duplication of these transmission facilities and if the use of these facilities is rationalized.

The position of the LDC in all this is particularly important. It seems quite clear that most LDCs in Africa and Latin America and in substantial parts of the Middle East will be able to handle their full traffic requirements within their continent, with Europe, and with the US by the use of one earth station that works with one satellite. If that satellite is reasonably full the per channel cost will be low. If there are two satellites to handle all or a portion of this traffic, then not only will the per channel costs for the satellite use be greater, but also the LDC will have to install a second earth station (or at least a second antenna) to work with the second satellite.

It follows from this that the US policy ought to be of finding a formula which would discourage or make impossible the establishment of a separate satellite system that would do just what the global system is primarily set up to do.

An intra-European satellite system is perhaps difficult to distinguish on logical terms from other regional systems, but it can be distinguished on practical terms. It is only the Europeans that want a regional system because of their scientific and technical ambitions and they could certainly afford one. Since it has not been contemplated that much intra-European traffic would be sent via satellite anyway, it can be said that the damage to the global system is relatively small.

There are two basic approaches that can be followed to limiting the possibility of injurious regional systems. The first would seek to define in the agreement the kinds of regional systems that are permitted and the kind that is not. For example, one could talk about a regional system limited in geographical coverage or by certain ties, such as the CETS definition. The second approach would seek instead to put the burden on the INTELSAT organization of the future to give or withhold its approval of the creation of a regional system and would set forth in the agreement guidelines as to the conditions under which approval would be granted. Of course a combination of the two methods also would be possible.

The principal disadvantage of the definition approach, especially if it is used alone, would be that it would permit separate satellites almost anywhere, by any group. There would be no barrier, in the agreements at least, to proliferation of uneconomic systems.

This danger probably is more theoretical than real, however, because it is only the Europeans, in the immediate future at least, who have sufficient incentive for a separate system. In any case, it probably would be very difficult to agree on guidelines that could be construed as discriminatory in permitting separate systems for developed areas (Europe) and not for other areas. In view of these considerations and because of the strong position of the Europeans, the real questions probably are those stated above, how to define "regional," whether the CETS definition is acceptable, and whether there should be a more specific understanding of its meaning as applied to Europe.

The answer to the first two questions we suggest is the CETS definition probably is about as good as any we could propose. It has the advantage of considerable existing support. It would be desirable, however, both to limit the coverage in this case and for the sake of precedent to seek a recorded understanding that a compact European region is confined to Europe and adjacent islands (the UK) and does not include North Africa.

We should also seek to incorporate in the definitive arrangements an obligation of members to refer proposals to the INTELSAT governing body for consideration. There are then questions of what authority the governing body should have with respect to such proposals. Generally speaking, the greater the governing body's authority, the better. The governing body should be able to determine whether or not the proposed system is technologically compatible and non-competitive with the INTELSAT system. However, what we might hope realistically to accomplish in this area needs further study.

A requirement for coordination from á technical standpoint is a must and a requirement for governing body approval from the standpoint of economic compatability is desirable if it can be obtained. The CETS wording on both points probably would be satisfactory if the concept were changed from recommendation to approval.

E/TT:FELoy :fbp
E/TD:WKMiller
11/22/68-12/12/68

November 19, 1968

DEFINITIVE ARRANGEMENTS POSITION PAPER

REGIONAL SATELLITE SYSTEMS

The United States has proposed[1] that the definitive arrangements allow members to establish independent satellite systems intended solely to meet their domestic telecommunications requirements (Category B-3 Satellites). Many INTELSAT partners, especially the Europeans, have proposed that the definitive arrangements also contain a provision permitting members to establish independent regional satellite systems. The Europeans have argued that the countries of Western Europe would be precluded under the United States proposal from establishing an independent system to meet their "regional" needs such as television distribution. They have analogized Western Europe's regional needs to the domestic needs of the United States, and have argued that they be treated alike. The United States recognized the rationale of the arguments put forth by the Europeans, and urged those advocating regional systems to come forward with a realistic and meaningful proposal to which the United States could respond.

A major barrier to the development of a position on regional satellites has been the lack of a definition of the term "regional." The difficulty in developing a definition arises from the fact that "regional" is merely a species of "international;" and that regional satellites could therefore compete with INTELSAT's global satellites. The CETS has now come forth with a proposal on independent regional systems which offers a starting point for negotiation on this subject.

The CETS members,[2] with the exception of France, have agreed to define regional as referring "to a geographically compact group of countries linked together by cultural or economic ties." It can be expected that France will propose a definition which would permit broader geographical coverage.

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1. In document ICSC 28-40.

2. These include: France, Monaco, Germany, Greece, Italy, the Vatican, Netherlands, Belgium, Denmark, Norway, Sweden, Spain, Portugal, Switzerland, Austria, Liechtenstein, United Kingdom, Ireland.

The CETS definition meets one important criterion of the United States position: that regional systems must be limited in scope. However, during the course of the negotiation, it will be necessary to define and/or build a record to support a more precise interpretation of "geographically compact" - one which would, in effect, limit regional systems to areas such as Western Europe.

In addition to the definition of regional, the CETS proposal provides that:

"Prior to the establishment of a domestic or regional system, the Governing Body of the Organisation should be consulted and may pass recommendations regarding:

- the consistency of the proposed use of the frequency spectrum and orbital space with the future organisation's proposed use (prior to ITU co-ordination).

- the proposed mechanism and technique for the control of domestic or regional satellites and possible interferences.

- the economic compatibility of domestic and regional systems with the global system."

While this proposal does open the door to an economic compatibility test, it fails to provide adequate means of protecting INTELSAT technical and economic interests. Unlike the United States proposal which makes a prior favorable determination of the Governing Body a condition precedent for the establishment of any domestic satellite system, whether by INTELSAT or by any member or members (including the United States), the CETS proposal provides that members wishing to establish regional systems need only consult with the Governing Body which may then pass recommendations. The result is that under the CETS proposal the only limitation on the establishment of regional satellite systems is contained in the definition of regional: the United States cannot accept such weak safeguards. In order to safeguard the interest of INTELSAT, and also be consistent with its proposal in ICSC 28-40,

on the establishment of domestic systems, the United States should press for a determinative role for the Governing Body so that a prior favorable determination is a condition precedent for the establishment of any regional system. In addition, as regards regional systems, the United States should augment the determinations to be made by the Governing Body as proposed in ICSC 28-40 by the inclusion of an economic compatibility test. Therefore, the United States proposal should be that members desiring to establish an independent regional system be obligated to present their plans to the Governing Body and that the Governing Body shall make a prior determination concerning:[3]

a. the consistency with INTELSAT's present or proposed use of the frequency spectrum and orbital space, and

b. whether the proposed mechanism and techniques for control of these satellites were adequate, and whether the radiation emitted from the satellites would cause harmful interference;

c. the economic compatibility of regional systems with the present or proposed INTELSAT systems.[4]

A favorable determination on all three points, in addition to satisfying the definition of regional, should therefore be a condition precedent to the establishment of any regional system.

Since the Governing Body would have the power to reject a regional system proposal, the definitive arrangements should provide some mechanism to assure timely action and objective consideration by the Governing Body of proposals for regional systems.

The United States should also propose that INTELSAT be authorized to provide facilities for regional requirements as is proposed for domestic requirements in document ICSC 28-40.

3. This language is based upon that used in document ICSC 28-40 in regard to domestic systems.

4. This language, from the CETS proposal, could be acceptable since it implies that the proposed system would not have an adverse economic impact on the present or proposed INTELSAT systems.

INTELSAT Conference Issues (Revised 1/2/69)

Criteria for Investment

Issue

What criteria should be established in the definitive arrangements to determine the relative level of investment in the space segment of the system for each member? Should investment levels be fixed or should they be adjustable periodically? What period of adjustment is most desirable?

Position U.S. Has Taken

In our October 1967 proposals we said "It appears that the fairest and most logical way to determine the investment shares of members is to relate these shares to the members' respective use of the INTELSAT-financed assets and facilities. These would include all Category A satellites and any Category B satellites financed by INTELSAT". The "use" contemplated is actual use of the INTELSAT-financed space segment of the global satellite system.

We subsequently elaborated our proposals in ICSC-29-33, November 17, 1967, and supplemented them with proposals to provide for minimum investment shares of 0.05% instead of 0.025% and broader representation of small shareholders on the governing body in ICSC-32-46, June 3, 1968. We said in 32-46 that we were willing to consider any proposals to postpone or phase in implementation of our financing recommendations. ICSC-29-33 should be read for details of our proposal.

Views of Others

The CETS countries, collectively, have suggested that investment be related to use and investment levels be adjusted periodically to reflect changing patterns of use. This proposal has not been further spelled out, except by the UK in ICSC-36-28, so we do not know how closely most of the CETS countries' views now correspond to our own. The only significant departure of the UK from the U.S. position deals with the method of assessing the value of assets during each periodic adjustment. The U.S. suggested reevaluation for each period and the UK prefers a fixed initial valuation amortized over a defined period with

net worth computed during each adjustment as the difference between cumulative capital contributed up to that date and the cumulative revenue distribution up to that date. This proposal is under study by ComSat.

Earlier some Europeans suggested, and France in particular urged, that investment be based upon projected levels rather than past levels of use and that prior commitments be made by member countries to finance fixed percentages of given satellite programs. The UK in ICSC-36-28 argues for quotas based on past use, adjusted periodically. Support for U.S. suggested reliance on past, and/or actual present use, also comes from Canada, Japan and Australia.

Another alternative, proposed initially by Canada and more recently by Kuwait, is the possibility of each member paying a fixed, equal share of a portion of the total investment larger than the basic minimum 0.05% we have proposed, and the balance being distributed among the members in proportion to use. However, the objective of these proposals is to reduce U.S. voting strength rather than to change investment criteria.

Mexico suggested investment through stock ownership with two classes of stock - common shares and preferred shares. The common shares would represent the fixed initial investment in the basic system and, it is assumed, would be voluntarily subscribed. Preferred shares would be purchased by proponents of a specialized, domestic or regional system, and that investment would be used in connection with such systems. This proposal has not been clarified, e.g. whether it was intended to avoid increased voting strength for specialized system sponsors, nor has it been seriously supported in ICSC deliberations.

Objective

The primary U.S. goal is to obtain agreement on an equitable and workable financing arrangement for INTELSAT. The less underlying principles and practices now in force are changed, the smoother transition toward definitive arrangements in the investment area should be. Our proposals should be realistic financially and politically, and manageable from an accounting viewpoint, particularly when we consider that bookkeeping and financial management are areas likely to be given over to the "internationalized staff of the Manager" very early under definitive

arrangements. The investment criteria and procedures adopted should support our basic single global system concept and reflect the nature of INTELSAT as an operating international public utility.

Discussion

Our principal concern has been to relate investment to use on an adjustable basis and to avoid (i) separate ownership of several satellites and (ii) frozen shares based on projected use. It appears that the first of these alternatives may no longer be a live issue as regards the global system in view of the current CETS position expressly adopting the principles suggested by the U.S. and implicitly discussing the French proposal. Projected use might not be too objectionable if the element of adjustability were introduced into it.

We have strong indications that a substantial majority of foreign countries agree in principle with our investment proposal, i.e. there is a strong consensus on the point that investment in INTELSAT under the definitive arrangements should be related to or determined by relative use of the system. We still need to know, however, the more specific views of others on past, present and projected use as criteria and may have to consider further the pros and cons of specific criteria definitions as they emerge. It is anticipated that the projected rather than past or present use figures will be favored by some influential countries such as France and the UK.

Projections of future use of international telecommunication facilities in regional planning meetings in the ITU and INTELSAT have been shown by experience to be usually conservative. An aspect worth noting of the possible issue arising over selection of past, present or future use as a criterion is that new countries entering the system generally will have higher rates of traffic growth than those already in the system, and it is more important, indeed necessary, to consider their prospective traffic because of lack of present or past traffic figures. As between existing members of the system, their relative shares of total use are not likely to vary greatly from year to year and consequently projected use for them is not as critical. The use figure for each member should reflect the circumstances of the individual member, case-by-case. On this point it will be preferable to avoid too much detail in the agreement. Defining such a proposal in the Agreements will not be easy and more work on this point is required.

The nature of communication satellite financing to date has been in part dictated by a long-term U.S. goal of having INTELSAT become a non-profit, user-owned consortium in which capital contributions are returned and the payment of return on the investment by users cancels out the investment earnings. This is possible if investment for each member is maintained at a relatively stable level over time and the pay-in and pay-out is in generally the same relative percentage of the total cash flow for each member. Therefore, the cost of using capital to a 5% user washes out against his earnings on the 5% of the total system investment which he made.

Investment under the Interim Agreements

Under the 1964 Agreement Establishing Interim Arrangements, shares of ownership in the space segment of the system (investment quotas) are determined under a modified principle of investment related to use. In the absence of any commercial communication satellite operations experience in 1964, members' probable use of the INTELSAT system had to be estimated for the initial period. Projected 1968 international telephone traffic data from the 1963 ITU World Plan (Rome) were slightly modified to establish a scale of "fixed quotas" for the initial period. It was provided that if the initial members participating in the negotiations all joined the system, they would be guaranteed certain minimum levels below which their quotas would not be reduced. (See Article XII of the 1964 Agreement).

Alternatives to a use criterion were considered prior to and during negotiation of the 1964 Agreements. A negotiated level of investment, which might reflect the political power, industrial capabilities and level of technological progress achieved by a given country was discussed with the USSR, but such an arbitrary arrangement was not considered politically viable or desirable. The Soviets criticized an INTELSAT based on telephone traffic criteria and presumably this was one factor that led to their non-participation in the creation of INTELSAT. In addition, there was the alternative of bilateral or regional multilateral agreements among operating entities, which was favored by the U.S. and some foreign carriers, but the requirements of the Communications Satellite Act of 1962 and the economies of scale and technolcgical considerations of an international satellite system did not permit or support introduction into the satellite realm of these traditional forms of arrangements employed in other modes of international communications.

Justifying Investment Related to Use

We find that logic, good business sense and traditional practice favored the establishment for INTELSAT of a principle of investment related to use. Nations which make substantial use of any commercial communication system are generally required or expected to put up a substantial part of the cost of establishing the system. Commensurate with the level of investment for each user is a level of risk and responsibility for insuring the economic viability and technical integrity of the system. Having borne risks and provided appropriate technical and economic assurances, it appears reasonable to permit large investors to enjoy whatever benefits the economies of such communication systems may provide. Essentially, such an approach reflects the interests of large using countries. However, we are constrained both by national policy and by international commitment to protect and advance the interests of smaller users, as well as the interests of the United States and other developed countries.

Adoption of the investment/use principle is consistent with a desire to maximize economies for large users while offering substantial benefits for small users. A specific alternative that might be suggested, allegedly in the interest of the smaller using countries, is giving each country an equal, fixed investment share. While it may be considered politically desirable for each small user to have a voice of one or two percent in voting - with a future INTELSAT space segment cost approximating $200 million or more, a one percent interest amounts to $2 million. Adding such an investment requirement to earth station costs, plus terrestrial interface and networking costs in smaller countries may create an unmanageable burden for such countries. In addition, if all ITU members joined INTELSAT and each member had 1% of the total investment, we would have 135% investment. Simple arithmetic quickly dispells any theories of the advisability of equality of investment on fixed shares. Even the Soviet "INTER-SPUTNIK" proposal calls for investment related to use.

We believe that establishing investment in INTELSAT at a level commensurate with use will most realistically and equitably balance the political and the economic interests of the larger and smaller users. In most small

or developing countries the desire and ability to pay will be commensurate with their relative levels of use. The poor, underdeveloped or small country will generate and receive relatively little international telecommunication traffic.

There are, in addition, legitimate reasons why the United States cannot accept reduction to the role of one "equal member" in an organization with currently more than sixty members and potentially well over one hundred members. Presently and for the foreseeable future, INTELSAT is and will be substantially dependent on the United States as (a) the world's largest single generator and recipient of international telecommunication traffic; (b) the world leader in the relevant technology; (c) the principal source of financial, technical manpower, and hardware requirements; and (d) apparently the sole available source for satellite launch capacity on acceptable terms and conditions. Furthermore, the difficulty in developing satisfactory alternatives to ComSat's continuation as Manager suggests to some extent that we may possess the only organizational and technical competence well enough organized at this time to manage and operate the global system.

The Indefeasible Right of Use Concept

In recent months the concept of investment related to use has been subject to close scrutiny within the USG as well as abroad. Commentators and government officials have been considering the advisability of modifying the concept of investment related to use to provide that users of the INTELSAT system be permitted to purchase an indefeasible right of use in one or several INTELSAT satellites.

It is argued that this proposal has the following advantages: (1) It permits budgetary planning for specified periods (life expectancy of the satellite) in specified amounts not subject to subsequent adjustments; (2) This simplifies and stabilizes accounting, rate making, and amortization; (3) It also limits investment requirements for individual countries because they would be required to invest only in satellites they would use.

A brief discussion of what indefeasible right of use is may help clarify the issue. The existing agreements under which transoceanic cables have been installed between the United States and other countries generally do not discuss the question of ownership. Each participant in the financing of a cable system purchases a "right to use" a number of circuits in a given cable. This right is "indefeasible" in that it cannot be revoked or denied without the consent of the user (financer), although adjustments may be made in the number of circuits dedicated to a user by mutual agreement with the other interested parties. In this kind of arrangement, each cable is considered a separate "system", readily identifiable physically, which interconnects two points - the cable heads - from which a variety of radial or networking systems may spread out in terrestrial service patterns. The investment share paid in is in proportion to the amount of capacity reserved as part of the total capacity.

In contrast to the physical characteristics of the cable, the "space segment" of the INTELSAT system involves (1) several satellites in space, with differing capacities, life expectancies and costs, serving different and overlapping areas; (2) related tracking, telemetry and control facilities on the earth's surface; and (3) the necessary administrative and operational facilities required for the maintenance and operation of the system. Thus, to equate an "indefeasible right of use" in a transoceanic cable with an "indefeasible right of use" in the space segment of the INTELSAT system requires some stretching of the imagination.

To accommodate the concept of indefeasible right of use in the context of a satellite system, one would have to contemplate specific financial arrangements relating to individual satellites, such as proposed by France, to be incorporated in the definitive arrangements for INTELSAT. It is by no means clear that the concept of "indefeasible right of use" in any way clarifies or simplifies the issue of financing the space segment and the related problems associated with the system, such as relative voting power. A major policy shortcoming of the indefeasible right of

use financing is that systems can be established readily by rich, developed countries with high traffic requirements, but as between LDCs there is little, if any, capacity provided in such a system. In addition, application of the indefeasible right principle leads to early rigidity in capacity allocation and utilization in any satellite system or generation established. Each investor would put up enough money to purchase sufficient capacity to meet his guaranteed traffic requirements. This practice neither provides adequately for nor encourages traffic growth at other than projected or planned rates.

The United States proposals for the definitive arrangements are ambiguous through silence on the question of ownership. We have consciously chosen to avoid generating discussion of "ownership" because, in its traditional sense, it is not really very meaningful when applied to communication satellites. Although INTELSAT will be roughly analagous to cable consortiums if investment is established for each member on the basis of its use of the system, for the aforestated reasons we do not believe that application of the principle of "investment related to use" in the global satellite system context is appropriately considered synonomous with the concept of "indefeasible right of use" in the context of submarine cable systems.

Investment Through Stock Purchase

The proposal to arrange financing of INTELSAT on a stock basis has been raised in the definitive arrangements context by Mexico. To structure INTELSAT as a stock corporation and introduce dividends, capital reserve accounts, and other accounting consequences of a stock structure, would complicate the attainment of an organizational and accounting structure leading to a straight cost, user-owned system in which no single user earns a dollar profit. We should discourage consideration of the Mexican proposal at the Conference.

Some additional questions with respect to our proposal which have not arisen so far as we know, but might arise, are the following:

- Members which do not use the system may be dissatisfied with the proposal for no interest or other return on their (base share) investments (ICSC-29-33, page 5). Users whose use is less than a base share similarly might be dissatisfied.

- There might be objection to the investment adjustment proposal on the ground that some members will have difficulties in making funds available periodically for increased investment requirements without decisions on their part.

ComSat staff members are currently developing studies evaluating the implications and seriousness of these two questions.

E/TD:SEDoyle/TENelson/WKMiller:sp
11/18/68 - 1/2/69

INTELSAT Conference Issues (State revision 12/27/68)

Procurement Policy

Issue

Under what principle or policy should INTELSAT place contracts to obtain hardware for the space segment of the global system? Should procurement be on the basis of quality and price or should there be a conscious policy of spreading contracts among members? Should there be any understanding on contract-spreading in or outside the agreements?

An additional question is whether non-industrial countries should be "compensated", as Argentina has proposed, for the additional costs to them of procurement which is not at minimum cost.

Position U.S. Has Taken

Our October 1967 proposal did not expressly deal with this question. We did refer to it rather obliquely by stating the view that it is in the interest of each country to develop its industrial competence and to share in the benefits of satellite technology. In President Johnson's August 1967 message to Congress on Telecommunications, he said that "We will continue the exchange of technical information, share technological advances and promote a wider distribution of procurement contracts among members of the consortium (emphasis added). There has been no other public declaration of our policy or publication of U.S. proposals on this issue.

Views of Others

In an early joint European submission tabled for the CETS countries by Netherlands/Belgium it was suggested that the 1969 agreements should protect the interests of all participants and, in particular, should make possible the development of the technology of member countries. This wording is repeated in the CETS paper of October 1968. Japan suggested that "procurement of the space segment should be carried out on the basis of the best quality and the cheapest price through international tender which is open to all member countries, and adequate measures should be taken to promote a wider distribution of procurement contracts among the member countries".

France uses procurement as a reason justifying separate ownership of particular satellites. France observes that separation of ownership "would preserve the industrial interests of signatories more effectively than Article X of the Interim Agreement which, as shown by experience, has proven to be inapplicable due to a basic inconsistency between participation proportionate to quotas and the necessity to procure the best equipment at the best price". The French argue that all expenditures agreed upon by each State should contribute as much as possible to increase the capacity of its industry.

The only other country that has expressed specific views on this issue is Argentina. In ICSC Document 34-47 (September 25, 1968) Argentina proposed a system of compensation to the non-industrial countries through technical assistance programs, the cost of which would be added to procurement contracts, so that the development of industrial competence by some members would be balanced by technical assistance to others.

Objective

Considered from an exclusively business point of view, it seems apparent that procurement above certain dollar levels should be pursuant to international competitive bidding with the selection on the basis of quality, price, and timely performance. However, the political reflection of national and regional industrial interests, particularly in Europe, suggests that we are not likely to obtain a procurement article reflecting this position in its pure form without a clear understanding that some contract-spreading will be done. Realistically, our objective should be to stay as close as possible to normal business criteria, both in the text of the agreement and in any related understandings that may be necessary.

Discussion

The 1964 Agreement provides:

> "In considering contracts and in exercising their other responsibilities, the Committee and the Corporation as manager shall be guided by the need to design, develop and procure the best equipment and services at the best price for the most efficient conduct and

> operation of the space segment. When proposals or tenders are determined to be comparable in terms of quality, c.i.f. price and timely performance, the Committee and the Corporation as manager shall also seek to ensure that contracts are so distributed that equipment is designed developed and procured in the States whose Governments are Parties to this Agreement in approximate proportion to the respective quotas of their corresponding signatories to the Special Agreement; provided that such design, development and procurement are not contrary to the joint interests of the Parties to this Agreement and the signatories to the Special Agreement. The Committee and the Corporation as manager shall also seek to ensure that the foregoing principles are applied with respect to major sub-contracts to the extent that this can be accomplished without impairing the responsibility of the prime contractor for the performance of work under the contract."

The provision for distribution of contracts was included at the insistence of European countries which hoped to ensure their participation in contracts. It has been impossible to carry it out fully, however, both because of the U.S. lead in space technology and because of the impracticality of distribution of contracts among many countries. The growth of INTELSAT from an originally small number of members, mostly industrialized, to 63 members, many with little or no aerospace industrial capability, has accentuated the problem.

However, in practice ComSat, as Manager, has facilitated constantly increasing levels of foreign participation in INTELSAT procurement, particularly in the major satellite procurement contracts, INTELSAT II, III and IV. The INTELSAT I contract (Early Bird) was negotiated between ComSat and Hughes without foreign participation before INTELSAT was created. Subsequent INTELSAT procurement has produced foreign participation in the indicated amounts:

Procurement Program	(7/31/68) Total Cost	Foreign Share	% of Whole
INTELSAT II	$32,728,000	$ 289,029	0.9%
INTELSAT III	32,448,000	2,151,711	6.5%
INTELSAT IV	54,801,600	19,418,000	35 %

Further details on foreign shares in INTELSAT programs are shown in the Annex to this paper.

The increasing percentage of non-U.S. participation is a product of several factors. First, the Europeans have been working very hard at increasing their competence. Second, U.S. space hardware manufacturers have set up various working relationships or partnerships with European and Japanese firms and have thus contributed to the foreign capability. Third, there has been considerable bending of the first principle of Article X.

The cost of the European participation in INTELSAT IV raised the cost of that program an estimated $4.4 million. Australia, New Zealand, Indonesia, and countries in Latin America that have no interest in building a satellite manufacturing capability of their own, much less financing one in Europe, have expressed concern over this bending of principle, although the extra cost has to date been in amounts they could accept.

Balancing European concerns against those of other countries, it appears probable that the definitive arrangements cannot stray very far, if at all, from the principles underlying Article X. No one in Europe, other than France, proposes seriously that INTELSAT adopt procurement rules explicitly taking greater account of their problem, although they are pushing to make it a factor in determining the outcome. Members other than European members, on the other hand, appear unlikely to press very seriously for strict interpretation of the price-quality criteria. Our expectation is that the Europeans, particularly France, will push to obtain substantial INTELSAT spending in Europe, but this

push will be counter-acted to some extent by the interest of other countries in INTELSAT economy. We cannot predict with certainty that Latin America will stand up to Europe as a block, however, because other economic and political considerations may lead them to accept the European position in some degree.

It would be in the U.S. interest both from the carrier standpoint and the manufacturer standpoint if the definitive arrangements reemphasized the policy of procurement on the basis of price, quality, and timely performance. This certainly is appropriate to an organization which is pledged by its preamble to provide communication facilities on the most economic basis possible. It is reasonable, therefore, for us to advocate a procurement policy under the definitive arrangements which, while recognizing the value of promoting wide international participation, gives primacy to best price and quality. To this end, the U.S. might propose wording along the lines of the following:

> "The Governing Body shall endeavor to insure that all contracts are awarded on the basis of the best quality, best price and timely performance. The Governing Body shall endeavor to insure the widest practical international participation in contracts and subcontracts consistent with the foregoing principle."

The proposed language retains the emphasis upon securing the best equipment at the best price and still encourages international participation provided it can be accomplished on a competitive basis. The Governing Body would have complete flexibility to determine the best means of distribution of contracts on an international basis provided that the requirements of price, quality and timely performance are met. However, there would be somewhat more emphasis on the price-quality principle than under the present formula and the distribution principle would be more clearly secondary.

This wording could be included in a draft agreement if we circulate one, or could be put forward in low key in some other way. However, we should not really press this issue, for the time being, at least, or until we see how the positions of the opposing sides develop. We will be in a better position then to appraise whether any improvement in the present provisions is likely to be obtainable and with what, if any, understanding outside the agreements.

If the U.S. is to be successful in getting maximum support for the "economically pure" procurement policy proposed above, and to do so while at the same time minimizing pressures to authorize a regime that would lead to undesirable separate systems, it must be prepared to be quite clear, simple and forthcoming in its position on industrial cooperation between the U.S. and others. It should state that it will authorize and encourage U.S. industry to cooperate with industries of other countries in assisting them to develop technology that they can use in bidding on INTELSAT contracts or in developing satellites for other purposes not inconsistent with the INTELSAT agreement. Hopefully this statement would be subject only to national security limitations.

The Argentine proposal for "compensation" to non-industrial countries in the form of technical assistance has not received any support to date and probably does not have to be taken too seriously in itself, as a specific proposal. However, a broader question that it suggests should be taken more seriously; whether there is something INTELSAT can or should do for the LDCs to assist in their technical development. This is a separate subject which should be dealt with elsewhere than in the procurement context.

ComSat: 11/19/68
E/TD:SEDoyle/WKMiller:sp 12/27/68

ANNEX

Table I

Implementation of Article X

1.	Total INTELSAT contract costs (excluding INTELSAT IV)	$97,837,591.
2.	Total foreign contracts and subcontracts outside U.S. (excluding INTELSAT IV)	$ 3,058,138.
3.	Foreign contracts and subcontracts % of total	c. 3.1%

COUNTRY BY COUNTRY BREAKDOWN OF FOREIGN PARTICIPATION

COUNTRY	VALUE OF CONTRACTS	% OF TOTAL	INTELSAT QUOTA
U.K.	$945,717.	c. 0.96%	7.321701
France	$884,083.	c. 0.93%	5.1316949
Germany	$579,375.	c. 0.6%	5.1316949
Japan	$271,227.	c. 0.27%	1.743262
Belgium	$265,180.	c. 0.27%	0.958794
Switzerland	$ 52,056.	c. 0.053%	1.743262

Table II

Implementation of Article X, Cost Breakdown for INTELSAT II

1.	Total contract price	$32,728,000.
2.	Total subcontracted outside U.S.	$ 289,029.
3.	Foreign subcontracts % of total	c. 0.9%

COUNTRY BY COUNTRY BREAKDOWN OF FOREIGN PARTICIPATION

COUNTRY	APPROX. VALUE	% OF TOTAL	QUOTA
U.K.	$159,029.	c. 0.5%	7.321701
France	$130,000.	c. 0.4%	5.1316949

Table III

Implementation of Article X, Cost Breakdown for INTELSAT III

1.	Total contract price (spent as of 7/31/68)	$32,448,000.
2.	Total subcontracted outside U.S.	$ 2,151,711.
3.	Foreign subcontracts % of total	c. 6.5%

COUNTRY BY COUNTRY BREAKDOWN OF FOREIGN PARTICIPATION

COUNTRY	APPROX. VALUE	% OF TOTAL	INTELSAT QUOTA
U.K.	$475,963.	c. 1.4%	7.321701
France	$740,000.	c. 2.2%	5.1316949
Germany	$579,375.	c. 1.7%	5.1316949
Belgium	$265,180.	c. 0.8%	0.958794
Japan	$ 38,637.	c. 0.12%	1.743262
Switzerland	$ 52,056.	c. 0.15%	1.743262

Table IV

Implementation of Article X, Cost Breakdown for INTELSAT IV

1.	Total Hughes price	$54,801,600.
2.	Total foreign subcontracted outside U.S.	$19,418,000.
3.	Foreign subcontracted % of total	c. 35%

COUNTRY BY COUNTRY BREAKDOWN OF PROPOSED FOREIGN PARTICIPATION

COUNTRY	APPROX. VALUE	% OF TOTAL	INTELSAT QUOTA
U.K.	$7,355,000.	c. 13.4%	7.321701
France	$3,954,000.	c. 7%	5.1316949
Germany	$2,716,000.	c. 5%	5.1316949
Japan	$1,154,000.	c. 2.1%	1.743262
Italy	$ 794,000.	c. 1.4%	1.917588
Switzerland	$ 777,000.	c. 1.4%	1.743262
Belgium	$ 849,000.	c. 1.5%	0.958794
Canada	$1,366,000.	c. 2.5%	3.268616
Sweden	$ 419,000.	c. 0.76%	0.610142
Spain	$ 34,000.	c. 0.062%	0.0958794

DEPARTMENT OF STATE
WASHINGTON

January 9, 1969

MEMORANDUM

TO: Members of the INTELSAT Conference Executive Committee.

Attached is an FCC staff draft article on inventions and data. It should be considered in connection with the issues paper on Data and Inventions (ComSat 11/19/68).

William K. Miller

Attachment.

FCC Staff Draft

1. The governing body, taking into account the principles and objectives of Intelsat, as well as generally accepted industrial practices, shall normally acquire for Intelsat the rights in inventions and technical data arising directly from any work performed on behalf of Intelsat.

2. Inventions and technical data to which Intelsat has acquired such rights (including rights acquired with respect to work performed on behalf of Intelsat prior to the entry into force of the definitive arrangements):

(a) Shall be made available to any signatory or any person in the jurisdiction of a signatory, or the government which has designated that signatory, on a royalty-free basis, for their use in connection with the design, development, construction, establishment, operation, and maintenance of equipment and components for the Intelsat space segment;

(b) Shall be made available to any signatory or any person in the jurisdiction of a signatory or the government which has designated that signatory, at the request of the relevant government, on fair and reasonable terms and conditions, provided that the governing body determines that the proposed use would not be inconsistent with the definitive arrangements; and

(c) May be made available to other persons and entities, for the purposes specified in (a) or (b) above or to any person or entity for other purposes, at the discretion of the governing body and under such terms and conditions as the governing body determines.

3. Except as it may otherwise determine, the governing body shall endeavor to have included in all contracts or other arrangements for design and development work, appropriate provisions which will insure that inventions and technical data owned by the contractor and its subcontractor which are directly incorporated in work performed under such contracts or other arrangements, may to the extent that it is necessary, be used for the exercise of the rights acquired by Intelsat pursuant to paragraph 1 of this article and which also permit their use on fair and reasonable terms by any entity authorized pursuant to paragraph 2 of this article, provided that such use is necessary.

November 19, 1968

DEFINITIVE ARRANGEMENTS
POSITION PAPER
ON
DATA AND INVENTIONS

Attached is a proposed statement of data and inventions policy for inclusion in the Operating Agreement of the definitive arrangements. The Article represents what we believe to be an appropriate statement of policy for inclusion in an agreement which will be permanent in nature and will encompass some 70 international partners. Its basic aspect is one of flexibility, provided to the Governing Body of INTELSAT. There is no intention, for what appear to us to be obvious practical reasons, to attempt to include in the definitive arrangements a detailed statement of contract patent and data clauses. With one exception, the Governing Body is given broad discretion to establish appropriate data and inventions clauses and to formulate reasonable terms and conditions of use of such data and inventions as may be acquired by INTELSAT.

Paragraph 1 of the proposed policy statement provides such broad discretion to the Governing Body with respect to the establishment of contract clauses which would determine the rights in inventions and data to be obtained by INTELSAT and those to be retained by the contractor. Two general guidelines are prescribed, namely that the formulation of policy with respect to the acquisition of rights of use in inventions and data take into account the principles and objectives of the INTELSAT organization, as well as generally accepted industrial practices.

A major impediment to the development of a flexible patent and data policy during the interim period has resulted from the inclusion in the present international agreements of specific guidelines with respect to the acquisition and use of inventions and data resulting from the expenditure of INTELSAT funds. To avoid this difficulty, it is essential that we resist the approach, such as suggested by the German patent proposal (ICSC-34-13), of attempting to include in the definitive agreements

a detailed statement of division of rights as between INTELSAT and its potential contractors. Adopting an approach such as proffered by the Germans, would place the Governing Body, and those negotiating on its behalf, in a straightjacket of uniformity which would appear most undesirable in the context of an organization that must deal with a broad spectrum of industrial interests. This is not to imply that the Governing Body should abandon the present practice of the ICSC of establishing standard contract clauses, including patent and data clauses, for incorporation in RFP's. Establishing such standard clauses as a matter of policy does not limit the authority of the Governing Body to adopt variations where appropriate.

Paragraph 2 of the proposed statement is intended to deal with the distribution and use of such inventions and technical data as may be acquired by INTELSAT under its various contractual and in-house activities. Again, this provision places very substantial discretion within the Governing Body to establish reasonable terms and conditions of use. There is an obvious exception, however, which is patterned upon Article 10(f) of the Special Agreement. All data and inventions to which INTELSAT has acquired a right of use shall be made available on a royalty-free basis to any person, including the designating governmental entities, for use in connection with the development, establishment and operation of the INTELSAT space segment.

With respect to uses outside the INTELSAT system, the Governing Body may, without restriction, make available INTELSAT inventions and data to any person on the basis of such reasonable terms and conditions as it may determine in the best interests of INTELSAT. This approach would, of course, permit the Governing Body to make available INTELSAT inventions and data for domestic and regional systems if it were determined to be in the interests of INTELSAT to do so. The Governing Body would be in a position to charge reasonable royalties, if it were appropriate, or to provide data without charge if the circumstances so warranted.

Paragraph 3 of the proposed statement deals with inventions and technical data owned by INTELSAT contractors, and the rights of use which INTELSAT should strive to obtain to the extent such background data and inventions are utilized by a contractor in performing INTELSAT work. The paragraph is in substance almost identical to Article 10(g) of the Special Agreement, which places upon the Committee a responsibility to endeavor to obtain appropriate background rights from INTELSAT contractors.

If an Article such as the attached is included in the definitive arrangements, the parties would be free to propose any appropriate modifications to the present INTELSAT patent and data policies and standard clauses. We would be able to deal on a businesslike basis with industrial cross-licensing arrangements and other established commercial practices. INTELSAT would also be able to take advantage of its patent and data portfolios, setting up licensing arrangements on a royalty basis where appropriate. Most importantly, however, we would not be required to formulate a division of rights between INTELSAT and its contractors in the context of a 70-nation international conference, with the results being incorporated in definitive international agreements.

As noted at the outset, the attached Article is intended for incorporation in the Operating Agreement of the definitive arrangements, with no provision in the government-to-government agreement relative to patent and data policy. This approach is consistent with the present international arrangements where the Special Agreement deals exclusively with this subject in Article 10(f) and 10(g). Inventions and technical data are an asset of the joint venture, financed by the partners to the Operating Agreement. Consequently, it is neither necessary nor desirable to include in the government-to-government agreement any statements of policy with respect to the acquisition and use of inventions and data arising out of INTELSAT-funded work.

ANNEX

DATA AND INVENTIONS POLICY
FOR INCLUSION IN OPERATING AGREEMENT

1. The Governing Body, taking into account the principles and objectives of INTELSAT as well as generally accepted industrial practices, shall acquire for INTELSAT appropriate rights in inventions and technical data arising directly from any work performed on behalf of INTELSAT.

2. Inventions and technical data to which INTELSAT has acquired such rights

   (a) shall be available to each Signatory or any person in the jurisdiction of a Signatory or the Government which has designated that Signatory, on a royalty-free basis, for their use in connection with the design, development, construction, establishment, operation and maintenance of equipment and components for the INTELSAT space segment, and

   (b) may be made available to other persons and entities, or for other purposes, under such terms and conditions as the Governing Body determines to be in the best interests of INTELSAT.

3. Except as it may otherwise determine, the Governing Body shall endeavor to have included in all contracts or other arrangements for design and development work appropriate provisions which will ensure that inventions and technical data owned by the contractor and its sub-contractors which are directly incorporated in work performed under such contracts or other arrangements, may be used on fair and reasonable terms by each Signatory or any person in the jurisdiction of a Signatory or the Government which has designated that Signatory, provided that such use is necessary, and to the extent that it is necessary to use such inventions and technical data for the exercise of the rights obtained pursuant to Paragraph 1. of this Article.

INTELSAT Conference Issues

The Fear of Cultural Subversion

Issue

Should some provision be included in the definitive arrangements, or some other commitment given at the Conference or elsewhere, to meet the fears that have been expressed in several countries of cultural subversion through direct broadcasting by satellite?

Position U.S. Has Taken

This issue has not arisen in any formal sense in INTELSAT. It has been raised periodically in UN forums, most recently the Outer Space Committee. The U.S. has taken no position there, except to suggest, when the subject has arisen from time to time, that the technical side should be studied first, i.e., what is possible and what is likely on what time schedule. Recently we agreed to a study by a working group of the Outer Space Committee, still urging, successfully, study of the technical question first. The agreed terms of reference of the working group are attached.

Views of Others

Concern has been expressed in several European countries (e.g., Belgium, France, Germany and Switzerland) that the INTELSAT system, heavily influenced by the U.S., may become an instrument for flooding receiving countries with unwanted television programs, broadcast direct via satellite. Sometimes the originator is an unidentified "they" and sometimes the U.S. American cartoons are mentioned.

Several countries have, sometimes less explicitly, indicated the same concern in UN bodies, notably the Space Committee, urging that work be started to consider rules on direct broadcasting by satellite. Sweden, and to a lesser extent Canada were in the forefront of this push at the October session of the Committee which agreed to formation of the working group mentioned above.

Objectives

1. To avoid complicating the negotiation of the definitive arrangements with this issue, or letting

it be an obstacle to a successful conclusion of the negotiations.

2. To avoid any unnecessary or ill-considered commitment in connection with the definitive arrangements.

Discussion

With present technology there is no problem. Each country now has total control over TV reception via satellite. Direct TV broadcasting to homes still will be relatively easy to control for some time to come, with more advanced technology, since fairly expensive and fairly obvious receiving equipment still will be needed. However, the time may come, presumably, when TV reception via satellite will be almost as hard to control by the receiving country as radio reception.

Several states are concerned or have taken it upon themselves to be concerned about this and have urged development of international rules. As a result, we may note again that a working group of the UN Outer Space Committee has been formed to consider this.

There are, broadly, two approaches to the problem. One is to screen the content of direct international broadcasts. The other is to prohibit them except with the agreement of the recipient country. The first involves impossible political problems, the second, difficult, but more limited, technical problems. However, it is not the purpose of this paper to suggest answers, but rather how we should deal with the problem in the context of the INTELSAT definitive arrangements.

One of the basic premises of the U.S. position on the definitive arrangements is that INTELSAT should be enabled to exploit technological advances for the benefit of its members. Hence we would not want to rule out INTELSAT facilities for direct broadcasting and we should not agree to any provision to this effect.

If there is pressure for a provision on direct broadcasting in the definitive arrangements, our position should be that the UN Outer Space Committee is dealing with the question and that it is not necessary for INTELSAT

to take any position or do anything about it, at least pending the Committee's conclusions. If this does not satisfy the countries which are concerned we could suggest a provision in the definitive arrangements to the effect that the INTELSAT governing body will not authorize the use of INTELSAT satellites for direct broadcasting without full consideration by a meeting of the members and in accordance with the decision of the members.

Attachment:

Working group terms of reference.

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Terms of Reference of Working Group

The Committee considers that a Working Group should be set up to study and to report to the Outer Space Committee on the technical feasibility of communications by direct broadcast from satellites and the current and foreseeable developments in this field and the implications of such developments including comparative user costs and other economic considerations, as well as social, cultural, legal and other questions.

The first task of the Working Group would be to formulate a work schedule for its fields of study and a timetable. It shall, early in 1969, address itself to a study of the technical feasibility and technical characteristics of direct broadcasting from satellites including questions relating to user costs, informing itself of and fully utilizing the work in this field done by the ITU and other specialized agencies, and prepare a report. On the basis of this report the Working Group shall then proceed to consider additional economic as well as social, cultural, legal and other implications of direct broadcasting, again preparing a report on these implications. Both reports of the Working Group shall be transmitted to the Outer Space Committee to enable it to report on the matter to the XXIV session of the General Assembly.

The Working Group shall be composed of interested members of the Committee, represented in so far as possible by specialists. Representatives of the specialized agencies of the United Nations shall be invited to participate in the work of the Group.

The reports of the Working Group shall also be submitted to the Scientific and Technical Sub-Committee and the Legal Sub-Committee for consideration at their meetings, if their respective timetables permit.

The Secretary General is requested to provide the Working Group with whatever information is currently available to him on the subject of direct broadcasting from satellites.

The Committee expresses the hope that interested states, members of the United Nations, and the specialized agencies, will contribute comments and working papers to the Working Group for its information and guidance in the performance of its task.

INTELSAT Conference Issues

Amendment Process

Issue

What provision for amendment should be included in the definitive arrangements, specifically, in the intergovernmental agreement and in the operating agreement?

Position U.S. Has Taken

None.

Views of Others

Not very much has been said on this subject, and some of the views that have been expressed are not clear. A role for the proposed Assembly has been suggested, but the composition of the Assembly (i.e., governments or telecommunications entities or both) is not clear. Some suggestions also are not clear as to whether they apply to the intergovernmental agreement or the operating agreement or both and whether or not acceptance by governments would be required in addition to Assembly action.

The European countries (the CETS group) have proposed that "the definitive arrangements" should be subject to review and amendment by the signatory governments. The Assembly could make proposals and

"a review conference of the parties to the agreement should be convened if necessary". We assume this means the Assembly or a conference of governments would pass on proposed amendments, which would then be subject to approval by a specified majority of governments. Presumably this would apply to the intergovernmental agreement. Whether it also would apply to the operating agreement is not clear.

Canada proposed that the Assembly "amend the agreement as required". This proposal does not specify which agreement (if there are two) or whether subsequent acceptance by governments would be required.

Japan proposed that the Assembly could revise the entities' agreement.

Australia has proposed a conference of governments, to be convened at stated intervals or upon request, which could amend the intergovernmental agreement. This would be a separate fourth tier in the organizational structure.

Since it is the accepted practice to require approval by a specified majority of governments as the last step in the amendment process for an intergovernmental agreement, we can reasonably assume that most of our partners will expect this.

Objective

Our obvious objective is a procedure or procedures making amendments neither too difficult nor too easy.

Discussion

Since it seems clear that almost all the INTELSAT partners contemplate two separate agreements, an intergovernmental agreement and an operating (telecommunications entities') agreement, the proposed amendment procedure for the two agreements can be discussed separately.

Intergovernmental Agreement

An amendment procedure for a multilateral intergovernmental agreement usually consists of two steps. The first of these is consideration and approval of proposed amendments by a specified majority in a body designated by the agreement for this role (in several cases, the assembly of a sponsoring organization) or in a conference of contracting governments called for the purpose. The second step usually is acceptance by a specified majority of the contracting parties. Two-thirds is the usual majority requirement in both cases.

We see no reason why this procedure should not be followed for the intergovernmental agreement. It is

normally slow and often difficult, but the INTELSAT intergovernmental agreement should not be written in such a manner that it is likely to require early or frequent amendment.

The body to which consideration and approval of amendments would be assigned should be the assembly if there is an assembly which represents all of the contracting governments or a conference of governments called for the purpose if there is not.

In either case, any proposed amendments should be considered first by the governing body, which should be required to pass on to the assembly with its comments any amendments which are proposed and are not withdrawn as a result of the governing body's discussion. If the assembly represents governments, it would consider the amendments and approve or not approve. If it consists of signatory entities and not governments, it could pass on proposed amendments to governments with the comment of the governing body and any comment of its own, including its recommendation as to whether a conference should or should not be convened. It probably would be desirable to provide for calling a conference if either the assembly so recommended or a third of the contracting governments so requested.

There probably should be a provision to require distribution to governments of any proposed amendments well in advance (e.g. six months) of consideration by the prospective approving body.

Operating Agreement

The interim Special Agreement includes an amendment procedure. Article 15 of that Agreement provides that any proposed amendment shall first be submitted to the Interim Committee, and, if recommended by the Committee for adoption, shall enter into force for all the signatories when approved by two-thirds of the signatories. There is a provision, however, that no amendment may impose any additional financial obligation upon a signatory without its consent.

A generally similar procedure would be appropriate under the definitive arrangements.

As in the case of proposed amendments to the intergovernmental agreement, consideration by the governing body would be a useful first step. However, there are questions whether the governing body's approval should be required, and, if so, by what vote, and what, if any, role the assembly should play and by what vote.

If the Assembly does not represent signatories of the special agreement, then it should have no role.

If it is made up or includes representatives of all of them (whether or not governments also are represented), it would be appropriate for it to consider and approve proposed amendments. If approval of two-thirds of the signatories is required in any case, assembly approval, by a two-thirds vote, would not be a substantial additional obstacle. In fact the reverse is true - if a two-thirds vote of the assembly is not obtainable there is no reason to expect approval by two-thirds of the members. Hence, we are led to recommend that the approval of such an assembly by a two-thirds vote should be required.

Whether or not assembly approval is required, approval, or an affirmative recommendation, by the governing body would be a reasonable first step. It would give the U.S. more control if this were done on a weighted vote basis, requiring, for example, a two-thirds weighted vote or a simple majority weighted vote, in addition to or instead of a required numerical majority. The decision on this point, however, might follow the decision on voting in the governing body on other important issues.

After approval by the governing body and by the assembly, if required, acceptance by two-thirds of the signatories should be required. This could be accomplished by the act of voting in the assembly for any member that is willing or by subsequent written approval.

The final element in Article 15 of the present agreement is that no amendment may impose an additional financial obligation on any signatory without its consent. Whether some similar provision will be needed may depend on the content of the agreement, i.e. to what extent it establishes limits.

The same question can also be posed more broadly: What provision should be made for a participant which is unwilling to accept an amendment? (We do not mean here a participant that merely has not acted affirmatively to accept an amendment, but rather one that has declared its unwillingness to be bound by an amendment.) It can hardly remain in the organization and not be bound by an amendment, nor can it be forced to abide by an amendment (in effect a new agreement) it is not willing to accept. Probably this problem could best be met by a provision for opting out of the organization in such a situation, on the basis of an equitable financial settlement.

INTELSAT Conference Issues

Special Benefits for the LDCs

Issue

Should INTELSAT provide special benefits to the LDCs that would make the organization more attractive or rewarding to LDCs?

This refers to benefits that are essentially financial rather than organizational arrangements that might be advantageous to smaller countries. Two specific proposals have been considered. The first, discussed in Attachment A hereto, considers whether INTELSAT should finance earth stations, capital contributions to INTELSAT, or even terrestrial communications projects for LDCs. The second proposition is discussed in a separate Issue Paper dealing with INTELSAT procurement, and asks whether LDCs should be compensated by INTELSAT for their share of any additional costs incurred by INTELSAT by reason of procurement which has not been done at minimum cost (such as procurement in Europe). This question was raised in a paper submitted to the ICSC by Argentina, which suggested that compensation be given through a technical assistance program of equivalent value.

Discussion

We can expect at least some LDCs to argue at the Conference that benefits to them of INTELSAT membership are not significant, and that INTELSAT is dominated by and its services geared toward the richer countries. We can also expect the argument that the organization will never be truly global until the less developed countries have an opportunity to participate more meaningfully in INTELSAT.

The large number of LDCs that have, in fact, joined INTELSAT would seem to prove the second proposition largely wrong. There are relatively few countries with sufficient (or significant) international or long haul communication requirements that are not members of INTELSAT today, other than the Soviet Union, the eastern European countries and China, all of which are influenced by political rather than economic factors. In the rest of the world, there

are few countries that are logical candidates for membership that have not shown some interest in participating.

With respect to the first question, we think that Attachment A demonstrates that there is not much advantage to be gained by the U.S. from financing LDC telecommunications via INTELSAT.

We nevertheless believe that while the U.S., in its preparation for the INTELSAT Conference, has been focusing largely on the needs of Europe, the demands of the LDCs will in fact be heard quite clearly at the Conference. Consequently we need a paper which is not so much an issues paper as a brief that seeks to marshal the arguments why INTELSAT, as envisioned by the U.S. is beneficial to the LDCs. Such a paper is attached as Attachment B. [Paper to be prepared.]

Attachments:

A. INTELSAT and Telecommunications Financing.
B. INTELSAT Advantages to LDCs [to be prepared].

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Attachment A

INTELSAT and Telecommunications Financing

The purpose of this paper is to consider the possible need for new or improved financing facilities for telecommunications for the less developed countries and, particularly, the possibility of a special relationship between INTELSAT and the international loan agencies, the IBRD and its affiliates, the IDB, the ADB, etc.

The objects of new or improved financing facilities could be (1) earth stations, (2) capital shares for the (INTELSAT) space segment, or (3) terrestrial telecommunications projects.

The purposes of a special relationship could be (a) to strengthen INTELSAT by making it attractive in the sense that it could offer something that might not be obtainable through other channels, and (b) to channel more funds from the loan agencies into telecommunications.

Earth Stations

At present the biggest expenditure for satellite communications that the LDCs face is in the construction of earth stations. Total costs are now running, on the average, around $4 million, including local costs for land, access roads, buildings, etc., which usually amount to some 30% of the total outlay. Variations in total cost depend upon the amount of terminal equipment placed in the station. Stations in developed countries cost more as they are equipped to handle more channels than stations located in the developing countries.

To date, financing has been available on reasonable terms for the foreign exchange costs of an earth station in every case, so far as we are aware, where the project is considered economically sound. This is usually done through a financing agency of the exporting country, e.g., in the case of the United States, the Export-Import Bank. ComSat already has good working relations with these agencies on an informal basis. Tie-ins with other countries' earth stations through other means often will be possible where traffic prospects are not sufficient to warrant building a separate station.

There is no reason to believe this situation will change. Hence, there appears to be no problem with respect to earth stations, unless we wish to encourage construction of stations which are not economically viable, and this is a proposition we would not wish to endorse.

Space Segment

Capital inputs of LDCs for the space segment in INTELSAT do not appear to have been a problem to date, at least not a problem of serious proportions. The amounts involved are much smaller - now about $100,000 for the minimum contribution which will be required over a period of some time of most new LDC members. Possibly some countries may have been deterred by the need for a contribution on this order, but if this is so, they are certainly not countries which at this stage would have any practical use for the organization.

In any case, the question arises whether we would want INTELSAT, or international agencies, or the United States to meet or finance capital subscriptions. We would answer this negatively. To do so would have the appearance of bribing new members to join and could certainly contribute an air of phoniness to the members numbers game, and we do not see sufficient value in numbers to compensate for this drawback. There probably would also be problems as to which countries should and should not have financing made available.

Other Telecommunications Projects

The questions here are principally whether there is an unsatisfied need for financing and, if so, whether INTELSAT could help in meeting such a need.

On the first question, while we have not made a detailed study, our strong impression is that present facilities are ready to finance new projects about as fast as they should be financed if they are rated objectively in the overall spectrum of LDC assistance projects. AID, the international lending agencies, and national lending agencies all have done a great deal in this area. As with earth stations, there is a question of the soundness of the project, and going too far in this area could encourage manufacturer-salesmen to go too

far with unsound or premature projects. A major question, and perhaps the major problem in LDC telecommunications development, is the readiness of many countries to handle advanced types of equipment. This is a training and technical assistance problem, which is being partly, not fully met, but one which takes time and which financing alone will not solve.

INTELSAT Role

As noted above, ComSat already has good working relationships with national export financing agencies with respect to earth station financing. It also makes available advice and technical assistance. Certainly in this area there appears to be neither need nor substantial possibility for making INTELSAT more attractive.

There might be greater possibilities with respect to other telecommunications equipment since there appears to be somewhat more scope for additional financing. However, this is sort of a more than nothing situation; the more does not appear to be much more, or even clearly of any measurable volume, nor worth any unusual costs or efforts.

Costs and efforts would be involved in developing an INTELSAT role. INTELSAT is by concept and by charter a space communications organization. To develop a concern and a capability in conventional terrestrial communications would certainly involve efforts both in obtaining agreement to partially reorient the agency and to develop capabilities. How great these efforts would be we do not know. However, the question does not appear worth pursuing in view of the marginal nature of the benefits, if any, to be gained.

In summary, if our impressions are sound, there is no financing problem that requires a change in existing institutions and no reason to pursue the possibility of a new special role for INTELSAT with respect to financing of terrestrial communications.

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See Revision dated 1/2/69

LIMITED OFFICIAL USE

INTELSAT Conference Issues

Criteria for Investment

Issue

What criteria should be established in the definitive arrangements to determine the relative level of investment in the space segment of the system for each member? Should investment levels be fixed or should they be adjustable periodically? What period of adjustment is most desirable?

Position U.S. Has Taken

In our October 1967 proposals we said "It appears that the fairest and most logical way to determine the investment shares of members is to relate these shares to the members' respective use of the INTELSAT-financed assets and facilities.. These would include all Category A satellites and any Category B satellites financed by INTELSAT". The "use" contemplated is actual use of the INTELSAT-financed space segment of the global satellite system.

We subsequently elaborated our proposals in ICSC-29-33, November 17, 1967, and supplemented them with proposals to provide for minimum investment shares of 0.05% instead of 0.025% and broader representation of small shareholders on the governing body in ICSC-32-46, June 3, 1968. ICSC-29-33 should be read for details of our proposal.

Views of Others

The CETS countries, collectively, have suggested that investment be related to use and investment levels be adjusted periodically to reflect changing patterns of use. This proposal has not been further spelled out, so we do not know how closely the CETS countries' views now correspond to our own. Earlier some of them suggested, and France in particular urged, that investment be based upon projected levels rather than past levels of use and that prior commitments be made by member countries to finance fixed percentages of given satellite programs.

The UK has also suggested that anticipated use rather than past use be considered as the measure of investment. However, the UK departs from the French position by supporting periodic adjustment. Support for U.S. suggested reliance on past, and/or actual present use, comes from Canada, Japan and Australia.

Another alternative, proposed initially by Canada and more recently by Kuwait, is the possibility of each member paying a fixed, equal share of a portion of the total investment, and the balance being distributed among the members in proportion to use.

Mexico suggests investment through stock ownership with two classes of stock - common shares and preferred shares. The common shares would represent the fixed initial investment in the basic system and, it is assumed, would be voluntarily subscribed. Preferred shares would be purchased by proponents of a specialized, domestic or regional system, and that investment would be used in connection with such systems.

Objective

The primary U.S. goal is to obtain agreement on an equitable and workable financing arrangement for INTELSAT. The less underlying principles and practices now in force are changed, the smoother transition toward definitive arrangements in the investment area should be. Our proposals should be realistic financially and politically, and manageable from an accounting viewpoint, particularly when we consider that bookkeeping and financial management are areas likely to be given over to the "internationalized staff of the Manager" very early under definitive arrangements. The investment criteria and procedures adopted should support our basic single global system concept and reflect the nature of INTELSAT as an operating international public utility.

Discussion

Our principal concern has been to relate investment to use on an adjustable basis and to avoid (i) separate ownership of several satellites and (ii) frozen shares based on projected use. It appears that the first of these alternatives may no longer be a live issue as

regards the global system in view of the current CETS position. The second probably is more alive. This might not be too objectionable if it were confined to a basis of projected use and the element of adjustability were introduced into it.

We have strong indications that a substantial majority of foreign countries agree in principle with our investment proposal, i.e., there is a strong consensus on the point that investment in INTELSAT under the definitive arrangements should be related to or determined by relative use of the system. We still need to know, however, the more specific views of others on past, present and projected use as criteria and may have to consider further the pros and cons of specific criteria definitions as they emerge. It is anticipated the projected rather than past or present use figures will be favored by some influential countries such as France and the U.K.

Projections of future use of international telecommunication facilities in regional planning meetings in the ITU and INTELSAT have been shown by experience to be usually conservative. An aspect worth noting of the possible issue arising over selection of past, present or future use as a criterion is that new countries entering the system generally will have higher rates of traffic growth than those already in the system, and it is more important, indeed necessary, to consider their prospective traffic because of lack of present or past traffic figures. As between existing members of the system, their relative shares of total use are not likely to vary greatly from year to year and consequently projected use for them is not as critical. One might conclude, therefore, that the use figure to apply to each member should take account of the circumstances of the individual member, case-by-case, and reflect a responsible and reasonable judgment. Defining such a proposal in the Agreements will not be easy and more work on this point is required.

The nature of communication satellite financing to date has been in part dictated by a long-term U.S. goal of having INTELSAT become a non-profit, user-owned consortium in which capital contributions are returned and the payment of return on the investment

by users cancels out the investment earnings. This is possible if investment for each member is maintained at a relatively stable level over time and the pay-in and pay-out is in generally the same relative percentage of the total cash flow for each member. Therefore, the cost of using capital to a 5% user washes out against his earnings on the 5% of the total system investment which he made.

Investment under the Interim Agreements

Under the 1964 Agreement Establishing Interim Arrangements, shares of ownership in the space segment of the system (investment quotas), are determined under a modified principle of investment related to use. In the absence of any commercial communication satellite operations experience in 1964, members' probable use of the INTELSAT system had to be estimated for the initial period. Projected 1968 international telephone traffic data from the 1963 ITU World Plan (Rome) were slightly modified to establish a scale of "fixed quotas" for the initial period. It was provided that if the initial members participating in the negotiations all joined the system, they would be guaranteed certain minimum levels below which their quotas would not be reduced. (See Article XII of the 1964 Agreement).

Alternatives to a use criterion were considered prior to and during negotiation of the 1964 Agreements. A negotiated level of investment, which might reflect the political power, industrial capabilities and level of technological progress achieved by a given country was discussed with the USSR, but such an arbitrary arrangement was not considered politically viable or desirable. The USSR would not consider joining INTELSAT on international telephone traffic criteria and this was one factor that led to their non-participation in the creation of INTELSAT. In addition, there was the alternative of bilateral or regional multilateral agreements among operating entities, which was favored by the U.S. and some foreign carriers, but the requirements of the Communications Satellite Act of 1962 and the economies of scale and technological considerations of an international satellite system did not permit or support introduction into the satellite realm of these traditional forms of arrangements employed in other modes of international communications.

Justifying Investment Related to Use

We find that logic, good business sense and traditional practice favored the establishment for INTELSAT of a principle of investment related to use. Nations which make substantial use of any commercial communication system are generally required or expected to put up a substantial part of the cost of establishing the system. Commensurate with the level of investment for each user is a level of risk and responsibility for insuring the economic viability and technical integrity of the system. Having borne risks and provided appropriate technical and economic assurances, it appears reasonable to permit large investors to enjoy whatever benefits the economies of such communication systems may provide. Essentially, such an approach reflects the interests of large using countries. However, we are constrained both by national policy and by international commitment to protect and advance the interests of smaller users, as well as the interests of the United States and other developed countries.

Adoption of the investment/use principle is consistent with a desire to maximize economies for large users while offering substantial benefits for small users. A specific alternative that might be suggested, allegedly in the interest of the smaller using countries, is giving each country an equal, fixed investment share. While it may be considered politically desirable for each small user to have a voice of one or two percent in voting - with a future INTELSAT space segment cost approximating $200 million or more, a one percent interest amounts to $2 million. Adding such an investment requirement to earth station costs, plus terrestrial interface and networking costs in smaller countries may create an unmanageable burden for such countries. In addition, if all ITU members joined INTELSAT and each member had 1% of the total investment, we would have 135% investment. Simple arithmetic quickly dispells any theories of the advisability of equality of investment on fixed shares. Even the Soviet "INTERSPUTNIK" proposal calls for investment related to use.

We believe that establishing investment in INTELSAT at a level commensurate with use will most realistically and equitably balance the political and the economic interests of the larger and smaller users. In most small

or developing countries the desire and ability to pay will be commensurate with their relative levels of use. The poor, underdeveloped or small country will generate and receive relatively little international telecommunication traffic.

There are, in addition, legitimate reasons why the United States cannot accept reduction to the role of one "equal member" in an organization with currently more than sixty members and potentially well over one hundred members. Presently and for the foreseeable future, INTELSAT is and will be substantially dependent on the United States as (a) the world's largest single generator and recipient of international telecommunication traffic; (b) the world leader in the relevant technology; (c) the principal source of financial, technical manpower, and hardware requirements; and (d) apparently the sole available source for satellite launch capacity on acceptable terms and conditions. Furthermore, the difficulty in developing satisfactory alternatives to ComSat's continuation as Manager suggests to some extent that we may possess the only organizational and technical competence well enough organized at this time to manage and operate the global system.

The Indefeasible Right of Use Concept

In recent months the concept of investment related to use has been subject to close scrutiny within the USG as well as abroad. Commentators and government officials have been considering the advisability of modifying the concept of investment related to use to provide that users of the INTELSAT system be permitted to purchase an indefeasible right of use in one or several INTELSAT satellites.

It is argued that this proposal has the following advantages: (1) It permits budgetary planning for specified periods (life expectancy of the satellite) in specified amounts not subject to subsequent adjustments; (2) This simplifies and stabilizes accounting, rate making, and amortization; (3) It also limits investment requirements for individual countries because they would be required to invest only in satellites they would use.

A brief discussion of what indefeasible right of use is may help clarify the issue. The existing agreements under which transoceanic cables have been installed between the United States and other countries generally do not discuss the question of ownership. Each participant in the financing of a cable system purchases a "right to use" a number of circuits in a given cable. This right is "indefeasible" in that it cannot be revoked or denied without the consent of the user (financer), although adjustments may be made in the number of circuits dedicated to a user by mutual agreement with the other interested parties. In this kind of arrangement, each cable is considered a separate "system", readily identifiable physically, which interconnects two points - the cable heads - from which a variety of radial or networking systems may spread out in terrestrial service patterns. The investment share paid in is in proportion to the amount of capacity reserved as part of the total capacity.

In contrast to the physical characteristics of the cable, the "space segment" of the INTELSAT system involves (1) several satellites in space, with differing capacities, life expectancies and costs, serving different and overlapping areas; (2) related tracking, telemetry and control facilities on the earth's surface; and (3) the necessary administrative and operational facilities required for the maintenance and operation of the system. Thus, to equate an "indefeasible right of use" in a transoceanic cable with an "indefeasible right of use" in the space segment of the INTELSAT system requires some stretching of the imagination.

To accommodate the concept of indefeasible right of use in the context of a satellite system, one would have to contemplate specific financial arrangements relating to individual satellites, such as proposed by France, to be incorporated in the definitive arrangements for INTELSAT. It is by no means clear that the concept of "indefeasible right of use" in any way clarifies or simplifies the issue of financing the space segment and the related problems associated with the system, such as relative voting power. A major policy shortcoming of the indefeasible right of

use financing is that systems can be established readily by rich, developed countries with high traffic requirements, but as between LDCs there is little, if any, capacity provided in such a system. In addition, application of the indefeasible right principle leads to early rigidity in capacity allocation and utilization in any satellite system or generation established. Each investor would put up enough money to purchase sufficient capacity to meet his guaranteed traffic requirements. This practice neither provides adequately for nor encourages traffic growth at other than projected or planned rates.

The United States proposals for the definitive arrangements are ambiguous through silence on the question of ownership. We have consciously chosen to avoid generating discussion of "ownership" because, in its traditional sense, it is not really very meaningful when applied to communication satellites. Although INTELSAT will be roughly analagous to cable consortiums if investment is established for each member on the basis of its use of the system, for the aforestated reasons we do not believe that application of the principle of "investment related to use" in the global satellite system context is appropriately considered synonomous with the concept of "indefeasible right of use" in the context of submarine cable systems.

Investment Through Stock Purchase

The proposal to arrange financing of INTELSAT on a stock basis has been raised in the definitive arrangements context by Mexico. To structure INTELSAT as a stock corporation and introduce dividends, capital reserve accounts, and other accounting consequences of a stock structure, would complicate the attainment of an organizational and accounting structure leading to a straight cost, user-owned system in which no single user earns a dollar profit.

Some additional questions with respect to our proposal which have not arisen so far as we know, but might arise, are the following:

- Members which do not use the system may be dissatisfied with the proposal for no interest or other return on their (base share) investments (ICSC-29-33, page 5). Users whose use is less than a base share similarly might be dissatisfied.

- There might be objection to the investment adjustment proposal on the ground that some members will have difficulties in making funds available periodically for increased investment requirements without decisions on their part.

Probably none of these problems is serious. However, we should develop answers.

E/TD:SEDoyle/TENelson/WKMiller:sp
11/18/68

See Revision Dated 12/27/69

November 19, 1968

DEFINITIVE ARRANGEMENTS POSITION PAPER

PROCUREMENT POLICY

I. Background

Article X of the Interim Agreement establishes a procurement policy which emphasizes the necessity of obtaining the best product at the best price. Article X also envisages, however, distribution of contracts and subcontracts among INTELSAT signatories in accordance with their investment quotas. This latter provision was included in Article X at the insistence of European countries who hoped to insure their participation in INTELSAT contracts.

During the interim period, however, INTELSAT has been unable to implement the quota provision of Article X fully because INTELSAT members, other than the United States, have not had sufficient capability to provide for prime responsibility in the manufacture of equipment for INTELSAT programs. Nonetheless, international participation did take place in the INTELSAT III and the INTELSAT IV programs through subcontracts from United States contractors to foreign firms. This foreign participation created additional costs for these programs.

It is proposed in this paper, first, that no quota formula for the distribution of contracts and subcontracts be included in the procurement provisions of the definitive arrangements and second, that INTELSAT procurements be based upon the normal commercial standard of securing the best product at the best price, with international participation encouraged if competitive.

II. Recommended United States Position on Procurement Policy under the Definitive Arrangements

The language of Article X of the Interim Agreement provides that when proposals or tenders are determined to be comparable in terms of quality, price and timely performance, the Committee shall seek to insure that contracts are distributed in approximate proportion to members' respective

quotas. When the Interim Agreement was negotiated in 1964, the prospective membership of INTELSAT was confined mainly to industrialized countries. Since 1964, however, membership in INTELSAT has increased by some 40 members, and two-thirds of INTELSAT's 63 members can be classified as developing nations which have no capacity to participate in INTELSAT contracts. Therefore, the quota provision in Article X, which was intended to apply to a small group of industrialized countries has become more unworkable as the organization has grown. Its continuation under the definitive arrangement would be meaningless except to create difficulties. For example, the provisions of the quota system in Article X are now used by the European members of INTELSAT to exert pressure upon the organization for INTELSAT contracts. The Europeans complain that the quota provision of Article X has not been properly administered since the proportionate amount of the procurements they have received has not equalled their investment in INTELSAT.

During Committee discussions of the INTELSAT III and IV contract, objections have been voiced by representatives of non-European countries and especially by developing countries, over the favoritism afforded the European owners and subsidization by them of additional costs associated with European participation in subcontracts.

The definitive arrangements should reemphasize the policy of procuring equipment for the space segment on the basis of quality, price and timely performance if they are to be reflective of a cooperative organization which is pledged by its preamble to provide satellite communication facilities to its members on the most economical basis possible. An organization in which a substantial majority of its members are unable to participate in INTELSAT contracts must not advocate a procurement policy under the definitive arrangements which would benefit the minority at the expense of the majority. The United States should advocate a policy under the definitive arrangements which, while recognizing the value of promoting wide international participation in INTELSAT contracts, also recognizes that such participation must be subordinated to best price and quality. The United States should propose the following language to replace the procurement article of the Interim Agreement:

> The Governing Body shall endeavor to insure that all contracts are awarded on the basis of the best quality, best price and timely performance. The Governing Body shall endeavor to insure the widest practical international participation in contracts and subcontracts consistent with the foregoing principle.

The proposed language retains the emphasis upon securing the best equipment at the best price and still "encourages" international participation provided it can be accomplished on a competitive basis. The Governing Body would have complete flexibility to determine the best means of distribution of contracts on an international basis provided that the requirements of price, quality and timely performance are met.

Superseded by version dated Dec. 19, 1968.

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INTELSAT Conference Issues

The Manager

Issues

What should be the arrangements for management functions under the definitive arrangements? Should ComSat remain as Manager, or should the management function be filled by an entity separate from the U.S. signatory? Should the Manager be internationalized? Should an international Manager have the same functions as the present Manager, particularly should it perform extensive technical functions or obtain these by contract?

Position U.S. Has Taken

Our October 1967 submission to the ICSC said " . . . in order to provide continuity and to make use of the experience accumulated, ComSat should be designated as Manager". We have, however, advocated international participation in the management function, i.e. hiring by ComSat or personnel from other member countries, and proposed that the Manager could be changed by proposal of the Governing Body approved by the Assembly.

Views of Others

Several of our partners (Belgium, Netherlands, Canada, UK, Japan) have taken the position that the Manager should not be identified with any participating entity and that the Manager should be internationalized.

Australia has said ComSat should not be excluded, but all possible measures should be taken to separate the managerial functions from the role of a signatory.

Japan has proposed a Secretariat which would exercise certain managerial functions.

Various parties have advocated designation of the Manager by the Agreement (UK), the Governing Body (Australia), and the Governing Body with the approval of the Assembly (Canada, Japan).

However, our partners realize that there is no immediate alternative to ComSat and that any change will take time. Several countries have suggested the necessity of transitional steps from ComSat to an international Manager.

Objectives

(1) an efficient management body, and

(2) the maximum degree of U.S. control of and through the Manager compatible with the views of our partners and the reputation of INTELSAT as a genuinely international organization, not dominated (or not excessively dominated) by the U.S.

Discussion

Rightly or wrongly, most of our partners probably are opposed to the present arrangement with the U.S. signatory as Manager, and, though this is less clear, probably most of them would also be opposed to a separate U.S. corporation as Manager. They argue conflict of interest, real or potential. Possibly more seriously, they clearly have strong political objections.

It is unlikely that our partners would accept the status quo without provision for change. If they did, they would do so only under great pressure and grudgingly. Acceptance of the new agreement and the long run success of the organization probably would be seriously imperiled.

At the same time there is general recognition that ComSat is the only body competent to manage the affairs of the organization for the period immediately ahead. Consequently provision for change rather than an immediate change is called for.

Two papers prepared for Panel IV have discussed managerial needs, attitudes and options in some detail, one prepared by ODTM, dated May 27, 1968, and one by FCC, dated May 29, 1968. The present paper should be read along with both of these.

Both of the earlier papers describe options in terms of the arrangement that would finally emerge rather than how the matter can be handled by the Conference and in the emerging agreements. They are useful for this purpose. The FCC paper particularly has a useful list of options and a realistic evaluation.

The present paper considers the problem more from the standpoint of what we can do at the Conference, how it can arrange for an answer as much as the substance of the answer. From this standpoint, broadly speaking, the options include the following:

1. Insist on our proposal, ComSat to be named in the agreement as Manager, but with provision for change by proposal of the Governing Body with the approval of the Assembly.

The real substance of this proposal is that ComSat continues as Manager until the Governing Body wishes other arrangements. Since it is generally recognized that ComSat is needed for a transition period, this might be obtainable, provided there is a definite understanding that a change is anticipated. There might also have to be an understanding on the nature of the anticipated change. In any case, the substance of this arrangement probably would be more readily obtained and with better feeling on the part of many of our partners if the question of the identify of the Manager is left to the Governing Body and not named in the agreement (see below).

2. Provide in the agreement for designation and possible change of the Manager by the Governing Body with the approval of the Assembly.

This provision could and probably would produce exactly the same result as above, but possibly with less offense to the political sensitivities of some of our partners. There would have to be an understanding that a change is anticipated, probably to some form of internationalized Manager. Acceptance also would depend on voting arrangements, or at least a clear understanding, that would not enable the U.S. to decide the issue alone in the Governing Body.

This would protect our interests and probably is the best arrangement that might be obtainable. Hence, we should be prepared to accept it, with the timing and circumstances subject to tactical considerations, i.e. making our view known at or before the Conference when we can best use whatever concession is involved.

3. We could go beyond this and accept in the agreement provisions for internationalization of the management function.

This would be acceptable if it should be really necessary and if transition provisions and timing are sufficiently flexible. However, there probably would be some disadvantage from the domestic political standpoint. No matter how flexible the agreed provisions, there probably would be some tendency to phase out ComSat and move to an international Manager more rapidly than under a less explicit provision.

There are of course all sorts of different possibilities for such an arrangement, and varying sorts of understandings under 2 and 3 above and falling between the two concepts, that might be considered. Generally speaking, probably the more we can leave to the Governing Body and the less change specifically provided for in the agreement the better.

Any of these options leaves further questions regarding the nature of an internationalized Manager and how it can be created, and whether or not a separate Secretariat would be useful. Would it be a partnership like INTELSAT, owned and controlled in proportion to investment, a new type of international corporation, or some other type of legal personality?

Particularly important is the question of the responsibilities of an internationalized Manager. One concept would give the Manager the same responsibilities that ComSat now has as Manager, and require the same capabilities. It would be responsible for system planning, design recommendations, procurement, and operation as well as finance, accounting and administrative support for the Governing Body. This type of organization would take a long time to develop on an international basis.

Another concept would be a Manager with the usual attributes of a secretariat, such as administrative support for the Governing Body and accounting. Finance and contracting responsibilities might also be included, but the functions of the present Manager requiring technical expertise would be handled by one or more private firms under contract. This concept would be easier to implement in a fairly short period. Presumably it would use ComSat as the sole or principal contract firm, at least in the initial period.

It is suggested that these questions could best be left to the Governing Body, though there might have to be some degree of understanding on the broad outlines of an intended

arrangement. If it were useful to meet the wishes of our partners, there could be a resolution of the Conference calling on the Governing Body to consider these questions and develop plans, or, if necessary, outlining the concepts to be considered. Such a resolution would be regarded as a guideline, but should not bind the Governing Body beyond broad guidelines.

E/TD:WKMiller:sp 10/18/68

Superseded by version dated 12/12/68

INTELSAT Conference Issues

Regional Systems

Issue

The question is whether there should coexist with a unified, global satellite system (i.e., the successor to the present INTELSAT system) other systems which are separate from but related to the global system and which serve international traffic requirements. These systems would be separate in the sense that the decision to establish the satellites would be made by some but not all INTELSAT members, which would finance the project, own it and determine questions of price, nature of service, procurement, etc., issues which are at present determined by the ICSC for all communications satellites. The relationship with INTELSAT could take on a variety of forms, but the only thing generally agreed upon now is that some sort of "technological coordination" is required, i.e., coordination to avoid frequency interference.

Thus conceived the issue is different from the issue whether, indeed, there should be a unified (in terms of ownership and control) global INTELSAT system at all.

If it is assumed that separate regional systems should or will be permissible under the definitive arrangements, there are additional issues, including the following:

(1) How should the acceptable coverage of such a system be defined? Is the CETS regional definition satisfactory? Should we seek a more specific understanding as to what it means as applied to Europe?

(2) What role should INTELSAT or its governing body have in the consideration of proposed regional systems?

Position US Has Taken

The US has not favored any regional systems. The first public statement was made by the President in his message to the Congress of August 14, 1967, in which he said:

> "If the regional satellite is to carry international traffic as well, [as distinguished from a satellite that provides domestic services to more than one nation, which the President's message treats the same as pure domestic satellites] INTELSAT--the international communications consortium--has an important stake in the result. Adequate

provisions must be made so that any international traffic which is diverted will not jeopardize the economic efficiency of the INTELSAT system or limit its extension to developing countries."

The background of this position is relevant here. In connection with USG thinking on definitive arrangements it had been decided that it was both logical and desirable from the US point of view to provide for satellite systems serving domestic needs that would be "separate" in the sense defined above. This was largely based on our feeling that we and maybe others would not want to depend upon international decisions for utilizing satellite services for domestic purposes. In our thinking (which became the October 1967 US position paper) we provided for three different degrees of separateness of domestic system, the first of which was not really separate at all but involved INTELSAT simply providing a satellite for such purpose. The third was quite separate, but took account of the inherent international characteristics of satellites by providing that INTELSAT would have to in essence approve of the frequency utilization plan and orbital position of any such domestic satellite.

Already then some Europeans had suggested that there should be provisions (perhaps similar ones) for regional satellites. While we did not accept the logic of this equation between domestic and regional systems, there was general recognition that there would be considerable political drive in that direction. After some further thought we concluded that any reference to regional systems ought not only to require the minimal technical coordination which we believe would be necessary for domestic satellites, but also require some protection against economic damage to the INTELSAT system. That is the purpose of the President's language.

The US October 1967 submission to the ICSC said nothing about regional satellites. This was a deliberate omission based on at least four considerations: i) we felt that regional satellites did not make any communications or economic sense, and, therefore, it was illogical to propose them; ii) we felt that it would be difficult to devise a structure of an agreement that would assure that the test of no economic harm would be met; iii) we believed that some of

of our partners probably would be opposed to regional satellites (for generally the same reasons as we were), and in view of this we saw no reason why we should either propose such a scheme or try to defend it when we really didn't want it; and iv) tactically, we believed that there might come a time when we would want to bargain with the Europeans for something we wanted in exchange for a retreat from our essentially negative position on regional satellites.

Since that time we have told the Europeans that we continue to think a test of economic damage to the global system should be applied to any regional satellite proposals. We have, however, added that it might well be that a satellite limited, for example, to television distribution inside Europe might well meet the test of no economic damage to INTELSAT. This was in distinction to systems of wider, intercontinental scope. At the ICSC meeting in November ComSat supported the European positions in favor of regional satellites confined to a compact geographical area (see below).

Views of Others

There has been in Europe a widely-shared belief that the INTELSAT agreements must provide for the possibility of regional satellites. This is reflected in the CETS October paper, which proposes that "provisions should be made for the establishment of separate satellites...by a group of parties to the arrangement to meet their regional needs." The term "regional" is stated to refer to "a geographically compact group of countries linked together by cultural or economic ties." The French reserved on the definition of "regional." The CETS paper also says the group of countries planning a regional system would have to consult the governing body of the Organization, which could "pass recommendations" concerning technical compatibility with the Organization's plans and economic compatibility with the global system.

At the November meeting of the ICSC a majority of Committee members (including the US) recommended that groups of members should have the right to establish an independent regional system and recommended the CETS definition of "regional." There was "substantial support" for a definition of "regional" as referring simply to "a geographically compact group of countries," and a proposal (by France) without support, that "regional" refer to "groups of countries linked together by cultural or economic ties."

The only clear view against regional systems expressed in the ICSC came from Japan, which, at an earlier date, opposed the creation of any independent regional satellite systems.

The French have discussed the issue in terms of extending the concept of separate domestic satellite systems.

It seems fair to say that the strongest argument for regional satellites in Europe stems from political and technical-scientific considerations, rather than communication ones. In fact, several Europeans--the Danes, the Germans and the Swiss, for example--have expressed misgivings about the common sense or economic wisdom of separate European satellite systems--particularly for television distribution, even though that is the most discussed form of regional system. They point to an extensive and underutilized microwave system built for this very purpose, and to the relative short distances involved in most European transmissions. However it was decided at the European Ministerial Space Conference in November to proceed with a $100 million European TV relay satellite system.

The two advantages the Europeans see to a regional system are: First, the establishment of a "protected zone" (Belgian phraseology) for European efforts in the field of space research, development, and production. Without such a protected zone Europe would continue to have to compete with the advanced Americans, and would never graduate from its present sub-contractor, junior-partner role. Second, a regional system is needed as a political or a psychological balance for a US domestic system.

For these reasons Europeans tend to favor an agreement providing for regional systems, even though they may doubt that such a system would in fact be established or that they would participate. The Italians (Telespazio) thought that the economics of a regional system looked so dismal that it figuratively and literally would not get off the ground if there were a good global system. The UK is generally confident that its space industry will do rather well, at little cost to the UK, by a continuation of the present process of INTELSAT procurement. There is a clearly discernible trend in INTELSAT toward procuring more and more complex hardware from Europe with each new family of satellites.

Discussion

It is clear that European pressure for regional systems

will be a major force in the negotiations, and our job is to devise a way in which regional systems could be accomodated in a manner as consistent as possible with our objectives.

The risks of economic inefficiency really are of two kinds. The first stems from the fact that both satellites and earth stations appear to offer great economies of scale. Satellites are becoming increasingly more expensive and able to carry more traffic, though cheaper on a per circuit basis. Economies will be realized if there is no unnecessary duplication of these transmission facilities and if the use of these facilities is rationalized.

The position of the LDC in all this is particularly important. It seems quite clear that most LDCs in Africa and Latin America and in substantial parts of the Middle East will be able to handle their full traffic requirements within their continent, with Europe, and with the US by the use of one earth station that works with one satellite. If that satellite is reasonably full the per channel cost will be low. If there are two satellites to handle all or a portion of this traffic, then not only will the per channel costs for the satellite use be greater, but also the LDC will have to install a second earth station (or at least a second antenna) to work with the second satellite.

It follows from this that the US policy ought to be of finding a formula which would discourage or make impossible the establishment of a separate satellite system that would do just what the global system is primarily set up to do.

An intra-European satellite system is perhaps difficult to distinguish on logical terms from other regional systems, but it can be distinguished on practical terms. It is only the Europeans that want a regional system because of their scientific and technical ambitions and they could certainly afford one. Since it has not been contemplated that much intra-European traffic would be sent via satellite anyway, it can be said that the damage to the global system is relatively small.

There are two basic approaches that can be followed to limiting the possibility of injurious regional systems. The first would seek to define in the agreement the kinds of regional systems that are permitted and the kind that is not. For example, one could talk about a regional system limited in geographical coverage or by certain ties, such as the CETS

definition. The second approach would seek instead to put the burden on the INTELSAT organization of the future to give or withhold its approval of the creation of a regional system and would set forth in the agreement guidelines as to the conditions under which approval would be granted. Of course a combination of the two methods also would be possible.

The principal disadvantage of the definition approach, especially if it is used alone, would be that it would permit separate satellites almost anywhere, by any group. There would be no barrier, in the agreements at least, to proliferation of uneconomic systems.

This danger probably is more theoretical than real, however, because it is only the Europeans, in the immediate future at least, who have sufficient incentive for a separate system. In any case, it probably would be very difficult to agree on guidelines that could be construed as discriminatory in permitting separate systems for developed areas (Europe) and not for other areas. In view of these considerations and because of the strong position of the Europeans, the real questiions probably are those stated above, how to define "regional," whether the CETS definition is acceptable, and whether there should be a more specific understanding of its meaning as applied to Europe.

The answer to the first two questions we suggest is the CETS definition probably is about as good as any we could propose. It has the advantage of considerable existing support. It would be desirable, however, both to limit the coverage in this case and for the sake of precedent to seek a recorded understanding that a compact European region is confined to Europe and adjacent islands (the UK) and does not include North Africa.

We should also seek to incorporate in the definitive arrangements an obligation of members to refer proposals to the INTELSAT governing body for consideration. There are then questions of what authority, if any, the governing body could have with respect to such proposals (e.g., would it have to approve, or could it only comment) and under what criterion. Generally speaking, the greater the governing body's authority, the better, but what we might hope realistically to accomplish in this area needs further study.

A requirement for coordination from a technical standpoint is a must and a requirement for governing body approval from the standpoint of economic compatability is desirable if it can be obtained. The CETS wording on both points probably would be satisfactory if the concept were changed from recommendation to approval.

E/TT:FELoy:WKMiller:fbp 11/22/68

FORM DS-14
4-1-55

DEPARTMENT OF STATE
WASHINGTON

INTERDEPARTMENTAL REFERENCE

DATE

11/7/68

REFERRED TO

Mr. O'Connell

RE:

WRITER ☐ HAS ☐ HAS NOT BEEN INFORMED OF THIS REFERENCE

COMMENTS:

This is the paper on procedures which Mr. Marks wants to discuss at the meeting November 21.

Attachment.

SIGNATURE

William K. Miller, Director

OFFICE OR DIVISION

Office of Telecommunications

INTELSAT Conference Issues (Revised 11/2/68)

Rules of Procedure - Voting

Issue

Draft provisional rules of procedure are attached. The most important issue is voting. How will the Conference conduct its business and approve and adopt its conclusions? (These questions need to be considered in the context of the question how the new agreements will be brought into effect, superseding the old, which is the subject of a separate paper.) There is also a question just what role observers will have.

Position U.S. Has Taken

The draft rules have not yet been circulated outside the U.S. and the U.S. has not taken any position on the voting issue or on the role of observers, except to say that we do not anticipate that non-members will vote at the Conference.

Views of Others

Several of our partners have concurred that non-members should not be allowed to vote and a few have taken the opposite position. Many have agreed that non-members should be allowed to be present as observers. We do not know our partners' views on voting requirements or the specific role of observers. Probably very few have considered the question.

Objectives

To conduct the business of the Conference effectively and reach conclusions supported by an acceptable majority of the members.

Discussion

The 1964 Conference operated on the basis of few and simple rules. There was no voting and decisions, including decisions on the texts of the agreements, were reached by consensus.

If this plan were workable it would be best. There would then be no basis for complaint by any member about the

new agreement and there might be less chance of serious difficulties with any member which eventually chooses not to participate in the new agreements.

The great difficulty with this plan is that it requires unanimity, or at least willingness of those thought to be in the minority to be silent. This worked well enough among a small number of countries, but is hardly likely to work among 63 countries with well established differences.

The questions then are what is an acceptable level of support for the agreements produced by the Conference and what voting procedure would give the best chance of obtaining this?

The size of and reasons for an "acceptable" majority are, of course, key questions. They relate mainly to the question of bringing the new agreements into effect, replacing the old. An acceptable majority must be, at minimum, large enough to avoid any reasonable impression that dissenting members have been required to accept something they oppose arbitrarily or by narrow margins.

With both efficient conduct of business and an acceptable level of support in mind, the following rules are suggested:

1. Member Governments only vote - no vote for non-members. This is logical in view of the nature of the Conference, a meeting of partners to organize and update their organization.

2. Each Government has one vote - no weighted voting. The Conference cannot succeed without a very substantial numerical majority and any proposal by the U.S. for weighted voting would be resented by our partners as well as advertised as proof of intent by the U.S. to dominate INTELSAT.

3. As many decisions of all kinds as possible would be reached by consensus. Voting would be used only in the absence of consensus or on the request of a delegation.

4. Voting by show of hands, or by roll call if the show of hands is inconclusive or if a delegation so requests.

5. Procedural decisions by majority vote of those present and voting for or against. The intent is simply to have a means of decision in order to be able to proceed.

6. Substantive decisions (decisions on the content of the agreements), except for final approval of agreement texts or parts of texts after they have been reported to the plenary by the Editorial Committee, by a two-thirds majority of those present and voting for or against.

7. Plenary decisions on the final texts or parts thereof by a two-thirds majority of the delegations participating in the Conference.

The majority requirement for procedural matters and two-thirds for substantive votes are common to many conferences and organizations. (It is also noteworthy that the INTELSAT Special Agreement provides for amendment with the approval of two-thirds of the signatories.) Relating these requirements to those present and voting for or against, i.e. excluding absentees and abstainers, is intended to avoid giving absence and abstention a negative effect and to make it easier for the conference to do business. However, the requirement of two-thirds of the participating delegations for final votes would avoid the possibility of decision by a small group.

An alternative way of meeting this point would be to require a vote of two-thirds of those present and voting, provided the affirmative vote constitutes a simple majority of the participating delegations. The two-thirds requirement as applied to the total is the more usual arrangement, however, and does not seem to be an excessive requirement.

It has also been proposed that a three-fourths margin should be required for the final votes. This would have the advantage over two-thirds of being clearly a requirement for a greater degree of consensus than is normally required. However, it also would afford greater possibilities for relatively small groups to block approval of the agreements or parts of them and thereby carry inordinate weight in decisions on content.

It is important in connection with any proposed voting arrangements requiring less than unanimity to make clear that we contemplate providing for buying out on an equitable basis any INTELSAT member that does not choose to accept the new agreements. No member should be in the position of being overruled on the content of the new arrangements without the option of selling his investment share on a fair basis.

As to the role of observers, one view, reflected in the attached draft rules of procedure, is that they should not be allowed to vote, but should be allowed, at the invitation of the Chairman, to submit written comments and speak on relevant matters. This is traditional practice in most international organizations and conferences. There is a presumption that observers will be present because of an interest in the possibility of joining the organization, and it would make their role more meaningful if they can be given an opportunity, within reason, for expression.

The other view is that observers should be present to observe only and should not be afforded an opportunity to speak or submit papers. The objective would be to avoid potentially disruptive intrusions. However, there appears little reason to think the usual observer's role would be abused and there probably would be considerable difficulty with some of our partners if we try to minimize the observer role. This also would be in some conflict with the avowed aim of universality.

Attachment:

Draft rules of procedure.

E/TD:WKMiller:sp 11/2/68

PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM (INTELSAT Conference)

PROVISIONAL RULES OF PROCEDURE

I - PURPOSE

1. This Plenipotentiary Conference, called to consider the report and recommendations of the Interim Communications Satellite Committee concerning the definitive arrangements for the international global commercial communications satellite system, shall be known as the Plenipotentiary Conference on Definitive Arrangements for the International Telecommunications Satellite Consortium. It may be referred to in brief as the INTELSAT Conference.

II - REPRESENTATION

2. Participation in the Conference shall be open to Governments signatory to the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System and to duly designated communications entities signatory to the Special Agreement. Each participating Government and its duly designated communications entity, if any, shall be represented by a delegation (a single delegation for each country) composed of a Representative and such Alternate Representatives and Advisers as may be deemed necessary. Their names shall be communicated to the Secretary General of the Conference by or on behalf of the Minister of Foreign Affairs of such Governments at least 24 hours prior to the opening of the Conference. An Alternate Representative or an Adviser may act as a Representative.

III - OBSERVERS

3. Invited Governments which are not signatories to the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System and invited international organizations may be represented at the Conference

by observers. The names of such observers shall be communicated to the Secretary General of the Conference by or on behalf of the Minister of Foreign Affairs of such Governments, or in the case of international organizations, by the Secretary General of the organization, at least 24 hours prior to the opening of the Conference. Observers shall not have the right to vote, but, at the invitation of the Chairman, may submit written comments and may speak on matters relevant to the work of the Conference.

IV - OFFICERS

4. A representative of the host Government shall be the Temporary Chairman and shall preside until the Conference elects a Chairman.

5. The Conference shall elect from among the Representatives a Chairman and four Vice Chairmen. The Chairman shall designate a Vice Chairman to preside in the event of his absence, who in such a case shall have the same powers as the Chairman.

V - SECRETARIAT

6. The Secretary General of the Conference, appointed by the Government of the United States of America, shall provide and direct such technical and administrative staff as may be required by the Conference. He shall be responsible for making all arrangements for the sessions of the Conference, its committees or working groups and generally shall perform all other work which the Conference may direct or require.

VI - COMMITTEES

7. The Conference, to facilitate its work, shall establish a Steering Committee, a Credentials Committee, and an Editorial Committee, and may establish any other committees or working groups it deems necessary for the performance of its functions, and may define their terms of reference. The Steering Committee shall be chaired by the Conference Chairman or his duly designated Vice Chairman, and shall be composed of the Conference Chairman, the four Conference Vice Chairmen and the Chairman of each Conference committee.

8. The committees shall operate under the rules of procedure of the Conference, to the extent that they are applicable.

VII - SESSIONS

9. The inaugural and closing sessions of the Conference shall be held in public unless the Conference shall determine otherwise. Other plenary sessions and meetings of committees and working groups shall be closed unless the meeting shall determine otherwise. Such sessions and meetings shall, however, be open to attendance by observers unless the meeting shall determine otherwise.

VIII - CONDUCT OF BUSINESS

10. The Chairman shall exercise the powers of his office in accordance with customary practice. In the exercise of his functions, he shall remain under the authority of the Conference.

11. Except as otherwise provided, the Chairman shall call upon speakers in the order in which they signify their desire to speak. The Chairman may call a speaker to order if his remarks are not relevant to the subject under discussion. The Chairman may limit the time to be allowed to each speaker on a question and the number of times each speaker may speak on the question. When the debate is limited and a speaker has used his allotted time, the Chairman shall call him to order without delay.

12. A Representative may at any time move the closure of the debate on the question under discussion, whether or not any other Representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

13. A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any Representative.

14. When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the Representatives present and voting, so decides. Permission to speak on the motion to reconsider

shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

15. Any delegation may designate another delegation to speak on its behalf, but no delegation may cast a vote on behalf of another delegation.

16. During the discussion of any matter, a Representative may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with the rules of procedure. A Representative may appeal against the ruling of the Chairman. A Representative rising to a point of order may not speak on the substance of the matter under discussion.

17. The following motions shall have precedence in the following order over all other proposals or motions before the meeting:

a) To suspend the meeting;

b) To adjourn the meeting;

c) For the closure of the debate on the question under discussion.

18. The order of precedence, when applicable, shall be by Government in accordance with the alphabet in the English language.

19. Proposals and amendments shall normally be introduced in writing in a working language of the Conference and submitted to the office of the Secretary General, which shall circulate copies to the delegations.

20. Voting

a. Definitions

For the purpose of these rules, the phrase "Representatives present and voting" means Representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

b. Quorum

A quorum shall be two-thirds of the Representatives to the Conference.

c. Decisions shall be taken as follows:

1. Each delegation represented at the Conference shall have one vote.

2. The rules of procedure and any amendments thereto shall be adopted by a two-thirds majority of the Representatives present and voting.

3. Decisions on matters of substance, except as otherwise provided in section d of this Paragraph, shall be taken by a two-thirds majority of the Representatives present and voting.

4. Decisions on matters of procedure, except as otherwise provided in this Paragraph, shall be taken by a simple majority of the Representatives present and voting.

5. If a question arises whether a matter is procedural or substantive, it shall be decided by the Chairman. Challenges to the Chairman's rulings shall be considered substantive.

d. Adoption of texts of the Definitive Arrangements

In voting upon the proposed texts of the definitive arrangements presented to the Conference by the Editorial Committee, the Conference shall endeavor to act unanimously. In the event that the Conference is unable to act unanimously, the proposed texts and amendments thereto shall be considered adopted when they have been approved in plenary session by two-thirds of the Representatives participating in the Conference.

e. Method of Voting

1. The Conference shall normally vote by a show of hands, but may vote by roll call if the show of hands does not indicate a clear result or if any Representative requests a roll call. The roll call shall be taken in the English language alphabetical order of the names of the Governments participating in the Conference.

2. The Chairman shall announce the beginning of voting. No Representative shall interrupt the voting except on a point of order in connection

with the actual conduct of the voting. The Chairman may permit Representatives to explain their votes after the voting. The Chairman may limit the time to be allowed for such explanations.

3. A Representative may move that parts of a proposal or of an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favor and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to a vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

4. When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

5. If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

IX - LANGUAGE

21. English, French and Spanish shall be the official and working languages of the Conference.

22. Any Representative or spokesman may speak in a language other than an official language. However, in such cases, he shall provide for interpretation into one of the official languages.

X - RECORDS

23. The Secretary General shall have prepared summary records of the plenary sessions, and of such committee meetings as the Conference Chairman may determine.

24. Conference documents and summary records shall be made available in the official languages of the Conference.

25. Any Representative shall have the right to have circulated as a Conference document any statement relative to an item under discussion. Such statements shall be submitted to the Secretary General in writing in an official language of the Conference.

XI - FINAL ACT

26. After the final texts of the definitive arrangements have been adopted by the Conference, they shall be opened for signature.