

# INTERSPUTNIK: DEVELOPING LEGAL BASIS OF ACTIVITY

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## Abstract

The purpose of this paper is to examine the present and the future evolution on the legal basis of INTERSPUTNIK's activity dictated by the new market orientation of the international telecommunications organization. This orientation created the need to adopt the operating agreement and to modify not only the basic agreement, but the structure of INTERSPUTNIK's bodies and their functions. All these changes signify the new stage of INTERSPUTNIK's activity in the family of similar international organizations.

## 1. Introduction

INTERSPUTNIK is an independent international intergovernmental organization established in 1971 and commercially operating its satellite communication global system.

In spite of such substantial changes among its members as the collapse of the USSR, the formation of independent states in its former territory, unification of Germany, the break up of the

Czechoslovakia, and the constitutional changes in some other member States, this organization managed to preserve and, recently, to strengthen its position thanks to 23 years of international experience and a sufficiently flexible and fast change-over from obsolete forms of activity to modern market-oriented forms.

The INTERSPUTNIK satellite communications programme continues to provide for the improvement of satellite communications to meet the growing demand for traffic and to introduce new services.<sup>1</sup>

## 2. Initial INTERSPUTNIK's arrangements

During the past two decades INTERSPUTNIK performed its activities on the basis of the following documents: Agreement on the establishment of the INTERSPUTNIK system and organization of space communications (the Basic Agreement done at Moscow on November 15, 1971); Agreement on the legal capacity, privileges and immunities of the INTERSPUTNIK International Organization of Space Communications (done at Berlin on September 20, 1976); Agreement between INTERSPUTNIK International Organization of Space Communications and the Government of the Union of the Soviet Socialist Republics concerning the settlement of questions relating to the seat of the INTERSPUTNIK Organization in the USSR (done at Moscow on September 15, 1977).

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The Basic Agreement was the main regulatory document which defined the purposes, status and structure of INTERSPUTNIK, competence of its bodies, entry procedure for INTERSPUTNIK members, stages of operation of the communications system, components of the INTERSPUTNIK system, financial terms and conditions, telecommunications services available to its signatories and others users, the usual for each treaty final provisions.

INTERSPUTNIK's arrangements have paid special attention to the privileges and immunities of the organization's personnel as well as of the representatives of the members while in the territory of the Host Government for the purpose of exercising their functions. Just for these aims were concluded two Agreements.

The 1976 Agreement has defined the legal rights of the INTERSPUTNIK and its officers in the territories of the countries-Parties to this Agreement. INTERSPUTNIK is exempted from customs duties and limitations on the import and export of articles for official use. The premises of INTERSPUTNIK are inviolable. INTERSPUTNIK's property, assets and documents are immune. Its officers, while performing their official duties in the territories of the States-Parties to this Agreement, are granted a number of privileges and immunities.

The 1977 Agreement regulates the lease to INTERSPUTNIK of

premises in Moscow, the installation and use in the premises of equipment for internal, urban and international telephone and telegraph communication, the protection of the premises, the right of INTERSPUTNIK to open in the country of the seat currency accounts and accounts in roubles, to print and publications for its purposes, to issue identification certificates to its staff members. The possibility to conclude other agreements for the purpose of implementing the 1977 Agreement was also considered.

Besides above the mentioned arrangements there are a number of documents regulating the activity of INTERSPUTNIK's standing executive body-Directorate: Regulations of the INTERSPUTNIK Directorate, Staff Regulations of the INTERSPUTNIK Directorate.

INTERSPUTNIK as an intergovernmental organization has full international legal personality, and has within the scope of its objectives the right to conclude agreements with other subjects of international law. It has concluded a protocol on the use of Russian communication satellites and agreements on cooperation with ITU, INTELSAT, INMARSAT, EUTELSAT and ARABSAT.

### 3. Legal consequences of the new market-oriented arrangements

At the present stage of development INTERSPUTNIK

follows the pattern set by the INTELSAT and INMARSAT. This organization is on the way to be based on similar legal footing to that of INTELSAT and INMARSAT. We have mean a twin-arrangement, since side by side with basic agreement there will be shortly adopted a special Operating Agreement between the telecommunication entities concerned. This important decision was taken by the 7<sup>th</sup> meeting of the Committee of Plenipotentiaries of INTERSPUTNIK, which took place in Warsaw, Poland, on March 15-17, 1994<sup>2</sup>/. to amend the regulatory documents of the Organization, in particular the main document - Agreement on the Establishment of the INTERSPUTNIK System and Organization of Space Communications (done at Moscow on November 15, 1971). These amendments must reflect the provisions of the INTERSPUTNIK's Operating Agreement which is soon to be adopted. It may be foresee the modification of articles concerning the organization structure, (art.11), the functions of the governing and operation standing executive and administrative bodies of the INTERSPUTNIK (art. 12 and art.13), the control over the Organization's financial activity (art.14), the Organization's share capital (art.15), the tariffs policy for space segment utilization (art.16), withdrawal from the Organization (art.17), the dissolution of the Organization (art.18) and the reality that the government of the Russian Federation fulfils the functions of the Depository Government (art.20)

A twin - arrangement of the INTERSPUTNIK organization dictates the necessity to foresee on the Basic Agreement the position that each contracting party shall sign the Operating Agreement or shall designate a telecommunication entity, which shall sign the Operating Agreement.

As it's known the same provisions have been included in the INTELSAT and INMARSAT agreements with only difference that operating agreements have been adopted simultaneously with basic agreement.

According to the Art. 24 of the INTERSPUTNIK Basic Agreement amendments to it shall come into force for each Contracting Party accepting the amendments upon their approval by two thirds of the Contracting Parties. An amendment which has come into force shall be binding on the other Contracting Parties after their acceptance of such amendment.

It may be useful to specify the rules on the submission of the amendment proposal to the INTERSPUTNIK's arrangements taking into consideration similar dispositions at the INMARSAT Convention (art.34).

There are serious reasons for careful study by the legal experts of all arrangements governing the INTERSPUTNIK's activities for its modification to market - oriented activities. This modification should take into

account the principles which are as follows:

- global scale of the commercial communications satellite system;
- simple procedure to entry into Organization;
- small initial contribution to the share capital and sufficiently high percentage of the guaranteed annual profit share;
- equal and relatively low service tariffs for signatories and users, as well as equitable and direct access of any user to the space segment irrespective of organization membership;
- simple and efficient system of mutual settlements of disputes;
- use of standard in the international market and relatively inexpensive equipment;
- provision of service to different users without any discrimination or limitation of rights, including case when a given user is a member or user of a different international system;
- attractive to signatories and users tariff policy.

Now it must be clear that INTERSPUTNIK like two other global satellite communications systems - INTELSAT and INMARSAT will be based on two separate but related fundamental legal pillars. The revised Basic

Agreement and the Operating Agreement on the INTERSPUTNIK International Organization of Space Communications with its Annex of Arbitration. It's obtained understanding that this Operating Agreement shall be applied provisionally to all the Signatories that signed it as from the date of it signing until it enters into force.

What concerns the 1982 Protocol attached to the Basic Agreement it shall be terminated after the entry into force of the amendments. Unlike INTELSAT and INMARSAT the provisions concerning the establishment of the Operations Committee and its rules procedure will not be of put in the Basic Agreement, but in the Operating Agreement. This difference may be explained by the fact that this committee is not a governing body as the Board of governors in INTELSAT but only a working body of the Organization. As to the other, so called standard provisions, they will be the same as in the INTELSAT and INMARSAT Operating Agreements: rights and obligations of the signatories, establishment and formation procedure of the share Capital, contribution of investment shares to the capital, procedure of transfer of investment shares in the capital, tariff policy, use of returns and distribution of profits, upgrading of space and terrestrial segments, use of external financing, ITU notification, permission for earth station, utilization of the organization's space segment, liabilities, disputes

settlement procedure amendments, suspension of rights and termination of membership, settlement of financial matters while with drawing from the Organization or terminating membership, depository, entry into force, final provisions. Provisions for the arbitration procedure will be contained in Annex to this agreement and not in the Basic Agreements as was done in the INTELSAT and INMARSAT arrangements.

#### 4. Structure of INTERSPUTNIK

The revised Basic Agreement will establish a structure consisting of four organs: Board, Operations Committee, Directorate and Auding Commission. The Board is the main governing body composed of one representative from each Member with one vote regardless of the investment share in the share capital. Generally, the Board considers and decides on matters of crucial importance. This may be any issue affecting the purposes, general policy and long-term objectives of the Organization's activity.

Sessions of the Board are held at least once every two years. Besides regular sessions, the Board may also convene extraordinary sessions if requested by any Member of the organization, the Operations Committee, or the Director General provided that such a request is supported by at least one third of the Members of the Organization.

The Operations Committee will be a working body of the

Organization set up for the purpose of prompt consideration and decision making with regard to the Organization's activity. Issues covered by the terms of reference of the Operations Committee will be defined in the revised Basic Agreement.

The Committee will be composed of 17 members including 13 members having the greatest investment share in the capital of the Organization and 4 members elected by the Board irrespective of their investment share. The Committee will held at least two sessions per year. Each member of the Committee will have a weighted vote equal to the investment share or investment shares contributed to the capital by the signatory or group of signatories represented by it. The voting share of a member of the Committee will not exceed 25 per cent of the total number of weighted votes.

The Committee will seek consensus in its decision making. Should it be impossible to achieve consensus, decisions on matters of substance will be made by a qualified majority if voted for by at least 1/2 of the attending and voting members of the Committee whose aggregate voting share is at least 2/3 of the total number of weighted votes of all the numbers of the Committee. On motions of order decisions will be made by a simple majority if voted for by a half plus one of the attending and voting members of the

Committee having in mind that each member will have one vote. Decisions on the status of the matters under discussion will be taken by a simple majority of votes. The decisions of the Committee will be binding upon all the signatories.

The Directorate is the standing executive and administrative body of INTERSPUTNIK. The Directorate consists of "the Director General, his deputy, principal, technical and auxiliary staff.

The Director General and his deputy will be elected by the Operations Committee and approved by the INTERSPUTNIK Board. Principal staff members (Technical Development Director, Operations Director, Economic and Legal Director, Marketing Director) are appointed by the Director General on a competitive basis.

The Directorate deals with current matters directly related to the system's operation and implementation of the decisions taken by the Board and the Operations Committee.

The Directorate's general tasks are as follows:

- day-to-day management of the INTERSPUTNIK system;
- elaboration or participation in the drawing-up of various documents concerning INTERSPUTNIK's developments, operation, financial and organizational matters as well

as implementation of such measures:

- timely preparation and distribution of materials to be discussed at Board sessions, meetings of the Operations Committee, expert's meetings on technology and economic/legal issues as well as traffic meetings;

- coordination of INTERSPUTNIK's activity with other international space communications organizations; participation, on behalf of INTERSPUTNIK, in international exhibitions, symposia and conferences;

- definition of general principles of the system's utilization, operation and control;

- performance of the functions of a depository of protocols, agreements, contracts and other instruments signed on behalf of INTERSPUTNIK;

- intermediary services and organization of various forms of cooperation with other organizations;

- elaboration and updating of the INTERSPUTNIK System Regulations.

The Director General is assisted by the Board of the Directorate as a consultative body in resolving problems related to the Directorate's activity. The Board's meetings are convened at least once a month.

The interests of all international staff members in their relations with the top

executives of the Directorate are represented by the Initiative Group as a civic body. The Initiative Group acts within the framework of the Initiative Group Regulations.

The control over the Organization's financial activity is exercised by the Auditing Commission. This Commission consists of three members elected by the Operations Committee for a term of three years among the nationals of different countries whose governments are members of the Organization.

The Auditing Commission submits its reports to the Operations Committee and to the Board of the Organization. In performing its functions the Auditing Commission acts in accordance with the "Auditing Commission Regulations" of the INTERSPUTNIK International Organization of Space Communications.

## 5. Members and Users

As at August 1, 1994 the following 22 countries were INTERSPUTNIK members: Republic of Afganistan, Republic of Bulgaria, Republic of Cuba, Czech Republic, Republic of Georgia, Federal Republic of Germany, Hungarian Republic, Republic of Kazakhstan, Korean Democratic People's Republic, Laos Democratic People's Republic, Mongolian Republic, Republic of Belarus, Republic of Nicaragua, Republic of Poland, Republic of

Turkmenistan, Romania, Russian Federation, Syrian Arab Republic, Yemen, Socialist Republic of Vietnam, Republic of Kirgistan and Republic of Tajikistan.

As was already noted the Russian Federation as a continuing state of the USSR officially has assumed all rights and liabilities of the former USSR, related to its INTERSPUTNIK membership and depository functions.

Russia, as a continuing state of the USSR, was not obliged to apply for INTERSPUTNIK membership, but other former soviet republics which were considered successor states to the Soviet Union did have to apply for INTERSPUTNIK membership. Just for these reasons many of the former soviet republics were obliged to apply for INTERSPUTNIK membership. After the establishment of the Commonwealth of Independent States (the CIS) the main task of INTERSPUTNIK is to render assistance to the former Soviet republic in establishing direct international links with foreign partners. Before the collapse of the USSR the republics had mostly transmitted links via an international center in Moscow and usually much time was wasted to establish a connection because of the limited capabilities of the center.

INTERSPUTNIK is rendering assistance to the C.I.S. countries not only in terms of space segment capacity, but

also as an experienced coordinator of earth station construction and the establishment of connecting lines to the stations. Moreover, INTERSPUTNIK can assist those users who wish to communicate with the C.I.S. countries via INTERSPUTNIK.

The procedure of entry into INTERSPUTNIK is very simple. To become its member the Government of any state should send an official application to the INTERSPUTNIK Board stating that it shares the goals and principles of the organization's activities and assumes the obligations arising from the Agreement on the Establishment of the INTERSPUTNIK International System and Organization of Space Communications of November 15, 1971 and the Agreement on the Legal Capacity, Privileges and Immunities of the INTERSPUTNIK International Organization of Space Communications signed on September 20, 1976. The said documents should be ratified by the Parliament of the country concerned. The Board notes the statement of any government wishing to join INTERSPUTNIK. The government that signed and forwarded its application will become an INTERSPUTNIK member if it submits the corresponding documents to the depository government represented by the Ministry of Foreign Affairs of the Russian Federation. The corresponding documents can be a document of ratification of the Agreement or a note of the Ministry of Foreign Affairs of the country concerned. The government of the country

becomes a member of the organization as from the date of deposition of the above documents with the depository. Any new member must appoint his representative to the Board.

As at 01.09.1994 the INTERSPUTNIK System was used by more than 100 countries or companies including the PTT Administrations and companies in the US, UK, Japan; Canada, China, India, France, Portugal, Madagascar, etc.

INTERSPUTNIK provides a full set of services for users located anywhere on the globe. Its basic services are as follows:

- telephony, facsimile, telex and data exchange in international, domestic and regional public networks, as well as in dedicated networks;
- regional TV and audio broadcasting in VSAT network;
- establishment of videoconferencing networks;
- establishment of business communications networks, etc.

INTERSPUTNIK is also looking into the possibility of using LEO satellites for personal radio-telephony.

As it has always done, INTERSPUTNIK will provide its services to different users without any discrimination or limitations of rights, including cases when a given user participates in the establishment or is a member or user of a different



international system. According to the tariff policy, INTERSPUTNIK closely follows the level of world prices and intends to keep its tariffs attractive to members and users. There are plans to offer more advantages to those who ensure long-term and effective use of the space segment.

## 6. Financial Arrangements

To perform its functions, INTERSPUTNIK uses the assets of the Statutory Fund consisting of investment shares contributed by the member-countries.

Each investment share is composed of

- a mandatory contribution paid upon entry in the amount of 1% of the Statutory Fund, and

- an extra contribution depending on the percentage of utilization, by a given country, of space segment capacity within the total volume of space segment capacity utilization by all INTERSPUTNIK member-countries. No extra contribution is required if the percentage of space segment utilization by a given country does not exceed 1% of the total space segment. The Statutory Fund is accumulated in US\$.

The basic source of the Organization's revenues are receipts for the provision of space segment capacity.

The profit which remains after

the defrayal of INTERSPUTNIK's maintenance expenses and replenishment of its special funds is distributed by the Member.

To encourage its members, the organization pays them guaranteed profit shares proceeding from the results of each fiscal year (the fiscal year corresponds to the calendar year).

The total amount of the guaranteed profit shares is equal to 14% of the total amount of INTERSPUTNIK's capital in the period under review. This percentage is distributed among the members of the Organization depending on their investment shares in the capital.

To increase the efficiency of utilization of the existing facilities, the Organization provides tariff incentives that encourage its customers to use the most advanced types of equipment.

One of INTERSPUTNIK's special funds is a development fund. This fund is used to finance the development and upgrading of the communications system as well as monitoring and control facilities. It is also a source of financial aid to certain members of the Organization.

INTERSPUTNIK's experience shows that any funds, invested by the member-countries in his communications system pay back quite rapidly.

In fixing its tariff, the Organization proceeds not only

from world-average prices but also from the following consideration:

- as a rule, the tariffs are fixed for the occupied satellite capacity rather than for the number of channels;
- in the case of long-term lease INTERSPUTNIK grants a discount, and the longer a given lease is the greater is the discount;
- preferential tariffs are fixed on a provisional basis for newly introduced services;
- tariffs for customers using standard earth station differ from rates applicable to non standard stations.

There are separate tariffs for space segment and earth station utilization. Transponder charges are fixed by the Board, and earth station tariffs by earth station owners.

## 7. Components of the INTERSPUTNIK system

The INTERSPUTNIK system consists of a space and earth segments. The space segment includes Stationar and Express (starting from 1994) communications satellites positioned at geostationary orbit. As compared with the Stationar satellites, the Express satellites have more capacity and better operating parameters. The use of the Express satellites will upgrade the technological level of the system, its service quality and economic

efficiency. In the future INTERSPUTNIK shall use the next-generation satellite systems.

INTERSPUTNIK is currently working to provide its own space segment that would fully meet the Organization's future needs.

The space segment also includes:

- monitoring stations which monitor the performance of the entire system and check the parameters of new earth stations for compliance with the specifications set forth in the INTERSPUTNIK Regulations;
- ground control and monitoring facilities for satellites in orbit.

The type of an earth station (standard or small aperture) and its equipment configuration are chosen by the owner. As at 01.09.94 there were over 40 standard earth stations in the INTERSPUTNIK System.

The owner of a future earth station should in advance inform the INTERSPUTNIK Directorate of his intention to build a station and coordinate different organizational matters related to types of service, planned traffic, routings, etc. as well as apply for and register frequency position for the earth station under construction with the IFRB as it is prescribed by the ITU.

As soon as the earth station becomes operational, its owner

tests its parameters for compliance with the specifications listed in the INTERSPUTNIK Regulations. After that the Directorate gives permission to the owner to connect the station to the system.

The functions of a monitoring station can be performed by any standard earth station that is equipped not only with the type-approved radio communications systems but also with the required instrumentation to monitor the performance of the entire system. As a minimum there is one monitoring station operating in the service area of each satellite. Monitoring stations are selected and appointed by the Operations Committee.

The basic functions of the terrestrial control complex are as follows:

- transmission of commands to the satellites to switch on satellite borne systems which monitor the performance of different onboard units, collect telemetry data, process these data and transmit them to the Earth;

- reception, recording and processing of telemetry data and decision-making regarding control of satellite-borne equipment;

- transmission of commands to control satellite-borne equipment and supervision over the execution of such commands;

- satellite tracking,

measurement of orbit parameters, forecasting of time-dependent changes in these parameters;

- forecasting of orbit correction time and execution of such corrections;

- determination and output of initial data for calculation of tracking data etc.

The operation of the INTERSPUTNIK System is organized by the Directorate, control centre and monitoring stations.

The earth segment comprises several types of ground stations situated in various locations on the globe, owned by members or users and used for traffic exchange among different customers.

In conclusion it could be noted that INTERSPUTNIK has a number of advantages as compared with similar organizations.

Basically, they are as follows:

- INTERSPUTNIK is a global system of satellite communications;

- a simple and efficient system of mutual settlements;

- direct access to the space segment for any users irrespective of their membership in INTERSPUTNIK;

- all the member-countries have equal rights;

- small contributions to the

Statutory Fund and a guaranteed and sufficiently high percentage of the annual profit share;

- same relatively low tariffs for members and users;

- usage of equipment widely available throughout the world.

### Notes

1. See, the exclusive interview of Gennady Kudryavtsev, INTERSPUTNIK's Director General, Satellite Communications, April 1993, p.26.

2. See, the News Release. INTERSPUTNIK, No. 1, April, 1994, p.3.

3. See, R.Mullerson, New Development in the Former USSR and Yugoslavia. Virginia Journal of International Law, vol.33, Number 2, Winter 1993, p.304.