

The Protection of the Public Interest in the Light of the Commercialisation and Privatisation of the Providers of International Satellite Telecommunications

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Abstract

The new structures produced in the commercialisation of international satellite communications seek to reassure as to their continued respect for the public interest by instituting supervisory bodies, ITSO and IMSO. As a result of maritime developments IMSO may have its mandate extended. Should this go further?

1. Introduction.

The Vienna Declaration on Space and Human Development adopted at the end of UNISPACE III in 1999 acknowledges the importance of private enterprise in space.¹ It is now five years since INMARSAT was privatised and three since INTELSAT also followed that route. I have elsewhere expressed reservations as to these developments,² and would still retain some doubts. As originally conceived both organisations were intended to serve the international public interest. Both new structures have built-in to them devices to secure that public interest, but how robust

are those devices? We should remember that the new companies are working within an international commercial environment very different from the one in which their predecessors were conceived. The skills required by their executives have mutated. How well have their public interest purposes survived? Formally they have, but INTELSAT still worries me. I have less fear for INMARSAT and it is interesting to find that recent discussions within INMARSAT may be opening up a new approach, with application beyond telecommunications questions.

2. The commerciality of business.

Much is made of the dogma attributed to Adam Smith that private enterprise operating in a free market produces better results for society as a whole.³ But the doctrine of the 'free market' as originally propounded was conceived of as operating in a society very different to our own, a smaller, more limited market-place where traders and businessmen mostly knew each other, and one in which theological and moral constraints were for the most part effective in curbing excess and amorality. Today the fine line between enterprise and theft seems blurred, as recent accounting cases to do with communications companies as well as some in the power supply business would appear to indicate.

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A 'brisk pioneering spirit' in the seeking of wealth, may not always be readily distinguished from the activities of 'unprincipled opportunists always ready to grab something for nothing'.⁴

Modern business is not sentimental. Without profit a company falls. With profit others seek to take over the business. We are told of economies of scale, of the interlocking nature of comparable (previously competitive) businesses, and we are beguiled by promises of 'efficiency savings' (which usually means summary cuts). At the instance of chief executives some companies embark on grandiose programmes of acquisition, taking an enterprise far from its original business, and constructing conglomerates out of wildly divergent elements. These usually seem to fail after a few years. But in the pursuit of profit there is always a role for the entrepreneurial vultures, as well as for white knights and company doctors. Companies restructure and amputate or divest themselves of those parts of the business that are loss-making. 'Shareholder value' is paramount. But that aim may sit uneasily with service to the customers of the enterprise. 'Shareholders' in major businesses are not individuals but large money-management undertakings such as insurance companies and fund-managers, and the managers of which are ignorant of the technicalities of the businesses in which they invest. Their interest lie in profit, not altruism. And then there can be the problem of the 'managers' of the enterprise, as the financial papers regularly chronicle.

3. The Public Interest.

The provision of a service to the public is not the same as the provision of a public service. A 'service to the public' is intended to be profitable. A public service

need not be profitable or economic, but it is provided in the public interest, and as needed its costs may be defrayed either by direct grant or by cross-subsidy from profitable activities within the business of the provider as a whole.⁵ A buccaneering approach to satellite telecommunications could view such matters as subsidiary to the maximisation of profit and therefore as unduly idealistic. The public service ethos could be diluted, if not lost. The international public interest lies in the provision of global services, ready access to the system for all, non-discrimination and equitable costs.⁶ I have elsewhere suggested that in the Twenty-First century such provision now has a basis of duty under International Law,⁷ but confine this discussion to the formal agreements and undertakings relating to the new INTELSAT and INMARSAT arrangements.^{8 9}

It was UNGA Res. 1721 Part D that clearly identified the benefit that could be derived from space telecommunications, and accordingly called for the creation of a global satellite telecommunications system. The Preambles of both the new INTELSAT and INMARSAT Conventions refer to UNGA Res. 1721 as to global and non-discriminatory service. Both INTELSAT and INMARSAT have devices to secure to some extent the public interest in their operations. Both have privatised their operational and business elements but each retains a residual international organisation which, in terms of a Public Service Agreement with the privatised entity can enforce public service obligations written in to the new Agreements.¹⁰ How do they stack up?

4. ITSO and INTELSAT.

The International Telecommunications Satellite Organisation (ITSO) was created

in 2001 by the amendment of the original definitive intergovernmental arrangements of 1973, and the termination of the related Operating Agreement.¹¹ Article II creates the new ITSO, and Art. VI gives it juridical personality. Its structure is laid down in Art. VIII to consist of an Assembly of Parties meeting every two years, and an Executive Organ headed by a Director General. The duration of the new ITSO Agreement is at least twelve years, at which point the Assembly of Parties may decide to terminate it (Art. XXI). Parties may withdraw from the Agreement (Art. XIV), and its amendment is possible (Art. XV). Operational and business elements of the former INTELSAT have been transferred to a new company INTELSAT LLC, based in the U.S. and other subsidiary companies registered elsewhere including Bermuda and the U.K. The shareholders of the new Company are the former Parties to the INTELSAT Agreements, holding shares in proportion to their previous investment shares in INTELSAT. Some have already sold shares to other shareholders and it is intended that there will be a public offering of shares in the near future.

The function of ITSO is contained in Art. III: '[T]he main purpose of ITSO is to ensure through the Public Services Agreement, that the Company provides, on a commercial basis, international public telecommunications services, in order to ensure performance of the Core Principles.' Further by Art. V. ITSO is to 'take all appropriate action including entering in to the Public Services Agreement, to supervise the performance ... of the Core Principles, in particular the principle of non-discriminatory access to the Company's system for existing and future public telecommunications services offered by the Company when space segment capacity is available on a

commercial basis.'¹² The Core Principles are that the Company should: (i) maintain global connectivity and global coverage; (ii) serve its lifeline connectivity customers; and (iii) provide non-discriminatory access to the Company's system. The Lifetime Connectivity Obligation (LCO) is constituted by specific agreement with particular countries to provide continued telecommunications services to the Lifetime Connectivity Obligation customer (Art. I(h)). Twelve countries have qualified for LCO status as being least developed and dependent on INTELSAT for telecommunication services. The duration of an LCO contract is twelve years.

The Director General of ITSO has specific responsibilities as to monitoring the INTELSAT Company's compliance with the Core Principles in general (Art. X (e)), and with particular duties as to LCO contracts and customers including the performance of such contracts, petitions for eligibility to enter into such contracts, conciliation in disputes between the company and customers, and advise on the selection of arbiters in case of dispute (Art. X (f)).

My concerns about the new system have several elements. First, there must be a severe question as the permanence of these arrangements. As noted above the new Agreement has a twelve year life (Art. XXI), and then can be terminated by the Assembly. The quorum of the Assembly is a majority of the Parties. A proposal to terminate the Agreement is specifically defined as a matter of substance which means it will be determined by a two-thirds majority of those Parties present and voting (Art. IX (f)), and with each Party having one vote (Art. IIX(g)). In 2013 commercial interests will argue for the removal of the constraints that the Agreement and relative Public Service

Agreement impose on the INTELSAT companies activities. In that case the remanent public service element of INTELSAT will evanesce. Second, there is a knock-on effect as to non-US space industries, which no longer have the protection of the requirements of the old system as to a share of procurement contracts. The obvious response is that merit will always secure a contract even against a domestic US supplier. But experience in other industries including aviation undermines that argument. Third, as things are INTELSAT has ceased to be an independent entity and is now subject to the requirements of the United States through the FCC. That loss of independence may well increase in the current international and domestic political environment. There are official US statements indicating a willingness to treat INTELSAT as required to serve the interests of the United States.¹³ This would militate against the provision of non-discriminatory access to satellite services on a global basis.

5. IMSO and INMARSAT

Although INMARSAT effectively privatised on 15 April 1999, the relevant Amended Convention did not come into force until 31 July 2001, binding all Parties including those that had not accepted the revision.¹⁴ The Operating Agreement between the telecommunications entities has been terminated and under the new Convention the INMARSAT Council has disappeared. A newly constituted residual intergovernmental organisation, the International Mobile Satellite Organisation (IMSO) is charged with the oversight of duties as to the provision of public services, notably the Safety of Life at Sea (GDMSS), and a Public Services Agreement entered into between IMSO

and a new Company. In the new interlinked structure INMARSAT's business and operational functions have been transferred to INMARSAT Ventures Ltd (www.inmarsat.int), a UK company, and associated subsidiary companies based in Bermuda. The shareholders of the new Company are the former Parties to the INMARSAT Agreements, holding shares in proportion to their previous investment shares in INMARSAT. It is intended that there will be a public offering of shares in the Company in the near future.

IMSO, established by Art. 2 of the new Convention, consists of an Assembly and a Secretariat.¹⁵ The Secretariat (Art. 9) operates under a Director who serves for a four year term or terms (Art. 9 (1)).¹⁶ The Assembly is composed of all the Parties (presently 87, Art. 6 (1) and (3)), at which each Party has one vote (Art. 7 (1)). It meets in ordinary session every two years (Art. 6 (2)), but with extraordinary meetings possible at the request of one-third of the Parties, or the Director, or as the Assembly's Rules of Procedure provide (Art. 6.2). There is also an 'extra-conventional' Advisory Committee. The functions of the Assembly are set out in Art. 8. It considers and reviews the purposes, general policy and long term objectives of the Organisation as well as the activities of the INMARSAT Company relative to the basic principles laid out in Art. 3 (to which we are coming) (Art. 8.(a)). In so doing the Assembly is to take into account any recommendations which the Company may make on the matter. It also can take steps to ensure observance of the basic principles of IMSO, including dealing with the Public Services Agreement (Art. 8(b)), decides on formal relations with other international persons (Art. 8 (c)), and appoints and may remove the Director (Art. 8 (e)). IMSO has legal personality (Art. 12), and is to cooperate

with the UN and other relevant international organisations (Art. 13). The present IMSO Agreement has no specific provision for its termination, but one assumes that that also lies within the competence of the Assembly, presumably as a matter of substance (Art. 7). The running costs of IMSO are paid by the Company under the Public Services Agreement (Art. 10).

IMSO's purposes, set out in Art. 3 of the Convention, are to secure the observance by the INMARSAT Company, INMARSAT Ltd., of certain basic principles incorporated in the Public Services Agreement, and laid out in Art. 3. INMARSAT Ltd. is to continue to provide the global maritime distress and safety services and in particular those specified by the 1974 International Convention on the Safety of Life at Sea¹⁷ (SOLAS) and the Radio Regulations of the ITU as amended and updated as these relate to the Global Maritime Distress and Safety System (GDMSS) (set up by the International Maritime Organisation) (Art. 3.1). INMARSAT Ltd is also first to provide services without discrimination on basis of nationality (Art. 3 (b)), second to act exclusively for peaceful purposes (Art. 3 (c)), third, is to seek to serve all areas where there is need for mobile satellite communication, including giving due consideration to rural and remote areas of developing countries (Art. 3 (d)),¹⁸ and fourth, operate in a manner consistent with fair competition subject to applicable laws and regulations (Art. 3 (e)).

The related Public Services Agreement allows IMSO to enforce compliance with the basic principles of Art. 3 of the Convention by U.K. court action if necessary. A main element in the Agreement is the preservation as an operational responsibility of the INMARSAT Company of the Global

Maritime Distress and Safety System (GDMSS) (set up by the International Maritime Organisation). The provision of global maritime, aeronautical and land mobile services are also important, but it should be noted that the basic distress signal element of GDMSS is a free service, and follow-up signals in connection with a distress signal are at a reduced rate. And as we have noted above, the intention of INMARSAT to seek to serve all areas where there is need for mobile satellite communication, giving particular regard to rural and remote areas of developing countries is another strand in the meeting of the international public service element of INMARSAT services. This is also present as part of the Public Services Agreement.

Apart from these matters I should also note that IMSO itself holds a special share in the INMARSAT Company,¹⁹ which allows it to block an amendment to the public service obligations contained in the company's constituent documents, or proposals that would seriously affect compliance with these obligations. It can also block the voluntary winding up of the Company. Of course at present, before the dilution of share-ownership which will occur when share-holding becomes widely available, the majority of share-holders in the Company are Parties to IMSO and are likely to think the same way in both arenas. But once shares in the Company become part of the general availability of shares to entrepreneurs, money-managers and speculators, this may no longer obtain. The 'special share' mechanism is therefore useful.

6. IMSO: Future developments?

But IMSO and the new INMARSAT arrangements do have problems. The international telecommunications scene is

changing, and new competition is developing in the area of mobile satellite services.²⁰ Entrants to the field or those expanding their interests in it are not interested in remote and rural areas in developing countries, as there is no immediate profit achievable. Nor are they particularly interested in the provision of maritime safety services. Another potential difficulty looms even with the element of safety of life at sea. On 25 November 1999, by its Res. A.888(21) the Assembly of the International Maritime Organisation adopted general criteria as to the provision of GDMSS services.²¹ This was in response to developments in the design and technical capabilities of new satellites, allowing newer operators to meet the requirements set by the IMO as to the GDMSS system. The effect would be that a new entrant would be able to take at least some of the revenue presently going to INMARSAT Ltd., but without the constraint that INMARSAT Ltd has under its public service obligation as to providing service to remote and rural areas. In short we are seeing the impact on INMARSAT of 'commercial principles' in the telecommunications business.

One (business-like?) response would be simply to shuck off the constraints that INMARSAT Ltd. works under. INMARSAT/IMSO could terminate the IMSO Convention and the Public Service Agreement so as to compete with any newer entrants on a basis of equality and. But such would forfeit elements of the public service that neutral observers would wish to preserve. It is therefore good that a different solution is being investigated.

In 2002 Denmark proposed amendments to the IMSO Convention at the Sixteenth Session of the IMSO Assembly and an Intersessional Working Group (IWG) was set up to consider the

matter.²² Although some of these amendments can be considered simply as a tidying-up (e.g. the replacement of the titling of the Secretariat as Directorate, and the limiting of the Director to two terms) there were more fundamental elements to the proposal. In particular the mandate of IMSO would be extended to supervise any 'Provider' of telecommunications services, whether a PTT or a commercial company, willing to come under its jurisdiction. Again it was proposed that Art. 3 would be modified so make clear that ensuring that GDMSS obligations are met is the primary purpose of IMSO. The rest of Art. 3 would be adapted to require that Providers provide services without discrimination on basis of nationality, act exclusively for peaceful purposes, and act in a manner consistent with fair competition. The previous element in Art. 3 as to rural and remote areas would be transplanted to a new Art. 5 allowing IMSO to assist Providers in ensuring that remote and rural areas of developing countries are served and technical assistance and capacity building to be facilitated. Correlatively the Public Service Agreement would be amended and available for any new service Providers.

The Intersessional Working Group had three meetings,²³ and its Report goes to the Seventeenth Session of IMSO in late 2004.²⁴ It reflects a lack of consensus among the IWG. Some oppose change to the IMSO mandate, deeming such a development unnecessary and perhaps even, by the addition of a new level of bureaucracy, a hindrance to efficiency of the GDMSS system.²⁵ Others think such a development premature, but possible when IMO does recognise a provider other than INMARSAT for GDMSS.²⁶ Yet others think the need to amend the IMSO mandate as urgent. My comment would be that it makes little sense not to foresee and

provide for future developments. Objections seem trivial, based on cost and possible 'restrictions' on enterprise. The cost involved is minimal, especially when placed against the willingness of some to spend vast sums on other endeavours in which economic operation seems to be of less concern. Might it be rather that the dislike of the proposal is based on an apprehension that future 'Providers' within the GDMSS might need to meet standards that would impinge on profit?

Interestingly the Recommendations of the Third Meeting of the IWG, which adopted the 'Outcome' report, include that the forthcoming Assembly should consider the reports of each of the IWG Sessions. This means that potentially other matters discussed in the IWG Sessions could be considered. These include aeronautical safety and the proper role of IMSO in relation to services to rural and remote areas.

The present revised draft attached to the Outcome Report, in places with alternative texts, still deals with GDMSS as the basic service to be provided by the new entrants to an IMSO system. However, that need not be the case. What of others wishing to enter the satellite telecommunications field in order to provide inexpensive basic services to the rural and remote areas, which is a matter of interest to the existing INMARSAT/IMSO system? They might be willing to place themselves under IMSO supervision as to their meeting their intentions, particularly if such developments were to tie in with the concerns of the World Summit on the Information Society 2003-2005 and questions of the Digital Divide.²⁷ Another area of interest might be aeronautical safety and traffic management. Further, we are standing on the brink of other developments. David Sagar drew the attention of the 2003 Practitioners Forum

of the European Centre for Space Law to the fact that global positioning services are services of great public benefit., and therefore a business in which providers might reasonably reassure the world at large as to non-discrimination, fair competitive practices and global access.²⁸ In other areas the supervision of the performance of aeronautical safety services could also be included in the future.²⁹

Second-last, and probably politically contentious, there is the question of 'peaceful purposes' currently enshrined in Art. 3 (c). This is language that has a long history in space law, and in international law and politics generally. As far as telecommunications is concerned, can it survive as an obligation? Should it disappear from IMSO requirements? It goes to the content of the communications rather than the service itself, and telecoms providers do not themselves monitor content. I would suggest that it be removed as an unquantifiable or unascertainable requirement,³⁰ as well as being unenforceable at the point at which it could be important – when the non-peaceful message passes through the system.

The broad result of the proposed alterations would be to convert IMSO into a general monitor of compliance with public service obligations, extending its supervisory role to other telecoms Providers willing to place themselves under such supervision. These public service obligations might lie within the realm of GDMSS services, but could well go beyond into other services.

7. Further ben

But we can go yet further in such thoughts. There is a need for an international regulator or supervisor or safeguarder of the international public interest.³¹ IMSO

and ITSO do that job within their limited mandates. IMSO's jurisdiction might extend to other telecoms Providers, as indicated above. But should this concept not be extended? In many countries government, or governmentally established independent agencies supervise the activities to enterprises, public and private, to ensure that the public interest as well as the commercial interest is preserved. The FCC requires the maintenance of uneconomic services to areas of the US where the telecoms traffic is thin, and economic pricing would be unacceptable. The UK does likewise. But these supervisors operate only within national jurisdiction.

It would make sense to have a global regulator dealing with all such matters. And if for example, the IMSO mandate were to be extended first to supervise GPS systems, starting with Galileo, it could eventually be turned into a general supervisor or monitor, thereby serving the international public interest. But we will have to come back to such a grandiose notion. I am afraid that I cannot envisage commercial interests being appreciative of such suggestions.³²

NOTES

¹ The Preamble of the 'Space Millennium: Vienna Declaration on Space and Human Development' adopted by the plenary meeting of the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space, Vienna, 30 July 1999 (A/CONF.184/6, 30 July 1999) *inter alia* recognises 'that significant changes have occurred in the structure and content of world space activity, as reflected in the increasing number of participants in space activities at all levels and the

growing contribution of the private sector to the promotion and implementation of space activities'. For text see www.oosa.unvienna.org/unisp-3/res/html/viennadecl.html.

² F. Lyall, 'On the Privatisation of Intelsat' (2000) 26 *J. Space L.* 101, (2001) 5 *Sing. J. Int. and Comp. Law* 111.

³ F. Lyall, 'Privatisation, Jurisprudence and Space', 1999 42 *Proc. IISL* 149 - 158; Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, (Oxford: Oxford U.P., 1993), Cf. C.R. Fay, *Adam Smith and the Scotland of his Day* (Cambridge: Cambridge UP, 1956); E. Rothschild, *Economic Sentiments: Adam Smith, Concordet, and the Enlightenment* (Cambridge, Mass.: Harvard U.P., 2001). This is not to say that commercial enterprise should be excluded from space telecommunications. Since 1993 the US Federal Communication Commission can, and sometimes must, use an auction process, that is competitive bidding for spectrum assignments and other decisions internal to the US (47 U.S.C. 309(j) as amended), and has done so. Cf. G.L. Rosston and J.S. Steinberg, 'Using Market-based Spectrum Policy to Promote the Public Interest', 1997 50 *Fed. Comm. L.J.* 87-116. For a 'space' example involving both spectrum and orbital location see *In the Matter of Auction of Direct Broadcast Satellite Licenses*, 19 FCC Rcd. 820; 2004 FCC LEXIS 173, Release Number FCC 04-8, Adopted January 5 2004, released January 15, 2004. In that Proceeding the assignments involved related to DBS orbital positions assigned to the US by the 1983 ITU Regional Administrative Radio Conference. The FCC may not use competitive bidding for the provision of international or global satellite

communications services: see § 647, Open-Market Reorganisation for the Betterment of International Telecommunications Act, 2000, the 'ORBIT Act'; Pub. L. No. 106-180, 114 Stat. 48, § 647, codified at 47 USC § 765f.

⁴ T. Pratchett, *Jingo*, (London: Gollancz, 1997) 17.

⁵ This is precisely what Art. V(d) of the 1973 Definitive Arrangements for INTELSAT secured. By it there was a single uniform cost for a particular service on a world-wide basis, so 'thin' routes were subsidised by 'fat' routes. For the 1973 INTELSAT arrangements see: Agreement relating to the International Telecommunication Satellite Organisation (INTELSAT), (1973) U.K.T.S. 80, Cmnd. 5461; 23 UST 3813, TIAS 7532; (1971) 10 ILM 1909.

⁶ What exactly is the international public interest in such matters is discussable, but I suggest that these elements are essential. As to discussions see inter alia: J.M. de Faraminan Gilbert, 'Law and Ethics of Outer Space' 2000 43 *Proc. IISL* 12-17; J. Monserrat Filho, 'Why and How to Define 'Global Public Interest'' 2000 43 *Proc. IISL* 22-33; Ram S. Jakhu, 'Safeguarding the Concept of Public Service and the Global Public Interest in Telecommunications, 2001 5 *Sing. J. Int. and Comp. Law* 71-102; F. Lyall, 'The Role of the World Interest in Space Telecommunication Activities' 2001 44 *Proc. IISL* 171-180.

⁷ F. Lyall, 'International Law and New Global Private Satellite Telecommunications Systems', (2002) 27 *Annals of Air and Space Law*, 429-446.

⁸ The activities of the new INTELSAT and INMARSAT companies and the progress of privatisation are outlined in successive reports by the FCC as required under the ORBIT Act. See FCC Report to Congress as required by the ORBIT Act, 2000 15 FCC Rcd 11288, 2000 FCC LEXIS 3106; *ibid.* 2001 16 FCC Rcd 12810, 2001 FCC LEXIS 3272; *ibid.* 2002 17 FCC Rcd 11458, 2002 FCC LEXIS 2995; *ibid.* 2003 FCC Rcd 12525, 2003 FCC LEXIS 3315; *ibid.* 2004 FCC LEXIS 3112.

⁹ Ideally I should treat of EUTELSAT as well. It has adopted a structure similar to that of INTELSAT and INMARSAT, but space does not so permit

¹⁰ INMARSAT pioneered this solution. See D.W. Sagar, 'The Privatisation of INMARSAT: Special Problems' in *International Organisations and Space Law*, (ESA SP-442) 127-46; his 'The Privatisation of Inmarsat' (1998) 41 *Proc. IISL* 205-23; and his 'Inmarsat since Privatisation,' in *Legal Framework for Satellite Telecommunications. Proceedings of the Project 2001 - Workshop on Telecommunications Held 8-9 June 2000 at Berlin* (Cologne: Institute of Air and Space Law, University of Cologne, 2000) at 163-8.

¹¹ The ITSO Treaty Agreement 2001, the Agreement relation to the International Telecommunications Satellite Organisation, is available at www.itso.int. The new Agreement has some odd phraseology, for example, what does it mean to 'ensure performance of the Core Principles' (Art. III (b)? It would have been better to use 'fulfil' or 'honor' as the Preamble does.

¹² To elucidate: ‘on a commercial basis’ is defined by Art. I(e) as meaning ‘in accordance with usual and customary commercial practice in the telecommunications industry’, but one may (?must) ask whose industry is involved? Correlatively I note that the new arrangements free INTELSAT from the former restrictions implicit in the sharing of procurement contracts among then industries of the then Parties that the previous Agreements required. ‘Non-discriminatory access’ is defined as ‘fair and equal opportunity to access the company’s system by Art. I(o) – but ‘fair and equal’ is not unequivocal. Last ‘when space segment capacity is available’ does possibly fudge the requirements of the Core Principles as to service.

¹³ See Part IV, ‘Impact of Privatisation’ in successive FCC Reports to Congress under the Orbit Act, 2002, 2003, 2004, cited above n. 8. Cf. fears expressed in F. Lyall, ‘Privatisation and International Telecommunications Organisations’ (1995) 38 *Proc. IISL* 168-74.

¹⁴ Amended Convention of the International Mobile Satellite Organisation (IMSO (INMARSAT)) with Public Service Agreement (1999) XXIV *Annals of Air and Space Law* 477 – 506. See also articles by David Sagar cited above, n. 10.

¹⁵ There is also an ‘extra-conventional Advisory Committee.

¹⁶ The IMSO Secretariat presently consists of three individuals.

¹⁷ 1184 UNTS 2; (1980) BTS 46, Cmd. 7874; 32 UST 47, TIAS 9700; 14 ILM 963.

¹⁸ In later discussion, to which we are coming, this has been sharpened to mean particularly countries, which are dependent on satellite communications, or where non-satellite telecommunications are not available.

¹⁹ Memorandum of Association of INMARSAT Ventures Plc, Clause 6; Articles of Association of INMARSAT Ventures Plc, Arts. 21 – 25, UK Company No. 3674573, as updated and altered.

²⁰ Within many countries radio services for land, sea and air mobile stations have been available for many years. The U.S. was the first to move into satellite services for mobile stations, by for example Aeronautical Radio Inc. and the American Mobile Satellite Corporation. The FCC issued its such decision on such services in 1986, the so-called Allocation Order, 2 FCC Rcd 1825, 61 Rad. Reg. 2d (P & F) 165. See also the Memorandum Order and Authorisation (1989) 4 FCC Rcd 6041; 66 Rad. Reg. 2d (P & F) 1378 which granted applications from eight companies allowing them to participate in the American Mobile Satellite Corporation.

²¹ Criteria for the Provision of Mobile-Satellite Communication Systems in the Global Maritime Distress and Safety System (GDMSS), IMO Res. A.888(21). See also ‘In the Matter of the Establishment of Policies and Service Rules for the Mobile Satellite service in the 2 GHz Band’ 2000 15 FCC Rcd. 16127; 22 Comm. Reg. (P & F) 807, Adopted 14 August, released 20 August 2000.

²² Text of Proposed Amendments to the Convention on the International Mobile Satellite Organisation by the Party of Denmark, at

www.state.gov/e/eb/rls/othr/14620.htm. This text together with Explanatory Notes is IMSO Doc. (2003) IWG/1/INF/5 part of the documents of the First Meeting of the IWG one of the appendices to the 'IWG Outcome', cited n. 24, below.

²³ Apart from proposals and discussion by IWG members, the IWG had presentations also by ICAO and IMO and INMARSAT Ventures Plc, and they, Azerbaijan, COSPAS-SARSAT, the ITU and IMSO sent observers.

²⁴ Report: 'Outcome of the Intersessional Working Group to the IMSO Assembly', adopted at the third session of the IWG, 8 February 2004, IMSO IWGARF. Also available at www.state.gov/e/eb/rls/rpts/othr/32557pf.htm

²⁵ Statement by the United States, Annex VIII to IWG3RA, annexed to IWG 'Outcome', n.24, above. Cf. its contributions in IWG1R paras. 5.3.6-10.

²⁶ Statement by the Russian Federation, Annex VII to IWG3RA, annexed to 'Outcome', n.24, above.

²⁷ See WISIS information on the ITU website – www.itu.int. Cf. Lyall, above n. 7, on possible international duties as to telecommunications services.

²⁸ DS has later pointed out to me that there would be problems where a private enterprise/governmental partnership was involved. In the IMSO model the Organisation has no responsibility for INMARSAT's financing or for management of the system. Galileo is differently structured.

²⁹ Aeronautical safety was considered at the IWG, but related amendments were withdrawn, ICAO expressing no view on what it considered as a matter for IMSO alone, while noting that aeronautical communications were a matter for ICAO SARPS and PANS. See IWG2R 5.4.2 - 5.4.2.3; IWG2R para. 6.3.2 – 6.3.2.7, available in 'Outcome' Report, above n. 24. There is a non-exclusive, consultation and cooperation Agreement between ICAO and IMSO. Cf. 'Use of Aeronautical Mobile Satellite Services (AMSS) for Communication and Surveillance', a paper presented by IMSO at the Fourth Meeting of the ALLPIRG/Advisory Group, 6-8 February 2001.

³⁰ Is a message as to deployment of military forces peaceful or non-peaceful? Is a diplomatic message that contains a threat peaceful or non-peaceful?

³¹ Cf. F. Lyall, 'The International Telecommunication Union: A World Communications Commission?' 1994 37 *Proc. IISL* 42 – 47; and 'The Rational, Efficient and Economic Use of Space: Three Suggestions' in M. Benko and W. Kroll, eds, *Air and Space Law in the 21st Century*, *Liber Amicorum Karl-Heinz Bocksteigel*, (Cologne: Carl Heymanns, 2001), 386–95 at 393-5.

³² Cf. the response I received for expressing such notions at a meeting of the Secretary General of the ITU's Reform Working Group in 2000.