INTERSPUTNIK - NEW LEGAL DEVELOPMENTS

Dr. Mahulena Hošková*

Abstract

Intersputnik was founded in 1971 by the USSR and eight other COMECON member states as an international, intergovernmental organisation. Since the „fall of the wall" between the two political blocks it is the object of substantial changes. Its composition was influenced not only by the German re-unification, but changed also due to the dissolution of the Soviet Union and of the former Czechoslovakia. Moreover, in 1989, the use of Intersputnik had been opened also to non-member states of the then still existing COMECON, such as Algeria, Iraq and India. In August 1992, the United States Federal Communication Commission authorised At&T and IDB to use Intersputnik as a separate system to supplement Intelsat as a means of communication between the USA and Russia.

These substantial modifications of the structure underlying the activities of Intersputnik have to be followed by the re-structuralisation of its system, as well as its decision-making methods. The items to be discussed are the modification of the principle of every member state having one vote in Intersputnik's decision making process, the adoption of plans concerning the design, operation and further development of the communication system, the drafting of rules of specifications for earth stations and their integration into the general system, the allocation of frequency channels, the fixing of uniform rates for transmission, the annual election of the Director General, the establishment of a different institutional set-up etc. As a result of these trends it seems clear, that Intersputnik's future international system will be largely influenced by structural elements of Intelsat and Inmarsat including the introduction of a system of weighted voting.

I. Introduction

At the end of October this year, an assembly of both the parties and the potential signatories of the „Intersputnik international system and Organization of Space Communications" will take place in Munich. One of its most important tasks is to complete the re-structuralisation of the institutional system of the organization and to supplement the body of its normative rules by a draft „Intersputnik operating agreement".

The primary reason of these steps is the necessity to react to the changed situation: i.e. the existence of privatised national telecommunications organizations which, in addition to the states, are the most probable subjects participating in its future activities. The envisaged abandonment of the principal release from the formerly omnipotent state influence, by

* JUDr. (Prague), Csc.; Member IISL.
Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany.

setting limits for its interference into the sphere of communications, promises fundamentally changed conditions as regards financing Intersputnik´s activities and, as a consequence, the increase of Intersputnik´s competition prospects on the telecommunications market.

In particular, although its current network of ground stations enables to cover the areas both of the Atlantic and Indian ocean with a wide spectrum of signals which makes it attractive for many telecommunication users, a new generation of satellites, corresponding the current standards of technical development is needed in the imminent future. For this dimension of investment, private resources are indispensable taking into account Intersputnik´s envisaged re-structuralisation as well as the experiences of other comparable telecommunications organizations such as Intelsat, Eutelsat or Inmarsat.

These tendencies reflect, however, not only the economic consequences of the „fall of the wall" phenomenon in Europe; they are also the result of the changed structure of the membership of the organization itself: As compared to the year of its foundation, in 1972, when the states-parties consisted of six socialist countries (Bulgaria, Czechoslovakia, GDR, Hungary, Mongolia, and the USSR, followed during the same year by Poland and Cuba), its current membership comprises 22 countries with very different socio-economic systems[1].

One of the substantial changes constitutes the membership of the re-united Germany representend by the Ministry of Foreign Affairs in co-operation with the Ministry of Postal and Telecommunications and the „Deutsche Bundespost Telekom"; it must be stressed that Intersputnik is the only international intergovernmental organization in which the unified Germany continued its membership „inherited" from the GDR. Another change was brought about by the dissolution of the Soviet Union which resulted in the membership of the Russian Federation, represented by the Russian Federal Ministry of Communication, Information Science and Space, as well as of some of successor states of the former Soviet Union. On the other hand, it is interesting to note that, e.g. Ukraine is no longer participating in Intersputnik since it became a member of Intelsat and fully concentrated its pertinent activities within the framework of this organization. Subsequent to the dissolution of former Czechoslovakia, the Slovak Republic which pursues its activities in Eutelsat and Inmarsat, terminated its membership in Intersputnik.

It would certainly be premature to draw any final conclusions concerning the new structure and directions of activites of the „new" Intersputnik at this time, i.e. two weeks before the session of its assemblies; on the other hand, the experiences of Intelsat, Eutelsat and Inmarsat already allow to present some general features of its possible future structure.

II. The Current Legal Basis of Intersputnik

„Intersputnik - international system and Organization of Space Communications" was created in 1972 as an international intergovernmental organization under an international agreement, registered with the United Nations[2]. This „Agreement on the establishment of the „Intersputnik" international system and Organization of Space Communications" was signed in Moscow on 15 November 1971 and came into force after the deposition of six ratification instruments on 12 July 1972. This treaty which is expected to be supplemented by another set of norms - an operational agreement - this year, still represents the normative source of Intersputnik´s activities.

Art. 1 of the Agreement of 1971(72) describes the main goal of this organization as establishing „...an international system of communication satellites"; the method how to reach this aim is „to ensure co-operation and co-ordination of efforts in the design, establishment, operation and development of the communications systems". Although doubtlessly created as a reaction to the existence of the Intelsat system,

the Intersputnik organization shows some specific features which reflected the structure and underlying philosophy of other mainly Eastern European organizations.

Art. 2 declares Intersputnik to be an „open international organization" which, then, was seen by some „eastern" authors as a guarantee for its democratic character[3]. This approach was underlined by the relevant provision of the Preamble, declaring, e.g. „...the interests of the development of international co-operation based on respect for the sovereignty and independence of States, equality and non-interference in the internal affairs as well as mutual assistance and mutual benefit..." as one of its corner stones. The logic of the principle of non-interference in the internal affairs of other States presupposed that members of the organization to be exclusively States: Thus, Art. 2(2) of the Agreement is drafted to enable the membership of „the governments that have signed this Agreement and have deposited their instruments of ratification ...as well as the governments of other States that have acceeded to this Agreement....".

Consequently, the governing body of Intersputnik vested with decision-making competences, the Board, is, according to Art. 12, composed of one representative from each member of the organization, each having one vote. The powers of the Board are very wide: Generally, according to Art. 12, it has the competence „...to deal with matters covered by this agreement". *In concreto,* it should examine and approve measures for establishing, acquiring or leasing and operating the space segment; determine specifications for the Organization's communication satellites; examine and approve the programme of putting into orbit the organization's communication satellites; approve the plan for the distribution of the communication channels among the members of the organization as well as the procedure and conditions for the utilization of the communication channels by other users; determine specifications for the earth stations or determine whether the earth stations offered for inclusion into the communication system of the organization meet the relevant specifications.

As regards the institutional level, among the competences of the Board should be mentioned the right to elect the Director-General and his deputy and to supervise the activities of the Directorate or to elect the Chairman of the Auditing Commission. Furthermore, it shall approve the plan of the activities of the organization for the coming calendar year; examine and approve the budget of the organization; take note of the official statements of the governments wishing to accede to the Agreement; but also determine the procedure and the dates for the payment of the member states' proportional contributions as well as readjust the contribution shares and set the rates for transmitting a unit of information or the lease cost of the organization's satellite communication channel.

The decision-making procedure of this body is described in Art. 12(7): „The Board should seek unanimity in adopting its decisions. If this is not achieved, the decision of the Board shall be considered adopted if no less than two thirds of all Members vote for them. The „interests principle" known from the procedural rules of the former CMEA has been applied in Intersputnik: The decisions of the Board will not be binding on those members who did not agree their adoption and submitted their reservations in writing; however, such members may later associate themselves with the decisions. The power to conclude, on behalf of the Board and within the framework determined by it, international and other agreements is delegated to the Director-General.

The substantive results of the organization depend on a harmonized functioning of both its components, the space segment comprising communication satellites with transponders, satellite-borne facilities and the ground systems of control to ensure the normal functioning of the satellites (Art. 4), as well as the earth stations mutually communicating via satellites. The property standard of these two categories differs: The space segment of Intersputnik belongs to the property of the organization or is leased from members possessing such systems; in contrast thereto, the earth stations remain in the property of states or recognized operating

agencies. A precondition for this system is Art. 8 which reads: „The Organization shall be a legal entity and shall be entitled to conclude contracts, acquire, lease and alienate property and to institute proceedings", which reminds of Art. IV of the Intelsat Agreement and of Art. IV of the Eutelsat Convention.

In line with the Eastern European legislative techniques of the 70s the possibility of access of the earth stations of the Member States to Intersputnik's communications system has been formulated as „the right" of the members of the organization „to include the earth stations which they have built into this system, ...provided these stations meet the Organization's specifications" (Art. 4(4)); the competence to determine these specifications is, under Art. 12 (6), given to the Board. From the normative content of the promulgated „right" presupposing the possibility of its enforcement remained almost nothing. So, in reality, this „right" could not be enforced by the member states concerned.

Furthermore, hardly comprehensive from a normative point of view seems to be the provision of Art. 6 of the Agreement declaring that „...communication satellites owned by the Organization shall be launched, put to orbit and operated in orbit by Members which possess appropriate facilities for this purpose on the basis of agreement between the Organization and such Members." Should this rule have implied the exclusion of other launch capacities than those of the member states or, on the other hand, perhaps a duty of a member state to give its launching capacities primarily to Intersputnik's disposal under a certain form of *pactum de contrahendo*? The subsidiary rule, that the contributions of the Members of the Organization to its statutory fund (Art. 15(3)) should be used for financing the launching and putting into orbit of communications satellites, hardly clarified this legal problem.

According to Art. 16 (1) the organization shall operate the space segment making communications channels available to its members and other users in accordance with the provisions of this Agreement. The inaccuracy of these „provisions" could lead in the actual state of exploitation of communications services, to quite serious ambiguities: Art. 16 (2) postulates, e.g., that „the communications channels at the disposal of the Organization shall be distributed among the Members of the Organization on the basis of their needs for channels". Which will be the criteria for determining these „needs"? Perhaps, as a subsidiary criterion, the ITU „first come, first served" principle? There are no provisions on the lease of channels to other users: The agreement limits the relevant provision in Art. 16(2) to the rule that „communications channels which are in excess of aggregate requirements of all Members of the Organization may be leased to other users." It is, therefore, necessary to refer to Art. 12(6) of the Agreement, concerning the distribution of competences which gives the Board of Intersputnik the power „...to approve...the procedure and conditions for the utilization of the communications channels by other users"; this body has also the competence to establish the rates for payment for communications channels.

The financing of Intersputnik's activities shall be run by the Statutory Fund, the details of establishment of which should be provided by a special protocol among the Contracting Parties. As a general rule should be applied the principle that „..the amount of the proportional contributions of the Members of the Organization ...shall be fixed in proportion to the extent to which they use the communications channels" (Art. 15(1)). Also the profits resulting from the operation of the communications system shall be shared by the members of Intersputnik in proportion to the amount of their contributions (Art. 15(9)). The question of liability is only shortly be touched upon: The organization shall be liable with respect to its obligations within the limits of the property which it owns (Art. 10). Excluded, however, is the liability of the organization with respect to the obligations of the Contracting Parties, nor shall the Contracting Parties be liable with respect to the obligations of the organization (Art. 10(2)).

In sum, the „Agreement on the establishment of the „Intersputnik" international system and Organization of Space Communications" is an international legal document that corresponds to the place and period of its origin, and to the economic conditions and the legislative culture of that time. Although it contains some normative provisions similar to the rules of the Intelsat or Eutelsat basic treaties, it intentionally left the regulation of significant issues either to „protocols" or to decisions of the Board, thus, avoiding the risk of responsibility resulting from any eventual infringment the treaty rules. The urgent necessity of more transparency was recognized by the Parties in the present state of Intersputnik´s activities; as models for the current discussion serve other international communications systems which combine the features of an international organization with international commercial structures and, consequently, are characterized by the existence of two legal instruments - of the basic treaties and the operational agreements.

III. Models of other international communications organizations

All three comparable models for a re-structuralised Intersputnik - Intelsat, Inmarsat and Eutelsat - have essentially similar tripartite structures. They consist of the parties, i.e. sovereign states which have entered into the founding treaties of each of these organizations[4]. The bodies representing the parties of Intelsat, Inmarsat and Eutelsat are known as the „Assemblies of Parties". Another category of organs represents the signatories, i.e. the telecommunications entities designated by the parties which invest in these organizations and are responsible for their operations. The signatories operate through the Meetings of Signatories in Intelsat, the Council of Inmarsat and the Board of Signatories of Eutelsat. The third group are the Executive Organs at the respective headquarters.

1. Intelsat

The oldest and largest international satellite organization is the International Telecommunications Satellite Organization (Intelsat)[5]. More than 122 States are members of Intelsat and its satellites are used by over 170 nations. Intelsat is also an international corporation and acts on a commercial basis. It is mainly concerned with the provision via satellite of international public telecommunication services on a global basis. The USSR did not wish to join Intelsat in 1964 for various reasons, paramount amongst which was the perception that the USA held a dominant position in Intelsat[6].

Presently, the organization is based upon two international instruments: the Agreement Relating to the International Telecommunications Satellite Organization „Intelsat" [7] and the Operating Agreement relating to the International Telecommunications Satellite Organization[8], both of which entered into force in February 1973. According to Art. VI of the Agreement, Intelsat is organized into four distinct parts: the Assembly of Parties, the Meeting of Signatories, the Board of Governors and an Executive Organ responsible to the Board of Governors.

The management is provided by the Board of Governors (Art. X). The Board meets at least four times a year and has the general responsibility for the „design, development, construction, establishment , operation and maintenance of the Intelsat space segment". Moreover, it is empowered to adoption „criteria and procedures...for approval of earth stations for access to the Intelsat space system." It is composed of a governor from each Signatory that has a minimum investment share in Intelsat.

Art. IX(j) contains the rules concerning the procedure of taking decisions of the Board: It shall endeavor to take them unanimously. However, if it fails to reach an unanimous agreement, it shall take decisions on all substantive questions, either by an affirmative vote cast by at least four Governors having at least two thirds of the total voting participation

of all Signatories and group of Signatories represented on the Board of Governors taking into account the distribution of the excess referred to in subparagraph g (iv) of this Article[9], or else by an affirmative vote cast by at least the total number constituting the Board of Governors minus three, regardless of the amount of voting participation they represent.

In general, Intelsat shall be the owner of the space segment and of all other property acquired (Art. V). Each Signatory shall have an investment share corresponding to its percentage of all utilization of the Intelsat space segment by all Signatories as determined in accordance with the provisions of the Operating Agreement (Art. V(c)); however, no Signatory, even if its utilization of the space segment is nil, shall have an investment share less than the minimum established in the Operating Agreement.

A set of rules is devoted to the procedure of coordinating steps with any Party or Signatory of Intelsat that intends to establish, acquire or utilize space segment facilities separate from the Intelsat space segment facilities (e.g. Art. XIV). These procedures involve consultations, evaluation of the technical compatibility and finally recommendations by the Assembly of Parties or the Board of Governors.

2. Eutelsat

On 13 May 1977 17 European PTTs signed the interim Eutelsat Agreement. The organization was permanently founded by the Convention establishing the European Telecommunications Satellite Organization „Eutelsat“[10] and its Operating Agreement relating to the European Telecommunications Organization, both of which entered into force on 1 September 1985[11].

According to the Preamble and Art. III of the Convention, Eutelsat´s main objective is to construct, establish, operate and maintain the European space segment and to provide the space segment required for international public telecommunications services in Europe. The structure established in order to achieve these goals reminds of the construction of the organs of Intelsat: the Assembly of Parties composed of all the Parties, the Board of Signatories composed of the Board of Members, each Board Member representing one Signatory, and the Executive Organ headed by a Director General.

The responsibility for the design, development, construction, establishment, acquisition by purchase or lease, operation and maintenance of the Eutelsat Space Segment and for any activities which Eutelsat is authorized to undertake is vested with the Board of Signatories (Art. XII) in which each Signatory shall have a voting participation equal to its investment share. No Signatory shall have more than 20 per cent of the total voting participation which can under certain conditions augment by a maximum of 5 per cent (Art. XI c). A quorum for any meting of the Board of Signatories shall consist either of Board Members representing a simple majority of Signatories having the right to vote, provided that that majority have at least two-thirds of the total voting participation of all the Signatories having the right to vote, or of Board Members representing the total number of Signatories having the right to vote minus three, regardless of the voting participation the latter represent (Art. XI f).

The decision procedure of the Board differentiates, similar to the procedure of Intelsat, between substantive and procedural matters (Art. XI): Decisions on matters of substance will be taken either by an affirmative vote of Board Members representing at least four Signatories having at least two-thirds of the total voting participation of all the Signatories having the right to vote, or by an affirmative vote cast by at least the total number of Signatories present or represented minus three, regardless of the voting participation the latter represent. Decisions on any adjustment of the capital ceiling which may be required to meet the objectives of providing the space segment for international or domestic public telecommunications services in Europe according to Art. III a and b shall be taken by an affirmative vote cast by at least a simple

majority of the Signatories present or represented and having at least two thirds of the total voting participation. On the contrary, decisions on any adjustment of the capital ceiling which may be required to undertake new programmes involving capital investments which are required to meet other objectives are to be taken by an affirmative vote cast by at least two-thirds of the Signatories present or represented and having at least two-thirds of the total voting participation. Finally, decisions on procedural matters shall be taken by an affirmative vote cast by a simple majority of the Board Members present and voting, each having one vote.

As to the issue of property, it is to be noted that Eutelsat shall own or lease the Eutelsat Space Segment and all other property acquired by it (Art. V). Each Signatory shall have a financial interest in Eutelsat in proportion to its investment share and this shall correspond to its percentage of utilization of the Eutelsat Space System by all Signatories as determined under the Operating Agreement. However, no Signatory, even if its utilization of this Space System is nil, shall have an investment share less than the minimum investment share specified in the Operating Agreement[12].

Article XVI contains the provisions concerning the establishment, aquirement or utilization of space segment equipment separate from the Eutelsat Space Segment in order to meet the requirements of international public telecommunications services within the Eutelsat Space Segment service area: In such a case, the Party or Signatory is due to furnish all relevant information to the Assembly of Parties through the Board of Signatories which shall establish whether there is likely to be any significant economic harm to Eutelsat. The results of this procedure will be issued in a form of „views" of the Assembly of Parties which will be given within six months from the start of the foregoing procedure. To ensure the technical compatibility of any space segment separate from the Eutelsat system determined for domestic or international public or specialized telecommunications services with the Eutelsat structure, the Board shall draft and submit to the Assembly of Parties guidelines „to be considerd by any Party of Signatory" (Art. XVI b). Space segments of Intelsat and Inmarsat, as well the systems for national security purposes, are excluded from this procedure of harmonization[13].

3. Inmarsat

The Convention on the International Maritime Satellite Organization (Inmarsat) was sponsored by Inter-governmental Maritime Consultative Organization (IMCO) and concluded on 3 September 1976[14]. It entered into force, together with the Operating Agreement on the International Maritime Satellite Organization (Inmarsat)[15] on 16 July, 1979; 29 countries, including the United States and the Soviet Union, had joined by the end of that year.

The main task of Inmarsat 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 managements of ships, maritime public correspondence services and radiodetermination capabilities"(Art.3), supplemented with new communications systems as Inmarsat-C, a data messaging system using small, portable terminals, and Inmarsat's aeronautical satellite communications system as well as the newest addition, - Inmarsat-M, which brings a lower-cost, portable satellite phone service[16].

The structure of the organization consists of the Assembly composed of all the Parties, the Council and the Directorate. The Council has the responsibility to make provision for the space segment necessary for carrying out the purposes of the organization in the most economic, effective and efficient manner, including adoption of criteria and procedures for approval of earth stations on land, on ships and on structures in the marine environment for access to the Inmarsat space segment (Art. 15). The Council is composed of 22 Signatories, 18 being the representantives of those Signatories, or groups of Signatories, not otherwise representend, which have agreed to be represented as a group, and which have the largest investment shares in the organization.

Another four Members should be the representatives of Signatories not otherwise represented on the Council, elected by the Assembly, irrespective of their investment shares, in order to ensure that the principle of just geographical representation is taken into account, with due regard to the interests of the developing countries (Art.13).

The decision making procedure of the Council is provided for in Art. 14: Decisions on substantive matters shall be taken by a majority of the representantives on the Council representing at least two-thirds of the total voting participation of all Signatories and groups of Signatories represented on the Council. Decisions on procedural matters shall be taken by a simple majority of the representantives present and voting, each having one vote.

Each representative shall have generally a voting participation equivalent to the investment share or shares he represents. However, no representative may cast on behalf of one Signatory more than 25 per cent of the total voting participation in the organization (Art. 14(3a)).

Among the operational and financial principles of Inmarsat should be mentioned the rule that each Signatory has a financial interest in proportion to its investment share which shall be determined in accordance with the Operating Agreement (Art. 5). The organization as a legal person may own or lease the space segment (Art. 6) which shall be open for use by ships of all nations on conditions determined by the Council (Art. 7(1)). Earth stations on land communicating via the Inmarsat space segment are located on land territory under the jurisdiction of the Parties and are wholly owned by Parties or subjects under their jurisdiction (Art. 7c).

The provisions concerning the use of the separate space segment facilities to meet any or all of the purposes of the Inmarsat space segment are contained in Article 8: In order to ensure technical compatibility and to avoid significant economic harm to the Inmarsat system, the Organization must be notified and the Council shall express its views in a form of recommendation of a non-binding nature; the Assembly shall express its views in the form of recommendations of a non-binding nature within a period of nine months. These procedures shall not apply, as in Intelsat and Eutelsat, to the space segment facilities for national security purposes.

In this context should be mentioned the provisions of Art. XIV and XV of the Operational Agreement, which require approval of all earth stations utilizing the Inmarsat space segment by Inmarsat; any application for such an approval shall be submitted to the organization by the Signatory (authorized telecommunications entity) of the Party in whose territory the earth station on land is or will be located, eventually licensed. Any application for utilization of the Inmarsat space segment must be submitted to the organization again by a Signatory (authorized telecommunications entity). The adoption of criteria and procedures in this sphere fall into the competences of the Council (Art.15).

IV. Thoughts about possible steps for the re-structuralization of Intersputnik

Intersputnik was founded as a legally homogenous organization based on one inter-governmental treaty, leaving however, several significant legal questions unresolved. The process of dividing the „monolithic" Intersputnik system into, on the one hand, the inter-governmental level which should fulfill the tasks of an organizational character, and into, on the other hand, the commercial level based on the role and activities of the national telecommunications entities (the signatories) must be accompanied by the acceptance of a new set of legal rules. These should, however, not only be provisions regulating the position of and relation between the signatories but, it is to be hoped add also more transparency to the relations among the member states.

For the implementation of this approach, the „Agreement on the establishment of the Intersputnik international system and Organization of Space Communications" of 1971/72 shall probably continue to serve as a „basic" document. As in the case of Intelsat, Inmarsat or Eutelsat, this basic inter-governmental treaty will be supplemented by an „operating agreement" with „signatories" as its subjects, the term which is used in all three parallel communications organizations to include both the Parties and the telecommunications entities, designated by the former under their national procedures.

In line with the structures of the just mentioned communications organizations, the agreement should first define its crucial terms (subjects, certain organs, investment and voting shares). With regard to the more than 20 years of existence of Intersputnik's „basic" agreement it is necessary to clarify the relation between the terms used in the „basic" agreement and the definitions used in an operating agreement. Moreover, as in Art. II of the Eutelsat Operational Agreement that defines the relation of the Signatories to the two Eutelsat treaties it might be advisable to define this relation in the operating agreement of Intersputnik.

In the 1971/72 Intersputnik Agreement, there are no detailed rules concerning the financing of the organization. Such rules were limited Art. 15 on the statutory fund which was formulated in very general terms and referred to a blanket norm that, in turn, referred the issue of a decision on its establishment and size to a „special protocol". The experiences of other communications organizations shows the necessity to regulate in more detail the main principles of its establishment by a legal instrument, determirning the investment shares, the politics of tariffs as well the use of returns and distribution of profits.

It will also be interesting to note, how Intersputnik modifies the „right" of its members „to include the earth stations which they have built into the communications system of the Organization provided these stations meet the Organization's specifications" (Art. 4 of the „Basic" agreement) which should have been determined by the Board of Intersputnik according to Art. 12(6). It would be more realistic if that substantive „right" would be substituted by a procedural, non discriminatory right to submit an application to include the earth stations to the Intersputnik system, as is the case in other communications systems. Another point will be, however, whether this procedural right will be reserved to the Signatories as is the case in e.g. Eutelsat (Art. XIV of the Eutelsat Operating Agreement), or whether it will be given also to other authorized telecommunications entities. The general tendency of re-building Intersputnik's structure speaks rather in favour of the second alternative.

Similar questions concern the provisions relating to the exploitation of Intersputnik's space capacity which was - under Art. 16 of the „Basic Agreement" - made available according to the needs of the member states with the remaining capacities open for lease to other users. The competence to approve the procedure and conditions for the utilization of the communications channels by other users was vested with the one Member - one vote Board (Art. 12(6)). Again, the question is to be solved if the right to apply for the Organization's space capacity remains with the Signatories or whether it will be extended to others.

In this context, the question might arise as to whether the new Intersputnik legal instrument should introduce any monopoly clause in case of establishing, acquiring or utilizing space segment equipment separate from the Intersputnik space segment, as it is known from e.g. the Eutelsat Convention (Art. XVI). So far, there seem to be are no indications for such a development.

One of the very sensitive issues to be dealt with concerns the question as to guarantee the proportional representation of the Signatories in Intersputnik and its decision-making process. The present Board of Intersputnik resembles, from an institutional perspective, due to its composition when compared with other communications organizations, an „Assembly" and, as to its functions, combines both the

features of the assemblies and the boards or councils usually to be found. The representation of the Signatories and their participation requires, however, the establishment of a new organ, an operation committee. The composition of such a working body of Intersputnik could reflex various alternatives: It has to be decided, whether it will consist of all the signatories or only those representing a member of the Board, - and which should be the maximum proportion of the total voting participation in Intersputnik's organs. Moreover, it is necessary to agree upon the procedural rules of this organ, on the quorum and on the categories of matters which shall be decided by a simple or by a qualified majority. From a practical point of view, it is suggested that there ought to be rules about the settlement of disputes.

V. Conclusion

Structuring Intersputnik into two systems might entail interesting perspectives for many customers. In particular, the high probability that there will be no monopoly clause as regards both the special procedure of co-ordination in the case of exploitation of other space segments, and the absence of any petrification of the monopolistic position of the national Signatories regarding the permissions for exploiting the earth stations and the space segment capacities, could contribute to the creation of a modern and relatively very effective international telecommunications organization.

[1] In December 1992, the following States were members of Intersputnik: Afghanistan, Belarus, Bulgaria, Cuba, Czech Republic, Georgia, Germany, Hungary, Kazakhstan, Korea Dem. Rep., Kyrgyzstan, Laos, Mongolia, Nicaragua, Poland, Romania, Russian Federation, Syria, Tajikistan, Turkmenistan, Vietnam and Yemen.

[2] See TIAS 859/860 (1973), No. 12343.

[3] See e.g. J .M. Kolosov, Massovaja informacija i mezdunarodnoe pravo (1974), p. 65.

[4] See S. White, S. Bate, T. Johnson, Satellite Communications in Europe (1994), p.16, 98 et seq.

[5] For an overview, see J. Fawcett/G. Schuster, Intelsat, in: R. Bernhardt (ed.), Encyclopedia of Public International Law, Vol. II (1995), p. 1000 et seq.

[6] In detail about Intelsat see M.S. Snow, The International Telecommunications Satellite Organization (INTELSAT) (1987); about its economic results see e.g. INTELSAT - Annual Report 1993 (1993).

[7] UN Treaty Series Vol. 1219, No.19677.

[8] U.S. Department of State 1971, pp. 281-317.

[9] „No Governor many cast more than forty per cent of the total voting participation of all Signatories and Groups of Signatories represented on the Board of Governors. To the extent that the voting participation of any Governor exceeds forty per cent of such a voting participation, the excess shall be distributed equally to the other Governors of the Board of Governors."

[10] For the text see Cmnd 9069 Misc. 25(1983).

[11] For an overview, see R. Wolfrum, Eutelsat, in: R. Bernhardt (supra note 5), p. 300 et seq.

[12] Compare with Art. Vb of the Agreement of Intelsat .

[13] Compare with Art. XIV g of the Agreement of Intelsat.

[14] See ILM, Vol. 15 (1976) 1051-1075. For an overview, see J.Fawcett/G. Schuster, Inmarsat, in: R. Bernhardt (ed.) supra note 5, p. 991 et seq.

[15] See ILM, Vol. 15 (1976) 219-248.

[16] Inmarsat Annual Review and Financial Statements (1993).