TABLE OF CONTENTS

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DEFINITIVE ARRANGEMENTS FOR INTELSAT

The Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System provides in Article IX that the Interim Communications Satellite Committee (the Committee) shall render a report not later than January 1, 1969, containing the Committee's recommendations concerning the Definitive Arrangements for an international global system which shall supersede the Interim Arrangements. This report is to follow the principles found in the Preamble of the present Agreement, which incorporates the principle (set forth in Resolution 1721 of the XVI United Nations General Assembly) that communications by satellite should be available to the nations of the world as soon as practicable on a non-discriminatory basis.

Believing that it is important for the Committee to begin consideration of its report at the earliest possible date, in order to expedite the agreement on Definitive Arrangements, the United States proposes that the Committee begin its study of this subject. Accordingly, this paper submits for the Committee's consideration a proposal containing an outline of the Definitive Arrangements.

I. Introduction

A. Objectives of the Definitive Arrangements

In considering the form, structure and purpose of the Definitive Arrangements, certain objectives concerning the provision of satellite communications services appear to be shared by all States. It is in the interest of each State that:

1. High quality and reliable communications services be available to it at the lowest possible cost. This objective implies that a communications satellite system be designed to achieve a maximum in efficiency, including arrangements allowing each State access by the most direct routing practicable to every other State with which it has joint communications interests. It also implies that any unnecessary duplication of facilities, whether they be located in space or on the ground, should be avoided.

2. To the extent technologically possible, the system assure that facilities be available to meet each State's requirements for satellite communications when they arise.

3. The technology of satellite communications be developed at the most rapid pace economically practicable, and the benefits of such technological advances be available to all States.

4. It have an opportunity to participate, to the extent of its capability, in the research, development and manufacturing opportunities in the field of satellite communications.

B. Basic International Characteristics of Communications by Satellite

Communications satellites have a number of characteristics that are fundamentally international in nature. International cooperation in establishment and operation of satellite communications facilities is peculiarly important because of these basic facts:

1. Geo-stationary satellites occupy locations (or "parking slots") in orbit in the plane of the earth's equator. The available number of such slots is limited, and they therefore constitute a valuable international resource.

2. Communications satellites utilize the electromagnetic frequency spectrum, also a vital and limited international resource.

3. Communications satellites radiate electromagnetic energy, which cannot now or in the foreseeable future be precisely confined within national boundaries. This energy is capable of causing interference to other communications facilities.

4. Communications satellites are themselves susceptible to harmful interference from other electromagnetic radiations.

Recognition of the foregoing considerations and objectives, coupled with the desire to promote world peace and understanding through vastly improved and expanded

worldwide communications, led to formation in 1964 of the single global commercial communications satellite system.

C. Experience of INTELSAT to Date

The experience of INTELSAT to date demonstrates convincingly that the single global system concept established in the INTELSAT agreements of 1964 was well designed to meet the objectives stated in Section A above, taking into account the international nature of communications by satellite outlined in Section B above.

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

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

Because of the nature of INTELSAT's task, its success or failure should be judged today--and will be in the future--largely (though not entirely) by the manner in which it harnesses the capital, manpower, technology and other available resources to provide a high-quality, low-cost service and otherwise meets the needs of the participants. Accordingly, INTELSAT requires a form of international cooperation which differs in certain significant respects from that applicable to other multi-national bodies with which we are acquainted.

By these standards, INTELSAT has been a success, and an important development in techniques of inter-

national cooperation. We conclude, consequently, that it is desirable to retain the essential INTELSAT concept. Nevertheless, experience and a look to the future indicate the possibility of making certain changes that would foster improved international cooperation and increase the benefits from such cooperation.

II. Purpose and Scope of the INTELSAT Organization

As under the Interim Arrangements, the purpose of INTELSAT would be to provide for the design, development, construction, establishment, maintenance and operation of the space segment of the global commercial communications satellite system. The space segment of this system would comprise the communications satellites, and the tracking, control, command and related facilities required to support the operation of the satellites.

The scope of INTELSAT's authority and activity would remain similar to its present scope--to meet the needs of its members for all satellite communications services through a basic, growing system of satellites. This broad statement of INTELSAT's scope requires some further analysis, in terms of both its functional and geographic scope.

A. Functional Scope

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

B. Geographic Scope

It is important to recognize, however, that in quite another sense INTELSAT's facilities must serve a variety of different needs, and that the Definitive Arrangements must take full account of this variety. To date INTELSAT has been engaged primarily in planning and bringing about a system providing a basic global coverage, that is, a system largely intended to provide international commu-

nications services. Under the Definitive Arrangements INTELSAT would obviously continue to do this.

As a general rule the basic INTELSAT system will also be able to provide efficiently and well domestic communications services. Clearly communications satellites will play a significant role in domestic communications; each State will have to determine how it wishes to use satellite facilities for domestic communications purposes.

States might use communications satellites for domestic services in several ways

--by obtaining circuits in an INTELSAT satellite
--by operating a separate satellite solely for domestic service, or
--by operating a separate satellite for joint use of a group of neighboring countries for their respective domestic traffic demands.

The decision among such methods should logically be based on whether the requirements can be met more efficiently and economically by a satellite owned by INTELSAT or by a separate satellite.

Certainly two closely related concepts are fundamental. First, inasmuch as States have traditionally exercised jurisdiction over their domestic telecommunications, provision should be made for the establishment of separate satellites by a member of INTELSAT to meet its domestic needs. Second, clearly the space segment of even a domestic satellite system is a matter of legitimate international concern, and no action should be taken in the establishment of a domestic system which is incompatible with the global INTELSAT system.

Accordingly, this paper contemplates two categories of satellites.

1. Category A Satellites

Category A satellites would be those satellites established on the initiative of the Governing Body of INTELSAT. They would be designed to provide global coverage and intended mainly to serve the international communications needs of INTELSAT

members. They would be available to serve domestic needs of members of INTELSAT to the extent desired.

Category A satellites would be financed by all members of INTELSAT in accordance with the arrangements described elsewhere in this paper which relate each member's investment directly to its use of these satellites.

The Governing Body of INTELSAT would be responsible for making all decisions with respect to the design, development, construction and establishment of Category A satellites and the conditions of their use.

Operational control of Category A satellites would be provided by INTELSAT through the Manager

2. Category B Satellites

Category B satellites would be those satellites intended specifically to meet the domestic needs of an INTELSAT member. In order to assure that legitimate international concerns be fully protected, prior to the establishment of such a satellite the Governing Body would have to decide that:

(a) The establishment of such facilities would be consistent with INTELSAT's proposed use of the frequency spectrum and orbital space, and

(b) The proposed mechanism and techniques for control of these satellites were adequate, and the radiation emitted from the satellites would not cause harmful interference.

A member desiring to establish Category B satellites could achieve this by any one of three means

--it could request the Governing Body to establish a Category B satellite jointly financed in the same manner as Category A satellites.
--if a member did not wish to have a jointly financed satellite or if the Governing Body failed to act affirmatively on a request of a member, the member would be entitled to have a satellite or satellites established

by INTELSAT but financed entirely by the member concerned. In this case, the member would be obligated to pay all costs allocable to the satellite or satellites established in this manner. Accounting principles would be set forth in the Definitive Arrangements to ensure that all members receive the financial benefits resulting from the allocation of common costs among Category A satellites and the above two methods of establishing Category B satellites. The design, development and construction of the Category B satellites of the types mentioned above could be, if desired, in accordance with specifications provided by the member for which they would be established. Operational control of these Category B satellites could be exercised by INTELSAT through the Manager or, if desired, by the member for which the satellites were established.

--if a member does not wish to establish or have established Category B satellites by either of the means outlined above, the member could establish a Category B satellite or satellites itself. In this case, financing, design, development, construction, procurement and operational control would be the responsibility of the member concerned rather than that of INTELSAT.

C. Participation in INTELSAT

Participation in the global commercial communications satellite system shall be available to all nations--large and small, developed and developing. INTELSAT members shall continue to have full and non-discriminatory access to Category A satellites. Non-member States may utilize INTELSAT Category A satellites in accordance with arrangements negotiated between them and a member or members of INTELSAT.

D. Obligations of INTELSAT Members

INTELSAT members would obligate themselves to meet their satellite communications requirements in accordance with the provisions outlined in this paper. However, none of the arrangements discussed in this paper would affect the right of each member to establish satellites to meet unique and vital governmental needs.

III. Financial Participation

A key question in framing the Definitive Arrangements is the method by which INTELSAT shall fix the financial participation of its members. This participation determines the proportionate share of the total INTELSAT investment which each member shall make, as well as the proportionate share of the revenue and expenditures which each member shall be entitled to share or obligated to bear. This financial participation, which is in a sense the fundamental element of membership, is herein sometimes called the "investment share".

It appears that the fairest and most logical way to determine the investment shares of members is to relate these shares to the members' respective use of the INTELSAT-financed assets and facilities. These would include all Category A satellites and any Category B satellites financed by INTELSAT (together hereafter sometimes referred to as "INTELSAT-financed facilities"). In considering this concept it is desirable to examine briefly the meaning of the term "use", the manner in which actual use was considered in the establishment of the present INTELSAT structure, how changing use patterns could be reflected in changing investment shares, and how to deal with States that desire to be members but, for any of several reasons, do not actually use the facilities.

A. Concept of Use

The use contemplated herein means actual use of the INTELSAT-financed facilities by a member. It should be made clear that a member need not have an earth station in its territory to use Category A satellites, but could use them through the earth stations of a nearby member.

B. Background

During negotiations of the Interim Arrangements an effort was made to relate investment shares (called quotas in the Agreement Establishing Interim Arrangements) as realistically as possible to the expected use of the global commercial communications satellite system. For this purpose, reliance was placed principally on estimated 1968 long distance telephone traffic considered suitable for satellite communications. These data, developed at the World Plan Committee Meeting of the ITU held in Rome in 1963, and refined at a meeting of traffic experts in Montreal in April 1964, were necessarily preliminary and incomplete. For example, they could not

include adequate consideration of non-voice usage, services first made available because of satellites, and use by geographic areas which would have modern communications available for the first time because of satellites. In all likelihood there will be a substantial imbalance in 1969 between investment quotas and actual use of the global system, due not only to these factors but also to the limitations inherent in fixed quotas.

While it was impossible for the investment quotas established under the Interim Arrangements to be in accord with actual use of the space segment, by 1969 or 1970 the development of the global system will be sufficiently advanced to enable the members' investment shares in INTELSAT to be brought into proportion to their respective use.

C. Keeping Investment Proportionate with Use

In order to keep each member's investment in INTELSAT proportionate to its use of INTELSAT-financed satellites, investment shares would be allocated among members of INTELSAT at the following times:

1. On entry into force of the Definitive Arrangements. The total unamortized investment in the space segment at that time, together with any additional capitalization deemed necessary, would be re-allocated among members of the organization in accordance with the respective use by members during the previous year.

2. Thereafter, annually, when investment would again be brought into direct proportion with each member's use of satellites during the previous year.

Appropriate accounting principles would be established to ensure that investments actually made by members would be taken into account whenever investment shares are re-allocated.

D. Minimum Investment Share

By the time the Definitive Arrangements enter into force, some present INTELSAT members may not be using the INTELSAT facilities. Furthermore, after the Definitive Arrangements enter into force, other States may wish to participate in INTELSAT and have a voice in its development even though they have no immediate opportunity to use the

INTELSAT facilities, or may use them only minimally. In order to accommodate these situations, the Definitive Arrangements should provide for a minimum investment share, not dependent on use, of perhaps .025%.

IV. The Structure of the Organization

A. Overall Structure

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

B. The Governing Body

The Governing Body would be the executive body of the organization and would possess all the powers and functions necessary to carry out the purposes of the organization. In addition to powers possessed by the Committee, the Governing Body would be responsible for certain previously described decisions with respect to the establishment of Category B satellites, concluding management contracts, and setting the agenda for the annual meeting of the Assembly of Members.

Eligibility for representation on the Governing Body would be based upon the size of members' investment shares. Members could be represented either singly or in groups with the minimum investment share required for representation set at a level to ensure that the Governing Body would be approximately the size of the Committee.

The vote of the representative on the Governing Body of each member or group of members of the organization would be directly proportional to the investment share of such member or group. An upper limit of 50% on the voting power of any particular member would be set with a view to preventing there being inordinate voting power in any one member.

The required majority for taking decisions within the Governing Body would differ somewhat from that required under Article V of the present Agreement. A

majority of two-thirds of the voting power of the organization would be required for decisions on all substantive matters. A simple majority of the voting power would be required for decision on purely procedural questions.

C. The Assembly of Members

Both the Interim Arrangements and the Definitive Arrangements proposed herein contemplate that the affairs of INTELSAT shall be conducted by a Governing Body of reasonable size. Members with relatively small investment shares can be represented on that body by combining. Nevertheless, at present a number of the members with smaller investment quotas are not represented on the Committee, and it is possible that this would continue to be so under the Definitive Arrangements. Consequently, it is felt that an annual meeting of all members of the organization would be desirable in order to provide a direct opportunity for all members to participate in the affairs of the organization. This meeting would be the Assembly of Members.

The Assembly of Members should have the following powers and responsibilities:

1. To receive and consider a report from the Governing Body concerning the organization's activities and performance during the preceding year and the organization's plans and programs for the future;

2. To consider and approve or disapprove the recommendations of the Governing Body concerning any change of Manager or the arrangements between the organization and the Manager;

3. To receive and consider such other reports as shall be furnished to it by the Governing Body and to act upon all such matters referred to it by the Governing Body;

4. To discuss matters relating to operation of the INTELSAT system and make recommendations thereon to the Governing Body.

All decisions of the Assembly shall require the concurrence of a majority of the members of the Assembly holding at least two-thirds of the investment shares of the organization.

D. The Manager

As under the Interim Arrangements, a single entity would be designated to serve as Manager. Steps should be taken to assure appropriate international participation in the managerial function; the Manager, for example, should retain the services of qualified personnel from member countries. The Manager would continue to function subject to the general policies and specific determinations made by the Governing Body.

Subject to the rights of members with respect to Category B satellites as set forth herein, the Manager's functions would be set forth in the agreements incorporating the Definitive Arrangements and would include (i) coordination of facilities, (ii) coordination and maintenance of effective satellite utilization, (iii) negotiation and administration of all contracts, (iv) coordination of research and development for INTELSAT, (v) system planning for program development, and (vi) administrative support to the Governing Body and the Assembly of Members.

A management contract would be concluded between the Governing Body and the Manager in order to define clearly the scope of the Manager's activities, the line of the Manager's authority, the standard of performance required of the Manager, and remuneration of the Manager. The management contract would be reviewed and renegotiated periodically. In order to provide continuity and to make use of the experience accumulated, Comsat should be designated as Manager.

In order to provide the organization with flexibility, the agreements incorporating the Definitive Arrangements would provide that the entity serving as Manager could be changed if the Assembly of Members approved a change proposed by the Governing Body.

B

USDel/2
February 21, 1969

DRAFT INTELSAT INTERGOVERNMENTAL AND OPERATING AGREEMENTS

These draft Agreements have been annotated with references to the Report of the Interim Communications Satellite Committee on definitive arrangements for an International Global Communications Satellite System (ICSC-36-58E), to the existing INTELSAT Agreements, to each other, and, in exceptional cases, to outside sources.

These annotations are intended solely as an aid in locating relevant portions of the documents referred to and are not presented as an exhaustive list of portions identical, similar, or contrary to the annotated section.

The symbols U, SM, M, SS, S and P after paragraph numbers refer to views of the ICSC on the paragraphs and mean "unanimous", "substantial majority", "majority", "substantial support", "support", and "proposal" respectively.

Proposed Intergovernmental Agreement

AGREEMENT ESTABLISHING DEFINITIVE ARRANGEMENTS FOR A GLOBAL COMMERCIAL COMMUNICATIONS SATELLITE SYSTEM

PREAMBLE [1/]

The Governments party to this Agreement

Noting that pursuant to the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System and the related Special Agreement, both of which entered into force on August 20, 1964, an operational global commercial communications satellite system (hereinafter referred to as the "global satellite system") has been established by the International Telecommunications Satellite Consortium (INTELSAT); [2/]

Desiring to continue the development and improvement of the single global satellite system as part of an improved global communications network which will provide expanded communications services to all areas of the world and which will contribute to world peace and understanding; [3/]

Determined, to this end to provide, for the benefit of all nations and areas of the world, through the most advanced technology available,

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1/ The Preamble is primarily a restatement of the principles contained in the preamble to the Interim Agreement. Two new paragraphs have been added.

2/ New

3/ Restatement of Interim Agreement preambular paragraph 2. See also: ICSC-36-58E, paragraphs 181(SM) and 183(M).

the most efficient and economical facilities possible consistent with the best and most equitable use of the radio spectrum and of orbital space; 4/

Believing that satellite communications should be organized in such a way as to permit all nations and areas of the world to have access to the global satellite system and those States so wishing to invest in the system with consequent participation in the design, development, construction, provision of equipment, establishment, operation, maintenance and ownership of the system; 5/

Recalling the principle set forth in Resolution No. 1721 (XVI) of the General Assembly of the United Nations 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; 6/

Recalling the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies; 7/

Agree as follows:

4/ Restatement of Interim Agreement preambular paragraph 3. See also: ICSC-36-58E, paragraphs 181(SM), 183(M), 168(U), and 175(SM).

5/ Restatement of Interim Agreement preambular paragraph 4. See also: ICSC-36-58E, paragraphs 181(SM) and 174(SM).

6/ Interim Agreement preambular paragraph 1. See also: ICSC-36-58E, paragraph 181(SM).

7/ New.

ARTICLE I [1]

In this Agreement:

(a) "Interim Agreement" means the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System, done at Washington, D.C., concluded by Governments, and which entered into force on August 20, 1964. [2]

(b) "Special Agreement" means the Agreement among Governments and entities designated by Governments which was concluded and signed pursuant to provisions of the Interim Agreement and which entered into force on August 20, 1964. [3]

(c) "Design" and "development" include research. [4]

(d) The "Operating Agreement" means the Agreement signed by Governments party to this Agreement or by the communications entities designated by such Governments pursuant to Article III of this Agreement. [5]

(e)"Party" means a Government for which this Agreement is definitively or provisionally in force. [6]

1/ Article I defines terms used throughout the Agreement.

2/ ICSC-36-58E, paragraph 146.

3/ ICSC-36-58E, paragraph 147.

4/ Interim Agreement, Article I(b)(ii); Special Agreement, Article 1(d).

5/ New. See ICSC-36-58E, paragraph 152.

6/ ICSC-36-58E, paragraph 153.

(f) "Signatory" means a Government, or the communications entity designated by a Government party to this Agreement, which has signed the Operating Agreement. 7/

(g) "Space segment" means the communications satellites, and the tracking, command, control, monitoring and related facilities and equipment required to support the operation of the communications satellites. 8/

(h) "INTELSAT space segment" means that space segment which is owned in undivided shares by the Signatories in accordance with this Agreement and the Operating Agreement and shall include that space segment which was owned by the signatories to the Special Agreement. 9/

(i)"INTELSAT property and assets" means the property and assets, including the INTELSAT space segment, owned by the Signatories in undivided shares. 10/

(j) "Telecommunications" means any transmission, emission, or reception of signs, signals, writings, images and sound or intelligence of any nature which can be provided by satellites and shall in no case be interpreted as implying any limitation upon the types of telecommunications services for which INTELSAT may provide space segment facilities. 11/

7/ Special Agreement, Article 1(f); ICSC-36-58E, paragraph 154.

8/ Interim Agreement, Article I(b)(i). See also ICSC-36-58E, paragraph 157.

9/ New. See ICSC-36-58E, paragraph 157.

10/ New. See ICSC-36-58E, paragraphs 518(SM) and 519(S).

11/ New. See International Telecommunication Convention, Montreux, 1965, Annex 2, which defines "telecommunication" as: "Any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems."

(k) "Public telecommunications services" includes public services, fixed and mobile, which can be provided by satellite such as telephony, telegraphy, telex, facsimile and data transmission, relay of radio and television programs, and leased circuits for any of these purposes. 12/

(l) "Specialized telecommunications services" includes services other than public telecommunications services which can be provided by satellite such as, but not limited to, aeronautical, maritime, radio-navigation, space research, and broadcasting services. 13/

(m) "Domestic telecommunications services" means telecommunications among and between places under the jurisdiction of a single State. 14/

(n) "International telecommunications services" means all telecommunications services other than domestic telecommunications services. 15/

(o) "Investment share" means the percentage of ownership in the INTELSAT space segment of a Signatory as determined pursuant to Article 4 of the Operating Agreement. 16/

12/ ICSC-36-58E, paragraph 159.

13/ ICSC-36-58E, paragraph 160.

14/ See ICSC-36-58E, paragraph 161.

15/ New.

16/ New.

ARTICLE II [1]

(a) The Parties shall cooperate in providing, in accordance with the principles set forth in the Preamble to this Agreement, for the design, development, construction, establishment, operation, and maintenance of the INTELSAT space segment and such other space segments as may be provided by INTELSAT pursuant to this Agreement and the Operating Agreement. [2]

(b) The Parties agree that all of the rights and obligations of the signatories to the Special Agreement created under the Interim Agreement and the Special Agreement and outstanding on the date of entry into force of this Agreement and the Operating Agreement shall be assumed by the Signatories to the Operating Agreement under the terms and conditions set forth in the Operating Agreement. Effective as of the date the Operating Agreement enters into force, the Signatories in accordance with the provision of the Operating Agreement, shall own the INTELSAT space segment in undivided shares in proportion to their respective investment shares in the INTELSAT space segment. [3]

1/ This Article states in general terms the decision of the Parties to continue the operation of INTELSAT and lays down the principle that the rights and obligations of signatories of the Special Agreement pass to Signatories of the Operating Agreement.

2/ Interim Agreement, Article I(a). See also ICSC-36-58E, paragraph 190(U).

3/ ICSC-36-58E, paragraph 518(SM).

ARTICLE III [1]

(a) Each Party shall sign, or shall designate a communications entity, public or private, to sign, the Operating Agreement which shall be concluded further to this Agreement and which shall be opened for signature at the same time as this Agreement.[2] Relations between any Signatory and the Party which has designated it shall be governed by the applicable domestic law. [3]

(b) The Parties contemplate that administrations and communications carriers will, subject to the requirements of their applicable domestic law, negotiate and enter directly into such traffic agreements as may be appropriate with respect to their use of channels of communication provided pursuant to this Agreement and the Operating Agreement, services to be furnished to the public, facilities, divisions of revenues and related business arrangements. [4]

1/ This Article provides that the definitive arrangements will be in two agreements and obligates a Party to the Agreement to sign or designate a Signatory to the Operating Agreement. The Article also describes the general expectation that administrations and communications carriers will handle directly the matters mentioned.

2/ Interim Agreement, Article II(a); ICSC-36-58E, paragraphs 570(SM) and 574(U).

3/ Interim Agreement, Article II(a).

4/ Interim Agreement, Article II(b).

ARTICLE IV [1/]

(a) An Assembly is hereby established [2/] which shall be composed of one representative from each Party or its Signatory, as determined by each Party prior to each meeting of the Assembly. [3/] The Assembly shall meet at least annually [every two years] and may be convened in special meeting at any time by the Chairman of the Board of Governors upon a recommendation of the Board of Governors. [4/] The first meeting of the Assembly shall commence within one year after this Agreement and the Operating Agreement enter into force. The date of subsequent meetings not convened by the Chairman of the Board of Governors shall be determined by the Assembly. The meetings of the Assembly shall take place at the headquarters of INTELSAT unless otherwise determined by the Assembly.

(b) The Assembly shall elect a President and such other officers as may be required at the beginning of each meeting, and they shall hold office for the duration of the meeting. The Assembly shall adopt its own rules of procedure.

(c) A quorum in the Assembly shall consist of a majority of the representatives which includes representatives ot Signatories which, or of Parties the Signatories of which have at least two-thirds of the investment shares in the INTELSAT space segment. Decisions and recommendations shall be

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1/ This Article provides for an Assembly of representatives of Parties or Signatories to meet periodically, and provides for Assembly election of officers, voting and quorum requirements, and functions.

2/ ICSC-36-58E, paragraph 244(U).

3/ ICSC-36-58E, paragraph 247(M).

4/ ICSC-36-58E, paragraph 316(SS).

made in the Assembly by a majority of the representatives present and voting, which includes representatives of Signatories which, or Parties the Signatories of which, have investment shares in the space segment equal to two-thirds of the investment shares of all Signatories and Parties whose representatives are present and voting. 5/

(d) The Assembly shall:

(i) If the Assembly deems advisable, select at its first meeting more than one year after this Agreement enters into force and at appropriate meetings thereafter, not more than three representatives to serve on the Board of Governors from among Signatories not otherwise represented thereon, 6/ provided that the Assembly shall make no such selection if, at the commencement of the meeting, the Board of Governors consists of 20 or more representatives. 7/ Representatives selected hereunder shall serve for one [two] year from the date of selection and thereafter until a new selection is made hereunder or until the Board of Governors consists of 20 representatives without regard to representatives selected hereunder, whichever first occurs. In making selections hereunder, the Assembly shall consider the use by the Signatories of the INTELSAT space segment and the geographic composition of the Board of Governors.

(ii) Consider and act on any recommendation made by the Board of Governors to the Assembly concerning the Manager pursuant to Article V(b). 8/

(iii) Consider and act at its next subsequent meeting on any recommendations made by the Board of Governors to the Assembly concerning an increase in the limit of the net contribution set forth in Article IX of this Agreement. 9/

(iv) Consider and act on recommendations made by the Board of Governors to the Assembly of proposed amendments to the Operating Agreement. 10/

5/ ICSC-36-58E, paragraph 314(P).

6/ ICSC-36-58E, paragraph 300(SS).

7/ ICSC-36-58E, paragraph 350(SM). See also paragraphs 351(SS), 352(S), 354(P) and 355(P).

8/ See ICSC-36-58E, paragraphs 305(S), 461(SS).

9/ ICSC-36-58E, paragraph 304(S).

10/ ICSC-36-58E, paragraph 301(SS).

(v) Consider proposed amendments to this Agreement and recommend whether a Conference of Parties shall be convened in accordance with Article XIV of this Agreement. 11/

(vi) Consider an annual (biennial) report from the Board of Governors concerning the activities and performance of the Board of Governors and the Manager during the preceding year and the plans and programs of the Board of Governors for the future. 12/

(vii) Consider such other reports as may be submitted to the Assembly by the Board of Governors, and act on all matters as may be referred to it for action by the Board of Governors. 12/

(viii) Consider and act on a recommendation by the Board of Governors to the Assembly that a Party shall be deemed to have withdrawn from this Agreement for failure to comply with the obligations thereunder. 13/

Any modification proposed by the Assembly to a recommendation of the Board of Governors shall be referred to the Board of Governors for its consideration and appropriate action. If the Board of Governors approves the recommendation as modified by the Assembly, such recommendation may be implemented without further action by the Assembly. The Assembly may also consider other questions or matters within the scope of this Agreement or the Operating Agreement and may make recommendations to the Board of Governors on any such questions or matters.

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11/ See ICSC-36-58E, paragraph 307(S).

12/ ICSC-36-58E, paragraph 295(M).

13/ ICSC-36-58E, paragraph 296(M).

(v) Consider proposed amendments to this Agreement and recommend whether a Conference of Parties shall be convened in accordance with Article XIV of this Agreement. 11/

(vi) Consider an annual (biennial) report from the Board of Governors concerning the activities and performance of the Board of Governors and the Manager during the preceding (two) year and the plans and programs of the Board of Governors for the future. 12/

(vii) Consider such other reports as may be submitted to the Assembly by the Board of Governors. 12/

(viii) Consider and act on a recommendation by the Board of Governors to this Assembly that a Party shall be deemed to have withdrawn from this Agreement for failure to comply with the obligations thereunder. 13/

Any modification proposed by the Assembly to a recommendation of the Board of Governors shall be referred to the Board of Governors for its consideration and appropriate action. If the Board of Governors approves the recommendation as modified by the Assembly, such recommendation may be implemented without further action by the Assembly.

11/ See ICSC-36-58E, paragraph 307(S).

12/ ICSC-36-58E, paragraph 295(M).

13/ ICSC-36-58E, paragraph 296(M).

ARTICLE V [1]

(a) A Board of Governors is hereby established [2] to give effect to this Agreement and the Operating Agreement. [3] The Board of Governors shall have responsibility for the design, development, construction, establishment, operation and maintenance of the INTELSAT space segment and for any other activities which are undertaken by INTELSAT pursuant to authority contained in this Agreement and the Operating Agreement. [4] The Board of Governors shall have the powers and shall exercise the functions set forth in this Agreement and the Operating Agreement. [5] The powers of the Board of Governors shall include, but not be limited to, the following:

(i) Adopting policies, plans and programs in connection with the design, development, construction, establishment, operation or maintenance of the INTELSAT space segment and, as appropriate, in connection with any other activities which INTELSAT is authorized to undertake.

(ii) Adopting procurement policies, regulations and procedures and approving procurement contracts in excess of an amount specified by the Board of Governors. [6]

(iii) Adopting procedures for determination of annual and other adjustments of the investment shares. [7]

1/ This Article provides for a Board of Governors of INTELSAT, with responsibility for the INTELSAT space segment and other authorized INTELSAT activities. The general provision is followed by a partial list of particular powers of the Board of Governors.

2/ ICSC-36-58E, paragraph 244(U).

3/ ICSC-36-58E, paragraph 369(U).

4/ ICSC-36-58E, paragraph 370(U).

5/ Interim Agreement, Article IV(a).

6/ ICSC-36-58E, paragraph 373(U).

7/ ICSC-36-58E, paragraph 375(U).

(iv) Adopting financial policies and approving budgets by major categories. 8/

(v) Adopting policies and procedures for the acquisition, protection and distribution of rights in inventions and data consistent with Article 8 of the Operating Agreement. 9/

(vi) Adopting criteria and procedures for approval of earth stations for access to the INTELSAT space segment, for verification and monitoring of performance characteristics of earth stations having access, and for coordination of such earth station access to and use of the INTELSAT space segment. 10/

(vii) Adopting terms and conditions governing the allotment of INTELSAT space segment capacity.

(viii) Taking such actions as may be appropriate in accordance with the provisions of Article IX with respect to the increase of the net contribution. 11/

(b) The Board of Governors shall enter into a fixed term contract with the Manager and at the termination of any contract period enter into a further contract with the then existing Manager or make recommendations to the Assembly for the substitution of a new specifically named entity to perform the functions of the Manager. 12/

8/ See Interim Agreement, Article V(c)(iii).

9/ See Special Agreement, Article 10(f) and (g).

10/ ICSC-36-58E, paragraphs 376(U), 377(U), and 378(U).

11/ See Interim Agreement, Article VI(b).

12/ ICSC-36-58E, paragraph 461(SS).

ARTICLE VI [1]

(a) The Board of Governors shall be composed of

(i) one representative from each Signatory [2] whose investment share is not less than _____ percent of all investment shares in the INTELSAT space segment. [3]

(ii) one representative from each of any two or more Signatories who have agreed to combine in order to be represented and whose combined investment shares in the INTELSAT space segment are not less than _____ percent of all such shares. [4]

(iii) one representative from each of any five or more Signatories who have agreed to combine in order to be represented, [5] and

(iv) such representatives as may be selected by the Assembly pursuant to Article IV(d)(i). [6]

Signatories may combine for representation under (ii) and (iii) of this paragraph at any time. No Signatory shall be represented under more than one of the foregoing categories.

(b) For purposes of determining representation and voting on the Board of Governors, an adjustment of investment shares will be effective thirty days after it has been made pursuant to Article 4 of the Operating Agreement.

1/ This Article provides for the representation of Signatories on the Board of Governors as well as a system of weighted voting, a quorum requirement, election of officers and other matters relating to the functioning of the Board of Governors.

2/ ICSC-36-58E, paragraph 346(M).

3/ ICSC-36-58E, paragraph 357(U). See also Interim Agreement, Article IV(b).

4/ ICSC-36-58E, paragraph 357(U). See also Interim Agreement, Article IV(b).

5/ ICSC-36-58E, paragraph 361(S).

6/ See ICSC-36-58E, paragraph 358(M).

(c) Each representative of a Signatory or group of Signatories shall have a vote equal to the total investment share of the Signatory or group of Signatories he represents. 7/ Each representative shall cast his entire vote in the same way on any question or shall abstain from voting his entire vote. If the representative of any Signatory or group of Signatories shall have more than 50 percent of the vote of all Signatories and groups of Signatories entitled to be represented in the Board of Governors he shall cast no more than the vote which is equal to 50 percent of the total vote of all Signatories and groups of Signatories entitled to be represented in the Board of Governors. 8/ X take away veto.

(d) The Board of Governors shall endeavor to act unanimously; 9/ however, if it fails to reach unanimous agreement, its decisions and recommendations shall be made by the concurrence of representatives whose total vote, out of the votes of all Signatories and groups of Signatories entitled to be represented in the Board of Governors, equals at least a

(i) majority of the investment shares of such Signatories and groups in the case of procedural questions; 10/

(ii) two-thirds majority of the investment shares of such Signatories and groups in the case of substantive questions. 11/

(e) Any dispute whether a particular question is procedural or substantive shall be decided by the Chairman of the Board of Governors. Any such decision of the Chairman may be overruled by a majority of representatives present and voting, each representative having one vote.

7/ See ICSC-36-58E, paragraphs 393(SM) and 399(S) and Interim Agreement, Article V(a).

8/ ICSC-36-58E, paragraph 410(SS).

9/ ICSC-36-58E, paragraph 403(U); Interim Agreement Article V(c).

10/ See ICSC-36-58E, paragraph 423(SM).

11/ ICSC-36-58E, paragraph 419(M). See also Interim Agreement, Article V(c).

(f) The first meeting of the Board of Governors shall be convened by the Chairman of the Interim Communications Satellite Committee within sixty days from the date this Agreement and the Operating Agreement enter into force.

(g) A quorum in the Board of Governors shall consist of representatives having at least two-thirds of the vote of all Signatories and groups of Signatories entitled to be represented in the Board of Governors. 12/

(h) The Board of Governors shall adopt its own rules of procedure, which shall include the method for selection of a Chairman and such other officers as may be required and the duration of their tenure. Notwithstanding the provisions of paragraph (d) of this Article, such rules may provide any method fo voting in the election of officers as the Board of Governors deems appropriate.

(i) In the performance of its responsibilities under this Agreement and the Operating Agreement, the Board of Governors shall be assisted by such advisory committees as it deems appropriate. 13/

12/ See Interim Agreement, Article V(b).

13/ Interim Agreement, Article IV(d).

ARTICLE VII [1/, 2/]

The Communications Satellite Corporation shall act as the Manager of INTELSAT, [3/] (subject to replacement as provided in Article V(b). [4/]) The Board of Governors shall conclude a contract with the Manager for an initial period of not less than 5 years setting forth the terms and conditions under which the Manager will perform its functions. [5/] The contract shall provide for inclusion on the Manager's staff of qualified personnel from States Party to this Agreement. Pursuant to general policies of the Board of Governors and to specific determinations it may make, the activities of the Manager shall include, but not be limited to: [6/]

(i) Development, design, construction, establishment, operation and maintenance of the INTELSAT space segment.

(ii) Development, design, construction, establishment, operation and maintenance of the space segment of other telecommunications facilities which may be provided by INTELSAT pursuant to this Agreement.

(iii) Providing for the administrative and other operating requirements of INTELSAT, including its financial management.

1/ This Article provides for INTELSAT to be managed by a Manager, under a written contract with the Board of Governors, and under the Board of Governors' direction. Subject to replacement, COMSAT is named as Manager. The Manager's range of activities is generally described and there is a specific provision for including qualified nationals of Parties on the Manager's staff.

2/ See Interim Agreement, Article VIII.

3/ ICSC-36-58E, paragraphs 444(P) and 451(S).

4/ ICSC-36-58E, paragraph 461(SS).

5/ ICSC-36-58E, paragraph 476(SS).

6/ See ICSC-36-58E, paragraphs 465-474.

ARTICLE VIII [1]

(a) The primary objective of the Parties to this Agreement is to provide for the design, development, construction, establishment, operation and maintenance of the space segment to meet international public telecommunications services requirements, [2] and the Parties and the Signatories agree that the space segment utilized to meet these requirements shall be the space segment provided by INTELSAT. The Parties and Signatories further agree that they shall not establish, or join in the establishmenr of, or use, any space segment other than the INTELSAT space segment to meet international public telecommunications services requirements. [3]

(b) To the extent any Signatory, Party or any person within the jurisdiction of a Party establishes or otherwise acquires space segment facilities separate from the INTELSAT space segment to meet its domestic public or specialized telecommunications services requirements or international specialized telecommunications services requirements, the Parties and Signatories agree that the establishment, acquisition and operation of any such facilities will be subject to prior determination by the Board of Governors that:

(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

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1/ This Article describes the scope of activities INTELSAT is authorized to engage in and contains the agreement of the parties in respect to the establishment and use of a space segment other than that provided by INTELSAT.

2/ ICSC-36-58E, paragraphs 166(U), 195(U). See Interim Agreement, Article I.

3/ ICSC-36-58E, paragraph 600(M).

(iii) The radiation emitted from such space segment facilities will not cause harmful interference. [4]

(c) The Board of Governors is authorized to provide to any Signatory INTELSAT space segment facilities to meet the domestic public or specialized telecommunications services requirements or international specialized telecommunications services requirements of that Signatory, the Party designating that Signatory or any person within the jurisidction of that Party under mutually agreeable terms and conditions. [5] The Board of Governors is also authorized to provide non-INTELSAT space segment facilities to meet the domestic public or specialized telecommunications services requirements or international specialized telecommunications services requirements of a Signatory, a Party or any person within the jurisdiction of a Party under mutually agreeable terms and conditions. Such non-INTELSAT space segment facilities shall be financed and owned by and may be designed, developed and constructed in accordance with specifications provided by the entity so requesting. [6]

(d) The Board of Governors is authorized to provide capacity in the INTELSAT space segment for domestic and international telecommunications services requirements of non-Party States and authorities having earth stations, or communications entities, public or private, designated by them, upon terms and conditions similar to those upon which such services are provided to Parties or Signatories, provided that, in establishing charges for such service, appropriate allowance shall be made for the fact that such States, authorities, or communications entities have not borne any portion of the cost of establishing the INTELSAT space segment. [7] The Board of

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4 See ICSC-36-58E, paragraph 610(SM), 611(SS), 614(M), 616(SS), 617(S), 216(M), 217(M), 221(SS) and 222(SS).

5 ICSC-36-58E, paragraphs 209(SM) and 200(S).

6 See ICSC-36-58E, paragraphs 213(SM) and 200(S).

7 ICSC-36-58E, paragraph 555(SS). See ICSC-36-58E, paragraph 554(U) and 556(P).

Governors may also, under appropriate terms and conditions, provide a separate satellite or satellites to meet the domestic public or specialized telecommunications services requirements or international specialized telecommunications services requirements of such States, authorities, or communications entities.

(e) Nothing in this Agreement shall affect the right of a Party to establish satellites solely for national security purposes. [8]

(f) To the extent required by this Agreement the Parties agree to have the satellite telecommunications services requirements of the Parties and Signatories fulfilled in accordance with the provisions of this Agreement. Upon the breach of any obligation under this Article by a Signatory or Party which has not been remedied within three months from the date of notification of breach by the Board of Governors to the Signatory or the Party in question, the rights of the Signatory or of the Signatory designated by that Party shall be suspended. After three months from the date of such suspension, the Board of Governors may recommend to the Assembly that the Party which designated the Signatory or the Party be deemed to have withdrawn from this Agreement, pursuant to Article IV(d)(viii). Upon approval by the Assembly of such a recommendation, this Agreement shall cease to be in force for such Party. Withdrawal of the Signatory of such Party from the Operating Agreement shall thereupon be automatically effected subject to the condition provided in Article XII(c). [9]

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8 ICSC-36-58E, paragraph 620(SS).

9 See Special Agreement, Article 4(d) and Interim Agreement Article XI(b) and (c), ICSC-36-58E, paragraph 625(SM).

ARTICLE IX [1/, 2/]

(a) Except as otherwise provided in this Article, the net contribution in the INTELSAT space segment shall not exceed U.S. $300,000,000.

(b) Net contribution, as used in paragraph (a), shall include the cumulative cash contributions made by the signatories of the Special Agreement pursuant to Article 4 of that Agreement and by Signatories to the Operating Agreement pursuant to Article 3 of that Agreement, less the cumulative amount of depreciation recorded in the INTELSAT accounts commencing August 20, 1964.

(c) The Board of Governors may recommend that the net contribution should be increased above U.S. $300,000,000 and, if so, in what amount. Such recommendation shall be referred to the Assembly for consideration at its next meeting or at a special meeting convened by the Chairman of the Board of Governors pursuant to the provisions of Article IV hereof. Such recommendation for an increase shall become effective when approved by the Assembly.

1/ This Article provides for a limit to the net contribution of Signatories and a method for raising that limit.

2/ See Interim Agreement, Article VI(a)and (b).

ARTICLE X [1]

The Board of Governors shall endeavor to insure that all contracts are awarded on the basis of the best quality, best price and timely performance. The Board of Governors shall endeavor to insure the widest practicable international participation in contracts and subcontracts consistent with the foregoing principle. [2, 3]

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[1] The Article establishes basic procurement policy.

[2] ICSC-36-58E, paragraphs 536(SM) and 541(SM).

[3] See Interim Agreement, Article X.

ARTICLE XI [1]

(a) This Agreement shall be open for signature for six months from _____, 1969 in Washington by:

(i) the Government of any State which is a Party to the Interim Agreement;

(ii) the Government of any other State which is a member of the International Telecommunication Union. [2]

(b) The Government of any State referred to in paragraph (a) of this Article may accede to this Agreement after it is closed for signature. The financial conditions under which the Signatory of a Government acceding to this Agreement shall sign the Operating Agreement shall be determined by the Board of Governors.

(c) This Agreement shall enter into force on the date on which it has been signed without reservation as to approval, or has been approved after such reservation, by two-thirds of the parties to the Interim Agreement, except that such two-thirds must include Parties who hold or Parties whose Signatories hold at least eighty percent (80%) of the total investment quota under the Special Agreement. For each Government signing this Agreement after it has entered into force, the Agreement shall be effective upon signature or, if it signs subject to a reservation as to approval, on approval by it.

(d) Any Government which signs this Agreement subject to a reservation as to approval may, as long as this Agreement is open for signature, declare

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[1] This Article, dealing with signature, accession, entry into force and other matters is based primarily on Article XII of the Interim Agreement.

[2] ICSC-36-58E, paragraph 229(M).

that it applies this Agreement provisionally and shall thereupon be considered a Party to this Agreement. Such provisional application shall terminate:

(i) upon approval of this Agreement by that Government; or

(ii) upon withdrawal by that Government in accordance with this Agreement.

(e) Notwithstanding anything contained in this Article, this Agreement shall not enter into force for any Government nor be applied provisionally by any Government until that Government or its communications entity designated pursuant to Article III of this Agreement shall have signed the Operating Agreement.

(f) If this Agreement has not entered into force for, or has not been provisionally applied by, the Government of a State which has signed it in accordance with this Article within a period of one year from the date when it is first opened for signature, the signature shall be considered of no effect.

(g) No reservation may be made to this Agreement except as provided in this Article.

(h) Upon entry into force of this Agreement, the Government of the United States of America shall register it with the Secretary General of the United Nations in accordance with Article 102 of the Charter of the United Nations. [3]

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[3] Interim Agreement, Article XIV.

ARTICLE XII [1]

(a) Any Party may withdraw from this Agreement and this Agreement shall cease to be in force for that Party three months after that Party shall have notified the Depositary Government of its intention to withdraw. In the event of such withdrawal, the Signatory designated by such Party shall pay all sums already due under the Operating Agreement, together with a sum which shall be agreed between that Signatory and the Board of Governors in respect of costs which will result in the future from contracts concluded prior to notification of withdrawal. If agreement has not been reached within three months after notification of withdrawal, the Board of Governors shall make a final determination of the sums which shall be paid by that Signatory.

(b) Not less than three months after the rights of a Signatory to the Operating Agreement have been suspended pursuant to Article 6 of the Operating Agreement, and if that Signatory has not meanwhile paid all sums due, the Board of Governors, having taken into account any statement by that Signatory or the Party which has designated it, may recommend to the Assembly that such Party shall be deemed to have withdrawn from this Agreement. Upon approval by the Assembly of such a recommendation, this Agreement shall cease to be in force for such Party.

(c) Withdrawal by a Party from this Agreement shall automatically effect withdrawal from the Operating Agreement by the designated Signatory to the Operating Agreement, but the obligation to make payments under paragraph (a) of this Article shall not be affected by such withdrawal.

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[1] This Article deals with voluntary and involuntary withdrawal. See ICSC-36-58E, paragraph 624(SM). It is based upon Article XI(a), (b) and (c) of the Interim Agreement.

ARTICLE XIII [1/]

(a) The headquarters of INTELSAT shall be in Washington, District of Columbia, United States of America.

(b) INTELSAT, its assets, property, and income shall be immune in all States Party to this Agreement from all national income and property taxation.

(c) The Government of the country in which the headquarters of INTELSAT is situated (hereinafter referred to as "the host Government") shall as soon as possible conclude with the Board of Governors, acting on behalf of INTELSAT, an agreement relating to the status, privileges and immunities of INTELSAT, of its officers, employees, and participants, and of representatives of Parties while in the territory of the host Government for the purpose of exercising their functions.

(d) The agreement concluded under paragraph (c) of this Article shall be independent of this Agreement and shall prescribe the conditions of its termination.

(e) Such additional privileges and immunities as may be appropriate for the proper functioning of INTELSAT under this Agreement and the Operating Agreement may be obtained at the request of the Board of Governors from one or more other Parties, either by menas of an agreement or agreements which the Board of Governors, acting on behalf of INTELSAT, may conclude with one or more such Parties, or by other appropriate action of such Party or Parties.

1/ This Article deals with INTELSAT headquarters and privileges, immunities and exemptions. See ICSC-36-58E, paragraphs 595 and 597(SM).

ARTICLE XIV [1]

(a) Amendments to this Agreement may be proposed by any Party or Signatory and shall be submitted to the Board of Governors for consideration. The Board of Governors shall submit proposed amendments, together with its comments and recommendations, to the Assembly. The Assembly shall submit proposed amendments to the Parties with the recommendations of the Board of Governors and its own recommendations concerning whether the amendments should be adopted and whether a Conference of Parties should be convened. Notwithstanding the recommendation of the Assembly, one-third of the Parties may request a Conference of Parties to consider any amendment to this Agreement proposed pursuant to this Article.

(b) Proposed amendments shall be distributed to the Parties at least ninety days prior to the convening of a Conference of Parties.

(c) Upon recommendation of the Assembly or the request of one-third of the Parties, the Government of the United States of America shall convene a Conference of the Parties.

(d) An amendment to this Agreement shall enter into force for all Parties 90 days after the Depositary Government has received notice of acceptance of the amendment from two-thirds of the Parties, except that such two-thirds must include Parties who hold or Parties whose Signatories hold at least eighty percent (80%) of the investment shares in the INTELSAT space segment.

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[1] This Article deals with amendments. See ICSC-36-58E, paragraphs 582 and 583(SM).

ARTICLE XV [1]

(a) Notifications of approval, or of provisional application, and instruments of accession or of acceptance of amendments shall be deposited with the Government of the United States of America.

(b) The Government of the United States of America shall notify all signatory and acceding governments of signatures, reservations of approval, deposits of notifications of approval or of provisional application, deposits of instruments of accession, notifications of acceptance of amendments and notifications of withdrawals from this Agreement.

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[1] This Article provides for the United States Government to act as depositary of the Agreement.

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February 21, 1969

DRAFT INTELSAT INTERGOVERNMENTAL AND OPERATING AGREEMENTS

These draft Agreements have been annotated with references to the Report of the Interim Communications Satellite Committee on definitive arrangements for an International Global Communications Satellite System (ICSC-36-58E), to the existing INTELSAT Agreements, to each other, and, in exceptional cases, to outside sources.

These annotations are intended solely as an aid in locating relevant portions of the documents referred to and are not presented as an exhaustive list of portions identical, similar, or contrary to the annotated section.

The symbols U, SM, M, SS, S and P after paragraph numbers refer to views of the ICSC on the paragraphs and mean "unanimous", "substantial majority", "majority", "substantial support", "support", and "proposal" respectively.

DRAFT OPERATING AGREEMENT

FOR THE DEFINITIVE ARRANGEMENTS

PREAMBLE [1]

Whereas certain Governments have become parties to an Agreement Establishing Definitive Arrangements for a Global Commercial Communications Satellite System, established under the Agreement Establishing Interim Arrangements for a Global Commercial Communications Satellite System; and

Whereas those Governments have undertaken to sign or to designate a communications entity to sign this Operating Agreement;

The Signatories to this Operating Agreement hereby agree as follows:

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[1] This Preamble is based upon the Preamble to the Special Agreement.

ARTICLE 1[1]

For purposes of this Operating Agreement:

(a) "INTELSAT" means the International Telecommunications Satellite Consortium.[2]

(b) The "Agreement" means the Agreement among Governments establishing definitive arrangements for a global commercial communications satellite system.[3]

(c) The following words and phrases shall have the same meaning as they have in the Agreement:[4]

(i) "Interim Agreement,"

(ii) "Special Agreement,"

(iii) "Party,"

(iv) "Signatory,"

(v) "Design" and "development,"

(vi) "Space segment,"

(vii) "INTELSAT space segment,"

(viii) "Telecommunications,"

(ix) "Public telecommunications services,"

(x) "Specialized telecommunications services,"

(xi) "International telcommunications services,"

(xii) "Domestic telecommunications services,"

(xiii) "Investment share,"

(d) "Board of Governors" means the organ established pursuant to Article V of the Agreement.[5]

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1 This definitions article incorporates by reference the definitions in Article I of the draft Intergovernmental Agreement for most terms.

2 First paragraph, preamble to Intergovernmental Agreement.

3 New; see also ICSC-36-58E, paragraph 151.

4 See references under Article I of the Intergovernmental Agreement

5 New.

ARTICLE 2[1]

Each Signatory undertakes to fulfill the obligations placed upon it by the Agreement and this Operating Agreement and thereby obtains the rights provided for Signatories in each Agreement. Each Signatory further agrees to assume, in proportion to its investment share, all of the obligations created pursuant to the Special Agreement and outstanding on the date of entry into force of this Operating Agreement, and the Signatories shall obtain, in proportion to their respective investment shares, all right, title and interest in the space segment owned by the signatories under the Interim Agreement and the Special Agreement, subject to the requirements of Article 4(h) of this Operating Agreement.

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1 See Article 2 of the Special Agreement.

ARTICLE 3[1]

"Each Signatory shall contribute a percentage of the costs of the design, development, construction and establishment of the INTELSAT space segment equal to its investment share.

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1 See Article 3 of the Special Agreement; ICSC-36-58E, paragraph 493(M).

ARTICLE 4 [1]

(a) Each Signatory to this Operating Agreement shall have an investment share of the INTELSAT space segment. [2]

(b) The investment shares of Signatories on the date this Operating Agreement enters into force shall be determined as follows: [3]

(i) Each Signatory who was signatory to the Special Agreement shall, except as otherwise provided in this paragraph (b), have an investment share equal to its percentage of the total utilization of the space segment under the Special Agreement by all such Signatories during the twelve month period immediately preceding the entry into force of this Operating Agreement.

(ii) Any Signatory who did not utilize the space segment under the Special Agreement during the twelve month period immediately preceding the entry into force of this Operating Agreement shall have an investment share of .05 percent. The investment shares of the other Signatories, as determined pursuant to subparagraph (i) of this paragraph (b), shall be reduced pro rata to accommodate such .05 percent investment shares.

(iii) Any Signatory whose investment share was calculated pursuant to subparagraph (b)(i) at less than .05 percent or was reduced pro rata pursuant to subparagraph (b)(ii) to less than .05 percent shall be so notified by the Manager. Within a period of thirty days following the date of said notification, any such Signatory may elect, by providing written notice to the Manager, to have an investment share of .05 percent. Upon receipt by the Manager of all such notifications, the Manager shall adjust pro rata the investment shares of all Signatories to accommodate such elections, effective at the conclusion of said thirty-day period; provided, however, that elections pursuant to this subparagraph (b)(iii) shall not reduce any investment share below .05 percent which investment share, but for elections hereunder, would be .05 percent or more. In implementing the foregoing proviso, any consequential adjustments of investment shares required shall be made pro rata in order to maintain the total investment shares at 100 percent.

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1 This Article sets forth the methods for initial determination and subsequent adjustment of shares of undivided ownership (investment shares) in the INTELSAT space segment.

2 See ICSC-36-58E, paragraph 493(M).

3 See ICSC-36-58E, paragraphs 498(SM) and 511(M).

(c) Effective upon conclusion of the thirty-day period referred to in paragraph (b), the Manager shall charge or give a credit, as appropriate, to each Signatory who was also a signatory to the Special Agreement an amount equal to the difference between the investment share of such Signatory and its last investment quota under the Special Agreement multiplied by the net worth of the INTELSAT space segment as of the date of entry into force of this Operating Agreement. Any Signatory who was not a signatory to the Special Agreement shall be charged with an amount equal to its investment share times the net worth of the INTELSAT space segment as of the date of the entry into force of this Operating Agreement. [4]

(d) The investment shares of Signatories shall be adjusted annually beginning one year after the date of the entry into force of this Operating Agreement, or at any other time determined by the Board of Governors, as follows: [3]

(i) Each Signatory shall, except as otherwise provided in this paragraph (d), have an investment share equal to its percentage of the total utilization of the INTELSAT space segment by Signatories during the period since the last preceding determination of investment shares.

(ii) Any Signatory who did not utilize the INTELSAT space segment during the period since the last preceding determination of investment shares shall have an investment share of .05 percent. The investment shares of the other Signatories as determined pursuant to subparagraph (i) of this paragraph (d) shall be reduced pro rata to accommodate such .05 percent investment shares.

(iii) Any Signatory whose investment share was calculated pursuant to subparagraph (d)(i) at less than .05 percent, or was reduced pro rata pursuant to subparagraph (d)(ii) to less

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[3] See ICSC-36-58E, paragraphs 498(SM) and 511(M).

[4] This paragraph completes the initial determination mechanizm.

than .05 percent, shall be so notified by the Manager. Within a period to be specified by the Board of Governors following the date of such notification any such Signatory may elect, by providing written notice to the Manager, to have an investment share of .05 percent. Upon receipt of all such notifications, the Manager shall adjust pro rata the investment shares of all Signatories to accommodate such elections, effective at the conclusion of the period specified by the Board of Governors; provided, however, that elections pursuant to this subparagraph (d)(iii) shall not reduce any investment share below .05 percent which investment share, but for elections hereunder, would be .05 percent or more. In implementing the foregoing proviso, any consequential adjustments of investment shares required shall be made pro rata in order to maintain the total investment shares at 100 percent.

(e) Effective upon conclusion of each election period specified by the Board of Governors, pursuant to subparagraph (d)(iii) the Manager shall charge or give a credit, as appropriate, to each Signatory who was a Signatory prior to the last preceding determination of investment shares, of an amount equal to the difference between the current investment share and the immediately preceding investment share of such Signatory multiplied by the net worth of the INTELSAT space segment as of the conclusion of such election period. Any Signatory who was not a Signatory prior to the last preceding determination of investment shares shall be charged for an amount equal to its investment share multiplied by the net worth of the INTELSAT space segment as of the conclusion of such election period. [5]

(f) The Manager shall make the calculations required under this Article and shall notify each Signatory, within ____ days following the date of the determination pursuant to paragraph (b) of this Article or of each adjustment

[5] This paragraph completes the mechanism for investment share adjustment.

pursuant to paragraph (d) of this Article, of the investment shares to be held by all Signatories and of the amount to be charged or credited to it in the appropriate INTELSAT accounts as a result of such determination or adjustments. [6]

(g) The Board of Governors shall determine the method to be followed by the Manager in measuring the use of the INTELSAT space segment by each Signatory and in determining the net worth of the INTELSAT space segment. [7]

(h) The Manager shall calculate the value of the investment of signatories to the Special Agreement who have not signed the Operating Agreement upon its entry into force by multiplying the last investment quota of each such signatory under the Special Agreement by the net worth of the INTELSAT space segment as of the effective date of this Operating Agreement. Each such signatory shall, by notification to the Manager on or before the first date of the determination of investment shares pursuant to paragraph (b) of this Article, be entitled to receive an amount equal to the value of its investment. If no such notification is received within such notification period, the value of the investment of that signatory shall be continued in the INTELSAT space segment at a rate of interest to be determined by the Board of Governors. If that signatory does not accede to this Operating Agreement within one year from the date of its entry into force, it shall receive the value of its investment as computed above plus the accumulated interest. [8]

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[6] New.

[7] New; see ICSC-36-58E, paragraph 511(M).

[8] See generally ICSC-36-58E, paragraph 521(SM).

ARTICLE 5[1]

(a) The Board of Governors may specify appropriate units of satellite utilization based upon various types of uses and, from time to time, shall establish space segment utilization charges which, as a general rule, shall be sufficient to cover amortization of the capital cost of the INTELSAT space segment, the estimated operating, maintenance and administration costs of the INTELSAT space segment, and compensation for the use of capital.[2]

(b) In establishing space segment utilization charges pursuant to paragraph (a) of this Article, the Board of Governors shall include in the estimated operating, maintenance and administration costs of the INTELSAT space segment, the estimated direct and indirect costs of the Manager which are allocable to its performance of services as Manager in the operation and maintenance of the space segment, and appropriate compensation to the Manager, as may be agreed in the contract between the Manager and the Board of Governors, for such services.[3]

(c) Space segment utilization charges shall be paid periodically to the Manager at times specified by the Board of Governors. The charges shall be computed in United States dollars and paid in United States dollars or in currency freely convertible into United States dollars.[4]

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1 This Article establishes a space segment utilization charge to cover current costs, amortization of capital costs, and compensation for use of capital. See ICSC-36-58E paragraph 493(M) and 527(SM).

2 See Article 9(a), Special Agreement.

3 See Article 9(b), Special Agreement.

4 See Article 9(c), Special Agreement.

(d) The components of the space segment utilization charges representing amortization and compensation for the use of capital shall be credited to the Signatories in proportion to their respective investment shares. In the interests of avoiding unnecessary transfers of funds between Signatories, and of keeping to a minimum the funds held by the Manager on behalf of the Signatories, the Board of Governors shall make suitable arrangements for funds representing these components to be distributed among the Signatories in such a way that the credits established for Signatories are discharged.[5]

(e) The other components of the space segment utilization charges shall be applied to meet all operating, maintenance, and administration costs, and to establish such reserves as the Board of Governors may determine to be necessary. After providing for such costs and reserves, any balance remaining shall be distributed by the Manager, in United States dollars, or in currency freely convertible into United States dollars, among the Signatories in proportion to their respective investment shares; but if insufficient funds remain to meet the operating, maintenance and administration costs, the Signatories shall pay to the Manager, in proportion to their respective investment shares, such amounts as may be determined by the Board of Governors to be required to meet the deficiency.[6]

(f) The Board of Governors shall institute appropriate sanctions in cases where payments pursuant to this Article shall have been in default for three months or longer.[7]

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5 See Article 9(d), Special Agreement.
6 See Article 9(e), Special Agreement.
7 See Article 9(f), Special Agreement.

ARTICLE 6 [1]

(a) The Board of Governors shall call upon the Signatories to make their respective proportionate payments pursuant to Article 3 of this Operating Agreement as necessary to enable obligations to be met as they become due. Payments shall be made to the Manager by each Signatory in United States dollars, or in currency freely convertible into United States dollars, and in such amounts that, accounting on a cumulative basis, the sums paid by the Signatories are in proportion to their respective investment shares in the INTELSAT space segment. When a Signatory incurs obligations pursuant to authorization by the Board of Governors, the Board of Governors shall cause payments to be made to that Signatory.[2]

(b) Accounts for expenditure referred to in paragraph (a) of this Article shall be subject to review by the Board of Governors and shall be subject to such adjustment as the Board of Governors may decide.[3]

(c) Each Signatory shall pay the amount due from it under paragraph (a) of this Article on the date designated by the Board of Governors. Interest at a rate to be determined by the Board of Governors shall be added to any amount unpaid after that date. If the Signatory has not made a payment within three months of its becoming due, the rights of the Signatory under the Agreement and this Operating Agreement shall be suspended. After such suspension, the Board of Governors may recommend to the Assembly that the Party which designated the defaulting

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1 This Article relates to the payment of capital contributions to INTELSAT and to the consequences of default in making such payment.

2 See Article 4(b), Special Agreement.

3 See Article 4(c), Special Agreement.

Signatory be deemed to have withdrawn from the Agreement. Upon determination by the Assembly that such Party is deemed to have withdrawn from the Agreement, the Board of Governors shall make a binding determination of the sums already due from the Signatory together with any sums to be paid in respect of the costs which will result in the future from contracts concluded prior to withdrawal. Such withdrawal shall not, however, affect the obligation of the Signatory concerned to pay sums due under this Operating Agreement, whether falling due before withdrawal or payable in accordance with the aforesaid determination of the Board of Governors.[4]

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4 See Article 4(d), Special Agreement.

ARTICLE 7 [1]

All contracts entered into pursuant to the Agreement and this Operating Agreement shall be placed in accordance with the procurement policies and regulations adopted by the Board of Governors, and shall, except as otherwise provided by the Board of Governors, be based on responses to appropriate requests for quotations for invitations to tender from among persons and organizations qualified to perform the work under the proposed contract. All such contracts shall, except as otherwise directed by the Board of Governors, be entered into, executed and administered by the Manager for and on behalf of INTELSAT.

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1 This Article relates to contract placement pursuant to procurement policies and regulations of the Board of Governors. See Article 10(a) and (e) of the Special Agreement.

ARTICLE 8 [1]

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

(b) Inventions and technical data to which INTELSAT has acquired such rights:

(i) Shall be made available to any Signatory or any person in the jurisdiction of a Signatory, or the Government which has designated that Signatory:

(A) on a royalty-free basis, for use in connection with the design, development, construction, establishment, operation, and maintenance of equipment and components for the INTELSAT space segment;

(B) on fair and reasonable terms and conditions prescribed by the Board of Governors, for use in connection with other purposes, provided the Board of Governors determines that the proposed use would not be incompatible with the principles and objectives of INTELSAT; and

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1 Data and inventions. See generally ICSC-36-58E, paragraphs 545(U), 547(SS) and 548(SS); see also Article 10(f) and (g) of the Special Agreement.

(ii) May be made available to other persons and entities at the discretion of the Board of Governors and under such terms and conditions as the Board of Governors determines, provided the Board of Governors determines that the proposed use would not be incompatible with the principles and objectives of INTELSAT.

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

ARTICLE 9 [1]

Each Signatory shall keep such books, records, vouchers and accounts of all costs for which it is authorized to be reimbursed under this Operating Agreement with respect to the design, development, construction, establishment, operation and maintenance of the INTELSAT space segment as may be appropriate and shall at all reasonable times make them available for inspection by representatives of the Board of Governors.

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1 See Article 11, Special Agreement.

ARTICLE 10 [1]

The following shall be included as part of the costs of the design, development, construction, and establishment of the INTELSAT space segment to be shared by the Signatories in proportion to their respective investment shares in the INTELSAT space segment:

(i) All direct and indirect costs for the design, development, construction, and establishment of the INTELSAT space segment incurred by the Manager, by the Board of Governors or, pursuant to authorization by the Board of Governors, by any Signatory.

(ii) Compensation to the Manager, as may be agreed in the contract between the Manager and the Board of Governors, for the managerial services associated with the design, development, construction and establishment of the INTELSAT space segment.

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1. Components of capital costs. See Article 5, Special Agreement.

ARTICLE 11 [1]

The following shall not form part of the costs to be shared by the Signatories:

(a) Taxes on the net income of any of the Signatories;

(b) Design and development expenditures on launchers and launching facilities except expenditures incurred for the adaptation of launchers and launching facilities in connection with the design, development, construction and establishment of the INTELSAT space segment;

(c) The expenses of the representatives of the Signatories on the Board of Governors and on its advisory committees and the staffs of those representatives except insofar as the Board of Governors may otherwise determine;

(d) The expenses of the representatives of Parties and Signatories to the Assembly except insofar as the Board of Governors may otherwise determine.

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1. Article 6, Special Agreement.

ARTICLE 12 [1]

(a) In considering whether an earth station should be permitted to utilize the INTELSAT space segment, the Board of Governors shall take into account the technical characteristics of the station, the technical limitations on multiple access to satellites due to the existing state of the art, the effect of geographical distribution of earth stations on the efficiency of the services to be provided by the system, the recommended standards of the International Telegraph and Telephone Consultative Committee and the International Radio Consultative Committee of the International Telecommunication Union, and such general standards as the Board of Governors may establish. Failure by the Board of Governors to establish general standards shall not of itself preclude the Board of Governors from considering or acting upon any application for approval of an earth station to utilize the INTELSAT space segment.

(b) Any application for approval of an earth station to utilize the INTELSAT space segment shall be submitted to the Board of Governors by the Signatory in whose area the earth station is or will be located or, with respect to other areas, by a duly authorized communications entity. Each such application shall be submitted either individually or jointly on behalf of all Signatories and duly authorized communications entities intending to utilize the INTELSAT space segment by means of the earth

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1. Earth station use of the INTELSAT space segment. See Article 7, Special Agreement.

station which is the subject of the application.

(c) Any application for approval of an earth station which is or will be located under the jurisdiction of a party to the Agreement and which is to be owned or operated by an organization or organizations other than the Signatory to the Operating Agreement designated by such Party shall be made by that Signatory.

ARTICLE 13 [1]

(a) Each applicant for approval of an earth station pursuant to Article 12 of this Operating Agreement shall be responsible for making equitable and non-discriminatory arrangements for the use of the earth station by all Signatories or duly authorized communications entities intended to be served by the earth station individually or jointly with other earth stations.

(b) To the extent feasible the Board of Governors shall allot to the respective Signatory, or duly authorized communications entity, for use by each earth station which has been approved pursuant to Article 12 of this Operating Agreement, an amount of satellite utilization appropriate to satisfy the total communications capability requested on behalf of all Signatories and duly authorized communications entities to be served by such earth station.

(c) In making allotments of satellite utilization the Board of Governors shall give due consideration to the investment shares of the Signatories to be served by each earth station.

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1. Indirect access. See Article 8, Special Agreement; see also ICSC 36-58E, paragraph 554(U), 555 (SS), 556(P).

ARTICLE 14

Neither the Manager nor any Signatory as such shall be liable to any other Signatory for loss or damage sustained by reason of a failure or breakdown of a satellite at or after launching or a failure or breakdown of any other portion of a space segment. [1]

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1. Article 13, Special Agreement.

ARTICLE 15 [1]

(a) An arbitral tribunal constituted under this Operating Agreement as provided in Annex A shall be competent to give a decision in the following matters:

(i) Any legal dispute concerning whether an action or a failure to act by the Board of Governors, the Assembly or one or more Parties or Signatories, is authorized by or is in compliance with this Operating Agreement and the Agreement; and

(ii) Any legal dispute arising in connection with any other agreement relating to the arrangements established by this Operating Agreement and the Agreement which the Parties or Signatories which are parties to that other agreement have agreed to confer such a competence.

(b) Any such legal disputes will be settled in accordance with the provisions of the Annex A of this Operating Agreement. A tribunal, in exercising competence under paragraph (a)(ii) of this Article, shall act in accordance with the agreement which confers competence on it.

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1. Arbitration. See Article 2(a) and (b) of the Supplementary Agreement. See ICSC 36-58E, paragraphs 592, 593(U).

ARTICLE 16 [1]

(a) This Operating Agreement shall enter into force for each Signatory upon entry into force of the Agreement or, if the Agreement is not then provisionally or definitively in force for the Party designating the Signatory, when the Agreement enters into force for such Party, either provisionally or definitively.

(b) This Operating Agreement shall continue in force for as long as the Agreement is in force.

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1 See Article 16, Special Agreement.

ARTICLE 17 [1]

Any proposed amendment to this Operating Agreement shall first be submitted to the Board of Governors for consideration. If the Board of Governors approves a proposed amendment, as submitted or as the Board of Governors may modify it, the Board of Governors shall recommend such amendment to the Assembly for action pursuant to Article IV (d) (iv) of the Agreement. Upon approval by the Assembly, the amendment shall be referred to the Signatories. The amendment shall enter into force for all Signatories when notifications of approval have been deposited with the Government of the United States of America by two-thirds of the Signatories, provided no amendment may impose upon any Signatory any additional financial obligation without appropriate action pursuant to Article IX of the Agreement.

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1 See Article 15, Special Agreement.

ANNEX A [1]

ARTICLE 1

Only the following may be parties in arbitration proceedings instituted under this Operating Agreement:

(a) Any Signatory

(b) The Board of Governors

(c) The Assembly

1/ See the Supplementary Agreement on Arbitration beginning Article 2(c). This Annex is substantially unchanged from the Supplementary Agreement. Compare Article 2(c) of the latter with Article 1 of the Annex; Article 3 with Article 2 of the Annex; Article 11(c) with Article 10(c) of the Annex. See ICSC-36-58E, paragraph 569, 592, 593(U).

ARTICLE 2

(a) Within 30 days of the entry into force of this Operating Agreement and every two years thereafter, each Signatory shall submit to the Board of Governors the name of a legal expert of generally recognized ability who will be available for the succeeding two years to serve as president of a tribunal constituted under this Operating Agreement. If for any reason a nominee becomes unavailable for selection to a panel, the nominating Signatory shall submit the name of another legal expert who will be available for the remainder of his predecessor's term. From such nominees the Board of Governors shall appoint seven individuals to a panel from which presidents of tribunals shall be selected.

(b) The members of the panel shall be appointed by the unanimous agreement of the representatives in the Board of Governors or, if not so appointed within three months from the entry into force of this Operating Agreement and every two years thereafter, by a decision of the Board of Governors taken in the same manner mentioned in Article VI(d)(ii) of the Agreement. The members of the panel shall be appointed for a term of two years, which shall commence on the date of appointment of the last member of the panel, and may be reappointed.

(c) For the purpose of designating a chairman, the panel shall be convened to meet by the Chairman of the Board of Governors as

soon as possible after the panel has been appointed. The quorum for a meeting of the panel shall be five members. After discussion among its members, the panel shall designate one of its members as its chairman by a decision taken by the affirmative votes of at least four members, cast in one or, if necessary, more than one secret ballot. The chairman so designated shall hold office as chairman for the rest of his period of office as a member of the panel. The cost of the meeting of the panel shall form part of the costs to be shared by the Signatories in accordance with this Operating Agreement.

(d) Vacancies on the panel shall be filled by appointment made by the unanimous agreement of the representatives in the Board of Governors. If the vacancy is not so filled within two months of the date when it arises, the appointment shall be made by decision of the Board of Governors taken in the same manner mentioned in Article VI(d)(ii) of the Agreement. Vacancies in the office of the chairman of the panel shall be filled by the panel by designation of one of its members in accordance with the procedure set out in paragraph (c) of this Article. A member of the panel appointed to replace a member or designated to replace a chairman whose term of office has not expired shall hold office for the remainder of his predecessor's term.

(e) In appointing the members of the panel the Board of Governors shall seek to ensure that its composition is drawn from the various principal legal systems as they are represented among the Signatories.

ARTICLE 3

(a) The party wishing to submit a legal dispute to arbitration shall provide each party and the Board of Governors with a document which contains the following items:

(i) A list of the parties against which the case is brought;

(ii) A statement which fully describes the dispute being submitted for arbitration, the reasons why each party is required to participate in the arbitration, and the relief being requested;

(iii) A statement which sets forth why the subject matter of the dispute comes within the jurisdiction of a tribunal to be constituted under this Operating Agreement, and why the relief being requested can be granted by such tribunal if it finds in the petitioner's favor;

(iv) A statement explaining why the petitioner has been unable to achieve a settlement of the dispute by negotiation or other means short of arbitration;

(v) The name of the individual designated by the petitioner to serve as a member of the tribunal.

(b) Within 21 days from the date copies of the document described in paragraph (a) of this Article have been received by all

the parties against which the case is brought, the respondents' side shall designate an individual to serve as a member of the tribunal.

(c) In the event of failure by the respondents' side to make such a designation, the chairman of the panel, within ten days following a request by the applicant's side which shall not be made before the expiration of the 21 day period aforesaid, shall make a designation from among the experts whose names were submitted to the Board of Governors pursuant to Article 2(a) of this Annex A.

(d) Within 15 days after such designation the two members of the tribunal shall agree on a third individual selected from the panel constituted in accordance with Article 2 of this Annex A, who shall serve as the president of the tribunal. In the event of failure to reach agreement within such period of time, the chairman of the panel, within ten days after a request from one of the sides, shall designate a member of the panel other than himself to serve as president of the tribunal.

(e) The tribunal shall commence its functions as soon as the president is selected.

(f) Should a vacancy occur in the tribunal for reasons which the president or the remaining members of the tribunal decide are beyond the control of the parties, or are compatible with the

proper conduct of the arbitration proceedings, the vacancy shall be filled in accordance with the following provisions:

(i) Should the vacancy occur as a result of the withdrawal of a member appointed by a side to the dispute, then that side shall select a replacement within ten days after the vacancy occurs.

(ii) Should the vacancy occur as a result of the withdrawal of the president of the tribunal or of another member of the tribunal appointed by the chairman, a replacement shall be selected from the panel in the manner described in paragraph (d) or (c) respectively of this Article.

(g) Except as prescribed in this Article, vacancies occurring in the tribunal shall not be filled.

(h) If a vacancy is not filled, the remaining members of the tribunal shall have the power, upon the request of one side, to continue the proceedings and give the tribunal's final decision.

ARTICLE 4

(a) The time and place of the sittings of the tribunal shall be determined by the tribunal.

(b) The proceedings shall be held in private and all material presented to the tribunal shall be treated as confidential, except that the Parties to the Agreement whose designated Signatories are parties to the dispute shall have the right to be present and shall have access to material presented. When the Board of Governors is a party to the proceedings, all Parties to the Agreement and all Signatories shall have the right to be present and shall have access to material presented, except where the tribunal shall in exceptional circumstances decide otherwise.

(c) The proceedings shall commence with the presentation of the petitioner's case containing its arguments, related facts supported by evidence and the principles of law relied upon. The petitioner's case shall be followed by the respondent's counter-case. The petitioner may submit a reply to the respondent's counter-case. Additional pleadings shall be submitted only if the tribunal determines they are necessary.

(d) The proceedings shall be conducted in writing, and each side shall have the right to submit written evidence in support of its allegations of fact and law. However, oral arguments and testimony may be given if the tribunal considers it appropriate.

(e) The tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute provided the counter-claims are within its jurisdiction as defined in Article 15 of the Operating Agreement.

(f) At any time during the proceedings, the tribunal may terminate the proceedings if it decides the dispute is beyond its jurisdiction as defined in Article 15 of the Operating Agreement.

(g) The tribunal's deliberations shall be secret and its rulings and decisions must be supported by at least two members.

(h) The tribunal shall support its decision by a written opinion. A member dissenting from the decision may submit a separate written opinion.

(i) The tribunal may adopt additional rules of procedure consistent with those established by this Annex A which are necessary for the proceedings.

ARTICLE 5

(a) If one side fails to present its case, the other side may call upon the tribunal to accept its case and to give a decision in its favor. Before doing so, the tribunal shall satisfy itself that it has jurisdiction and that the case is well-founded in fact and in law.

(b) Before giving the decision, the tribunal shall grant a period of grace to the side which has failed to present its case, unless it is satisfied that the party in default does not intend to present its case.

ARTICLE 6

Any Signatory, group of Signatories, the Board of Governors, or the Assembly which considers that it has a substantial interest in the decision of the case may petition the tribunal for permission to become a party to the case. If the tribunal determines that the petitioner has a substantial interest in the decision of the case, it shall grant the petition.

ARTICLE 7

Either at the request of a party, or upon its own initiative, the tribunal may appoint such experts as it deems necessary to assist it.

ARTICLE 8

Each of the Signatories, the Board of Governors and the Assembly shall provide all information determined by the tribunal, either at the request of a party to the case or upon its own initiative, to be required for the proper handling and determination of the dispute.

ARTICLE 9

During the course of its consideration of the case, the tribunal shall have power, pending the final decision, to make recommendations to the parties with a view to the protection of their respective rights.

ARTICLE 10

(a) The decision of the tribunal shall be based on interpretation of the Agreement and this Operating Agreement in accordance with generally accepted principles of law.

(b) Should the parties reach an agreement during the proceedings, the agreement shall be recorded in the form of a decision of the tribunal given by the consent of the parties.

(c) The decision of the tribunal shall be binding on all the parties to the dispute and shall be carried out by them in good faith. However, if, in a case in which the Board of Governors or the Assembly is a party, the tribunal decides that a decision of the Board of Governors or the Assembly is null and void as not being authorized by or in compliance with the Agreement and this Operating Agreement, the decision of the tribunal shall be binding on all Signatories or Parties respectively.

ARTICLE 11

Unless the tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of the members of the tribunal, shall be borne in equal shares by each side. Where a side consists of more than one party, the share of that side shall be apportioned by the tribunal among the parties on that side.

D

USPos/1
February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: The Assembly

U.S. Position:

1. There should be an Assembly of Parties or Signatories, meeting annually or biennially.

2. Representation in the Assembly (Party or Signatory) to be determined by each Party.

3. Voting in the Assembly should combine one nation-one vote with weighted voting - simple majority of members with 2/3 weighted majority required.

4. Except with respect to specified functions pertaining to possible replacement of the Manager, increase in the limit of the net contribution, and amendment of the agreements, the Assembly should not be the decision-making body (which should be the Governing Body).

Interim Agreements: No provision.

ICSC Report: Generally paras. 237-261; particularly 262-343.

Papers: Issues paper on "Major Organs of the Organization: The Governing Body and the Assembly" (State 11/15/68).

Executive Committee: Minutes of January 7, 1969, item 5 (b); January 30, 1969, item 4; February 7, 1969, items 4 B, C and E.

Draft Agreements: Principally Article IV.

E/TD:SEDoyle:sp

E

USPos/2
February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: The Board of Governors

U.S. Position:

1. The Board of Governors of INTELSAT should be the primary decision-making executive organ.

2. Voting in the Board of Governors should reflect the relative level of investment of the participating Signatories, except that no Signatory should cast a vote in excess of 50% of the total votes entitled to be represented in the Board.

3. Participation in the Board of Governors should be based upon the following criteria:

(a) Signatories with investment shares of __% or more. (The proposed percentage is not specified at this time.)

(b) A representative from each of any two or more Signatories whose combined investment share is not less than the smallest investment share represented under (a) above.

(c) A representative from any five Signatories who have combined their investment shares, regardless of amount.

(d) Not more than three additional representatives as may be selected by the Assembly if the total number of representatives under the above provisions is less than 20.

Interim Agreements: Articles IV and V.

ICSC Report: Paragraphs 344-430, 481-486.

Papers: Issues paper on "Major Organs of the Organization: The Governing Body and the Assembly", State 11/15/68.

Executive Committee: Minutes of January 7, 1969, item 5 (b); February 7, 1969, 4 (c).

Draft Agreements: Principally Articles V and VI.

E/TD:SEDoyle:sp

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USPos/3
February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: The Manager

U.S. Position:

Our position remains as proposed in our October 1967 paper (ICSC 28-40), which included the following:

1. A single entity should be the Manager.

2. Appropriate international participation in the managerial function should be assured.

3. The Manager should function subject to general policies and specific determinations made by the Board of Governors.

4. Functions of the Manager should be set forth in the Agreements.

5. There should be a contract between the Manager and the Board of Governors.

6. The Manager could be changed on recommendation of the Board of Governors approved by the Assembly.

7. ComSat should continue as Manager for the foreseeable future.

Interim Agreements: Intergovernmental Agreement, Article VIII; Special Agreement, Articles 12, 13.

ICSC Report: For brief statement of current status see paras. 118-119; for definitive arrangements see paras. 431-477 and 487-488.

Papers: Issues paper - "Major Organs of the Organization: The Manager", State revision 12/19/68; State memorandum on "U.S. Position on INTELSAT Manager", Loy/Lorenz, 1/17/69; ComSat memorandum, 1/16/69; DTM memorandum, "Manager for INTELSAT", 1/16/69; FCC draft, "Manager - Fall Back Position", 1/31/69.

Executive Committee: Minutes of January 13, 1969, item 3; January 21, 1969, item 6.

Draft Agreements: Principally Article VII.

E/TD:SEDoyle:sp

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USPos/4
February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Scope of Services

U.S. Position:

1. Our basic position remains as stated in ICSC 28-40, October 1967, that INTELSAT should have authority to furnish all kinds of services, not only traditional long distance communications services, but all services that can be provided by means of communications satellites. This includes "specialized" and domestic services as well as international public telecommunications services.

2. As proposed in ICSC 28-40, INTELSAT should be authorized to provide the space segment for domestic services, either by regular INTELSAT satellites or by satellites established for the purpose (ICSC Report 205, 209, 212-214).

3. We can accept a qualification with respect to providing the space segment for specialized services to the effect that this will not adversely affect the provision of the space segment for international public telecommunication services (e.g. ICSC Report paragraph 197).

4. We do not advocate an INTELSAT monopoly for provision of specialized or domestic services (ICSC Report 614-616).

5. We oppose a provision (such as ICSC Report 227) to authorize INTELSAT to provide separate satellites solely to meet needs of a national security nature.

Interim Agreements: Preamble and Article I are pertinent but not explicit on the scope of services to be offered as the question is understood today.

ICSC Report: Section B, "Scope of Activities of the Organization", 188-227, and part of Section K on "Rights and Obligations of Parties", 606-617.

Papers: Issues paper on "Functional Competence of the Organization", State, 11/19/68; "Direct Broadcasting", State, 2/-/69.

Executive Committee: Minutes of January 7, item 5 (a); January 21, item 7.

Draft Agreements: Article I (j), (k) and (l) and Article VIII.

E/TD:WKMiller:sp

LIMITED OFFICIAL USE

INTELSAT Conference Issues

Direct Broadcasting

Issue

What should be the U.S. position at the Conference and in the definitive arrangements on the subject of direct broadcasting by satellite?

Position U.S. Has Taken

The U.S. position on the kinds of services Intelsat should have authority to furnish is set forth in the position paper on Scope of Services. Generally, we view Intelsat as a developer and supplier of facilities and would not place restrictions on the kinds of services that can be provided by means of communications satellites. As the paper on Scope of Services states, the U.S. has not addressed directly the question of specialized services (of which direct broadcasting by satellite is one) in any of its Intelsat submissions. We have, however, in our position supporting broad competence for Intelsat, implied that members should obtain any desired specialized services through the Intelsat space segment.

The concept of direct broadcasting by satellite has raised fears of cultural subversion in several countries. While the issue has never been formally treated in Intelsat, it has been raised periodically in U.N. forums, most recently the Outer Space Committee. The U.S. has taken no position there, except to suggest, when the subject has arisen from time to time, that the technical side should be studied first, i.e., what is possible and what is likely on what time schedule. Recently we agreed to a study by a working group of the Outer Space Committee, still urging, successfully, study of the technical question first. The agreed terms of reference of the working group are attached.

Views of Others

In general, in the area of Intelsat's competence to provide services, the views of others are set forth in the paper on Scope of Services. Beyond the provision of public international telecommunication services (and, even there, there are differences over whether or not Intelsat should be the exclusive provider of such services and whether or not it should be required to provide them), there is no consensus on Intelsat's authority to provide specialized telecommunication services or on the conditions attendant to such provision.

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

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

Objectives

As is stated in the paper on Scope of Services, the U.S. position is that Intelsat should be equipped with the latitude to provide, in addition to public telecommunication facilities, satellite relay facilities for other applications.

As far as direct broadcasting, specifically, is concerned, we wish to avoid complicating the negotiation of the definitive arrangements with this issue, or letting it become an obstacle to a successful conclusion of the negotiations.

We wish, also, to avoid any unnecessary or ill-considered committment in connection with the definitive arrangements.

Discussion

Fears of direct broadcasting by satellite are logically directed primarily at the broadcasting earth station and only secondarily at Intelsat. The Consortium merely operates the space segment of the global system. Intelsat has no purview over what is transmitted to an earth station for relay by satellite. The occasion of the Conference, however, and the necessity of reaching agreement on the services Intelsat is to offer provide a convenient means to thwart the supposed designs of would-be broadcasters by foreclosing to them any access to necessary transmission facilities.

In view of the broad U.S. objective that satellite relay facilities should not be restricted, that Intelsat should be enabled to exploit technological advances for the benefit of its members, the U.S. would hope to avoid any prohibition against the provision in the future of facilities for direct broadcasting by satellite. (See the paper on Scope of Services.) Rationally, it can be argued that it is imprecise to curtail the provision of a facility when the imagined threat is not the facility, but the use to which it might be put. Initially, this reasoning could be used to support the U.S. position that the definitive arrangements should not contain any provision which would rule out Intelsat facilities for direct broadcasting.

Concern with direct broadcasting by satellite may be a bit premature at this time, moreover. Each country now has total control over TV reception from satellites. Direct TV broadcasting from satellites to homes will still be relatively easy to control for some time to come, even with advances in technology, since fairly expensive and fairly obvious receiving equipment will continue to be needed for a number of years. The time may come, however, when direct TV reception from satellites will be almost as hard to control from within the receiving country as is radio reception today.

Probably with this long-range prospect in mind, several states are concerned, as witnessed by the previously mentioned formation of a working group of the U.N. Outer Space Committee.

If there is pressure for a provision on direct broadcasting in the definitive arrangements, our position should be that the U.N. Committee is dealing with the question and that it is not necessary for Intelsat to take any position or do anything about it, at least pending completion of the Committee's study.

There are, broadly, two approaches to the problem of direct broadcasting by satellite. One is to screen the content of direct international broadcasts via satellite. This would involve impossible political problems. The second approach is to prohibit direct broadcasts except where the recipient country agrees to receive them. This would present still difficult, but more limited, technical problems. If other delegations are not willing to defer the matter pending U.N. developments, we could suggest a provision in the definitive arrangements which would constrain the Governing Body to authorize the use of Intelsat satellites for direct broadcasting only with the agreement of intended recipients and all countries likely to be affected. The attendant technical problems would still remain.

INTELSAT:RWBeales

Terms of Reference of Working Group

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

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

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

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

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

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

H

USPos/5
February 17, 1969

INTELSAT CONFERENCE

Position Paper

SUBJECT: Access to the System

U.S. Position:

In consistency with the concept of a universal system available to all nations, non-members, whether they are ITU members or not, should be permitted to have direct access to the INTELSAT space segment on a space available basis after the needs of members have been met. Such access should be by agreement with the organization, on terms and conditions, to be determined by the Governing Body. Such terms and conditions should be similar to those upon which services are provided to signatories, provided that appropriate allowance should be made for the fact that members have invested capital in the system and non-members have not.

Interim Agreements: The preamble to the Agreement is pertinent.

ICSC Report: Section I, 550-556.

Papers: Ward Allen's memorandum of January 24, 1969.

Executive Committee: Minutes of January 21 (item 8), January 30 (3), February 7 (5).

Draft Agreement: See Article VIII (d).

E/TD:WKMiller:sp

USPos/6
February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Regional Systems

U.S. Position:

1. We have not proposed provision for regional satellites outside INTELSAT.

2. If the Europeans insist on provision for regionals they should be subject to:

(a) a satisfactory area definition (such as the CETS definition, i.e. a compact area),

(b) determination by the Governing Body that they are economically compatible with INTELSAT, and

(c) determination by the Governing Body that they are technically compatible with INTELSAT (i.e. with respect to use of the spectrum and orbital space, adequate control and absence of harmful interference).

Interim Agreements: No provision.

ICSC Report: 606-611 in Section K. Also pertinent are the CETS definition of "regional" (162) and 220-222, relating to determination of technical compatibility for domestic satellites, which can also be applied to regional satellites.

Papers: Issues paper on "Regional Systems", State revised 12/12/68, ComSat 11/19/68.

Executive Committee: Minutes of January 7, 1969, item 5 (a).

Draft Agreements: No provision.

E/TD:WKMiller:sp

J

USPos/7
February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Legal Personality

U.S. Position:

INTELSAT need not have a separate legal personality in order to function. The present joint venture nature of INTELSAT is sufficient and flexible enough to permit all desired organizational functions to be performed. Giving INTELSAT legal personality may give rise to certain administrative-operational problems and tax law questions which are avoidable in the joint venture configuration. At the present time the U.S. sees no need for INTELSAT to have a separate legal personality as long as either the Manager, some individual or other entity is accorded power to act for the organization.

Interim Agreements: No specific relevant provision. Organization, decision-making authority and ownership are treated without reference to legal personality in Articles I through IV.

ICSC Report: Paras. 231-236.

Papers: Issues papers on "Legal Personality", State 11/14/68; and ComSat "Legal Status of the Organization", 11/19/68; Legal Committee paper "Legal Status of INTELSAT Under Definitive Arrangements", 2/3/69.

Executive Committee: Minutes of February 6, 1969, item 4.

Draft Agreements: No provisions specifically address this question. See Article VII regarding definitions of functions the Manager is authorized to perform on behalf of the organization. (However, ComSat's capacity to act as a jural entity is derived from its corporate existence, not from anything in the Agreements.)

E/TD:SEDoyle:sp

USBP/3
February 3, 1969

MEMORANDUM FOR AMBASSADOR MARKS

FROM: Legal Committee on Definitive Arrangements*

SUBJECT: Legal Status of INTELSAT under the Definitive Arrangements

The Legal Committee has examined the various legal problems and alternatives relating to INTELSAT's juridical status under the Definitive Arrangements. Because of certain unresolved differences of view, which are reflected in the attached memoranda, the Legal Committee felt it would be preferable to have the various representatives separately state their positions for consideration of the Executive Committee.

cc: Chairman Rosel H. Hyde
Mr. James McCormack
General James D. O'Connell
Mr. Frank E. Loy
Mr. John A. Johnson
Mr. Ward P. Allen
Mr. William K. Miller

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* Comprised of representatives of the Department of State (Richard Frank, Asst. Legal Adviser); FCC (Henry Geller, General Counsel, and Asher Ende, Deputy Chief, Common Carrier Bureau); DTM (John O'Malley, Jr., Legal Counsel), and Comsat (William D. English, Asst. General Counsel).

February 3, 1969

MEMORANDUM OF COMSAT

SUBJECT: LEGAL STATUS OF INTELSAT UNDER THE DEFINITIVE ARRANGEMENTS

This memorandum has been prepared in connection with the analysis by the Legal Committee on Definitive Arrangements* of the various alternatives for INTELSAT's juridical status and personality under the definitive arrangements. It first deals with how INTELSAT's business may be conducted under its present status, and the legal implications of explicitly endowing INTELSAT or its manager with legal personality. Attention is then focused upon the ramifications of the principle alternatives.

CONCLUSION

INTELSAT need not be established having legal personality in order to effectively carry out its business functions and enjoy appropriate privileges and immunities. A joint venture

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* Comprised of representatives of the Department of State (Richard Frank, Asst. Legal Adviser); FCC (Henry Geller, General Counsel, and Asher Ende, Deputy Chief, Common Carrier Bureau); DTM (John O'Malley, Jr., Legal Counsel), and Comsat (William D. English, Asst. General Counsel).

without legal personality--INTELSAT's present status--provides an appropriate framework for the conduct of INTELSAT's business and the achievement of its purposes. Moreover, this legal framework could readily accommodate, through a normal agency relationship, a management staff separate from the partners, if such became necessary.

INTELSAT could be endowed with legal capacities to act in its own name and on its own behalf by providing in the Agreement that it shall have legal personality. However, such personality would offer no substantial legal advantages, and the possession of such personality could have certain undesirable ramifications for both INTELSAT and Comsat, including certain administrative-operational problems and, unless a specific and authoritative ruling to the contrary were obtained from U.S. tax authorities, severe tax consequences to Comsat.

There is an apparent political element to the legal personality issue which should not be overlooked. Endowing INTELSAT with legal personality is seen by some of our foreign partners as a way to aggrandize its status, make it more comparable to a public international organization, and reduce the dependence on and influence of Comsat. The proposals by our partners for an international manager must be seen in the same light. Accordingly, since their position is based

primarily on political and not legal grounds, they may not be persuaded by the argument that legal personality is not necessary to permit INTELSAT--even with an international manager--to fully perform all necessary functions.

I. THE ALTERNATIVES

A. INTELSAT's PRESENT STATUS

INTELSAT's juridical status under the interim arrangements is usually described as a joint venture without legal personality, although this joint venture status is not defined in the Interim Agreement. The Agreement contains no provision explicitly giving to INTELSAT either specific or general capacities to act in its own name (e.g., to contract, to acquire and dispose of property or to institute legal proceedings) or full juridical personality. Therefore, whatever capacities INTELSAT has to act must be derived from the municipal laws of the various participating states, the laws of each state applying to INTELSAT business conducted within that state.

Within the United States, INTELSAT, for purposes of doing business, is regarded under the law as a partnership.

As a general rule, a partnership is not considered to be a legal entity separate and distinct from its participants. Therefore, in doing business (contracting, etc.), it must act through one of its participants (either Comsat or another signatory), an individual representative, or an outside entity. However, contracts for and on behalf of the consortium may be entered into in the name of the consortium ("INTELSAT"), and such contracts bind all the participants. Further, property purchased on behalf of the consortium can be held by the participants in the name of INTELSAT, each participant having an undivided interest in the property. Moreover, the consortium's lack of legal personality does not constitute a disability with respect to the protection of the rights of the partners in legal proceedings involving third parties.

We cannot speak authoritatively on the domestic laws of all other INTELSAT members in this regard. As in the United States, it is unlikely that INTELSAT would be generally regarded as having legal personality in its present status. On the other hand, the concept of agency seems to be

recognized by virtually all legal systems. Thus, whether or not INTELSAT is recognized as having legal capacities to act in its own name, it could in any case do business through one of its participants (either Comsat or another), an individual, or an outside entity. Much of INTELSAT's business has been carried out in this manner,[1/] and no objection has been raised in the ICSC with respect to this general method of operation.

B. LEGAL PERSONALITY FOR INTELSAT

INTELSAT could be endowed with legal capacities to act in its own name and on its own behalf by including in the Intergovernmental Agreement a provision explicitly stating that it shall possess legal personality. Such a provision

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1/ The contracts for the lease and operation of TT&C facilities in Italy and Australia were between INTELSAT and Telespazio and OTC, respectively, with INTELSAT being "represented" by Comsat as manager. Moreover, contracts for allotments of satellite utilization (e.g., between INTELSAT and the British Post Office, the Spanish Tel. Co. and OTC (Australia)) have been signed by the Chairman of the ICSC as agent of all the members, and at one time INTELSAT employed a "secretary" who entered into contracts, as agent of the consortium, for interpreters, etc., in the name of INTELSAT.

would probably be effective in most member states, although in some states implementing legislation might possibly be required. Many different formulations have been utilized to achieve essentially the same result for various international organizations.2/

If INTELSAT were given legal personality, the business functions of the organization could be carried out by its officers or by a management entity which derives its capacities to act from the organization's capacities. Such personality would not predetermine INTELSAT's internal structure; in particular, it would not require the creation of an international management body. Nor would it relieve INTELSAT or its manager from the obligation to act in accordance with the policies imposed by the Agreements and the decisions of its decision-making bodies. It could, however, result in certain financial and administrative rearrangements, as discussed below.

2/ See Attachment A for several examples of such clauses.

C. LEGAL PERSONALITY FOR AN INTERNATIONAL MANAGER

The definitive arrangements could maintain INTELSAT in its present status as a joint venture without legal personality, and, in addition, create an international management entity having legal personality. Such a management entity might operate in one of two ways. It could contract and hold property in its own name for the benefit of the consortium. On the other hand, it might act as agent of the partners in conducting the business of INTELSAT. As a legal framework for INTELSAT's operation, this device offers no benefits which are not offered by endowing INTELSAT with legal personality. The device might avoid one of the ramifications that results from granting INTELSAT legal personality--the possible adverse tax consequences to Comsat under U.S. tax laws, as discussed below. However, it suffers from the same disadvantages which result from granting INTELSAT legal personality.

II. RAMIFICATIONS

A. ABILITY TO DO BUSINESS

INTELSAT need not be endowed with legal personality in order to carry out effectively its business functions under the definitive arrangements. This holds true whether the present organizational structure--operation primarily through Comsat or another signatory--is maintained, or the permanent agreements authorize the Governing Body to employ an administrative manager and staff to perform INTELSAT's management functions.

The concept of agency, which is recognized by virtually all legal systems, provides a sound legal basis for the performance of management functions by such an individual within the framework of INTELSAT's present legal status. A designated administrative manager could be authorized and directed by the Governing Body to act as agent for and on behalf of the signatories, jointly and/or severally, in performing necessary legal functions, most important of which is contracting for the space segment. This administrative manager would be as effective

legally as Comsat or another signatory in signing those contracts as agent for the signatories. The contractual situation with respect to third parties would not be materially different than one in which an official of an INTELSAT having legal personality contracted for the organization, except that in the former case the rights and obligations under the contract would be held jointly by the signatories rather than by the single entity, INTELSAT.

The consortium need not be recognized as a legal entity under the laws of a particular member state in order to enter into contracts, through a designated agent, with a national or domestic entity of that state. It is sufficient that all of the signatories represented by the agent are legal entities, whether or not they are foreign entities with respect to that member state. As a general rule, this would be the case with other business functions as well.3/

3/ For example, in filing patent applications on INTELSAT-owned inventions in several jurisdictions other than the U.S. in the name of Comsat, no impediment has been found. And, although we have no experience in instituting legal proceedings to protect patent rights thereby obtained, it is doubtful that having allowed a foreign national to obtain patent rights, these jurisdictions would deny him recourse to that state's courts in protecting these rights.

Of course, the performance of certain business functions involving special local interests--e.g., owning real property, maintaining a local office--might in some instances involve compliance with certain local requirements, such as registration to do business.[4/] Even if INTELSAT had legal personality, it would encounter the same requirements in similar instances. In any event, such requirements should not constitute any real impediment to INTELSAT's overall operation for several reasons: First, a large portion of INTELSAT's business--procurement of equipment and services, etc.--would not encounter such requirements; only in relatively rare instances, within the foreseeable scope of INTELSAT's operations, would its operations include the kinds of local-interest activities that might encounter those requirements. Second, in most cases compliance with those requirements would cause no practical or legal difficulty, particularly since in each

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4/ It should be noted that in order to institute legal proceedings in a particular state, it will always be necessary to resort to representation by local counsel, whether or not INTELSAT has legal personality.

instance one of the participants in the consortium would be a domestic entity of the member state. Third, if difficulty did arise, it could be avoided by acting on an ad hoc basis through or on behalf of the local signatory, as has occasionally been done under the present arrangements.

Contracts entered into by the partners through an authorized individual acting as their agent would bind all of the signatories individually. That is, the contractors would be able to look directly to the individual assets of the signatories to satisfy INTELSAT's obligations under its contracts. On the other hand, if INTELSAT had legal personality, there would be substantial doubt whether the individual participants would be directly subject to legal process to the extent of INTELSAT's obligations. This doubt might cause potential contractors to be reluctant to contract directly with INTELSAT as a legal entity separate and distinct from its members, unless INTELSAT kept on hand liquid assets sufficient to evidence its ability to meet contractual obligations as they arise, as well as the normal operating costs of the organization.

In its present status, INTELSAT assets are owned jointly in undivided interests by the signatories. If INTELSAT is endowed with legal personality and the consortium assets are held by this new legal entity, some form of evidencing the various signatories' ownership interests in the entity would seem 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. The means utilized to evidence their ownership would have to allow for a sliding scale relating ownership to use, assuming an investment/use mechanism is incorporated under the definitive arrangements. The effect of this change cannot be adequately evaluated at this time, but it could be a source of potential difficulty. 5/

B. IMPACT UPON PARTICIPANTS

1. Tax Consequences

With respect to United States federal income tax law, the existence or absence of legal personality in INTELSAT has ramifications for both INTELSAT and Comsat. First, if

5/ The potential impact of legal personality on INTELSAT's financial arrangements requires further study by financial-management experts; the views expressed here represent only preliminary views on this matter.

 p12 missing

the granting of legal personality could be construed as affording the participants, in their individual capacities, limited liability, INTELSAT might be treated as an "association" for purposes of federal income taxation. If so, Comsat might no longer be able to deduct from its gross income its share of INTELSAT's operating expenses, including depreciation of its share of the INTELSAT assets, which could result in an out-of-pocket cost to Comsat on the order of perhaps several million dollars each year.

Another potential effect of INTELSAT's treatment as an "association" is that Comsat might lose the right to an "investment credit" for investments in certain assets acquired by INTELSAT. (Under INTELSAT's present tax treatment, Comsat has a right to claim a tax credit of up to 7% of its share of such investments made by the consortium.) The full extent of the loss of this right, in terms of potential cost to Comsat in years to come, cannot be evaluated at this time, but it could be substantial.

We do not feel that the inclusion of a provision in the Agreements expressly negating limited liability would be an acceptable means of alleviating these potential adverse consequences. The inclusion of such a provision would be legally and commercially imprudent. Moreover, it would likely be viewed by our partners as a selfish suggestion of no benefit, and potential detriment, to them; the general practice, and, indeed, one of the more compelling justifications for creating a separate entity, is to seek the umbrella of limited liability for the participants.

In addition, considering the difficulties previously encountered when, with the assistance of the Department of State, immunity from federal income taxation was sought from the Internal Revenue Service for the INTELSAT signatories, Comsat is reluctant to place too much reliance on alleviating possible tax consequences through a favorable policy statement from the IRS. Such reliance might place Comsat in the position of committing itself on the issue of legal personality prior to the time when the definitive arrangements would be finalized to a point

that the Department of Treasury would have a sufficiently concrete basis on which to render a definitive ruling. Moreover, this alternative presents considerable commercial and legal uncertainty, inasmuch as a favorable ruling would not have the force and effect of law, in the absence of subsequent incorporation into the Code or regulations; it could be revoked, conceivably even retroactively.

A second consequence relates to possible immunity from income taxation in the U.S. INTELSAT is currently treated as a partnership for purposes of U.S. income tax law. A partnership does not have to pay income tax, but merely files an information return, passing through its income to the partners pro rata (the great majority of whom are foreign governments or government agencies and, therefore, not subject to federal income taxation (26 USC 892)). Therefore, United States tax relief to INTELSAT has entailed merely relief from this reporting requirement. On the other hand, if giving to INTELSAT full juridical personality caused it to be considered an "association", it could be subject, unless exempted in

the agreement, to income taxation on income imputed to the organization. The Department of State does not foresee any difficulty in obtaining such immunity, even though any such immunity would amount to immunity from real taxation rather than merely relief from certain reporting requirements. It should be noted that if INTELSAT were treated as an "association" and not given tax immunity, Comsat might be subject to double taxation on its share of INTELSAT's income, since it might be subject to taxation as a shareholder on its income from INTELSAT after INTELSAT, itself, had been taxed on its total income.

It is not possible to make an authoritative statement of what the tax ramifications of the alternatives are likely to be under the tax laws of other states.

2. Liability of Participants to Third Parties

Under INTELSAT's present status, the participants are liable either jointly or jointly and severally for the obligations of INTELSAT. 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 would certainly 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, others might regard INTELSAT's legal entity status as insulating the individual participants from the debts of the organization, thus giving to the organization limited liability. This might be considered beneficial, from the participants point of view, with respect to tort and contractual liabilities. However, this could have a substantial adverse impact upon the ability of INTELSAT to engage in commercial activities, as is discussed above on page 11.

C. PRIVILEGES AND IMMUNITIES

With respect to the United States, the President may grant extensive privileges and immunities to INTELSAT under the International Organizations Immunities Act. The use

of this Act by the President is not dependent upon INTELSAT's possession of legal personality.

Although we cannot speak authoritatively on the laws of other countries in this regard, we doubt that either the absence or existence of legal personality would create problems in conferring privileges and immunities under their domestic laws.

Of course, the makeup of INTELSAT and the functions that it would perform could affect the appropriate scope of privileges and immunities are appropriate to grant to it. A more thorough discussion of the relationship of privileges and immunities to the makeup and operation of the organization will be made in a separate memorandum on that subject.

D. IMPLEMENTATION

The State Department has advised us that, as a matter of United States law, INTELSAT could be explicitly granted legal personality by an executive agreement used in combination with an executive order issued under the International Organizations Immunities Act, without resort to Congressional action. However, in view of the existence

of precedent to the contrary, 6/ and the substantial legal-political controversies that have, on occasion, surrounded the President's exercise of authority in the conclusion of executive agreements, we feel that the granting of legal personality and capacities without specific Congressional approval necessarily involves certain political-policy, as well as legal, considerations. For this reason, we think that further exploration within the executive branch on this issue would be desirable.

6/ For example, the Inter-American Development Bank, the International Bank for Reconstruction and Development, and the Asian Development Bank all received specific congressional approval for United States participation including a specific section granting, in the United States, the status, privileges and immunities specified in the international agreements.

ATTACHMENT A

Food and Agriculture Organization

Article 16. 1. The Organization shall have the capacity of a legal person to perform any legal act appropriate to its purpose which is not beyond the powers granted to it by this Constitution.

Intergovernmental Committee for European Migration

Article 25. The Committee shall possess full juridical personality and enjoy such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes, and in particular the capacity, in accordance with the laws of the territory: (a) to contract; (b) to acquire and dispose of immovable and movable property; (c) to receive and disburse private and public funds; (d) to institute legal proceedings.

International Bank for Reconstruction and Development

Section 2. Status of the Bank

The Bank shall possess full juridical personality, and, in particular, the capacity:

(i) to contract;
(ii) to acquire and dispose of immovable and movable property;
(iii) to institute legal proceedings.

International Civil Aviation Organization

Article 47. The Organization shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions.

MEMORANDUM OF DEPARTMENT OF STATE

SUBJECT: Legal Personality of INTELSAT under the Definitive Arrangements

The United States' proposed definitive arrangements will not contain a provision granting INTELSAT legal personality.* We expect, however, that many of the participants at the conference will favor granting INTELSAT legal personality.** These participants presumably feel that the existence of legal personality will make the organization psychologically less dependent on Comsat as manager, and will enable the organization legally to exercise its own management function if/when Comsat is replaced as manager.

This memorandum analyzes the legal implications of granting INTELSAT legal personality in the definitive arrangements, of incorporating INTELSAT, and of granting an INTELSAT International Manager legal personality. Our purpose is to assist you in determining what the United States position should be if others insist on legal personality. The memorandum does not take into account or evaluate the psychological aspects of the problem.

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* As used in this memorandum, legal personality includes at least capacity to hold property, to enter into contracts, and to proceed in court.

** Paragraph 236 of the ICSC Report states: "A substantial majority of the Committee recommends that the Organization, which should be either an international or intergovernmental organization, should possess legal personality and, on the territory of each participating State, the juridical capacity necessary to exercise its functions and reach its objectives, including the capacity to conclude agreements, to own property and to exercise rights against third parties in its own name." A Swiss paper to the ICSC (SCL/IWG/1E) also recommends legal personality.

CONCLUSION

1. If INTELSAT is given legal personality, there may be two tax ramifications but in both cases any adverse effects could be remedied.

2. Whether or not INTELSAT has legal personality does not affect the eligibility of the organization for privileges and immunities in the United States. INTELSAT may be given legal personality by executive agreement.

3. If INTELSAT decides to exercise its own management function, there are potential difficulties relating to the exercise of legal capacities if it has no legal personality. We cannot now evaluate the extent of these difficulties or conclude definitively whether INTELSAT could operate as effectively without legal personality.

INTELSAT'S PRESENT STATUS

Under the Interim Arrangements, INTELSAT is usually described juridically as a joint venture without legal personality. The international agreement establishing the organization does not explicitly empower it to contract, to acquire or dispose of property, or to institute legal proceedings. The agreement provides that COMSAT is to act as manager and to implement decisions regarding the space segment. COMSAT, because of its independent status as a D.C. Corporation, possesses the above-mentioned legal capacities and can act in its own name when performing the management function. In the alternative, COMSAT or others

with legal personality do, according to COMSAT, act as agent on behalf of all the members of INTELSAT, exercising the legal capacities of all the members.

RAMIFICATIONS OF INTELSAT HAVING OR NOT HAVING LEGAL PERSONALITY

1. Tax Consequences

Granting or denying INTELSAT legal personality would have two potential tax consequences. If legal personality were considered to include limited liability, INTELSAT might be treated as an "association" under United States tax law.* If so, (a) INTELSAT's income would be taxable, and (b) COMSAT might lose its right to its investment credit in certain assets acquired by INTELSAT, and COMSAT might no longer be able to deduct from its gross income its share of INTELSAT's operating expenses, including depreciation of its share of the INTELSAT assets (according to COMSAT a"cost"on the order of $5 million each year). We could avoid these potential adverse impacts if we could obtain a Department of Treasury policy statement that INTELSAT will not be considered an "association." Treasury has not yet been approached on this subject. We could also avoid INTELSAT's being an "association" by stating in the agreement that there will not be limited liability, i.e. the existing situation, with

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* A corporation, for federal income tax purposes, includes an "association" which, generally speaking, must possess three of the following four characteristics: (1) continuity of life, (2) centralization of management, (3) limited liability, and (4) free transferability of interests. INTELSAT would probably be considered to possess (1) and (2), and not (4). Consequently whether it is an association and subject to tax under the Regulations would depend on (3), limited liability.

the signatories either jointly or jointly and severally liable for the obligations of the organization. The problem of INTELSAT's being taxable is, in any case, taken care of by our proposed privileges and immunities provisions which will exempt INTELSAT from income taxation.

2. Privileges and Immunities

With respect to the United States, the President may grant extensive privileges and immunities to INTELSAT under the International Organizations Immunities Act. The use of this Act by the President is not related to INTELSAT's possession of legal personality.

A Swiss submission to the ICSC states that the absence of legal personality would create problems in conferring privileges and immunities under European domestic laws. Although we cannot speak authoritatively on the laws of other countries, we tend to doubt this.

INTELSAT could be given legal personality under United States domestic law by executive action by use of the International Organizations Immunities Act.*

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* An appropriate legal personality provision considered by the Legal Committee is the following:

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

(i) contract;

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

(iii) institute legal proceedings.

3. The Right to Contract, to Acquire and Dispose of Real and Personal Property, and to Institute Legal Proceedings

If INTELSAT is given legal personality in the intergovernmental agreement, it would be empowered, as an entity, to contract, to acquire and dispose of real and personal property, and to institute legal proceedings in each of the member countries.*

If INTELSAT is not given legal personality in the intergovernmental agreement, these capacities would have to be exercised on behalf of INTELSAT's members by another entity, e.g., an incorporated manager like COMSAT, an individual, or one of the members. This entity would act on the basis of its own capacities derived from the domestic law of a participating state or as an agent for the INTELSAT members, exercising each member's legal personality. (To illustrate, the entity could purchase property in its own name or in the names of COMSAT, France, and the other INTELSAT signatories which would then own the property in common.)

INTELSAT is presently doing business through COMSAT. COMSAT, by virtue of its own capacities as a D.C. Corporation, contracts, own property, and institutes legal proceedings, either in its own name or on behalf of INTELSAT's members. In some instances, COMSAT has acted through other agents. Accoring to COMSAT, no difficulties have been encountered.

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*Nonetheless, when exercising these capacities in a member country, the consortium, just as COMSAT presently, would be obligated to comply with that country's laws, e.g., registration requirements and tax laws, unless it is granted privileges and immunities in respect of such laws.

INTELSAT may, in the future, perform its own management function, e.g. through a secretariat. International organizations composed of sovereigns who have secretariats or secretary generals act for them have traditionally endowed themselves with legal personality in an international agreement to avoid numerous potential complications. These complications may occur since, among other reasons, there are no public international law rules governing public organizations analogous to private international law rules governing commercial joint ventures composed of private parties. Although we cannot foresee all the complications now, the following are a few examples.

1. Related to the participation of sovereigns, it is not clear that an individual can always act for a sovereign, e.g. whether service of process on a secretary general could bring into court the sovereign members of the organization and therefore the joint venture.

2. As a practical problem a seller may be unwilling to sell property to an individual, as agent for a number of purchasers (including purchasers with sovereign immunity) unless he can pursue any legal remedy he may have against the agent rather than the group of buyers individually. COMSAT can, of course, deal as an agent that is legally responsible and able to satisfy a judgment in its own right. An individual employee of INTELSAT could not offer the same security to a seller.

3. It is doubtful that an entity incorporated in one state or a national of one state would, in each member country, be entitled to exercise all the capacities of a legal person. The intergovernmental agreement could easily obligate the member states to permit an INTELSAT

with legal personality to exercise these capacities, and this can easily be implemented, e.g. in the United States under the International Organizations Immunities Act. But while the intergovernmental agreement could also obligate the member states to permit a foreign corporation or national (or the organization as a group including foreign corporations) to exercise all capacities within their jurisdictions, this obligation could not be easily implemented by each country. It would probably necessitate a treaty or implementing legislation for the United States.

A Swiss presentation argues that a further complication could arise in light of differing national legal conceptions of the principle of "undivided ownership" in partnership property.

We are not contending that each of these problems could not, with varying degrees of difficulty, be overcome, e.g. by operating in one case through an individual who owns property in INTELSAT's name, in another case through a local signatory, who owns in its own name, etc. We do conclude, however, that legal personality can remedy serious complications, and this is precisely why international organizations, when they can, obtain legal personality in intergovernmental agreements. The European argument that INTELSAT should have legal personality to handle its management function is not unfounded. This does not mean that legal personality could not be granted when the organization assumes the function.

INCORPORATION OF INTELSAT

As an alternative to granting INTELSAT legal personality in the intergovernmental agreement, INTELSAT could be endowed with legal capacities to act as a corporate entity through incorporation in one of its member's jurisdictions. We doubt this is an acceptable alternative, for we see no advantages of domestic incorporation over

granting legal personality by intergovernmental agreement, and we see numerous potential problems. It would, needless to say, be difficult to reach agreement on the country of incorporation; incorporation may subject the consortium to domestic legal requirements with which it would not want to comply thus requiring additional privileges and immunities; and the consortium, if incorporated domestically, might lose some of the special benefits it could have by virtue of being an international organization.

LEGAL PERSONALITY FOR AN INTERNATIONAL MANAGER

Another alternative to granting INTELSAT legal personality in the definitive arrangements would be to leave INTELSAT in its present status as a joint venture without legal personality, and to create an international management entity with legal personality. This device would eliminate the possible tax ramification resulting from INTELSAT having legal personality, i.e. the tax consequences to COMSAT discussed above; but we do not consider this a significant advantage since this tax ramification can be avoided in other ways. We do not feel that granting legal personality to an international management entity has significant advantages or disadvantages; we are inclined to favor legal personality in the organization since this is likely to be simpler and is more usual.

F.C.C. Position

If INTELSAT continues to function with ComSat as manager, we see no legal problem in INTELSAT remaining a joint venture without legal personality.

If INTELSAT has a manager independent of any signatory, there may be some uncertainty as to its ability to act in every participating state, but we doubt that there would be a substantial impediment to INTELSAT effectively carrying on its business, particularly if the agreement incorporated a provision specifically authorizing an employee of the independent management entity (e.g., the Managing Director) to act on behalf of the consortium. 1/

If INTELSAT is given legal personality, we believe any adverse legal consequences will either not be substantial or can be overcome. 2/ Moreover, we believe that most of the adverse legal consequences suggested by ComSat can be avoided if legal personality is given to the independent manager but not to INTELSAT. This alternative would leave INTELSAT as a joint venture, all property would continue to be owned in undivided shares, the liability of individual partners would remain intact and INTELSAT would presumably not be considered an "association" for tax purposes.

1/ We understand that there is some question whether such a provision would require Congressional action on the part of the U.S. (i.e., a treaty or legislation).

2/ The tax impact on ComSat appears to be a legal consequence of real substance, but we believe it can be effectively overcome, particularly if the agreement makes clear that INTELSAT does not have limited liability.

In sum, we believe that there are no legal problems which dictate the answer to the question of whether INTELSAT or an independent manager should have legal personality. In our opinion this question should be determined by the critical policy and political considerations involved, considerations which are, of course, outside the purview of this Committee. Finally, we stress that these views on the legal issues are not intended to indicate or imply opposition to or support for any of the alternative courses of action.

USBP/6
February 3, 1969

MEMORANDUM OF LEGAL COUNSEL, DTM

Subject: Legal Status of INTELSAT Under the Definitive Arrangements

My views coincide with those of the Department of State, the FCC, and Comsat on the desirability of INTELSAT remaining a joint venture without legal personality. The present form of operation through a joint commercial venture has worked satisfactorily from a legal standpoint, and I can see no legal problems arising if INTELSAT should continue to remain a joint venture without legal personality.

If INTELSAT should decide to have a manager which would be independent of any of the signatories to the Definitive Arrangements, I would foresee no significant legal problems arising from the decision itself. However, the financial condition of the manager, or agent, as well as its legal authority to carry out specific projects for INTELSAT, would have to be determined by any business organization wishing to perform INTELSAT contracts. This may involve some delay and added expense to INTELSAT. Comsat as a signatory and as an independent corporation at present blends these two functions together rather well and I see no legal advantages that would be created if they were separated through the creation of an independent manager.

My final point goes to the tax question. I share the concern of the FCC and the Department of State that the tax impact on Comsat if INTELSAT is given legal personality is a legal consequence of real substance. I disagree, though, that it can be effectively overcome in the absence of a definitive ruling from the Treasury Department, even if the agreement makes clear that INTELSAT does not have limited liability. It is my understanding that no such ruling has, as yet, been issued by the Treasury Department. It seems to me that it would not be appropriate for the Treasury Department to rule on this question in the absence of a definitive legal description of INTELSAT itself. It is my view, therefore, that the tax question be considered a serious one having a potentially substantial adverse impact on Comsat, at least until the matter is resolved by the Treasury Department.

John J. O'Malley, Jr.

K

USPos/8
February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Privileges and Immunities

U.S. Position:

The U.S. position is reflected in Article XIII of the draft Agreement and includes the following:

1. INTELSAT, its assets, property and income should be immune in all Party states from national income and property taxes.

2. The host Government should negotiate a "headquarters" agreement with INTELSAT.

3. Additional privileges and immunities as appropriate should be obtained by agreement with other Parties.

Interim Agreements: No provision.

ICSC Report: Paragraphs 594-597.

Papers: Legal Committee report of 2/3/69 on "Privileges and Immunities Status Under the Definitive Arrangements"; issues papers on "Legal Personality", State, 11/14/68; and "Legal Status of the Organization", ComSat draft, 12/16/68.

Executive Committee: Minutes of February 6, item 5; February 13, 1969, item 4 (E).

Draft Agreements: Article XIII.

[illegible]

USBP/7
February 3, 1969

MEMORANDUM FOR AMBASSADOR MARKS

FROM: Legal Committee on Definitive Arrangements*

SUBJECT: Privileges and Immunities Status Under the Definitive Arrangements

This memorandum analyzes the question of what privileges and immunities should be granted, under the definitive arrangements, by participating states to INTELSAT and its participants.**

The memorandum first describes INTELSAT's present privileges and immunities status in the United States and then discusses what benefits should or could be included in the definitive arrangements and in what form such benefits could be incorporated in the agreement.

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*. Comprised of representatives of the Department of State (Richard Frank, Asst. Legal Adviser); FCC (Henry Geller, General Counsel, and Asher Ende, Deputy Chief, Common Carrier Bureau); DTM (John O'Malley, Jr., Legal Counsel), and Comsat (William D. English, Asst. General Counsel).

** The question of the legal personality of the organization (i.e., the capacity to contract, acquire property in its own name, and to institute legal proceedings) is dealt with in a separate memorandum.

INTELSAT'S PRESENT STATUS IN THE UNITED STATES***

1. Source of Privileges and Immunities

The Interim Agreements contain no provision explicitly granting to INTELSAT, its organs, or its participants (including Comsat) any privileges or immunities or exemptions from the laws of participating states.

INTELSAT, nonetheless, has been granted certain privileges and immunities within the United States. Both the ICSC and INTELSAT have been designated by the President as "international organizations" within the meaning of the International Organizations Immunities Act (22 USC 288, hereinafter referred to as the IOIA) and have been provided with some of the privileges, exemptions, and immunities authorized by the IOIA (Executive Orders No. 11227 and 11277). In addition, special Federal tax legislation (26 USC 883) regarding the signatories of the Special Agreement has been passed by Congress (and legislation exempting the signatories from local taxation has been recommended to the Bureau of the Budget). Finally, INTELSAT and Comsat (in its role as Manager) have been administratively given exemptions from certain regulations and expedited treatment.

*** We do not at present know whether INTELSAT enjoys any privileges and immunities in foreign countries.

2. Substance of Privileges and Immunities Enjoyed

Executive Order No. 11227 (Annex A) makes the following sections of the IOIA applicable to the ICSC:

(1) "Insofar as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments." (Section 2(d))

(2) "Pursuant to regulations prescribed by the Commissioner of Customs with the approval of the Secretary of the Treasury, the baggage and effects of alien officers and employees of international organizations, or of aliens designated by foreign governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives shall be admitted (when imported in connection with the arrival of the owner) free of customs duties and free of internal-revenue taxes imposed upon or by reason of importation." (Section 3)

(3) "Persons designated by foreign governments to serve as their representatives in or to international organizations and the officers and employees of such organizations, and members of the immediate families of such representatives, officers, and employees residing with them, other than nationals of the United States, shall, insofar as concerns laws regulating entry into and departure from the United States, alien registration and fingerprinting, and the registration of foreign agents, be entitled

to the same privileges, exemptions, and immunities as are accorded under similar circumstances to officers and employees, respectively, of foreign governments, and members of their families." (Section 7(a))

(4) "Representatives of foreign governments in or to international organizations . . . shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives except insofar as such immunity may be waived by the foreign government or international organization concerned." (Section 7(b))

Other significant parts of the IOIA applicable to the ICSC are, briefly stated, as follows:*

(1) the enjoyment of the immunities is conditioned upon notification to and acceptance by the Secretary of State of the persons who will enjoy the immunities; (Section 8(a))

(2) the Secretary of State may determine that certain individuals enjoying the immunities are persona non grata; (Section 8(b))

(3) the enjoyment of these immunities does not necessarily depend upon reciprocal recognition of similar immunities by foreign governments; (Section 9) and

(4) the exemption of ICSC non-US citizen employees from US income and other related employment taxes. (Sections 4 and 5).

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* Although we are not discussing legal personality in this paper, we should note that the Executive Order grants the ICSC the capacity to contract, acquire property, and institute legal proceedings (Section 2(a) of the IOIA) "to the extent consistent with the instrument creating" the ICSC.

In addition to the benefits outlined above, INTELSAT and its signatories also enjoy certain tax exemptions. Since INTELSAT has been determined by the Treasury Department to be a partnership for federal income tax purposes, it does not itself have taxable income but would still be required to file an information return. Executive Order No. 11277 (Annex B) exempts INTELSAT from this filing requirement. Moreover, Congress has passed special tax legislation exempting all INTLESAT signatories from federal income taxation on income earned within the United States from INTELSAT. Since the vast majority of INTELSAT signatories are foreign governments or agencies of foreign governments and therefore not taxable (26 USC 892), this legislation affected only a few signatories.

Besides the privileges and immunities enjoyed by INTELSAT and the ICSC, there are two significant instances of special regulatory procedures to accommodate Comsat in its role as Manager for INTELSAT. The FCC has amended its procurement regulations to make it clear that procurements by Comsat for and on behalf of INTELSAT are not subject to FCC

regulation. Also the Office of Munitions Control of the State Department has provided an expedited procedure for the clearance of technical documents for distribution by Comsat as Manager to the members of the ICSC and its subcommittees.

Attached at Annex C is a chart setting forth the significant privileges and immunities available under the IOIA with a notation of those presently granted to INTELSAT and its participants.

ALTERNATIVE FORMS FOR GRANTING PRIVILEGES AND IMMUNITIES

The privileges and immunities issue could be addressed in the definitive arrangements along the following lines. The intergovernmental agreement could:

1. have no provision relating to privileges and immunities. States, at the request of INTELSAT, could then grant privileges and immunities if they believe appropriate to the organization and its participants. This is the procedure under the interim arrangements.

2. have a provision that INTELSAT can negotiate with Parties to obtain appropriate privileges and immunities, e.g., the International Coffee Agreement, 1968, Article 22(5). The provision could include an obligation on the part of the Parties to provide appropriate privileges and immunities.

3. provide that the state where the organization has its headquarters should provide appropriate privileges and immunities. Those privileges and immunities would normally then be articulated in a separate headquarters agreement negotiated between the organization and the headquarters state, e.g., the United Nations Headquarters Agreement Act (61 Stat. 756).

4. provide that all participating states are obligated to confer a specified list of privileges and immunities, e.g., the International Cotton Institute Agreement, Article VI, TIAS 5964.

The present arrangement (i.e., Alternative 1: no provision in the intergovernmental agreement but with certain states, i.e., the United States, unilaterally granting certain privileges and immunities) has apparently worked satisfactorily. The primary benefit in keeping this arrangement is that it avoids a negotiation now of privileges and immunities, and it permits changes in privileges and immunities status should such changes become appropriate as the organization develops. It does, however, make uncertain INTELSAT's uniform enjoyment of appropriate privileges and immunities

in all countries in which INTELSAT does business. Moreover, certain countries, e.g. the United Kingdom, may find it difficult to grant privileges and immunities if they are not enumerated in either the multilateral agreement or an agreement, authorized by the multilateral agreement, between the country and the organization. The advantages of the first alternative would also pertain to the second alternative. While under Alternative 2 there would be no advance assurance as to which privileges and immunities would be enjoyed by INTELSAT in each member state, this alternative would provide greater assurance that countries like the United Kingdom would be able to make available appropriate privileges and immunities. The third alternative would not obligate those states that do not house the headquarters to grant privileges and immunities. It leaves open the possibility of these states refusing to grant privileges and immunities on an ad hoc basis and the organization thus being subjected to undesirable impositions, e.g., property and customs taxes. The benefit of the fourth alternative is that it clearly obligates participating states to grant the organization enumerated privileges and immunities. On the other hand, it is not clear that the same privileges and immunities

are required in every member state, or that all members will be willing to grant the same privileges and immunities. Alternatives 2, 3, and 4 could be used in various combinations.

RECOMMENDATION

The scope of the privileges and immunities granted to other international organizations has varied considerably. In determining which privileges and immunities should be granted INTELSAT and its participants three guidelines were followed:

1. Privileges and immunities are traditionally granted to foreign governments (and their representatives) Parties to international organizations and to the organizations themselves and their employees. It would be appropriate for certain privileges and immunities to be provided for in the definitive arrangements.

2. Although INTELSAT is an international organization with public purposes, it is also a commercial venture. Consequently, all of the privileges and immunities received by Parties and representatives to organizations having only governmental functions are not appropriate in this case.

3. Other governments will probably insist that certain privileges and immunities be granted by the headquarters State. In order to retain the headquarters in the United States, we will want to accommodate this insistence of other Parties to a reasonable extent.*

Form of Agreement

We believe the preferable means of providing privileges and immunities would be an article in the international agreement (a) providing certain benefits for the organization in all states, (b) requiring the conclusion of a headquarters agreement between the organization and the host state, and (c) providing that such additional privileges and immunities as are appropriate for the proper functioning of INTELSAT may be obtained from other Parties at the request of the Governing Body, either by means of an agreement between INTELSAT and a Party, or by other appropriate action by a Party. This combination of alternatives 2, 3 and 4 has

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* The Report of the Interim Committee stated that "The subject of the privileges, immunities and exemptions to be accorded the Organization merits careful consideration." A substantial majority of the Committee (except for the U.S.) recommended that, "in order to better exercise its functions and reach its aims, the Organization should enjoy privileges and immunities determined by the Parties to the Intergovernmental Agreement and should be exempt, to the extent possible, from the law of the headquarters of the Organization."

several benefits. It assures the organization in all member states the minimum privileges and immunities, hopefully satisfies those parties who will insist on additional privileges and immunities at the headquarters; allows for the fact that the need for privileges and immunities will vary with the state; and avoids a negotiation now on most privileges and immunities issues.

Privileges and Immunities in all States

There are certain minimum benefits that should be conferred on INTELSAT by all States, and which would be set out in the international agreement: exemption from customs duties and taxes, and exemption from national income and property taxation.* A draft article setting out these exemptions and providing for a headquarters agreement is attached at Annex D.

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* The proposed exemptions from customs duties and taxation have not yet been cleared with the Department of the Treasury. No immunity would be granted from any state and local taxation since the IOIA does not provide the President with authority to excuse an international organization from such taxes. While there is no federal property taxation in the United States, Section 6 of the IOIA provides for exemption from D. C. property taxes.

Headquarters Agreement

The following is a list of recommended privileges and immunities to be included in a headquarters agreement: **

1. INTELSAT: Immunity of its assets and property from confiscation; privilege of communication; exemption from D. C. property tax.

2. OFFICERS AND EMPLOYEES OF INTELSAT (except nationals or permanent resident aliens of the host state): Exemption from customs duties and taxes as to their baggage and effects on first entry; exemption from immigration, registration and other entry and departure restrictions.

3. REPRESENTATIVES TO THE ASSEMBLY (except nationals or permanent resident aliens of the host state): Privilege of communications; exemption from immigration, registration and other entry and departure restrictions.

4. SIGNATORIES (except signatory of host state): Exemption from national income and D. C. property taxes.

5. REPRESENTATIVES OF SIGNATORIES TO THE COVERNING BODY (except nationals or permanent resident aliens of the host

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** These are also set out in chart form at Annex E.

state): Privilege of communication; exemption from immigration, registration and other entry and departure restrictions; exemption from national income taxation attributable to his official capacity as representative.

Certain privileges and immunities that have been granted by the United States during the interim period are not now recommended. In the proposed article representatives to the Assembly and to the Governing Body and officers and employees of INTELSAT have not been granted immunity from civil or criminal process for acts performed in their official capacity, even though these benefits are presently enjoyed by comparable individuals. Since the functions of the organization are primarily commercial, such immunity does not seem appropriate. Moreover, since the individuals would be acting in an official capacity, the doctrine of respondeat superior would require INTELSAT to be the principal Party liable.

Additional Privileges and Immunities to Consider

Furthermore, in an effort to maintain the INTELSAT headquarters and the Manager's residence in the United States, there are certain privileges and immunities that we are not recommending, but that may need to be considered if raised by other Parties.

1. Immunity of representatives to the Assembly and Governing Body from legal process for acts committed in their official capacity. This immunity is presently enjoyed by these individuals under the interim arrangements, so that governments at the Conference might insist that they be retained. It would not apply, however, in the case of a motor traffic vehicle offense or in the case of damage caused by a motor vehicle.

2. Immunity of INTELSAT's property and assets from search, seizure, attachment and execution before delivery of final judgment against the organization; INTELSAT would still be liable to suit; also, inviolability of INTELSAT's archives.

3. Immunity of officers and employees of INTELSAT from civil process for acts committed in their official capacity. If such an immunity is granted, INTELSAT as principal would still remain liable for the acts of its agents. There is precedent for such immunity in present agreements (e.g., Cotton Institute Agreement).

4. Immunity of officers and employees of INTELSAT from national income and D. C. property taxes. The Department of the Treasury has raised objections to granting this immunity to such individuals in an effort to limit the tax immunities of non-governmental individuals.

Exemption from Regulatory Jurisdiction

Other Governments at the Conference may be concerned over the question of FCC regulatory jurisdiction over INTELSAT and Comsat as Manager. While the Commission under both the 1934 Federal Communications Act and the 1962 Satellite Act has extensive jurisdiction to regulate Comsat as a U.S. domestic carrier, it does not assert jurisdiction to regulate Comsat as Manager of INTELSAT. It has amended its procurement regulations to make it clear that procurements for or in behalf of INTELSAT are not subject to FCC regulation. The sole exception requires FCC licensing of non-governmental radio facilities located on United States territory. Should this issue arise, the above facts would be pointed out. As other Governments insist on a provision granting immunity from regulatory jurisdiction, we would need a clear understanding of what exactly these Governments require in the way of immunity in order to decide whether we would be willing to agree to such a provision and whether it could be done by Executive Agreement.

IMPLEMENTATION

We have recommended only privileges and immunities covered by the IOIA. Under the IOIA the President may by executive order confer on an international organization any or all of the privileges and immunities set out in the Act if United States participation in the organization has been authorized by an Act of Congress (Section 1). The 1962 Communications Satellite Act (47 USC 701) authorizes U.S. participation in INTELSAT. Therefore, all of the privileges and immunities recommended and any of the proposed forms suggested can be implemented on the part of the U. S. by executive order, without further congressional action (i.e., legislation or advice and consent).

ANNEXES:
A. Executive Order No. 11227
B. Executive Order No. 11277
C. Chart of Existing Privileges and Immunities
D. Draft Article
E. Chart of Proposed Privileges and Immunities

cc: Chairman Rosel H. Hyde
Mr. James McCormack
General James D. O'Connell
Mr. Frank E. Loy
Mr. John A. Johnson
Mr. Ward P. Allen
Mr. William K. Miller

ANNEX H

17

Title 3—THE PRESIDENT

Executive Order 11227

DESIGNATING THE INTERIM COMMUNICATIONS SATELLITE COMMITTEE AS A PUBLIC INTERNATIONAL ORGANIZATION ENTITLED TO ENJOY CERTAIN PRIVILEGES, EXEMPTIONS, AND IMMUNITIES

By virtue of the authority vested in me by Section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288), and having found that the United States participates in the Interim Communications Satellite Committee pursuant to the authority of the Communications Satellite Act of 1962 (76 Stat. 419; 47 U.S.C. 701-744) and the Agreement Establishing Interim Arrangements for a Global Commercial Communications System, August 20, 1964, TIAS 5646, I hereby designate the Interim Communications Satellite Committee as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, with the following exceptions:

1. The Interim Committee shall not enjoy the privileges, exemptions, and immunities conferred pursuant to Sections 2(b), 2(c), and 6 of that Act.

2. The officers and employees of the Interim Committee shall not enjoy the privileges, exemptions, and immunities conferred pursuant to Section 7(b) of that Act, but representatives to the Interim Committee and their alternates shall enjoy the privileges, exemptions, and immunities conferred pursuant to said Section 7(b).

The designation of the Interim Communications Satellite Committee as a public international organization within the meaning of the International Organizations Immunities Act is not intended to abridge in any respect privileges, exemptions, or immunities which such organization may have acquired or may acquire by treaty or Congressional action.

LYNDON B. JOHNSON

THE WHITE HOUSE,
June 2, 1965.

[F.R. Doc. 65-5963; Filed, June 2, 1965; 5:25 p.m.]

Executive Order 11277

DESIGNATING THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM AS AN INTERNATIONAL ORGANIZATION ENTITLED TO ENJOY CERTAIN PRIVILEGES, EXEMPTIONS, AND IMMUNITIES

By virtue of the authority vested in me by Section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288), I hereby designate the International Telecommunications Satellite Consortium, an organization in which the United States participates pursuant to the authority of the Communications Satellite Act of 1962 (76 Stat. 419; 47 U.S.C. 701–744) and which was established pursuant to the Agreement Establishing Interim Arrangements for a Global Commercial Communications System of August 20, 1964, TIAS 5646, and the Special Agreement signed pursuant thereto, as an international organization, as that term is defined in Section 4(i) of the International Organizations Immunities Act, entitled to enjoy, from and after August 20, 1964, all of the privileges, exemptions, and immunities provided by Section 4(a) of that Act.

The foregoing designation is not intended to abridge in any respect any privileges, exemptions, or immunities which such organization or the Interim Communications Satellite Committee (provided for by the above-mentioned Agreements) may have acquired or may hereafter acquire by treaty, Congressional action, or other Executive order.

LYNDON B. JOHNSON

THE WHITE HOUSE,
April 30, 1966.

[F.R. Doc. 66-4899; Filed, May 2, 1966; 1:43 p.m.]

EXISTING PRIVILEGES AND IMMUNITIES*

ANNEX C

	ICSC	REPRE. OF SIGNATORIES OF ICSC	OFFICERS & EMP. OF ICSC	INTELSAT	SIGNATORIES
Immunity from Civil Process in Official Capacity		Yes			
Immunity from Criminal Process in Official Capacity		Yes			
Immunity of Assets and Property from Search, Seizure, Attachment and Execution					
Immunity of Assets and Property from Confiscation					
Inviolability of Archives					
Privilege of Communications	Yes				
Exemption from Customs, Duties and Taxes	Yes	Yes	Yes		
Exemption from Immigration, Registration and other Entry and Departure Restrictions	Yes	Yes	Yes		
Immunity from National Income Taxation				Yes	Yes
Immunity from DC Property Taxation					

*None of these privileges and immunities apply to COMSAT in the United States.

Proposed Article

(1) INTELSAT, its assets, property, and income shall be immune in all States Party to this Agreement from all national income and property taxation. With respect to customs duties and taxes imposed upon or by reason of importation and the procedures in connection therewith, each Government Party to this Agreement shall accord to INTELSAT the privileges, exemptions and immunities that such Party accords under similar circumstances to foreign Governments.

(2) The Government of the country in which the headquarters of INTELSAT is situated (hereinafter referred to as "the host Government") shall as soon as possible conclude with the Governing Body, acting on behalf of INTELSAT, an agreement to be referred to and approved by the Assembly relating to the status, privileges and immunities of INTELSAT, of its officers, employees, and participants, and of representatives of Parties while in the territory of the host Government for the purpose of exercising their functions.

(3) The agreement concluded under paragraph (2) of this Article shall be independent of the present Agreement and shall prescribe the conditions of its termination.

(4) Such additional privileges and immunities as may be appropriate for the proper functioning of INTELSAT under this Agreement may be obtained at the request of the Governing Body from one or more other Parties, either by means of an agreement or agreements which the Governing Body, acting on behalf of INTELSAT, may conclude with one or more such Parties, or by other appropriate action of such Party or Parties. 2/

ANNEX E

PROPOSED PRIVILEGES AND IMMUNITIES*

	INTELSAT	OFFICERS & EMP. OF INTEL	REPRE. TO ASSEMBLY	SIGNA-TORIES	REPRE. OF SIGNATORIES TO GOVERNING BODY
Immunity from Civil Process in Official Capacity	No	No	No**	No	No**
Immunity from Criminal Process in Official Capacity	n.a.	No	No**	n.a.	No**
Immunity of Assets and Property from Search, Seizure, Attachment and Executive	No	n.a.	n.a.	No	n.a.
Immunity of Assets and Property from Confiscation	Yes	n.a.	n.a.	No	n.a.
Inviolability of Archives	No	n.a.	n.a.	No	n.a.
Privilege of Communications	Yes	n.a.	Yes	No	Yes
Exemption from Customs, Duties and Taxes	Yes	Yes (first entry)	No	n.a.	No
Exemption from Immigration, Registration, and other Entry and Departure Restrictions	n.a.	Yes	Yes	n.a.	Yes
Immunity from National Income Taxation	Yes	No	n.a.	Yes	Yes
Immunity from National (and DC in US) Property Taxation	Yes	No	n.a.	Yes	No

*None of these privileges and immunities apply to COMSAT in the United States.

**These immunities are presently enjoyed by the corresponding individuals under the Interim Arrangement.

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USPos/9
February 17, 1969

INTELSAT CONFERENCE

Position Paper

SUBJECT: Financial Arrangements

U.S. Position:

In our October 1967 paper (ICSC-28-40) we proposed investment related to use of the system, meaning use of the INTELSAT-financed space segment. We elaborated our proposals in ICSC-29-33 and supplemented them in ICSC-32-46 to provide for minimum investment shares of 0.05% instead of 0.025%. We suggested adjustment of shares annually in relation to the previous year's use, but have indicated that the adjustment interval could be longer. We also have supported compensation for use of capital in the intervals between adjustments.

The U.S. continues to advocate the investment/use approach as set forth in these papers. Our position is reflected in 498, 511 and 521 of the ICSC report.

Interim Agreements: Articles III, VI and XII(a) (ii) of the Agreement and Article 3 of the Special Agreement and the annex thereto are relevant.

ICSC Report: Section F (489-531) applies.

Papers:
1. The pertinent issues paper is entitled "Criteria for Investment", State revised draft 1/2/69.

2. ComSat is preparing a simplified explanation of the investment/use proposal.

Executive Committee: See minutes of January 13, 1969, item 5.

Draft Agreements: Articles II (b), III (b), IV (2) (iii), V (a) (iv) and (vii), VIII (c) and (d), and IX; Articles 3, 4, 5 and 6 of the Operating Agreement.

E/TD:WKMiller:sp

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USPos/10
February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Procurement Policy

U.S. Position:

We favor primary emphasis on considerations of price, quality and delivery (536) with distribution of contracts a secondary consideration. The following wording, incorporated in the draft agreement, reflects the U.S. position:

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

Interim Agreements: Article X and Article 10 (a), (b) and (c) are pertinent.

ICSC Report: Section G (532-543) applies.

Papers: Issues paper on "Procurement Policy", State revision 12/27/68, ComSat 11/19/68.

Executive Committee: See minutes of January 13, 1969, item 4.

Draft Agreements: Article X; Article 7 of Operating Agreement.

E/TD:WKMiller:sp

USBP/8
December 27, 1968

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

Procurement Policy

Issue

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

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

Position U.S. Has Taken

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

Views of Others

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

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

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

Objective

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

Discussion

The 1964 Agreement provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNEX

Table I

Implementation of Article X

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

COUNTRY BY COUNTRY BREAKDOWN OF FOREIGN PARTICIPATION

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

Table II

Implementation of Article X,
Cost Breakdown for INTELSAT II

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

COUNTRY BY COUNTRY BREAKDOWN OF FOREIGN PARTICIPATION

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

Table III

Implementation of Article X, Cost Breakdown for INTELSAT III

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

COUNTRY BY COUNTRY BREAKDOWN OF FOREIGN PARTICIPATION

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

Table IV

Implementation of Article X,
Cost Breakdown for INTELSAT IV

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

COUNTRY BY COUNTRY BREAKDOWN OF PROPOSED FOREIGN PARTICIPATION

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

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USPos/11
February 17, 1969

INTELSAT Conference

Position Paper

SUBJECT: Inventions and Data

U.S. Position:

The definitive arrangements should include a policy provision along the lines of that proposed in the attached memorandum of the Legal Committee (February 3, 1969), with details of implementation left to the Governing Body.

Interim Agreements: Article 10(f) (g) of the Special Agreement.

ICSC Report: Section H (544-549).

Papers: 1. Legal Committee report, February 3, 1969 (attached).

2. Issues paper on "Data and Inventions", ComSat, November 19, 1968.

Executive Committee: Minutes of January 13, 1969, item 6; February 6, 1969, item 6.

Draft Agreements: Article 8 of the Operating Agreement.

Attachment:

Legal Committee memorandum.

E/TD:WKMiller:sp

USBP/9

February 3, 1969

MEMORANDUM TO: Ambassador Marks

FROM: Legal Committee on Definitive Arrangements*

SUBJECT: Inventions and Data

The Legal Committee has examined the attached provision relating to inventions and data which has been jointly prepared by Comsat and the Federal Communications Commission and is of the opinion that its inclusion in the definitive arrangements would pose no legal problems under U.S. law. Specifically, the General Counsel of the Federal Communications Commission has been informally advised by the Antitrust Division of the Department of Justice that it believes that a provision along the lines of the attached does not present any antitrust problems.

cc: Chairman Rosel H. Hyde
Mr. James McCormack
General James D. O'Connell
Mr. Frank E. Loy
Mr. John A. Johnson
Mr. Ward P. Allen
Mr. William K. Miller

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* Comprised of representatives of the Department of State (Richard Frank, Asst. Legal Adviser); FCC (Henry Geller, General Counsel, and Asher Ende, Deputy Chief, Common Carrier Bureau); DTM (John O'Malley, Jr., Legal Counsel), and Comsat (William D. English, Asst. General Counsel).

PROPOSED COMSAT-FCC PATENT AND DATA ARTICLE

FOR OPERATING AGREEMENT

OF

DEFINITIVE ARRANGEMENTS

1/22/69

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

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

(a) Shall be made available to any signatory or any person in the jurisdiction of a signatory, or the government which has designated that signatory:

(i) on a royalty-free basis, for use in connection with the design, development, construction, establishment, operation, and maintenance of equipment and components for the Intelsat space segment;

(ii) on fair and reasonable terms and conditions prescribed by the Governing Body, for use in

connection with other purposes, provided the Governing Body determines that the proposed use would not be incompatible with the principles and objectives of Intelsat;

(b) May be made available to other persons and entities at the discretion of the Governing Body and under such terms and conditions as the Governing Body determines, provided the Governing Body determines that the proposed use would not be incompatible with the principles and objectives of Intelsat.

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

extent that it is necessary to use such inventions and technical data for the exercise of the rights obtained pursuant to Paragraph 1. of this Article.

USPos/12
February 12, 1969

INTELSAT CONFERENCE

Position Paper

SUBJECT: Rules of Procedure - CETS Consensus Issue

Problem:

There is at least one potentially serious problem with regard to the U.S. proposed Provisional Rules of Procedure. In an Aide Memoire from The Netherlands, dated January 29, 1969, the sixteen member countries of the European Conference on Satellite Communications (CETS) urged that the Conference rules provide that decisions taken during the Conference be on the basis of consensus rather than voting.

U.S. Position:

In a circular message to our INTELSAT member posts we instructed the posts to inform host governments that we agree that maximum effort should be given to obtain agreement by consensus. However, at a negotiating conference, such as this one, there must be some provision for reaching decisions if efforts to obtain consensus prove futile. We mentioned the UN Conference on Road Traffic and on the Law of Treaties as examples of recent international conferences with two-thirds majority voting rules.

We should make quite clear that the U.S. takes the intention of seeking consensus seriously and has no intention of railroading any positions by means of voting, particularly not over the opposition of a major group of member countries, but that we cannot accept rules which have no provision for the ultimate resolution of issues and would permit one or a few members to block the conclusion of definitive arrangements.

References:

1. Conference Doc. No. 2 (Provisional Rules) Rule 8, para. 20.

2. Netherlands Embassy Aide Memoire of January 29 (attached).

Attachment.

E/TD:SEDoyle/WKMiller:sp

AIDE MEMOIRE

Duration of the Conference

The United States Government have proposed that the Conference be concluded on 21 March 1969. In the view of CSTS Governments, the setting of such a deadline, if it be intended thereby to indicate the conclusion of the negotiations, would not be desirable. The CSTS Governments naturally agree that it is essential that Definitive Arrangements be drawn up as soon as possible and that the negotiations should take as short a period of time as is reasonable. But, if agreement is to be reached on Definitive Arrangements of a satisfactory and lasting nature, it seems essential that opportunity be given for adequate discussion of all aspects of the Arrangements. It is envisaged by CSTS Governments that the negotiations should begin with a general debate in a Plenary Meeting of the Conference to discuss the main points. This would presumably lead to the establishment of appropriate working groups to consider particular questions in more detail. The reports of these working groups or committees would then be submitted to the Plenary Conference; and this would lead to further negotiations there, of which there might be several rounds.

Procedure of the Conference.

The United States Government have proposed, in the provisional rules of procedure for the Conference, that although the Conference should endeavour to act unanimously, a formal vote could be taken on procedural and substantive questions and upon the text of the Definitive Arrangements themselves. The CSTS Governments would favour a rather different approach. Their feeling is that it would be greatly preferable, at least in the initial rounds of negotiations, to make every endeavour to reach agreement on substantive questions, and indeed on the text of the Definitive Arrangements, by means of a consensus. It is their view that Parties to the Interim Arrangements, who have invested substantial sums of money in the system, should not be obliged, by the immediate adoption of formal voting procedures, to accept the redeployment of their investments in a way contrary to their wishes. The Interim Arrangements are of indefinite duration, and it is laid down that they should continue in force until agreement is reached on the Definitive Arrangements. It seems important that the Definitive

Arrangements be drawn up and adopted in such a way that all Parties to the Interim Arrangements are in fact able to sign them. There is also the point that the consensus procedure, which is more flexible than any voting arrangement, might make it easier for Governments which are not Parties to the Interim Arrangements to indicate their views as to the contents of the Definitive Arrangements. If sustained endeavours during the early rounds of the negotiations do not lead to a consensus on all points, the CSTS Governments do not rule out the possibility that formal voting procedures on substantive questions might be introduced at a later stage.

Washington D.C.
January 29, 1969.

INTELSAT Conference Issues (Revised 11/12/68)

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

Issue

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

Position U.S. Has Taken

None.

Views of Others

Unknown - not discussed.

Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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INTELSAT Conference Issues

Amendment Process

Issue

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

Position U.S. Has Taken

None.

Views of Others

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

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

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

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

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

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

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

Objective

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

Discussion

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

Intergovernmental Agreement

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

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

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

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

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

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

Operating Agreement

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

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

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

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

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

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

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

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

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

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

DEPARTMENT OF STATE

Washington, D.C. 20520

MEMORANDUM February 10, 1969

TO: INTELSAT - Ambassador Marks

FROM: IO/UNP - Joseph P. Lorenz

SUBJ: Precedents of Voting Procedures for the Amendment and Entry into Force of International Agreements

In accordance with your request, set forth below are provisions from a number of international agreements which describe the procedures for amending multilateral instruments and bringing them into force. The agreements covered are the IMCO Convention, the IAEA Statute, the Convention for Safety of Life at Sea, the WMO Convention, and the Outer Space Treaty. In two cases (IMCO and SOLAS), the amendment process is weighted in favor of states having the principal interest in the convention, requiring the approval of the governing body of the organization as wellas the assembly. In the WMO and Outer Space Treaty voting for amendments is not weighted, but only those states which accept the amendments are bound by them. Finally, in the case of the IAEA, the sole power to amend lies with the assembly and members, with the governing body having only an advisory role. Entry into force, in every case except the WMO Convention, requires acceptance by a certain number of principally interested states as well as by a specified number of other governments.

The pertinent provisions of the agreements follow:

IMCO

1. Amendments: (Article 52)..Amendments shall be adopted by a two-thirds majority vote of the Assembly, including the concurring votes of a majority of the Members represented on the Council....

2. Entry into Force: (Article 60) The present Convention shall enter into force on the date when 21 States of which 7 shall each have a total tonnage of not less than 1,000,000 gross tons of shipping, have become parties to the Convention in accordance with Article 57.

International Convention for Safety of Life at Sea

1. Amendments: (Article IX) ...An amendment to the present Convention may be proposed to the Organization at any time by any Contracting Government and such proposal if adopted by a two-thirds majority of the Assembly of the Organization (hereinafter called the Assembly), upon recommendation adopted by a two-thirds majority of the Maritime Safety Committee of the Organization (hereinafter called the Maritime Safety Committee), shall be communicated by the Organization to all Contracting Governments for their acceptance.

2. Coming into Force: (Article XI) The present Convention shall come into force twelve months after the date on which not less than fifteen acceptances, including seven by countries each with not less than one million gross tons of shipping, have been deposited in accordance with Article X.....

IAEA

1. Amendments: (Article XVIII C) Amendments shall come into force for all members when: (i) Approved by the General Conference by a two-thirds majority of those present and voting after consideration of observations submitted by the Board of Governors on each proposed amendment, and (ii) Accepted by two-thirds of all the members in accordance with their respective constitutional processes. ...

2. Entry into Force: (Article XXI E) This Statute, apart from the Annex, shall come into force when eighteen States have deposited instruments of ratification in accordance with para B of this article, provided that such eighteen States shall include at least three of the following States: Canada, France, the USSR, the UK and Northern Ireland, and the USA. ...

WMO

1. Amendments: (Article 28) Amendments to the present Convention involving new obligations for Members shall require approval by the Congress, in accordance with the provisions

of Article 10 of the present Convention, by a two-thirds majority vote, and shall come into force on acceptance by two-thirds of the Members which are States for each such Member accepting the amendment.....

2. Entry into Force (Article 35) The present Convention shall come into force on the 30th day after the date of the deposit of the 30th instrument of ratification or accession....

Outer Space Treaty

1. Amendments: (Article XV) ...Amendments shall enter into force for each State Party to the Treaty accepting the amendments upon their acceptance by a majority of the States Parties to the Treaty and thereafter for each remaining State Party to the Treaty on the date of acceptance by it.

2. Entry into Force: (Article XIV (3)) This Treaty shall enter into force upon the deposit of instruments of ratification by five Governments including the Governments designated as Depositary Governments under this Treaty (US, UK, USSR).

IO/UNP:JPLorenz:avw 2/10

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USBP/13
November 13, 1968

INTELSAT Conference Issues

Special Benefits for the LDCs

Issue

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

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

Discussion

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

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

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

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

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

Attachments:

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

E/TT:PELoy:sp
11/13/68

Attachment A

INTELSAT and Telecommunications Financing

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

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

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

Earth Stations

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

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

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

Space Segment

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

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

Other Telecommunications Projects

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

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

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

INTELSAT Role

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

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

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

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

E/TD:WKMiller:sp 11/13/68

Terms of Reference for Subcommittee I(A)

Subcommittee I(A) shall study and make appropriate recommendations with respect to purposes and objectives of Intelsat; Intelsat membership; scope of Intelsat activities; rights and obligations of members: structure of the organization; number and duration of agreements, as well as signatories thereto; and relationships with the ITU.

The Subcommittee shall adopt an appropriate agenda to facilitate consideration of the matters included in its terms of reference and shall, after due discussion and deliberation, report its recommendations to Committee I for appropriate action and forwarding to the Plenary.

PROPOSED AGENDA FOR SUBCOMMITTEE I(A)

		ICSC Report Par
I.	Objectives and purposes of INTELSAT	163-187
II.	Eligibility for INTELSAT membership	228-230
III.	Relationships with non-member States	550-556
	a) Non-member States eligible for membership	
	b) States ineligible for membership	
IV.	Number of agreements constituting the definitive arrangements	568-571
V.	Signatories of the agreements	572-576
VI.	Duration of the agreements	577-580
VII.	Scope of INTELSAT's activities	188-227
	a) International public telecommunications services	193-195
	b) International specialized telecommunications services	196-202
	c) Domestic telecommunications services	203-225
	d) Meeting needs of national security nature	226-227
VIII	Rights and obligations of members	
	a) General	599-605
	b) In relation to satellites providing domestic services	215-225 609-611
	c) In relation to satellites for specialized services	612-617
	d) In relation to satellites intended to meet national security needs	618-621
	e) In relation to regional satellites providing international services	606-608 216-225

IX. Structure of the Organization	237-244
a) The Governing Body	
1) Functions	197,200-202,205, 207,209,212-225, 227,367-390, 481-486
2) Size, composition and organization	271,300, 328, 344-366,424-430,48
3) Voting	391-423,481
b) Assembly	
1) Functions	264-281, 293-309 318-333, 480
2) Composition	246-260
3) Frequency of meetings	288-291,315-317, 340-343
4) Voting	283-287, 310-314, 334-339
c) Management Body	
1) Functions	463-477
2) Identity,character and designation	431-462, 487-488
3) Relationship to the Governing Body	255-256
X. Relationship with the ITU	216-217, 561, 563 565, 607, 610,614 615

Terms of Reference of Subcommittee I.B

Subcommittee I.B shall study and make recommendations with respect to legal and procedural questions associated with the structuring and entry into force of the definitive arrangements. Specifically, the subcommittee will include in its considerations what definitions should be specified in the agreements, the legal status of INTELSAT under the definitive arrangements, privileges and immunities, the mechanisms for accession and supercession, appropriate withdrawal provisions, the liability of partners, amendment processes and the means of settlement of disputes.

The Subcommittee shall adopt an appropriate agenda to facilitate consideration of the matters included in its terms of reference and shall, after discussion and deliberation, report its recommendations to Committee I for appropriate action and forwarding to the Plenary.

TENATIVE AGENDA FOR SUBCOMMITTEE I.B

I. Definitions (146-162)*

- A. Intergovernmental
- B. Operating
- C. Recommendations

II. Legal Status of INTELSAT (231-236)

- A. Comparison of present legal structure (Joint Venture) with an Independent Legal Status for INTELSAT
  - 1. Ability to conduct business
    - a. Contracting
    - b. Acquisition of property
    - c. Protection of property interests
  - 2. Ramifications
    - a. Ownership
    - b. Liabilities
    - c. Taxation
    - d. Other
  - 3. Implementation
- B. Conclusions
- C. Recommendations

III. Privileges and Immunities (594-596)

- A. Present Status of INTELSAT

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*Paragraph references are to sections of the Report of the Interim Communications Satellite Committee on Definitive Arrangements for an International Global Communications Satellite System.

B. Categories of Immunities

1. Taxation

2. Customs

3. Civil and Criminal Process

4. Search, seizure and attachment

5. Confiscation of assets

C. Implementing Arrangements

1. Headquarters Agreements

2. Other Mechanisms

D. Recommendations

IV. Accession, Supersession and Buy-Out (626)

A. Accession and Supersession

1. Formula for Entry Into Force - Unanimity vs. Less Than Unanimity

a. General principles of International Law

b. Requirements of Article IX(b)

2. Transfer of Rights and Obligations under Interim Arrangements

B. Obligations and Rights of Non-Continuing Prior Members

1. Article IX(b)

2. General Principles of Equity and Law applicable to Partnerships and Joint Ventures

3. Financial Obligations and Rights

4. Patent and Data Rights

V. Withdrawal Provisions (622-625)

A. Voluntary Withdrawal - Permissive?

1. Obligations and Rights of Withdrawing Signatory

B. Involuntary Withdrawal

1. What constitutes Default?

a. Non-payment - grace period

b. Non-compliance with Terms of Agreements

2. Consequences

a. Suspension of Rights - Automatic?

b. Expulsion - Role of Assembly and Governing Body

VI. Liability of Partners Inter-Se

A. Article 13 of Special Agreement

B. For Obligations on behalf of INTELSAT

VII. Settlement of Disputes (591-593)

A. Adequacy of Existing Supplementary Agreement on Arbitration

1. Proposed Amendments

B. Operating Agreement or Separate Agreement?

VIII. Amendment Processes (581-590)

A. Intergovernmental Agreement

B. Operating Agreement

IX. Reservations

Committee II - Operational Arrangements

Subcommittee A - Financial Arrangements

Terms of Reference

Subcommittee IIA will study and make recommendations concerning financial arrangements to be included in the agreements. Such provisions will include financial principles of investment and the method of determining investment shares, consideration of the financial aspects of the transitional arrangements, and treatment of financial implications of withdrawal.

The Subcommittee shall adopt an appropriate agenda to facilitate consideration of the matters included in its terms of reference, and shall, after discussion and deliberation, report its recommendations to Committee II for appropriate action and forwarding to the Plenary.

Proposed Agenda

		ICSC Report Par.
I.	Principles underlying the financial arrangements of the organization	492-496
II.	Principles for determining investment shares of signatories	497-506
III.	Methods of determing investment shares	507-515
IV.	Financial rights and obligations of investors	516
	A. Property rights and interests	517-519
	B. Compensation for use of capital	520-523
	C. Contribution to maintenance and operating expenses	524-525
	D. Conditions of use	526-531
V.	Financial aspects of system access by non-members	553-556
VI.	Financial aspects of provisions relating to withdrawal	622-625
VII.	Financial aspects of transition from interim arrangements to definitive arrangements	626-636

Committee II - Operational Arrangements

Subcommittee B - Other Arrangements

Terms of Reference

Subcommittee IIB will consider and prepare recommendations on the subjects of procurement; inventions, data and technical information; earth station authorization provisions; and any other operational aspects of the draft agreements.

The Subcommittee shall adopt an appropriate agenda to facilitate consideration of the matters included within its terms of reference and shall, after discussion and deliberation, report its recommendations to Committee II for appropriate action and forwarding to the Plenary.

Proposed Agenda

		ICSC Report Par.
I.	Procurement policies	532-543
II.	Inventions, data and technical information	544-549
III.	Authorization of earth stations and initial and continuing verification and monitoring of system performance.	---
IV.	Any other operational aspects of proposed agreements	---

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USIP/1
January 29, 1969

MEMORANDUM FOR AMBASSADOR MARKS

FROM: Legal Committee on Definitive Arrangements*

SUBJECT: Arbitration Provisions Under Definitive Arrangements

This memorandum considers the type of arbitral machinery that should be established under the definitive arrangements.

The memorandum first focuses on the substance of the existing Supplementary Agreement on Arbitration and concludes that, in general, an arbitration arrangement patterned closely after the Supplementary Agreement would be most desirable from the United States point of view. It recommends certain minor changes in the present Supplementary Agreement, and sets forth reasons why significant changes which may be recommended by the Europeans should be opposed by the United States.

The memorandum also raises the question whether the United States Government should have the opportunity to participate directly in arbitral processes arising under the intergovernmental agreement. As is noted below, there is disagreement within the Legal Committee on this issue.

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* Comprised of representatives of the Department of State (Richard Frank, Asst. Legal Adviser); FCC (Henry Geller, General Counsel, and Asher Ende, Deputy Chief, Common Carrier Bureau); DTM (John O'Malley, Jr., Legal Counsel), and Comsat (William D. English, Asst. General Counsel).

1. Summary of Present Supplementary Agreement on Arbitration.

Under the present Supplementary Agreement on Arbitration, if a "legal dispute" is brought to arbitration an arbitral tribunal is established with competence to decide "whether an action or a failure to act by the [Interim] Committee or by any signatory or signatories [to the Special Agreement] is authorized by or is in compliance with the [intergovernmental] Agreement and the Special Agreement." Only a signatory of the Special Agreement or the Interim Committee is authorized to institute and to be a party in proceedings. (Article 2).

The arbitral tribunal is composed of three members. The opposing sides to a dispute each designate one member, and if one side fails to do so, the chairman of the panel makes the selection. The third member, the president of the tribunal, is selected by the other two from a panel of seven experts appointed every two years by the Interim Committee from a list of names submitted by the signatories of the Special Agreement. (Articles 3 and 4). In the event the two members of the tribunal fail to agree on a third member, within a specified period of time,

the chairman of the panel of seven experts designates the third member.

The tribunal has the power to determine its own jurisdiction. (Articles 5(f) and 6). The proceedings are held in private and all materials presented are kept confidential. Decisions require approval of two of the three members and must be supported by a written opinion. (Article 5). They are to be based on interpretation of the Agreement, the Special Agreement and the Supplementary Agreement "in accordance with generally accepted principles of law." The tribunal's decision is binding on all parties to the dispute. (Article 11). Pending final decision, the only interim relief which the tribunal may grant is in the form of recommendations to the parties in order to protect their respective rights. (Article 10).

2. Recommended United States Position.

The Supplementary Agreement on Arbitration has not been invoked during the life of the interim arrangements. In general, we believe that the substantive provisions in the Agreement provide a reasonable and effective arbitration procedure, and, with the exception

of the minor changes noted below and the issue raised in paragraph 4 herein, we do not believe that there is any need to change these provisions.

a. Changes in INTELSAT.

The arbitration provisions will need to reflect changes made in the INTELSAT organization under the definitive arrangements. Some of these will require no more than editorial changes; for instance, "Government Body" should replace "Committee". Other changes may be necessitated as a result of structural changes in the organization. For instance, the creation of an Assembly with certain decision-making functions may necessitate its being included as a proper party to arbitration proceedings.

b. When a panel member's period of service commences.

It is not clear under the present agreement whether a panel member's period of service commences on the date of his appointment, the date of the appointment of the seventh and last member, or the date when the panel is convened for the purpose of choosing a chairman. We

of the minor changes noted below and the issue raised in paragraph 4 herein, we do not believe that there is any need to change these provisions.

a. Changes in INTELSAT.

The arbitration provisions will need to reflect changes made in the INTELSAT organization under the definitive arrangements. Some of these will require no more than editorial changes; for instance, "Government Body" should replace "Committee". Other changes may be necessitated as a result of structural changes in the organization. For instance, the creation of an Assembly with certain decision-making functions may necessitate its being included as a proper party to arbitration proceedings.

b. When a panel member's period of service commences.

It is not clear under the present agreement whether a panel member's period of service commences on the date of his appointment, the date of the appointment of the seventh and last member, or the date when the panel is convened for the purpose of choosing a chairman. We

recommend that the member's period of service commence upon the appointment of the seventh and last member, and that language to that effect be included in the provisions.

c. Procedure for filling a vacancy on the panel.

Under the present agreement, the Interim Committee fills a panel vacancy from the list of nominees supplied by the signatories. But it is not clear whether a signatory whose nominee is no longer available or whose nominee is being replaced is permitted to submit a new nomination for the list before the vacancy is filled. We recommend that Article 3(a) of the Supplementary Agreement be amended to permit such signatory to submit a new nomination under those circumstances.

d. Relaxation of quorum requirement.

At present the quorum requirement for a meeting of the panel is six out of seven members. The panel only meets to choose its chairman, who designates panel members under certain circumstances. (Article 3(c)). This is an important act, since the arbitration machinery can function only after the panel has convened and selected a chairman. Accordingly, it may be desirable (and acceptable

if there is widespread geographic representation on the panel) to make it somewhat easier for the panel to convene and select a chairman by reducing the quorum requirement from six to five members.

3. Recommended United States Position Regarding European Efforts to Make Major Changes in the Arbitration Arrangements.

During the 1964 negotiations of the interim arrangements, several European countries put forth proposals which would have created a standing arbitration tribunal with a different jurisdiction provision and with authority to issue interim orders. We believe they were motivated by a desire to reduce United States influence in the consortium by establishing a powerful organ with authority, in effect, to review and to supplant Committee decisions.

With respect to a standing tribunal, the European view seems to have been that the immediate availability of a permanent tribunal would be likely to encourage actions and decision-making in accordance with the Agreement, thus avoiding the necessity of litigation. The United States questioned the workability of a standing

tribunal on the grounds that it would be an open invitation for unnecessary and impeding litigation in an organization which necessarily granted wide discretion to the Interim Committee on behalf of the signatories.

The proponents of interim relief powers* maintained that the possibility of interim relief must be available for application in exceptional and important cases where it was absolutely necessary to prevent a fait accompli with damaging consequences. The United States objected to the provision for interim relief, viewing it as an extreme form of relief reserved for cases where the possibility of irreparable damage could be firmly established, and inappropriate to a complex commercial organization making practical and technical decisions. We feared

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* The proposed Article 8 of the European Draft read as follows:

> The Tribunal shall have power to issue provisional measures and interim orders during the course of its consideration of the dispute but only if it finds this indispensable to protect the rights of the complaining party. Except in such cases, the operations or activities which have given rise to the dispute may be continued, pending the decision, which shall include appropriate provisions to compensate the prevailing party for any damage suffered on this account.

such a provision would permit interruption of INTELSAT operations as a result of an unfounded complaint. Finally, a compromise was agreed upon (Supplementary Agreement, Article 10) which gave the arbitration tribunal the authority during the course of its consideration of a case to make "recommendations to the parties with a view to the protection of their respective rights."

With respect to the scope of jurisdiction, the Europeans had originally proposed that the tribunal have competence concerning the "interpretation or application of the Special Agreement." We feared the Europeans intended to interpret this language to allow the tribunal to review the Committee's policy determinations rather than being limited to determining whether it acted within the scope of its authority. They finally accepted a United States proposal which was incorporated as the present definition of the competence of the tribunal. (Article 2(a)).

We believe the establishment of an arbitral tribunal which is a standing tribunal, has interim relief powers, or has broader jurisdiction is not desirable from a United States point of view.

With regard to a standing tribunal, the existence of such a tribunal could lead to constant harassment of the Governing Body and interference in the normal business operations of INTELSAT; and it would require a new procedure for selecting permanent members which would presumably not allow the parties to arbitration to select an arbitrator.

The United States should oppose interim powers greater than the present authority to issue recommendations for the following reasons: such powers are inappropriate in a complex commercial organization in which many decisions which are grounded on business judgment and discretion might be inhibited by the existence of a tribunal with power to suspend decisions on an interim basis; the organization could well suffer considerable loss of revenues due to delays in the execution of the Governing Body's decisions; the tribunal would be required to formulate its interim relief in the absence of a full and detailed assessment of all the facts; because of the extraordinary nature of interim relief measures our legal system requires a determination of irreparable harm subject to the safeguard of judicial review, a safeguard not

possible in the present context; the present interim relief measures are adequate and appropriate.

If the tribunal's jurisdiction were broadened beyond that now provided in the Supplementary Agreement, the business judgment and policy determinations of the Governing Body would be constantly subject to review, revision and even rejection by the tribunal. This is not the purpose of a bona fide arbitration provision. The competence of the tribunal should be limited to legal issues, such as whether the Governing Body is acting within the scope of the Agreements, as presently set forth in the Supplementary Agreement.

As an argument applicable to all three of the above considerations, although there has been no resort to arbitration, no serious questions have arisen as to the meaning or scope of the Supplementary Agreement on Arbitration; it is not anticipated that the definitive arrangements will differ from the interim arrangements to such an extent as to require a substantively different arbitration arrangement.

One last point should be emphasized. The Legal Committee's conclusion that the permanent agreements

should establish an arbitration procedure is based on the assumption that arbitral arrangements substantially similar to the present ones can be negotiated. If, however, proposals for standing arbitral tribunal possessed of wide jurisdiction and broad powers are tabled by our partners and gain any widespread support, we would have to reconsider our position on the arbitration issue. The United States interests may be better served by no arbitration arrangements at all than by an arbitral tribunal as described above.

4. Party to Arbitration.

As noted above, there is disagreement within the Legal Committee concerning whether the United States Government should be a party to arbitration processes involving the intergovernmental agreement. Set forth below are the differing viewpoints.

a. State Department View (as drafted by the State Department).

Under the present Supplementary Agreement, the jurisdiction of the arbitration tribunal extends to disputes arising under the intergovernmental agreement as well as under the Special Agreement. However, the United States Government is not able directly to initiate or to be a party to any

arbitration, even those under the intergovernmental agreement. Only the Interim Committee (on which Comsat represents the United States) or a signatory of the Special Agreement (Comsat for the United States) is authorized to institute and to be a party to an arbitration.

The Department of State believes that the United States Government cannot abandon the right to institute or to be a party to arbitration of a dispute arising under an agreement to which it is a party.

In addition, under the present intergovernmental agreement, there is no dispute settlement mechanism when the acts of parties to that agreement are drawn into question. The Department of State believes that the arbitration provisions for the definitive arrangements should cover disputes relating to acts of parties.

No one can seriously challenge the proposition that the Government of the United States has an important and justified interest in the definitive arrangements. The 1962 Act directs the President to --

> "exercise such supervision over relationships of the corporation with foreign governments or entities or with international bodies as may be appropriate to

> assure that such relationships shall be consistent with the national interest and foreign policy of the United States;" (47 U.S.C. 721 (a)(4)).

In the definitive negotiations, the President has chosen to carry out his responsibility not by issuing instructions to Comsat, but by having his designee take charge of the negotiations and carry them to fruition and by having the United States Government sign the agreement. This choice was made despite Comsat's undeniable financial interest in the outcome of the definitive negotiations.

It would hardly be in keeping with this interest for the United States to abandon its direct control over the interpretation of the agreements once they have been negotiated. The resolution of disputes arising out of factors unforeseen at the time of negotiation could radically change the character of the intergovernmental agreement. For example, the character of the interim arrangements and of general United States communications policy could have been dramatically affected by arbitration of the issue of the permissibility of separate domestic satellites. We will, of course, do our best to foresee all potential issues of this kind, but we should be foolish to believe that all important

issues can be anticipated, especially in this area of rapid technological development. The permanence of the definitive arrangements makes arbitration all the more important to the United States Government; while most issues may be dealt with satisfactorily by Comsat, this procedure can no longer suffice as the exclusive means to protect the interests of the United States Government.

Although we recognize the INTELSAT arrangements are to a certain extent sui generis, we know of no precedent where the United States Government delegates all its responsibilities for active participation in arbitration arising out of an international agreement to which it is a party. On the contrary, the Government often engages in international arbitrations on behalf of private interests.

The Department of State also recognizes that Comsat has distinct interests in any disputes arising under either agreement and may have the primary interest in particular cases.

In order to accommodate both interests, the Department of State recommends that the arbitration provisions provide that disputants in arbitration proceedings may be parties

to the intergovernmental agreement (e.g., the U.S. Government for the U.S.), signatories, or the Governing Body; that signatories may institute proceedings only with consent of its Party; and that a Party may choose to participate on behalf of or jointly with its signatory named as a respondent. We also recommend that the arbitration provision encompass acts by Parties. In practice, the United States in consultation with Comsat, would decide whether the United States should institute arbitration or whether Comsat could institute arbitration, and whether the United States or Comsat should defend an action instituted by someone else.

This is an issue only for the United States and a small number of other countries whose governments are parties to the intergovernmental agreement but who have authorized private entities, rather than government ministries, to accede to the Special Agreement. We doubt consequently that this would be considered a major or meaningful change to the other parties, or that they would object to the change.*/

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*/ The Committee has recommended that the "Second Agreement" incorporate arbitration provisions. Whether or not the Department of State recommendation is accepted, we believe the arbitration provisions, since they cover disputes arising under the intergovernmental agreement, should be in that agreement rather than the subordinate agreement.

b. Comsat View.

The views presented by the State Department are inappropriate and unnecessary when viewed in the context of the unique arrangements governing the United States participation in INTELSAT. Moreover, these views present certain serious disadvantages and risks as discussed below:

(1) Comsat should, subject to appropriate supervision and instruction, be the United States party to any arbitration proceedings under the definitive arrangements.

(a) It does not appear appropriate or necessary for the Government to participate as a party in arbitration proceedings under the definitive arrangements. The Satellite Act envisioned the United States participation in the establishment and operation of the global communications satellite system through a private corporation, Comsat, subject to appropriate governmental supervision and regulation. The language of the Act serves to negate direct Government participation in the establishment and operation of the system, and there is no reason to regard arbitration as an exception to this approach. On the other hand, the Act provides an adequate legal basis for supervision by the Government of Comsat's relationships with foreign governments or entities

such as INTELSAT, and there is no reason to suspect that such supervision would not continue to be effective with respect to any arbitration proceedings which involved the intergovernmental agreement.

It should be recognized that the provisions of the two agreements are so intertwined and interrelated that a dispute which arises out of either agreement inevitably will involve some significant aspects of the other. For example, the three disputes in which recourse to arbitration has been threatened -- the aeronautical satellite program, exceeding the $200 million amount set in the Interim Agreement, and the French request for a general license with respect to INTELSAT inventions and data -- encompass interpretive issues under both the Interim and Special Agreements.

(b) Since Comsat is the United States instrument for participation in the establishment and operation of the global system, invests its stockholders' money in that system, and bears the financial risks, it is appropriate that it should be the party to all arbitration proceedings involving the consortium's disputes, since such disputes will nearly always have a financial impact. The Government has no

financial liability with respect to the outcome of any disputes referred to arbitration, yet, it seeks a unilaterial right to determine in each instance whether Comsat, with its substantial financial and operational investment in the system countenanced by a congressional act, may represent itself in INTELSAT disputes.

(c) Moreover, State's proposal fails to take into account the fact that the necessity for arbitration will most likely be determined by what transpires in the nature of negotiations and conciliatory efforts in the Governing Body where the grievances of a signatory will first be raised and the opportunity first afforded to formulate arguments in reply with a view towards avoiding an arbitral dispute. During such proceedings the Government could protect its interest in the same manner as it does in other INTELSAT matters, by issuing appropriate instructions to Comsat. Should the matter move on to arbitration, the Government can also protect its interests by precisely the same means, without shifting the party which has been representing the United States in the pre-arbitral considerations.

(2) Serious disadvantages would result if the arbitration provisions were included in the intergovernmental agreement rather than the operating agreement.

(a) The State Department's recommendation would place Comsat at a serious disadvantage vis-á-vis its foreign partners in the Governing Body, since nearly all such partners would, unlike Comsat, be potential parties to any arbitration proceedings. In view of its heavy financial and operational investment in INTELSAT, Comsat regards as unacceptable any suggestions which would place it on a less than equal basis with its partners in arbitration proceedings involving INTELSAT.

(b) Although we cannot envision an arbitral dispute which would be exclusively or primarily of concern to the parties to the intergovernmental agreement (nor has the State Department cited any such example), we can appreciate State's concern that it be in a position to effectively respond to sovereign differences arising in the organization. However, INTELSAT should not adopt mechanisms which could encourage political or sovereign disputes, for to do so may seriously impair its commerical viability. While it was established

by intergovernmental agreement, its success is largely attributable to the fact that it is composed of signatories whose primary function is communications and who attempt to minimize political controversy in favor of keeping matters on a commercial basis. Having these communications entities arbitrate their own disputes (Comsat subject, of course, to appropriate governmental supervision) serves this basic aim and is in furtherance of the basic thrust of the interim agreements and the Satellite Act. Moreover, the Government has available to it diplomatic channels through which purely sovereign differences can be resolved.

(c) The State Department's recommendation, if adopted as the United States position, would raise a major issue with our foreign partners for no discernible reasons. The Interim Committee has unanimously recommended (see its Report on the Definitive Arrangements, para. 593) that the "Operating Agreement," successor to the Special Agreement, should incorporate provisions on arbitration procedures. For the United States to reverse its position now and propose to the Conference a basically different approach to the arbitration question could open the door to European proposals

for undesirable changes in the entire arbitration procedures, the very result which the State Department agrees we should avoid.

(3) The State Department's argument, that they know of no precedent where the government delegates all of its responsibilities for active participation in arbitration arising out of an international agreement to which it is a party, is irrelevant and misleading.

(a) In making this argument, State has overlooked an obvious example where the Government is not a disputant to an agreement which it signed: namely, Comsat's participation as the United States party under the existing Supplementary Arbitration Agreement which encompasses disputes arising under both the Interim and Special Agreements. Moreover, the alleged dearth of precedent is not really relevant when the uniqueness of the Comsat-Government relationship established by the Satellite Act is considered.

(b) Furthermore, Comsat's status as the direct party to arbitration would not constitute an abdication by the Government of its overall responsibilities under the Satellite Act. As noted previously, these responsibilities are met through the furnishing of supervision and instructions

to Comsat with regard to INTELSAT matters that affect the foreign policy and national interest of the United States. This has included interpretation of the intergovernmental agreement and would, presumably, include, where appropriate, supervision and instructions with respect to arbitral matters relating thereto, and there is, of course, no question that Comsat would continue to comply with applicable governmental instructions.

(4) The relationship between a party and its signatory with respect to arbitration is a domestic matter that should not be included in the permanent agreements.

(a) The State Department's recommendation, which would provide the parties to the intergovernmental agreement a unilateral right to determine (i) whether arbitral proceedings should be instituted and (ii) the proper parties to a proceeding, would place before an international conference a purely domestic matter, the relationship between a party and its signatory. Such matters are wholly inappropriate for resolution in an international agreement. The present Interim Agreement specified, for instance, that the relations between a party and its designated signatory "shall be governed by the

applicable domestic law." (Article II (a)). In addition, it could only be viewed as an attempt by the United States to resolve its unique internal problems in an international forum.

(b) The finely balanced and unique relationship of the foreign policy interest of the United States on the one hand and the commercial interest of Comsat on the other should not be made a part of the United States position at the Conference. To do so for the purpose proposed by the State Department could only serve to impair this relationship without achieving any concrete goals not already possessed by virtue of domestic law.

(5) Conclusion.

Of prime importance is the continuance of INTELSAT as a stable and viable commercial organization. One means of better assuring a commercial basis of operation is to confine disputes to the signatory communications entities themselves, thereby helping to avoid, wherever possible, political implications. The State Department has failed to demonstrate any substantive advantages to be derived from changing the present arbitral arrangements to provide the parties to the intergovernmental agreement, the unilateral

right to determine the parties to disputes arising under the definitive agreements. In fact, there are substantial disadvantages and risks in adopting State's position.

Further, State has not provided any evidence in support of its apparent concern that the Government's position would not be adequately preserved through continuation of Comsat's direct participation in INTELSAT disputes. Comsat, although the designated entity with the financial and operational interests at stake, is subject to supervision and instruction by the Government. The mechanisms which have been developed to provide for such supervision have functioned effectively, and Comsat fully anticipates they will continue so under the definitive arrangements.

Accordingly, Comsat's position vis-à-vis the status of most of its partners, the uniqueness of its relationship with the Government, and its responsibilities to its shareholders, all dictate that Comsat should remain the direct party in interest to arbitral proceedings under the definitive arrangements.

c. FCC View, as concurred in by Legal Counsel, DTM.

The Commission is not convinced that it is necessary for the U. S. to be a party to the INTELSAT arbitral processes, and it appears that there could be undesirable results if such a course is pursued.

Basic to this entire question is the thoroughly unique relationship between Comsat and the Government, which is established by the Satellite Act and which has governed the U. S. participation in INTELSAT under the interim arrangements. Thus, Comsat is the sole U. S. participant in INTELSAT and on its governing body where all significant decisions, many of which are vital to the U. S. Government, are made. The interests of the U. S. Government are protected by the instructions issued to Comsat as the U. S. participant. Thus, we feel there would be a basic inconsistency, in proceeding solely through Comsat in the vital governing body in which all issues, including any of those which might ultimately go to arbitration, are debated and decided, and then make a provision to have the Government injected into the arbitral process.

We believe that the instructional processes should serve to protect U. S. interests just as adequately

in the arbitral process as in the matters coming before the Governing Body. Indeed, the Government is in a better position to effectuate its instructions during the arbitral process since, under Section 5(b) of the Arbitration Agreement the Government has a right to be present at and receive all papers pertaining to the arbitral proceedings.

Also relevant is the fact that the existing arbitral agreement does not provide for the Government to be a party to the arbitral process. The Government was willing to agree to the arbitral arrangements at that time and we know of nothing which has changed in the interim. It would seem most likely that the foreign partners would construe any proposal of this sort as a lack of confidence by the U. S. Government in Comsat. In this regard, it should be noted that the Government has considered, and rejected, on other occasions, having a Government representative participate in the ICSC proceedings. The latest example of this was in connection with ICSC consideration of the definitive arrangements, which were, of course, of critical importance to the Government.

Except for the question of Government participation, all are agreed that it is in the best interest

of the U. S. Government to basically repeat the present arbitral arrangements. This being so, it would seem in the best interests of the U. S. not to open this question of Government participation unless it is considered of such importance as to justify the weakening of our position against other fundamental amendments, e.g., scope of jurisdiction, standing tribunal and interim relief.

Along the same lines, it appears that U. S. interests would be best served by not emphasizing or enhancing the arbitral process but rather to maximize the authority of the governing body with its weighted voting. The proposal for Government participation would seem to lend stature to the arbitral process and might open the door to political disputes.

As has been indicated this is almost uniquely a U. S. problem. A foreign signatory who wished to bring Comsat to arbitration might be upset if the U. S. had the power to substitute itself for Comsat. On the other hand, we feel that we should not afford foreign entities the possible option of proceeding against either Comsat or the U. S. Government as it pleased. This could elevate political as

against commerical considerations, a possibility we wish to avoid.

cc: Chairman Rosel H. Hyde
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General James D. O'Connell
Mr. John A. Johnson
Mr. Frank E. Loy
Mr. Ward P. Allen
Mr. William K. Miller

V

UNITED STATES DELEGATION
TO THE
PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS
FOR THE
INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM
Washington, D.C., February 24 - March 21, 1969

USDel/1 (Final)

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