

# The Future of ELDO and ESRO in the Light of Current Negotiations of Definitive Arrangements for Intelsat

## Introduction

INTELSAT—The International Telecommunications Satellite Consortium—has been involved in negotiations held in the Department of State, U.S.A., from February 24 to March 21, 1969 and from June 23 to July 11, 1969.<sup>1</sup> Article IX of the multilateral governmental agreement of August 20, 1964, establishing interim arrangements for a global commercial communications satellite system, speaks of definitive arrangements being made at “the earliest practicable date, with a view to their entry into force by 1st January 1970”.<sup>2</sup> At its fifth and final plenary session, Friday, March 21, 1969, the Plenipotentiary Conference on Definitive Arrangements for the International Telecommunications Satellite Consortium arranged for continuation of the work of the Conference through establishment of a Preparatory Committee.<sup>3</sup> That Preparatory Committee, at its twenty-fifth session, Thursday, July 10, 1969, aware that it was failing to complete its

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<sup>1</sup>Documentation for both periods of the negotiations is available in the Department of State, Washington, D.C. 20520. The February-March 1969 documentation is that of the Plenipotentiary Conference on Definitive Arrangements for the International Telecommunications Satellite Consortium. The June-July 1969 documentation is that of the Preparatory Committee of the Plenipotentiary Conference.

<sup>2</sup>For the text of the two agreements creating INTELSAT, see 15 U.S.T. 1705, T.I.A.S. 5646. The January-1967 reprint of T.I.A.S. 5646 uses the name INTELSAT which, on October 28, 1965, was adopted for the organization by its governing body, the Interim Communications Satellite Committee. In addition to the intergovernmental agreement, a Special Agreement was concluded August 20, 1964, involving commercial, financial and technical issues.

<sup>3</sup>See *Summary Record—Fifth Plenary Session, Friday, March 21, 1969*. SR/5, March 21, 1969, page 1.

work on time, *i.e.* by November 1969, arranged to have the Plenary Conference postponed until February 16-March 20, 1970.<sup>4</sup>

This slippage in the work program of INTELSAT tends to produce a more balanced picture of all space organizations based upon international legal instruments. ESRO and ELDO, *e.g.*, tend to gain in stature, while INTELSAT loses prestige, although the former's gains and the latter's loss appear to be very tenuously linked.<sup>5</sup>

### U.S. Intelsat Delegation

In his closing remarks at the fifth and final plenary session on Friday morning, March 21, 1969, Ambassador Leonard H. Marks, Chairman of the U.S. INTELSAT Delegation, announced that he would be leaving the Plenipotentiary Conference to return to private life.<sup>6</sup> On April 8, 1969, President Nixon named William W. Scranton, former Governor of Pennsylvania, as the new Chairman of the Delegation.<sup>7</sup> Since Scranton's appointment, the American press has emphasized the persistent rumors of a weakening of the official U.S. position in favor of the Communications Satellite Corporation (Comsat) as manager for INTELSAT.<sup>8</sup> Article VIII of the multilateral intergovernmental agreement of August 20, 1964, had authorized Comsat to act as Manager for the INTELSAT space segment.<sup>9</sup>

Although Ambassador Scranton headed the U.S. INTELSAT Delegation for the June 23-July 11, 1969 sessions of the Preparatory Committee of the Plenipotentiary Conference on Definitive Arrangements for the

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<sup>4</sup>See *Summary Minute—Twenty-Fourth Session, Thursday, July 10, 1969*. PC/SR/24, July 10, 1969. 1, 2. Also see *Summary Minute—Twenty-Fifth Session, Thursday, July 10, 1969*. PC/SR/25, July 10, 1969, pp. 1, 2.

<sup>5</sup>Whereas hitherto ESRO (European Research Organization) to a minor extent, and ELDO (European Launch Development Organization) in a major way, have been beset with problems and have been considered as leaving something to be desired in the way of efficient international organizations, INTELSAT has continually benefited from its image as a business-like organization. None of these three organizations is world-wide in its applicability to the extent of the International Telecommunication Union, with its 135 member countries, including those in the Soviet-dominated "Intersputnik" space communications system as well as in INTELSAT. For an excellent current statement of the role of the International Telecommunication Union, see the Statement of its Secretary-General, Mr. M. Mili, in Committee I of the Plenipotentiary Conference, Wednesday, February 26, 1969, in document Com.I/5, February 27, 1969. For an official view of the Soviet-sponsored "Intersputnik" system, see the Statement by the Observer of the USSR in Committee I of the Plenipotentiary Conference, Thursday, February 27, 1969, in document Com.I/10, February 27, 1969.

<sup>6</sup>SR/5, March 21, 1969, p. 2.

<sup>7</sup>See article, *Scranton Becomes Chairman of U.S. INTELSAT Delegation*, Department Of State News Letter, April 1969, p. 16.

<sup>8</sup>A typical article is that of Robert J. Samuelson, Washington Post Staff Writer, entitled *Comsat's International Role Debated*, with the sub-title "Problem Confronts 40-Nation Intelsat Conference," The Washington Post, Monday, June 23, 1969, p. D11.

<sup>9</sup>See T.I.A.S. 5646, either the initial printing or the January-1967 reprint.

International Telecommunications Satellite Consortium, the key men at those meetings were the representative of the United Kingdom, John E. Killick, who was elected Chairman of the Preparatory Committee, and the representative of Japan, Mr. Ogiso, elected Vice-Chairman.<sup>10</sup> The U.S. INTELSAT Delegation was incredibly large—thirty-three in number.<sup>11</sup>

### **The Comsat-As-Intelsat-Manager Issue**

One reason for there being eight Comsat representatives on the over-staffed U.S. INTELSAT Delegation is the fact that Comsat is determined to preserve its role as Manager of the INTELSAT space segment.<sup>12</sup> Paragraphs 431 to 488 of the Report of the Interim Communications Satellite Committee on Definitive Arrangements for an International Global Communications Satellite System include two paragraphs—443 and 444—noting proposals made to have the current Manager designated by the Interim Agreement to be the Management Body under the definitive arrangements.<sup>13</sup> In this connection it is essential to understand the provisions of Article XV of the Interim Agreement, under which the present arrangements (including Comsat as Manager for the INTELSAT space segment) remains in force and effect until the definite arrangements enter into force.<sup>14</sup> Any delay, therefore, tends to perpetuate Comsat as Manager.

With this background, one may review more understandingly, the discussion of the management issue at the thirteenth session of the Preparatory Committee on Wednesday, July 2, 1969. The Chairman, Mr. Killick of the United Kingdom, summarized at the outset the earlier deliberations of both Conference and Committee on this key issue. Three attitudes were distinguished:<sup>15</sup>

1. Internationalization or “denationalization” of the Manager after a fixed period provided for in the Definitive Arrangements, with implementation to be effected in steps and under the supervision of a Director General answerable to the Governing Body.

<sup>10</sup>PC/SR/1, June 23, 1969, p. 1; PC/SR/3, June 24, 1969.

<sup>11</sup>See the two-page Alphabetical Telephone Directory, dated June 23, 1969, for the United States Coordinating Group for the Meeting of the Preparatory Committee of the Plenipotentiary Conference on Definitive Arrangements for the International Telecommunications Satellite Consortium, Washington, D.C., June 23-July 11, 1969.

<sup>12</sup>Perhaps the best way to become aware of this fact is to read all the reports, beginning in November 1965, compiled and disseminated by the Chairmen of the Interim Communications Satellite Committee to Members of INTELSAT, reporting the discussion and decisions of the ICSC.

<sup>13</sup>See the 118-page Report of the Interim Communications Satellite Committee on Definitive Arrangement for an International Global Communications Satellite System, Dec. 6, January 15, 1969, of the Plenipotentiary Conference series, also referred to under its ICSC number—ICSC-36-58E W/12/68.

<sup>14</sup>See T.I.A.S. 5646.

<sup>15</sup>PC/SR/13, July 2, 1969, page 1.

2. Concern with adverse effects to the efficiency of INTELSAT resulting from internationalization or "denationalization."
3. Advocacy that efficiency be the primary goal, and that internationalization was not intrinsically a desired end.

In the discussion which ensued about future provisions on Management in the eventual Definitive Arrangements, the Chairman commented that it was actually a dialogue: the United States and its supporters kept emphasizing optimal operational performance, whereas the opponents stressed the importance of internationalization or "denationalization".<sup>16</sup>

At the nineteenth session on Monday afternoon, July 7, 1969, the U.S. INTELSAT Delegation reviewed its position on the issue of Management, noting several points: (a) agreement by all that INTELSAT's first objective must be the efficiency, economy and reliability of the global system; (b) wide support for the proposition that the present manager should be continued under contract for a fixed period of years, at the end of which period new arrangements would be made—*e.g.*, a separate international body to perform INTELSAT technical functions would be created by INTELSAT; (c) care must be taken to prevent deciding prematurely, now, to integrate technical management, thereby risking the loss of virtually irreplaceable personnel as the international political considerations impair INTELSAT's efficiency.<sup>17</sup>

### Role of Regional Systems Within Global System

The issue of regionalism, and the scope or permissibility for regionalism within the overall global system, is another burning issue under discussion by the Preparatory Committee. The issue was touched upon at the twentieth session when the financial arrangements were discussed.<sup>18</sup> General agreement was obtained for the proposition that investment quotas should be linked to usage, but there was no agreement as to whether domestic traffic should be included in calculating usage.<sup>19</sup> At the twenty-first session, on July 8, 1969, regionalism as a concept was advanced specifically by the representative of the Federal Republic of Germany, who urged: (a) that regional systems be permissible; (b) that the INTELSAT organization should be able to express its views regarding the establishment of such systems of a regional nature, but could not impose

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<sup>16</sup>*Id.* p. 2.

<sup>17</sup>PC/SR/19 (Final), July 10, 1969, page 1. This important document, on pages 2 and 3, sets forth the rationale provided by the U.S. INTELSAT Delegation for the U.S. Statement, followed by the comments made by other delegations on the points raised by the U.S. INTELSAT Delegation.

<sup>18</sup>PC/SR/20, July 8, 1969, p. 2.

<sup>19</sup>*Id.*

those views on member states; and (c) that INTELSAT members would be duty-bound to refrain from acting in such a manner as to prevent the INTELSAT system from being as technically efficient and as financially economical as possible.<sup>20</sup> It was noted by the Chairman that this German proposal was a refinement of an earlier proposal made by Japan.<sup>21</sup> The question of compatibility between the regional and the global systems was refined also—into economic compatibility and technical compatibility.<sup>22</sup>

### **Regionalism As Exemplified By ELDO and ESRO**

ELDO was established by the Convention for the Establishment of a European Organization for the Development and Construction of Space Vehicle Launchers, done at London, March 29, 1962, and entering into force on February 29, 1964.<sup>23</sup> While the duration of the agreement is not stated, after a five-year period any member may give written notice of withdrawal to the depositary—the United Kingdom.<sup>24</sup> The United Kingdom, Belgium, France, Federal Republic of Germany, Italy and the Netherlands, represent Western Europe. The only non-European member is Australia, which possesses the facilities for development firings for the first stage and of the complete launcher at Woomera.<sup>25</sup>

Essentially, two views of ELDO are held by the members: those, principally the Germans and the French, who tend to view its activities in political terms and in terms of economic prestige, and those, like the British and the Italians, who stress the financial aspect of the ELDO commitment to develop an impressive launch capability.<sup>26</sup> It is estimated that ELDO will require at least another two years to produce such a launch capability,<sup>27</sup> even if the members collaborate to the fullest extent in every way.

The seat of ELDO is at Paris,<sup>28</sup> where ESRO has its headquarters. Yet bringing the two organizations under one organizational umbrella, even while retaining separate identities, has proved impossible, despite a specific provision of the ELDO Convention contemplating cooperation and even merger.<sup>29</sup>

<sup>20</sup>PC/SR/21, July 8, 1969, p. 2.

<sup>21</sup>*Id.*

<sup>22</sup>*Id.*, at 3.

<sup>23</sup>See 507 U.N.T.S. 177 *et seq.*

<sup>24</sup>Article 23.

<sup>25</sup>Article 16 is concerned with ELDO's Initial Program.

<sup>26</sup>The United Kingdom is repeatedly stressing its financial commitment to ELDO and inability to maintain such a burden.

<sup>27</sup>Those who follow ELDO developments closely agree on the figure of two years.

<sup>28</sup>Article 1.

<sup>29</sup>Article 12(2), which provides for the "closest possible cooperation" between ELDO and any future European space research organization, also proposes the establishment of a

ESRO was established by the Convention for the Establishment of a European Space Research Organization, and with a Financial Protocol annexed thereto, which entered into force March 20, 1964.<sup>30</sup> The organization was created to promote European collaboration in the field of space research for peaceful purposes. It is scientifically oriented. It has developed two satellites for research purposes, and arranged to have them launched. It has also built and launched dozens of sounding rockets. ESRO is committed to develop three more satellites for research, and will perhaps hire another United States launch vehicle, although it may use the launch facility under construction by French authorities in French Guiana.

ESRO has an infrastructure. A technical laboratory is located in the Netherlands. There is a computer center in Germany. A research center for advanced work is to be found in Italy. Besides a tracking station in Alaska, ESRO has arranged for use of tracking stations extending southward into Africa.

Like ELDO, its political counterpart, ESRO has perennially been short of money, and suffers somewhat from the fragmentation of its operations. Unlike ELDO, its management has been excellent. ESRO benefits from having more members than ELDO; European countries like Denmark, Spain, Sweden and Switzerland have committed themselves to ESRO's scientific purposes and eschewed the political problems connected with building an ambitious launching capability

### Conclusion

As noted above, the merger of ELDO and ESRO, despite their different goals and objectives and the difference in their membership, is most unlikely. Without such a merger or equivalent action for closer collaboration of Western European countries to guarantee themselves a Western European regional system, their proposals, like that of the German representative at the twenty-first session of the Preparatory Committee on July 8, 1969, face strong opposition from countries contemplating a global system supplemented by domestic rather than by regional systems, within the system being developed by INTELSAT.

The fact that slippage has already occurred in the time table for Definitive Arrangements for INTELSAT is, however, perhaps an indication that the forces of regionalism may be stronger than the advocates of the single

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joint coordinating committee to consider matters of mutual concern such as the desirability of a merger of the two organizations.

<sup>30</sup>See 528 U.N.T.S. 33 *et seq.* for text of the Convention for the Establishment of a European Space Research Organization, and Financial Protocol annexed thereto. Pursuant to Article XX of the Convention, France is the Depositary for ESRO.

global INTELSAT network with strong, centralized management would be willing to admit at this time. Such a clash between global internationalism and regionalism may be resolved, but at the expense of the scope of activities of INTELSAT, which has heretofore been strictly a commercial system, but which might seek to move beyond commerce into navigation, meteorology and related areas.