# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

Washington, D.C., February - March 1969

Com.II/SR/1 **(Final)**
**March 7, 1969**

**SUMMARY RECORD - FIRST SESSION OF COMMITTEE II**
TUESDAY, FEBRUARY 25, 1969

Convening of the Session

The Chairman of the Conference, Leonard H. Marks, acting as Temporary Chairman, called the first session of Committee II to order at 11:40 a.m.

Election of Committee Chairman

Mr. Marks invited nominations for Chairman of Committee II. The Representative of Australia nominated the Representative of Japan, Mr. Ogiso. The Representatives of the Federal Republic of Germany, Indonesia, the Republic of China and Venezuela seconded the nomination. There being no other nominations, Mr. Ogiso was declared elected as Chairman of Committee II.

Chairman Ogiso assumed the Chair and expressed his thanks for the honor bestowed upon him. He recognized the demands of the task before him and promised to make every effort to do his best in this position.

Election of Vice Chairman

Chairman Ogiso invited nominations for Vice Chairman of Committee II. The Representative of Jamaica nominated the Representative of Brazil, Dr. de Abranches. The Representatives of Argentina, Lebanon and Japan seconded the nomination. There being no other nominations, Dr. de Abranches was declared elected as Vice Chairman of Committee II.

Organization of Committee Work

Chairman Ogiso informed the Committee that the French and Spanish versions of document Com. II/1, which outlines a suggested work program, were now ready for distribution, and this would be done at the conclusion of the session. He observed that since there had not yet been time to

study this paper, it seemed preferable that discussion be taken up at the next session. Mr. Ogiso suggested, without objection, that the next session take place Wednesday, February 26, at 3:00 p.m. in the Main Conference Room. Accordingly, the session adjourned at 12:10 p.m.

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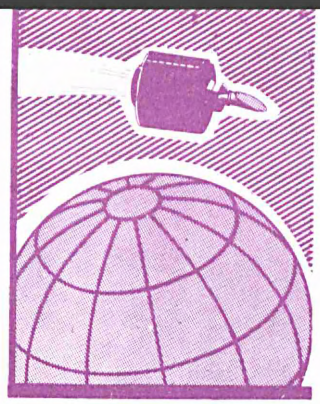

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com.II/SR/1
February 25, 1969

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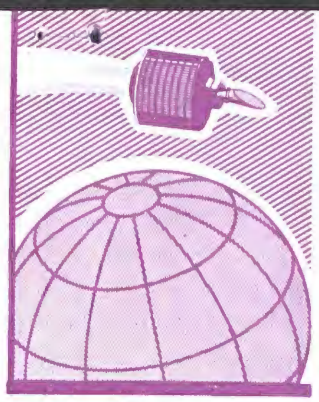

PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

Washington, D.C., February - March 1969

Com. II/SR/2
February 26, 1969

PROVISIONAL SUMMARY RECORD - SECOND SESSION OF COMMITTEE II
WEDNESDAY, FEBRUARY 26, 1969

Convening of the Session

Chairman Ogiso called the session to order at 3:15 p.m. He invited Dr. de Abranches to take his seat as Vice Chairman. Dr. de Abranches did so and expressed his appreciation for the confidence shown in him.

Consideration of Suggested Work Program (Com. II/1)

The Chairman suggested that the Committee focus on the document Com. II/1 entitled "Legal and Procedural Questions," and invited discussion on the suggested work program contained therein.

The Representative of Argentina stated that this document includes consideration of the amendment process but does not, however, mention the closely related issue of duration of the definitive arrangements, and suggested that this should be included in the discussions of this Committee.

The Representative of Chile suggested that the work program contained in the document in question be amended so that any discussion of definitions be taken up after the other subject headings. He felt that only after the other topics before this and other Committees were considered could it be determined what definitions will be required. He also suggested that discussion of the legal status of INTELSAT (Item II) be based on paragraphs 231-236 of the ICSC Report and not be limited in any way to papers tabled before this Committee. He also felt that this Committee should express itself on the issues such as the number of agreements, who will be the signatories, the duration of the definitive arrangements, questions regarding transition from interim to definitive arrangements, and the subject of entry into force.

The Representative of the Federal Republic of Germany suggested that the duration of the definitive arrangements would be included in a discussion of Item IV, dealing with Accession, Supersession and Buy-Out.

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The Representative of the United States observed that except where distinctions can be made between the work of the various Committees, some problems of duplication would result should each of the Committees attempt to broaden areas of its concern. He therefore favored maintaining the work program as presented.

The Representative of the United Kingdom supported the position of the Representative of Argentina that definitions be considered at a later stage. He also asked the Chairman whether it was a proper understanding that the subject of transitional arrangements, when considered by this Committee, would only include juridical questions and not financial aspects. It was his belief that since Committee III is charged with responsibility for financial arrangements, detailed financial matters should be left to it.

The Chairman concurred with the view of the Representative of the United Kingdom with respect to the appropriateness of Committee III considering financial consequences.

The Secretariat offered the following clarifications: the paragraphs of the ICSC Report cited in Item III (Privileges and Immunities) should read 594-597; the matter of transition to the definitive arrangements is before this Committee (Item IV), as well as before Committee III, where reference is also made to paragraph 626 of the ICSC Report.

The Chairman noted by way of summation that several representatives had suggested that the item "Definitions" be deferred to a later stage. In the absence of objection it was so agreed.

The Chairman further noted that many of the items before Committee II are interrelated with items before other Committees. It was clear that Committee II should be responsible for the legal aspects but it was not necessary to specify at this time which items before other Committees might also have legal ramifications. He suggested a consensus appeared to have developed that the suggested agenda (Com. II/1) be accepted as the basis for the Committee's program of work while noting that any member would be free to raise in this Committee any matter before another Committee which had legal implications which needed examination in this Committee; in such cases the Chairman would consult with the Chairman of the other Committee and with his concurrence would open discussion in Committee II on the appropriate legal aspects. Without objection it was so decided.

Concerning the question of the paragraph in the ICSC Report dealing with transition (paragraph 626), the Chairman asked if Chile accepted the view that this matter be raised in this Committee in connection with Item IV, Accession, Supersession and Buy-Out. The representative of Chile agreed.

The Representative of Brazil suggested that the question of entry into force (Item IV. A. 1) be treated as a separate item for discussion under

Item IV since this question is independent of the questions of accession and supersession.

The Representative of the United States stated that significant and difficult questions involving the transition from interim to definitive arrangements were closely connected with the hypothetical question that might be posed by non-continuing members, and these should be considered as two parts of the whole, with discussion permitted on either or both aspects. The United States was concerned lest the inclusion of a separate heading for entry into force inhibit free discussion.

The Representative of Sweden was inclined to share the view of the United States that the two subjects are very closely interrelated.

The Representative of the United Kingdom pointed out that the issues involved in Item IV have already been interrelated by inclusion of reference to them in the interim arrangements and it was impossible to separate the discussions completely.

The Chairman asked if it was acceptable that a separate paragraph dealing with the subject of entry into force be included under Item IV as sub-item C. The Representative of Sweden stated that this addition was acceptable. The Representative of the United States stated that this addition was acceptable if consideration of Item IV were not limited to a point-by-point consideration but rather permitted free discussion of all aspects of Item IV. This was also acceptable to the Representative of Brazil. In light of the agreement indicated, the Chairman concluded that the subject of entry into force would become sub-item C under Item IV, Accession and Supersession and Buy-Out. It was so agreed.

Discussion of Legal Status of INTELSAT

The Chairman invited discussion of Item II, Legal Status of INTELSAT. In response to a statement by the Representative of Chile, the Chairman stated that it was his understanding that paragraphs 231-236 of the ICSC Report formed the basis for discussion of legal status but that the delegates are free to submit any documents or comments on this question.

The Representative of Switzerland stated that since the United States document (Com. II/2) had been received only recently, the delegates should be allowed more time in which to consider it before commenting. The Representative of The Federal Republic of Germany agreed with this view. The Chairman suggested that it might expedite Committee proceedings if there were some preliminary discussion and he asked whether the Representative of the United States would speak to its document (Com. II/2).

The Representative of the United States, acknowledging the brief time that the paper had been available to delegates, thought it would be useful

to explain the theory upon which the document is based. He observed that the document suggests a pragmatic--what works and what works best--approach, rather than a doctrinal or conceptual approach. He felt the present status achieves two results: 1) it has operated without legal difficulty and without unnecessary or undesirable complications in accomplishing its work, and 2) the present joint venture form has enabled the different telecommunications entities to join together directly in a venture which financies, provides and operates the necessary facilities, without the need of an intermediary, and, in so doing, reflects the kind of operation in which INTELSAT is engaged. The Representative of the United States suggested that this subject be discussed now even though other Committees may be involved with matters related to this subject.

The Representative of Sweden stated that the circumstances surrounding the 1964 arrangements were in various ways distinct from those surrounding the present arrangements. It is a major shortcoming of the present arrangement that the owners of the space segment cannot speak in their own name about property they own. He recognized that this shortcoming included serious political overtones, but, those shortcomings were still real, requiring resolution. He felt that the heart of the difficulty results from the present arrangement whereby ownership of the system is in undivided shares. The Representative of Sweden concluded that a legal personality was therefore essential. He recognized that the organization performed two distinct functions, one public and one commercial. With respect to the public function, it seems appropriate that each member state be entitled to one vote, while recognizing that majority requirement for decisions is a distinct issue. With respect to the commercial function, it seems to him appropriate that voting be related to the share of the investment.

The Chairman recognized the complexity involved in this subject and the desirability of more time to study the paper submitted. He invited discussion on other topics mentioned in document Com. II/1, with the understanding that discussion of legal status would be resumed later.

The Representative of Algeria expressed his hope that the positions of both Sweden and the United States would be further clarified in document form.

The Chairman invited members who desired to speak to enter their names on the speakers list maintained by the Committee Secretary.

The Representative of Australia, noting that the document submitted by the United States mentioned the existence of certain undesirable ramifications resulting from the granting of legal personality, asked that the United States elaborate more fully on these disadvantages.

The Representative of Mexico stated that the legal form the organization would take was a key question upon which much of the work of Committee II was dependent. He suggested that while it must await decisions of Committee I on various matters, such as legal form, Committee II

should proceed to explore the legal consequences flowing from the different legal forms that Committee I may select.

Adjournment

The Chairman suggested that the scheduling of the Committee's next session be deferred until it became clear whether the trip to Cape Kennedy continued as planned. The session adjourned at 4:40 p.m.

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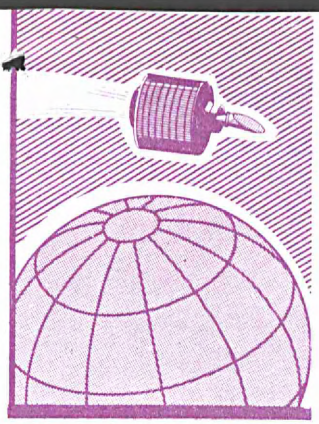

PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

Washington, D.C., February - March 1969

Com. II/SR/3 (Final)
March 7, 1969

SUMMARY RECORD - THIRD SESSION OF COMMITTEE II
THURSDAY, FEBRUARY 27, 1969

Convening of the Session

Chairman Ogiso called the session to order at 3:10 p.m. He confirmed that the Committee would defer consideration of Item I to a later stage of its work.

Discussion of Item II, Legal Status of INTELSAT

The Representative of Brazil suggested that it would be helpful to clarify doubts common to many countries who use the Roman legal system if the Committee considered what legal impediments there might be under various legal systems if a joint venture concept were employed. These doubts arose from the structure of legal systems and did not involve political considerations. INTELSAT should possess the legal machinery most conducive to carrying out its functions; however, the necessity for stable definitive arrangements lasting over a number of years requires respect for certain basic precepts of existing legal systems.

The Representative of Israel observed that, if his understanding is correct, no special difficulties have arisen as to past legal activities of INTELSAT, and that therefore there should be good reasons before another form of legal relationship among the participants is substituted for the present form. He suggested that the work of the Committee could be facilitated if the Secretariat produced a document comparing the main advantages and disadvantages of the two legal forms that have been proposed, incorporating references from the ICSC discussions.

The Secretary explained that in the time available, the Secretariat most probably could not research and produce the desired document but would be most willing to aid in assembling information made available by the various delegations.

The Representative of Switzerland agreed that the solution of the question of legal status must be satisfactory to all legal systems. To assist in this respect, the Swiss delegation is preparing a paper comparing the

proposed forms from the European standpoint. He proposed that the Committee establish a small task force of jurists to draft a comparative document.

The Representative of the United States, recognizing the importance of the questions mentioned by the Representatives of Brazil and Switzerland, stated that now, as in 1964, it is important to construct a legal framework for INTELSAT that can function effectively in, and consistent with, the various legal systems. Moreover, this legal framework must be compatible with and best suited to the functions and activities in which INTELSAT engages. He noted that a joint venture is not itself a legal status nor does it attempt to tailor itself to any particular legal system. Instead, it relies upon the universally recognized principles of agency and contract and the legal capacity of the various partners comprising the venture; it works well where there is a broad basis of representation in the partnership. It has been used worldwide by INTELSAT without difficulty. With respect to the concern of various members regarding possible differences among the various legal systems, the Representative of the United States stated that such problems should be identified and examined to determine their validity in terms of the specific business activities of INTELSAT, e.g. contracts, acquisition, disposition and protection of property interests. He also felt that the joint venture structure, besides being legally feasible and effective, is also well suited to the business of INTELSAT, that of providing satellite capacity and bandwidth to the various signatories for use in combination with their own earth stations, to create channels of communication. In view of this cooperative relationship, he saw no necessity for placing between the satellite and the signatories any form of ownership separate and apart from the property interests of the signatories. To do so would serve no purpose but to add to the administrative cost of the system. Recognizing that the public interest nature of INTELSAT is basically organizational rather than legal, he emphasized that a joint venture concept permitting direct undivided ownership of the property by the signatories would not dictate a particular organizational form. The joint venture had seemed to work well for INTELSAT, and he felt that before consideration is given to changing the legal form, a significant basis demonstrated by specific problems should exist.

The Representative of the United Kingdom indicated that he had reached no final conclusions but believed that in the final analysis INTELSAT's legal status would depend upon its structure. He expressed doubts as to whether the permanent organization could deal on an international plane through an agent; he wondered, taking into account the general practice of international organizations, whether the corporate structure should not be viewed as normal, with the burden being on proving that it should not be utilized.

The Representative of Chile, impressed by the substantial majority recommendation regarding legal status in the ICSC Report, inquired as to the United States' reasons for recommending that the present legal form be retained. He suggested that under the Roman law concept of agency, the

manager is an unofficial agent of INTELSAT. He preferred that INTELSAT have legal personality in international law with the signatories sharing control to the extent of their interest in the entity, and that the liability be limited. Under Chilean law he saw no insurmountable problems respecting privileges and immunities and taxation.

The Representative of the United States explained that the document (Com. II/2) offered by the United States delegation was a sincere effort to explore the issues concerning legal status. He offered several comments in response to the questions raised by the Representatives of the United Kingdom and of Chile. As a joint venture, INTELSAT could deal directly with public international organizations both on a commercial and international basis. As a legal matter, there would be nothing to preclude the partners from designating an agent for a purpose in the furtherance of INTELSAT's business as is presently done, the partners each having the legal capacity to appoint an agent. INTELSAT's business makes unnecessary a world market value for ownership shares in INTELSAT. Experience has shown that contracting is easier in states that are members of INTELSAT since contractors know that the local partner stands behind the contract. Financial matters that have a direct impact on the partners in a joint venture, such as tax advantages afforded them through a proportionate share of the venture's depreciation of assets and other expenses, would, in the case of a legal entity, have an impact upon that entity and would not pass through to the partners these various tax advantages.

The Representative of the Philippines suggested that the difficulty may lie with the legal interpretation of a partnership. He asked whether the present status is one of general or limited partnership, and the extent to which INTELSAT is now liable to suit. He also questioned whether a signatory, as a principal, could also be an agent.

The Representative of Brazil, taking into account the previous statements by various delegates, suggested that the Committee try to determine the drawbacks in establishing a legal entity and avoid the more legalistic discussions. To implement this, it was suggested that a small working group be established to consider various alternatives including joint venture and legal entity, and submit a report. He further noted that a change from the present manager might entail a thorough revamping of the legal details.

The Representative of the United States agreed with the suggestion of the Representative of Brazil as a practical way to proceed on the question of legal status. Responding to the questions raised by the Representative of the Philippines, the United States Representative stated that liability of the undivided partners was a continuing concern, and that with respect to third party liability, which varies according to jurisdiction, insurance has been found to be the only acceptable solution. Regarding liability to customers for interruption or failure to provide service, express "hold harmless" provisions are contained in the allotment agreements, copies of which could be made available to the delegates. As for party-defendants to

to a suit, it was explained that first there must be jurisdiction over a signatory after which the extent of its liability would depend upon the legal system involved. Under the present arrangements, the other signatories would contribute, to the extent of their proportionate investment, to offset any loss and damages suffered by a signatory acting in INTELSAT's behalf. In prosecuting a legal claim, the United States Representative explained that it is not normally necessary to name all the partners, nor does naming a partner normally require his appearance before the tribunal hearing the claim. A distinct advantage afforded by the joint venture format is that a claim may be prosecuted through the local signatory.

The Representative of Israel supported the forming of a working group and suggested that it include in its consideration the reasons underlying the recommendation in paragraph 233 of the ICSC Report.

The Representative of the Federal Republic of Germany also supported the suggestion of a work group which would study first the advantages and disadvantages of legal forms associated with giving INTELSAT legal personality. In addition, he suggested that the working group look into precedents in other treaties and requested the United States to supply some examples of multilateral joint ventures.

The Representative of Mexico stressed that the working group should be as small as possible, contain delegates expressing opposing viewpoints, and be open to all other delegates who wish to observe and, perhaps, intervene.

The Representative of the United States, in response to the suggestion of the Representative of the Federal Republic of Germany, urged that the working group examine the pros and cons of several alternatives. As for the matter of precedents, he stated that the United States would be prepared to table in the working group examples supporting its position.

Chairman Ogiso named the representatives of the following States to the working group: Brazil, Chile, Federal Republic of Germany, Philippines, Sweden, Switzerland, United Kingdom and the United States. He charged the group with the task of preparing a comparative table of the different legal forms for presentation to the Committee.

Chairman Ogiso sought the Committee's consensus as to the date of the next meeting. The Representative of Mexico, supported by the Representative of Brazil, suggested that debate not resume until the working group has finished its work. Chairman Ogiso adjourned the Committee at 5:10 p.m. until further notice.

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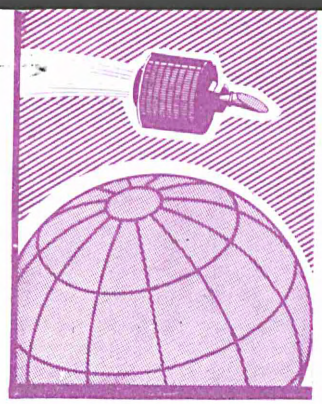

PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

Washington, D.C., February - March 1969

Com. II/SR/3
February 28, 1969

PROVISIONAL SUMMARY RECORD - THIRD SESSION OF COMMITTEE II
THURSDAY, FEBRUARY 27, 1969

Convening of the Session

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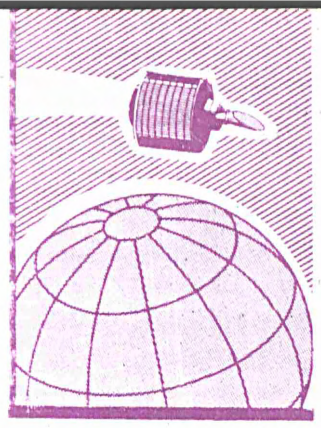

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com.II/SR/4 (Final)
March 10, 1969

SUMMARY RECORD - FOURTH SESSION OF COMMITTEE II
TUESDAY, MARCH 4, 1969

Convening of the Session

Chairman Ogiso called the session to order at 2:50 p.m. in the PAHO Conference Hall. He called upon the Representative of the United Kingdom to present, in the absence of the Chairman of the Working Group, a report of the status of its work. The Representative of the United Kingdom stated that the Working Group had not finished its debate of the issues before it and expected that at the conclusion of its next meeting, tentatively planned for the afternoon of Wednesday, March 5, it would begin to write this report.

Chairman Ogiso suggested that pending receipt of the report of the Working Group the Committee begin discussion of Item II-3 and requested the Representative of the United States, whose delegation had submitted II-3 to introduce the document.

Discussion of Item 3, Privileges and Immunities

The Representative of the United States stated the document was self-explanatory and based on the ICSC report which recommended that the question of privileges and immunities be given careful consideration. The United States has decided that a provision for privileges and immunities should be included in the inter-governmental agreement and believed three forums appropriate: (1) Certain privileges and immunities should be granted in the inter-governmental agreement; (2) Additional privileges and immunities in a headquarters agreement between INTELSAT and the country where the headquarters is to be located; and (3) Additional privileges and immunities should be negotiated as they become necessary in the course of the operation of the organization with the individual countries involved.

The Representative of Sweden stated that the document submitted by the United States apparently assumed that INTELSAT would not have legal personality. In view of the fact that many countries have already expressed an interest in having legal personality attached to the organization, consideration of privileges and immunities should also proceed under the assumption that legal personality would be given.

Chairman Ogiso stated that it was regretable but nevertheless unavoidable that the Working Group had not completed its task, however, he would like to

propose the discussion continue with the understanding that each country make clear the basis of its assumption on the legal personality for INTELSAT.

The Representative of Chile stated the document submitted by the United States refers on several occasions to a Board of Governors acting on behalf of INTELSAT. He believed this implied that the document in fact assumed that legal personality would be granted since the board of Governors could not enter into an agreement regarding privileges and immunities for an organization not having legal personality. He, therefore, suggested that the discussion proceed on an assumption of legal personality.

The Representative of the United States noted that under United States law, privileges and immunities can be granted regardless of legal personality and suggested that the Committee move forward and leave legal personality and its relation to privileges and immunities to the Working Group now considering legal personality.

The Representative of the United Kingdom stated that the question of legal status was significant in view of the fact that in his country the granting of privileges and immunities was dependent on whether the international organization had legal status.

The Chairman stated he wished to confirm that the United States had no objection to continuing discussion on the basis of legal personality.

The Representative of the United States stated that it was not his understanding that Sweden and Chile had stated that work could not proceed without a decision on legal status. He understood Sweden's and Chile's position was discussion of privileges and immunities should be based on the assumption that legal personality was granted. He felt each country should assume what was necessary in order to continue with the discussion. He further stated that the Committee's objective should be to try to mold an appropriate and effective privileges and immunities provision, if it decides one is necessary, subject of course to later changes if developments so dictate.

The Representative of Chile said discussion could begin with the understanding INTELSAT has a legal personality. He asked how the Board of Governors could represent INTELSAT, as noted in Annex A, when the Board of Governors has no status since INTELSAT has no identity or legal status under his country's legal system. He questioned whether an analysis could be made of privileges and immunities and taxes independently of the question of legal status.

Chairman Gigo stated that he recognized the difficulties in discussing privileges and immunities without a decision on legal personality but asked that the discussion proceed on the assumption that legal personality was granted without prejudice to the United States or other countries that hold different views.

The Representative of Sweden stated that the document submitted by Sweden (Doc. 8) envisioned a separation within the organization according to functions, that is, public and commercial. This separation was not intended as an end in itself, but was expected to provide a more rational and workable division of the organization's work. The principal consideration supporting this division is the accommodation this separation lends to the question of privileges and immunities. The dual structure would provide a simple basis for decision on which privileges and immunities to grant. No privileges and immunities would be granted to the commercial organ (corporation) of the organization except national income and property taxes, because it would be unacceptable to place the commercial enterprise on a better competitive level with other commercial enterprises. With respect to the public functions, the organization would be entitled to receive all the appropriate privileges and immunities ordinarily attributed to a purely international organization. He stated that only by such a separation of functions could the liability on the commercial side be limited.

The Representative of Korea stated that without a decision of the Working Group regarding legal status, a consideration of all other items on the agenda are rendered less meaningful. He suggested that those countries not participating in the Working Group would like further details on the Working Group proceedings.

Chairman Ogiso, noting the absence of the Chairman of the Working Group, called upon the United Kingdom to provide the requested information.

The Representative of the United Kingdom stated it has become apparent that a fundamental cleavage has developed between those countries which support the position for legal personality and those who believe no legal personality is necessary. The Working Group has not completed its debate. It appeared to him that, at the moment, a majority seemed to favor granting legal personality, but it was possible that a different view could prevail.

The Representative of the United States stated that it would be helpful to ascertain the attitudes of the members with respect to specific privileges and immunities. It would be particularly helpful to know the position of the members with respect to exemption from national income and property taxes, as well as each of the other privileges and immunities suggested in the document submitted by the United States and suggested discussion on II-3 continue using the previously agreed assumptions.

The Representative of Sweden noted the interrelation of the privileges and immunity discussion to Committee I consideration of the INTELSAT structure and suggested the Committee move to a discussion of Item VII on Settlement of Disputes.

The Representative of Chile said he was ready to continue discussion on the basis of the agreed assumptions.

The Representative of the Netherlands stated that his Government would have considerable difficulty with the provision of exemption from taxes as presented in the United States document. He saw no reason why INTELSAT should be given such exemption in view of the fact that it is a commercial enterprise.

The Representative of Sweden stated the simplicity of the Swedish proposal was privileges and immunities would be granted to the public sector but none to the commercial side of INTELSAT.

The Representative of Chile stated the United States document assumed the headquarters of INTELSAT would be in the United States. The Committee has no authority to determine where the headquarters should be. He believed that a proper distinction should be drawn between taxes in the headquarter's state and taxes in other member countries as well as between those applicable to the organization and those applicable to the signatories.

The Representative of the United Kingdom stated that there appeared to be some hesitancy to discuss privileges and immunities by this Committee. This was not surprising in view of the fact that a multi-national organization is involved which, in addition, is to carry on a significant commercial operation. The nearest parallel, which is not altogether helpful, is the international banks. Since a number of decisions with respect to the structure of the organization bear heavily on what privileges and immunities would be appropriate, it may be preferable to include a provision in the agreement regarding privileges and immunities stated in general terms, with the specifics left for adoption in a subsequent protocol. This approach would have the advantage of providing the members with a full understanding of the nature of the organization before decision on privileges and immunities was necessary.

The Representative of the United States responding to the remarks of the Representative of Chile, stated the United States did not intend in its document to determine the situs of the headquarters by reference to it in the document regarding privileges and immunities. It was his belief the position of the United States would be the same regardless of where the headquarters would be. He admitted that the public-commercial dichotomy had raised problems and that, because governments are involved, certain privileges and immunities were being suggested. He supported the suggestion of the United Kingdom that some privileges and immunities could be agreed upon by the members subsequent to the adoption of the definitive arrangements. He requested the Representative of Sweden to provide the Committee with an indication which privileges and immunities would be granted to the public organ under the Swedish proposal.

The Representative of Sweden stated its proposal differed from the United Kingdom in that no delay would be involved and the relevant privileges and immunities could be agreed upon and included in the definitive arrangements. Responding to the Representative of the United States, he stated that the organ performing the commercial functions would receive no privileges or immunities except tax exemption, but the organ performing the public functions would receive those privileges and immunities ordinarily granted international organizations.

The Representative of Saudi Arabia stated that in deciding the question of privileges and immunities the Committee must (1) determine the applicable law and (2) decide whether the representatives of the organization are to act in their sovereign or business capacity. In the case of the former, he suggested that the solution to his question could be found in many international organizations.

The Representative of Chile replying to the statement by the Representative of the United States stated that he was not seeking to determine a site for the headquarters but only referring to the language in attachment A of Com. II/3 as a basis for his remarks. He viewed as extremely useful the United States proposal presenting three possible solutions which would aid those countries in which it might be difficult to grant all of the privileges and immunities in the definitive arrangements themselves. By way of reference to Article XVI(b) of the Swedish proposal (Doc. 8) he explained that under Chilean law privileges and immunities, as well as tax exemptions, as a general rule, and with very few exceptions, are granted pursuant to laws approved by the Congress of Chile. On the other hand when international agreements containing such provisions are ratified pursuant to Chilean law, the designated provisions automatically become law in Chile. Therefore, he concluded that a provision such as the Swedish article would have no practical effect in Chile since domestic legislation would have to be enacted in order to grant any privileges and immunities including tax exemptions not specified in the definitive arrangements.

The Representative of Japan noted that two factors governed their granting of privileges and immunities to international organizations: (1) the legal status of the organization and (2) its structural character. In Japan the privileges and immunities described in the United States proposal, would require the organization to have legal personality and also be intergovernmental in character. Under current Japanese law domestic legislation would have to be amended in order to grant privileges and immunities to INTELSAT as envisioned in Com. II/3, but amending all the relevant provisions of the domestic law would not be practically feasible because it would require very cumbersome procedures.

The Representative of Pakistan noting that privileges and immunities apparently vary among the various countries suggested that such a clause in the definitive arrangements should be flexible and applicable within all countries.

The Representative of the Federal Republic of Germany inquired whether, under the Swedish concept, the property and assets of INTELSAT would be subject to seizure. After quoting Article 7, Section 4 of the Charter of the International Bank for Reconstruction and Development (World Bank), he asked for comments by the other delegates.

The Representative of Sweden noted that the Representative of the Federal Republic of Germany was correct in his interpretation of the Swedish proposal but suggested that the example of the World Bank was not relevant as the Bank is not a market operating exterprise but deals only with States as clients, a restriction not applicable to INTELSAT. He argued that INTELSAT would contract and therefore could expect to sue and be sued and its property and assets, as a result, should be subject to seizure.

The Representative of the United States, in responding to the Chairman's request that it comment on the immunities of property and assets under the United States proposal, stated that such property and assets would be immune from confiscation and from property tax. In addition, it was his belief that the World Bank's functions extended beyond those described by the Swedish Representative, since it also promotes financial undertakings and buys and sells securities. In his view it was impossible to separate governmental and commercial functions, for this reason the United States had included in it paper those privileges and immunities which it thought INTELSAT should have. He stated an interest in learning of other examples where there has been a distinction made between the public and commercial functions of an international organization, noting that privileges and immunities had been granted the International Coffee Organization and the Cotton Institute, although they also had commercial and public aspects.

The Representative of Sweden indicated that the examples offered by the United States, such as the International Coffee Organization, did not have a public utility character which, he suggested, gave INTELSAT its international public character apart from its commercial character.

The Representative of the United States in reply urged as relevant the fact that INTELSAT is a sui generis organization and thought it appropriate that INTELSAT, because of its governmental character, should have certain privileges and immunities but not necessarily all which a purely governmental organization would be entitled to. He reiterated the United States position regarding certain privileges and immunities being contained in the definitive arrangements while others would be set forth in a headquarters agreement.

The Representative of Switzerland supported the last two interventions of the United States. He felt it quite difficult to separate clearly and unambiguously the functions of the organization. He viewed the organization under the definitive arrangements as truly international, and essentially non-profit in character with universal participation, functioning essentially as a public service for all nations. Consequently, he supported appropriate privileges and immunities, including tax immunity, for the organization, and suggested the possibility of according INTELSAT privileges and immunities greater than those mentioned in the United States paper. He believed assets and property should be free from seizure.

The Representative of Canada after endorsing the views of both Switzerland and the United States, noted that Canadian law normally accords privileges and immunities on the basis of the United Nations Convention on Privileges and Immunities. He viewed the privileges and immunities suggested by the United States as roughly the same as those that could be feasibly accorded by Canada.

The Representative of Denmark inquired of the United States as to the consideration of privileges and immunities in a situation where there is not a private manager for INTELSAT. The Representative of the United States responded that in his opinion the same privileges and immunities would be appropriate.

The Representative of Australia noted that the matter of any privileges and immunities recommended or included in the definitive arrangements would have to be referred to his Government for appropriate legislative consideration. For this reason he was inclined to agree with the suggestion of the United Kingdom that the matter of privileges and immunities be left to a subsequent protocol. He noted that Australia has a federal system of government, under which the Commonwealth (Federal) Government levies taxes on income while both the federal and state governments levy property taxes. Although he couldn't predict what income tax exemptions Australia would afford INTELSAT, he noted that international telecommunications are exempt from taxes under current legislation. He further noted that the proposed exemption from income taxes by the United States would afford far greater benefits to the other signatories if it is assumed that the bulk of INTELSAT income would be earned in the United States.

The Representative of Korea noted every country has its own distinct procedure for granting privileges and immunities and suggested that the debate of the Committee should be directed to the types and extent of privileges and immunities which INTELSAT should possess.

The Representative of Sweden noting the significance which the Representative of Switzerland attached to the immunity from seizure, referred to the statement in the Swiss paper Com. II/4 that an Organization doing business must be subject to suit, and asked whether it was the Swiss opinion that the enforcement of any judgement rendered against INTELSAT should depend upon the decision of the INTELSAT Governing Body. In response the Representative of Switzerland stated that this was only an apparent discrepancy and wished to have his intervention understood in the sense of Article 7, Section 3 of the Charter of the World Bank, which he read to the Committee.

The Representative of Sweden noting that presently a majority of INTELSAT assets are privately owned asked of the Swiss Representative whether he had taken into account in his consideration of the World Bank example the extent to which the property of the bank is privately owned. He renewed his question as to whether a majority vote of the Governing Body could decide as to the enforceability of a judgement against INTELSAT.

The Representative of India stated that INTELSAT, as an international organization, should enjoy the privileges and immunities normally accorded other international organizations. He supported the United Kingdom and Australian proposal for a general clause, such as paragraph 597 of the ICSC Report, with the details to be specified later.

The Representative of Chile suggested that there was a latent problem in the differentiation between public and commercial functions. He noted that under the interim arrangements and the proposals for the definitive arrangements specialized telecommunications entities may be designated as INTELSAT signatories, their relations under the interim arrangements with their respective governments having been expressly reserved as a matter of domestic law. In some cases the governments provide funds for these telecommunications entities in which case only a single interest is involved. Thus, when such countries agree as to the definitive arrangements they are protecting both their public and the commercial interest as one. However, when the government is not an investor of funds in the signatory telecommunications entity there is a differentiation of interest, and the public interest should be protected by a domestic agreement between the Government and its signatory. Accordingly, the Representative viewed the present Article II of the interim agreement as quite wise and hoped that it would be included in the definitive arrangements.

The Representative of France stated that it was difficult for him to offer any definitive views at this time as to the juridical structure of INTELSAT; however, there were certain matters which he wished to note. From the standpoint of privileges and immunities there must be a differentiation of the public and commercial characters. For the public nature, the problem is one of determining who will benefit, while from the commercial viewpoint it must be stressed that there are states providing funds, and, as a result, it would not be proper for others to benefit or derive profits from such funds. He viewed the question of third party liability as extremely difficult to solve consistent with the provisions relating to liability of states contained in the Treaty on the Peaceful Uses of Outer Space. In this connection, it should be considered what property would be subject to seizure to satisfy judgments obtained by third parties as well as what form of justice could be applied to assure reimbursement to victims.

The Representative of the United Kingdom agreed with the United States that it was very difficult to distinguish between public and commercial functions, and surmised that there are large areas where it will be impossible to distinguish the differences. In reference to the United States draft article on privileges and immunities contained in Attachment A of Com. II/3, he stated that the United Kingdom could accept most of it. Specifically, he noted that subparagraph (a) was not really a matter of privileges and immunities, that subparagraph (b) would require domestic legislation in the United Kingdom, that subparagraphs (c) and (d) comprised a sensible arrangement, and that subparagraph (e) would be quite satisfactory provided the word "additional" was deleted and INTELSAT was an international organization.

The Representative of Australia supported the United Kingdom's statement and stated a clause as proposed by the United Kingdom would be acceptable, subject to any amendments which may become necessary after the adoption of the legal form of the organization.

The Chairman, noting that the discussions had been fruitful, stated his belief that a majority of the delegates seemed to be in accord with the suggestion of the United Kingdom for a general privileges and immunities clause with details left to a later agreement or protocol. He then called for further views based on the United States paper having understood the United Kingdom to have voiced its approval of the subparagraphs contained therein and with the understanding that no proposal was made to finalize the language.

The Representative of the United Kingdom, by means of clarification, pointed out that at this stage the United States draft article would be satisfactory if (1) there was a blank inserted in place of "Washington, D.C." in subparagraph (a), (2) subparagraph (b) was deleted, and (3) the word "additional" was deleted from subparagraph (e).

The Representative of Chile expressed his concern with the wording of subparagraph (c) of the United States clause which, to him, seemed to omit the signatories as immune from income taxation in the headquarters state, although such immunity was indicated as an example in Item 4 on page 5 of the

United States paper. He asked a clarification from the United States Representative.

The Representative of the United States suggested that emphasis not be placed on the examples but, instead, on the draft language. In this connection, he stated that the word "participants" in subparagraph (c) would include signatories. He noted that the language, of course, could be changed if desired. In response to a further question from the Representative of Chile, the Representative of the United Kingdom pointed out that the Committee was only considering general principles in discussing the language of the United States draft article although he thought that the article was generally satisfactory. He noted, of course, that he would want the word "participants" to be understood as including signatories.

The Chairman emphasized that the present procedure was being followed only for the purposes of discussion and that no commitments were being made by any states during this discussion.

The Representative of Mexico, while noting that he was not in a position to comment specifically as to any one of the provisions, stated that under Mexican law, if INTELSAT is an international organization the matter of privileges and immunities would not be difficult but if it were a consortium, it would be questionable that it could grant them. He supported the idea of a protocol and suggested that once the scope, structure, and legal status of INTELSAT is determined the drafting of privileges and immunities should be relatively easy.

The Chairman noted what seemed to him a slight difference of view between the proposals of the United Kingdom and Mexico in that the former would accept a general privileges and immunities clause leaving the specifics to a later protocol while the latter would prefer leaving the entire question of privileges and immunities to a later protocol. As clarification, the Representative of Mexico stated that he was reserving his position for the time being and recognized that a general clause could be discussed in general terms with substantive matters left to later discussion and inclusion in a separate protocol.

Consideration of Suggested Work Program (Com. II/1/Rev. 1)

The Chairman noting that fruitful discussions had been achieved at this meeting asked the Committee for suggestions as to whether the next meeting should take up Item IV, Accession, Supercession and Buy-Out, or Item VII, Settlement of Disputes, assuming of course, that the Working Group is not in a position to report back to the Committee by tomorrow afternoon. After discussion by the delegates, including a statement by the Vice Chairman that in his opinion he could not, unfortunately, give any conclusions about the progress of the work of the Working Group until after a meeting scheduled for Wednesday evening, the Chairman, hearing no objections, announced that Item IV would be the next item for discussion. In addition the Chairman announced that Ambassador Marks had requested the Committee to take over the consideration of

Item VI on Committee I's agenda (Com. I/1 (Rev. 1))--Number of agreements constituting the definitive arrangements— because of its legal nature. It was proposed by the Chairman that this item be included as Item X on this Committee's agenda, and hearing no objections, it was placed on the agenda.

Adjournment

The meeting was adjourned at 5:20 p.m. to convene again Wednesday, March 5, at 2:30 p.m. in the Pan American Health Organization Conference Hall.

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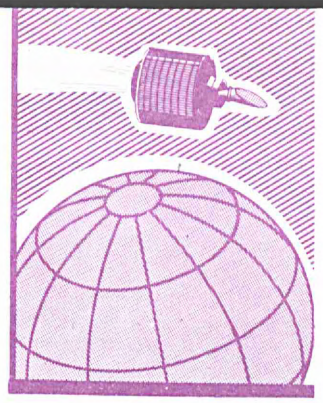

PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

Washington, D.C., February - March 1969

Com II/SR/4
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Chairman Ogiso suggested that pending receipt of the report of the Working Group the Committee begin discussion of Item II-3 and requested the Representative of the United States, whose delegation had submitted II-3 to introduce the document.

Discussion of Item 3, Privileges and Immunities

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The Representative of Sweden stated that the document submitted by the United States apparently assumed that INTELSAT would not have legal personality. In view of the fact that many countries have already expressed an interest in having legal personality attached to the organization, consideration of privileges and immunities should also proceed under the assumption that legal personality would be given.

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NOTE: Any changes or corrections in this Summary Record must be submitted to the Secretary General within 48 hours.

propose the discussion continue with the understanding that each country make clear the basis of its assumption on the legal personality for INTELSAT.

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The Representative of the Federal Republic of Germany inquired whether, under the Swedish concept, the property and assets of INTELSAT would be subject to seizure. After quoting Article 7, Section 4 of the Charter of the International Bank for Reconstruction and Development (World Bank), he asked for comments by the other delegates.

The Representative of Sweden noted that the Representative of the Federal Republic of Germany was correct in his interpretation of the Swedish proposal but suggested that the example of the World Bank was not relevant as the Bank is not a market operating exterprise but deals only with States as clients, a restriction not applicable to INTELSAT. He argued that INTELSAT would contract and therefore could expect to sue and be sued and its property and assets, as a result, should be subject to seizure.

The Representative of the United States, in responding to the Chairman's request that it comment on the immunities of property and assets under the United States proposal, stated that such property and assets would be immune from confiscation and from property tax. In addition, it was his belief that the World Bank's functions extended beyond those described by the Swedish Representative, since it also promotes financial undertakings and buys and sells securities. In his view it was impossible to separate governmental and commercial functions, for this reason the United States had included in it paper those privileges and immunities which it thought INTELSAT should have. He stated an interest in learning of other examples where there has been a distinction made between the public and commercial functions of an international organization, noting that privileges and immunities had been granted the International Coffee Organization and the Cotton Institute, although they also had commercial and public aspects.

The Representative of Sweden indicated that the examples offered by the United States, such as the International Coffee Organization, did not have a public utility character which, he suggested, gave INTELSAT its international public character apart from its commercial character.

The Representative of the United States in reply urged as relevant the fact that INTELSAT is a sui generis organization and thought it appropriate that INTELSAT, because of its governmental character, should have certain privileges and immunities but not necessarily all which a purely governmental organization would be entitled to. He reiterated the United States position regarding certain privileges and immunities being contained in the definitive arrangements while others would be set forth in a headquarters agreement.

The Representative of Switzerland supported the last two interventions of the United States. He felt it quite difficult to separate clearly and unambiguously the functions of the organization. He viewed the organization under the definitive arrangements as truly international, and essentially non-profit in character with universal participation, functioning essentially as a public service for all nations. Consequently, he supported appropriate privileges and immunities, including tax immunity, for the organization, and suggested the possibility of according INTELSAT privileges and immunities greater than those mentioned in the United States paper. He believed assets and property should be free from seizure.

The Representative of Canada after endorsing the views of both Switzerland and the United States, noted that Canadian law normally accords privileges and immunities on the basis of the United Nations Convention on Privileges and Immunities. He viewed the privileges and immunities suggested by the United States as roughly the same as those that could be feasibly accorded by Canada.

The Representative of Denmark inquired of the United States as to the consideration of privileges and immunities in a situation where there is not a private manager for INTELSAT. The Representative of the United States responded that in his opinion the same privileges and immunities would be appropriate.

The Representative of Australia noted that the matter of any privileges and immunities recommended or included in the definitive arrangements would have to be referred to his Government for appropriate legislative consideration. For this reason he was inclined to agree with the suggestion of the United Kingdom that the matter of privileges and immunities be left to a subsequent protocol. He noted that Australia has a federal system of government, under which the Commonwealth (Federal) Government levies taxes on income while both the federal and state governments levy property taxes. Although he couldn't predict what income tax exemptions Australia would afford INTELSAT, he noted that international telecommunications are exempt from taxes under current legislation. He further noted that the proposed exemption from income taxes by the United States would afford far greater benefits to the other signatories if it is assumed that the bulk of INTELSAT income would be earned in the United States.

The Representative of Korea noted every country has its own distinct procedure for granting privileges and immunities and suggested that the debate of the Committee should be directed to the types and extent of privileges and immunities which INTELSAT should possess.

The Representative of Sweden noting the significance which the Representative of Switzerland attached to the immunity from seizure, referred to the statement in the Swiss paper Com. II/4 that an Organization doing business must be subject to suit, and asked whether it was the Swiss opinion that the enforcement of any judgement rendered against INTELSAT should depend upon the decision of the INTELSAT Governing Body. In response the Representative of Switzerland stated that this was only an apparent discrepancy and wished to have his intervention understood in the sense of Article 7, Section 3 of the Charter of the World Bank, which he read to the Committee.

The Representative of Sweden noting that presently a majority of INTELSAT assets are privately owned asked of the Swiss Representative whether he had taken into account in his consideration of the World Bank example the extent to which the property of the bank is privately owned. He renewed his question as to whether a majority vote of the Governing Body could decide as to the enforceability of a judgement against INTELSAT.

The Representative of India stated that INTELSAT, as an international organization, should enjoy the privileges and immunities normally accorded other international organizations. He supported the United Kingdom and Australian proposal for a general clause, such as paragraph 597 of the ICSC Report, with the details to be specified later.

The Representative of Chile suggested that there was a latent problem in the differentiation between public and commercial functions. He noted that under the interim arrangements and the proposals for the definitive arrangements specialized telecommunications entities may be designated as INTELSAT signatories, their relations under the interim arrangements with their respective governments having been expressly reserved as a matter of domestic law. In some cases the governments provide funds for these telecommunications entities in which case only a single interest is involved. Thus, when such countries agree as to the definitive arrangements they are protecting both their public and the commercial interest as one. However, when the government is not an investor of funds in the signatory telecommunications entity there is a differentiation of interest, and the public interest should be protected by a domestic agreement between the Government and its signatory. Accordingly, the Representative viewed the present Article II of the interim agreement as quite wise and hoped that it would be included in the definitive arrangements.

The Representative of France stated that it was difficult for him to offer any definitive views at this time as to the juridical structure of INTELSAT; however, there were certain matters which he wished to note. From the standpoint of privileges and immunities there must be a differentiation of the public and commercial characters. For the public nature, the problem is one of determining who will benefit, while from the commercial viewpoint it must be stressed that there are states providing funds, and, as a result, it would not be proper for others to benefit or derive profits from such funds. He viewed the question of third party liability as extremely difficult to solve consistent with the provisions relating to liability of states contained in the Treaty on the Peaceful Uses of Outer Space. In this connection, it should be considered what property would be subject to seizure to satisfy judgments obtained by third parties as well as what form of justice could be applied to assure reimbursement to victims.

The Representative of the United Kingdom agreed with the United States that it was very difficult to distinguish between public and commercial functions, and surmised that there are large areas where it will be impossible to distinguish the differences. In reference to the United States draft article on privileges and immunities contained in Attachment A of Com. II/3, he stated that the United Kingdom could accept most of it. Specifically, he noted that subparagraph (a) was not really a matter of privileges and immunities, that subparagraph (b) would require domestic legislation in the United Kingdom, that subparagraphs (c) and (d) comprised a sensible arrangement, and that subparagraph (e) would be quite satisfactory provided the word "additional" was deleted and INTELSAT was an international organization.

The Representative of Australia supported the United Kingdom's statement and stated a clause as proposed by the United Kingdom would be acceptable, subject to any amendments which may become necessary after the adoption of the legal form of the organization.

The Chairman, noting that the discussions had been fruitful, stated his belief that a majority of the delegates seemed to be in accord with the suggestion of the United Kingdom for a general privileges and immunities clause with details left to a later agreement or protocol. He then called for further views based on the United States paper having understood the United Kingdom to have voiced its approval of the subparagraphs contained therein and with the understanding that no proposal was made to finalize the language.

The Representative of the United Kingdom, by means of clarification, pointed out that at this stage the United States draft article would be satisfactory if (1) there was a blank inserted in place of "Washington, D.C." in subparagraph (a), (2) subparagraph (b) was deleted, and (3) the word "additional" was deleted from subparagraph (e).

The Representative of Chile expressed his concern with the wording of subparagraph (c) of the United States clause which, to him, seemed to omit the signatories as immune from income taxation in the headquarters state, although such immunity was indicated as an example in Item 4 on page 3 of the

United States paper. He asked a clarification from the United States Representative.

The Representative of the United States suggested that emphasis not be placed on the examples but, instead, on the draft language. In this connection, he stated that the word "participants" in subparagraph (c) would include signatories. He noted that the language, of course, could be changed if desired. In response to a further question from the Representative of Chile, the Representative of the United Kingdom pointed out that the Committee was only considering general principles in discussing the language of the United States draft article although he thought that the article was generally satisfactory. He noted, of course, that he would want the word "participants" to be understood as including signatories.

The Chairman emphasized that the present procedure was being followed only for the purposes of discussion and that no commitments were being made by any states during this discussion.

The Representative of Mexico, while noting that he was not in a position to comment specifically as to any one of the provisions, stated that under Mexican law, if INTELSAT is an international organization the matter of privileges and immunities would not be difficult but if it were a consortium, it would be questionable that it could grant them. He supported the idea of a protocol and suggested that once the scope, structure, and legal status of INTELSAT is determined the drafting of privileges and immunities should be relatively easy.

The Chairman noted what seemed to him a slight difference of view between the proposals of the United Kingdom and Mexico in that the former would accept a general privileges and immunities clause leaving the specifics to a later protocol while the latter would prefer leaving the entire question of privileges and immunities to a later protocol. As clarification, the Representative of Mexico stated that he was reserving his position for the time being and recognized that a general clause could be discussed in general terms with substantive matters left to later discussion and inclusion in a separate protocol.

Consideration of Suggested Work Program (Com. II/1/Rev. 1)

The Chairman noting that fruitful discussions had been achieved at this meeting asked the Committee for suggestions as to whether the next meeting should take up Item IV, Accession, Supercession and Buy-Out, or Item VII, Settlement of Disputes, assuming of course, that the Working Group is not in a position to report back to the Committee by tomorrow afternoon. After discussion by the delegates, including a statement by the Vice Chairman that in his opinion he could not, unfortunately, give any conclusions about the progress of the work of the Working Group until after a meeting scheduled for Wednesday evening, the Chairman, hearing no objections, announced that Item IV would be the next item for discussion. In addition the Chairman announced that Ambassador Marks had requested the Committee to take over the consideration of

Item VI on Committee I's agenda (Com. I/1 (Rev. 1))--Number of agreements constituting the definitive arrangements—because of its legal nature. It was proposed by the Chairman that this item be included as Item X on this Committee's agenda, and hearing no objections, it was placed on the agenda.

Adjournment

The meeting was adjourned at 5:20 p.m. to convene again Wednesday, March 5, at 2:30 p.m. in the Pan American Health Organization Conference Hall.

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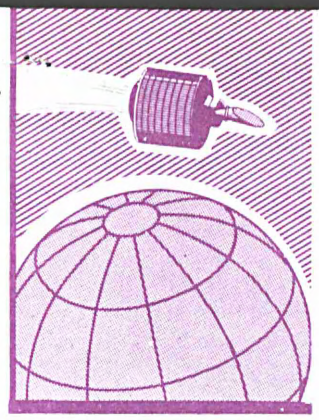

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/5 (Final)
March 13, 1969

SUMMARY RECORD - FIFTH SESSION OF COMMITTEE II
WEDNESDAY, MARCH 5, 1969

Convening of the Session

Chairman Ogiso convened the session at 2:50 p.m. He announced that the working group dealing with legal status had rescheduled its meeting for 2:30 p.m., Thursday, March 6. As agreed at the last meeting, the Committee would consider Item IV, Accession, Supersession and Buy-Out.

Discussion of Item IV, Accession, Supersession and Buy-Out

The Chairman stated that document Com. II/5, submitted by the United States, dealing with accession, supersession and buy-out, had been reached by the Secretariat translation service late the previous evening and the translations were still in process. He wondered whether the French- and Spanish-speaking delegations might agree to some preliminary discussion while awaiting these translations. No objections were perceived at this point and the Chairman suggested the Representative of the United States might make some introductory comments on the document. Since delegations had not had an opportunity to study the document fully, he suggested the United States Representative might comment in some detail.

The Representative of the United States stated that Article IX of the Interim Arrangements provided general principles, not specifics, regarding accession and supersession. Three basic questions must be resolved: (1) transfer of existing rights and obligations to the definitive arrangements; (2) the percentage of present membership whose consent would be necessary to bring the definitive arrangements into force; (3) a procedure for compensating present members if they do not accede to the definitive arrangements. An equitable rule would be for the new arrangements to enter into force when two-thirds of the present parties whose signatories held 80% of the total investment acceded. Non-continuing members should receive from the organization their net paid-in capital plus a reasonable return thereon; their previously acquired patent and data rights would continue so long as they abided by the conditions on which those rights were granted. With respect to buy-out, Committee II should develop a general rule with precise formulations left to Committee III. In Doc. 10,

submitted by the United States, Article II of the proposed Intergovernmental Agreement and Article 2 of the proposed Operating Agreement provide a simple method of transfering rights and obligations from the interim to the definitive arrangements. Article XI(c) of the proposed Intergovernmental Agreement, dealing with entry into force, was modeled on Article XII of the Interim Agreement and requires the consent of two-thirds of the parties whose signatories hold 80% of the investment. A two-thirds majority is frequently found in international agreements with amendment provisions. Article 16 of the proposed Operating Agreement provides a procedure by which that Agreement would enter into force as to its signatories.

The Representative of Chile felt that, since the document (Com. II/5) was not yet available in Spanish, it should not, in accordance with the previous Conference understanding, be considered until circulated in all three official languages. The Representative of Venezuela concurred. The Chairman observed that the point was well taken, recalling that he had suggested some preliminary comments in the interim which might be useful. The Representative of France agreed with the Chilean Representative. He wished to proceed but not on the basis of a document not yet available in all official languages. Otherwise, he felt that an exchange of views was altogether appropriate. He noted that a document submitted by Sweden was before the Committee in the official languages. The Representative of Sweden concurred, saying there was enough before the Committee for a general exchange of views.

The Chairman asked if there were any objections to going on with this item without reference to non-translated documents. The Representative of the United States pointed out that Doc. 10, before the Committee in the three official languages, contained the United States position which the most recent document merely elaborated upon. The Representative of Brazil suggested that Articles XI and 16 of Doc. 10 submitted by the United States should form the basis of the Committee's discussion. The Representative of Chile suggested the discussion proceed in general terms without specific reference to documents not fully translated and distributed. The discussion thereupon proceeded.

The Representative of Sweden, feeling that the substantive problem with respect to this subject was rather limited in scope, suggested the analysis proceed under that assumption, that legal personality will be granted and the joint venture will continue. Regarding the first assumption, he saw a very simple answer; the transfer of property owned in undivided shares required the unanimous agreement of all parties. The more difficult question arises when one tries to determine whether a different result would obtain under the second assumption. Sweden felt that since the Interim Agreement did not provide for amendment by less than unanimous consent, it could not be replaced without unanimous consent. As a result, there should be no significant difference under either basic assumption. In addition, the United States proposal would permit expropriation of 20% of the property by the holders of the other 80%.

The Representative of Chile asked whether paragraph 20 of the Rules of Procedure, as adopted, which states that the agreement shall be adopted by two-thirds of the representatives, meant that the definitive arrangements shall enter into force by that majority. The Representative of Sweden stated that acceptance of rules of procedure could in no way amend or revise a duly ratified treaty. The Representative of Mexico fully agreed with Sweden. Without an express statement to the contrary, unanimity is the rule in international law.

Procedural rules are general rules for discussions that could not be used to permit a group of states to bind another state without its consent.

The Representative of Chile wished to clarify if one country could prevent the definitive arrangements from entering into force by merely refusing to accede. The Representative of Mexico replied that those who agree to continue under definitive arrangements will obviously consider them binding while the remainder will consider the interim agreements applicable.

The Representative of the United Kingdom noted that adoption of a text by this Conference has nothing to do with ratification by the governments and accession to the definitive arrangements. The former shall be governed by the two-thirds majority rule adopted in the Rules of Procedure. For entry into force the rules of international law, as expressed in the International Law Commission's Draft Convention on Treaties, require unanimous consent for supersession, unless the earlier agreement provided for supersession by less than unanimous consent. Such provision was included in the Interim Arrangements. By Article XV the Interim Agreement remains in effect until entry into force of the definitive arrangements; this provision clearly shows that definitive arrangements were envisioned, Article IX safeguards investments, which would be unnecessary if unanimous consent was intended. Unanimity is not required; it was therefore necessary to arrange for entry into force of the definitive arrangements by less than all the parties to the Interim Agreement. A requirement of two-thirds of the parties with about 80% of the investment was about right. Providing present members one year to accede to the definitive arrangements seemed appropriate. Compensation of non-continuing members should be considered in depth by Committee III but general legal principles should be set by this Committee. Reasonable compensation involved some fair system for valuing the non-continuing member's share of the assets and liabilities.

Chairman Ogiso asked if there was any disagreement that adoption of the text of definitive arrangements by two-thirds of the Conference Representatives pursuant to the Rules of Procedure was separate from the question of entry into force of such arrangements. No disagreement was noted.

The Representative of Venezuela shared the United Kingdom's view that the Interim Agreement looked to the conclusion of definitive arrangements and, in that connection, included substantive as well as procedural aspects.

The Representative of Sweden agreed with the International Law Commission's draft and, therefore, with the principles of international law expressed by the United Kingdom Representative. However, he disagreed with the latter's application of those principles to the present situation. Specifically, the Interim Agreement does not provide for less than unanimous consent for supersession. No amendment procedure was included; this was conclusive that unanimous consent was essential. The Special Agreement, in contrast to the Interim Agreement, has an amendment clause; therefore, less than unanimous consent might suffice with respect to the Special Agreement. He found it impossible to determine from the Interim Agreement what percentage of the parties would have to agree to its supersession; a small number of members could thus merely claim rights under some definitive arrangements mutually agreed upon by them and declared to have entered into force. He could not conclude that it was possible to terminate the Agreement by majority vote.

The Representative of India disagreed with the Representative of Sweden and agreed with the United Kingdom Representative. Sweden attaches too much emphasis to the absence of any amendment provisions in the interim arrangements. There was no need to include such an amendment provision since that agreement was intended at the outset to be merely interim, and that definitive arrangements would be concluded within a short time to replace them. Article IX clearly established this Conference and the procedure to be followed for valid definitive arrangements to come into force, after which no rights can be claimed under the Interim Agreement since, by the express terms of Article XV, it would no longer be in force. Nor could a small number of countries claim INTELSAT property under definitive arrangements which were not the result of strict adherence to Article IX.

The Representative of Argentina agreed with the Representative of India. The present arrangements are merely interim; Article IX was sufficient to avoid any assertion of arbitrary procedures. He did not share the Swedish concern regarding expropriation since INTELSAT is the subject of international legislation.

The Representative of the Philippines generally agreed with the Representatives of India and Argentina. All the parties signed the Interim Agreement knowing that sooner or later a permanent agreement would be signed. In the meantime, the Interim Agreement remains in force and can be acceded to. No one member should have a veto as to how and when the permanent arrangements enter into force. Proposed Article XXI, Convention

on the Law of Treaties, provides in subparagraph (a) that: "A Treaty enters into force in such a manner and upon such a date, as it may provide, or as the negotiating states may agree." This is the crux of the problem and requires this Conference to negotiate terms and conditions relating to the entry into force of the definitive arrangements.

The Representative of Brazil felt that the Committee should deal first with accession, and secondly with supersession. Recognizing that the debate was concerned with supersession, he stated that only in the absence of a convention to which the Conference could look for guidance should the principles of international law be applied. Articles IX(a) and (b) of the Interim Agreement constituted such a convention and provided norms by which the Conference should be guided. The definitive arrangements shall be substituted for the interim arrangements and they shall safeguard the investment made by the signatories to the Special Agreement. The draft Convention of the Law of Treaties cannot be utilized at this time as it has not come into force. Parties who signed the interim arrangements acknowledged their rights and obligations would be terminated by entry into force of definitive arrangements. It would be necessary to negotiate separate agreements with non-continuing parties to provide equitable reimbursement, but he saw no danger of expropriation.

The Representative of Saudi Arabia agreed with the Representative of India and described the interim arrangements as having a time limit, after which they would have no binding effect. He asked whether a party could sign the definitive arrangements with reservations and, if so, to what extent.

The Representative of Venezuela, noting the valuable contribution of the Brazilian Representative, asked whether he felt a non-continuing member recognized his ownership rights could be affected by the new agreement. The Representative of Brazil felt the interim arrangements left this question unanswered; it could be handled by separate agreement or arbitration.

The Representative of Denmark felt there might be a conflict between a single global system and entry into force of the definitive arrangements; since the interim arrangements are binding until there is unanimous accession to the new arrangements, there may end up two systems. While in many multi-lateral agreements a revised agreement could be applied to one group of parties while retaining the original agreement in force as to the remainder, this could not be done for INTELSAT without ignoring the single global system concept.

The Representative of Sweden shared other delegates' interest in assuring no veto power for one or a small group of states. However, he found it necessary to make a formal reservation on the legal structure of the interim agreement. None of the interventions in support of a less-than-unanimity rule had been convincing. Recognizing that Article IX(b) has some bearing on the substance of the agreements and thus obligates

the parties to act in a certain direction, it is silent as to entry into force of the definitive arrangements and the concurrent termination of the interim arrangements. The interim character of the present arrangements has no bearing on the present problem. They were entered into by consent of all of the signatories and cannot be replaced without their consent. The Supplemental Agreement on Arbitration had not come into force until signed and ratified by all parties to the Interim Agreement.

The Representative of France noted that the final text of the Convention on Treaties has yet to be drafted and thus reference must be to customary international law in which the principle for supersession is unanimity. There were two delicate problems regarding supersession; safeguarding the members' rights and buy-out. If the definitive arrangements were to be effective, they must eliminate these problems for the present members.

The Representative of Australia referred to the observation by the Swedish Representative that nothing in the Interim Agreement concerned its amendment, although the Special Agreement contains an amendment provision. Article IX of the Interim Agreement provides for a Conference of the parties to that Agreement. The Interim Agreement can not be amended by the two-thirds majority vote provided for in the Conference Rules of Procedure. This does not preclude amendment of the Special Agreement by the ICSC, operating on the two-thirds basis in the Special Agreement. He agreed with the United Kingdom that the interim arrangements contemplate replacement by permanent arrangements although he was unable to find specific provisions on the mechanics for replacing the interim arrangements.

The Representative of the United States fully agreed with the United Kingdom, India, and Brazil. International law does not require unanimity. The interim agreement implies a less-than-unanimity requirement for entry into force of the definitive arrangements. A common sense approach was preferable. He questioned whether the delegates wished to apply to the present situation a rule that an existing agreement cannot be changed without unanimous consent of the parties thereto. If better definitive arrangements exist, whose entry into force would not prejudice the rights of any present members, the United States would prefer to supercede the interim arrangements. As a matter of clarification, the United States was not suggesting expropriation; those members not continuing would be adequately compensated. He disagreed with the Swedish position, believing their draft provisions did not adquately cover the matters under consideration. As a matter of procedure, he suggested the Committee consider the specific language before it in Docs. 8 and 10 and try to formulate recommendations.

To clarify a question relating to the Swedish position, the Chairman inquired of its Representative whether he felt an ITU member, after the adoption of the definitive arrangements text and accession to it by most, but not all, of the necessary present members, could accede to the Interim Agreement to obstruct entry into force of the definitive arrangements.

The Representative of Sweden answered in the affirmative. There existed a precedent; the coming into force of the Supplemental Agreement on Arbitration had been delayed through the need for new acceding States to ratify it. In reply to the United States, he noted that a treaty could be amended by either unanimous consent of the parties or pursuant to provisions of an amendatory clause; since the Interim Agreement did not contain the latter, unanimity was necessary.

The United States Representative, replying to a question by the Argentine Representative, felt the Committee could discuss the specific language proposed by the United States without referring to the textual commentary in Com. II/5. The proposed provisions in Doc. 10 relating to the matter under discussion do not significantly vary from similar articles in other international agreements.

The Chairman, observing that there was no objection, invited discussion on the pertinent language before the Committee.

The Representative of Chile noted that under Article XI(c) of the United States proposed Intergovernmental Agreement, there exist two joint requirements for entry into force: (1) two-thirds of the parties to the Interim Agreement and (2) that these should represent at least 80% of the investment share under the interim arrangements. Under this arrangement the definitive arrangements could not enter into force without United States consent, nor could they under a unanimity requirement. Referring to the manner in which the ITU 1965 Convention specifies its entry into force he suggested entry into force of the definitive arrangements be on the basis of a quorum decided upon by this Conference. Otherwise, one member could block the substitution of the definitive arrangements for the interim arrangements.

The Chairman asked the United States Representative about the property rights of a present member who, for domestic reasons, is unable to join the new organization before the entry into force of the definitive arrangements. The Representative of the United States responded that draft Article XI(c) covers this problem by allowing a government to sign the definitive agreement subject to later ratification, in which case the agreement could be provisionally applied until subsequent ratification. A one-year grace period is provided under Article 4 of the proposed Operating Agreement, but the Signatory of the member would not have a vote until either its final approval of the new agreement or its statement of intention to apply the new agreement provisionally was deposited.

The Representative of Brazil said that, regarding ratification, his delegation could accept the United States proposed Article XI, although the language could be improved. The Draft Convention on the Law of Treaties contains five methods by which governments can be bound by a treaty; signature without reservation, acceptance, approval, accession, and ratification. In this regard he noted confusion as to the United States language, since in many countries legislative or other domestic approval is necessary before the government can become bound by an agreement. He suggested a paragraph describing the manner in which a government can become a party to the definitive arrangements and a separate paragraph on supersession and ratification. These views were shared by the Representative of Argentina who expressed surprise at the concept of accession with reservation.

The Representative of the United States indicated that, although the language of Article XI could probably be improved, it came in large measure from the Interim Agreement. He further noted the International Coffee Agreement allows for signature subject to later approval. He suggested that the precise wording be considered by a working group. The Chairman hoped the United States would suggest specific wording.

The United Kingdom Representative reiterated his general agreement with the principles in proposed Article XI. Referencing the Swedish working draft, Doc. 8, he disagreed with the requirement of unanimous acceptance before the definitive arrangements could enter into force, as expressed in Article XXII.

The Representative of Switzerland recognized it might be impractical to demand unanimity because of the effect a non-consenting member's veto would have.

The United States proposal was inconsistent with a no-veto concept since it would give a veto to the largest participant.

The Chairman suggested that at its next session the Committee first return to Item II, Legal Status, if the report of the Working Group is available, and also be prepared to continue discussion on Item IV and perhaps even Item V and VI. He also requested that delegates submit papers as early as possible to the Secretariat so they can be prepared and distributed well ahead of the meeting time. The next session would be Friday, March 7, at 2:30 p.m.

Adjournment

The session was adjourned at 5:30 p.m.

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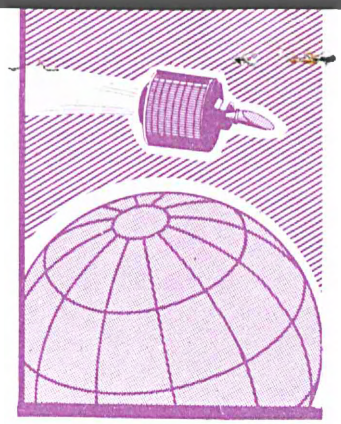

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/5
March 6, 1969

PROVISIONAL SUMMARY RECORD - FIFTH SESSION OF COMMITTEE II
WEDNESDAY, MARCH 5, 1969

Convening of the Session

Chairman Ogiso convened the session at 2:50 p.m. He announced that the working group dealing with legal status had rescheduled its meeting for 2:30 p.m., Thursday, March 6. As agreed at the last meeting, the Committee would consider Item IV, Accession, Supersession and Buy-Out.

Discussion of Item IV, Accession, Supersession and Buy-Out

The Chairman stated that document Com. II/5, submitted by the United States, dealing with accession, supersession and buy-out, had been reached by the Secretariat translation service late the previous evening and the translations were still in process. He wondered whether the French- and Spanish-speaking delegations might agree to some preliminary discussion while awaiting these translations. No objections were perceived at this point and the Chairman suggested the Representative of the United States might make some introductory comments on the document. Since delegations had not had an opportunity to study the document fully, he suggested the United States Representative might comment in some detail.

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The Representative of Chile felt that, since the document (Com. II/5) was not yet available in Spanish, it should not, in accordance with the previous Conference understanding, be considered until circulated in all three official languages. The Representative of Venezuela concurred. The Chairman observed that the point was well taken, recalling that he had suggested some preliminary comments in the interim which might be useful. The Representative of France agreed with the Chilean Representative. He wished to proceed but not on the basis of a document not yet available in all official languages. Otherwise, he felt that an exchange of views was altogether appropriate. He noted that a document submitted by Sweden was before the Committee in the official languages. The Representative of Sweden concurred, saying there was enough before the Committee for a general exchange of views.

The Chairman asked if there were any objections to going on with this item without reference to non-translated documents. The Representative of the United States pointed out that Doc. 10, before the Committee in the three official languages, contained the United States position which the most recent document merely elaborated upon. The Representative of Brazil suggested that Articles XI and 16 of Doc. 10 submitted by the United States should form the basis of the Committee's discussion. The Representative of Chile suggested the discussion proceed in general terms without specific reference to documents not fully translated and distributed. The discussion thereupon proceeded.

The Representative of Sweden, feeling that the substantive problem with respect to this subject was rather limited in scope, suggested the analysis proceed under that assumption, that legal personality will be granted and the joint venture will continue. Regarding the first assumption, he saw a very simple answer; the transfer of property owned in undivided shares required the unanimous agreement of all parties. The more difficult question arises when one tries to determine whether a different result would obtain under the second assumption. Sweden felt that since the Interim Agreement did not provide for amendment by less than unanimous consent, it could not be replaced without unanimous consent. As a result, there should be no significant difference under either basic assumption. In addition, the United States proposal would permit expropriation of 20% of the property by the holders of the other 80%.

The Representative of Chile asked whether paragraph 20 of the Rules of Procedure, as adopted, which states that the agreement shall be adopted by two-thirds of the representatives, meant that the definitive arrangements shall enter into force by that majority. The Representative of Sweden stated that acceptance of rules of procedure could in no way amend or revise a duly ratified treaty. The Representative of Mexico fully agreed with Sweden. Without an express statement to the contrary, unanimity is the rule in international law.

Procedural rules are general rules for discussions that could not be used to permit a group of states to bind another state without its consent.

The Representative of Chile wished to clarify if one country could prevent the definitive arrangements from entering into force by merely refusing to accede. The Representative of Mexico replied that those who agree to continue under definitive arrangements will obviously consider them binding while the remainder will consider the interim agreements applicable.

The Representative of the United Kingdom noted that adoption of a text by this Conference has nothing to do with ratification by the governments and accession to the definitive arrangements. The former shall be governed by the two-thirds majority rule adopted in the Rules of Procedure. For entry into force the rules of international law, as expressed in the International Law Commission's Draft Convention on Treaties, require unanimous consent for supersession, unless the earlier agreement provided for supersession by less than unanimous consent. Such provision was included in the Interim Arrangements. By Article XV the Interim Agreement remains in effect until entry into force of the definitive arrangements; this provision clearly shows that definitive arrangements were envisioned, Article IX safeguards investments, which would be unnecessary if unanimous consent was intended. Unanimity is not required; it was therefore necessary to arrange for entry into force of the definitive arrangements by less than all the parties to the Interim Agreement. A requirement of two-thirds of the parties with about 80% of the investment was about right. Providing present members one year to accede to the definitive arrangements seemed appropriate. Compensation of non-continuing members should be considered in depth by Committee III but general legal principles should be set by this Committee. Reasonable compensation involved some fair system for valuing the non-continuing member's share of the assets and liabilities.

Chairman Ogiso asked if there was any disagreement that adoption of the text of definitive arrangements by two-thirds of the Conference Representatives pursuant to the Rules of Procedure was separate from the question of entry into force of such arrangements. No disagreement was noted.

The Representative of Venezuela shared the United Kingdom's view that the Interim Agreement looked to the conclusion of definitive arrangements and, in that connection, included substantive as well as procedural aspects.

The Representative of Sweden agreed with the International Law Commission's draft and, therefore, with the principles of international law expressed by the United Kingdom Representative. However, he disagreed with the latter's application of those principles to the present situation. Specifically, the Interim Agreement does not provide for less than unanimous consent for supersession. No amendment procedure was included; this was conclusive that unanimous consent was essential. The Special Agreement, in contrast to the Interim Agreement, has an amendment clause; therefore, less than unanimous consent might suffice with respect to the Special Agreement. He found it impossible to determine from the Interim Agreement what percentage of the parties would have to agree to its supersession; a small number of members could thus merely claim rights under some definitive arrangements mutually agreed upon by them and declared to have entered into force. He could not conclude that it was possible to terminate the Agreement by majority vote.

The Representative of India disagreed with the Representative of Sweden and agreed with the United Kingdom Representative. Sweden attaches too much emphasis to the absence of any amendment provisions in the interim arrangements. There was no need to include such an amendment provision since that agreement was intended at the outset to be merely interim, and that definitive arrangements would be concluded within a short time to replace them. Article IX clearly established this Conference and the procedure to be followed for valid definitive arrangements to come into force, after which no rights can be claimed under the Interim Agreement since, by the express terms of Article XV, it would no longer be in force. Nor could a small number of countries claim INTELSAT property under definitive arrangements which were not the result of strict adherence to Article IX.

The Representative of Argentina agreed with the Representative of India. The present arrangements are merely interim; Article IX was sufficient to avoid any assertion of arbitrary procedures. He did not share the Swedish concern regarding expropriation since INTELSAT is the subject of international legislation.

The Representative of the Philippines generally agreed with the Representatives of India and Argentina. All the parties signed the Interim Agreement knowing that sooner or later a permanent agreement would be signed. In the meantime, the Interim Agreement remains in force and can be acceded to. No one member should have a veto as to how and when the permanent arrangements enter into force. Proposed Article XVI, Convention

on the Law of Treaties, provides in subparagraph (a) that: "A Treaty enters into force in such a manner and upon such a date, as it may provide, or as the negotiating states may agree." This is the crux of the problem and requires this Conference to negotiate terms and conditions relating to the entry into force of the definitive arrangements.

The Representative of Brazil felt that the Committee should deal first with accession, and secondly with supersession. Recognizing that the debate was concerned with supersession, he stated that only in the absence of a convention to which the Conference could look for guidance should the principles of international law be applied. Articles IX(a) and (b) of the Interim Agreement constituted such a convention and provided norms by which the Conference should be guided. The definitive arrangements shall be substituted for the interim arrangements and they shall safeguard the investment made by the signatories to the Special Agreement. The draft Convention of the Law of Treaties cannot be utilized at this time as it has not come into force. Parties who signed the interim arrangements acknowledged their rights and obligations would be terminated by entry into force of definitive arrangements. It would be necessary to negotiate separate agreements with non-continuing parties to provide equitable reimbursement, but he saw no danger of expropriation.

The Representative of Saudi Arabia agreed with the Representative of India and described the interim arrangements as having a time limit, after which they would have no binding effect. He asked whether a party could sign the definitive arrangements with reservations and, if so, to what extent.

The Representative of Venezuela, noting the valuable contribution of the Brazilian Representative, asked whether he felt a non-continuing member recognized his ownership rights could be affected by the new agreement. The Representative of Brazil felt the interim arrangements left this question unanswered; it could be handled by separate agreement or arbitration.

The Representative of Denmark felt there might be a conflict between a single global system and entry into force of the definitive arrangements; since the interim arrangements are binding until there is unanimous accession to the new arrangements, there may end up two systems. While in many multi-lateral agreements a revised agreement could be applied to one group of parties while retaining the original agreement in force as to the remainder, this could not be done for INTELSAT without ignoring the single global system concept.

The Representative of Sweden shared other delegates' interest in assuring no veto power for one or a small group of states. However, he found it necessary to make a formal reservation on the legal structure of the interim agreement. None of the interventions in support of a less-than-unanimity rule had been convincing. Recognizing that Article IX(b) has some bearing on the substance of the agreements and thus obligates

the parties to act in a certain direction, it is silent as to entry into force of the definitive arrangements and the concurrent termination of the interim arrangements. The interim character of the present arrangements has no bearing on the present problem. They were entered into by consent of all of the signatories and cannot be replaced without their consent. The Supplemental Agreement on Arbitration had not come into force until signed and ratified by all parties to the Interim Agreement.

The Representative of France noted that the final text of the Convention on Treaties has yet to be drafted and thus reference must be to customary international law in which the principle for supersession is unanimity. There were two delicate problems regarding supersession; safeguarding the members' rights and buy-out. If the definitive arrangements were to be effective, they must eliminate these problems for the present members.

The Representative of Australia referred to the observation by the Swedish Representative that nothing in the Interim Agreement concerned its amendment, although the Special Agreement contains an amendment provision. Article IX of the Interim Agreement provides for a Conference of the parties to that Agreement. The Interim Agreement can not be amended by the two-thirds majority vote provided for in the Conference Rules of Procedure. This does not preclude amendment of the Special Agreement by the ICSC, operating on the two-thirds basis in the Special Agreement. He agreed with the United Kingdom that the interim arrangements contemplate replacement by permanent arrangements although he was unable to find specific provisions on the mechanics for replacing the interim arrangements.

The Representative of the United States fully agreed with the United Kingdom, India, and Brazil. International law does not require unanimity. The interim agreement implies a less-than-unanimity requirement for entry into force of the definitive arrangements. A common sense approach was preferable. He questioned whether the delegates wished to apply to the present situation a rule that an existing agreement cannot be changed without unanimous consent of the parties thereto. If better definitive arrangements exist, whose entry into force would not prejudice the rights of any present members, the United States would prefer to supercede the interim arrangements. As a matter of clarification, the United States was not suggesting expropriation; those members not continuing would be adequately compensated. He disagreed with the Swedish position, believing their draft provisions did not adquately cover the matters under consideration. As a matter of procedure, he suggested the Committee consider the specific language before it in Docs. 8 and 10 and try to formulate recommendations.

To clarify a question relating to the Swedish position, the Chairman inquired of its Representative whether he felt an ITU member, after the adoption of the definitive arrangements text and accession to it by most, but not all, of the necessary present members, could accede to the Interim Agreement to obstruct entry into force of the definitive arrangements.

The Representative of Sweden answered in the affirmative. There existed a precedent; the coming into force of the Supplemental Agreement on Arbitration had been delayed through the need for new acceding States to ratify it. In reply to the United States, he noted that a treaty could be amended by either unanimous consent of the parties or pursuant to provisions of an amendatory clause; since the Interim Agreement did not contain the latter, unanimity was necessary.

The United States Representative, replying to a question by the Argentine Representative, felt the Committee could discuss the specific language proposed by the United States without referring to the textual commentary in Com. II/5. The proposed provisions in Doc. 10 relating to the matter under discussion do not significantly vary from similar articles in other international agreements.

The Chairman, observing that there was no objection, invited discussion on the pertinent language before the Committee.

The Representative of Chile noted that under Article XI(c) of the United States proposed Intergovernmental Agreement, there exist two joint requirements for entry into force: (1) two-thirds of the parties to the Interim Agreement and (2) that these should represent at least 80% of the investment share under the interim arrangements. Under this arrangement the definitive arrangements could not enter into force without United States consent, nor could they under a unanimity requirement. Referring to the manner in which the ITU 1965 Convention specifies its entry into force he suggested entry into force of the definitive arrangements be on the basis of a quorum decided upon by this Conference. Otherwise, one member could block the substitution of the definitive arrangements for the interim arrangements.

The Chairman asked the United States Representative about the property rights of a present member who, for domestic reasons, is unable to join the new organization before the entry into force of the definitive arrangements. The Representative of the United States responded that draft Article XI(c) covers this problem by allowing a government to sign the definitive agreement subject to later ratification, in which case the agreement could be provisionally applied until subsequent ratification. A one-year grace period is provided under Article 4 of the proposed Operating Agreement, but a member would not have a vote until its final approval of the new agreement was deposited.

The Representative of Brazil said that, regarding ratification, his delegation could accept the United States proposed Article XI, although the language could be improved. The Draft Convention on the Law of Treaties contains five methods by which governments can be bound by a treaty; signature without reservation, acceptance, approval, accession, and ratification. In this regard he noted confusion as to the United States language, since in many countries legislative or other domestic approval is necessary before the government can become bound by an agreement. He suggested a paragraph describing the manner in which a government can become a party to the definitive arrangements and a separate paragraph on supersession and ratification. These views were shared by the Representative of Argentina who expressed surprise at the concept of accession with reservation.

The Representative of the United States indicated that, although the language of Article XI could probably be improved, it came in large measure from the Interim Agreement. He further noted the International Coffee Agreement allows for signature subject to later approval. He suggested that the precise wording be considered by a working group. The Chairman hoped the United States would suggest specific wording.

The United Kingdom Representative reiterated his general agreement with the principles in proposed Article XI. Referencing the Swedish working draft, Doc. 8, he disagreed with the requirement of unanimous acceptance before the definitive arrangements could enter into force, as expressed in Article XXII.

The Representative of Switzerland recognized it might be impractical to demand unanimity because of the effect a non-consenting member's veto would have.

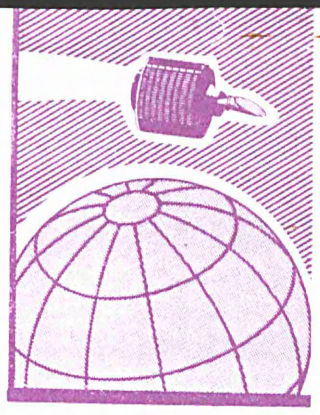
The United States proposal was inconsistent with a no-veto concept since it would give a veto to the largest participant.

The Chairman suggested that at its next session the Committee first return to Item II, Legal Status, if the report of the Working Group is available, and also be prepared to continue discussion on Item IV and perhaps even Item V and VI. He also requested that delegates submit papers as early as possible to the Secretariat so they can be prepared and distributed well ahead of the meeting time. The next session would be Friday, March 7, at 2:30 p.m.

Adjournment

The session was adjourned at 5:30 p.m.

* * *



PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

Washington, D.C., February - March 1969

Com. II/SR/6 (Final) (Corr. 1)
March 18, 1969

Please correct the title to read:

SUMMARY RECORD - SIXTH SESSION OF COMMITTEE II

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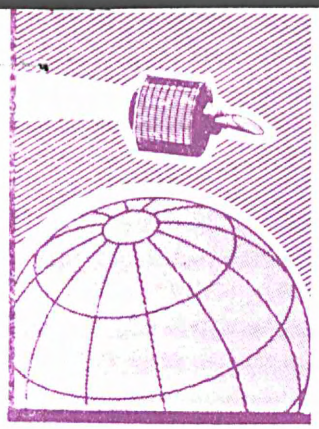

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/6
March 8, 1969

PROVISION SUMMARY RECORD - SIXTH SESSION OF COMMITTEE II
FRIDAY, MARCH 7, 1969

Convening of the Session

Chairman Ogiso convened the session at 2:50 p.m. and observed that since the Working Group had not completed its work, discussion of Item II would have to be deferred. He noted that Com. II/6 (Mexico) and Com. II/7 (Japan) had been submitted to the Committee. Since Com. II/6 deals with legal status, he suggested it be considered when the subject was before the Committee and that now there be discussion of Com. II/7. The Representative of Mexico while agreeing to defer discussion of Com. II/6 states their document dealt not only with Item II, Legal Status, but also Item III, Privileges and Immunities. Chairman Ogiso invited Japan to discuss Item IV, Accession, Supersession, and Buy-Out (Com. II/7).

Discussion of Item IV, Accession, Supersession and Buy-Out

The Representative of Japan wished to discuss a consequence flowing from supersession of the interim arrangements by the definitive arrangements. Noting the new agreement could enter into force by consent of a certain number of prior members representing a substantial majority who participated in the interim arrangements, he believed the United States formula quite reasonable, as a general proposal, although, he reserved the right to comment later on specific wording. However, if the definitive arrangements provide for their entry into force and supersession of the interim arrangements on approval without reservation by, for example, two-thirds the prior members, a considerable number of governments, because of domestic requirements for parliamentary approval, may not be able to accede before such entry into force. These members will, therefore, lose their membership in INTELSAT until they get domestic approval to accede to the permanent agreement. This situation will create a problem for those members and their designated signatories that desire to continue in INTELSAT. This problem could endanger the smooth transition from the interim to the definitive arrangements. The Japanese Delegation, therefore, proposed the provision set forth in paragraph I of Com. II/7, be included in the Intergovernmental Agreement.

NOTE: Any changes or corrections in this Summary Record must be submitted to the Secretary General within 48 hours.

Thus, any party to the interim arrangements who signs, subject to later approval, acceptance or ratification shall automatically, without necessity of a declaration, become a provisional party to the new arrangements. It would then have one year to comply with the domestic requirements necessary to its final adherence.

Replying to the Representative of Korea, the Representative of the United States said that Article XI(d)(1) included ratification within the term "approval". Since the Japanese proposal apparently meant automatic provisional application, he stated the same problem would exist under either proposal; for this reason the United States had not recommended automatic provisional application.

The Representative of Canada stated Article XI(d)(ii) of the United States proposal drew no distinction between withdrawal of parties who merely provisionally accepted and those who acceded. The draft Convention on the Law of Treaties does so distinguish, and a similar distinction should be considered by this Committee.

The Representative of the United Kingdom referred to the Swiss statement at the fifth session that ownership of investment shares should not provide a veto over entry into force of the definitive arrangements. He understood this concern but the fact was that the United States presently holds 53% of the investment shares. As a practical matter, to prevent a United States veto it would be necessary to lower the maximum ownership required for approval to 47%. That 47% would then have to be unanimous and it might be necessary to buy out the other 53% of the capital, a difficult, if not impossible burden for the remaining members. While the definitive arrangements may better distribute investment quotas, one cannot ignore present realities. The two-thirds, including 80%, figures suggested by the United States seem reasonable and should be accepted as a middle-course.

The Representative of Chile while agreeing that entry into force should not be permitted by just any majority, noted as a problem the meaning of substantial financial interest in document Com. II/5. It might be advisable to discard a quorum element in favor of final approval by an appreciable majority such as two-thirds or possibly even three-fourths of the prior members.

The Representative of Israel suggested the Committee focus on the substantive legal questions involved rather than devoting present time to the language of a final resolution which could be dealt with by a drafting group.

The Representative of the United States agreed with the United Kingdom position and disagreed with that of the Representative of Chile regarding the 80% requirement, as it contained undesirable ramifications. He agreed with the Representative of Canada that those provisional members who later decide to withdraw could come under the buy-out rather than the withdrawal provisions; but there should be a time limit.

Replying to a query by the Representative of Algeria regarding Congressional ratification of the definitive agreement, the Representative of the United States said that the question of the advice and consent of the United States Senate would depend on the terms of the document; he pointed out that the Interim Arrangements had not required such approval.

The Representative of Brazil appreciated the Japanese proposal and recognized the problem with United States draft Article XI. However, the solution suggested by Japan might present additional problems as it was impossible to establish provisional acceptance in some countries by mere signature to the agreement. The problem when the treaty does not provide specific procedure, involves those countries who, after giving provisional acceptance, then decide not to grant final approval. Prior notifcation to all members is required, and the countries would have twelve months to decide. The United States draft includes a three-month withdrawal procedure, but he thought the general rule more equitable. He agreed with the United Kingdom regarding entry into force, and disagreed with Chile as the 80% ownership requirement raised not a legal problem, but a policy decision, that could be better considered by Committee I or III. The agreement could enter into force with two-thirds or possibly three-fourths of the prior members consenting, and 80% of the ownership of investment shares also agreeing; whether such requirements were advisable was a separate question. His delegation will submit a document with a draft article.

The Representative of Chile said he did not find entry into force on the working schedule of any other committee hence it must be resolved in this Committee.

The Representative of the Philippines noted the United States proposal included no time limit for countries who provisionally approve the definitive agreement while the Japanese proposal sets a one year limit. He asked the Representative of Japan for clarification. The latter said that without a time limit the final agreement would be uncertain; a fixed time would ensure the stability.

The Representative of Korea was uncertain about the definition of approval. The Representative of the United States interpreted it to include ratification, while the Japanese proposal read "approval, acceptance or ratification." What was the distinction? The Representative of Japan said the phrase in the Japanese proposal followed common international practice and no difference between the proposals was intended.

The Representative of Mexico pointed out the draft Convention on the Law of Treaties, while a worthwhile guide, deals solely with intergovernmental agreements and its relevance should be borne in mind in this Conference that deals with a unique situation involving a mix between governmental and commercial interests.

The Representative of Argentina asked why the proposed United States Article XI limited provisional acceptance to governments signing the Agreement subject to reservation before entry into force. The United States Representative said this was the traditional approach and noted its use in Article XII of the Interim Agreement. However, it would be acceptable to expand this to expressly include "acceptance or ratification."

The Representative of Israel asked the Representative of Japan if a government could apply an international agreement provisionally without declaring it was going to do so? The Representative of Japan reiterated that under the United States proposal any government which could provisionally apply the agreement would be expected to do so since otherwise its membership in INTELSAT would lapse. The Japanese proposal safeguards the interest of such members by providing automatic provisional status for one year after entry into force to give governments time to carry out legislative requirements.

After ascertaining, at the request of the Representative of Chile, that no member desired to comment further at that time, on Item IV B, Obligations and Rights of Non-Continuing Prior Members, the Chairman opened the floor for discussion of Item V, Withdrawal Provisions, noting this would not preclude comments related to earlier items as appropriate.

Discussion of Item V, Withdrawal Provisions

At the request of the Chairman the Representative of the United States discussed briefly the applicable provisions regarding withdrawal in Doc. 10. The United States was merely suggesting a sound method, regardless of which organ of INTELSAT implements it or whether there are one or two agreements. Furthermore, the United States was not attempting by these provisions to resolve issues concerning the responsibilities of various organs, this being the province of other committees.

The Representative of Canada suggested a potential dispute as to the rights and obligations of a withdrawing party should be left to arbitration rather than the Board of Governors. The Representative of Germany agreed and noted a second method could be an annex to the definitive arrangements.

The Representative of Brazil suggested withdrawal be deferred since the present discussions are based on assumptions whose validity could not now be established.

The Representative of the United States agreed that withdrawal might be handled by arbitration, but felt it should follow a decision by the appropriate organ of the organization, thus presenting the arbital panel with findings upon which it could render an appropriate decision.

Referencing Article 28 of Doc. 8 the Representative of Chile stated the withdrawal proposals of the United States did not mention loss of capital of withdrawing party. He suggested the definitive arrangements should cover the question. The Representative of Colombia said this matter is under discussion in Committee III.

The Representative of the United Kingdom noted that the United States withdrawal provisions do not mention the capital of a withdrawing signatory and the operating agreement may require a covering clause.

The Representative of Algeria supported the comments of Chile and Colombia that the matter falls within the purview of Committee II.

The Representative of Syria associated himself with the point raised by the Representative of Chile regarding loss of capital.

Procedure

The Chairman, noting that Committee III is presently discussing the financial rights and obligations of a withdrawing member, suggested further discussion be deferred until the Committee received a summary of Committee III discussions. He also asked that the Working Group submit its report on Monday's session. Thereafter the Committee would discuss the remaining Agenda items.

Adjournment

The session adjourned at 4:40 p.m., to reconvene on Monday, March 10, at 2:30 p.m.

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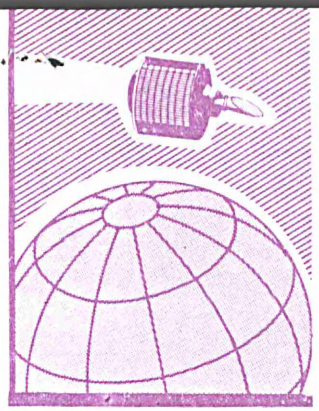

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/6(Final)
March 17, 1969

SUMMARY RECORD - SIXTH SESSION OF COMMITTEE III
FRIDAY, MARCH 7, 1969

Convening of the Session

Chairman Ogiso convened the session at 2:50 p.m. and observed that since the Working Group had not completed its work, discussion of Item II would have to be deferred. He noted that Com. II/6 (Mexico) and Com. II/7 (Japan) had been submitted to the Committee. Since Com. II/6 deals with legal status, he suggested it be considered when the subject was before the Committee and that now there be discussion of Com. II/7. The Representative of Mexico while agreeing to defer discussion of Com. II/6 states their document dealt not only with Item II, Legal Status, but also Item III, Privileges and Immunities. Chairman Ogiso invited Japan to discuss Item IV, Accession, Supersession, and Buy-Out (Com. II/7).

Discussion of Item IV, Accession, Supersession and Buy-Out

The Representative of Japan wished to discuss a consequence flowing from supersession of the interim arrangements by the definitive arrangements. Noting the new agreement could enter into force by consent of a certain number of prior members representing a substantial majority who participated in the interim arrangements, he believed the United States formula quite reasonable, as a general proposal, although, he reserved the right to comment later on specific wording. However, if the definitive arrangements provide for their entry into force and supersession of the interim arrangements on approval without reservation by, for example, two-thirds the prior members, a considerable number of governments, because of domestic requirements for parliamentary approval, may not be able to accede before such entry into force. These members will, therefore, lose their membership in INTELSAT until they get domestic approval to accede to the permanent agreement. This situation will create a problem for those members and their designated signatories that desire to continue in INTELSAT. This problem could endanger the smooth transition from the interim to the definitive arrangements. The Japanese Delegation, therefore, proposed the provision set forth in paragraph I of Com. II/7, be included in the Intergovernmental Agreement.

Thus, any party to the interim arrangements who signs, subject to later approval, acceptance or ratification shall automatically, without necessity of a declaration, become a provisional party to the new arrangements. It would then have one year to comply with the domestic requirements necessary to its final adherence.

Replying to the Representative of Korea, the Representative of the United States said that Article VI(d)(1) included ratification within the term "approval". Since the Japanese proposal apparently meant automatic provisional application, he stated the same problem would exist under either proposal; for this reason the United States had not recommended automatic provisional application.

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The Representative of the United Kingdom referred to the Swiss statement at the fifth session that ownership of investment shares should not provide a veto over entry into force of the definitive arrangements. He understood this concern but the fact was that the United States presently holds 53% of the investment shares. As a practical matter, to prevent a United States veto it would be necessary to lower the maximum ownership required for approval to 47%. That 47% would then have to be unanimous and it might be necessary to buy out the other 53% of the capital, a difficult, if not impossible burden for the remaining members. While the definitive arrangements may better distribute investment quotas, one cannot ignore present realities. The two-thirds, including 80%, figures suggested by the United States seem reasonable and should be accepted as a middle-course.

The Representative of Chile stated that, while he agreed that the entry into force would require accession by a substantial majority, he believed that the meaning of the words "substantial financial interest" contained in the conclusion of document Com. II/5 could become a problem if the final text of the Definitive Agreements should be approved without requiring such "substantial financial interest," because in such case the Delegation that presented document Com. II/5 might believe that the requirements that it thought necessary for the provisional arrangements to be replaced by definitive arrangements had not been attained. In order that no country could, all by itself, prevent the entry into force of the definitive arrangements, the Representative of Chile proposed that, in accordance with the Special Agreement, the requirement of a percentage of the total investment quota contained in draft Article XI(c) of Doc. 10 requiring accession by only two-thirds or even three-fourths of the Parties to the Provisional Agreement for entry into force of the definitive arrangements, should be eliminated.

The Representative of Israel suggested the Committee focus on the substantive legal questions involved rather than devoting present time to the language of a final resolution which could be dealt with by a drafting group.

The Representative of the United States agreed with the United Kingdom position and disagreed with that of the Representative of Chile regarding the 80% requirement, as it contained undesirable ramifications. He agreed with the Representative of Canada that those provisional members who later decide to withdraw could come under the buy-out rather than the withdrawal provisions; but there should be a time limit.

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ratification." What was the distinction? The Representative of Japan said the phrase in the Japanese proposal followed common international practice and no difference between the proposals was intended.

The Representative of Mexico pointed out the draft Convention on the Law of Treaties, while a worthwhile guide, deals solely with intergovernmental agreements and its relevance should be borne in mind in this Conference that deals with a unique situation involving a mix between governmental and commercial interests.

The Representative of Argentina asked why the proposed United States Article XI limited provisional acceptance to governments signing the Agreement subject to reservation before entry into force. The United States Representative said this was the traditional approach and noted its use in Article XII of the Interim Agreement. However, it would be acceptable to expand this to expressly include "acceptance or ratification."

The Representative of Israel asked the Representative of Japan if a government could apply an international agreement provisionally; whilst not being able to declare, it was going to do so? The Representative of Japan reiterated that under the United States proposal any government which could provisionally apply the agreement would be expected to do so since otherwise its membership in INTELSAT would lapse. The Japanese proposal safeguards the interest of such members by providing automatic provisional status for one year after entry into force to give governments time to carry out legislative requirements.

After ascertaining, at the request of the Representative of Chile, that no member desired to comment further at that time, on Item IV B, Obligations and Rights of Non-Continuing Prior Members, the Chairman opened the floor for discussion of Item V, Withdrawal Provisions, noting this would not preclude comments related to earlier items as appropriate.

Discussion of Item V, Withdrawal Provisions

At the request of the Chairman the Representative of the United States discussed briefly the applicable provisions regarding withdrawal in Doc. 10. The United States was merely suggesting a sound method, regardless of which organ of INTELSAT implements it or whether there are one or two agreements. Furthermore, the United States was not attempting by these provisions to resolve issues concerning the responsibilities of various organs, this being the province of other committees.

The Representative of Canada suggested a potential dispute as to the rights and obligations of a withdrawing party should be left to arbitration rather than the Board of Governors. The Representative of Germany agreed and noted a second method could be an additional agreement to the definitive arrangements setting out in detail the procedures for final settlement.

The Representative of Brazil suggested withdrawal be deferred since the present discussions are based on assumptions whose validity could not now be established.

The Representative of the United States agreed that withdrawal might be handled by arbitration, but felt it should follow a decision by the appropriate organ of the organization, thus presenting the arbital panel with findings upon which it could render an appropriate decision.

The Representative of Chile stated that Article XII of Doc. 10 does not contain any provision referring to loss or return of the capital provided by the withdrawing party. On the other hand, Article 28 of Annex A of Doc. 8 has a provision covering that matter. He suggested that the definitive arrangements should incorporate a clear provision on the subject, based on whatever the Conference decides regarding the loss or return of capital in case of such a withdrawal.

The Representative of the United Kingdom noted that the United States withdrawal provisions do not mention the capital of a withdrawing signatory and the operating agreement may require a covering clause.

The Representative of Algeria supported the comments of Chile and Colombia that the matter falls within the purview of Committee II.

The Representative of Syria associated himself with the point raised by the Representative of Chile regarding loss of capital.

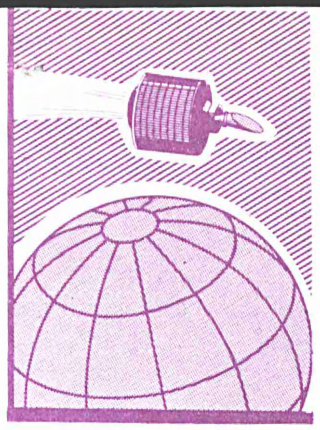
Procedure

The Chairman, noting that Committee III is presently discussing the financial rights and obligations of a withdrawing member, suggested further discussion be deferred until the Committee received a summary of Committee III discussions. He also asked that the Working Group submit its report on Monday's session. Thereafter the Committee would discuss the remaining Agenda items.

Adjournment

The session adjourned at 4:40 p.m., to reconvene on Monday, March 10, at 2:30 p.m.

* * *



# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/7 (Final)
March 17, 1969

SUMMARY RECORD - SEVENTH SESSION OF COMMITTEE II
MONDAY, MARCH 10, 1969

Convening of the Session

Chairman Ogiso convened the session at 2:45 p.m. He noted that the working group had submitted its report on legal status, but felt it appropriate that consideration be deferred until the members had an opportunity to study this important document. At his request, the Working Group's Chairman, the Representative of Brazil, introduced the report, noting that it is largely self-explanatory. A single recommendation had been impossible. A careful review at the next session might keep in mind the other than legal considerations involved, which might be within the perview of other committees.

Discussion of Item X, Number of Agreements

Chairman Ogiso noted that Committee I had asked that Committee II take up the question of number of agreements as early as possible because several items in the former's agenda depended on Committee II's conclusions on this subject. There was no objection to his suggestion that this topic be discussed next and then the Committee could return to its work schedule.

The Representative of the United Kingdom stated that there should be two agreements as in the interim arrangements. The post office is about to become a public corporation in the United Kingdom, and it is this entity which will finance telecommunications operations. Without two separate agreements, United Kingdom approval would require a special act of Parliament.

The Representatives of the United States, Italy, Peru, Chile, Mexico, Australia, the Philippines, Brazil, Argentina, Venezuela, Malaysia, Canada and Belgium agreed that there should be two agreements.

The Representatives of the United States, Venezuela and Malaysia felt the first should be an intergovernmental agreement and the second an operating agreement. The Italian Representative explained that the Italian telecommunications entity is an independent agency and the two agreements would conform better with Italian operational arrangements. The Representative of Peru stated

that Peru had just established a separate telecommunications entity and two agreements would be more convenient. The Representative of Chile expressed concern regarding the content of the two agreements, and suggested that Committee II consider what belongs in each.

The Representative of Australia agreed with the Representative of Chile that the subject matter of each agreement must also be considered by this Committee. For example, the final structure of the organization may affect the number of agreements necessary. Assuming the organizational form would permit two agreements, his delegation would support that proposal, the first agreement being among governments and the second an operating agreement, including provision for arbitration.

The Representative of the Philippines' endorsement of two agreements was related to the proposal that the organization be three-tiered. He also urged that the agreements include provisions on duration, arbitration, privileges and immunities and exemptions.

The Representative of Brazil felt since not only governments are involved but also telecommunications entities, some of which are private corporations, it is necessary to have at least two agreements. One would be among governments and the second among the commercial entities. At present there are three agreements, the intergovernmental, the special and the arbitration agreements. Are two or three agreements needed? The United States proposal, Doc. 10, annexes the arbitration provisions to the operating agreement. Brazil supports this proposal. Brazil would accept an arbitration clause in the intergovernmental agreement or as an annex thereto, but would not favor a separate agreement for arbitration. Brazil takes the same position regarding privileges and immunities. The Swedish proposal for only one agreement with an annex for by-laws of incorporation and arbitration should be discussed in another committee.

Chairman Ogiso noted that there seemed to be a consensus in the Committee supporting one agreement for governments and another for communications entities. He noted that it might be more appropriate to discuss where to place the arbitration provisions when the Committee considers Item VII, Settlement of Disputes. He thus suggested that the Committee limit its present discussion to the number of agreements and he asked if any delegation objected to two separate agreements.

The Representative of Sweden stated that, as indicated by his delegation's proposals, one agreement seemed appropriate, but his delegation could accept two separate agreements.

The Representative of France had no position, as yet, regarding the number of agreements because he agreed with the Representatives of Chile and Australia that it was important to know the content of the agreements. Two separate agreements, one among governments and the other among commercial entities might create difficult problems, for example, regarding arbitration. It might be difficult to determine whether the government or communications entity should be the party in an arbitration proceeding. The responsibility of the parties should be clear in the final agreements. The arguments in favor of two

agreements, which are based on national legal considerations, do not seem decisive because they may be contradictory. Moreover, numerous international commitments which link physical and juridical entities that have less relationship to the state than the telecommunications organizations are not divided into several texts. Anyway, as required by the Space Treaty, whatever solution is adopted it must be made very clear that, in the final analysis, the responsibility is that of the governments or of the Organization. In any case, there can be no question of creating a precedent in the matter in case of amendment or revision or in any other case.

The Representative of Chile, acknowledging the importance of two agreements, pointed out that problems may result when a government is not also a signatory to the operating agreement unless the agreements are carefully drawn. The intergovernmental agreement must provide for privileges and immunities because only governments can do that. It must also include an arbitration provision, because a dispute may arise solely between governments, withdrawal provisions to deal with that possibility, and amendment provisions so that that agreement may be altered. For the same reasons the operating agreement must also make provision for arbitration, withdrawal and amendment.

The Representative of Mexico felt that the legal status of signatories must be determined; because only then could the scope of their authority be known and consequently what should be included in the operating agreement.

The Representative of the Federal Republic of Germany preferred one agreement, but recognized the difficulties one agreement would present to a number of countries. The legal structure the organization would assume and the content of each agreement should influence the decision regarding the number of agreements.

The Representative of Canada felt the arbitration provisions, which the United States proposal makes an annex to the operating agreement, might be moved to the intergovernmental agreement. On privileges and immunities, a determination must be made as whether they should be included in a protocol adopted subsequent to the other agreements or embodied in the agreements themselves.

The Representative of the United Kingdom stated that there were few areas legally required to be included in the intergovernmental agreement: transfer of rights, granting of privileges and immunities, limitation of non-competition, eligibility of membership, arbitration and designation of entities to participate in the second agreement.

The Representative of the United States suggested that the discussion of the contents of the agreements be postponed until other Committees have reported. The Representative of Australia noted that the position presented by the Representative of the United Kingdom would probably require a treaty rather than an international executive agreement. The Representative of Brazil stated that the question of treaty as opposed to executive agreement was an internal matter dependent on the legal system of each country.

Chairman Ogiso stated that it appeared the Committee had reached a consensus that there should be two agreements. A number of delegations felt that this Committee should consider the content of the two agreements but he suggested that a fruitful discussion await the decisions of other Committees.

He also acknowledged that some questions might arise as a result of having designated entities as signatories to the operating agreement but he suggested that this matter could be examined at a later stage. There being no objection, he concluded that there was a consensus in support of two agreements.

Discussion of Item VI, Liability of Partners

Without objection, he suggested the Committee move on. Conclusion of the question of withdrawal, the Chairman noted, might await the decisions of other committees regarding financial obligations of signatories. Since there were no representatives wishing to address Item V, the Committee moved on to Item VI, Liability of Partners, inter se. The Chairman noted the question of third party liability was also before this Committee but he suggested it would be preferable,to avoid confusion, to discuss that issue separately when legal status is considered.

The Representative of the United States noted that Article 14 of the U.S. proposed operating agreement (Doc. 10), closely resembled Article 13 of the Special Agreement. The Representative of Chile observed the U.S. Article 14 would require radical change if legal status is granted since it must reflect the legal establishment of the entity, vis-a-vis the members.

The Representative of Mexico observed a meaningful solution would be difficult if not related to legal status since in a joint venture it is one of partnership relations, while in a legal entity it is the relation of the entity to its members. The Representative of Venezuela suggested deferring consideration until after discussing the Working Group's report.

The Representative of Brazil, while noting the relation between legal status and liability,thought the discussions could continue since the proposed Article 14 did not refer to partners but to "Signatories as such," and thus did not confine itself to either form of legal status. Article 14 exempts non-government signatories from liability for failure of the space segment, including the launch sequence, and leaves liability with governments, thus eliminating the need for liability insurance. Governments signing the definitive arrangements will expressly undertake international responsibility for accidents.

The Representative of Chile observed that the matter of liability in proposed Article 14 was directly related to legal personality; if personality existed the only entity responsible would be INTELSAT and not its partners or members, and no possibility for loss or damage being caused by a member arose. Thus he viewed legal personality as a determining factor in drafting this provision.

The Representative of Israel suggested that the discussion proceed with inter se liability since, regardless of the legal status, the organization as a whole should be liable rather than any single member. Responding to a request by the Chairman for clarification, the U.S. Representative stated the

United States viewed Article 14 as useful whether legal personality was conferred or not since a manager or a signatory may be given responsibility for launch services. He suggested discussion be postponed until legal status was considered further. The Chairman concurred.

Discussion of Item VII, Settlement of Disputes

The Representative of the Federal Republic of Germany noted the unanimous ICSC Report recommendation that arbitration provisions be part of the definitive arrangements which he took to mean both agreements. If the conference agreed the only action left is drafting and rearranging the Articles, and permitting states to be parties. He proposed a small working group, but the U.K. Representative suggested certain matters could usefully be discussed first. The Chairman, noting the Committee had developed the procedure of a general exchange of views before submitting an item to a working group suggested Committee consideration. The Representative of the United States described the proposed Article 15 of the operating agreement and the annex thereto (Doc. 10) as essentially the same as the present arbitration agreement. Some changes had seemed desirable: making the wording consistent with the proposed organizational structure; recommending explicitly that the term of a panel member commence on appointment of the seventh member; allowing a signatory to submit a replacement nomination; reducing the panel quorum from six to five; permitting the actions or non-actions of Parties to be the subject of arbitration; and including arbitration provisions in the Operating Agreement.

Responding to the Italian Representative, the Representative of Brazil felt the arbitration provisions should be in or annexed to the Intergovernmental Agreement, rather than the Operating Agreement since proposed Article 15 included both agreements in its terms of reference. Therefore, retention of arbitration in the Operating Agreement would raise questions concerning disputes between governments. He suggested the working group, when established, offer guidance on placement of the arbitration provisions either as a separate protocol or as part of the main agreements. The former would allow members to sign the main agreements without signing the protocol; however, he felt that under the definitive arrangements governments must accept arbitration of disputes. The Representative of the United States explained the U.S. had suggested a separate annex owing to its length and not through a desire for a separate protocol.

The Representative of the United Kingdom, viewing arbitration as an integral part of the definitive arrangements, supported a separate arbitration annex as part of the agreements instead of a separate protocol. It would be more appropriate,if governments are to be possible parties, to place the arbitration in the Intergovernmental rather than the Operating Agreement. The present scope of arbitration was reasonably satisfactory; determination of the obligation of both the organization and a withdrawing party might be added.

The Representative of Argentina noted it might be best to avoid compulsory arbitration. If a member was in doubt as to the arbitration provisions, including them in the main agreements might make a member reluctant to sign; a separate protocol might be helpful.

The Representative of Pakistan asked the Secretary to obtain information on the present arbitration panel: (1) the names of its members, (2) the chairman's name, (3) number of cases referred to it, and (4) the costs to date. The Secretary noted he would consult with the Manager and distribute the requested information. The Representative of Pakistan also stated that provision should be made for settlement of disputes between members regarding working of the Special Agreement.

The Chairman requested permission to move onto Items VIII and IX and suggested the United States Representative make introductory remarks on these matters as incorporated in its proposed agreements (Doc. 10).

Discussion of Item VIII, Amendment Provision

The Representative of the United States described Article XIV of its proposed Intergovernmental Agreement as a new article permitting any party or signatory to propose an amendment to the Board of Governors which would, in turn, submit it to the Assembly. The proposed Operating Agreement includes Article 17 which is similar to the present amendatory provision, Article 15, in the Special Agreement.

The Representative of Chile expressed concern on certain points in the U.S. proposal. Amendment of either agreement would be decided by the same body which would raise a problem where a Party to the Intergovernmental Agreement is not the Signatory to the Operating Agreement. The Operating Agreement should be amended by the Signatories and, the Intergovernmental Agreement by the Parties; a four-tier structure would avoid this problem. He expressed concern that an additional quorum requirement, namely, a percentage of the investment shares, would permit a member or small group of members to possess a veto power.

In response, the Representative of the United States compared amendment of the Operating Agreement by an assembly of governments to the present Conference. Further, although governments may adopt amendments to the Operating Agreement, Article 17 would leave approval to the signatories. He agreed that the quorum requirement could be left blank for determination by the Plenary Session.

Discussion of Item IX, Reservations

The Representative of the United States, by way of introducing this matter, noted that Article XII of the proposed intergovernmental agreement would not permit reservations, nor would the revised Article XII presented by the Brazilian Delegation in Com. II/8.

Establishment of Working Group

The Chairman, in response to a suggestion by the U.S. Representative that a working group might begin drafting the Committee's report to the Plenary Session, especially on those matters generally agreed, believed that most agenda items had not yet been sufficiently discussed with the possible exception of Item IV, Accession, Supersession and Buy-Out. Therefore, there being no

objection, a working group consisting of Brazil, Japan, Sweden, the United Kingdom and the United States was established to deal with Item IV. The Chairman noted that other delegations would be welcome to participate in or observe the work of the group.

Adjournment

The session adjourned at 5:30 p.m., to meet Wednesday, March 12, at 2:30 p.m., to consider the first Working Group's report and then discuss settlement of disputes, amendments and reservations.

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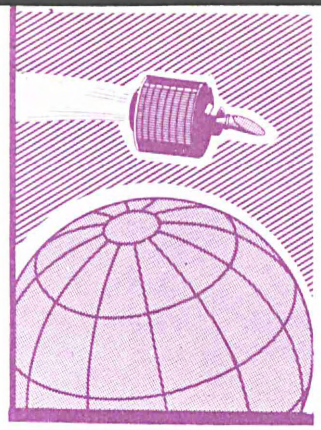

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/7
March 10, 1969

PROVISIONAL SUMMARY RECORD - SEVENTH SESSION OF COMMITTEE II
MONDAY, MARCH 10, 1969

Convening of the Session

Chairman Ogiso convened the session at 2:45 p.m. He noted that the working group had submitted its report on legal status, but felt it appropriate that consideration be deferred until the members had an opportunity to study this important document. At his request, the Working Group's Chairman, the Representative of Brazil, introduced the report, noting that it is largely self-explanatory. A single recommendation had been impossible. A careful review at the next session might keep in mind the other than legal considerations involved, which might be within the perview of other committees.

Discussion of Item X, Number of Agreements

Chairman Ogiso noted that Committee I had asked that Committee II take up the question of number of agreements as early as possible because several items in the former's agenda depended on Committee II's conclusions on this subject. There was no objection to his suggestion that this topic be discussed next and then the Committee could return to its work schedule.

The Representative of the United Kingdom stated that there should be two agreements as in the interim arrangements. The post office is about to become a public corporation in the United Kingdom, and it is this entity which will finance telecommunications operations. Without two separate agreements, United Kingdom approval would require a special act of Parliament.

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Note: Any changes or corrections in this Summary Record must be submitted to the Secretary General within 48 hours.

that Peru had just established a separate telecommunications entity and two agreements would be more convenient. The Representative of Chile expressed concern regarding the content of the two agreements, and suggested that Committee II consider what belongs in each.

The Representative of Australia agreed with the Representative of Chile that the subject matter of each agreement must also be considered by this Committee. For example, the final structure of the organization may affect the number of agreements necessary. Assuming the organizational form would permit two agreements, his delegation would support that proposal, the first agreement being among governments and the second an operating agreement, including provision for arbitration.

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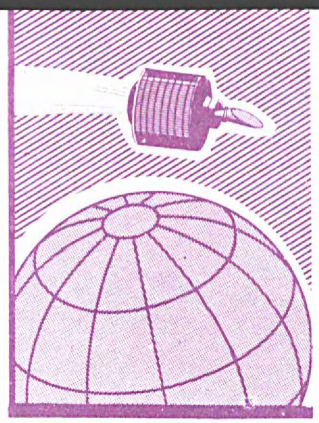

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/8
March 12, 1969

PROVISIONAL SUMMARY RECORD - EIGHTH SESSION OF COMMITTEE II
WEDNESDAY, MARCH 12, 1969

Convening of the Session

Chairman Ogiso convened the session at 2:50 p.m. He announced that the Steering Committee today requested all committees to complete their work by Monday, March 17, in order to report to the Plenary. It requested the Working Group report on Legal Status be submitted to Committee I for consideration in connection with the structure of the organization. As this report had already been broadly discussed in the Committee and Working Group, he asked if there was any further discussion prior to its referral to Committee I.

The Representative of Chile asked whether Committee II would make a decision on the report prior to referring it to Committee I or the Plenary.

Chairman Ogiso said that the Steering Committee had expressed its desire that Committees not vote on differing views but submit them to the Plenary, as it had been generally agreed to operate by consensus so far as possible. The Chairman suggested this procedure be followed for the Working Group report.

The Representative of the United Kingdom could not agree to submit an unamended report to Committee I because he felt it contained criticism by the minority of the majority position. A balanced presentation would require criticism of the minority position and he could only agree to a report where both sides were equally and freely presented. He felt the criticism of the majority position contained several inaccuracies, not only of what the majority advocated but also for what its report would contain. He referred to paragraph 1, page 2 of Annex B which disputes the statement that within the Consortium structure a signatory cannot perform legal actions except through a private corporation. The majority report on this subject states, on page 2, as follows: "As will be shown more fully later, under the present arrangements it is in practice impossible for the participants, although sovereign States, to perform legal actions except through a private corporation subject to local law or a Signatory." Thus, the unqualified statement in Annex B is incorrect. In Annex B, paragraph 2, the statement is made that the majority report alleges

Note: Any changes or corrections in this Summary Record must be submitted to the Secretary General within 48 hours.

a joint venture has no contractual capacity. This apparently refers to the statement on page 4 of the majority report which says a joint venture has no contractual capacity and, therefore, cannot be a party to a contract. The majority report statement was intended only to indicate that the joint venture could not contract as such, it did not deny it had capacity to contract through other parties. In the third paragraph of Annex B the statement is made that Signatories have no rights or claims directly against INTELSAT contractors. This refers to page 4 of the majority report which states it is doubtful at all whether the Signatories are parties to contracts and have any rights or claims against the other party to the contract which they could assert without going through one particular partner. This is different from the unqualified statement in paragraph 3 of Annex B. For these reasons the United Kingdom could not support the two parts of the Working Group report going to Committee I in unamended form.

The Representative of Korea suggested the Working Group meet again to try to resolve the differences. Chairman Ogiso felt that after so much effort, another Group meeting would probably not be fruitful. He asked the Chairman of the Working Group for his opinion. Speaking as Working Group Chairman, the Representative of Brazil felt that, despite every effort, consensus had been impossible; it was even difficult to agree on the manner in which the report should be presented.

The Representative of Chile felt the Working Group had concluded its task. He saw no contradiction in two opposing views being presented in the report; it should now be considered and if agreement could not be reached the Committee should vote on the report.

The Representative of the Philippines stated that the Working Group had discharged its responsibilities. He believed the report to be self-explanatory, presenting the two sides, and a reading of the criticism in the minority report would easily reveal its shortcomings. He, therefore, felt that the Summary Record of this debate should be included in the report submitted to Committee I and the Plenary. Chairman Ogiso agreed with this suggestion and said he would arrange for the Summary Record to be included in the report referred to Committee I and the Plenary.

The Representative of the Federal Republic of Germany supported the criticisms by the Representative of the United Kingdom regarding the submission of the report of the Working Group.

The Representative of France agreed with the Representative of the Federal Republic of Germany. He believed the normal procedure regarding working group reports had not been followed; opinions differing from a majority position were ordinarily presented in footnotes rather than in an independent critique.

The Representative of Switzerland supported the Philippine proposal and associated himself with the comments by the Representatives of the Federal Republic of Germany and the United Kingdom. He believed the procedure followed by the minority, to say the least, was extraordinary. If the minority position

had been presented in objective form, it could have taken the form taken by the majority position. If that course had been followed the advantages and disadvantages of either position would have clearly been set forth in a fair and objective manner.

The Representative of Argentina supported some of the views already expressed but reserved the right to comment on the substance of the report when such discussion is held before this or some other committee.

Chairman Ogiso felt there was a consensus in the Committee to follow the procedure earlier suggested by him. He hoped the substance of the report could now be discussed and he suggested that those delegations that had not participated in the Working Group express their views.

The Representative of Sweden endorsed the position presented by the Representative of the United Kingdom.

The Representative of the United Kingdom agreed that the summary record of this discussion be attached to the report of the Working Group. Paragraph 4 of Annex B of the minority report referred to relations with other organizations. The majority report was concerned with agreements not informal relations. No member of the majority would question that the joint venture could conduct informal relations and arrive at informal arrangements with an international specialized agency. What concerned the majority was that it was not possible to enter into an agreement.

The Representative of Switzerland endorsed the statements of the United Kingdom. There was in addition another area of misrepresentation in Paragraph 7 of the minority report regarding inventions, data, title to patents and the distribution of know-how. While a procedure had been worked out for the transfer of title from COMSAT to other signatories, there was considerable doubt that the distribution of know-how had been worked out and that this recently-adopted procedure worked well. It had encountered some difficulties and resistance. As to complete and non-discriminatory access by other parties, it has been suggested that a signatory could not go directly to the contractor but must go through a particular signatory to obtain data. In the process of doing so, a certain amount of censoring could be involved. The question was whether the partners of the consortium actually are co-owners of the patents, data, and know-how who can make use of patents, data and know-how without further permission.

The Representative of the United Kingdom, referring to paragraph 5, of the minority report, noted the statement that telecommunications entities have demonstrated their ability to protect their property and investments. But the point is overlooked that what is at issue is the protection of the property, not only of the telecommunications entities, but also of INTELSAT and its 68 co-owners. While certain telecommunications entities may sue in the courts of their own countries, very grave difficulties would be confronted in the courts of other countries. A problem would arise in the courts of some countries where

sovereign immunity was not waived. Another difficulty would be the necessity in some instances of bringing representative actions where authorization for such actions might be required or where the defense might wish to join other members. With regard to paragraph 6, it is stated that the United States would be capable of granting privileges and immunities; but the majority report reverted to previous statements that a number of countries would have difficulty in granting privileges and immunities if no legal personality were granted, or, if it were possible to do so, it would require a lengthy process involving legislation.

The Representative of Sweden pointed out that difficulty would arise with respect to sovereign immunity. Other than a tax exemption,no privileges and immunities would be granted.

The Representative of Canada believed the majority recommendation of the ICSC Report was significant in taking a position favoring legal personality. The joint venture had been an appropriate form to begin with but now that the organization had 68 members and contemplated definitive arrangements, it should be given truly international status. An international organization with legal personality offered clear functional and legal advantages in terms of capacity to contract and to own and dispose of property. With respect to privileges and immunities, there was doubt whether Canada could grant them unless a legal personality were involved.

The Representative of Mexico recalled his delegation's Document Com. II/6, dealing with the legal status most appropriate to the organization. After considering the discussion and Documents Com. II/8 and Com. II/9 the Mexican Delegation agreed with the majority position.

The Representative of France agreed that the organization should have a distinct legal personality for three specific reasons: (1) to attract new members to the organization it is psychologically essential that it be recognized by all countries; (2) partnership or joint ventures, while frequently used in the past, have been abandoned for more modern and flexible forms; (3) legally, for decisions taken by the organization to be easily implemented in all countries, it was necessary to have a form acceptable in all countries. A partnership or a joint venture is a much more complicated form. It would also be difficult to grant privileges and immunities to an organization without a legal personality.

The Representative of Austria favored a structure more in conformity with the purposes of the organization. A separate legal status was widely supported by a majority of the members and he associated his delegation with the majority view.

The Chairman said he would refer the report of the Working Group along with the Summary Record of the discussion just concluded to Committee I.

governments. This seemed best as the provisions would then cover all types of legal disputes that might arise under the two agreements. It would not be difficult to transfer the necessary provisions from the proposed Operating Agreement to the proposed Intergovernmental Agreement.

In response to a request for clarification by the Chairman, the Representative of the United States stated that the United States proposal was intended to include disputes between signatories to the Operating Agreement as well as those between parties to the Intergovernmental Agreement, and in this connection subscribed to the view of Brazil that the latter disputes be included.

The Representative of Korea felt that in order to cover all possible disputes the arbitration provisions should be included in the Intergovernmental Agreement.

The Chairman asked the Representative of the United States if the arbitration agreement might be attached to the Intergovernmental Agreement as well as the Operating Agreement. The United States Representative responded that he would have to consult his Government.

The Representative of Chile stated that any dispute arising from any cause or reason under the Intergovernmental Agreement should be subject to arbitration, with the only parties being the governments themselves or a government and INTELSAT. In disputes of an operational nature, the parties would be either the signatories themselves or a signatory and INTELSAT, assuming the latter had legal personality. In case there is a separate manager entity the Board of Governors should include it within the scope of arbitration procedures.

The Representative of Switzerland supported the view of the Representative of Brazil that the scope of the arbitration tribunal should be broad and should be part of the Intergovernmental Agreement and not the Operating Agreement. Furthermore, it was unacceptable that the appointment of the members of tribunal be by the Board of Governors or that a tribunal appointed in this manner could render a decision binding sovereign states.

The Representative of Mexico agreed it was absolutely essential that the arbitration provisions deal with both governments and signatories. The United States proposal approached the problem from the standpoint of the signatory to the Operating Agreement; governments as parties to the Intergovernmental Agreement would not be able to accept arbitration along those lines. Therefore, he felt that it would be necessary to have either two separate arbitration agreements or one agreement with two separate and distinct sections.

The Representative of the United Kingdom, concurring with Brazil and Switzerland, stated that it should be possible for the governments to be parties to arbitration, especially since a more complicated structure for INTELSAT might make the competence of the various organs of greater significance. For example, if a weighted-vote organ rendered a decision allegedly exceeding its powers, an aggrieved government party who felt the decision should have been taken by an organ with equal votes would be able to protect its vote. Furthermore, if governments were to be parties to arbitration, the provisions should be included

in the Intergovernmental Agreement. The Representative stated that he was satisfied with the scope of the present Supplementary Agreement on Arbitration. Specifically he noted that matters pertaining to withdrawal should definitely be a subject for arbitration. However, business and commercial decisions of the Board of Governors should not be subject to arbitration. Arbitration on matters between INTELSAT and third party contractors would be impractical since a contractor would rarely submit to arbitration by a panel selected by the other party.

The Representative of Argentina noted that arbitration between states is rather exceptional. Thus, if the arbitration agreement did not provide for the settlement of disputes between states, other means could possibly be provided. If the system of arbitration proposed by the United States included states as potential parties, a signatory would be in a position to force a state to submit to arbitration. However, it might be possible to have another type of arbitration applicable only to states, and in such a case the arbitration clauses would have to appear in both agreements.

The Representative of the United States noted that disputes might be intertwined between the Intergovernmental and Operational Agreements; it would be difficult to function with two different arbitral procedures. It would seem better to try to solve the problem with one agreement rather than two.

The Representative of the Philippines supported arbitration with respect to signatories and the commercial aspects of the organization and reserved his position on arbitration between states.

The Representative of Brazil referred to the intervention of the Representative of Argentina and noted that a signatory could not effectively institute arbitration against its own designated government since elsewhere in the agreement there would be a provision (like that in the present Interim Arrangements) that relationships between a party and its signatory were matters for domestic resolution. In response the Representative of Argentina observed that such a clause did not mean that a procedure could not be instituted. There was also a possibility of similar difficulties if two or three states designated the same signatory.

The Representative of Chile asked what would happen if a dispute arose between a government, signatory to the Operating Agreement, and a non-governmental telecommunications entity which was the signatory of another country. The Representative of Argentina replied that his government would not accept suit brought by any signatory to the Operating Agreement but a suit could be brought against the Argentinian entity signatory to that agreement.

The Chairman inquired about the appointment by the Board of Governors of members to the panel from which presidents of tribunals would be selected. In response the Representative of the United States said this seemed appropriate to the organizational structure recommended. However, Committee I was presently debating the structure of the organization; this Committee might merely note opposing views and leave the final decision to the Plenary.

Discussion of Item VII, Settlement of Disputes

The Chairman indicated that in connection with this topic there were two concrete proposals by Sweden and the United States, namely, Docs. 8 and 10, respectively. He suggested the discussion take these proposals into account but could, of course, go further if so desired.

The Representative of Sweden was concerned that under Article 2 of Annex A of Doc. 10 (United States proposed Arbitration Agreement), the members of the panel from which the president would be chosen for an arbitral tribunal could be appointed by the weighted voting of the Board of Governors. He compared this with Article VI(10) of the Swedish proposal (Doc. 8) which would have the Assembly members,each with one vote, elect the tribunal.

The Representative of France felt the rules for settling disputes between states should be as close as possible to those normally applied in public international law; for other disputes, such as commercial ones, the procedures should be such as to resolve these as soon as practicable. Each state should have an equal voice in selecting the panel and the latter should be completely independent.

The Representative of Chile noted that if INTELSAT is given legal personality, Article 1 of the United States Annex A should reflect that the only parties would be INTELSAT and the signatories and not include the Board of Governors or the Assembly. The Representative of the United States noted this would be true whether INTELSAT was given legal personality or not, and it could be provided elsewhere in the agreement who would represent the organization.

The Representative of Pakistan suggested that the arbitral provisions remain flexible to cover both legal disputes and operational disputes between signatories.

In response to a question of the Representative of the Philippines the Representative of the United States stated it was traditional for an arbitral tribunal to determine whether a matter was within its scope of jurisdiction; and the United States arbitral provisions were intended to resolve all foreseeable types of disputes. If others should arise in the future they might be settled under applicable principles of law.

The Representative of Argentina asked why Article 15 of the proposed Operating Agreement refers to "Parties" while Article 1 of Annex A does not. The Representative of the United States noted he was not in a position to answer at this time.

The Representative of Brazil, after reviewing the proposals of both the United States and Sweden noted that settlement of disputes between governments was not included in the provisions. The Committee should initially decide if it should recommend that the arbitral provisions also include disputes between

The Representative of Japan noted a fundamental difference between disputes arising from the application and interpretation of the Intergovernmental Agreement and those arising under the Operating Agreement. As to the former, some means for settlement would be necessary but it was doubtful that arbitration would be satisfactory. As to the latter, a commercial form of arbitration was preferable.

The Representative of Mexico believed there must be a difference between the two types of arbitration agreements since a sovereign power would not submit to arbitration on a basis equal with a commercial concern.

The Representative of Australia doubted whether it was necessary or desirable to annex the arbitration agreement to the Intergovernmental Agreement. He could not think of any dispute which could not be brought under an agreement annexed to the Operating Agreement, i.e., between signatories, or between a signatory and an organ of INTELSAT. Under Article 10 of the United States Annex, if a signatory went to arbitration with either the Assembly or the Board of Governors, the decision of the tribunal would be binding on the respondent organ as well as on all of the signatories or parties, respectively.

The Representative of Chile subscribed to the previous intervention of Mexico. A mechanism for arbitration between signatories would be necessary but it was difficult to determine whether an arbitration agreement was needed to decide disputes between states. For instance, if the Intergovernmental Agreement does not define any rights and obligations between the parties, such a mechanism may not be necessary. Therefore, the Committee should await the definition of the substance composing the two agreements before deciding on the need for arbitration between states. It would be advisable to set up an arbitral mechanism in the Operating Agreement not only for disputes between signatories but also between signatories and INTELSAT if it has legal personality.

By way of summary, the Chairman identified two questions facing the Committee: (1) The necessity for an arbitration provision under the Operating Agreement on which there appeared to be a definite, favorable consensus. (2) The necessity for a procedure for settlement of disputes arising between parties to the Intergovernmental Agreement; on this the views of the members were divided. As suggested by the Representative of Chile, it might be better to withhold a decision on interparty disputes until the substance of the Intergovernmental Agreement became more definite. Arbitration was not the only procedure for the settlement of a dispute between states; governments could choose other methods. For these reasons, he felt that the second question might require more time before a decision could be reached. He therefore proposed that a working group be appointed at this time to study arbitral provisions applying between signatories and between signatories and the organization.

The Representative of the United States suggested that in view of the short amount of time, the working group should also cover the settlement of disputes arising between states under the Intergovernmental Agreement. There would seem to be no necessity to know in advance the substantive provisions of an agreement before deciding on arbitration provisions; an arbitral mechanism was preferred to the International Court of Justice and the delay associated therewith.

The Representative of Brazil thought if governments were going to sign the Operating Agreement it might then become necessary to have a mechanism for settlements of disputes between such governments and the organization. The Representative of Argentina noted that in signing the Operating Agreement a government was doing so in a commercial or telecommunications capacity and not necessarily in a purely sovereign capacity.

The Representative of the United States observed that disputes could arise under the Intergovernmental Agreement and that actions of signatories could affect governments. Therefore, he felt there should be a comprehensive arbitration agreement applying both to parties and to signatories and to matters under both the Intergovernmental and Operating Agreements.

The Chairman indicated that the mandate of the working group could be expanded to include parties in matters arising under the Intergovernmental Agreement. If the working group was unable to reach an agreement as to this it could so report to the Committee. The Representative of the Federal Republic of Germany cautioned against terms of reference that are too broad.

The Representative of the United Kingdom believed the working group should try to establish whether or not governments should be parties, and identify any differences and the grounds for them. In this suggestion, he was joined by the Representative of the United States who thought nothing further could be done in this Committee or Committee I to assist the working group in its task.

The Chairman, noting that the majority seemed to prefer that the working group deal with all questions under this item, stated that the working group would consider the following matters relating to arbitration:

1. Arbitration procedures between signatories to the Operating Agreement and between a signatory and the organization.

2. Arbitration procedures between parties to the Intergovernmental Agreement, as well as the question of whether such procedures are necessary.

3. The criteria for appointing the tribunal.

4. The differences, if any, which may arise depending on whether the organization has legal personality.

5. The location of the arbitration provisions in the Definitive Arrangements.

6. Such other issues as the working group deems appropriate.

The Chairman suggested that the working group use the U.S. and Swedish drafts as possible bases for their consideration and attempt to produce a single report with respect to the question of arbitration. It was decided that the working group would be made up of the following delegations: Brazil, Chile, France, Japan, Mexico, the Philippines, Sweden, Switzerland, Tunisia, the United Kingdom, and the United States. It was further suggested, for the sake of expediency, that the working group prepare its report in the form of a

report from this Committee to the Plenary, it being understood that the Committee would have the right to amend or revise any or all of the report as it desired before it was submitted to the Plenary.

Discussion of Procedure

In response to inquiries from the Representatives of Chile and Mexico, the Chairman explained that the Steering Committee had agreed that because the report of the working group on legal status bore a close relationship to the question of structure, it be sent to Committee I for its use and information during its consideration of the question of structure. He reiterated that the Summary Record of today's session would be attached to the submission. The Chairman noted that the report was provided to Committee I to enable it to consider the question of the structure of INTELSAT in the broadest possible scope and was not meant to be a conclusive report of this Committee, and agreed to so indicate in his transmission to Committee I. The Chairman noted that this was an exceptional case and was not intended to establish a precedent in regard to other reports which, unless otherwise decided, would be sent by this Committee to the Plenary.

The Representative of France had no objection to exchange of documents for information purposes between the various Committees. As to working group documents, divergent views should all be reflected in order to assist the Committee and permit the Plenary to note the various views.

Establishment of the Working Group on Privileges and Immunities

The Chairman suggested that the same working group also concern itself with the question of privileges and immunities, Item III. He noted that this had already been discussed in the Committee but that reference to a working group had been deferred until the report on the legal status had been submitted.

The Representative of Japan sought to determine whether the working group would consider the question of INTELSAT's immunity from taxation as proposed in Article XIII(b) of the U.S. draft Intergovernmental Agreement. The Chairman stated that this would be left to the working group.

Agenda for the Ninth Session

The Chairman proposed that the Committee take up first at its next session Item IV (Accession, Supersession and Buy-Out) if the report of that working group is available. The Committee could next take up Item VIII (Amendment Processes), Item IX (Reservations) and Item VI (Liability of Partners Inter-Se). If Committee III has reached some conclusions on the subject of withdrawal, Item V (Withdrawal Provisions) might be discussed.

Adjournment

This session was adjourned at 6:30 p.m. The next meeting was scheduled for 2:30 p.m. on Friday, March 14, 1969.

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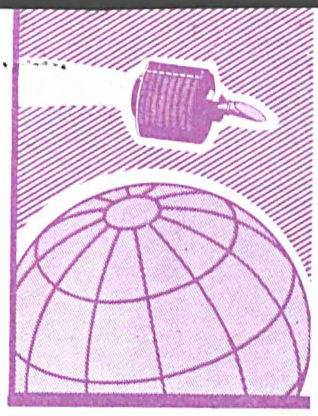

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/9(Final)
March 20, 1969

SUMMARY RECORD - NINTH SESSION OF COMMITTEE II
FRIDAY, MARCH 14, 1969

Convening of the Session

Chairman Ogiso convened the session at 2:55 p.m.

Report of Working Group on Accession, Supersession, and Buy-Out

The Working Group Chairman, the Representative of the United Kingdom, reported almost unanimous agreement on entry into force, including whether unanimous consent of present members and a fixed percentage of investment should be prerequisites. Regarding the transfer of rights from the interim to the definitive arrangements, the group proposed two alternatives, assuming the organization was granted legal personality. Under the first, the rights and obligations of the members under the Interim Arrangements would be transferred to the signatories under the definitive arrangements; under the second, the rights and obligations would be transferred to INTELSAT. With respect to buy-out unanimous agreement was reached on various principles.

The Representative of Chile observed that the Working Group report read as if it were a final Committee document, but it is yet to be determined whether the majority and minority positions reflect the entire Committee. Regarding Article XI, the Conference had not yet decided whether ITU membership would be required to participate in INTELSAT. Regarding Article XII, his delegation did not concur that a percentage of the investment should be required, although it was acceptable that a greater percentage than a simple majority would be necessary for the agreements to enter into force. The provision on transfer of rights, should apply only to those who accede to the definitive arrangements.

The Representative of Korea stated that under Article XII(c), in theory, provisional application would continue forever if a government did not state its intention of withdrawing and did not deposit the instrument as provided. A one year limitation should be attached.

The Representative of Sweden stated that his delegation was about to submit a statement setting forth its position on the Working Group report. The Interim Agreements cannot be interpreted as permitting a majority to bring definitive arrangements into force with effect of expropriating the shares of the minority.

The Swiss Representative could not accept entry into force being dependent on agreement by those countries owning a certain percentage of the investment. He agreed with the Chilean view that the majority required for entry into force could be higher than two-thirds. He supported the second alternative regarding transfer of rights and obligations of the present members to INTELSAT.

The Representative of France stated that the new agreements could enter into force only by unanimous consent of the present members and that entry into force should not be related to any percentage of investment. The transfer of rights and obligations was linked to other aspects of the Agreements and it should be dealt more precisely.

The Representative of the United Kingdom agreed with Articles, XI, XII, XIII, and XVII in the report and with the second alternative regarding the transfer of rights and obligations because otherwise INTELSAT would have difficulty in obtaining credit for its operations and could not function without the consent of all members.

The Representative of Sweden supported the second alternative on the transfer of rights and obligations but reserved on the exact phrasing.

The Representative of Canada generally associated himself with Articles XI, XII, XIII, and XVII in the report and the buy-out provisions. He favored the second alternative on transfer of rights and obligations as the first would defeat attempts to give the organization legal status.

The Representative of Brazil suggested that, since less than one-third the present members hold more than a majority of the investment shares, the decision regarding a requirement of percentage of investment for entry into force should be left to Committee I as it is a political decision. Therefore, the percentage for the majority of shares should be left blank. He suggested Article XII include a provision for provisional application for the transfer of rights and obligations. No legal impedement existed with respect to either alternative. The choice is based on political considerations and, therefore, should be left to the Plenary. Regarding buy-out, the three principles in the report should be presented as texts to the Plenary.

The Representative of the Federal Republic of Germany favored the proposal in Article II(b).

The Representative of the United Kingdom stated that most rights and obligations inter se would lapse with the termination of the Interim

Arrangements except, for example, provisions relating to safeguarding of investments and the rights and obligations of members to third parties.

The Representative of the United States agreed with the Brazilian view that the ownership of the space segment by signatories of INTELSAT should be decided by the Plenary. As to the Korean suggestion, for a time limit on provisional acceptance, he did not believe it necessary as this was an internal matter. International obligations would be the same were the acceptance provisional or definitive.

The Chairman asked members' views regarding the suggestion for a time limitation. The Representative of Canada was still undecided on the exact distinction between provisional and definitive acceptance. The Representative of Algeria asked what the legal status would be if a country initially accepted the agreements with reservations and then withdrew. The Representative of Brazil said that the majority view in the Working Group was no distinction existed between provisional and definitive acceptance. The minority view which his delegation shared, felt there was a distinction. Provisional entry into force is relatively new in international law and its exact implications are undefined. He felt an important distinction exists between acceptance with reservation and unconditional acceptance as the former was tantamount to acceptance unless annulled which is different from unconditional acceptance. The agreements should reflect these differences, allowing different rights and obligations for the different forms of acceptance.

Chairman Ogiso suggested that as no agreement had been reached for a time limitation for definitive acceptance the report would be submitted to the Plenary with a footnote indicating this alternative. The Representative of Korea concurred.

The Representative of Argentina asked what would happen under Article XII(c) if the Definitive Arrangements are not ratified within the 18-month period. The Representative of the United Kingdom replied the Working Group considered 18 months sufficient for the legislative processes of all countries to accede. If an insufficient number of countries acceded within 18 months it would be necessary to call another conference to alter the draft of Definitive Arrangements.

Chairman Ogiso noted he understood the United Kingdom believed 18 months was sufficient time for all countries to complete their Parliamentary procedures since only signature was involved, not ratification and approval. If governments had not signed within 18 months there was little possibility they would sign.

The Representative of the Philippines supported Articles XI, XIII, and XVII as well as the principles regarding buy-out. He suggested clarifying Article XII(a) by deleting the last sentence and inserting part of it in the first sentence. The Representatives of the United States and the United Kingdom felt the alterations might create more ambiguties than clarification.

The Representative of Korea suggested the paragraph include a provision for acceptance by a percentage of the financial investment. The Chairman thought this was for the Plenary to decide, noting that the report would reflect all views.

The Observer from Ghana questioned the appropriateness of designating the Governing Body to determine financial conditions under Article XII(d). The Representative of the United States indicated it was not the intention to determine in this Committee the structure or function of any particular organ of the Organization.

The Representative of Mexico in principle agreed with the content of Com. II/10 for refering it to the Plenary, while reserving the right to make comments or clarifications. He noted some translation problems on legal terminology in the Spanish text and suggested an editing group be established.

The Representative of Argentina reserved his position on the report on accession, supersession and buy-out which he viewed the Committee as having generally approved.

The Representatives of Mexico, Brazil and Algeria suggested that some legal terms in the report might be translated more precisely. The Chairman asked that any translation refinements be reported to the Secretariat.

Chairman Ogiso asked if the Committee could adopt the Working Group report. The Representative of Sweden, noted that the Report had not been available until this morning, asked that discussion be kept open.

The Representative of the United Kingdom drew attention to the blank on Page 5 of the Report and explained this blank should be filled in to indicate which alternative the Committee favored on the transfer of rights and obligations. The Representative of Chile noted that he wanted the minority view explained in greater detail if the Committee agreed to submit the report as the majority view.

The Representative of the United Kingdom noting previous Committee discussions observed that a majority seemed to prefer alternative two, the transfer of rights and obligations to INTELSAT. The Chairman, noting no objection, declared alternative two the majority view but deferred a decision on the report until the next meeting. The United States objected to deferral as the views of the delegates had been expressed in earlier Committee discussions and could be further expressed at the Plenary.

Discussion of Item X - Amendment Processes

The Representative of the United States referenced Article XIV of the draft Intergovernmental Agreement and Article 17 of the proposed Operating Agreement, (Doc. 10), as a suggested method for providing for amendment processes. References to various organs by name was not an attempt to establish in this Committee the structure or responsibility of the various organs.

The Representative of Chile noted that under a three-tier structure a problem could arise in that governments, party to the Intergovernmental Agreement, could decide amendments to the Operating Agreement, even though various signatories to that agreement were private entities and not governments. He did no see how any collegiate body could undergo changes which its members did not approve. For this reason, he favored a four-tier structure with an assembly of signatories. The Representative of the United States noted that it would be a domestic matter between an individual government and the signatory as to who would cast its vote in an Assembly considering an amendment, and that it was quite similar to the present Conference where governments are negotiating an operational agreement that will subsequently be signed by designated signatories. The Representative of Argentina concurred. The Representative of Chile felt this matter might need further study.

The Representative of Argentina understood the operating agreement to be merely an accessory to the intergovernmental agreement. He sought clarification whether the proposed amendment machinery would enable the Board of Governors to block amendments, and whether an Assembly decision on an amendment would be subject to arbitration under proposed Article XV. The Representative of the United States replied that under this draft, although the Board of Governors could recommend against an amendment, it could not block it and must forward it to the Assembly. On the second question it was not intended that a decision of the Assembly on an amendment be subject to arbitration.

The Representative of the United Kingdom was satisfied generally with proposed Article XIV, but noted that adequate discussion in the Assembly prior to a vote on an amendment would be necessary, and, further, that last minute proposals should be avoided. He proposed at least three months notice be required before a meeting of the Assembly to consider an amendment. The Representative of the United States felt a more flexible rule would be preferable as the infrequency of Assembly meetings would pose a problem with setting a definitive notice period. The Representative of Brazil did not see how the definitive arrangements could be legally amended without the participation of all governments. Both agreements should be capable of being amended by an Assembly comprised of governments on the recommendation of the Board of Governors, without any further approvals or considerations.

The Representative of the United States noted its draft was based on an Assembly made up of parties or signatories as determined by the respective governments. While it would be difficult for an Assembly of signatories to amend the Intergovernmental Agreement, it would likewise be difficult for an Assembly of Governments, without the signatories, to amend the operating agreement.

The Representative of Chile disagreed with the Representative of Brazil. Nothing in the Special Agreement indicated that private signatories were considered representatives of Governments. A solution would be to distinguish clearly the commercial function of the telecommunications entities, signatory to the operating agreement, from public functions by putting the former only in the Operating Agreement and the latter in the Intergovernmental Agreement. Noting that the operating agreement will be an international agreement, he felt it would require domestic approval only in those jurisdictions where the Government was the signatory. The Representative of Peru suggested that there was a contradiction in logic in letting a commerical signatory propose an amendment to an intergovernmental agreement. The Representative of Sweden drew attention to the amendatory provisions in the Swedish draft, namely Articles VI (3), and XII(b) (i) of the Organization Agreement and Articles 11 (v) and 29 of the Statute of the Corporation. He further stated that in as much as the Swedish draft separated the public and commercial functions it was proper for the Governing Body to regulate its activities.

The Representative of Brazil noted that the clear distinction between public and commercial functions in the Swedish draft supported his previous argument. He referenced Article 29 (c) of the proposed Swedish Statute which would require immediate approval by the Organization of any increase in capital voted by the Board of Governors. Such approval was necessary since the Corporation cannot be altered without the consent of the States which created it. Recognizing that a two step process may be necessary for amendment of either Agreement, it would not be possible for the signatory to the Operating Agreement to amend it without the approval of the states. The Representative of Chile noted he had referred to the Swedish document not necessarily to give support to its suggested amendment procedure but rather to note that it clearly separates public and commercial functions. He also noted that the Definitive Arrangements would provide that relations between a government and its signatories were a matter of domestic concern.

The Representative of France stated that regardless of the structure of INTELSAT, decisions pertaining to amendments should be submitted for the approval and ratification of the States.

Discussion of Item IX, Reservations

The Representative of the United States noted that Article XI (d), in the Annex to Com. II/10, provided that there should be no reservations to the proposed Intergovernmental Agreement. He observed, however, that this would not preclude signature subject to later ratifications or approvals.

The Representative of France noted that Article XI (d) appeared feasible at this time but he would be unable to give a definitive opinion until the final text of the Agreement is known, and, therefore, thought that the matter should be postponed to a later stage. The Representatives of Sweden, the Federal Republic of Germany and Syria supported the French statement.

The Chairman, noting the views of the delegates, proposed that the Report of this Committee to the Plenary should note that while there was no substantial objection to the United States draft proposal the delegates found it difficult to commit themselves without knowing the contents of the final agreement. The Representative of Mexico supported the Chairman's suggestion.

Procedure

After noting the views of several delegates and the requirement that this Committee's Report be submitted by Tuesday, March 18, so that it could be taken up by the Plenary, the Chairman asked Working Group II/B to meet on Saturday, March 15 at 2:30 p.m. to complete its work on settlement of disputes, privileges and immunities, and to take up item VIII, Amendment Processes. This would enable the Committee to consider at its next session the Report of this Working Group as well as the Report on Accession, Supersession, and Buy-out. In addition, the Committee will at that time consider further the items of Liabil and Withdrawal, and prepare its final report for the Plenary.

The Representative of Algeria stated that he represented his delegation both in Committee I and II, and since those committees would be meeting at the same time on Monday, he reserved his position as to any decision taken in Committee II during his absence.

Adjournment

The session was adjourned at 6:30 p.m. The next session is scheduled for Monday, March 17, at 10:00 a.m.

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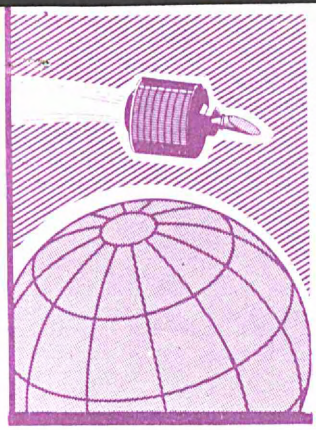

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/9
March 14, 1969

PROVISIONAL SUMMARY RECORD--NINTH SESSION OF COMMITTEE II
FRIDAY, MARCH 14, 1969

Convening of the Session

Chairman Ogiso convened the session at 2:55 p.m.

Report of Working Group on Accession, Supersession, and Buy-Out

The Working Group Chairman, the Representative of the United Kingdom, reported almost unanimous agreement on entry into force, including whether unanimous consent of present members and a fixed percentage of investment should be prerequisites. Regarding the transfer of rights from the interim to the definitive arrangements, the group proposed two alternatives, assuming the organization was granted legal personality. Under the first, the rights and obligations of the members under the Interim Arrangements would be transferred to the signatories under the definitive arrangements; under the second, the rights and obligations would be transferred to INTELSAT. With respect to buy-out unanimous agreement was reached on various principles.

The Representative of Chile observed that the Working Group report read as if it were a final Committee document, but it is yet to be determined whether the majority and minority positions reflect the entire Committee. Regarding Article XI, the Conference had not yet decided whether ITU membership would be required to participate in INTELSAT. Regarding Article XII, his delegation did not concur that a percentage of the investment should be required, although it was acceptable that a greater percentage than a simple majority would be necessary for the agreements to enter into force. The provision on transfer of rights, should apply only to those who accede to the definitive arrangements.

The Representative of Korea stated that under Article XII(c), in theory, provisional application would continue forever if a government did not state its intention of withdrawing and did not deposit the instrument as provided. A one year limitation should be attached.

Note: Any changes or corrections in this Summary Record must be submitted to the Secretary General within 48 hours.

The Representative of Sweden stated that his delegation was about to submit a statement setting forth its position on the Working Group report. The Interim Agreements cannot be interpreted as permitting a majority to bring definitive arrangements into force. No language in the Interim Agreements indicates this authority and the absence of any amendment provisions in the Intergovernmental Agreement implies that unanimous consent is necessary. He reserved the right to comment further.

The Swiss Representative could not accept entry into force being dependent on agreement by those countries owning a certain percentage of the investment. He agreed with the Chilean view that the majority required for entry into force could be higher than two-thirds. He supported the second alternative regarding transfer of rights and obligations of the present members to INTELSAT.

The Representative of France stated that the new agreements could enter into force only by unanimous consent of the present members and that entry into force should not be related to any percentage of investment. The transfer of rights and obligations was linked to other aspects of the Agreements and it should be dealt more precisely.

The Representative of the United Kingdom agreed with Articles, XI, XII, XIII, and XVII in the report and with the second alternative regarding the transfer of rights and obligations because otherwise INTELSAT would have difficulty in obtaining credit for its operations and could not function without the consent of all members.

The Representative of Sweden supported the second alternative on the transfer of rights and obligations but reserved on the exact phrasing.

The Representative of Canada generally associated himself with Articles XI, XII, XIII, and XVII in the report and the buy-out provisions. He favored the second alternative on transfer of rights and obligations as the first would defeat attempts to give the organization legal status.

The Representative of Brazil suggested that, since less than one-third the present members hold more than a majority of the investment shares, the decision regarding a requirement of percentage of investment for entry into force should be left to Committee I as it is a political decision. Therefore, the percentage for the majority of shares should be left blank. He suggested Article XII include a provision for provisional application for the transfer of rights and obligations. No legal impedement existed with respect to either alternative. The choice is based on political considerations and, therefore, should be left to the Plenary. Regarding buy-out, the three principles in the report should be presented as texts to the Plenary.

The Representative of the Federal Republic of Germany favored the proposal in Article II(b).

The Representative of the United Kingdom stated that most rights and obligations inter se would lapse with the termination of the Interim

Arrangements except, for example, provisions relating to safeguarding of investments and the rights and obligations of members to third parties.

The Representative of the United States agreed with the Brazilian view that the ownership of the space segment by signatories of INTELSAT should be decided by the Plenary. As to the Korean suggestion, for a time limit on provisional acceptance, he did not believe it necessary as this was an internal matter. International obligations would be the same were the acceptance provisional or definitive.

The Chairman asked members' views regarding the suggestion for a time limitation. The Representative of Canada was still undecided on the exact distinction between provisional and definitive acceptance. The Representative of Algeria asked what the legal status would be if a country initially accepted the agreements with reservations and then withdrew. The Representative of Brazil said that the majority view in the Working Group was no distinction existed between provisional and definitive acceptance. The minority view which his delegation shared, felt there was a distinction. Provisional entry into force is relatively new in international law and its exact implications are undefined. He felt an important distinction exists between acceptance with reservation and unconditional acceptance as the former was tantamount to acceptance unless annulled which is different from unconditional acceptance. The agreements should reflect these differences, allowing different rights and obligations for the different forms of acceptance.

Chairman Ogiso suggested that as no agreement had been reached for a time limitation for definitive acceptance the report would be submitted to the Plenary with a footnote indicating this alternative. The Representative of Korea concurred.

The Representative of Argentina asked what would happen under Article XII(c) if the Definitive Arrangements are not ratified within the 18-month period. The Representative of the United Kingdom replied the Working Group considered 18 months sufficient for the legislative processes of all countries to accede. If an insufficient number of countries acceded within 18 months it would be necessary to call another conference to alter the draft of Definitive Arrangements.

Chairman Ogiso noted he understood the United Kingdom believed 18 months was sufficient time for all countries to complete their Parliamentary procedures since only signature was involved, not ratification and approval. If governments had not signed within 18 months there was little possibility they would sign.

The Representative of the Philippines supported Articles XI, XIII, and XVII as well as the principles regarding buy-out. He suggested clarifying Article XII(a) by deleting the last sentence and inserting part of it in the first sentence. The Representatives of the United States and the United Kingdom felt the alterations might create more ambiguties than clarification.

The Representative of Korea suggested the paragraph include a provision for acceptance by a percentage of the financial investment. The Chairman thought this was for the Plenary to decide, noting that the report would reflect all views.

The Observer from Ghana questioned the appropriateness of designating the Governing Body to determine financial conditions under Article XII(d). The Representative of the United States indicated it was not the intention to determine in this Committee the structure or function of any particular organ of the Organization.

The Representative of Mexico in principle agreed with the content of Com. II/10 for refering it to the Plenary, while reserving the right to make comments or clarifications. He noted some translation problems on legal terminology in the Spanish text and suggested an editing group be established.

The Representative of Argentina reserved his position on the report on accession, supersession and buy-out which he viewed the Committee as having generally approved.

The Representatives of Mexico, Brazil and Algeria suggested that some legal terms in the report might be translated more precisely. The Chairman asked that any translation refinements be reported to the Secretariat.

Chairman Ogiso asked if the Committee could adopt the Working Group report. The Representative of Sweden, noted that the Report had not been available until this morning, asked that discussion be kept open.

The Representative of the United Kingdom drew attention to the blank on Page 5 of the Report and explained this blank should be filled in to indicate which alternative the Committee favored on the transfer of rights and obligations. The Representative of Chile noted that he wanted the minority view explained in greater detail if the Committee agreed to submit the report as the majority view.

The Representative of the United Kingdom noting previous Committee discussions observed that a majority seemed to prefer alternative two, the transfer of rights and obligations to INTELSAT. The Chairman, noting no objection, declared alternative two the majority view but deferred a decision on the report until the next meeting. The United States objected to deferral as the views of the delegates had been expressed in earlier Committee discussions and could be further expressed at the Plenary.

Discussion of Item X - Amendment Processes

The Representative of the United States referenced Article XIV of the draft Intergovernmental Agreement and Article 17 of the proposed Operating Agreement, (Doc. 10), as a suggested method for providing for amendment processes. References to various organs by name was not an attempt to establish in this Committee the structure or responsibility of the various organs.

The Representative of Chile noted that under a three-tier structure a problem could arise in that governments, party to the Intergovernmental Agreement, could decide amendments to the Operating Agreement, even though various signatories to that agreement were private entities and not governments. He did no see how any collegiate body could undergo changes which its members did not approve. For this reason, he favored a four-tier structure with an assembly of signatories. The Representative of the United States noted that it would be a domestic matter between an individual government and the signatory as to who would cast its vote in an Assembly considering an amendment, and that it was quite similar to the present Conference where governments are negotiating an operational agreement that will subsequently be signed by designated signatories. The Representative of Argentina concurred. The Representative of Chile felt this matter might need further study.

The Representative of Argentina understood the operating agreement to be merely an accessory to the intergovernmental agreement. He sought clarification whether the proposed amendment machinery would enable the Board of Governors to block amendments, and whether an Assembly decision on an amendment would be subject to arbitration under proposed Article XV. The Representative of the United States replied that under this draft, although the Board of Governors could recommend against an amendment, it could not block it and must forward it to the Assembly. On the second question it was not intended that a decision of the Assembly on an amendment be subject to arbitration.

The Representative of the United Kingdom was satisfied generally with proposed Article XIV, but noted that adequate discussion in the Assembly prior to a vote on an amendment would be necessary, and, further, that last minute proposals should be avoided. He proposed at least three months notice be required before a meeting of the Assembly to consider an amendment. The Representative of the United States felt a more flexible rule would be preferable as the infrequency of Assembly meetings would pose a problem with setting a definitive notice period. The Representative of Brazil did not see how the definitive arrangements could be legally amended without the participation of all governments. Both agreements should be capable of being amended by an Assembly comprised of governments on the recommendation of the Board of Governors, without any further approvals or considerations.

The Representative of the United States noted its draft was based on an Assembly made up of parties or signatories as determined by the respective governments. While it would be difficult for an Assembly of signatories to amend the Intergovernmental Agreement, it would likewise be difficult for an Assembly of Governments, without the signatories, to amend the operating agreement.

The Representative of Chile disagreed with the Representative of Brazil. Nothing in the Special Agreement indicated that private signatories were considered representatives of Governments. A solution would be to distinguish clearly the commercial function of the telecommunications entities, signatory to the operating agreement, from public functions by putting the former only in the Operating Agreement and the latter in the Intergovernmental Agreement. Noting that the operating agreement will be an international agreement, he felf it would require domestic approval only in those jurisdictions where the Government was the signatory. The Representative of Peru suggested that there was a contradiction in logic in letting a commerical signatory propose an amendment to an intergovernmental agreement. The Representative of Sweden drew attention to the amendatory provisions in the Swedish draft, namely Articles VI (3), and XII(b) (i) of the Organization Agreement and Articles 11 (v) and 29 of the Statute of the Corporation. He further stated that in as much as the Swedish draft separated the public and commercial functions it was proper for the Governing Body to regulate its activities.

The Representative of Brazil noted that the clear distinction between public and commercial functions in the Swedish draft supported his previous argument. He referenced Article 29 (c) of the proposed Swedish Statute which would require immediate approval by the Organization of any increase in capital voted by the Board of Governors. Such approval was necessary since the Corporation cannot be altered without the consent of the States which created it. Recognizing that a two step process may be necessary for amendment of either Agreement, it would not be possible for the signatory to the Operating Agreement to amend it without the approval of the states. The Representative of Chile noted he had referred to the Swedish document not necessarily to give support to its suggested amendment procedure but rather to note that it clearly separates public and commercial functions. He also noted that the Definitive Arrangements would provide that relations between a government and its signatories were a matter of domestic concern.

The Representative of France stated that regardless of the structure of INTELSAT, decisions pertaining to amendments should be submitted for the approval and ratification of the States.

Discussion of Item IX, Reservations

The Representative of the United States noted that Article XI (d), in the Annex to Com. II/10, provided that there should be no reservations to the proposed Intergovernmental Agreement. He observed, however, that this would not preclude signature subject to later ratifications or approvals.

The Representative of France noted that Article XI (d) appeared feasible at this time but he would be unable to give a definitive opinion until the final text of the Agreement is known, and, therefore, thought that the matter should be postponed to a later stage. The Representatives of Sweden, the Federal Republic of Germany and Syria supported the French statement.

The Chairman, noting the views of the delegates, proposed that the Report of this Committee to the Plenary should note that while there was no substantial objection to the United States draft proposal the delegates found it difficult to commit themselves without knowing the contents of the final agreement. The Representative of Mexico supported the Chairman's suggestion.

Procedure

After noting the views of several delegates and the requirement that this Committee's Report be submitted by Tuesday, March 18, so that it could be taken up by the Plenary, the Chairman asked Working Group II/B to meet on Saturday, March 15 at 2:30 p.m. to complete its work on settlement of disputes, privileges and immunities, and to take up item VIII, Amendment Processes. This would enable the Committee to consider at its next session the Report of this Working Group as well as the Report on Accession, Supersession, and Buy-out. In addition, the Committee will at that time consider further the items of Liability and Withdrawal, and prepare its final report for the Plenary.

The Representative of Algeria stated that he represented his delegation both in Committee I and II, and since those committees would be meeting at the same time on Monday, he reserved his position as to any decision taken in Committee II during his absence.

Adjournment

The session was adjourned at 6:30 p.m. The next session is scheduled for Monday, March 17, at 10:00 a.m.

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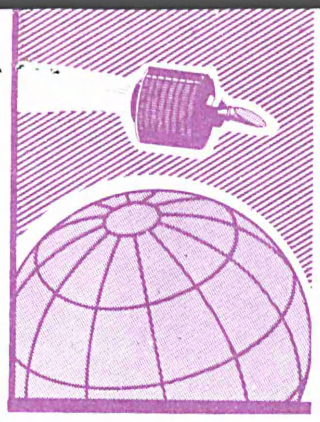

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/10(Final)
March 20, 1969

SUMMARY RECORD--TENTH SESSION OF COMMITTEE II
MONDAY, MARCH 17, 1969

Convening of the Session

Chairman Ogiso convened the session at 10:25 a.m.

Discussion of Item VI - Liabilities of Partners Inter-se

The Chairman, noting this topic had been deferred until the completion of the report of the Working Group on Legal status, proposed the Committee take it up and then consider third-party liability. Noting that a majority of the Working Group favored legal personality for INTELSAT, the Chairman suggested the discussion be based on this assumption without prejudice to the minority view.

The Representative of the United States, at the request of the Chairman, explained that Article 14 of its proposed Operating Agreement is essentially the same as the present Article 13 of the Special Agreement. Responding to a question by the Representative of Argentina, he stated the proposed provision did not cover third-party tort liability, that being covered, for most members, by the Treaty on the Peaceful Use of Outer Space. Article 14 is not intended to absolve a signatory from liability for damage caused by the space segment to the property of another signatory; Article 14 would absolve a state only in its capacity as a signatory and not as a party to the proposed Intergovernmental Agreement.

The Representative of the United Kingdom noted that under the Special Agreement nothing requires contribution among the various signatories to offset costs and damages incurred by reason of having been held liable in connection with the operation of the INTELSAT system. This could also arise under design, development, construction, and establishment of the space segment. He suggested some method of contribution in the definitive arrangements; assuming legal personality, a signatory's exposure would be reduced as INTELSAT would incur liability for operation of the system, not the signatories.

The Representative of Chile, assuming legal personality, noted the proposed Article 14 does not speak of the liability of INTELSAT as an entity.

It should be clearly set forth that neither INTELSAT nor any signatory would be liable to any other signatory. Article 14 should be closely coordinated with Article 8 of the Treaty on the Peaceful Use of Outer Space since, within the framework of INTELSAT, there will be governments signatory to the Operating Agreement.

The Representative of Sweden, referring to the Swedish Draft Agreement (Doc. 9), noted the utilization of a limited liability company would appear not to require any provisions for liability inter-se.

The Representative of Argentina felt the proposed Article 14 consistent with general liabilities established by the Outer Space Treaty; it merely supplements and regulates to a certain extent the application of that Treaty.

The Representative of Chile clarified that Article 14 was not inconsistent with Article 8 of the Outer Space Treaty, since the former only referred to loss or damages at or during launch. Accordingly, he was only trying to determine what would happen to those states which had already subscribed to the Outer Space Treaty, in order to clearly indicate that the intent of Article 14 was to establish an exemption from liability by way of an exception to the Outer Space Treaty.

The Representative of France stated that he did not quite understand the scope of this provision which, even under the Interim Arrangements, was not completely true. If the Organization is to have legal personality, there will be no liability of participants inter-se but, possibly, a mutual liability of participants and the Organization in the event of work performed by a participant under a contract concluded with the Organization.

The Representative of Australia noted his doubt on what was covered by proposed Article 14. He felt it was primarily concerned with an exemption from liability for a breakdown in communications facilities through the satellite. Damage caused by the rocket during launch or a satellite collision in space should not be exempted by this provision, but come under the Outer Space Treaty. In either case, the intent should be clearly stated in the provision. The United States Representative clarified that, although broader in scope, the essential purpose of the provision pertains to a breakdown in communications. As drafted, Article 14 would cover loss of communications because of failure of a satellite to function or an abortive launch attempt, as well as a collision in outer space. It was not inconsistent with Outer Space Treaty as the parties to the Intergovernmental Agreement would still be responsible. What Article 14 does is to absolve a signatory of liability to another signatory for almost any kind of damage that would result from a failure or breakdown of the satellite.

The Representative of the Philippines believed Article 14 intended to encompass only international public telecommunication services, and inquired as to whether its scope comprehended such other functions as specialized,

regional and domestic satellites. In response, the Representative of the United States stated that Article 14 is intended to cover all operations of INTELSAT, but not the independent operations of a signatory.

The Representative of Chile opined that Article 14 is based on the assumption that INTELSAT will continue as a joint venture in which case liability would run to the signatories. If given legal personality, the responsibility will be that of INTELSAT rather than the signatories, since operations will be conducted by a legal entity separate from the signatories. Replying, the Representative of the United States stated Article 14 does not depend upon whether the Organization has legal personality, since, in either case, INTELSAT may choose to perform certain functions through a signatory. The Representative of Chile, then noted that such a signatory would be acting as a representative of INTELSAT and, as such, would not itself be liable.

The Representative of Australia stated it does not necessarily follow from granting legal personality to INTELSAT that it will automatically have limited liability. Nothing would prevent the financial structure from remaining similar to its present form where signatories are liable. Since the United States comments indicated that Article 14 was primarily to cover breakdowns in communications, he wanted to be sure that the scope of this Article did not conflict with the Outer Space Treaty. As clarification, he suggested that "mechanical" precede "failure" in Article 14, and the phrase "at or after launching" be deleted. The Representative of the United States did not see the need for a change in language.

The Representative of Sweden agreed with the Representative of Australia that the grant of legal personality to INTELSAT does not automatically involve limited liability for its members. He referenced the Swedish proposal (Doc. 8) which provides for a limited liability company.

The Representative of Brazil, noting the commercial nature of INTELSAT operations, recognized that there exists a problem in determining those areas of liability which may not be covered under Article 14. The resolution of such areas of liability should accord with accepted general principles of law. He did not believe there should be a second provision in addition to Article 14 regarding liability.

The Representative of the United States clarified further that Article 14 was intended solely to cover liability inter-se arising out of the loss or breakdown of a satellite. Other types of inter-se liability, such as the obligations of the signatories to contribute to the design, development and construction costs of the Organization are covered elsewhere in the Agreement.

The Representative of Chile, noting the report of the Working Group on Legal Status (Com. II/11) and particularly paragraph 6 of Annex A thereto, said a provision on the extra-contractual liability of INTELSAT vis-à-vis signatories would be needed.

The Representative of Australia, referring to the previous intervention of Brazil that extra-contractual liability should not be covered by the definitive arrangements, noted it was standard practice in telecommunications service agreements that the entity providing service would not be liable to the user for a breakdown in the system. Such a provision should be included in the Operating Agreement, and, if there are other forms of liability, these should be discussed and a decision made on whether additional clauses are needed. If the intent was to exempt signatories from liability inter-se as a result of a failure or breakdown in service, it should be clearly stated in Article 14.

The Chairman suggested that inter-se liability be further discussed in the Working Group, taking into consideration the proposals of the United States and Sweden, and proposed the Australian Representative join the Working Group.

Discussion of the Third Party Liability

The Representative of Sweden agreed the concept of legal personality does not automatically involve a limited liability. Many problems arise if the concept of undivided shares is combined with legal personality, because nothing would limit the liability of the signatories for the debts of INTELSAT. So, he believed it necessary to give INTELSAT legal personality with the right to hold assets and enjoy limited liability.

The Representative of Japan, noting third-party liability could arise out of launching of a satellite, cited the work of the Legal Subcommittee of the United Nations on the Peaceful Uses of Outer Space which has been concerned with liability for damage problems arising from the launching of objects into outer space, and the implementation of Article 7 of the Outer Space Treaty. Noting this Subcommittee had reached some agreement on various points, he suggested this Conference await the results of this United Nations Subcommittee.

Procedure Regarding Item V - Withdrawal

The Chairman noted it had been agreed in previous Committee discussion to refer Item V to the Working Group after Committee III submitted its report. He proposed the Working Group take up the question of withdrawal, taking into consideration the Draft Report of Committee III (Com. III/49).

Procedure Regarding Item I - Definitions

The Chairman, noting the earlier agreement of the Committee, further deferred consideration of this item until such time as the entire scope of the definitive arrangements text is available.

Procedure Regarding Committee Work

The Chairman, noting the Plenary expects to discuss the report of Committee II at its Thursday session, requested the Working Group to complete its report so it can be discussed at the Committee meeting on Tuesday.

The Representative of Chile asked for a Committee decision on the two Working Group reports already presented. The Representative of Sweden, who had previously requested discussion be held open on the Report of the Working Group on Accession, Supersession, and By-Out, stated he had no objection to the Committee adopting this report, but reserved the right of discussion in the Plenary.

The Chairman recalled the understanding reached in the Steering Committee that Committees should not vote on each proposal but try to reach consensus, or report various viewpoints to the Plenary. In following this procedure, the Chairman intended to prepare a covering note to the Conference Chairman explaining the Committee deliberations and attaching as annexes the various Working Group Reports adopted by the Committee. He then proposed the adoption of the Report on Accession, Supersession and By-Out Com. II/10.

Adoption of Com. II/10

The Representative of Argentina referred to Com. II/10 and stated (1) the Spanish terminology in paragraph 1 needs improvement, (2) there appeared to be gaps in the machinery in proposed Article XI, and (3) the proposed Article XII(c) regarding provisional entry into fourth was largely a new concept in international law. As a result, Argentina would have to abstain if this document were submitted to a vote.

The Representative of Chile requested that his comments at the Ninth Session of the Committee on March 14, be clearly reflected in the Report.

The Representative of Korea requested his suggestions for a time limit on provisional application of the definitive arrangements and for a financial quorum requirement in Article XII(c), be included in the Report of the Committee.

The Chairman observed that the views of the various delegations are duly recorded in the Summary Record of the Committee. He recalled his earlier decision that the Report include as a footnote the suggestion of Korea concerning a time limit on provisional application. As to the financial quorum, he noted that the concept was presently included in the Annex of the Report, Article XII(a).

The Representative of France, while not objecting to the adoption of the Report, noted it should clearly state there were majority and minority positions but which only reflect trends. He observed that certain delegations had been unable to attend

all Working Group meetings, and hoped the final text, with the necessary editorial improvements, would be decided upon in accordance with the Rules of Procedure interpreted according to decisions adopted in Plenary, that is to say, without voting. Moreover, if there had been voting, the required majority would have been two-thirds and not half. The Representative of Algeria supported the French intervention and questioned what was meant by adoption of the Report. He suggested it would be better to merely indicate the various trends that evolved during the Committee's work. The Chairman, agreeing that the adoption of the Committee's Report did not irrevocably commit the delegates, noted that the adoption of document Com. II/10 as a Report of the Committee seemed agreeable.

Adoption of Com. II/11

The Representative of Switzerland inquired whether the Summary Record of March 12, 1969 (Com. II/SR/8) would form part of the Committee's Report on Legal Status. The Chairman answered in the affirmative. The Swiss Representative then asked whether the attachment could be limited only to the relevant portions of Com. II/SR/8. The Chairman replied, that with the Committee's approval, he would, with the help of the Secretary, select those portions directly relevant.

The Representative of the United States noted that Com. II/SR/8 contained a suggestion that the minority view of the United States, contained as Annex B to Com. II/9, did not accurately reflect the majority position. This was because there had been certain refinements in the majority position which were not available to the minority at the time the latter's views were written.

The Representative of Argentina stated that he did not fully share the majority position reflected in this Report. In particular he did not share those views on legal personality which he found to be stated in a natural law fashion, nor did he share the view on responsibility of participants expressed in paragraph 6. As to the minority position, he did not agree that a willingness to solve problems is sufficient in cases where there is no legal personality, noting that there could be cases where the parties involved may not recognize each other. In the opinion of the Argentine Delegation, the problem of juridical or legal personality is very important and, consequently, it prefers that its ultimate decision not be taken by means of votes.

In the absence of further discussion or objection, the Chairman declared the Report adopted.

Adjournment

The Chairman adjourned the session at 12:20 p.m. until Tuesday, March 18, at 2:30 p.m.

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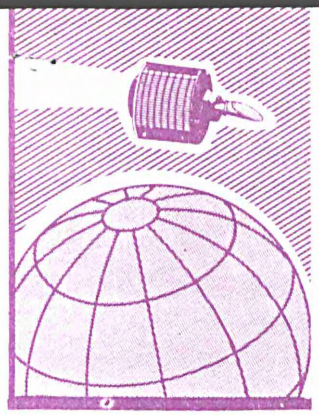

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/10
March 17, 1969

PROVISIONAL SUMMARY RECORD--TENTH SESSION OF COMMITTEE II
MONDAY, MARCH 17, 1969

Convening of the Session

Chairman Ogiso convened the session at 10:25 a.m.

Discussion of Item VI - Liabilities of Partners Inter-se

The Chairman, noting this topic had been deferred until the completion of the report of the Working Group on Legal status, proposed the Committee take it up and then consider third-party liability. Noting that a majority of the Working Group favored legal personality for INTELSAT, the Chairman suggested the discussion be based on this assumption without prejudice to the minority view.

The Representative of the United States, at the request of the Chairman, explained that Article 14 of its proposed Operating Agreement is essentially the same as the present Article 13 of the Special Agreement. Responding to a question by the Representative of Argentina, he stated the proposed provision did not cover third-party tort liability, that being covered, for most members, by the Treaty on the Peaceful Use of Outer Space. Article 14 is not intended to absolve a signatory from liability for damage caused by the space segment to the property of another signatory; Article 14 would absolve a state only in its capacity as a signatory and not as a party to the proposed Intergovernmental Agreement.

The Representative of the United Kingdom noted that under the Special Agreement nothing requires contribution among the various signatories to offset costs and damages incurred by reason of having been held liable in connection with the operation of the INTELSAT system. This could also arise under design, development, construction, and establishment of the space segment. He suggested some method of contribution in the definitive arrangements; assuming legal personality, a signatory's exposure would be reduced as INTELSAT would incur liability for operation of the system, not the signatories.

The Representative of Chile, assuming legal personality, noted the proposed Article 14 does not speak of the liability of INTELSAT as an entity.

Note: Any changes or corrections in this Summary Record must be submitted to the Secretary General within 48 hours.

It should be clearly set forth that neither INTELSAT nor any signatory would be liable to any other signatory. Article 14 should be closely coordinated with Article 8 of the Treaty on the Peaceful Use of Outer Space since, within the framework of INTELSAT, there will be governments signatory to the Operating Agreement.

The Representative of Sweden, referring to the Swedish Draft Agreement (Doc. 8), noted the utilization of a limited liability company would appear not to require any provisions for liability inter-se.

The Representative of Argentina felt the proposed Article 14 consistent with general liabilities established by the Outer Space Treaty; it merely supplements and regulates to a certain extent the application of that Treaty.

The Representative of Chile clarified that Article 14 was not inconsistent with Article 8 of the Outer Space Treaty, since the former only referred to loss or damages at or during launch. Accordingly, he was only trying to determine what would happen to those states which had already subscribed to the Outer Space Treaty, in order to clearly indicate that the intent of Article 14 was to establish an exemption from liability by way of an exception to the Outer Space Treaty.

The Representative of France, noting the importance of determining whether INTELSAT is to have legal status, stated that under the normal rules of international telecommunication operations the participants, to avoid disputes among themselves, proscribe inter-se disputes. In those situations where a signatory acts on behalf of the Organization, it would do so presumably under a contract which would determine the inter-se rights and obligations of the Organization and the signatory.

The Representative of Australia noted his doubt on what was covered by proposed Article 14. He felt it was primarily concerned with an exemption from liability for a breakdown in communications facilities through the satellite. Damage caused by the rocket during launch or a satellite collision in space should not be exempted by this provision, but come under the Outer Space Treaty. In either case, the intent should be clearly stated in the provision. The United States Representative clarified that, although broader in scope, the essential purpose of the provision pertains to a breakdown in communications. As drafted, Article 14 would cover loss of communications because of failure of a satellite to function or an abortive launch attempt, as well as a collision in outer space. It was not inconsistent with Outer Space Treaty as the parties to the Intergovernmental Agreement would still be responsible. What Article 14 does is to absolve a signatory of liability to another signatory for almost any kind of damage that would result from a failure or breakdown of the satellite.

The Representative of the Philippines believed Article 14 intended to encompass only international public telecommunication services, and inquired as to whether its scope comprehended such other functions as specialized,

regional and domestic satellites. In response, the Representative of the United States stated that Article 14 is intended to cover all operations of INTELSAT, but not the independent operations of a signatory.

The Representative of Chile opined that Article 14 is based on the assumption that INTELSAT will continue as a joint venture in which case liability would run to the signatories. If given legal personality, the responsibility will be that of INTELSAT rather than the signatories, since operations will be conducted by a legal entity separate from the signatories. Replying, the Representative of the United States stated Article 14 does not depend upon whether the Organization has legal personality, since, in either case, INTELSAT may choose to perform certain functions through a signatory. The Representative of Chile, then noted that such a signatory would be acting as a representative of INTELSAT and, as such, would not itself be liable.

The Representative of Australia stated it does not necessarily follow from granting legal personality to INTELSAT that it will automatically have limited liability. Nothing would prevent the financial structure from remaining similar to its present form where signatories are liable. Since the United States comments indicated that Article 14 was primarily to cover breakdowns in communications, he wanted to be sure that the scope of this Article did not conflict with the Outer Space Treaty. As clarification, he suggested that "mechanical" precede "failure" in Article 14, and the phrase "at or after launching" be deleted. The Representative of the United States did not see the need for a change in language.

The Representative of Sweden agreed with the Representative of Australia that the grant of legal personality to INTELSAT does not automatically involve limited liability for its members. He referenced the Swedish proposal (Doc. 8) which provides for a limited liability company.

The Representative of Brazil, noting the commercial nature of INTELSAT operations, recognized that there exists a problem in determining those areas of liability which may not be covered under Article 14. The resolution of such areas of liability should accord with accepted general principles of law. He did not believe there should be a second provision in addition to Article 14 regarding liability.

The Representative of the United States clarified further that Article 14 was intended solely to cover liability inter-se arising out of the loss or breakdown of a satellite. Other types of inter-se liability, such as the obligations of the signatories to contribute to the design, development and construction costs of the Organization are covered elsewhere in the Agreement.

The Representative of Chile, noting the report of the Working Group on Legal Status (Com. II/11) and particularly paragraph 6 of Annex A thereto, said a provision on the extra-contractual liability of INTELSAT vis-à-vis signatories would be needed.

The Representative of Australia, referring to the previous intervention of Brazil that extra-contractual liability should not be covered by the definitive arrangements, noted it was standard practice in telecommunications service agreements that the entity providing service would not be liable to the user for a breakdown in the system. Such a provision should be included in the Operating Agreement, and, if there are other forms of liability, these should be discussed and a decision made on whether additional clauses are needed. If the intent was to exempt signatories from liability inter-se as a result of a failure or breakdown in service, it should be clearly stated in Article 14.

The Chairman suggested that inter-se liability be further discussed in the Working Group, taking into consideration the proposals of the United States and Sweden, and proposed the Australian Representative join the Working Group.

Discussion of the Third Party Liability

The Representative of Sweden agreed the concept of legal personality does not automatically involve a limited liability. Many problems arise if the concept of undivided shares is combined with legal personality, because nothing would limit the liability of the signatories for the debts of INTELSAT. So, he believed it necessary to give INTELSAT legal personality with the right to hold assets and enjoy limited liability.

The Representative of Japan, noting third-party liability could arise out of launching of a satellite, cited the work of the Legal Subcommittee of the United Nations on the Peaceful Uses of Outer Space which has been concerned with liability for damage problems arising from the launching of objects into outer space, and the implementation of Article 7 of the Outer Space Treaty. Noting this Subcommittee had reached some agreement on various points, he suggested this Conference await the results of this United Nations Subcommittee.

Procedure Regarding Item V - Withdrawal

The Chairman noted it had been agreed in previous Committee discussion to refer Item V to the Working Group after Committee III submitted its report. He proposed the Working Group take up the question of withdrawal, taking into consideration the Draft Report of Committee III (Com. III/49).

Procedure Regarding Item I - Definitions

The Chairman, noting the earlier agreement of the Committee, further deferred consideration of this item until such time as the entire scope of the definitive arrangements text is available.

Procedure Regarding Committee Work

The Chairman, noting the Plenary expects to discuss the report of Committee II at its Thursday session, requested the Working Group to complete its report so it can be discussed at the Committee meeting on Tuesday.

The Representative of Chile asked for a Committee decision on the two Working Group reports already presented. The Representative of Sweden, who had previously requested discussion be held open on the Report of the Working Group on Accession, Supersession, and By-Out, stated he had no objection to the Committee adopting this report, but reserved the right of discussion in the Plenary.

The Chairman recalled the understanding reached in the Steering Committee that Committees should not vote on each proposal but try to reach consensus, or report various viewpoints to the Plenary. In following this procedure, the Chairman intended to prepare a covering note to the Conference Chairman explaining the Committee deliberations and attaching as annexes the various Working Group Reports adopted by the Committee. He then proposed the adoption of the Report on Accession, Supersession and By-Out Com. II/10.

Adoption of Com. II/10

The Representative of Argentina referred to Com. II/10 and stated (1) the Spanish terminology in paragraph 1 needs improvement, (2) there appeared to be gaps in the machinery in proposed Article XI, and (3) the proposed Article XII(c) regarding provisional entry into fourth was largely a new concept in international law. As a result, Argentina would have to abstain if this document were submitted to a vote.

The Representative of Chile requested that his comments at the Ninth Session of the Committee on March 14, be clearly reflected in the Report.

The Representative of Korea requested his suggestions for a time limit on provisional application of the definitive arrangements and for a financial quorum requirement in Article XII(c), be included in the Report of the Committee.

The Chairman observed that the views of the various delegations are duly recorded in the Summary Record of the Committee. He recalled his earlier decision that the Report include as a footnote the suggestion of Korea concerning a time limit on provisional application. As to the financial quorum, he noted that the concept was presently included in the Annex of the Report, Article XII(a).

The Representative of France, while not objecting to the adoption of the Report, noted it should clearly state there were majority and minority positions. He observed that certain delegations had been unable to attend

all Working Group meetings, and hoped the final text, with the necessary editorial improvements, would be decided upon in accordance with the Rules of Procedure. The Representative of Algeria supported the French intervention and questioned what was meant by adoption of the Report. He suggested it would be better to merely indicate the various trends that evolved during the Committee's work. The Chairman, agreeing that the adoption of the Committee's Report did not irrevocably commit the delegates, noted that the adoption of document Com. II/10 as a Report of the Committee seemed agreeable.

Adoption of Com. II/11

The Representative of Switzerland inquired whether the Summary Record of March 12, 1969 (Com. II/SR/8) would form part of the Committee's Report on Legal Status. The Chairman answered in the affirmative. The Swiss Representative then asked whether the attachment could be limited only to the relevant portions of Com. II/SR/8. The Chairman replied, that with the Committee's approval, he would, with the help of the Secretary, select those portions directly relevant.

The Representative of the United States noted that Com. II/SR/8 contained a suggestion that the minority view of the United States, contained as Annex B to Com. II/9, did not accurately reflect the majority position. This was because there had been certain refinements in the majority position which were not available to the minority at the time the latter's views were written.

The Representative of Argentina stated that he did not fully share the majority position reflected in this Report. In particular he did not share those views on legal personality which he found to be stated in a naturalistic fashion, nor did he share the view on responsibility of participants expressed in paragraph 6. As to the minority position, he did not agree that a willingness to solve problems exists in cases where there is no legal personality, noting that there could be cases where the parties involved may not recognize each other.

In the absence of further discussion or objection, the Chairman declared the Report adopted.

Adjournment

The Chairman adjourned the session at 12:20 p.m. until Tuesday, March 18, at 2:30 p.m.

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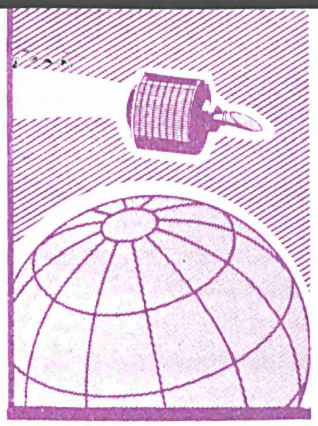

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/11
March 19, 1969

PROVISIONAL SUMMARY RECORD - ELEVENTH SESSION OF COMMITTEE II
WEDNESDAY, MARCH 19, 1969

Chairman Ogiso convened the session at 11:45 a.m. He directed the attention of the Committee to the report of Working Group II B (Com. II/15) regarding privileges and immunities and he asked the Representative of France, the Chairman of this Group, to introduce the report.

Report of Working Group II B

The Representative of France expressed his appreciation to the members of the Working Group. He noted the report contained views referred to as majority and minority but no votes were held in the Working Group.

There being no comment, the Chairman took it that the Working Group report was deemed adopted. He asked the Representative of France to outline the status of the remaining items before the Working Group.

The Representative of France explained that of the five items referred to the Working Group,time had prevented withdrawal, responsibility of associates, and liability of partners being covered. Questions of amendments and revisions still required drafting.

The Chairman recalled that the Steering Committee had asked Committee II to report to Plenary on Thursday. He suggested that the Committee submit the reports of the Working Group on accession, supersession and buy-out (Com. II/10), legal personality (Com. II/11), and privileges and immunities (Com. II/15). The Chairman could explain the status of the remaining items in a covering letter which, in view of the shortage of time, he read to the Committee. He suggested the Committee hold a final meeting Thursday, March 20, to consider the final documents of the Working Group. If nothing further is completed by the Working Group, he would so report to the Plenary. He asked if this procedure was acceptable to the Committee.

The Representative of Switzerland generally agreed and asked that the Committee II meeting be arranged to avoid a conflict with the Committee I meeting.

NOTE: Any changes or corrections in this Summary Record must be submitted to the Secretary General within 48 hours.

A suggestion of the Representative of the United Kingdom to remove the brackets in Annex B, page 2, and Appendix I to Annex B, page 2, in Com. II/15 was accepted.

The Representative of Chile suggested that relevant points, as given in the Summary Record, of the discussion dealing with accession, supersession, and buy-out be attached to Com. II/10 as part of the submission to the Plenary.

The Representative of the United States disagreed with the suggestion of the Representative of Chile since the Summary Record statements were not intended for inclusion in the Committee report on accession. The attachment to the report on legal personality (Com. II/11) was made with the understanding that the Summary Record would be made part of the report so that the report reflected all the opinions expressed on that subject. The report regarding accession was intended to be inclusive of the various opinions expressed and attachment of the Summary Record would require a more careful reading if it were to be attached.

The Representative of Argentina stated the function of the Summary Record was to insure that the various views expressed in Committee consideration of reports are available to all the members of the Conference. It was therefore unnecessary to attach such Summary Records to Committee reports.

The Representative of Canada agreed with the Representative of the United States, pointing out there were significant differences between views included in the Summary Record and the report of the Committee.

The Representative of Malaysia suggested the content of the proposal of the Representative of Chile could be included in the covering letter of the Chairman to the Plenary.

The Representative of Switzerland agreed with the suggestion made by the Representative of Malaysia and suggested the Chairman's letter note the report was drafted by a small group.

The Representative of the United States disagreed with the suggestion of the Representative of Malaysia and pointed out that the report of Committee II was intended to reflect all the views of the Committee. To submit a report adopted unanimously by the Committee and then state in a letter from the Chairman that some countries had reservations regarding the report was contradictory. He suggested some reference might be made in the letter of the Chairman indicating the Summary Record contained the differing opinions regarding the proposals in all the reports made by this Committee.

The Representative of Chile suggested that the report regarding accession, supersession and buy-out be noted in the letter of the Chairman as a report adopted by the majority of the members while some minority views obtained.

The Chairman recalled the procedure adopted at this morning's Plenary was that no report was binding on members. The Summary Record is available to all members of the Conference and would be considered in future deliberations, together with the reports. He, therefore, asked that no specific reservations be made in the Plenary presentations.

The Representative of Chile stated his suggestion was made in order to avoid repetition in the Plenary. If no indication were made regarding his delegation's reservations regarding the Committee's reports, he would have to take them up in the Plenary. Then Chairman Ogiso said this course of action was agreeable.

The Representative of Mexico noted a number of inaccuracies in legal terminology existed in the Spanish translation and suggested corrections be made. Chairman Ogiso asked the Mexican Representative and other Spanish-speaking representatives to bring any translation inaccuracies to the Secretary.

The Representative of Japan asked if the questions of Settlement of Disputes was still under consideration by the Working Group as Com. II/15 contained a report on this subject. Chairman Ogiso responded negatively and stated his covering letter would be revised to reflect the fact.

He stated that the next meeting of Committee II would be Thursday, March 20, at a time to be announced by the Secretariat.

The meeting was adjourned at 12:55 p.m.

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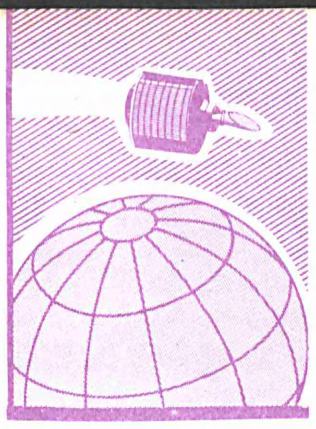

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/11 (Final)
March 24, 1969

SUMMARY RECORD - ELEVENTH SESSION OF COMMITTEE II
WEDNESDAY, MARCH 19, 1969

Chairman Ogiso convened the session at 11:45 a.m. He directed the attention of the Committee to the report of Working Group II B (Com. II/15) regarding privileges and immunities and he asked the Representative of France, the Chairman of this Group, to introduce the report.

Report of Working Group II B

The Representative of France expressed his appreciation to the members of the Working Group. He noted the report contained views referred to as majority and minority but no votes were held in the Working Group.

There being no comment, the Chairman took it that the Working Group report was deemed adopted. He asked the Representative of France to outline the status of the remaining items before the Working Group.

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The Representative of Switzerland agreed with the suggestion made by the Representative of Malaysia and suggested the Chairman's letter note the report was drafted by a small group.

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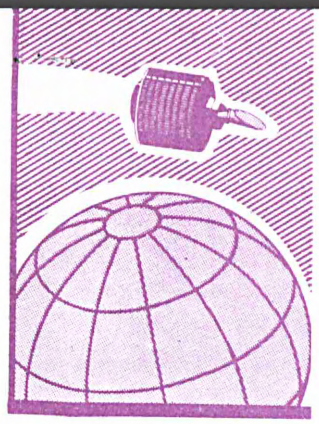

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/12
March 20, 1969

PROVISIONAL SUMMARY RECORD--TWELFTH SESSION OF COMMITTEE II
THURSDAY, MARCH 20, 1969

Convening of the Session

Chairman Ogiso convened the session at 2:45 p.m. He asked the Chairman of Working Group II-B, M. Lemaitre of France, to introduce the Group's Report (Com. II/16) on Amendment Processes, Withdrawal Provisions, and Liability of Partners, Inter-se.

Discussion of the Report of Working Group II-B

M. Lemaitre in introducing the Report, noted that Chile and Australia should be added to the list of members. The Report first takes up amendments, noting four general principles on which consensus was reached, as well as a number of majority and minority positions, and concludes with a discussion of review procedures. The Working Group did not have sufficient time to delve into Liability Inter-se and Withdrawal. Most members felt it better to leave these matters for later consideration when sufficient time is available.

The Representative of Mexico asked whether the parentheses around the words "majority" and "minority" would be deleted.

The Representative of Korea recalled he had concluded that the report was a summary of the Working Group discussions and that the majorities and minorities should be noted as those of the Working Group and not of the Committee. He further noted that the word "draft" on page 1 of the Annex should be deleted and that Com. II/11, the Report of the Working Group on Legal Status, referred only to the majority/minority opinions of the Working Group.

The Representative of India favored deleting notations of majority and minority support and substituting language to the effect that some of the delegates were of a certain opinion while others were of a different opinion. This would avoid long discussions to determine the majority and minority opinions in the full Committee.

NOTE: Any changes or corrections in this Summary Record must be submitted to the Secretary General within 48 hours.

The Representative of the United States agreed with removing "draft." He suggested Committee discussions to determine the majority and minority positions.

The Representative of Mexico noted that this Report would be Annex C to Com. II/15 in which majority and minority positions were stated regarding other items. The procedure should remain the same. He supported the suggestion of the United States.

The Representative of Chile believed that, without a point-by-point discussion, it would be impossible to ascertain whether these majorities and minorities were those of the Committee.

The Representative of Tunisia, recognizing the efforts put forth by the Working Group, suggested that the Report should be reflected as the product of the Working Group.

The Representative of the United Kingdom opposed using an inconclusive form of recommendation since he believed that the majority and minority positions of the Committee could be determined. He noted that the Committee had usually concurred in the findings of its working groups.

The Representative of the United States, supporting Mexico, Tunisia, and the United Kingdom, noted that the Working Group's determination of views had required much work and should not be diminished by the Committee. If any delegation believed that any majority or minority proposition did not reflect the true sentiment of the Committee, it should be examined and the actual sentiment determined. The Chairman proposed that this be done as to the relevant propositions. The Representative of Switzerland agreed and associated himself with the statements by the United Kingdom and the United States.

The Representatives of Algeria, Federal Republic of Germany, Israel, Italy, Lebanon and Syria felt the statement on page 1 of the Annex to Com. II/16, "A (majority) of the Committee felt that no amendment to the Operating Agreement should be made without the consent of Parties," was the majority sentiment. The Chairman, noting these sentiments, concluded that the parentheses should be removed.

On the next point (Annex, page 1), "A (minority) expressed the view that any amendment to the Operating Agreement should be approved only by Signatories," the Representatives of Algeria, Italy, Lebanon and Syria supported removing the parentheses. The Chairman, noting this, concluded that they should be removed.

The next point considered (Annex, page 2) was: "A (majority) considered that the amendments to the Intergovernmental Agreement should enter into force in a manner similar to that by which that Agreement itself enters into force." .

The Representative of Syria felt the word "majority" expressed the Committee's sentiment. The Representative of Argentina, reserving as to whether this expressed the majority sentiment of the Committee, noted that the procedure for entry into force of the definitive arrangements contains certain factors which may create obstacles which would, likewise, apply to amendments. The Chairman concluded that the parentheses should be removed.

Next considered was the sentence (Annex, page 2): "A (minority) felt that it was impossible to consider this question until a decision is taken on the procedure for the entry into force of the Definitive Agreements." The Representative of Algeria felt it difficult to express the sentiment of the Committee until the provisions for entry into force of the definitive arrangements are known. For that reason, he felt that "minority" should either be deleted or, retained with the parentheses. The Representative of the United States stated that this statement had to be a minority view since the preceding one had been determined to be a majority view. The Representative of Tunisia felt that these were not alternative propositions and opposed deleting the parentheses. He suggested, as a possible compromise, that the Report note that a majority felt it preferable to re-examine entry into force of amendments in light of the future decision as to the procedure for entry into force of the definitive arrangements. This received support from Algeria, France and Mexico, but was opposed by the United States. The Chairman concluded that the reservation by Tunisia should be noted in the Summary Record and the parentheses removed.

The Representative of the Federal Republic of Germany supported deleting the parentheses in the sentence (Annex, page 2): "With respect to review, a (majority) believed that there should be provisions for a mandatory review conference within a certain period of years, on the understanding that the Assembly could cancel such a conference if it were not necessary." The Representative of Tunisia inquired whether there was a minority position since he felt the same procedure should be followed here as elsewhere in this Report. The Chairman explained that the Working Group had used the expressions of majority and minority sentiments when it thought it had ascertained the existence of such sentiments within the Working Group. The Chairman of the Working Group, agreeing with Chairman Ogiso's interpretation, observed that here it was difficult to determine what the minority position was since there was no absolute opposition by any member to review procedures. The Representative of Israel associated himself with those members who considered it necessary to provide for the possibility of a review conference being called by a certain number or proportion of Parties. The Chairman concluded that the parentheses should be removed.

Hearing no further comment, the Chairman concluded that the Committee had adopted this Report of the Working Group. He then read his proposed note to accompany the Report to the Plenary. At the request of the Representative of Argentina, the Chairman agreed to include reference to the portions of the Summary Record relevant to the Committee's discussion of Items V and VI.

He further stated that he would reflect the fact that the Working Group was not able to consider these items.

Adjournment

The Committee adjourned at 3:55 p.m.

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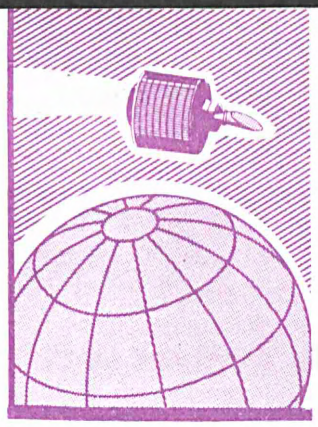

# PLENIPOTENTIARY CONFERENCE ON DEFINITIVE ARRANGEMENTS FOR THE INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

## Washington, D.C., February - March 1969

Com. II/SR/12 (Final)
March 24, 1969

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The Representative of India favored deleting notations of majority and minority support and substituting language to the effect that some of the delegates were of a certain opinion while others were of a different opinion. This would avoid long discussions to determine the majority and minority opinions in the full Committee.

The Representative of the United States agreed with removing "draft." He suggested Committee discussions to determine the majority and minority positions.

The Representative of Mexico noted that this Report would be Annex C to Com. II/15 in which majority and minority positions were stated regarding other items. The procedure should remain the same. He supported the suggestion of the United States.

The Representative of Chile believed that, without a point-by-point discussion, it would be impossible to ascertain whether these majorities and minorities were those of the Committee.

The Representative of Tunisia, recognizing the efforts put forth by the Working Group, suggested that the Report should be reflected as the product of the Working Group.

The Representative of the United Kingdom opposed using an inconclusive form of recommendation since he believed that the majority and minority positions of the Committee could be determined. He noted that the Committee had usually concurred in the findings of its working groups.

The Representative of the United States, supporting Mexico, Tunisia, and the United Kingdom, noted that the Working Group's determination of views had required much work and should not be diminished by the Committee. If any delegation believed that any majority or minority proposition did not reflect the true sentiment of the Committee, it should be examined and the actual sentiment determined. The Chairman proposed that this be done as to the relevant propositions. The Representative of Switzerland agreed and associated himself with the statements by the United Kingdom and the United States.

The Representatives of Algeria, Federal Republic of Germany, Israel, Italy, Lebanon and Syria felt the statement on page 1 of the Annex to Com. II/16, "A (majority) of the Committee felt that no amendment to the Operating Agreement should be made without the consent of Parties," was the majority sentiment. The Chairman, noting these sentiments, concluded that the parentheses should be removed.

On the next point (Annex, page 1), "A (minority) expressed the view that any amendment to the Operating Agreement should be approved only by Signatories," the Representatives of Algeria, Italy, Lebanon and Syria supported removing the parentheses. The Chairman, noting this, concluded that they should be removed.

The next point considered (Annex, page 2) was: "A (majority) considered that the amendments to the Intergovernmental Agreement should enter into force in a manner similar to that by which that Agreement itself enters into force."

The Representative of Syria felt the word "majority" expressed the Committee's sentiment. The Representative of Argentina, reserving as to whether this expressed the majority sentiment of the Committee, noted that the procedure for entry into force of the definitive arrangements contains certain factors which may create obstacles which would, likewise, apply to amendments. The Chairman concluded that the parentheses should be removed.

Next considered was the sentence (Annex, page 2): "A (minority) felt that it was impossible to consider this question until a decision is taken on the procedure for the entry into force of the Definitive Agreements." The Representative of Algeria felt it difficult to express the sentiment of the Committee until the provisions for entry into force of the definitive arrangements are known. For that reason, he felt that "minority" should either be deleted or, retained with the parentheses. The Representative of the United States stated that this statement had to be a minority view since the preceding one had been determined to be a majority view. The Representative of Tunisia felt that these were not alternative propositions and opposed deleting the parentheses. He suggested, as a possible compromise, that the Report note that a majority felt it preferable to re-examine entry into force of amendments in light of the future decision as to the procedure for entry into force of the definitive arrangements. This received support from Algeria, France and Mexico, but was opposed by the United States. The Chairman concluded that the reservation by Tunisia should be noted in the Summary Record and the parentheses removed.

The Representative of the Federal Republic of Germany supported deleting the parentheses in the sentence (Annex, page 2): "With respect to review, a (majority) believed that there should be provisions for a mandatory review conference within a certain period of years, on the understanding that the Assembly could cancel such a conference if it were not necessary." The Representative of Tunisia inquired whether there was a minority position since he felt the same procedure should be followed here as elsewhere in this Report. The Chairman explained that the Working Group had used the expressions of majority and minority sentiments when it thought it had ascertained the existence of such sentiments within the Working Group. The Chairman of the Working Group, agreeing with Chairman Ogiso's interpretation, observed that here it was difficult to determine what the minority position was since there was no absolute opposition by any member to review procedures. The Representative of Israel associated himself with those members who considered it necessary to provide for the possibility of a review conference being called by a certain number or proportion of Parties. The Chairman concluded that the parentheses should be removed.

Hearing no further comment, the Chairman concluded that the Committee had adopted this Report of the Working Group. He then read his proposed note to accompany the Report to the Plenary. At the request of the Representative of Argentina, the Chairman agreed to include reference to the portions of the Summary Record relevant to the Committee's discussion of Items V and VI.

He further stated that he would reflect the fact that the Working Group was not able to consider these items.

Adjournment

The Committee adjourned at 3:55 p.m.

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