

# THE INTERNATIONAL MARITIME SATELLITE ORGANIZATION — AN IMPORTANT MILESTONE IN MARITIME COMMUNICATIONS SERVICE

by

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## INTRODUCTION

At the present time, the world commodity trade is primarily carried by ships (1). Merchant fleet and fishing vessels of 10,000 gross tonnage of more than thirty nations (2) sail in and out of the port areas throughout the world carrying passengers and cargoes including inflammable gas and pollutant chemicals. The rapidly increasing intensity of traffic, the size of vessels, the speed of container and other ships, the growing danger of collision, loss of life and pollution underscores an important need for improved maritime communication.

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(1) More than ninety per cent of the world commodity trade is carried by ships. It is estimated that the total number of ships engaged in maritime trade now exceeds 60,000 aggregating over 300 million gross tons. See C.P. Srivastava, *Opening Speech at the International Conference on the Establishment of an International Maritime Satellite System, 1975*, Intergovernmental Maritime Consultative Organization (IMCO), Doc. MARSAT/CONF. IN F/4, p. 2.

(2) Thirty two nations- Liberia, Japan, United Kingdom, Norway, Greece, USSR, USA, Panama, Italy, France, Federal Republic of Germany, Sweden, Netherlands, Spain, Denmark, India, Cyprus, Singapore, Canada, Brazil, Poland, Somali Republic, China, Yugoslavia, Finland, Argentina, Portugal, Korea, German Democratic Republic, Belgium, Australia, and Bermuda have nearly 8,000 ships of 10,000 GRT and over. See IMCO, Doc. MARSAT/CONF. 3 (30 October 1974) p. 8.

Technological developments in the telecommunication system has immensely improved the land network of wireless telegraphy but has not produced tangible progress in regard to long-distance maritime communication due to reasons associated with ionospheric propagation of radio waves. The existing communication facility with its inherent limitations and deficiencies (3) is unable to cope with the future demands of world shipping and it has been found necessary to seek and implement sophisticated means of communication. But thanks to the new and important development in the world of space technology, it is now possible to make a great leap from the conventional oceanic radiocommunication system to the new radiocommunication satellite system. Some of the advantages offered by a maritime satellite system are (4) :

- (a) to relieve present congestion in the MF (Medium Frequency) and HF (High Frequency) bands;
- (b) to improve reliability, quality and speed of communication;
- (c) to improve geographical coverage and continuous availability of service;
- (d) to provide more reliable circuits and permit automation of radiotelephone and teleprinter;
- (e) to cater for services not possible at present in the MF and HF bands; e.g. high speed data transmission;
- (f) to provide for radio determination; and
- (g) to improve distress, urgency and safety communications.

Realizing the tremendous potentialities of space technology in the development of communication facilities, the Intergovernmental Maritime Consultative Organization (IMCO) (5) has been showing considerable interest since 1966 on its application for maritime purposes to improve safety at sea. The investigations initially made by the Subcommittees on Navigation (6)

(3) A Study prepared by the IMCO Panel of Experts on Maritime Satellites summarizes the various limitations and deficiencies of the present maritime communication system as follows : acute congestion and saturation of existing HF facilities before the end of the decade; limitation of MF ionospheric propagations resulting in delay and poor quality of signals; insufficient geographical coverage; inability to expand certain facilities and limited prospects for improving the existing system. See IMCO, Doc. MARSAT/CONF. 3 (30 October 1974) pp. 3-6.

(4) *Ibid.*, pp. 5-6.

(5) The objectives of IMCO, established in March 1958 as a Specialized Agency within the United Nations system of organizations are « to facilitate cooperation among Governments on technical matters affecting shipping with special responsibility for the safety of life at sea, to insure that the highest possible standards of safety at sea and of efficient navigation are achieved, and to encourage the removal of hindrances to trade and thus to make shipping services freely available to meet the needs of the world ». See R.Y. Edwards, « The Role of the Intergovernmental Maritime Consultative Organization in International Space Cooperation » in United States Senate Committee on Aeronautical and Space Sciences, *International Cooperation in Outer Space : A Symposium* (Washington : U.S. Government Printing Office, 1971) pp. 413-421.

(6) The Subcommittee on Safety of Navigation established in February 1966 by the 12th session of the Maritime Safety Committee of IMCO surveyed the use of space technology and considered the question of maritime operational requirements for navigation via satellites. The

and Radiocommunication of IMCO and detailed studies subsequently undertaken by the Panel of Experts on Maritime Satellites reinforced the urgency to establish an international maritime satellite system. Towards establishing such a system, an International Diplomatic Conference of Governments was held in London under the auspices of IMCO (7). The Conference held three meetings — the first session from 23 April to 9 May 1975, the second session from 9 to 28 February 1976, and the third session from 1 to 3 September 1976. At the third session the Conference decided to establish The International Maritime Satellite Organization (INMARSAT) and adopted its constitutional framework — a Convention and an Operating Agreement. The INMARSAT, as we shall see during the course of the present study, heralds an important milestone in the institutional mechanisms for the development of international space communication network which has been established in recent years through the INTELSAT and INTERSPUTNIK. The study will make an attempt to examine the importance of the new Organization by closely following the deliberations of the conference and by reviewing the characteristic features of the two constituent instruments — the Convention and the Operating Agreement on the International Maritime Satellite Organization.

## ESTABLISHMENT OF THE ORGANIZATION

The participating governments and organizations were in agreement that a maritime satellite system was necessary for improved maritime communications and that the system should provide global coverage. With regard to institutional arrangements for the effective management of the satellite system the following were considered by the Panel of Experts (8) :

- (a) (i) a new independent organization
- (ii) a consortium

Committee felt that a satellite system « could contribute to safety by providing reliable means for alerting vessels in cases of distress and emergency, improving means for position reporting for search and rescue purposes, expanding transmission of weather information, facilitating the operation of shipping lanes and the separation of traffic at sea ». See IMCO, Subcommittee on Safety Navigation, *Report of the Second Session* (April 1967). The Subcommittee on Radio Communication of the IMCO has also reviewed the feasibility of a maritime satellite system. See, Subcommittee on Radio communication, *Report of the Sixth Session* (January 1970).

(7) The International Diplomatic Conference on the Establishment of an International Maritime Satellite System was attended by delegations from more than forty countries, and by representatives from the United Nations, United Nations Educational Scientific and Cultural Organization, International Telecommunication Union and World Meteorological Organization together with observers from a number of intergovernmental and non-governmental bodies. See IMCO, DOC. MARSAT/CONF/D/14 (2 September 1976).

(8) The Panel of Experts was set up by the Maritime Safety Committee of IMCO in March 1972 to achieve an early implementation of an international maritime satellite system. After holding six meetings between July 1972 and September 1974 the Panel of Experts on Maritime Satellites prepared a report outlining reasons for establishing a Maritime Satellite System and suggesting organizational and institutional arrangements in the form of a draft convention for the establishment of the system.

## (b) Existing organization

- (i) IMCO
- (ii) INTELSAT
- (iii) Others

In the deliberations of the Panel of Experts, while supporting the need for a world-wide maritime satellite capability, the United States did not appear to be enthusiastic about the establishment of a new organization as it was likely to pose problems and result in lengthy negotiations leading to serious delays in providing such capability (9). On the other hand, United States proposed the formation of a consortium in which « membership would be open to national and international entities, including PTT administrations, commercial telecommunication carriers, or other entities appropriately authorized to participate in the Consortium » (10).

The formation of a consortium, however, did not find support for the following reasons :

- (i) A consortium of hybrid combination of private and public entities would give rise to legal complications, such as to sovereign immunity. Certain countries grant privileges and immunities only to states or international organizations with a legal status.
- (ii) Since the consortium would not possess international legal personality, it could not conclude international agreements of an international character, could not own property or be a party to legal proceedings.
- (iii) The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies and the Convention on International Liability for Damage Caused by Space Objects impose responsibility for operations in Outer Space and liability for certain kinds of damage on States and they cannot absolve themselves intentionally from this responsibility and liability. Therefore, for the sake of control, States should participate directly rather than indirectly in an international organization whose field is outer space and which may itself conduct operations in outer space (11).

The United States also proposed the involvement and utilization of INTELSAT so as to exercise policy and financial control over the maritime satellite service. The possible advantages of INTELSAT controlling the maritime system, as summarized by the United States delegate are : (a) the possibility of an early launch and thus a significant time saving; (b) attractive financial consequences; (c) compatibility of the space segment with existing

(9) IMCO, *Presentation of the Study on the Establishment of a Maritime Satellite System. Report of the IMCO Panel of Experts*, Doc. MARSAT/CONF/3 (30 October 1974) Section VII.

(10) *Ibid.*

(11) IMCO, *Note by the Government of the United Kingdom (Panel of Experts on Maritime Satellites, 4th Session)*, Doc. MARSAT/IV/3 (a)/2 (3 December 1973) p. 2.

earth stations and facilities; and (d) certain immediate organizational advantages permitting the accumulation of operating experience (12).

The proposal was not considered feasible as the present INTELSAT organization does not include all major maritime nations and it appeared improbable that such nations would join solely for maritime purposes. Further, since maritime communications should be fully international in all respects, especially to ensure full cooperation in safety of life at sea, the exclusion of any major maritime nation would be a serious disadvantage. From the administrative aspects, it might create additional complications. For example, if INTELSAT controls the system, the maritime element would be subject to decisions of the Board of Governors of INTELSAT where voting rights would be determined largely on the basis of total utilization of the space segment. Since the maritime element would be only a small proportion of the total space segment, important maritime countries with little or no fixed service traffic would have only minor control over the maritime service facilities.

As the abovementioned proposals of the United States did not obtain enough support, it was agreed on majority opinion that there was a need for an international intergovernmental organization to administer and manage the system and, as such the new Organization was established (13). The purpose of the Organization as stated in Article 3 (1) of the Convention is « to make provision for the space segment necessary for improving maritime communications, thereby assisting in improving distress and safety of life at sea communications, efficiency and management of ships, maritime public correspondence services and radiodetermination capabilities ». The Organization would seek to serve all areas where there is a need for maritime communications, and it would act exclusively for peaceful purposes (14).

## PARTICIPATION IN THE ORGANIZATION

The question of participation in the Organization was one of the thorniest problems that the Conference was confronted with. In certain countries, for example, in the United States and Japan, telecommunication services are the responsibility of private entities.

The provision of enabling a private designated entity to participate in the Organization is of great importance in particular to the United States as may be noted from the opening statement of Mr R.J. Waldmann, the United States representative. He said :

(12) IMCO, *Note by the Government of the United States of America (Panel of Experts on Maritime Satellites, 4th Session)*, Doc. MARSAT/IV/3 (a)/4 (6 December 1973) p. 2.

(13) See *Convention on the International Maritime Satellite Organization*, (Hereinafter cited as *Convention*), Article 2.

(14) *Ibid.*, Article 3 (2) and 3 (3).

It had long been United States practice that public telecommunication facilities and services were owned and operated by private communications companies, and the government had no legal authority to engage in or invest in the public communications field. Furthermore, the Government had no authority to guarantee or underwrite any financial investment undertaken by a communications carrier in an organization such as INMARSAT. Thus, United States participation in INMARSAT would have to be through a private designated telecommunications entity (15)...

The participation of private entity in an international organization would naturally create problems — problems such as domestic jurisdictional competence as to regulations and control of the entity, relationship between governments and the entity within the framework of the organization, responsibility for the operation of the system etc. In order to have a detailed discussion and analysis of the broad question of the rights and obligations of governments and designated private entities in the Organization a Working Group (16) was set up under the chairmanship of the Canadian representative. The Working Group was able to reach a broad agreement on the general guidelines including that any entity designated by a Member State should enjoy rights and fulfil obligations in the organization (17).

Following the guidelines suggested by the Working Group, the Conference accepted the novel principle — the customary practice allows membership in international organizations exclusively to sovereign states — of full participation of private entities along with nation states, the only subjects of classical international law. One distinction the Conference made was that the Convention should be signed by States who are called « Parties » (18) while the Operating Agreement could be signed either by States or by their designated entities who are named « Signatories » (19). This distinction, apart from its superficiality does not seem to have any significance from the functional point of view.

According to Article 2 (3) of the Convention, each Party (State) is authorized to designate a competent entity. The word « competent » has not been defined anywhere in the Convention; hence it will be left entirely to the subjective determination of the State concerned. However, it is assumed that the entity, at the least, should have the powers necessary to discharge the financial, technical and operational functions for which it will be responsible.

(15) IMCO, *Provisional Summary Record of the Third Plenary Meeting*, Doc. MARSAT/CONF/SR. 3 (24 April 1975) p. 2.

(16) The Working Group was composed of representatives of Bulgaria, Canada, France, Federal Republic of Germany, Japan, Netherlands, Norway, Sweden, United Kingdom, USA and USSR.

(17) IMCO, Doc. MARSAT/CONF/C. 1/2 (1 May 1975) p. 2; See also *Sessional Act*, Doc. MARSAT/CONF. 10 (9 May 1975) pp. 5-6.

(18) « Party » means a State for which the Convention has entered into force ». See *Convention*, Article 1 (b).

(19) « Signatory » means either a Party or an entity designated in accordance with Article 2 (3), for which the Operating Agreement has entered into force ». *Ibid*, Article 1 (c).

The type of designated entities may include public governmental agencies, private companies, mixed public and private corporations, and State-owned national companies. The socialist countries may designate a governmental agency or a State-owned and State-directed national company. The countries with a free enterprise system, on the other hand, may designate government agencies, corporations with a partly private and partly State-owned capital and purely private entities. No matter what is the nature and scope of ownership and control in an entity, the entity so designated shall be subject to the jurisdiction of the State (20).

Since the Organization is financed by the contributions of the Signatories (21), the relationship between the Party (State) and the Designated Entity (Signatory) becomes of paramount importance.

The relationship between the Party and the Signatory is governed by the municipal law and not by international law (22). This does not mean to suggest that, by an alteration of the domestic law, the Signatory may avoid the obligations and leave the Organization suffering a loss. In order to dispel any doubt in this regard, the Convention spells out that the Party « shall provide such guidance and instructions as are appropriate... to ensure that the Signatory fulfils its obligations » (23). Furthermore, in the event of default or withdrawal of a Signatory (a designated entity), the Party, that is the Member State shall assume the capacity of the designated entity, designate a new entity or withdraw (24).

## INSTITUTIONAL STRUCTURE

The Organization will have three principal organs : (1) The Assembly; (2) The Council, and (3) The Directorate (25).

With regard to the scope and nature of functions of the two organs — the Assembly and the Council — there were serious differences of views : one view supported by a large majority endorsing the Panel of Experts which considered the Assembly responsible for determining the broad policy of the Organization and the other advocated mainly by the United States which restricted the role of the Assembly to expressing views and making recommendations while the real commercial and political power was exercised by the Council.

(20) *Ibid.*, Article 2 (3).

(21) *Ibid.*, Article 5 (1).

(22) *Ibid.*, Article 4 (a).

(23) *Ibid.*, Article 4 (b). Further the Convention provides that the Party shall « ensure that the signatory, in carrying out its obligations within the Organization, will not act in a manner which violates obligations which the Party has accepted under this Convention or under related international agreements ». Article 4 (c).

(24) *Ibid.*, Article 4 (d); 29 (3) and 30 (6).

(25) *Ibid.*, Article 9.

At one end of the spectrum the European countries in general (26), and the socialist states, in particular (27), thought that the Assembly should be the supreme body in conformity with the fundamental principle of the sovereign equality of states. Spokesmen from the developing countries-Egypt, India and Peru- also supported the above view for the obvious reason that their present incapacity in investment should not debar them from future participation in the decision-making process (28). At the other end of the spectrum was the views vigorously propounded by the United States. In order to ensure efficient management of the system, according to the United States representative, « Decisions must be based on technical and economic considerations and must be taken by the Council, which would be made up of the biggest investors and therefore the biggest users of the system; that was the best way of ensuring that decisions were closely linked to utilization of the system » (29).

In spite of lengthy discussions and opposition from a large number of countries, the United States firmly maintained its original position that « the management responsibilities of the new organization should lie with the Council, which ought then logically to have full power to discharge them as it thought best » (30). This position in essence reflects the United States belief that the INMARSAT must be based on a sound financial and profit-making basis which could be ensured only by the Council representing investment/operating agencies taking decisions rather than an Assembly of political/governmental responsibilities.

#### THE ASSEMBLY

The Assembly is composed of all the Parties (31). As such and to that extent, it may be said that the Assembly is the supreme organ of the Organization.

As the Assembly is predominately a political body, the principle of equality of member States is maintained. Each member, big or small, has only one

(26) See for example German Democratic Republic, IMCO; Doc. MARSAT/CONF/SR. 6 (25 April 1975) p. 7.

(27) Union of Soviet Socialist Republics, *ibid.*, p. 6.

(28) For example, the representative from Egypt said that the organization « should be so constituted as to allow for as broad a membership as possible, and should not be a rich man's club ». Further he « hoped that the Conference would do nothing to prejudice the decisions of the developing countries to join the Organization at a later stage ». IMCO, Doc. MARSAT/CONF/SR. 12 (8 May 1975) pp. 10-11.

(29) United States, *op. cit. supra* note 26 at p. 6.

(30) « To give the Assembly the full power to determine the Organization's broad policy », the U.S. representative said « would introduce considerable uncertainty and might be construed as giving the Assembly rather broad powers with respect to work which ought to be assigned to the Council ». IMCO, Doc. MARSAT/CONF/SR. 12 (8 May 1975) p. 7.

(31) See *Convention*, Article 10 (1).



vote (32), and each vote has the same weight. The Convention does not make any limitation as to the number of delegates each Party can send to the Assembly's meetings (33). The size of the delegates may therefore vary from one country to another.

The Assembly's decisions are mostly recommendatory in nature. Hence unanimity need not necessarily be sought. The rule of unanimity means that no government is bound to take action to which it does not expressly agree; the corollary is that every member has a veto, and even when this is not exercised, the speed of the fleet is the speed of the slowest ship. Happily, the Convention provides that Assembly's decisions « on matters of substance shall be taken by a two-thirds majority, and on procedural matters by a simple majority, of the Parties present and voting » (34).

The functions of the Assembly in general are to guide the Council on policy matters and to act on the advice of the Council. Its supervisory and regulatory functions are limited to ensure that the activities of the Organization are consistent with the Convention. Decision-making powers are also restricted to certain administrative and institutional matters. Specifically, the functions of the Assembly may be summarized as follows :

- (1) Consider and review the activities, purposes, general policy and long-term objectives of the Organization and express views and make recommendations thereon to the Council;
- (2) Ensure that the activities of the Organization are consistent with the Convention and with the purposes and principles of the United Nations Charter;
- (3) Authorize, on the recommendation of the Council, the establishment of additional space segment facilities;
- (4) Decide on other recommendations of the Council and express views on reports of the Council;
- (5) Elect four representatives on the Council;
- (6) Decide upon questions concerning formal relationships between the Organization and States and international organizations;
- (7) Decide upon any amendment to the Convention or to the Operating Agreement;
- (8) Consider and decide about termination of membership (35).

In performing the abovementioned functions, the Assembly should take into account any relevant recommendations of the Council. In other words, the functions of the Assembly, howsoever limited as they are, are further controlled by the directives and instructions of the Council.

(32) *Ibid.*, Article 11 (1).

(33) « Regular sessions of the Assembly shall be held once every two years. Extraordinary sessions shall be convened upon the request of one-third of the Parties or upon the request of the Council ». Article 10 (2).

(34) Article 11 (2).

(35) Article 12.

## THE COUNCIL

The Council is composed of twenty-two representatives (36) of whom eighteen are from the Signatories or groups of Signatories which have the largest investment shares in the Organization (37). The remaining four representatives of Signatories are elected by the Assembly, irrespective of their investment shares, in order to ensure the principle of just geographical representation is taken into account, with due regard to the interests of the developing countries (38).

Voting procedure (39) in the Council was an extremely controversial subject matter which the conference had to face with. The shift of real decision-making power from the Assembly to the Council placed a heavy strain on the principle of sovereignty and equality.

The Soviet Union, stressing its inherent reliance on the principle of equal rights between States in international intergovernmental organizations, believed that each country should be entitled to a vote. On the other hand, the United States forcefully argued its case that voting in the Council — an organization intended to be run on commercial basis — should be determined on the basis of investment shares. Mr Miller, speaking for the United States delegation, however indicated that « it would be prepared to accept some limitation on the number of votes that could be cast by a single member of the Council, in order to prevent that member from blocking decisions taken jointly by all the other members of the Council » (40).

In essence, the problem was to reconcile two conflicting philosophies : on the one hand, that which held that the voting strength of the largest participant should be limited, and on the other, that which held that investors should be entitled to a voting strength fully commensurate with the size of their investment. After prolonged discussion the Conference adopted the principle that each representative in the Council shall have a voting participation equivalent to the investment share he represents (41). No representative is, however, allowed to cast on behalf of one Signatory more than 25 per

(36) Article 13 (1).

(37) Article 13 (1) (a).

(38) Article 13 (1) (b).

(39) For the broad question of voting procedure in international institutions see Elizabeth McIntyre, « Weighted Voting in International Organizations », 8 *International Organization* (1954) 484-497; Herbert Weinschel, « The Doctrine of the Equality of States and Its Recent Modifications », 45 *American Journal of International Law* (1951) 417-442; Louis B. Sohn, « Multiple Representation in International Assemblies », 40 *American Journal of International Law* (1946) 71-99.

(40) IMCO, Doc. MARSAT/CONF/SR. 27 (27 February 1976).

(41) *Convention*, Article 14 (3) (a).

cent of the total voting participation in the Organization except in a remote situation as specified in the Convention (42).

As its decisions have binding effect, the Council shall endeavour to take decisions unanimously (43). This is necessary in order to respect the national sovereignty and to protect the legitimate interests of the participating states. At the same time, it is well to remember that, if the Council has to function effectively under the unanimity principle, ways and means will have to be found of minimizing differences and facilitating agreements. The unanimity principle will require an honest and good faith effort on the part of the members to reconcile and reduce their differences to a minimum. This spirit of understanding and tolerance will make action possible even without the need of a formal vote. Under the existing global conditions, it is presumptuous to envisage such an ideal situation. « If unanimous agreement cannot be reached », the Convention has therefore realistically provided that, « decisions on substantive matters shall be taken by a majority of the representatives on the Council representing at least two-thirds of the total voting participation of all Signatories and groups of Signatories represented on the Council » (44).

The Council is mainly responsible to make provision for the space segment necessary for carrying out the purposes of the Organization. As such it has at its disposal effective means of decision-making and an efficient system of control which will ensure that the proposed satellite system is carried as anticipated or can be adapted to new conditions. The range of functions of the Council is very broad. It includes supervisory and regulatory functions, executive, administrative, financial, and legislative functions.

The supervisory and regulatory functions include determination of maritime satellite telecommunication's requirements and adoption of policies, plans, programmes, procedures and measures for the design, and development (45). The Council will also determine arrangements for consultation on a continuing basis with bodies representing shipowners, maritime personnel and other users of maritime telecommunications (46).

The Council would not only undertake planning and programming but also execute the projects without interference. Execution includes construc-

(42) In its Article 14 (3) (b), the Convention provides :

If a Signatory represented on the Council is entitled, based on its investment share, to a voting participation in excess of 25 per cent of the total voting participation in the Organization, it may offer to other Signatories any or all of its investment share in excess of 25 per cent...

To the extent that the investment share of the Signatory in excess of 25 per cent offered for distribution is not distributed in accordance with the procedure set forth in this paragraph, the voting participation of the representative of the Signatory may exceed 25 per cent.

(43) Article 14 (2).

(44) *Ibid.* Decisions on procedural matters shall, however, be taken by a simple majority of the members present and voting, each having one vote.

(45) Article 15 (a).

(46) Article 15 (h).

tion, establishment, acquisition by purchase or lease, operation, maintenance and utilization of the INMARSAT Space Segment (47).

The administrative functions of the Council include adoption and implementation of management arrangements and submission to the Assembly of periodic reports on the activities of the Organization (48).

The Council has complete control over the financial resources. It has power to adopt financial policies, approve the financial regulations, annual budget and financial statements, periodic determination of charges for use of the INMARSAT space segment, and decisions with respect to all other financial matters, including investment shares and capital ceiling consistent with the Convention and the Operating Agreement (49). Audit is one of the most of essential means of control over the financial transactions and it is carried out annually by an independent auditor appointed by the Council (50).

The Council shall assume responsibilities in adopting criteria and procedures for approval of earth stations on land, on ships and on structures in the marine environment for access to the INMARSAT space segment and for verification and monitoring of performance of earth stations having access to and utilization of the INMARSAT Space Segment (51). It will also adopt procurement procedures, regulations, and approve procurement contracts (52).

#### THE DIRECTORATE

The Directorate is headed by the Director General who is the chief executive and legal representative of the Organization (53).

The Director General will be assisted in his duties by such staff as the Council might determine. The conditions of employment of the regular Staff and consultants will be defined in the Staff Regulations approved by the Council.

The Director General is appointed by the Council for a period of six years from among the candidates proposed by the Parties and subject to their confirmation. His functions and powers will be defined by the Council and he is responsible to the Council.

(47) Article 15 (a).

(48) Article 15 (b) and (c).

(49) Article 15 (g).

(50) Article 24.

(51) Article 15 (c).

(52) Article 15 (f).

(53) Article 16 (3).

The paramount consideration in the appointment of the Director General and the ancilliary staff is the necessity of ensuring the highest standards of integrity, competency and efficiency.

## PROCUREMENT AND UTILIZATION

### PROCUREMENT OF GOODS AND SERVICES

There was general agreement among the participant States that the procurement of goods and services required by the Organization, whether by purchases or leases, shall be effected by the award of contracts based on responses to invitation to tender. Contracts shall thus be awarded, according to the Convention, to bidders offering the best combination of quality, price and the most favourable delivery time (54).

The United States, emphasizing its basic concept of establishing a sound and economically viable organization, wanted to see that the goods are procured in competitive bids while the European countries in general and the Soviet Union in particular wished that the INMARSAT take into consideration the additional « steps to encourage and maintain world-wide competition and assure the broadest international base of supply of goods and service » (55) so that the Organization could remain to be truly international in character. Those favoured the latter view felt that the United States has at the present moment the technological superiority in one or two large corporations and on the basis of competitive price, delivery time and quality, would effectively have a supplier monopoly over less advanced firms in other parts of the world. Pursuant to this, the Convention dispenses with the open international tender, in the following cases, in order to encourage worldwide competition in the supply of goods and services :

- (i) The estimated value of the contract does not exceed 50,000 US dollars;
- (ii) Procurement is urgently required to meet an emergency situation;
- (iii) There is only one source of supply or the sources of supply are severely limited;
- (iv) By the nature of the requirement, it would be neither practicable nor feasible to undertake an open international tender;
- (v) The procurement is for personal services (56).

(54) Article 20 (1) (a), (b) and (c).

(55) IMCO, Doc. MARSAT/CONF/C.2/WP. 3 (29 April 1975).

(56) Article 20 (2).

### UTILIZATION CHARGES

The Council will specify the units of measurement for the various types of utilization of the INMARSAT space segment. In establishing charges for such utilization, the Council will take into account the operating, maintenance and administrative costs as well as compensation to be paid for use of investment capital. The Council is authorized to levy different charges for entities who are not Signatories to the Organization. Briefly stated, the utilization charge will be fixed on a sound economic and financial basis having regard to accepted commercial principles.

### LEGAL PERSONALITY

To enable it to fulfil its functions, the Organization should have a defined status. It should be as strong and as efficient as possible. It should be endowed with specific capacity to exercise functions and undertake rights and obligations on a parity with similar functions, rights and obligations exercised or possessed by the individual Parties.

The importance of conferring predictable legal status on the Organization cannot be overemphasized. This is not without historical precedents. In the advisory opinion given by the International Court of Justice in the case concerning the *Reparation for Injuries Suffered in the Service of the United Nations*, a question referred by the United Nations General Assembly, the Court said :

In the opinion of the Court, the Organization (United Nations) was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality (57).

There is an express provision in the Convention (58) conferring legal personality on the Organization. The Organization has, in particular, the capacity (i) to conclude agreements with States or international organizations; (ii) to institute legal proceedings; (iii) to enter into contracts, and (iv) to acquire, lease, hold and dispose of movable and immovable property.

Though it is not specifically stated in the Convention, it is assumed that the Organization shall enjoy a legal personality recognized in both international and municipal law.

By virtue of its international legal personality, the Organization can conclude agreements governed by international law with all states as well as other international organizations. Another question involving legal status,

(57) I.C.J. Reports (1949) 179.

(58) See, convention, Article 25.

namely the legal capacity under municipal law is also of utmost importance. By means of its legal capacity, the Organization can enter into innumerable transactions which are incidental to its day-to-day operations such as, for instance, transactions dealing with the purchase of supplies and equipment, lease of premises, employment of personnel, etc. When legal personality is not conferred, it is the national law of each state which determines the extent to which the Organization shall enjoy legal capacity. National laws may vary considerably in this matter.

By the provisions of the Convention, the Organization possesses the right on its own account to institute legal proceedings necessary for the protection of its interests and, whether it occupies the position of plaintiff or defendant, to enter into desirable settlements. Further, the ability of the Organization to enter into firm commitments would be dependent on the applicability to it of the ordinary legal procedures which private businessmen follow in their contractual and other relations.

### PRIVILEGES AND IMMUNITIES

The Organization enjoys such privileges and immunities as are necessary for the efficient performance of its functions. Generally speaking, the term privileges and immunities implies all that could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs, and to the independent exercise of the functions and duties of its officials. For example, the property of the Organization is exempt from all States Parties to the Convention « from all national income and direct national property taxation and from customs duties on the INMARSAT space segment, including components and parts associated therewith » (59). All the Signatories are exempt from national taxation on income earned from the Organization in the territory of that Party.

Provision has been made in the Convention (60) for conclusion of an Headquarters agreement in between the Organization and the host Government relating to the privileges and immunities of the Organization, its staff and of representatives of Parties and Signatories whilst in the territory on official duties. For similar purposes the Organization may conclude a Protocol on the privileges and immunities with Governments other than the host State (61). The Headquarters agreement and the Protocol on privileges and immunities are independent of the Convention and shall be terminated according to the prescribed conditions.

(59) Article 26 (1).

(60) Article 26 (3).

(61) Article 26 (4).

## RELATIONSHIP WITH OTHER ORGANIZATIONS

The Organization will have close cooperation with the United Nations and its bodies dealing with the Peaceful Uses of Outer Space and Ocean Area, and other agencies on matters of common interest. This cooperation is indispensable for the effective implementation of the INMARSAT programme.

The relationship of the Organization with IMCO is of special importance. The Organization was born under the auspices of IMCO and much of its preliminary activities are being carried out with the assistance and direction of IMCO. In the same manner, the Organization will have to keep close contact and give due consideration to the relevant resolutions, recommendations and procedures of the organs of the International Telecommunication Union (ITU). In particular, the State in whose territory the Headquarters is located shall coordinate the frequencies to be used for the space segment and notify the ITU of the frequencies to be so used in accordance with the Radio Regulations annexed to the International Telecommunication Convention (62).

## SETTLEMENT OF DISPUTES

Article 31 of the Convention contains general principles and the annex attached to the Convention provides detailed procedures for the settlement of disputes. Disputes might arise relating to the rights and obligations under the Convention or the Operating Agreement (1) between Parties; (2) between Parties and the Organization; (3) between Parties and the Signatories; (4) between Signatories; and/OR (5) between signatories and the Organization.

As the utilization of the satellite system in maritime communication presents complex and sensitive questions, mutual accommodation and agreement through negotiation, as provided in the Convention (63), is the best medium of settlement of disputes.

In a dispute arising between Parties, between Signatories or between Parties/Signatories and the Organization, if negotiated settlement is not reached within a period of one year and if the disputants have not agreed to submit the dispute to the International Court of Justice or some other adjudicatory body, the dispute may be submitted to arbitration as provided in the annex to the Convention. In disputes between Parties and Signatories, the Convention does not provide for the negotiated settlement; nor does it provide for the lapse of a reasonable period of time before submission of the dispute to arbitration (64).

(62) Article 27 and 28.

(63) Article 31 (1).

(64) Article 31 (3).



Happily, a considerable body of rules concerning the appointment of an arbitral tribunal has now been developed. Closely following these well-established rules, the Convention provides for each disputant party naming an arbitrator of its choice, and a third member is chosen by mutual accord. The third arbitrator will act as president of the tribunal. The decision of the tribunal shall be in accordance with international law and be based on (a) the Convention and the Operating Agreement; (b) generally accepted principles of law. The decision of the tribunal shall be binding on all the disputants and shall be carried out by them in good faith.

### THE OPERATING AGREEMENT

The Operating Agreement is mainly concerned with technical, operational and financial subjects. The matters it deals with include criteria for the utilization of the space segment, earth station, capital contribution and revenue distribution, financial adjustments and settlement of accounts, liability of the Signatories and allocation of investment shares.

The allocation of investment shares of each member is important that needs some comment. The importance is enhanced by the fact that the question of investment is linked to the voting system in the Council of the INMARSAT. In accordance with the originally proposed draft article (65), « the investment share of each Member shall be based on the percentage of utilization of the space segment by that Member relative to the utilization of all Members ». But controversy centred around the criteria applied to determine the manner in which utilization was to be attributed to a Signatory for the purpose of determining the Signatory's investment share.

The United States which has a relatively small maritime fleet and considerable satellite usage wanted determination of investment share based one hundred percentage on satellite usage. Stated otherwise « utilization should be attributed for all calls originating and terminating in a country » (66). On the other hand, the great maritime nations of Europe including the Soviet Union wanted to determine the degree of utilization in accordance with the number of ships registered in a given state and the intensity of utilization by those ships. Liberia, whose registry accounts for nearly twenty per cent of the world's total larger vessels expressed its unwillingness « to shoulder the burden of payment for the use of the system » (67) based on the principle of ship's registry. That country supported the principle expounded by the United States.

(65) A slightly modified version of the article now appears in Article V paragraph 1 of the Operating Agreement as follows : « Investment shares of Signatories shall be determined on the basis of utilization of the INMARSAT space segment ».

(66) IMCO, Doc. MARSAT/CONF/SR.5 (25 April 1975) p. 3.

(67) *Ibid.*, p. 7.

As there was no consensus in the plenary, the question of allocation of investment shares was referred to a Working Group « to develop the basis for determining investment shares which might be acceptable to all potential members » (68). The Working Group could not reach an acceptable formula but was able to indicate the broad scope of the problem and suggested the following four alternatives for attributing traffic in order to permit the assessment of a Member's investment share (69).

*Alternative I :*

Utilization shall be attributed to the Member States under which authority the ship is operating in the case of calls from a ship and to the Member State in cases of calls originating in territory under its jurisdiction.

*Alternative II :*

Utilization shall be attributed to the Member State for calls originating or terminating in land territory under its jurisdiction.

*Alternative III :*

Utilization shall be attributed to the Member State under which authority the ship is operating in the case of calls originating in a territory under its jurisdiction. Additionally, half of the utilization shall be attributed to the Member State for calls originating from ships of non-Member States terminating in land territory of Member States, and for calls originating from land territory of non-Member States terminating in ships of Member States.

*Alternative IV :*

Utilization in both directions shall be divided into two equal parts, a ship part and a land part. The part associated with the ship where the traffic originates or terminates shall be attributed to the State under which authority the ship is operating if that State is a Member. The part associated with the land territory where the traffic originates or terminates shall be attributed to the corresponding State if that State is a Member.

In the finally adopted Operating Agreement, Alternative IV was agreed upon with the additional clause that « for any Signatory, the ratio of the ship part to the land part exceeds 20 : 1, that Signatory shall, upon application to the Council, be attributed utilization equivalent to twice the land part or an investment share of 0.1 per cent, whichever is higher » (70).

It may be noted from the foregoing that the criterion applied for allocation of shares is couched in such a language that no country would have monopoly over the investment shares and consequently would not be able to exercise dominating influence in the INMARSAT Organization. The United States, West European countries, Soviet Union and Japan might be the major potential investors in the Organization on account of their heavy volume of telecommunication traffic and large number of shipping registrations. The participation of developing countries for the immediate future would be very minimal.

(68) IMCO, *Report of the Working Group on Investment Shares*, Doc. MARSAT/CONF/C.2/WP.2/Rev. 1 (5 May 1975) p. 2.

(69) *Ibid.*, Annex 1.

(70) See, *Operating Agreement*, Article V (2).

## SOME CONCLUDING OBSERVATIONS

The establishment of the International Maritime Satellite Organization provides one of the most vivid illustrations of the vital role that mutual cooperation can play in the utilization of new scientific and technological developments. The proposal was a brilliant act of imagination on the part of IMCO. It not only led to cooperation in which the powerful maritime States, in spite of ideological differences, have joined together to develop and utilize the satellite system in maritime communications but also inspired other developing and less interested States to participate in the Organization.

The maritime satellite system is unique in character assuring world-wide coverage in the truly international sense and would be accessible to all users. It is estimated that the system would ultimately operate on a twenty-four hour basis for all maritime regions of the globe between latitude 70° north and 70° south by three geostationary satellites, one each over the Atlantic, Indian and Pacific oceans. In the early stages, the ships participating in the system are those of specialized types — tankers, container ships, large passenger ships in small number — and the system will meet general communication requirements, in particular public correspondence. The potential number of ships participating in the system would be in the vicinity of 60,000 by 1980 and 100,000 by the year 2000 (gross tonnage of 100 and upwards).

The Maritime Satellite Organization would bring about a real revolution not only in the methods of operating and managing maritime telecommunication but in the institutional structure of an international organization established within the United Nations system. The decision makers of the new action-oriented Organization with responsibility in operational, technical and financial matters would consist of governments, governmental agencies and private entities, on a shareholding basis. The participation of private corporations on an equal footing with nation-states in an inter-governmental Organization is innovative and is a bold departure from the traditional orthodox theory of Institutions composed of only sovereign states. This approach does not necessarily call for a surrender of sovereignty but merely for pooling so much of it as may be needed for a joint and coordinated development programme in the exigencies of contemporary international relations.

INMARSAT is not a political organization where considerations of national prestige play an overwhelming role. It is an operational organization established for a specific technical and economic purpose of meeting maritime trade requirements, and is intended to work in a businesslike manner. It will be administered on commercial basis so as to make it financially self-supporting.