

INMARSAT: THE INTERNATIONAL MARITIME
SATELLITE ORGANIZATION—ORIGINS AND STRUCTURE

*Stephen E. Doyle**

I. INTRODUCTION

On September 3, 1976, in London, England, the charter of a new international organization was brought into being culminating a four year effort of study, analysis, planning and negotiation.¹ The third and final session of the International Conference on the Establishment of an International Maritime Satellite System provided for creation of the International Maritime Satellite Organization (INMARSAT), the purpose of which 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 radio-determination capabilities."² In addition, the Organization shall seek to serve all areas where there is need for maritime communications and shall act exclusively for peaceful purposes.³

II. ROLE OF THE INTERGOVERNMENTAL MARITIME CONSULTATIVE
ORGANIZATION (IMCO)

The principal entity in the UN family of organizations concerned with maritime affairs is IMCO; the origins, functions and history of which are well recounted in a recent congressional study on international organizations involved in space-related activities.⁴ Since 1958, IMCO has focused the activities of seafaring nations on nautical matters of common concern. When the Secretariat of the United Nations published its first compilation of space activities and resources in the UN system, in 1972,⁵ it noted

*Deputy Assistant Administrator for International Affairs, National Aeronautics and Space Administration, Chairman of the Economic Assessment Working Group of the Panel of Experts on Maritime Satellites of the Intergovernmental Maritime Consultative Organization (1974-75). The views expressed in this paper are those of the author and are not necessarily those of any organization of which he is a member.

¹Convention on the International Maritime Satellite Organization (INMARSAT), opened for Signature September 3, 1976. For reference to the Sessional Act of the International Conference on the Establishment of an International Maritime Satellite System, see 4 J. Space L. 135 (1976).

²*Id.* at Art. 3.

³*Id.*

⁴Galloway, International Cooperation in Outer Space: A Symposium, S. Doc. No. 92-57, 92d Cong., 1st Sess. 413-21 (1971).

⁵U.N. Doc. No. A/AC.105/100(1972).

that during the latter half of the 1960's IMCO had taken a considerable interest in the development of space techniques for maritime purposes. That interest was based mainly on:

- (i) The need to improve the existing maritime distress system;
- (ii) The desirability of improving safety communication, safety of navigation and position determination systems;
- (iii) The opportunity to meet certain operational needs of the maritime mobile service which are beyond the scope of existing resources and methods; [and]
- (iv) The fact that the present heavy congestion in frequency bands available to the maritime mobile service together with the continuous expansion of maritime mobile communications and of the number of ships, will make these bands inadequate within the foreseeable future.⁶

In 1972 it was IMCO's view that a new international maritime satellite system should provide for exchange via satellite of telephone, telegraph and facsimile messages and for radio determination and, in combination with existing navigational and communication services, improve such services in safety and navigation, information and data exchange from ship-to-shore, and improve public correspondence service for passengers and crew.⁷

To facilitate planning for a new structure to meet all these needs, the Maritime Safety Committee of IMCO instructed its Sub-Committee on Radiocommunications to give detailed and urgent consideration to this matter. In fact, in March 1972, on the advice of the Sub-Committee on Radiocommunications, a Panel of Experts was formed by the Maritime Safety Committee to take on the study and planning function.⁸

The terms of reference of the Panel of Experts, which could be reviewed and expanded as necessary, were:

- (a) study of the operational requirements of a maritime mobile satellite system;
- (b) study of the essential characteristics of a maritime mobile satellite system;
- (c) study of critical system elements, for example ship terminals;
- (d) cost/benefit and marketing studies looking to a cost evaluation;

⁶*Id.* at 106.

⁷*Id.*

⁸U.N. Doc. No. A/AC.105/193, at 111 (1977).

- (e) consider and make recommendations for a program of experiments and development work that may be necessary;
- (f) consider the appropriate body or bodies which might be interested in financing, establishing and operating the system;
- (g) prepare a report for the proposed International Conference in 1975.⁹

The Panel of Experts (POE) held five formal sessions and one extraordinary session in a two-and-one-half year period, completing its work in September 1974. The POE examined in detail the institutional, financial, technical, operational and legal aspects of creating a new entity and reported annually to the Maritime Safety Committee. Based on work of the initial sessions of the POE, it was evident by the fall of 1973 that a consensus was building for the conclusion that a new organization should be formed. Consequently, at its November 1973 session, the Assembly of IMCO, acting on a recommendation of the Maritime Safety Committee, adopted Resolution A.305 (VIII), dated November 23, 1973, in which the Assembly resolved:

- (a) to convene an International Conference of Governments for a period of two-and-a-half weeks in the early part of 1975 to decide on the principle of setting up an international maritime satellite system; and if it accepts this principle, to conclude agreements to give effect to this decision;
- (b) to request the Maritime Safety Committee to formulate the appropriate provisional agenda of the Conference....¹⁰

The Secretary-General of IMCO was invited to circulate invitations to the conference to all Member States of the United Nations, to any of the U.N. Specialized Agencies, to members of the International Atomic Energy Agency, to Parties to the Statute of the International Court of Justice, and to such inter-governmental and non-governmental organizations as are usually invited to send observers to conferences convened by IMCO.¹¹ In this manner it was expected that all possibly interested states and organizations would receive an invitation to the Conference.

Thus, a Panel of Experts working under the Maritime Safety Committee of IMCO conducted the initial studies which resulted in a report to be considered by the 1975 Conference. Additionally, IMCO provided secretariat support for the Panel of Experts and for the Conference, which required three separate sessions to conclude its work.

⁹Report to the Maritime Safety Committee of the 4th Session of the Panel of Experts on Maritime Satellites, IMCO Doc. No. MARSAT IV/9, Annex II, at 6-7 (1974).

¹⁰*Id.* at 3-4.

¹¹*Id.*

III. INTERNATIONAL CONFERENCE ON THE ESTABLISHMENT OF AN INTERNATIONAL MARITIME SATELLITE SYSTEM

A. First Conference Session—April 23 to May 9, 1975

The initial session¹² of the Conference was attended by delegations from 45 nations and by observer delegations of 15 international agencies and other organizations. The Conference organized its work in two main working committees. The first committee took up questions of the relationship between governments and their respective telecommunication and maritime entities, and discussed at length the distribution of powers between the Assembly of the member States and the Council of INMARSAT. The second committee considered the provisions on procurement policy for the new organization, the provisions on investment shares, including the question of initial investment shares and the implications for final investment shares.

As a result of its deliberations, the Conference concluded that in order to improve maritime communications there existed a need for a world-wide maritime satellite system and that there was a need for an international intergovernmental organization to administer and manage this system.¹³

The Conference also reached agreement on the following principles:

- (a) that any entity which may be designated by a Member State to enjoy rights and fulfill obligations in the [INMARSAT] Organization...shall be designated by the Government of the Member State;
- (b) that any entity so designated shall be subject to the jurisdiction of the designating Member State;
- (c) That any entity so designated shall, to the satisfaction of the designating Member State, be competent and have the powers necessary to discharge the functions for which it will be responsible;
- (d) that the rights, obligations and functions of any entity so designated shall be clearly defined; and
- (e) that in the event of default or withdrawal of a designated entity the designating Member State shall assume the capacity of a designated entity, designate a new entity, or withdraw.¹⁴

In the limited available time the Conference could not conclude the consideration of agreements necessary to bring the new organization into being. Consequently, the

¹²In response to expressions of interest by the U.N. General Assembly, IMCO submitted a report on this opening session to the U.N. Committee on Peaceful Uses of Outer Space. See U.N. Doc. A/AC.105/151 (1975).

¹³*Id.* at 5.

¹⁴*Id.* at 5-6.

Conference decided to reconvene in a second session and to establish an Intersessional Working Group to prepare for the second session. The Conference resolved that the Working Group should meet in two or more sessions with the object of completing its tasks not later than November 30, 1975, so that its recommendations could be circulated to Governments in time for the second session of the Conference. The Working Group was explicitly instructed to consider four fundamental principles, *viz*: (1) the relationship between Governments and designated entities; (2) the distribution of powers between the Assembly and the Council; (3) the type and number of appropriate international instruments; and (4) the procurement policy for the Organization.¹⁵ In addition, the Intersessional Working Group was directed to develop appropriate draft texts for inclusion in the appropriate instrument(s). In conducting this work the Working Group was to base its work on the Report of the Panel of Experts on Maritime Satellites and the documentation submitted to it, and reports and summary records of the first session of the Conference.¹⁶

Before concluding, the first session of the Conference also adopted a recommendation that, while recognizing that each country must retain whatever safeguards it considers necessary for the protection of its own communication services, all countries should be invited to consider permitting ship earth stations (on-board terminals) to operate in the radio frequency bands 1535 - 1542.5 and 1636.5 - 1644 MHz within harbor limits and other waters within national jurisdictions. The Conference invited the International Telecommunication Union to bring this recommendation to the attention of its Members for their consideration.¹⁷

1. The Intersessional Working Group (IWG)

The Working Group required three sessions to conclude its assigned work.¹⁸ At the conclusion of the first session of the Conference, the delegations of thirteen Western European countries and the United States agreed among themselves on major elements or principles of the institutional and organizational arrangements which would form the basis of the proposed system. As reported by Arthur L. Freeman, U.S. Representative to the Intersessional Working Group:

These arrangements, hereinafter referred to as the "package", included acceptance of the propositions that a government may designate an entity to assume financial, technical and operational responsibilities within INMARSAT; that managerial responsibility will be vested in a strong governing body in which policy making

¹⁵*Id.* Attachment 2, at 8.

¹⁶*Id.* at 8-9.

¹⁷*Id.* Attachment 3, at 10.

¹⁸Report to the First Intersessional Working Group Meeting on the Establishment of an International Maritime Satellite System, TD Ser. No. 60 (1975); Report to the Second Intersessional Working Group, TD Ser. No. 64 (1975); Report to the Third Intersessional Working Group, TD Ser. No. 66 (1975).

responsibilities will be given to investors in direct proportion to their utilization of the system; that the thrust of the procurement policy will be to ensure that price, quality and the most favorable delivery time are the principal criteria for the award of contracts; and that these arrangements will be embodied in an Intergovernmental Agreement and an Operating Agreement.¹⁹

The Working Group had the task of converting these agreements, *en principe*, into acceptable international agreement texts, taking into account the views and attitudes of other governments. The basic issues being addressed were not new to the international telecommunications community, having been well debated and resolved in the process of arriving at definitive arrangements for INTELSAT. But INMARSAT was bound to be a different matter because of two major factors: (1) interests independent of telecommunications were here involved, *viz.* maritime interests, including ship owners, maritime unions and national maritime ministries and regulatory bodies; and (2) the presence of the U.S.S.R. and several Eastern European countries as potential major parties in the new organization, and the necessity to take into account and accommodate their views. In the creation of INTELSAT, while the communist countries had followed developments with interest and attended some organizational meetings as observers, they had not played a major role in negotiating the agreements.²⁰ The U.S.S.R.'s approach to organization for satellite communications is described and analyzed in a number of sources,²¹ and differs in some major aspects from the general Western nations' approach. A principal difference is that the U.S.S.R. favors international organizational arrangements involving only states (governments) and is disinclined to enter mixed organizations involving states and private enterprise, as is the case with INTELSAT. It is the "mixed" nature of the telecommunications community that dictated a two-agreement approach to INTELSAT, *i.e.*, an agreement among governments supplemented by an agreement among telecommunication entities. That same fact of life led to the necessity for the Intersessional Working Group to develop two agreements—the basic Convention and a related Operating Agreement.

a. IWG First Session—August 4-8, 1975 (London)

At the first session of the Working Group thirty-seven countries and eight international organizations and entities were represented. A proposed set of agreement

¹⁹Report to the First Intersessional Working Group, *supra* note 18, at 1.

²⁰Several detailed studies of the negotiating history of INTELSAT have been published. *See, e.g.*, J.F. Galloway, *The Politics and Technology of Satellite Communications* (1972); R. Colino, *The INTELSAT Definitive Arrangements: Ushering in a New Era in Satellite Communications*, Monograph No. 9 (1973); J. Pelton, *Global Communications Satellite Policy: INTELSAT Policies and Functionalism* (1974); Doyle, *Permanent Arrangements for the Global Commercial Communication Satellite System of INTELSAT*, 6 *Int'l Law* 258 (1972).

²¹*See, e.g.*, Sheldon, *Soviet Programs, 1966-70*, S. Doc. No. 92-51, 92d Cong., 1st Sess. (1971); T. Shillinglaw, *The Soviet Union and International Satellite Telecommunications*, in *Telecommunications* (1970); Doyle, *An Analysis of the Socialist States' Proposal for Intersputnik: An International Communication Satellite System*, 15 *Villanova L. Rev.* 83 (1969).

texts was tabled jointly by the Federal Republic of Germany, Norway and the United Kingdom. This draft became the primary working document of the first session.²² To forestall lengthy debate on the issue of state vs. commercial entity roles, the U.S. and U.S.S.R. delegations presented a jointly agreed formulation on the basic roles of governments and operating entities in the organization. This approach reflected the principles that were contained in the resolution adopted at the first session of the Conference, recited above.²³ The basic functions of the Assembly of Parties, as proposed in the Western European nations' draft, were endorsed by the U.S., the U.S.S.R. and Japan. The Assembly functions thus agreed were:

- (a) Review the activities of the Organization and express views and make recommendations with regard to the purposes of the Organization.
- (b) Ensure that the activities of the Organization are consistent with this Convention and with the purposes and principles of the United Nations Charter, as well as with any other treaty by which the Organization becomes bound in accordance with its decision.
- (c) Authorize, on the recommendation of the Council, any extension of the activities of the Organization into fields other than maritime public telecommunications services. Assembly authorization shall not be required for use of maritime public telecommunications services for relaying telecommunications for radiodetermination and safety purposes.
- (d) Decide on other recommendations of the Council and express views on reports of the Council.
- (e) Adjust the minimum share required for representation on the Council in accordance with Article 13 (1).
- (f) Decide upon questions concerning formal relationships between the Organization and States, whether Parties or not, and international organizations.
- (g) Decide upon any amendment to this Convention [and to the Operating Agreement] pursuant to Article 41 [and Article XIII of the Operating Agreement].²⁴
- (h) Consider and determine whether membership be terminated in accordance with Article 32.²⁵

At this point in the Working Group deliberations the delegations of Mexico, Egypt, Nigeria and Turkey argued for a strengthening of the Assembly's role, in order that

²²Report to the First Intersessional Working Group, *supra* note 18, at 4.

²³See text accompanying note 14 *supra*.

²⁴The brackets in this item indicate the lack of full agreement on the words within brackets.

²⁵See Report to the First Intersessional Working Group, *supra* note 18, at 6-7.

aspirations of developing countries could be met through actions of that organ. They proposed the following functions to be added:

- (i) Upon recommendation of the Council, act upon the appointment and termination of such appointment of the Director General in accordance with Article 14.
- (j) Review at appropriate intervals the present Convention and the Operating Agreement as a whole to decide whether any amendments are necessary to them.
- (k) Exercise any other powers coming within the purview of the Assembly according to the provisions of this Convention.²⁶

Discussion of the proposal was deferred to the next session of the Working Group. The substantial part of the remaining work done at the first session of the Working Group related to the development of a consensus of procurement policy. Draft provisions were developed and after several efforts by the U.S. delegation to make them more closely align with INTELSAT's procurement policy, the following provisions were adopted by the Working Group:

- (1) The procurement policy of the Council shall be such as to encourage, in the interests of the Organization, world-wide competition in the supply of goods and services. To this end:
 - (a) Procurement of goods and services required by the Organization whether by purchase or lease shall be effected by the award of contracts, based on responses to open international invitations to tender.
 - (b) Contracts shall be awarded to bidders offering the best combination of quality, price and the most favorable delivery time.
 - (c) If there are bids offering comparable combinations of quality, price and the most favorable delivery time, the Council shall award the contract so as to give effect to the procurement policy set out above.
- (2) In the following cases the requirement of open international tender may be dispensed with under procedures adopted by the Council, provided that in so doing the Council shall encourage in the interests of the Organization world-wide competition in the supply of goods and services.
 - (a) The estimated value of the contract does not exceed [...] and the award of the contract would not by reason of the application of such dispensation place a contractor in such a position as to prejudice at some later date the effective exercise by the Council of the procurement policy stated above. To the extent justified by changes in world prices, as reflected by relevant price indices, the financial limit may be revised by the Council [by a vote of at least two-thirds of the representatives represented in the Council representing a majority of the total investment shares in the Organization].
 - (b) Procurement is required urgently to meet an emergency situation.

²⁶*Id.* at 7.

(c) There is only one source of supply to a specification which is necessary to meet the requirements of the Organization or the sources of the supply are so severely restricted in number that it would be neither feasible nor in the best interest of the Organization to incur the expenditure and the time involved in open international tender, provided that where there is more than one source they will have an opportunity to bid on an equal basis.

(d) The requirement is of an administrative nature for which it would be neither practicable nor feasible to undertake open international tender.

[(e) The procurement is for personal services.]²⁷

The functions of the Council (best viewed as the equivalent of a board of directors in a corporation) were discussed, but in the absence of a consensus this subject was deferred to the second session of the Working Group for decision.

In an attempt to expedite progress in view of the limited time available to the Working Group, the Government of Norway extended an invitation to a meeting of experts in Oslo during September 1975, to undertake preparatory work on legal aspects of: (1) inclusion of an article on rights and obligations; (2) liability and exoneration from liability; (3) relationships with states and international organizations; (4) settlement of disputes; (5) final clauses of the Convention and the Operating Agreement; and (6) privileges and immunities and a draft protocol to deal with these topics. Sixteen delegations indicated an intention to attend the working session of legal experts.²⁸

Thus, the first session of the Intersessional Working Group reached basic agreement on the issues assigned to it by the Conference, and made substantial progress toward draft texts for the proposed agreements. A. L. Freeman, reporting on this work as Head of the U.S. Delegation, noted: "A major factor in recording this progress was the strong support given to the elements of the package, to which only the U.S. and thirteen Western European countries had previously agreed, by the U.S.S.R. and Japan."²⁹ It was also Freeman's view that the texts thus agreed were not likely to undergo substantial revision, except as might be appropriate to reflect certain concerns of the developing countries.³⁰

b. IWG Second Session—October 27-31, 1975 (London)

At the second session of the Intersessional Working Group thirty-one states and six international organizations and entities were represented. The Working Group reviewed

²⁷*Id.* at 8-10.

²⁸*Id.* at 11.

²⁹*Id.* at 12.

³⁰*Id.*

several draft articles prepared by the meeting of legal experts in Oslo, supplemented by a two-day meeting in London immediately prior to the Working Group's second session.

An article proposed early by the U.S. and U.S.S.R. on relations between a state Party and its designated entity was accepted in a slightly revised form. An article providing for the rights of all Parties and designated entities to attend and participate in all meetings of the organization was accepted without comment. The Working Group amended slightly an article defining the legal personality of the organization and its legal capacities. An article giving the Assembly power to decide upon questions of external relations of the organization was adopted without discussion, and an article and related protocol on Privileges and Immunities were forwarded without substantive comment for consideration by the resumed Conference. An article on withdrawal was revised and accepted, but the Working Group did not complete discussion of an article on suspension and termination which required further analysis in connection with the provisions for settlement of disputes. A text on signature, ratification, acceptance, approval and accession was accepted, leaving open the question of whether or not reservations to the Convention would be permitted. The latter point was referred for decision to the resumed Conference. Articles on entry into force and the depositary were accepted. An article on languages was accepted, after lengthy discussion, designating English, French, Russian and Spanish as official languages, but leaving to the Rules of Procedure of the Assembly and Council the designation of working languages.

In addition, articles for the Operating Agreement were accepted dealing with exoneration from liability, entry into force, depositary and testimonium.³¹

The question of liability was extensively discussed during preparatory work for the second session of the Working Group, according to A. L. Freeman, U.S. Representative, but it was not discussed in the plenary meetings of the Working Group during the second session. Freeman summarized the situation as follows:

The Europeans are arguing forcefully that the Convention must address the question of potential governmental liability for space damage. They propose an Article which would shield members (governments and possibly private entities) from claims brought by other members (thus giving the Organization a status approaching that of a corporation) and which would also require the Signatories to reimburse any member which has had to honor a claim merely because of its status as a member of this Organization. The U.S. had originally argued that no mention should be made of governmental liability or reimbursement - as in the INTELSAT Agreements - and that this matter should thus be left to other relevant treaties. At this meeting the U.S. informally indicated a willingness to consider a provision regarding governmental reimbursement if the provisions regarding governmental non-liability were dropped. This suggestion seemed to develop some support but no final resolution was reached.³²

³¹See Report to the Second Intersessional Working Group, *supra* note 18, at 4-6.

³²*Id.* at 6-7.

In the continuing consideration of Assembly and Council roles, the U.S., most Western European countries and others preferred a strong Council, with basically review functions in the Assembly. Other countries, led particularly by Egypt, Mexico, Nigeria and Turkey, continued to push for some key decision-making by the Assembly. The question was not fully resolved at the second session of the Working Group, although a compromise list of relative functions for the two bodies was produced and gained substantial support.³³

Procedures for amending the Convention were readily and generally agreed; but procedures for amending the Operating Agreement were discussed extensively. The U.S. had proposed amending the Operating Agreement by decision of the Council approved by the Signatories (designated entities). The Europeans and the U.S.S.R. insisted upon an Assembly approval role for Operating Agreement amendments. A compromise resulted, in which the Assembly would confirm amendments agreed to by the Council.³⁴

Proposals by the International Chamber of Shipping were submitted assigning to the Council functions of arranging consultation mechanisms between the Organization and maritime Recognized Private Operating Agencies responsible for ship terminal operations. Discussion of these proposals was deferred.³⁵

The Working Group took up the full range of questions relating to investment shares, but initial investment shares proved difficult to determine. In general, countries were reluctant to take on large initial shares because of concomitant risks. A range of alternatives was explored but no decision was reached.³⁶

The subject of a capital ceiling for the organization was discussed but no conclusion was reached. Proposals ranged from \$165 million to \$250 million with substantial variations in countries' preferences.³⁷

Although policy relating to patents and data was discussed there were significant differences as to the basic philosophy to be adopted in this matter and delegations wished to have more time to consult with their national authorities. Consequently a compromise text was proposed, but not agreed, and the question was deferred to a subsequent meeting of the Working Group.³⁸

³³*Id.* at 7-8.

³⁴*Id.* at 9.

³⁵*Id.* at 10.

³⁶*Id.* at 10-11.

³⁷*Id.* at 12-13.

³⁸*Id.* at 13-14.

Pressure of time resulted in the need for a third session of the Intersessional Working Group, and an invitation from the Dutch delegation to host the session was accepted. An agenda for the third session was agreed prior to concluding the second session.³⁹

The second session involved the first substantive and in-depth discussion of financial matters and patent and technical information policy. In the words of the U.S. Representative "that discussion was particularly useful not because any mutually agreed positions were reached, but because the dimensions of the problems were fully revealed."⁴⁰ Although no agreed texts were produced on the central policy issues, substantial progress toward resolution of these issues was made.

c. IWG Third Session—December 1-5, 1975 (Noordwijk)

The third session of the Working Group was necessary to take up a number of aspects of the draft Convention and draft Operating Agreement which had not previously been discussed and to conclude work on the articles which had been discussed but not agreed. Twenty-six states and four international organizations and entities were represented.

The meeting established two working groups dealing with: (1) financial matters; and (2) nonfinancial matters. Although an effort was made in the financial matters working group to conclude agreed texts, differences among delegations and lack of time resulted in the adoption of draft articles which included unagreed (bracketed) language. These articles, clearly identifying the areas of agreement and disagreement, were referred to the resumed Conference for completion. Articles on financial matters were prepared for the two agreements as shown in the following table. The topics bearing an asterisk were bracketed and involved substantial issues.⁴¹

CONVENTION	OPERATING AGREEMENT
Establishment of use charges	Payment of use charges*
Audit (ultimate placement in final texts left open)	Interest on overdue payments
Capital contributions and compensation for use of capital	Capital ceiling (text agreed without specific number or monetary unit)

³⁹*Id.* at 15-16.

⁴⁰*Id.* at 16.

⁴¹See Report to the Third Intersessional Working Group, *supra* note 18, at 5-8.

Excluded costs* (placement to be determined)	Settlement of Accounts (currency to be determined)
	Investment shares*
	Priority for use of revenues
	Financial adjustment between Signatories
	Debt financing
	Settlement upon withdrawal or termination

The second working group, dealing with nonfinancial matters, took quite a different approach to its work—Freeman explains:

The Working Group, concerned with nonfinancial matters primarily considered the texts for various articles to be incorporated in the Convention. There was a concerted effort to remove brackets from around disputed texts and frequent recourse to voting on such disputed texts. The effort to resolve issues in this fashion was undertaken in order to provide the Resumed Conference with a text enjoying wide support, and thereby narrow the issues on which the Conference will have to focus. In a number of situations, delegations, including the United States, were obliged to add notes to the texts supported by the majority reiterating their objections to such texts.⁴²

The resulting work of the second working group included texts of the Preamble to the Convention and a series of definitions; however, not all the definitions were complete, *e.g.*, the term "ship" was not discussed, which left open the issue of whether or not permanently moored platforms would be included in that term. The question was left for the resumed Conference.

There was substantial discussion of the *purpose* of INMARSAT and serious objection arose to a U.S. proposal to refer to the "commercial basis" on which the space segment would be provided.⁴³ There was also concern about reference to radio determination as a purpose because explicit reference, it was argued, could give rise to satellites exclusively for that purpose. In the end, the following text was agreed:

⁴²*Id.* at 9.

⁴³*Id.* at 10.

The purpose of the Organization is to make provisions 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, by satellites.⁴⁴

It was agreed without debate that INMARSAT may own or lease the space segment. The issue of a member's obligation to notify the organization of intention to establish other space segments of similar purpose was debated but not resolved.

A text was accepted setting forth the terms for access to the space segment basically insuring access for ships of all nations on conditions to be determined by the Council. "In determining such conditions, the Council shall not discriminate among ships on the basis of nationality."⁴⁵

There was no debate of the article setting forth the structure of the organization, *viz.*, "The organs of the Organization shall be: (a) The Assembly; (b) The Council; and (c) The Directorate headed by a Director General."⁴⁶

Meetings of the organizations; Assembly composition, meetings and voting; Council composition, procedures and functions were discussed and substantially agreed, with the exceptions of: Assembly power to elect additional signatories to the Council to ensure just geographical representation, and Council voting provisions, including required majority and a limit on a single member's voting power.⁴⁷

Previously agreed texts were amended to make possible agreement on provisions controlling the relationship between suspension and termination and settlement of disputes.⁴⁸ Texts were agreed dealing with notifications by the headquarters host government to the International Telecommunication Union of frequency use plans of the Organization and the process of frequency coordination.

A preamble to the Operating Agreement was adopted. Texts on patent and technical information policy could not be agreed at the third session and these matters were forwarded for further consideration. It was agreed to convene a meeting of experts on this matter in London on February 5 and 6, 1976.⁴⁹

⁴⁴*Id.* at 11.

⁴⁵Convention on the International Maritime Satellite Organization (INMARSAT), opened for signature September 3, 1976.

⁴⁶*Id.* Art.9

⁴⁷See Report to the Third Intersessional Working Group, *supra* note 18, at 14-16.

⁴⁸*Id.* at 17.

⁴⁹*Id.* at 19.

Except for the meeting of experts on patent and technical information policy, the Intersessional Working Group completed its preparatory work at the third session. Although there was still an impressive list of issues to be resolved, in summing up his Report on the Third Session of the Intersessional Working Group, the U.S. Representative opined:

A cautious appraisal of the likelihood that the work to date will be accepted by the Resumed Conference and that the cooperative spirit heretofore evidenced at the three sessions of the ISWG suggests that it is possible to foresee resolution of the outstanding issues at the Resumed Conference, and the possibility of initialling the texts of a Convention and an Operating Agreement at that time.³⁰

B. Second Conference Session—February 9-28, 1976 (London)

The resumed Conference³¹ was attended by delegates from 47 countries and 16 intergovernmental agencies and other international organizations. At this session the formal decision was taken that the new organization would have two basic instruments: (1) a Convention to be signed by Parties (Governments); and (2) an Operating Agreement to be signed by Signatories (Governments or designated entities). The Conference also formally decided that the organs of INMARSAT would be: (1) The Assembly, consisting of all Parties; (2) The Council, consisting of Signatories; and (3) The Directorate headed by a Director General.

The texts of the two agreements prepared by the Intersessional Working Group were adopted in large measure, although some revisions were made. In the final analysis, all of the articles of the Convention (save three) were agreed; the annex to the Convention containing procedures for settlement of disputes was adopted; and the entire Operating Agreement and an annex containing a list of initial investment shares of 40 countries were approved.³²

The three issues remaining unresolved at the end of the resumed session of the Conference were: (1) maximum voting power of each councilor; (2) whether or not reservation to the Convention would be permitted; and (3) official and working languages.³³ Because these issues remained outstanding, the Conference decided to adjourn and to convene a third session in London, September 1-3, 1976. A resolution was adopted to this effect, which invited IMCO to make arrangements for the third session.³⁴

³⁰*Id.* at 20.

³¹See Report on the Outcome of the Second Session of the International Conference on the Establishment of an International Maritime Satellite System, U.N. Doc. A/AC.105/169 (1976).

³²*Id.* at 2.

³³*Id.*

³⁴*Id.* at 4.

With the basic documents of INMARSAT all but agreed, the Conference proceeded on the assumption that the three remaining issues could be readily resolved. Several Resolutions and Recommendations were adopted to move forward with the planning and preliminary organizational work of INMARSAT. *Resolution 1* accepted the invitation of the United Kingdom to establish the headquarters of INMARSAT in London. *Resolution 2* provided for creation of the Preparatory Committee, which is elaborated fully below.

Recommendation 1 of the Conference dealt with world-wide minimum technical and operational equipment standards as a basis for specifications for ship-borne terminals. *Recommendation 2* dealt with the need to establish world-wide technical and operating standards to facilitate communication between ships and subscribers on shore. *Recommendation 3* addressed again the desirability of ship-borne terminals being allowed to operate on certain frequencies within harbor limits and other waters under national jurisdiction. *Recommendation 4* dealt with a study of the use by INMARSAT of multipurpose satellites.⁵⁵

1. The INMARSAT Preparatory Committee

Convinced, as it was, that work should go forward on the development of a world maritime communication satellite system the resumed Conference decided to take the steps necessary to facilitate planning and organizational development. Thus, *Resolution 2* called for establishment of the Preparatory Committee.

The function of the Committee broadly construed was to carry out preparatory studies and actions in the *interim* between the closing of the Conference and the entry into force of the instruments establishing INMARSAT.⁵⁶

Participation in the Preparatory Committee was opened to representatives of governments which had signed the Convention and Operating Agreement and to representatives of designated entities which had signed the Operating Agreement. Also included were representatives of governments and their designated entities which had indicated their intention to initiate domestic procedures which would permit membership in INMARSAT.⁵⁷

⁵⁵The Resolutions and Recommendations are Summarized only. *Id.* at 2-3. For full texts, see the Final Acts of the Second Session of the Conference.

⁵⁶U.N. Doc. A/AC.105/169, at 3 (1976). The relevant provisions of the Convention provide that it shall enter into force 60 days after the date on which states representing 95 percent of the initial investment have become parties. If the Convention does not enter into force within 36 months of the date it was opened for signature, it shall not enter into force at all. Convention on the International Maritime Satellite Organization (INMARSAT), Art. 33, opened for signature September 3, 1976. The Operating Agreement enters into force for the Signatory on the date that the Convention enters into force for the party. *Id.* Art. XIV of the Operating Agreement.

⁵⁷U.N. Doc. A/AC.105/169, at 3 (1976).

Committee membership and sharing of costs were to be based on a declaration to be submitted by each country to the Secretary-General of IMCO. Committee expenses were to be met from contributions of participating countries; and expense ceiling was set at \$500,000 (US) per annum, unless otherwise decided by the Committee.⁵⁸

An annex to *Resolution 2* contains a detailed list of the tasks assigned to the Committee. Included, among others, were the following:

Study of performance standards of land and ship earth stations, taking into account existing IMCO and International Telecommunication Union (ITU) studies and the experiences gained from the operation of existing systems and systems under development; study of the INMARSAT space segment facilities' options; identification of tasks which might be assigned to a management services contractor or contractors; preparation of proposals concerning the tasks and responsibilities of the Director General and the Directorate; initiation of contacts with the host country prior to Council negotiation of a headquarters Agreement including the study of possible premises for INMARSAT; and preparation of draft financial and staff regulations and draft rules of procedure of the Assembly and the Council.⁵⁹

The Resolution also called upon the Secretary-General of IMCO to make the necessary administrative, financial and secretariat arrangements and to convene the first session of the Preparatory Committee at the headquarters of IMCO if at least 14 states or their designated entities had notified him that they wished to participate.⁶⁰

C. Third Conference Session—September 1-3, 1976 (London)

The re-resumed Conference was attended by delegates from 47 countries and observers from Yugoslavia, and delegates from 23 intergovernmental agencies and other international organizations.⁶¹

Prior to the third session of the Conference a number of interested delegations consulted informally to arrive at a common approach to the outstanding issues. The group reached a consensus on the approach to the *ceiling on a Councilor's vote*, but the agreement was modified at the third session. William K. Miller, U.S. Representative, reported the result as follows:

In the period prior to convening the Third Session, support developed for the establishment of 25% of the total voting participation in the Organization as the upper limit on the vote a representative on the Council would be able to exercise on behalf of one Signatory. However, the concept of a mandatory distribution at the option of the

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰*Id.* at 4.

⁶¹See Report to the Third Session of the International Conference on the Establishment of an International Maritime Satellite System, TD Ser. No. 73 (1976).

affected Signatory of any investment in excess of 25% was dropped. Instead it was agreed that if a Signatory elected to divest itself of investment in excess of 25%, other Signatories would be invited to subscribe to the excess. To the extent the excess was not voluntarily subscribed, the Signatory possessing such excess would retain it and vote it, thereby voting a share greater than 25%. Should the affected Signatory elect not to divest itself of its investment in excess of 25%, its vote corresponding to such excess would be distributed equally to all other representatives on the Council.⁶²

The text of an article giving effect to this approach was agreed.⁶³

The U.S. Government, between the close of the second session and the opening of the third session, had become increasingly concerned about the question of *exemption* of INMARSAT and its property *from custom duties*. During the second session, the U.S. delegation had tried to get language in the draft Convention adjusted to conform to comparable language in the INTELSAT Agreement. The attempt was unsuccessful at the second session, but after some discussion and debate at the third session the language on exemptions was adjusted.⁶⁴

On the *issue of languages*, after a long and emotional debate at the second session of the Conference, the third session agreed to omit treatment of languages from the Convention and leave this matter to the organs of the organization to decide for themselves.⁶⁵ On the *question of reservations*, the third session agreed, without debate, that reservations cannot be made to the Convention or to the Operating Agreement.⁶⁶

The third session of the Conference agreed to accede to a recommendation of the IMCO Council that the dates of the first meeting of the INMARSAT Preparatory Committee be set at January 10-14, 1977, rather than January 11-17, 1977, as had been set by *Resolution 2* of the second session.⁶⁷

The Final Act, Convention and Operating Agreement, providing for the creation of INMARSAT, were opened for signature on September 3, 1976.⁶⁸

⁶²*Id.* at 5.

⁶³Convention on the International Maritime Satellite Organization (INMARSAT), Art. 14, opened for signature September 3, 1976.

⁶⁴Report to the Third Session of the International Conference, *supra* note 61, at 5-6.

⁶⁵*Id.* at 7.

⁶⁶*Id.* at 8.

⁶⁷*Id.*

⁶⁸*Id.*

IV. CONCLUSION

The process of gestation was thus completed and the fledgling organization, INMARSAT, was born on September 3, 1976. Or was it? There is one rather remarkable feature of this new Convention which permits any one of five countries, acting alone, to prevent the entry into force of the agreements. Because 95 percent of the initial investment must be subscribed to before the agreements can take effect, the following countries, with their indicated initial investment shares, can block the coming into existence of INMARSAT.

Country	Percentage
United States of America	17.00
United Kingdom	12.00
USSR (including Byelorussian SSR and Ukrainian SST)	11.00
Norway	9.50
Japan	8.45

The next largest initial investor is Italy, with 4.37 percent, then France, with 3.50 percent. Any combination of two or more of major European maritime nations could also block entry into force by withholding their participation. It would seem however, that because all these countries took an active and constructive role in formulating and producing these agreements, the chances of a single nation or nation-group veto are very limited.

An article-by-article comparative analysis of INTELSAT, INMARSAT and INTERSPUTNIK could well serve as adequate challenge for a doctoral dissertation. The somewhat more notable preoccupation with financial arrangements and guarantees of continuity of members in the INMARSAT agreements is more a reflection of concern over the risks involved in this new venture than any result of experience in earlier organizations. Some countries seemed concerned lest they be left by others to sustain an organization of questionable economic potential. It is doubtful that INMARSAT will fail if launched, because the commitments necessary to the launching are the best assurance of success. The mixed governmental/commercial-entity nature of the organization, which occasioned some hesitancy on the part of some states at the start, was dealt with using the INTELSAT model of the two-level agreement. Perhaps, over time, the experience of some states in INMARSAT will lead to an increase in membership in INTELSAT. In this observer's opinion, the most significant single aspect of the new Convention may be reflected in the languages in which it is printed—English, French, Spanish and Russian.