

COMMUNICATIONS SATELLITE CORPORATION

DATE: March 12, 1969

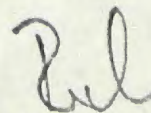
MEMORANDUM

TO: Frank E. Loy

FROM: Richard R. Colino

at

Attached is a draft statement on "Relationship of INTELSAT with the ITU," old item X on the agenda of Committee I. With this document, you have been provided with draft statements for each item on the agenda of Committee I.



Richard R. Colino

cc: U.S. Delegation

RELATIONSHIP OF INTELSAT WITH THE ITU

Several ITU activities are of particular relevance to communications satellites and will have a substantial impact on INTELSAT programs (e.g., allocation of frequencies by administrative radio conferences, development and adoption of CCIR technical recommendations relating to the avoidance of harmful interference between different services sharing the same bands and between satellite systems).

The United States, as set forth in our draft Preamble, believes that INTELSAT should provide an efficient and economical service consistent with the best and most equitable use of the radio spectrum. We favor the proposal set forth in the Report of the Interim Communications Satellite Committee on Definitive Arrangements for an International Global Communications Satellite System (Document 6, paragraph 563) that problems relating to technical and operational coordination between satellites intended primarily for international public telecommunication services and domestic and specialized satellites be dealt with by the Governing Body of the Organization and that in the use of the

radio frequency spectrum and application of technical and operation standards in the field of telecommunications, due attention should be paid to recommendations of the ITU. The United States feels that coordination between INTELSAT and the ITU is desirable because both are concerned with telecommunications -- INTELSAT as an operating entity providing telecommunication services by satellite, and the ITU as a regulating entity setting standards and guidelines in the allocation of a scarce resource used by INTELSAT, the radio frequency spectrum.

The Interim Communications Satellite Committee has considered a more formal coordination relationship with the ITU, and possible alternatives for INTELSAT participation in it, with particular reference to participation in the work of the CCIR and CCITT and the proposed ITU World Administrative Space Radio Conference in 1970 or 1971. Several alternatives are available by which such coordination could be effected. A provisional agreement could be concluded between the ITU Administrative Council and INTELSAT as an international organization. However, such an agreement would not automatically give INTELSAT access to or allow it to participate in ITU activities.

To participate as an observer at an Administrative Conference (e.g., the World Administrative Space Radio Conference), INTELSAT would have to submit an application to the Administrative Conference for consideration.

To participate in meetings of the CCIR or CCITT, INTELSAT would have to request permission to take part in its work prior to meetings.

Since the alternatives open for INTELSAT-ITU coordination are such that any coordination would be a continuous process and not capable of being effected by any single means, the United States believes that it is necessary that the Governing Body be empowered to take actions or authorize others to take actions required to discharge coordination responsibilities within the ITU framework and to participate in ITU activities relating to the establishment and utilization of communications satellites.

It does not seem necessary or desirable for the definitive arrangements to specify exactly the type of relationship to be initiated with the ITU. The United States considers that the various difficulties that might develop in implementing particular

arrangements necessitate that the Governing Body be given flexibility to handle any coordination arrangements with the ITU.

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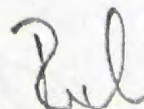
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ANALYSIS OF LEGAL PERSONALITY ISSUE

I. INTRODUCTION

Under the interim arrangements, the International Telecommunications Satellite Consortium (INTELSAT) is a joint venture, or partnership, of the Signatories. It possesses no legal personality separate from that of its partners, but rather relies upon the universal principles of agency and contract and upon the legal personality of the Signatories and the Manager to perform its functions. This legal structure has been used successfully throughout the world by INTELSAT.

The joint venture structure is not only legally feasible, but is well suited to the business of INTELSAT, which is to provide satellite facilities to the various Signatories for their use. In essence, INTELSAT is a cooperative organization, in which the owners of the facilities are also the users of the facilities. The Signatories contribute capital to the organization, which is compensated through space segment utilization charges that the Signatories pay for the use of the facilities. From a financial standpoint, INTELSAT is in essence a conduit through which the Signatories pay back their own investments in the jointly owned facilities.

This legal and financial structure is complemented by the internal organization of INTELSAT. The policy-making organ, Interim Communications Satellite Committee (ICSC), takes decision on behalf of all Signatories. The decisions of the ICSC are implemented by the Manager, Communications Satellite Corporation (Comsat), which is a corporation organized under the laws of the District of Columbia. As a United States corporation, Comsat possesses legal personality, and as Manager, Comsat enters into agreements with third parties on behalf of INTELSAT. Thus, Comsat can be considered the agent of all the Signatories, and authorized agreements entered into by Comsat bind the entire INTELSAT membership. In addition, the ICSC has effectively concluded agreements with third parties through non-U.S. Signatories, and through its chairman on several occasions. Any natural person may act as an executing agent on behalf of the partners.

This legal, financial, and organizational structure, in addition to giving the Consortium a great deal of flexibility in its business dealings, tends to diminish the importance of non-commercial, political issues in the consideration of basic technical, operational, and financial problems. This business-like attitude of INTELSAT is undoubtedly a factor in its ability to attract members of opposing political tendencies, and to deal effectively with the commercial and operational matters affecting the enterprise.

II. OBJECTIVES OF THE UNITED STATES

Because of the demonstrated successes of the present INTELSAT structure in providing economical and high-quality satellite facilities, the United States seeks to retain insofar as possible those legal, financial, and organizational aspects of INTELSAT which permit it to conduct its business in an effective and practical way. In addition, because of the dependency of the United States upon satellite communications, the United States desires to retain an important voice and influence in the organization.

III. OBJECTIVES OF OTHERS

In contrast to the United States, some other INTELSAT members seem to have as their principal objective the replacement of the existing consortium arrangement with a traditional international organization which would possess legal personality.

The issue of legal personality has not been presented by its proponents for legal reasons, but for political and psychological reasons related to this principal objective.

Such proposals would, in addition to legal personality, give INTELSAT a traditional international organization form with an Assembly, an Executive Body, and a management body staffed as an international civil service organization. INTELSAT, no longer dependent upon one or more of the Signatories to enter into

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agreements with third parties, would also be less dependent upon any one of the Signatories in the formulation and implementation of policy. In addition, the organizational structure of such an international organization would not only permit non-U.S. Signatories a greater voice in the decisions taken by INTELSAT, through adoption of voting procedures not directly related to investment, but it would also encourage lengthy discussion of political issues secondary to the operational problems faced by INTELSAT. Legal personality is an attribute of such a traditional international organization, and it is in this light that proposals to give INTELSAT legal personality must be examined.

In addition, proponents of the legal personality issue appear to be using this issue as a tactical device to present alternative management arrangements to the Conference. If INTELSAT were given legal personality, its need to rely on Comsat as Manager would appear to be diminished; and alternative management arrangements to replace Comsat as Manager would be more achievable than if INTELSAT retained the present joint venture form.

Only as a secondary (or lower priority) objective, do the proponents of legal personality appear to desire institutional arrangements which would ensure the continued provision by INTELSAT of efficient and economical satellite facilities.

III. CONSEQUENCES TO INTELSAT OF LEGAL PERSONALITY

The rejection by the United States of proposals to give INTELSAT legal personality and the philosophy behind such proposals are based on the following considerations:

First, even if the present management arrangements were to be continued under the definitive arrangements, and Comsat were to continue as the Manager of INTELSAT, giving INTELSAT legal personality would create a framework for the subsequent gradual phase-out of Comsat as Manager. As an entity possessing legal personality, INTELSAT could hire its own staff which initially would complement the work of the Manager and perform certain routine functions that were not specifically reserved to Comsat by the definitive arrangements. A progressive assumption of managerial

functions by this staff of international civil servants would be difficult to oppose given the desires of some INTELSAT partners, particularly if the voting arrangements for the prime policy-making organ of INTELSAT were to eliminate or prohibit the United States veto.

The dangers of transferring management functions to such a secretariat should not be underestimated. The staff of the management body would be subject to political influences, which could impair the performance of its functions. In addition, it would be nearly impossible to assemble a highly skilled and competent staff as employees of an internationally staffed secretariat, given the rigidities which are characteristic of all such international management organizations entrusted with an advanced technology. In this connection, the difficulties of regional international organizations for space activities, viz., Eldo and Esro, offer a sound basis for comparison. Further, such a management body would be more costly to INTELSAT, since INTELSAT presently has Comsat's entire staff at its disposal, but only utilizes that staff for a fraction of the time except for peak activity and emergencies. When it does not use Comsat's staff, INTELSAT is not charged for the costs of maintaining the personnel and the facilities, which can be utilized by Comsat for non-INTELSAT matters. This is, of course, a natural benefit of the consortium operation, where the resources of the financial participants are traditionally used to meet management requirements.

No such comparable arrangement would appear to be possible with an internationally staffed secretariat, which could not afford to pay for such reserve staff and facilities, but some Governments who are present at the INTELSAT Conference, particularly those that have no direct financial investment in the organization, appear to be willing to sacrifice these advantages for political reasons. Finally, such an international secretariat would not have as great an incentive as Comsat to effectively manage and operate the satellite system, since the secretariat, unlike Comsat, would have no direct financial interest in the outcome of the management effort.

To the extent that proposals for legal personality also envision a transfer of assets from the Signatories to the organization, these proposals would unnecessarily complicate the financial arrangements of INTELSAT. As long as the users and the owners of the satellite system are the same entities, there is no necessity for placing any form of ownership arrangement divorced from the property interest of the signatories between the satellites and the Signatories, which would serve no purpose and would simply add to the administrative cost of the system.

A somewhat intangible, but nevertheless important consideration, is the emphasis of some other INTELSAT members upon the international organization aspect of the legal personality issue. Giving INTELSAT an international organization status would establish a framework for the introduction of undesirable political considerations into the management and decision-making processes of the organization, which could impede effective and competent planning and operation of the satellite system.

V. CONCLUSION

Imbuing INTELSAT with a separate legal personality would be ill advised. The present joint venture arrangement permits INTELSAT to adopt flexible solutions to the practical problems of the organization. Proposals to change this organizational structure which would give INTELSAT a traditional international organization structure, including legal personality, should be avoided. Should the United States Delegation be forced for political reasons to abandon the present position on legal personality, it should obtain substantial concessions in return. These concessions should relate to issues of vital importance to the United States, such as: retention of Comsat as Manager, a limited role for the Assembly, and voting arrangements in the Board of Governors that will permit a full U.S. voice in the affairs of the organization. Other issues of like importance to the United States are: sole authority in INTELSAT to provide satellites for international public telecommunication services; a prohibition against members establishing satellites independently of INTELSAT for regional public telecommunication services; authority for INTELSAT to establish satellites for domestic and specialized

telecommunication services; and appropriate authority in the Board of Governors to approve all satellites established by members independently of the organization with respect to available satellite locations, and use of the frequency spectrum.

MEMORANDUM

TO: Mr. Frank Loy

FROM: Richard R. Colino

DATE: March 11, 1969

SUBJECT: Draft Statement from Committee I on Rights
and Obligations

Attached for possible use is a draft statement for old agenda item X of Committee I on rights and obligations. The draft is based upon the United States position papers and Document 10 submitted to the Conference.


R.R.C.

Attachment

cc: Entire U.S. Delegation

R.R. Colino
Comsat
March 11, 1969

RIGHTS AND OBLIGATIONS OF MEMBERS

Introduction

Members of organizations traditionally undertake certain obligations or surrender or qualify certain rights, in return for the acquisition of the rights, benefits, and privileges which membership bestows. This assumption of the obligations of membership is necessary for the success of the organization--all surrender something in order to gain mutual advantages.

The interim arrangements provide that members assume certain obligations, [among others:

1. "...to establish a single global commercial communications satellite system...." (Preamble)
2. "To cooperate to provide, in accordance with the principles set forth in the Preamble...for the design, development, construction, establishment, maintenance and operation of the space segment of the global commercial communications satellite system...."
(Article I(a))
3. Financial
4. Establishment and use of approved earth stations. In return for assuming such obligations the members received certain rights and benefits:

- a) Voice in determination of policy
- b) Access to INTELSAT information
- c) Access to the space segment
- d) An investment share in the system⁷

Membership in INTELSAT under the definitive arrangements shall likewise mean the assumption of obligations in order to secure rights and benefits. The United States Delegation believes that the obligations to be undertaken by members serve one important goal: the continued viability, development and growth of the most advanced, efficient and economic system of satellite communications. The issue is which obligations must be assumed to achieve this goal.

International Public Telecommunications Services¹

The United States believes that in return for the benefits and rights which membership in INTELSAT confers, members should obligate themselves not to engage in any actions or policies which might in any way prove deleterious to INTELSAT. This is only fair--both to the organization and to the other members of the cooperative venture. It is especially important in view of the role which INTELSAT now plays and will play in communications: the growing dependency of many areas upon satellites as the only

¹ Doc. 10, Art. I(k); see also ICSC Report para. 159.

means of modern, efficient direct communications.

Therefore, the United States believes that the Parties and the Signatories to the agreements should obligate themselves to use the INTELSAT space segment to satisfy all their international public telecommunications requirements via satellite.² Parties and Signatories should obligate themselves not to establish, or join in the establishment of, or use of, any space segment other than INTELSAT's to meet their international public telecommunications service requirements.³ Only in this way can the viability and future of the INTELSAT system be assured.

Domestic Telecommunications

The United States believes that the right of a sovereign State to establish satellite communications system solely to meet domestic telecommunications requirements should not be entirely abrogated by the agreements. This right must, however, be balanced with the interests of the international community and all who depend on satellite communications. The United States has proposed that to the extent any Signatory, Party, or any person, within the jurisdiction of a Party establishes or otherwise acquires space segment facilities separate from those

² Doc. 10, Art. VIII(a)

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of INTELSAT to meet domestic telecommunications requirements the establishment, acquisition and operation of any such facilities will be subject to the prior determination by the Board of Governors that:⁴

"(i) They will be consistent with the use of the radio spectrum and orbital space by the existing or planned INTELSAT space segment,

"(ii) The mechanisms and techniques for control of such space segment facilities will be adequate, and

"(iii) The radiation emitted from such space segment facilities will not cause harmful interference."

Members should have the right to secure from INTELSAT (and we have proposed that INTELSAT be authorized to provide) facilities to meet their domestic telecommunications needs. This might be done in three ways:⁵

1. The allocation of circuits in satellites established for international public telecommunications traffic.
2. The establishment of an INTELSAT-financed satellite to meet the domestic needs of one or more requesting members.

⁴ Doc. 10, Art. VIII(b)

⁵ Doc. 10, Art. VIII(c)

3. The establishment of a satellite at the request of one or more members to meet their domestic needs; such satellite to be financed and owned by the requesting members; it may be designed, developed and constructed in accordance with specifications provided by the requesting member.

Specialized Telecommunications⁶

The United States has proposed that INTELSAT be authorized to provide facilities to meet members' specialized telecommunications requirements.⁷ However, members should be free to establish such facilities alone or in conjunction with other members or non-members and subject to the same prior determination by the Board of Governors as would be required for domestic satellite facilities.⁸ Likewise, members should have the right to satisfy such needs through INTELSAT in the same way as suggested for domestic needs.⁹

Regional Satellite Systems

The United States Delegation considers that regional traffic is a species of international traffic. Therefore, members'

⁶Doc. 10, Art. I(1)

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obligation not to establish separate satellite systems for international public telecommunications traffic applies to so-called regional systems. However, this obligation does not include satellites intended solely for specialized telecommunications services. The United States urges all members to satisfy regional needs through INTELSAT and believes that the same standards as applied to domestic and specialized systems apply here. These standards are:

- "(i) They will be consistent with the use of the radio spectrum and orbital space by the existing or planned INTELSAT space segment,
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[In addition, the United States would add an economic test: that the Board of Governors make a prior determination of the economic compatibility of proposed regional systems with the present or proposed INTELSAT system. Regional would be defined as applying to communications among and between a geographically compact group of states linked together by cultural or economic ties.¹⁰]

¹⁰ See ICSC Report, para. 162.

National Security Needs

The United States suggests that nothing in the agreements affect the right of a Party to establish satellites solely for national security purposes.¹¹

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Donahue

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COMMUNICATIONS SATELLITE CORPORATION

JAMES McCORMACK
Chairman

11 March 1969

MEMORANDUM FOR THE U.S. DELEGATION

Subject: Business Negotiations Involved in the Present Conference

In my comments at yesterday morning's meeting of the U.S. Delegation reviewing certain items of great economic importance to Comsat, I said that I would confirm these comments in a written resume.

First, I would like to make four specific references to the Communications Satellite Act of 1962:

a. Section 102(c), stating that "United States participation in the global system shall be in the form of a private corporation".

b. Section 301, stating that this corporation shall be for profit.

c. Section 304, providing for stockholder financing of the corporation and specifying a policy for the issuance of the first stock offering which virtually guaranteed an extraordinarily large percentage of small investors.

d. Section 402, making Comsat primarily responsible for business negotiations with foreign entities, with safeguards for U.S. foreign policy interests, of course.

The Government does not guarantee the economic viability of Comsat, but the Government must certainly, in the exercise of its powers, guard against actions that might seriously diminish Comsat's own abilities to assure its financial success. It is on this latter point that I gave two examples of the sort of agreements being urged upon the U.S. in the present discussions which would be impossible for Comsat to accept, and which could lead to Comsat being unable to sign the Operating Agreement.

One example was the obvious one relating to the question whether the new INTELSAT shall be given a legal personality, a question on which the United States, for one reason and another, seems to be coming out almost alone in its opposition. As I have explained Comsat's problem -- and entirely apart from the desirability or undesirability of the policy from the U.S. Government's point of view -- Comsat needs clear assurances from Treasury and the FCC that such a change from the Interim Arrangements would not adversely affect our tax situation or our ability to handle our share of space segment costs as a depreciable

rate-base investment. I pointed out that Comsat is doing all within its power to find the means of relief in this matter, but those means must come from the Government, and we need the Government's help. If in the end it turns out that Treasury cannot give us the necessary tax ruling, I frankly see no solution short of legislation, which means that the U.S. delegation could at best end this particular conference session with an assurance that we will try to re-set the U.S. scene so as to be able to accede to the desire of the overwhelming majority of the other delegations.

The other example may be less obvious but it runs, if anything, even deeper in importance. Unless and until Comsat is granted business opportunities going well beyond our present half of the space segment and half of the existing U.S. earth stations, the viability of this private endeavor authorized and directed by law is heavily dependent on continuing in the INTELSAT Manager role. A management contract for a goodly number of years has long been accepted by Comsat as a feasible means of maintaining this role. However, no such contract can include the obligation to help build an organization to replace Comsat at the end of the period, for the immediate result would be a serious degradation of our ability to hold the most important people now aboard, who have

Memorandum for the U.S. Delegation
11 March 1969

-4-

made the crucially important contribution to the success of the Manager operation and the total U.S. venture to date.

I think I need not go further in explaining why such an eventuality jeopardizing the economic viability of Comsat would render us unable to sign the Operating Agreement.

James M. Connally

COMMUNICATIONS SATELLITE CORPORATION

JAMES McCORMACK
Chairman

11 March 1969

MEMORANDUM FOR THE U.S. DELEGATION

Subject: Congressional Comments on the INTELSAT Conference

The following is an excerpt from the transcript of a Senate Commerce Committee hearing on 4 March. It is an interjection by Senator Pastore in a report by Chairman Hyde on the INTELSAT Conference.

"In this regard, I have an observation to make, and maybe a lot of people disagree with me on this.

"I certainly would hope that this won't develop into a foreign aid program and that we again give away the birth right of America. We have spent a lot of money in America to develop this, and I hope in the process we will be fair with our friends around the globe but at the same time will preserve the interest of the American taxpayer as well."

Following is a somewhat similar comment by Chairman Staggers during Chairman Hyde's appearance before the House Commerce Committee on 6 March, replying to Chairman Hyde's statement that "There is nothing in our efforts at the Conference to indicate any disposition whatsoever to compromise our communications interests."

"I am happy to hear that because there have been some rumors that perhaps some of these managerships might be traded off. After all, America did provide the know-how at the start of this and the others came in afterward. I understand there has been some talk at your meetings that perhaps the United States is holding too much in the managership and the know-how, we are not sharing, and some other things have been brought up, and I just don't want the United States to be sold short.

Memorandum for the U.S. Delegation
11 March 1969

"That is what I am talking about. I know the Senate was apprehensive about this and I am sure every member of this committee would say they want you and every member of our delegation to protect our interests in that meeting."

Mr. Hyde: "I am very pleased to discuss this matter with you and I appreciate having your advice and counsel, Chairman Staggers."

The Chairman: "I am sure I am speaking for every member of the committee on this subject. I just wanted to bring it to your attention and the importance of it. I know often times there are tendencies to trade off some of these things for other purposes."

James R. Connally

COMMUNICATIONS SATELLITE CORPORATION

JAMES McCORMACK
Chairman

8 March 1969

MEMORANDUM FOR THE U.S. DELEGATION

Subject: Question of Legal Personality of INTELSAT Organization

Up to now discussions among the members of the U.S. delegation on the question of legal personality of INTELSAT has revolved chiefly around an international organization possessing specified attributes of legal personality described in the agreement, and assuming unincorporated form. From Comsat's point of view, one of the principal issues controlling whether Comsat could accept such a proposal has been the question of U.S. tax treatment of Comsat's revenues, chiefly whether Comsat's percentage share of annual depreciation of the space segment would be given tax deductible recognition by the U.S. tax authorities. At present, as all of you know, Comsat is permitted to deduct its share of space segment depreciation and this is one of the principal tax benefits of partnership status. The prospects appear, at least preliminarily, to justify hope for an assurance by IRS and the Treasury Department that Comsat's participation in the type of

organization described above would continue to have the tax treatment that the partnership interest has had in the past, though we have not yet received the definitive advice of the tax authorities. If this condition can be settled satisfactorily from Comsat's point of view, it remains to settle the matter of regulatory treatment of Comsat's interest in the space segment. Under the present arrangements, Comsat treats its 53% partnership interest in the space segment as a rate-base investment for the rate-making purposes of the FCC. While I doubt that any of the delegation have a serious question in this regard, Comsat must of course have the assurance of the FCC that Comsat could continue to treat its interest in an international organization possessing specified attributes of legal personality as an investment in rate-base to the extent of Comsat's percentage share.

I have discussed this matter with Chairman Hyde who believes that the necessary FCC assurance can be given in the forum of this delegation, after he has had an opportunity to consult with his Commission. Thereafter, when the international agreement has been negotiated, we would wish to formalize this understanding on a bilateral basis with the FCC.

James H. McInerney

COMMUNICATIONS SATELLITE CORPORATION

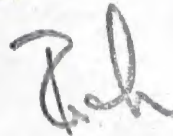
Date: March 8, 1969

MEMORANDUM

To: Frank E. Loy

From: Richard R. Colino

Attached are two draft papers for possible use in connection with Item VII (Signatories of the agreements) and Item VIII (Duration of the agreements) on the Agenda of Committee I.



cc: U.S. Delegation

SIGNATORIES TO THE AGREEMENTS

The Committee unanimously recommended that if the definitive arrangements were contained in two related agreements, the first between governments, the second should be signed either by governments or by the telecommunication entities, public or private, designated by governments.¹ This procedure was followed under the interim arrangements and proved to be sound and should be adhered to with definitive arrangements. The United States supports this approach.²

Given the dual nature of INTELSAT of an operating agency providing a necessary service and an international organization established by States, such an arrangement appears to be the most logical.

States would be parties to an intergovernmental agreement that would set forth the general blueprint for the organization's foundation and structure.

-
1. ICSC-36-58, paragraph 574. A substantial majority of the ICSC recommended that the definitive arrangements be contained in two related agreements. ICSC-36-58, paragraph 570.
 2. Doc. Com I/10

The use of two interrelated agreements to establish the definitive arrangements would promote flexibility to States with different economic systems to determine for themselves the most appropriate representational arrangements.

R. R. Colino
COMSAT Draft
March 8, 1969

DURATION OF THE AGREEMENTS

The Interim Arrangements were established for a limited duration because it was recognized that experience would have to be acquired in the operation of a global communications satellite system and that future developments in satellite technology could not be accurately ascertained. Thus, the most appropriate structure for the provision of satellite services was not known, though it was hoped that the interim organization established in 1964 would be able to respond to the purposes and tasks set forth.

The situation confronted in 1964 does not exist in 1969. Five years experience in the establishment and operation of a viable satellite system for communications has provided a basis for judgment and competence for determination of the shape of the permanent organization. It should be possible to formulate agreements which will be of lasting duration.

A structure should be provided for the permanent organization that is flexible enough to be responsive to changes in needs of the parties to the agreements and to new developments in satellite technology. The experience and expertise

acquired in the 5 years of the interim organization should be sufficient to provide the appropriate guidelines in this respect.

Adequate amendment procedures should be capable of responding to any unforeseen difficulties.

The United States feels that if the proposals for the structure and functions of the permanent organization are far-sighted and flexible, establishment of definitive arrangements for a fixed period will be unnecessary. This view is endorsed by a majority of the Interim Communications Satellite Committee.¹ (However, if the prevailing sentiment of the Conference is that it would be more appropriate to have a fixed period for the definitive arrangements, the United States Delegation would favor a lengthy duration e. g. 30 years.)

1. ICSC-36-58, paragraph 579.

COMMUNICATIONS SATELLITE CORPORATION

Date: March 7, 1969

MEMORANDUM

To: Frank E. Loy

From: Richard R. Colino

Pursuant to your request of Mr. Johnson at yesterday's Delegation meeting, enclosed is a paper prepared by the COMSAT staff dealing with the question of a three-tier and four-tier structure for the future INTELSAT organization. This paper is based upon documents submitted to the Conference and statements made in Committee I.

Also attached is a brief draft statement dealing with Agenda Item VI before Committee I.



cc: U.S. Delegation

Three Tier or Four Tier Structure: Summary and Analysis

Three Tier Structure

Several representatives have advocated that the future organization possess a three tier structure. Others have felt that a four tier structure provided a more suitable arrangement.

Among those proposing a three tier structure, consisting of an Assembly, a Governing Body, and a Management Body, confusion exists. Confusion arises because of the divergent views of representatives as to the functions to be exercised by an Assembly in this three tier format -- should its responsibilities be governmental or business or both. The confusion is compounded by differing views on membership in the Assembly.

There is confusion among those who agree that the Assembly should be the supreme organ, regarding both its functions and its composition. Representatives of Canada, Pakistan, Philippines, Algeria, Ceylon, and Japan have advocated that the Assembly be the highest organ. However, no agreement has been reached on the responsibilities that should be given to this supreme organ. For example, Pakistan and the Philippines consider that among its functions will be that of amending. Japan had reservations about granting it this responsibility.

Representatives of Pakistan and Algeria foresee an Assembly composed of parties to the Intergovernmental Agreement. The delegate of the Philippines sees an Assembly primarily composed of parties but telecommunication entities may or even should be represented in it. The representative of Japan foresees an Assembly of governments. The Canadian proposal advocates an Assembly where represented would be each government party to the Agreement. It would then be up to each government to decide on its representation, on whether it had a telecommunicator either as representative or advisor.

Among those who are agreed that the Assembly should possess limited functions, there is, again, a vagueness surrounding composition of this body and its functions. In the UK view, the Assembly would be composed of parties to the Intergovernmental Agreement but governments would be free to designate representatives of telecommunication entities to attend meetings if they desired. The U.S. has proposed an Assembly to be composed of governments or telecommunication entities to be determined by governments prior to each meeting and has advocated that the purpose of the Assembly be to allow participation by all signatories in the activities of the organization. The representative of Thailand has advocated an Assembly of governments, and the representative of New Zealand, an Assembly of Parties to the Agreement. The functions proposed

for a limited Assembly are not specified explicitly with any degree of exactness, since there appears to be no consensus on who will be represented in it. Yet, who will be represented in the Assembly cannot be ascertained until its functions are determined.

Four Tier Structure

A four tier structure, though not favored by some delegates for the permanent organization, might dissipate confusion and resolve the function - membership dilemma by separating governmental from business responsibilities, and thus permit a clearer decision on who would be represented where. The Australians have proposed a four tier structure consisting of an intergovernmental conference, an Assembly, a Governing Body, and a Management Body. The Assembly would be composed of participating telecommunication entities who would deal with telecommunications matters, reflecting the business nature of the enterprise. The international conference would be composed of governments, making intergovernmental decisions.

The representative of Chile favored a four tier structure because it would permit those entities which are distinct from their governments but which do not have seats in the Governing Body to participate in the Assembly. Likewise,

the representative of Jamaica supported this concept since it would enable small countries to play an effective role and would clearly distinguish between the responsibilities of governments and entities. The Belgian delegate favored a fourth organ, an Assembly of Signatories, again, to enable telecommunication entities not represented in the Governing Body to participate.

The representatives of Sweden, Switzerland, Turkey and Israel were amenable to a four tier structure. Switzerland felt an Assembly representing all Signatories could be added. The primary concern of the delegate from Turkey was the degree of participation poor nations would have in the organization.

Summary

Though some delegates favor a three tier structure, it appears that given the divergence of views on the functions and composition of the Assembly within this three tier concept and the consequent confusion, the alternative approach should be further investigated. A four tier structure offers a solution that could prove to be more readily acceptable since it caters to everyone's needs. The desire for governments to be represented could be satisfied in an international conference. The desire for all telecommunications entities to be represented would be satisfied by an Assembly of Signatories. With the questions of membership resolved functions for the respective bodies could be more readily specified.

Richard R. Colino
Comsat Draft
7 March 1969

NUMBER OF AGREEMENTS CONSTITUTING THE
DEFINITIVE ARRANGEMENTS

1. The interim arrangements are contained in two related agreements, the Interim Agreement, between Governments, and the Special Agreement, between Governments and/or their designated telecommunications entities, public or private. The Supplementary Agreement on Arbitration should be considered as being an annex to the Special Agreement.

2. The United States Delegation considers that the definitive arrangements should also be contained in two related agreements, the concept recommended by a substantial majority of the Interim Communications Satellite Committee, contained in paragraph 570 of the Report. As in 1964, the actual participants in INTELSAT will be either Governments or telecommunications entities and therefore a separate agreement setting forth their mutual rights and obligations is necessary. There must be a basic agreement establishing the INTELSAT structure among Governments. The United States in Document 10 suggests the relationship between the two agreements.

COMMUNICATIONS SATELLITE CORPORATION

Date: March 7, 1969

MEMORANDUM

TO: Frank E. Loy

FROM: Richard R. Colino

Attached are draft statements prepared for consideration in connection with Items III and V of the Agenda for Committee I.

The first attachment is a draft statement which might be used in connection with Agenda Item III. It consciously avoids stating clearly the United States' position on the issue of eligibility for membership in the future INTELSAT organization. Rather, the draft summarizes the various views expressed by the Delegations which have addressed this subject. As a tactical matter, it might be advantageous to keep the German Delegation guessing as to what the real U.S. position on this subject is and to consider the possibility of using this as a bargaining point to obtain concessions from the Germans on other issues of vital interest to the United States.

The two other attachments flow from the position the United States will take with respect to Item III of the Agenda and are drafted for possible use in connection with Item V. You will note that they are written in the alternative: one based on the assumption that membership in the organization will be open to all States; the other based upon the assumption that membership in the organization will be limited to those States which are members of the ITU.

cc: U.S. Delegation

RL

R. R. Colino
Comsat
7 March 1969

ELIGIBILITY FOR MEMBERSHIP

The United States Delegation has listened with keen interest to the various views expressed to date by many distinguished delegates concerning eligibility for membership in the organization to be established by the definitive arrangements. During the debate the United States has noted sentiment both for a continuation of ITU requirement and the elimination of this requirement. During the discussion of ITEM I of the Agenda (Objectives and Purposes) many distinguished delegates including those of Austria, Thailand, the Philippines, and Kuwait urged that participation in INTELSAT be open to all nations of the world, that INTELSAT become a truly universal organization. The distinguished delegates of Algeria, Ceylon, Nigeria, and the Philippines as well as the observers of Mongolia, Poland, Rumania, and the U.S.S.R. have expressed the same desire for full participation by all states. Other delegates including Canada, the Netherlands and Switzerland, called for an increase in participation by ITU members. We have heard likewise the statements by the distinguished delegates of Canada, Mexico, the United Kingdom, Greece, and France. In two documents, one submitted by Sweden and the other by Canada, India and the Federal Republic of Germany, the ITU requirement has been proposed calling for a continuation

of the ITU requirement for membership.

The United States notes that, as pointed out by several delegations, the Preamble to the 1964 arrangements cites resolution number 1721 (XVI) of the United Nations General Assembly to the effect "that communications by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis. Article XII, however, limits participation to ITU members. We also note that the interim arrangements permit access to the system by both members and non-members; the latter group might include non-ITU members, i.e., States not eligible for membership. This is an apparent inconsistency - for if a state is responsible enough to access the system, it should be responsible enough to be permitted to fully participate in the organization.

We have been most interested in two of the fuller arguments presented thus far on both sides of the question, those by the distinguished observer from Rumania and the distinguished delegate of the United Kingdom. The former noted that "INTELSAT's outstanding success removed justification for the reluctance to extend membership to all countries of the world." The removal of the ITU requirement would, he noted, "be consistent with U.N. Resolution 1721, help more nations, increase the efficiency of INTELSAT, make it possible to

create a single really global system, and improve international understanding." ¹ On the other hand the distinguished delegate of the United Kingdom pointed to practical reasons for the preservation of the ITU requirement. He cited the fact that "INTELSAT earth stations have to meet standards which take account of those developed in the CCITT and the CCIR." He noted that "the observers themselves had stressed the competence of the ITU in the entire field of space communications, and distinguished between the right of membership in INTELSAT and access by all nations to the global system, and held that the eligibility requirements in the Interim Agreement were not discriminatory."

1. Com. I/SR/6 - page 3.

RELATIONSHIP WITH NON-MEMBERS

(Based on ITU requirement for membership)

1. While the United States encourages the widest possible participation in INTELSAT, it recognizes that not all States will participate. Some might not be eligible for membership, not being members of the ITU; some who are eligible for membership might not join for any of a number of reasons. Therefore, it is necessary to discuss and determine the relationship, if any, of such non-members to INTELSAT.
2. There is no argument that members, who will have contributed their capital, and in many cases built earth stations in accordance with the standards set by the Organization, be entitled to direct access to the space segment, as well as to the other rights which participation in INTELSAT confers. This is based on the criterion that having accepted the obligations, they be entitled to all the rights flowing therefrom.
3. The United States Delegation likewise can see no dispute on the proposition that non-members of INTELSAT do not enjoy the rights and privileges associated with membership in the Organization. Thus, nonmembers, who have declined to undertake the

obligations of membership, should not enjoy the rights of membership. (Therefore, the United States Delegation supports the unanimous recommendation of the Interim Communications Satellite Committee, paragraph 554.)

4. Having limited membership in INTELSAT to ITU members, however, means that certain States will necessarily not be able to participate. The United States has proposed a method by which these States and other non-members can enjoy the benefits of satellite technology (Article VIII(d)) of Document 10.

5. Direct access by non-members raises the critical question of the charges for access to be paid by non-members, i. e., should non-members receive the benefits and have access at the same charge as members or should different charges apply? To phrase the problem another way: Would the use of two rates of charge, one for members and a different one for non-members be considered discriminatory?

Richard R. Colino
Comsat Draft
7 March 1969

RELATIONSHIP WITH NON-MEMBERS

DRAFT BASED ON SUPPORT OF ALL STATES POSITION

1. While the United States encourages all States to become members of INTELSAT, and supports and all states provision in the agreements, it realizes that there will be States which, for one reason or another, do not become members of INTELSAT, or which might not join in the immediate future. These non-members, however, will probably wish to enjoy the benefits of the new technology. Therefore, the question is how should such non-members benefit?
2. The United States Delegation considers that the elimination of the ITU requirement for membership in the Organization makes it possible for all States to participate on an equal and non-discriminatory basis, the major requirements of United Nations Resolutions 1721 are fulfilled and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.
3. The United States Delegation proposes that only member States of INTELSAT be entitled to direct access of the Organization's facilities and that non-member States be

required to make non-discriminatory arrangements with a Signatory to access the INTELSAT satellites. The Delegation of the United States believes that this is an objective and logical position.

4. The membership of INTELSAT has contributed its capital to the establishment and development and operation of the system and, therefore, have more at stake than do other nations. The membership has also been willing to assume the obligations associated with membership as well as receiving the rights accruing to members. This Resolution, however, does not mean that all States, whether members or non-members, must have the same rights in INTELSAT. The United States Delegation considers that the non-members need not and should not enjoy the same benefits which actual membership confers. The concept was recognized by the Interim Communications Satellite Committee in its unanimous recommendation in paragraph 554. However, non-members could enjoy the benefits of satellite communications through indirect access by non-discriminatory arrangements with a Signatory.

STRUCTURE OF THE ORGANIZATION

INTRODUCTION

The United States Delegation has listened with great interest to the statements of the distinguished delegates in this Committee and has carefully studied the various submissions concerning the structure of INTELSAT under the definitive arrangements. As a result, the United States Delegation has concluded that there may be some confusion, and possibly disagreement as to the basic concepts ^{the} underlying/INTELSAT organization.

NATURE OF THE ORGANIZATION

Most delegations have quite properly noted that there are two basic characteristics of INTELSAT: first, that it is an operating venture, providing facilities for communications on a commercial basis and second, that it is an organization with a broad international membership. In 1964 these two characteristics were weighed and emphasis was quite properly given to the first. The United States Delegation considers that the first characteristic must guide the work of this Conference. INTELSAT is an international partnership, an operating entity providing

telecommunication facilities on a commercial basis. Today our organization has a membership of 67 nations which account for some 95 percent of the telecommunications traffic of the world. That is quite remarkable for an organization as young as ours, particularly since many members today are not yet able physically to take advantage of satellites for their international communications.

One of the noteworthy characteristics of this organization which differentiates it from others is that the differences in interests and potential advantages to be derived which often divides the membership of other organizations into and "developing" country categories has no relevance.

The United States Delegation would disagree with the suggestion that INTELSAT be restructured as a traditional international organization. The United States believes that such an approach can only lead to the establishment of an ineffectual organization, another political arena, which would become increasingly incapable of providing the high quality, efficient, and technologically advanced services which the present INTELSAT organization has provided, and which the users of the system have come to expect.

The United States Delegation questions the desirability or necessity of introducing "political" matters into the structure of the organization as some proposals suggest. To a large extent what may be characterized as "political" decisions - e.g. issues relating to accessions by countries and to terms and standards for use of the system - can and should be stated in the agreements or, if need be, by amending the agreements. Thus, it should be possible to "depoliticize" the future organizational structure. We all should be able to agree that INTELSAT should be "apolitical".

The United States Delegation recognizes the international character of INTELSAT and believes that it can be properly recognized and accommodated within the organization to be established without detriment to the efficient operation of the venture.

THE ASSEMBLY

First, in regard to the Assembly it has been suggested in Document I/26 submitted by the Delegations of Canada, the Federal Republic of Germany, and India that the Assembly be composed of Governments (although the explanation of the proposal provided by the distinguished delegate of Canada implied that Signatories to an Operating Agreement could also participate). The United States does not support the proposition that Governments have a disproportionately large or inappropriate role to play in the affairs of INTELSAT.

While there are important roles for both Parties to the Intergovernmental Agreement and Signatories of the Operating Agreement, telecommunications entities, or the Governments in certain cases, which actually contribute the capital to the organization must have the primary role in the policy organs. The document introduced by Canada, the Federal Republic of Germany, and India suggests the Assembly should have the power of "over all policy". It also suggests that the Assembly should have the power, for example, to approve a five year program and should appoint a General Manager. We do not know what "over all policy" means but to the extent that it purports to participate in designing the system to that extent, we think that it just won't work. You cannot have an Assembly effectively carrying out this function. We don't know what it means to have the Assembly be the "supreme organization" and quite frankly we think it may be more easily debated if we consider more specifically the question of functions that the Assembly and the Governing Board should have.

CONFERENCE OF PARTIES

The United States has listened with great interest to the proposal by the distinguished delegate of Australia

that INTELSAT have a four-tier structure: a Conference of Parties to the Intergovernmental Agreement, an Assembly composed of Signatories to the Operating Agreement, a Governing Body and a Manager. The United States considers that this approach merits further consideration. Such a Conference of Parties would be primarily concerned with the amendment of the Intergovernmental Agreement and a very general review of the activities of the Organization. It might meet at fixed intervals, perhaps every five years, or when convened by a determined number of Parties. Hypothesizing that this approach might prove to be acceptable, the United States would then envisage an Assembly consisting only of Signatories, acting somewhat like the annual shareholders meeting in a corporation. Document 10 contains suggested functions for an Assembly, and the provisions for voting which the United States envisages for such an Assembly.

THE GOVERNING BODY (BOARD OF GOVERNORS)

The Organization will require a relatively compact executive organ similar to the Interim Communications Satellite Committee. This concept is recognized and accepted by all delegations. The United States Delegation believes that the international character of INTELSAT can be

properly recognized by providing for broad representation in the Board of Governors without jeopardizing its compactness or the important decision-making role which it must play. Because the Board of Governors will be the executive, decision and policy making organ, it must be composed of the Signatories. 7 The investors in the Organization, whether Governments or communications entities, must have direct control of the policies and determinations of the Organization. The United States looks with interest upon all suggestions for broader representation in this organ. It has proposed in Document 10 how this might be accomplished. In addition to the determination of representation according to the size of an individual Signatories' investment share or a group's combined investment share, the United States has proposed that any five Signatories regardless of investment share might combine for a single seat and that a certain number might be selected by the Assembly. The United States has submitted its suggestions as to the functions which might be given to the Board of Governors. These are contained in Document 10.

THE MANAGER (MANAGEMENT BODY)

Before discussing the Management Body or Manager for the Organization, several general observations may be appropriate. We are considering here the future organization of the most complicated and most extensive international

technical commercial operation of all times. One, which under a set of interim arrangements has, in the incredibly brief span of four years, succeeded beyond all but the most visionary original expectations. We are now urged *by sub* to revise this successful organization to the extent that the result would be to start over again, anew. We are urged to believe that this organization can be plausibly considered to be successfully internationalized only if the internationalization extends all the way down to the management of day-to-day operations, a totally new concept in communications management even in the relatively routine regime of conventional radio and cables. We are urged to make this shift in management organization from a coherent and efficient establishment (corporate) form to a traditionally international civil service form. And, we are urged to do this at a most curious point in time. A time when the trend in management is in the opposite direction: to a corporate form. Indeed, some of the organizations participating in this Conference are themselves in the process of adopting corporate form for greater management efficiency. Recent experiences in international and regional technical enterprises are also instructive. They lead the United States to conclude that "internationalization" at the management level can lead to, or contribute to, less than satisfactory results.

The United States Delegation has several specific comments concerning the Manager to offer at this time.

(a) The United States Delegation listened with particular interest to the submission by the distinguished delegate of the United Kingdom of his government's proposal for management arrangement under the definitive arrangements. These are contained in Document Com. I/40. We have also carefully analyzed those aspects of Com. I/26 which deal with the management body. The United States Delegation finds serious flaws in both proposals and is disturbed by some of the suggestions contained therein.

(b) The United States Delegation supports the brief one paragraph description of the management body contained on page 3 of Document Com. I/26. However, it does not support the concept of a management body as contained in that document.

(c) The United States cannot accept the establishment of an "internationalized" Manager in the form of an international secretariat or international organization as indicated by this document. "Internationalization" is a term which may require clear definition. However, with respect to "control" of the organization, the United States holds that this is international since control rests with the Board of Governors and not the Manager.

(d) The Manager is responsible for the day to day operation of a system providing the necessary services. Highly competent personnel are required. Transferring management functions to an inexperienced newly formed group could prove quite harmful to the INTELSAT system.

(e) The United States agrees with the statement contained in Document Com. I/40 submitted by the United Kingdom that "the effective management of a global commercial communications satellite system is a major undertaking requiring highly specialized skills and experience; international telecommunications will depend to an ever increasing extent on the system and no risks should be run which might reduce its efficiency or imperil the momentum of its growth."

(f) Without arguing ~~who~~^{we} best should provide a Manager, we would just like to say that we don't find the basic conceptual problem that some others have found in the proposition that a group of entities or partners should appoint one of their members to execute their instructions and provide the managerial manpower for the group as a whole and under the control of the group.

(g) We are not saying the Comsat and only Comsat can, in perpetuity be considered talented enough to act as Manager. Our paper does not suggest this. It specifically suggests the possibility of altering the Manager at some time in the future. At such time when a workable and proficient entity is available, we believe the Board of Governors and Assembly, acting together would be best qualified to endorse such a change.

CONCLUSION

In conclusion, the United States Delegation would like to stress several points.

1) (We are urged) to place powers over the application to world needs of a rapidly changing technology in the hands of an assembly, or congress, which have never in the past, even in a static situation, been successfully implemented through such a congress. The United States considers this most undesirable.

2) (We are urged) to shift away from a successful manager to a management form which is at best can be considered to be less than successful. The United States considers this to be both undesirable and inimical to our common interests.

3) The United States seeks no undue credit for having placed the fruits of its space research program in the service of better global communications. The technology and the facilities for translating it into the means of international communications existed, and it was fitting that we make to the world the offer which was authorized and directed by our Congress in its Communications Satellite Act of 1962.

4) We are most gratified not only by the technical success of this unique international endeavor to date but also by the extent to which it has attracted the nations of the world as indicated by the number which have come into the consortium to date.

5) The stakes of the United States in the continuing success of this endeavor are truly enormous. In particular, by the evidence of our actions, we are committing the bulk of U.S. long-haul international communications to the satellite system.

6) We cannot afford, nor do we think any other nation can afford, to risk the future of this enterprise on organizational experiments patterned after international organizations whose purposes and functions have little or nothing in common with the purposes and functions of maintaining, operating, and further developing the commercial potential of satellite communications. ✓

7) Mr. Chairman, the United States Delegation offers these views after careful consideration and with serious conviction.

COMSAT

INTER-OFFICE MEMORANDUM

Date: 6 March 1969

To: Frank Loy

From: Richard R. Colino

Subject:

Attached is a draft statement for Committee 1 on the structure of the organization to be established by the definitive arrangements. It represents an effort to pull together ideas and draft materials which were developed by you, Mr. McCormack, Mr. Johnson, Mr. Ende, and myself over these past few days. I have also included the suggestion, discussed within the delegation this past week, that it would be useful for the United States to "hint" that a four tier structure might prove acceptable.

Richard R. Colino

cc: U. S. Delegation.

*This should be
said word for word*

STRUCTURE OF THE ORGANIZATION

INTRODUCTION

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Most delegations have quite properly noted that there are two basic characteristics of INTELSAT: first, that it is an operating venture, providing facilities for communications on a commercial basis and second, that it is an organization with a broad international membership. In 1964 these two characteristics were weighed and emphasis was quite properly given to the first. The United States Delegation considers that the first characteristic must guide the work of this Conference. INTELSAT is an international partnership, an operating entity providing

telecommunication facilities on a commercial basis. Today our organization has a membership of 67 nations which account for some 95 percent of the telecommunications traffic of the world. That is quite remarkable for an organization as young as ours, particularly since many members today are not yet able physically to take advantage of satellites for their international communications.

One of the noteworthy characteristics of this organization which differentiates it from others is that the differences in interests and potential advantages to be derived which often divides the membership of other organizations into and "developing" country categories has no relevance.

The United States Delegation would disagree with the suggestion that INTELSAT be restructured as a traditional international organization. The United States believes that such an approach can only lead to the establishment of an ineffectual organization, another political arena, which would become increasingly incapable of providing the high quality, efficient, and technologically advanced services which the present INTELSAT organization has provided, and which the users of the system have come to expect.

The United States Delegation questions the desirability or necessity of introducing "political" matters into the structure of the organization as some proposals suggest. To a large extent what may be characterized as "political" decisions - e.g. issues relating to accessions by countries and to terms and standards for use of the system - can and should be stated in the agreements or, if need be, by amending the agreements. Thus, it should be possible to "depoliticize" the future organizational structure. We all should be able to agree that INTELSAT should be "apolitical".

The United States Delegation recognizes the international character of INTELSAT and believes that it can be properly recognized and accommodated within the organization to be established without detriment to the efficient operation of the venture.

THE ASSEMBLY

First, in regard to the Assembly it has been suggested in Document I/26 submitted by the Delegations of Canada, the Federal Republic of Germany, and India that the Assembly be composed of Governments (although the explanation of the proposal provided by the distinguished delegate of Canada implied that Signatories to an Operating Agreement could also participate). The United States does not support the proposition that Governments have a disproportionately large or inappropriate role to play in the affairs of INTELSAT.

While there are important roles for both Parties to the Intergovernmental Agreement and Signatories of the Operating Agreement, telecommunications entities, or the Governments in certain cases, which actually contribute the capital to the organization must have the primary role in the policy organs. The document introduced by Canada, the Federal Republic of Germany, and India suggests the Assembly should have the power of "over all policy". It also suggests that the Assembly should have the power, for example, to approve a five year program and should appoint a General Manager. We do not know what "over all policy" means but to the extent that it purports to participate in designing the system to that extent, we think that it just won't work. You cannot have an Assembly effectively carrying out this function. We don't know what it means to have the Assembly be the "supreme organization" and quite frankly we think it may be more easily debated if we consider more specifically the question of functions that the Assembly and the Governing Board should have.

CONFERENCE OF PARTIES

The United States has listened with great interest to the proposal by the distinguished delegate of Australia

that INTELSAT have a four-tier structure: a Conference of Parties to the Intergovernmental Agreement, an Assembly composed of Signatories to the Operating Agreement, a Governing Body and a Manager. The United States considers that this approach merits further consideration. Such a Conference of Parties would be primarily concerned with the amendment of the Intergovernmental Agreement and a very general review of the activities of the Organization. It might meet at fixed intervals, perhaps every five years, or when convened by a determined number of Parties.

Hypothesizing that this approach might prove to be acceptable, the United States would then envisage an Assembly consisting only of Signatories, acting somewhat like the annual shareholders meeting in a corporation. Document 10 contains suggested functions for an Assembly, and the provisions for voting which the United States envisages for such an Assembly.

THE GOVERNING BODY (BOARD OF GOVERNORS)

The Organization will require a relatively compact executive organ similar to the Interim Communications Satellite Committee. This concept is recognized and accepted by all delegations. The United States Delegation believes that the international character of INTELSAT can be

properly recognized by providing for broad representation in the Board of Governors without jeopardizing its compactness or the important decision-making role which it must play. Because the Board of Governors will be the executive, decision and policy making organ, it must be composed of the Signatories. The investors in the Organization, whether Governments or communications entities, must have direct control of the policies and determinations of the Organization. The United States looks with interest upon all suggestions for broader representation in this organ. It has proposed in Document 10 how this might be accomplished. In addition to the determination of representation according to the size of an individual Signatories' investment share or a group's combined investment share, the United States has proposed that any five Signatories regardless of investment share might combine for a single seat and that a certain number might be selected by the Assembly. The United States has submitted its suggestions as to the functions which might be given to the Board of Governors. These are contained in Document 10.

THE MANAGER (MANAGEMENT BODY)

Before discussing the Management Body or Manager for the Organization, several general observations may be appropriate. We are considering here the future organization of the most complicated and most extensive international

technical commercial operation of all times. One, which under a set of interim arrangements has, in the incredibly brief span of four years, succeeded beyond all but the most visionary original expectations. We are now urged to revise this successful organization to the extent that the result would be to start over again, anew. We are urged to believe that this organization can be plausibly considered to be successfully internationalized only if the internationalization extends all the way down to the management of day-to-day operations, a totally new concept in communications management even in the relatively routine regime of conventional radio and cables. We are urged to make this shift in management organization from a coherent and efficient establishment (corporate) form to a traditionally international civil service form. And, we are urged to do this at a most curious point in time. A time when the trend in management is in the opposite direction: to a corporate form. Indeed, some of the organizations participating in this Conference are themselves in the process of adopting corporate form for greater management efficiency. Recent experiences in international and regional technical enterprises are also instructive. They lead the United States to conclude that "internationalization" at the management level can lead to, or contribute to, less than satisfactory results.

The United States Delegation has several specific comments concerning the Manager to offer at this time.

(a) The United States Delegation listened with particular interest to the submission by the distinguished delegate of the United Kingdom of his government's proposal for management arrangement under the definitive arrangements. These are contained in Document Com. I/40. We have also carefully analyzed those aspects of Com. I/26 which deal with the management body. The United States Delegation finds serious flaws in both proposals and is disturbed by some of the suggestions contained therein.

(b) The United States Delegation supports the brief one paragraph description of the management body contained on page 3 of Document Com. I/26. However, it does not support the concept of a management body as contained in that document.

(c) The United States cannot accept the establishment of an "internationalized" Manager in the form of an international secretariat or international organization as indicated by this document. "Internationalization" is a term which may require clear definition. However, with respect to "control" of the organization, the United States holds that this is international since control rests with the Board of Governors and not the Manager.

(d) The Manager is responsible for the day to day operation of a system providing the necessary services. Highly competent personnel are required. Transferring management functions to an inexperienced newly formed group could prove quite harmful to the INTELSAT system.

(e) The United States agrees with the statement contained in Document Com. I/40 submitted by the United Kingdom that "the effective management of a global commercial communications satellite system is a major undertaking requiring highly specialized skills and experience; international telecommunications will depend to an ever increasing extent on the system and no risks should be run which might reduce its efficiency or imperil the momentum of its growth."

(f) Without arguing who best should provide a Manager, we would just like to say that we don't find the basic conceptual problem that some others have found in the proposition that a group of entities or partners should appoint one of their members to execute their instructions and provide the managerial manpower for the group as a whole and under the control of the group.

(g) We are not saying the Comsat and only Comsat can, in perpetuity be considered talented enough to act as Manager. Our paper does not suggest this. It specifically suggests the possibility of altering the Manager at some time in the future. At such time when a workable and proficient entity is available, we believe the Board of Governors and Assembly, acting together would be best qualified to endorse such a change.

CONCLUSION

In conclusion, the United States Delegation would like to stress several points.

1) We are urged to place powers over the application to world needs of a rapidly changing technology in the hands of an assembly, or congress, which have never in the past, even in a static situation, been successfully implemented through such a congress. The United States considers this most undesirable.

2) We are urged to shift away from a successful manager to a management form which is at best can be considered to be less than successful. The United States considers this to be both undesirable and inimical to our common interests.

3) The United States seeks no undue credit for having placed the fruits of its space research program in the service of better global communications. The technology and the facilities for translating it into the means of international communications existed, and it was fitting that we make to the world the offer which was authorized and directed by our Congress in its Communications Satellite Act of 1962.

4) We are most gratified not only by the technical success of this unique international endeavor to date but also by the extent to which it has attracted the nations of the world as indicated by the number which have come into the consortium to date.

5) The stakes of the United States in the continuing success of this endeavor are truly enormous. In particular, by the evidence of our actions, we are committing the bulk of U.S. long-haul international communications to the satellite system.

6) We cannot afford, nor do we think any other nation can afford, to risk the future of this enterprise on organizational experiments patterned after international organizations whose purposes and functions have little or nothing in common with the purposes and functions of maintaining, operating, and further developing the commercial potential of satellite communications.

7) Mr. Chairman, the United States Delegation offers these views after careful consideration and with serious conviction.

COMMUNICATIONS SATELLITE CORPORATION

March 6, 1969

MEMORANDUM

To: Frank Loy
From: R.R. Colino *RRC*

Attached is a revised commentary on Document Com. I/26 submitted by the Delegations of Canada, the Federal Republic of Germany and India. The attached paper includes the points contained in the paper on Doc. I/26 that I provided yesterday but has been edited and polished somewhat.

Distribution:

U. S. Delegation

COMMENTS ON DOCUMENT COM. I/26

The United States Delegation has studied and carefully analyzed the proposals put forward in Document I/26 by the Delegations of Canada, the Federal Republic of Germany, and India. While the United States is in agreement with some of the views contained in Document I/26, it does not agree with other proposals contained in that document. In addition, the United States Delegation seeks clarification of certain of the positions stated in Document I/26. The U. S. bases its analysis of these proposals on its concept of the organization. It believes that INTLESAT is fundamentally a business venture with the purpose of providing a necessary service in the most economical manner possible. It is a functional organization and to the extent that an international organizational framework and international organizational concepts can aid in the achievement of the purpose, they are acceptable.

The U. S. does not see INTELSAT as an international organization in the traditional sense of that concept, where sovereign equality of States and promotion of political goals are ultimate aims.

The United States agrees that the organization have a three tier structure: an Assembly, a Governing Body, and a Management Body.

The United States feels that the Organization should be international in scope and designed to attract the broadest possible membership. It considers that the status of an unincorporated joint venture provides the Organization with all the powers it needs to carry out its functions and objectives. These general proposals for the structure of the permanent organization are consistent with U. S. feelings as to the nature of INTELSAT and will not interfere with INTELSAT's functions.

Specific proposals regarding each of the organs -- composition, functions, the U. S. cannot agree to when the principle on which they rest is that of INTELSAT as an international Organization first, and a business-like operating venture second.

The Assembly

Under the Canadian/German/Indian proposal, each Government, party to the Agreement, would be represented in the Assembly (although the explanation of this proposal provided by the Canadian delegate implied that Signatories to an Operating Agreement could also participate) which could have periodic say in overall policy.

The United States Delegation would like clarification of this principle. For instance, what is meant by "overall policy?" It appears to mean the determination of the policies of the Organization; if so, the United States disagrees

with this view and considers that such a power rightly belongs in the Governing Body. The United States could not accept empowering the Assembly with major policy formulation and direction. Such an arrangement would be inconsistent with the U. S. view of INTELSAT as primarily an operating-oriented endeavor. The Assembly would normally meet once a year. It could not provide the continuing guidance and decision-making needed by an operating concern responsible for continuous provision of reliable telecommunication services. The communications entities, public and private, would have little or no part in deliberations affecting them and would be less able to offer assistance in matters in which they have knowledge and experience. The United States has proposed that the Assembly be composed of the Representatives of Parties or their Signatories, as appropriate. We do not agree that the telecommunications entities should be excluded from participation in the Assembly or relegated to a secondary role, which is an organ of importance and which will take decisions affecting their interests. Other responsibilities proposed for the Assembly could be detrimental to INTELSAT's functioning and limit INTELSAT's capacity to offer the best telecommunication services.

It is advocated that the Assembly approve the five-year program for the Organization on the recommendation of the Governing Body. It is not clear what this responsibility would involve. If it is proposed that the Board of Governors present to the Assembly for approval a detailed outline of what it intends to do, the United States could not support the proposal. The United States does not feel the Assembly should be the major policy organ (for reasons indicated above). Such an arrangement would also prove troublesome from a technological point of view. Developments in satellite technology are occurring so rapidly, many times in unexpected directions, that it is difficult to predict the directions in which it will move. Commitment of resources and decision-making in this manner (i.e. on a five-year basis) could limit INTELSAT's ability to respond to technological changes.

The consequences for INTELSAT of giving such wide-ranging functions to the Assembly are greater when the voting arrangements for the Assembly are considered. Since voting in this Assembly would be on the basis of each representative casting one vote, parties with minimal investment shares could make decisions committing the capital of all INTELSAT members. Those members, making the most use of the system and the largest financial contributions, could be placed in a disadvantageous position.

Document Com. I/26 states that "Decisions could be taken by a simple majority, except as otherwise provided."

The United States shares the interest of the Australian delegation in seeking a clarification of the phrase "except as otherwise provided." The U. S. feels that since all telecommunications entities should be able to participate in INTELSAT, an Assembly of Parties or Signatories, as determined prior to each meeting is desirable, but it should not be the major policy organ. We support giving the Assembly the responsibility of reviewing the activities of and decisions taken by the Governing Body.

The United States supports the proposal that the Assembly be given amendatory functions although the United States in Document 10 suggests different voting arrangements.

The United States Delegation questions the necessity of allowing the Assembly to confirm the accession of new members. More important, however, the United States considers it a barrier to participation in the Organization, one which is likely, in view of the proposal that the Assembly be composed only of Government, to prevent participation by many countries in INTELSAT. The proposal would place applications for membership into a political arena.

Since the question of determination of investment shares is currently being considered by Committee III, it does not appear appropriate to comment on this point at this time.

The Governing Body

The proposal that the Governing Body be composed of the representatives of "states" as phrased is ambiguous.

The United States has proposed, and we believe that most delegations concur (including the Delegations submitting Doc. Com. I/26) that the Governing Body should contain only the representatives of Signatories to the Operating Agreement. The investors in the Organization, whether governments or communications entities, must have direct control of the policies and determinations of the Organization. Thus, the recommendation that the Governing Body should be responsible for directing and implementing the policies of the Organization, only, is not acceptable to the U. S.

When considered in conjunction with functions proposed for the Assembly, it appears that the Governing Body would simply carry out the policies or instructions of the Assembly. This would be intolerable for an organization concerned with the establishment and operation of a communications system in a rapidly changing and dynamic field of technology. The entire history of INTELSAT and the Interim Communications Satellites Committee confirms that a small executive organ must have the full responsibility for policy determinations.

Therefore, the United States agrees that it is desirable and to the advantage of the Organization to have a Governing Body of limited size. The proposal presented in Doc. Com. I/26 would have 18 members representing the largest investors and four members representing geographic areas inadequately represented. The United States does not find this proposal unacceptable but feels that its proposals are more liberal. Represented on the Governing Body under the United States proposal would be those investors whose shares equal or exceed a requisite level, any investors who by combining can achieve the necessary level, any five members who choose to combine, regardless of investment shares, a certain number to be elected by the Assembly.

For the same reasons, the U. S. Delegation supports decision-taking on the basis of weighted voting. Because the U. S. feels that a small executive organ must have the full responsibility for policy determinations, it agrees that the Governing Body should have the power of decision concerning design, development, procurement, operation, and maintenance of the space segment. The U. S. supports the provisions giving the Governing Body the responsibility to approve budgets,

determine accession of new members, and investment quotas for Signatories, recommend to the Assembly amendment of the Agreement, and carry out such other functions as may be necessary to the efficient operation of the system.

As already noted, the United States cannot support the proposal for five -year programs, especially when they would have to be approved by the Assembly.

The Management Body

The U. S. Delegation supports a Management Body as described, under the direction of the Governing Body which would carry out the management functions of the Organization and provide administrative support to the Assembly and the Governing Body. However, it does not support the concept of a Management Body as contained in this document. As suggested in Document I/26, the Management Body would be an integral part of the Organization and would be internationalized as soon as practicable. The Governing Body would recommend to the Assembly appointment or dismissal of the General Manager.

The United States Delegation is concerned with the precise implications of the principle of "full internationalization of the Manager" If the implication is a participation

by non-United States personnel in the management function, then it would be consistent with the proposals and objectives of the United States. However, if it implies the establishment of some type of international secretariat or international organization, the the United States could not agree to such a principle. An international secretariat or organization is not conducive to the view of INTELSAT as business-oriented for it could not properly manage the communications system; the United States is unwilling to sacrifice the high quality, efficient and economic services already provided by INTELSAT. The Manager is responsible for the day-to-day operation of a system providing a necessary service. Highly competent personnel are required. Transferring management functions to an inexperienced, newly formed group could prove quite harmful to the INTELSAT system.

Internationalization would occur as soon as practicable. Since no indication is given of how long this would be or how it would come about, the United States cannot comment on these matters at this time.

LEGAL STATUS OF INTELSAT UNDER
THE DEFINITIVE ARRANGEMENTS

The purpose of this memorandum is to compare the present legal structure (joint venture) of INTELSAT with an independent legal status for INTELSAT, with a view to determining the necessity, if any, for modification of the present legal structure.

I. COMPARISON OF PRESENT LEGAL STRUCTURE (JOINT VENTURE)
WITH AN INDEPENDENT LEGAL STATUS FOR INTELSAT

INTELSAT's juridical status under the interim arrangements is that of a joint venture, and, as such, it does not have legal status or personality independent of the legal personality of its participants. The alternative to this juridical status would be to create, internationally, a legal status for INTELSAT which would be comparable to that possessed by public international organizations. The Legal Subcommittee should give primary consideration to the question of whether such independent international legal status is necessary for the effective conduct of INTELSAT's business functions.

A. ABILITY TO CONDUCT BUSINESS

1. Contracting

a. Present Status

INTELSAT need not have independent legal status in order to effectively carry out space segment contracting functions. Utilizing the concept of agency, which seems to be recognized by virtually all legal system, contracts for and on behalf of INTELSAT can be entered into by one of the signatories, either as manager or as signatory. The consortium may also contract through an individual or an outside entity acting as agent for the participants. The legal status of the individual to act as agent on behalf of both sovereigns and commercial entities, and to obligate them, in the conduct of significant business activities, has been recognized for centuries, long before the concept of the public international organization was developed.

INTELSAT business has been effectively carried out in this manner under the interim arrangements, and it could continue to be so conducted under the definitive arrangements. For example, in contracts for the lease

and operation of TT&C facilities in Italy and Australia with Telespanzio and OTC (Australia), respectively, and in the INTELSAT IV contract, Comsat, as manager, acted for and on behalf of INTELSAT. Moreover, all of the standard agreements for allotment of satellite capacity are entered into between INTELSAT and the user with the Communications Satellite Corporation, by authority of the Interim Communications Satellite Committee (ICSC), signing the agreements on behalf of INTELSAT. Also, the three-year, \$25 million contracts for the allotment of satellite capacity in connection with the NASCOM service (e.g., with Her Majesty's Postmaster General, The Spanish Telephone Company and OTC (Australia)) were signed by the Chairman of the ICSC as agent on behalf of the Committee.* Under such contractual arrangements, the rights and obligations under the contract are those of the individual signatories, in accordance with their respective quotas.

* The Committee is, of course, empowered by all the Signatories to the Special Agreement to act on their behalf in allotting satellite capacity.

The fact that the consortium has not been created as a separate international legal entity, or as an entity under the laws of a particular member state, does not constitute an impediment to entering into contracts, through a designated agent, with a national or domestic entity of any member state. Of course, as is the case with INTELSAT's present manager,* any entity or individual who would act on behalf of the consortium on a continuing basis would presumably have an instrument, in the form of an agency contract with the Board of Governors, to evidence his authority to obligate and acquire rights on behalf of the signatories. Such evidence of authority should permit the agent to accomplish even the most significant business activities of INTELSAT under the definitive arrangements, particularly in view of the fact that in almost any jurisdiction where INTELSAT business would be conducted, one of the signatories who would be bound by such an agency agreement would be resident.

* All the parties to the Interim Agreement designated Comsat as the manager of the joint venture, empowered to act on behalf of the consortium.

As is discussed below, there is attached as an Annex a brief analysis of several examples of the conduct of significant business and other activities through the use of the international joint venture. These examples point up the usual mode for the management of such joint ventures, namely, the use of one of the partners, acting for and on behalf of the consortium, in the management of the activity.

b. With Independent Legal Status

If INTELSAT were established as a separate international legal entity, that entity would itself enter into the necessary contractual arrangements. Under such contractual arrangements, the rights and obligations of INTELSAT arising out of the contract would rest with the legal entity rather than the individual signatories.

As there would be substantial doubt whether the individual signatories would be directly subject to legal process to the extent of INTELSAT's contractual obligations, potential contractors may very well be reluctant to contract directly with INTELSAT or its management body as a legal entity separate and distinct

from its members. Of course, INTELSAT could maintain substantial liquid assets to evidence its ability to meet contractual obligations as they arise, as well as the normal operating costs of the organization.

As noted above, the property rights arising out of any contractual arrangement entered into by a legally independent INTELSAT, would rest with that independent entity, instead of the individual signatories, in proportion to their investment shares. The effect of this upon the ownership rights of the signatories is discussed under the section of this paper dealing with ramifications.

2. Acquisition of Property

There would not appear to be any significant difference, with respect to the acquisition of property, between INTELSAT's ability in its present status and its ability as an independent legal entity. Contracts for the acquisition of property are generally governed by the same principles as other contracts; as discussed above, lack of legal personality does not constitute

; an impediment to the conclusion of space segment contracts. Of course, certain acquisitions of property involving special local interests -- e.g., the purchase or lease of land -- might in some instances entail compliance with certain local requirements, such as registration to do business. However, these requirements would presumably be encountered whether or not INTELSAT had legal personality.

3. Protection of Property Interests

INTELSAT's lack of legal personality does not and would not constitute a disability with respect to protection of the property interests of the signatories, as among themselves or as against third parties. With respect to conflicting claims as between and among signatories, the Supplementary Agreement on Arbitration provides an exclusive mechanism for settlement of disputed actions of signatories, as such, and that Agreement in its basic aspects will be continued under the definitive arrangements. With respect to actions and claims of third parties which involve the property interests of

INTELSAT, all contracts and agreements relating to the acquisition or utilization of INTELSAT property interests incorporate provisions requiring the settlement of disputes by final arbitration. Against encroachments by third parties not in privity with INTELSAT, there is no bar to INTELSAT, through the signatory in whose jurisdiction the encroachment occurred, instituting appropriate legal proceedings.

It may be necessary to join some or all of the signatories in a particular legal proceeding, but there is no apparent reason why such joinder should constitute a legal impediment and, as a practical matter, joinder is only required in name; the signatories may be represented in court by local counsel acting on behalf of all of them.* Resort to local counsel will always be necessary when instituting proceedings in a particular state, whether or not INTELSAT has legal personality and the legal capacity to institute legal proceedings.

* For example, in the U. S., INTELSAT, could institute proceedings in some instances through local counsel in the name of the Consortium without joining all the signatories; in other jurisdictions, the signatories must be named as parties.

With respect to the protection of such property interests as rights in inventions, it is doubtful that independent legal status for INTELSAT would offer any advantages. For example, no impediment has been found to exist to the INTELSAT manager filing patent applications on INTELSAT-owned inventions in a number of jurisdictions.

4. Other International Joint Ventures

The concept of the international joint venture, not created as a legal entity separate from the participants, is often utilized in undertakings involving international business operations. Such international joint ventures, which include participation by both private entities and governments, have successfully engaged in international operations in many fields, including communication, transportation, navigation, nuclear energy, and the exploitation of natural resources. Set forth in the attached Annex are several examples of such joint ventures, both past and present.

B. RAMIFICATIONS

1. Ownership

In its present status, INTELSAT assets are owned jointly in undivided interests by the signatories. If INTELSAT becomes a legal entity separate from its participants, the assets of INTELSAT would presumably be held by that entity. Consequently, some new form of evidencing the various signatories' ownership interests in the entity would be necessary. This requirement exists because the signatories would no longer have a direct undivided ownership interest in the assets; rather, they would have an interest in the legal entity INTELSAT, which would itself own the assets.

2. Liabilities

Under INTELSAT's present status, the participants are liable either jointly or jointly and severally for the obligations of INTELSAT to third parties. This status does not, however, result in any one participant being required to pay ultimately more than his share of an obligation, since the nature of the arrangements require the indemnification of such a party by the

other partners in proportion to their interest, assuming that the acting participant stayed within the legal bounds of the venture.

There is some question as to the liability of the individual participants in the event INTELSAT has legal personality. While some jurisdictions might treat the participants as still being jointly, or jointly and severally, liable on the obligations of INTELSAT, it is most likely that INTELSAT's separate legal entity status would, insulate the individual participants from the contractual and other liabilities of the organization. Although this might be considered beneficial, with respect to the tort and contractual liabilities of the signatories, this could have an adverse impact upon the ability of INTELSAT to engage in commercial activities, as is discussed above.

3. Taxation

The vesting of INTELSAT with separate legal personality would normally have the effect, under the laws of some INTELSAT members, of establishing it as a separate taxable entity apart from its signatories.

This treatment could possibly have adverse ramifications in at least two respects. First, it might make INTELSAT subject to income taxation in some member states, absent a grant of immunity from such taxation; under INTELSAT's present status it is unlikely to be regarded as a taxable entity. Second, those signatories who are taxable private entities might suffer various tax disadvantages which would be avoided if INTELSAT remains a joint venture. For example, they might no longer be able to deduct from their gross income their share of the expenses of INTELSAT, including depreciation of assets.

4. Privileges and Immunities

As a matter of international law, INTELSAT need not have independent legal status to enjoy privileges and immunities. Moreover, it is very doubtful that either the absence or existence of legal personality would create problems in conferring privileges and immunities under the domestic laws of the various INTELSAT members. Of course, the makeup of INTELSAT and the functions that it would perform could affect the privileges and immunities that are appropriate to grant to INTELSAT.

II. CONCLUSION

The ability of INTELSAT to efficiently conduct its business activities would not appear to be enhanced through the establishment of a legally independent status for INTELSAT. Even if the Board of Governors were to employ an individual, rather than Comsat or another signatory, to act as manager on behalf of INTELSAT, a joint venture without independent legal status -- INTELSAT's present status -- provides an appropriate framework for the conduct of INTELSAT's business. Moreover, creating an independent legal status for INTELSAT could have certain undesirable ramifications for both INTELSAT and the individual signatories.

ANNEX

EXAMPLES OF INTERNATIONAL JOINT VENTURES

TRANSPORTATION:

An example of a joint venture with collective management is the Scandinavian Airlines System (SAS). The SAS Consortium as it presently exists was created in 1951 by agreement among the national airlines of Denmark (DDL), Norway (DNL) and Sweden (ABA)^{1/} with assets contributed to the operating entity, SAS, in the ratio 2:2:3.

The Consortium was not created as a separate juridical person with particular nationality. It is, in essence, a partnership with the three national airlines participating in the venture as holding companies.^{2/} The parties jointly own all the property and rights of the Consortium, share any profit or loss which arises from the activities of the Consortium, and remain, as to third parties, jointly and severally liable for

^{1/} Each of the national airlines is 50% government owned. The legislatures of the respective states approved the agreement and each of the three governments endorsed it. Nelson, Scandinavian Airlines System - Cooperation in the Air, 20 J. Air L. & Comm. 178 (1953).

^{2/} Bin Cheng, The Law of International Air Transport, 273 (1962).

obligations incurred by the Consortium in connection with its activities.^{3/} The affairs are managed by a Board of Directors, an Executive Committee and a General Manager appointed by the Board of Directors to act as chief executive officer of the Consortium.

NAVIGATION:

The International Commission of the Cape Spartel Light was established by convention on May 31, 1865. The Commission was an international administrative organization for a "joint co-operative enterprise."^{4/} The Commission was not created as a separate legal entity. Its purpose was to administer the maintenance and upkeep of the lighthouse which was constructed by the Government of Morocco on the southerly approach of the entrance to the Mediterranean Sea in order to assure the safety

^{3/} Carlos Fligler, Multinational Public Enterprises, 27 (International Bank for Reconstruction and Development, 1967). Fligler notes that although nominal ownership of aircraft remains in the registered partner the Consortium both for internal and external purposes exercises all the powers pertaining to ownership and disposition thereof. Id. at 28.

^{4/} Stuart, The International Lighthouse at Cape Spartel, 24 Am. J. of Int. L. 770, 776 (1930).

of shipping through the Straits of Gibralter.^{5/} Contributions for the maintenance and upkeep were to be made equally by the twelve member countries.

NUCLEAR ENERGY:

Two multipartite joint undertakings in the field of nuclear energy concern reactor projects in Norway and Great Britain.^{6/} Under neither arrangement was the joint undertaking vested with separate legal personality. In the case of the undertaking in Great Britain, the U.K. Atomic Energy Authority, one of the participants, was specifically designated to act on behalf of all the participants in performing the legal acts involved in the operation of the undertaking.^{7/} In both instances, the agreements setting up the undertakings provide for a Board of Management assisted by a technical committee and a project officer. Expenditures are covered by contributions from the signatories in accordance with sharing formulas annexed to each agreement.

^{5/} 2 Peaslee, International Governmental Organizations, 1051 (Rev. 2 ed. 1961).

^{6/} Halden (Norway) Boiling Water Reactor Project, June 11, 1958; High Temperature Gas Cooled Reactor Project, Winfrith, U.K. March 23, 1959 (Project "Dragon").

^{7/} Agreement, Preamble and Article 1(b).

COMMUNICATIONS:

A most recent example of an agreement for the construction and maintenance of submarine telephone cables is the TAT-5 agreement between various U.S. common carriers and foreign telecommunications entities in Italy, Portugal and Spain.^{8/} Section 17 of this Agreement describes the venture as a "common enterprise." There is no operating entity or the like created; instead, construction and maintenance is apportioned among the parties with settlement arrangements provided for arriving at a distribution of the costs. The parties charged with construction responsibilities are responsible for letting the necessary contracts. Where facilities are owned by two or

^{8/} Transatlantic No. 5 and Mediterranean No. 1 Submarine Cable System Construction and Maintenance Agreement, June 20, 1968. This covers a cable from the United States to Spain, a second cable from Spain to Italy, terrestrial links between the two cables in Spain and a terrestrial link to Portugal.

more parties, pursuant to the ownership schedule annexed to the Agreement, the ownership is in common undivided shares.

Other cable agreements in the Atlantic, Pacific and Caribbean regions are of a similar legal nature as the TAT-5 Agreement and generally follow the same pattern as to allocation of ownership, responsibility and costs.^{9/} None of these create a separate entity to carry out the enterprise.

EXPLOITATION OF NATURAL RESOURCES:

Pursuant to the Franco-Algerian Agreement on Hydrocarbons and its Protocol, signed July 29, 1965, France and Algeria formed an association--the Franco-Algerian Cooperative Association (ASCOP). The purpose of the Association is the common

9/ Atlantic Region:

Transatlantic Cable Construction and Maintenance Agreement, dated September 30, 1957 (TAT-2).

Transatlantic Cable Construction and Maintenance Agreement, dated July 20, 1960 (TAT-3).

Transatlantic Cable Construction and Maintenance Agreement, dated November 1, 1963 (TAT-4).

Pacific Region:

U.S. Mainland - Guam Cable Circuit Agreement, dated November 21, 1963.

Guam - Philippines Cable Agreement, dated September 24, 1963.

Caribbean Region:

Jamaica -- Canal Zone -- Colombia Agreement of 1963.

exploration and exploitation by France and Algeria of Algerian petroleum resources. Although the Association was brought into existence by an intergovernmental agreement, the participants in the association are government-owned companies.^{11/}

The relationship of the two companies comprising the Association is one of an unincorporated association governed by the terms and conditions of the association agreement (the Protocol).

The Association does not constitute a juristic person.^{12/}

The business of the Cooperative Association is carried on by three organs: a Council of Management, a Technical Committee, and an Operator. The Council is entrusted with the overall management of the affairs of the Association, the Committee dealing only with such matters as are delegated to it by the Council as well as making recommendations to the Council. The entire zone of operation was divided into distinct parcels, and, pursuant to Article 16 of the Protocol, one of the parties was

^{11/} 4 International Legal Materials 809, 846 (1965); see generally, Cattán, The Evolution of Oil Concessions in the Middle East and North Africa, 146-151 (1967).

^{12/} Cattán, op.cit. supra., at 148.

to be the "Operator" (i.e. the managing partner for the Association) of each parcel unless it was agreed to give this function to a third party. The Operator is charged with the management of exploration and development operations of the parcel pursuant to the decisions of the Council and the Committee. Article 19(d) of the Protocol provides that the Operator is responsible for negotiating and contracting and can do so as agent on behalf of both of the parties.

TUNNEL AGREEMENTS:

The conventions between France and Italy^{13/} and Switzerland and Italy^{14/} for the construction of tunnels in the Alps establish intergovernmental joint ventures without separate legal personality.

Both conventions provided that each party will assign one-half of the construction to a national company. In addition, the conventions provided for the establishment of a supervisory commission to oversee the progress of the work. There is no

^{13/} Convention between Italy and France concerning the Construction and Operation of a Tunnel under Mont Blanc, March 14, 1953. 284 U.N.T.S. 223. (1957-58).

^{14/} Convention between Italy and Swiss Confederation concerning construction and operation of a road tunnel under the Grand-Saint Bernard, May 23, 1958. 363 U.N.T.S. 83. (1960).

express grant of personality to these commissions however.

Each convention further provides that upon the termination of the concession for any reason the tunnel shall become the common and indivisible property of the two states to be thereafter operated jointly on the basis of equal rights and responsibilities.