

# ITSO, IMSO AND EUTELSAT: The History, the Legal Instruments and the Legal Challenges

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## I The History of ITSO, IMSO and EUTELSAT

### ITSO<sup>1</sup>

The International Telecommunications Satellite Organization (ITSO) monitors and interfaces with Intelsat, Ltd., the commercial telecommunications entity it supervises, to ensure the availability of international public telecommunications services to all countries in the world. Previously known by the acronym “INTELSAT”, the International Telecommunications Satellite Organization is an intergovernmental organization, established in 1964, that ensures that communications by means of satellites are available to nations of the world on a global and non-discriminatory basis.

The creation of the International Telecommunications Satellite Organization resulted from the efforts of a group of nations to join the United States in 1964 to establish a global communications satellite system. The International Telecommunications Satellite Organization is an intergovernmental organization that incorporates the principle set forth in Resolution 1721 (XVI) of the General Assembly of the United Nations, which establishes that communication by means of satellites should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis. It also incorporates the principle embedded in the “Outer Space Treaty,” which states that outer space shall be used for the benefit and in the interest of all countries.

The Organization underwent an important restructuring in 2001 in order to secure the long-term viability of its communications system in a market that is characterized by increasing competition, fast-paced innovations and rising capital costs, and in order to attract private investments. The Assembly of Parties, the highest decision-making body of the Organization, approved in 2000 the legal instruments and framework necessary to create a commercial and pro-competitive company named “Intelsat, Ltd.,” to operate the satellite system and provide space segment capacity in a manner consistent with the core principles of global coverage and connectivity, lifeline connectivity and non-discriminatory access. For this purpose, ITSO transferred its global satellite system, including the geostationary-orbital locations, “landing rights” and the brand-name of “Intelsat,” to Intelsat, Ltd.

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1 For further information about ITSO, see <[www.itso.int](http://www.itso.int)>.

Since its establishment, the Organization has proved to be an efficient catalyst for global cooperation in satellite communications. It has promoted cross-border flows of information that are vital to business, trade and peace, and it has been instrumental in linking the developing countries to the global economy and enhancing the competitiveness of their economies.

Since 18 July 2001, ITSO has been restructured as follows:

At the intergovernmental level: Assembly of Parties: is the governing body of the Organization, currently comprised of the 149 member countries of ITSO, and meets normally every two years in ordinary Assemblies. The Assembly of Parties elects a Panel of Legal Experts that resolves disputes in connection with the Agreement between two or more member countries, or between ITSO and one or more member country.

Executive Organ: is headed by the Director General, who is the Chief Executive Officer (CEO) and the legal representative of ITSO, and is responsible to the Assembly of Parties. The Director General supervises and monitors Intelsat, Ltd.'s provision of public telecommunications services. An Advisory Committee comprised of representatives of 23 member countries provides consultative advice to the Director General on any matters requested.

## **IMSO<sup>2</sup>**

The International Mobile Satellite Organization (IMSO) is the intergovernmental organization that oversees certain public satellite safety and security communication services provided via the Inmarsat satellites. These public services include:

- services for maritime safety within the Global Maritime Distress and Safety System (GMDSS) established by the International Maritime Organization (IMO)
- distress alerting
- search and rescue co-ordinating communications
- maritime safety information (MSI) broadcasts
- general communications
- aeronautical safety AMS(r)S services through compliance with the Standards and Recommended Practices (SARPs) established by the International Civil Aviation Organization (ICAO)

The establishment of the Organization was based on two international public law instruments developed under the auspices of the International Maritime Organization (IMO). These are: (a) Convention on the International Maritime Satellite Organization (Inmarsat) between States Parties to the Convention; and (b) Operating Agreement between telecommunications entities public or private (one per Party) called "Signatories" designated by a State. Both instruments entered into force on 16 July 1979.

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<sup>2</sup> For further information about IMSO, see <[www.imso.org](http://www.imso.org)>.

The purpose of Inmarsat was to make provision for the space segment necessary for improved maritime communications and, in particular, for improved safety of life at sea communications and the Global Maritime Distress and Safety System (GMDSS). This purpose was later extended through amendments to the Convention and Operating Agreement to provide the space segment for land mobile and aeronautical communications, and the name of the organization was changed to the International Mobile Satellite Organization to reflect the amended purpose. After twenty years of successful operation, Member States and Signatories of the intergovernmental organization Inmarsat decided to challenge rapidly growing competition from private providers of satellite communications services and pioneered the first ever privatization of all assets and business carried on by the intergovernmental organization while adhering to the continuous provision of the public service obligations and governmental oversight as a pre-requisite of the privatization.

At its Twelfth Session in April 1998, the Inmarsat Assembly adopted amendments to the Inmarsat Convention and Operating Agreement which were intended to transform the Organization's business into a privatised corporate structure, while retaining intergovernmental oversight of certain public service obligations and, in particular, the Global Maritime Distress and Safety System (GMDSS). The Assembly and Council of Inmarsat subsequently decided to implement the amendments as from 15 April 1999, pending their formal entry into force. In doing so, it was recognised that early implementation of the new structure was needed to maintain the commercial viability of the system in a rapidly changing satellite communications environment, and thereby ensure continuity of GMDSS services and other public service obligations, namely: peaceful uses of the system, non-discrimination, service to all geographical regions and fair competition.

The restructuring amendments entered into force on 31 July 2001 and became binding upon all Parties and the Operating Agreement terminated on the same date. The Organization operates through:

- the Assembly of Parties, integrated by its 94 member States, which generally meets every two years;
- the Directorate, headed by the Director General who is the Chief Executive Officer and legal representative of IMSO; and
- an Advisory Committee, comprising a number of Member States, appointed by the Assembly, which meets regularly.

### **EUTELSAT<sup>3</sup>**

The European Telecommunications Satellite Organization, EUTELSAT, was created in 1977 by 17 European countries, members of the European Conference of Postal and Telecommunications Administrations, the CEPT, with the purpose of operating a European telecommunications satellite system. Its constitutive text, the EUTELSAT Convention, was opened for signature in July

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<sup>3</sup> For further information about EUTELSAT, see <[www.eutelsatigo.int](http://www.eutelsatigo.int)>.

1982 and entered into force on 1 September 1985. By 2001, 48 European States were Parties to the EUTELSAT Convention.

EUTELSAT established the first telecommunications satellite system in Europe. The Organization started by providing space segment capacity for basic telecommunications and audio-visual services to Europe and expanded its activities to the provision of all types of analogue and digital television and radio broadcasting services, business telecommunications services, multimedia communications, messaging and positioning services and access to broadband internet. Its satellite fleet provides coverage for Europe, the Middle East, Africa, Asia and the east coasts of North and South America.

Until 2 July 2001, the main purpose of the Organization was the design, development, construction, operation and maintenance of the space segment of the European telecommunications satellite system or systems. In this context, the prime objective of the Organization was the provision of the space segment required for international public telecommunications services in Europe.

On 2 July 2001, all assets, operational activities and related obligations and liabilities of the Organization were transferred to Eutelsat S.A., a company established for this purpose and operating under French law.

The Intergovernmental Organization was maintained to ensure that Eutelsat S.A. observes the following basic principles:

- Public service/universal service obligations
- Pan-European coverage by the satellite system
- Non discrimination
- Fair competition

To fulfill its role, the Intergovernmental Organization EUTELSAT consists of the following organs:

- the Assembly of Parties, composed of all States, Parties to the EUTELSAT Convention, which holds ordinary meetings every second year;
- the Secretariat, headed by an Executive Secretary, is appointed by the Assembly of Parties for a four year mandate. As the legal representative of EUTELSAT, the Executive Secretary acts under the direction of the Assembly of Parties and is directly responsible to it for the performance of all functions of the Secretariat.
- The Assembly is assisted by an Advisory Committee.

## II The Main Legal Instruments

- ITSO
  - ITSO Agreement<sup>4</sup>
  - The ITSO Agreement includes the amendments to the Agreement approved by the Twenty-Fifth (Extraordinary) Assembly of Parties in Washington, D.C., on 17 November 2000.

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<sup>4</sup> See Annex I.

- It establishes the restructured International Telecommunications Satellite Organization which then becomes known as ITSO.
- It has 21 Articles dealing with a range of issues such as:
  - a. Main Purpose and Core Principles of ITSO
  - b. Supervision of Intelsat
  - c. Financial Principles
  - d. Structure of ITSO
  - e. Role, powers and responsibilities of the Assembly of Parties
  - f. Role, powers and responsibilities of the Director General
  - g. Rights and obligations of the Parties
  - h. Frequency Assignments and the role of notifying administrations
  - i. Privileges, exemptions and immunities
  - j. Withdrawal
  - k. Amendment
  - l. Settlement of disputes
  - m. Duration, among others
- Public Service Agreement
  - The Public Services Agreement (the “PSA”) was entered into on July 18, 2001 by and between ITSO and Intelsat S.A. to ensure that Intelsat fulfils its “Public Service Obligations”, namely, to provide on a commercial basis, international public telecommunications services, in order to (i) maintain global connectivity and coverage; (ii) serve its lifeline connectivity customers; and (iii) provide non-discriminatory access to the Intelsat system.
  - It has 8 Articles dealing with:
    - a. Intelsat’s obligations to honor the Public Service Obligations
    - b. The supervisory role of ITSO
    - c. Governing law and dispute resolution; among others.
- Assembly of Parties – Rules of Procedure
  - It includes the amendments to the Rules of Procedure approved by the Thirty-Fourth Assembly of Parties in Washington DC on 24 June 2010.
  - It has 17 rules covering for example:
    - a. Documentation
    - b. Representation
    - c. Officers and Election of officers
    - d. Quorum
    - e. Voting
- IMSO
  - IMSO Convention<sup>5</sup>
    - a. At its Twelfth Session in April 1998, the Inmarsat Assembly adopted amendments to the Inmarsat Convention and Operating Agreement

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<sup>5</sup> See Annex II.

- which were intended to transform the Organization's business into a privatised corporate structure, while retaining intergovernmental oversight of certain public service obligations and, in particular, the Global Maritime Distress and Safety System (GMDSS).
- b. It established IMSO to ensure the provision, by each Provider, of maritime mobile satellite communications services for the GMDSS according to the legal framework set up by IMO.
  - c. In 2008, the IMSO Convention was amended by the Twentieth session of the Assembly.
  - d. It has 22 Articles dealing with a range of issues such as:
    - i Purpose and functions of IMSO
    - ii Oversight of the GMDSS
    - iii Structure of the organization
    - iv Role, powers and responsibilities of the Assembly of Parties
    - v Role, powers and responsibilities of the Director General
    - vi Costs
    - vii Settlement of disputes
    - viii Amendment
    - ix Withdrawal, among others
- Public Service Agreement
    - The PSA between IMSO and Inmarsat was entered into in 1999.
    - It has 17 articles covering for example:
      - a. Public service obligations
      - b. International standards and regulations
      - c. Remedies
      - d. Governing law and dispute resolution
  - Rules of Procedure of Assembly
    - It has 34 rules covering for example:
      - a. Sessions
      - b. Participation
      - c. Agenda and documentation
      - d. Officers and election of officers
      - e. Advisory committee
      - f. Voting, among others
  - Protocol on the Privileges and Immunities of IMSO
    - It entered into Force on 30 July 1983 and has been revised as at 15 April 1999.

## **EUTELSAT**

- The EUTELSAT IGO Convention<sup>6</sup>

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<sup>6</sup> See Annex III.

- The amendments to the Original EUTELSAT Convention, which established the restructured EUTELSAT IGO, were approved by the EUTELSAT Assembly of Parties in May 1999. They were applied on an accelerated (provisional) basis as from 2 July 2001 in accordance with a Resolution to this effect adopted by the EUTELSAT Assembly of Parties also in May 1999.
- It entered into force on a definitive basis on 28 November 2002.
- It has 21 Articles dealing with a range of issues such as:
  - a. Establishment of EUTELSAT and the Company Eutelsat S.A.
  - b. Purposes of EUTELSAT
  - c. Costs
  - d. Structure of EUTELSAT
  - e. Composition and meetings, procedure and functions of the Assembly of Parties
  - f. The Secretariat
  - g. Rights and obligations of the Parties
  - h. Privileges, Exemptions, Immunities
  - i. Withdrawal
  - j. Amendments and Termination
  - k. Settlement of Disputes, among others.

### III The Legal Challenges Faced by ITSO, IMSO and EUTELSAT

Regional and Global Space Organizations face some legal challenges. For example, it can be rather difficult for those organizations to keep up to date with the current needs and trends of the satellite industry bearing in mind that it is very complicated to amend the ITSO Agreement, the IMSO Convention or the EUTELSAT IGO Convention.

Any Party may propose amendments to the ITSO Agreement, IMSO Convention and EUTELSAT Convention by submitting their proposal to the executive organ.<sup>7</sup> The Assembly of Parties, which normally takes place every two years, would then consider the proposed amendment. It is also important to note that there must be a quorum for the Assembly of Parties to be able to make decisions (i.e. the majority of the parties must be represented at the meeting) which poses a further legal obstacle for the Organizations to be able to amend the Treaties.

If the Assembly of Parties approves the proposed amendment, it will only enter into force after the Depository has received notice of approval, acceptance or ratification of the amendment from two-thirds of the States which were Parties as of the date upon which the amendment was approved by the Assembly of Parties. This process can be very lengthy and complex in a number of Member Parties and might take up to 2 years after the country has decided to approve/accept/ratify the amendment.

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<sup>7</sup> See Article XV of the ITSO Agreement, Article 20 of the IMSO Convention and Article XIV of the EUTELSAT Convention.

Another challenge faced by those organizations is that it might be rather difficult to implement treaty provisions. For example, ITSO, IMSO and EUTELSAT IGO have to supervise the private company.<sup>8</sup>

The Treaties and the Public Service Agreement provide the tools to allow the organizations to supervise the private companies. If a dispute arises between the Organization and the private company, the disputants shall recourse to arbitration. For example, the ITSO PSA provides that the arbitration shall be conducted in accordance with the rules of the court of arbitration of the International Chamber of Commerce (ICC) whereas the IMSO PSA provides for arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Rules as in force at the time. Although decisions of arbitral tribunals are binding and final, if the private companies do not wish to collaborate, it can be rather difficult and time consuming for the Organizations to enforce the awards.

Similarly, if a dispute arises between Member Parties or between Member Parties and the Organizations, the Treaties provide for arbitration<sup>9</sup>. At ITSO, disputes that are not settled within a reasonable time shall be submitted to arbitration. At IMSO, if disputes are not settled within one year, they might go to the International Court of Justice (if the dispute is between Parties) or to arbitration. At EUTELSAT IGO, disputes that are not settled within one year shall be submitted to arbitration. If the dispute goes to arbitration, the decision of the tribunal is binding on all disputants and shall be carried out by them in good faith. If the Organization is a party to the dispute, the decisions of the arbitral tribunal shall be binding on all Parties and its expenses associated with the arbitration shall be regarded as an administrative cost of the Organization. Likewise, although decisions of arbitral tribunals are binding and final, if the losing party does not wish to collaborate, it can be rather difficult and time consuming to enforce the awards.

The three organizations described above also face the challenge of lack a harmonized approach in their oversight function. There is no supranational body to ensure some level of harmonization. This might result in lacunas as well as in conflicting provisions, which is not ideal. Nevertheless, the three Organizations examined here have collaborated and successfully worked together to achieve their objectives and goals.

Finally, the lack of international regulation of the satellite industry as a whole might be considered as another challenge, although this is not a challenge faced by the individual Organizations. The importance of broadband for generating economic growth and achieving social progress has been widely recognized as well as the role that satellite technology plays in serving remote areas, rural areas or areas with low population rates. Therefore, it might be necessary to

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8 See Articles III and V of the ITSO Agreement, Articles 3 and 5 of the IMSO Convention and Article III of the EUTELSAT Convention.

9 See Article XVI of the ITSO Agreement, Article 17 of the IMSO Convention and Article XV of the EUTELSAT Convention.



impose obligations on other satellite providers in order to ensure the availability of satellite services on a universal basis and in a non-discriminatory manner.

#### **IV Conclusion**

ITSO, IMSO and EUTELSAT IGO share the same history. Therefore, they have very similar legal instruments and structure and face similar legal challenges. Each of them has an important supervisory role to play and regulates the private companies to ensure the availability of international public telecommunications services on a non-discriminatory basis. The Organizations have been able to perform successfully their role despite the challenges faced by them.