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AN ANALYSIS OF THE SOCIALIST STATES' PROPOSAL FOR INTERSPUTNIK: AN INTERNATIONAL COMMUNICATION SATELLITE SYSTEM

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By a letter dated August 5, 1968, a draft agreement to establish an international communication satellite system (INTERSPUTNIK) was submitted to the Secretary General of the United Nations by representatives to the United Nations of Bulgaria, Cuba, Czechoslovakia, Hungary, Mongolia, Poland, Romania and the USSR. The letter begins “On the instructions of our Governments,” indicating that this submission to the Secretary General was not presented as the proposal of any organization but is in the form, frequently used in the United Nations, of a document submitted by several governments as a joint proposal. Although one frequently hears reference to “the INTERSPUTNIK organization” and “the INTERSPUTNIK members,” no such organization actually exists beyond the abstract concept represented by the proposed draft agreement.

Neither Albania nor communist-controlled China joined in sponsoring this draft agreement. In fact, of the communist regimes not recognized by the United States, only Albania and the Mongolian People’s Republic are members of the United Nations. This fact probably explains why the non-recognized regimes, the so-called “People’s Republic of China,” “German Democratic Republic,” “Democratic People’s Republic of Korea,” and the “Democratic People’s Republic of Viet Nam,” were not involved as co-sponsors of the draft, although some of these regimes may reasonably be considered to be sympathetic with the emergence of a socialist states’ international communication satellite system.

The Secretary General of the United Nations was requested to and did circulate the draft agreement as a document of the UN Committee on the Peaceful Uses of Outer Space.¹ There is no accom-

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The opinions expressed herein are those of the author and do not necessarily reflect the views of any organization, firm or agency with which he is now or has been associated.

panying explanatory text and the only footnotes in the document indicate that two annexes, one of which would identify the initial technical program of INTERSPUTNIK and the second of which would list the investment quotas of the members, "will be prepared later." The following analysis is based on the text of the circulated draft agreement.

DRAFT AGREEMENT ON THE ESTABLISHMENT OF AN INTERNATIONAL COMMUNICATIONS SYSTEM USING ARTIFICIAL EARTH SATELLITES

Preamble

The States Parties to this Agreement:

Recognizing the need to promote the strengthening and development of comprehensive economic, cultural and other relations through the maintenance of communications, including radio and television broadcasting using artificial earth satellites;

Recognizing the usefulness of co-operation in theoretical and experimental research and in the design, establishment, operation and development of an international communications system using artificial earth satellites;

Desiring to develop international co-operation on the basis of respect for the sovereign rights and equality of States and non-interference in their internal affairs and to promote mutual assistance and mutual advantages;

Proceeding on the basis of the provisions of United Nations General Assembly resolution 1721 (XVI) and of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, of 27 January 1967;

Have agreed as follows: . . . .

In the Preamble, the draft recognizes the need to promote international relations through the maintenance of communications, "including radio and television broadcasting." This phrase may suggest the sponsors' contemplation that INTERSPUTNIK would have competence to provide a direct broadcasting capability, as well as a capacity for broadcast relay or transmission services, although the phrase

2. Satellites may be used in two ways to facilitate broadcasting. The originating studio may send a signal via an earth station to a satellite for relay to an earth station(s) connected by land lines with local broadcasting stations. The local stations then broadcast the signal on frequencies and at power levels capable of being received
"direct broadcasting" does not appear anywhere in the draft. This interpretation might have been unjustified had the Russian word for "transmission" or "relay" been used, but the original Russian word translated in the phrase in question is unambiguously "broadcasting." The Preamble also expresses the desire to develop international cooperation on the basis of "respect for the sovereign rights and equality of States and non-interference in their internal affairs." This assertion may be in some measure intended to counter-balance the possible implication that INTERSPUTNIK could be a direct broadcasting facility operator. Such a balance is certainly required at this point in time because of the political questions which many governments and commentators have raised related to international direct broadcasting using satellites. 3

The Preamble expressly recognizes "the usefulness of cooperation in theoretical and experimental research." This suggests that INTERSPUTNIK, as an organization, could become involved actively in jointly financed programs of theoretical and experimental research relating to communication satellites. The Preamble concludes with references to United Nations General Assembly Resolution 1721 (XVI) and the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.

The Preamble raises two interesting points on which the balance of the text sheds very little light: one relating to possible direct broadcasting implications, and the second, the extent to which INTERSPUTNIK, as an organization, would conduct its own basic research.

in home radio or television sets. This process is referred to as "distribution" of broadcasts by satellite relay. The second way in which satellites may be used involves transmission of a signal to a satellite and rebroadcast of the signal by the satellite on frequencies and at power levels sufficient to permit reception of the signal directly on a home receiver. This is referred to as "direct broadcasting" via satellite.


During May 1969 the Subcommittee on National Security Policy and Scientific Developments of the House Committee on Foreign Affairs held hearings on the subject of the implications for foreign policy of satellite broadcasting. Contained in the published record of the hearings is a comprehensive annotated bibliography on the subject of direct broadcasting by satellite. SUBCOMMITTEE ON NATIONAL SECURITY POLICY AND SCIENTIFIC DEVELOPMENTS OF THE HOUSE COMMITTEE ON FOREIGN AFFAIRS, SATELLITE BROADCASTING: IMPLICATIONS FOR FOREIGN POLICY, 91ST CONG., 1ST SESS. 296 (Comm. Print 1969).
Article 1

1. An international communications system using artificial earth satellites shall be established.

2. In order to ensure co-operation and the co-ordination of the efforts of the States in the design, establishment, operation and development of the said communications system, an international organization for the use of artificial earth satellites for communications purposes, hereinafter called "Intersputnik", shall be established.

3. "Intersputnik" shall have its headquarters at ____________.

This Article is curiously worded. It provides that a system shall be established, but the organization — INTERSPUTNIK — shall ensure the cooperation and coordination of "the efforts of states in the design, establishment, operation and development of the said communications system." It does not provide that INTERSPUTNIK shall design, establish, operate and develop the system — rather it shall ensure the cooperation and coordination of efforts of states in this regard. Article 8, subparagraph 4 (b) clearly indicates that the organization, through the Secretariat, is to play a role in the design function. Such a role would include definition of needs, as the organization views them, and evaluation of design proposals to determine their sufficiency to meet the stated needs. This appears to be more than ensuring cooperation and coordination.

Secondly, INTERSPUTNIK is described as an "organization for the use" of satellites. Although this language could be the result of a loss of sense in translation (the original text was submitted in Russian), it seems curiously awkward that INTERSPUTNIK is not given expressly the rudimentary powers to design, establish, own and maintain the system. With regard to "ownership," Article 3, paragraphs 2 and 3 clearly contemplate ownership of elements of the system by the organization. The use of the established system would be by telephone, telegraph or data service operators and broadcasting networks or unions providing services in and between member countries. The organization itself is not likely to be a revenue-producing user. The question arises whether this wording was an intentional result of the original drafters, or is it only the result of an awkward translation? Language contained in Article 5 tends to substantiate the view that this may be an intentional non-assignment of power.

Article 2

Any state which agrees to the principles and conditions of membership set forth in this Agreement and signs and ratifies it or accedes to it may be a member of "Intersputnik".

Villanova Law Review, Vol. 15, Iss. 1 [1969], Art. 4

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The second Article is an "all states membership" provision which opens up the political question of the non-recognized regimes.  

Article 3

1. The international communications system using artificial earth satellites shall include the following components:

   (a) An outer-space complex consisting of communications satellites and the relay transmitters and on-board equipment necessary for their normal operation;

   (b) Ground systems for satellite control, telemetry, measurement of orbital parameters and the calculation of target indications for the antennas of ground stations;

   (c) A ground complex consisting of ground stations among which communication is maintained by means of the artificial earth satellites.

2. The outer-space complex shall be the property of "Intersputnik" or shall be leased from its member States.

3. The ground systems for satellite control, telemetry, measurement of orbital parameters and the calculation of target indications for the antennas of ground stations shall be the property of "Intersputnik" or shall be leased from member States which have such systems.

4. The ground complex shall be the property of the States which have constructed it in their territory.

In this Article the "components" of the international system contemplated are described. These are: (1) space segment, (2) tracking, telemetry and control (TT&C) stations, and (3) earth stations owned and operated by states members of the organization. In these

4. A definition of "recognition" and an historical review of U.S. attitudes on recognition are found in 1 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW §§ 30-34 (1940). Discussion of recognition of new states and new governments comprises §§ 35-52; acts falling short of recognition are treated in §§ 53-54; and the effects of recognition are treated in § 55. Recognition as it relates to the continuity of states is discussed in § 56. More recent treatment of these same subjects dealing primarily with newer laws of recognition is found in 2 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW CH. 3 (1963). A recent example of how the Government of the United States deals with the problem of "all states" participation in multilateral international agreements or organizations is set forth in the 1968 DEP'T STATE BULL. 84, where Ambassador Arthur J. Goldberg's careful explanation to the General Assembly of the United Nations is reproduced: "Under international law and practice, recognition of a government or acknowledgment of the existence of a state is brought about as a result of the deliberate decision and course of conduct on the part of a government intending to accord recognition. Recognition of a regime or acknowledgment of an entity cannot be inferred from signature, ratification, or accession to a multilateral agreement." This statement is included in U.S./U.N. Press Release No. 252, Statement by Ambassador Goldberg, December 19, 1967.

For a current view of the official United States position on recognition of particular states, governments, quasi-independent states, and territories, see DEP'T STATE, GEOGRAPHIC BULLETIN NO. 2: STATUS OF THE WORLD'S NATIONS (1967).
three elements there is no difference between the proposed INTERSPUTNIK system and the existing International Telecommunications Satellite Consortium's system known as the INTELSAT system. However, paragraphs 2 and 3 of Article 3 provide that the satellites comprising the space segment and the TT&C stations (considered part of the INTERSPUTNIK apparatus) shall be either "the property of INTERSPUTNIK or shall be leased from its member states." This indicates that a member of INTERSPUTNIK, apparently unilaterally, could launch communication satellites, establish TT&C facilities for such satellites, and then negotiate with INTERSPUTNIK for their use by the international system to handle traffic of the system. This element of the Socialist States' proposal is clearly a departure from INTELSAT's philosophy of joint ownership of the system's facilities. It could be construed as a Soviet effort to ensure that the USSR would be able to provide at least some of the space segment requirements of the international system to the organization on a lease basis with the USSR collecting the rent. It could unilaterally launch and bring into operation space segment facilities and then offer such facilities to the international system on a lease basis. Given the presence of such satellite capacity in space, and assuming reasonable lease charges, it may be expected that INTERSPUTNIK would look upon such an offer with favor. The USSR, on the other hand, would thereby be provided with a market for communication satellite facilities which, when sold or leased, could produce revenues to help support the national space program of the USSR.

Article 4

The launching and injection of satellites into orbit shall be carried out by States members of the organization on the basis of bilateral agreements between States having the necessary means to do so and "Intersputnik".

This Article provides that launch of satellites shall be carried out by states, members of the organization — not INTERSPUTNIK or another international organization such as the European Launcher Development Organization — on the basis of bilateral agreements between states having a launch capability and INTERSPUTNIK. This is essentially the procedure now followed by INTELSAT.

Article 5

1. "Intersputnik" shall set up an outer-space network. It may itself acquire such a network or lease one from member States on the basis of bilateral agreements.
2. "Intersputnik" shall operate the outer-space network, assigning communications channels both to member States and to other States not members of the organization or to other users in accordance with the provisions of this Agreement.

3. "Intersputnik" shall co-ordinate with the International Telecommunication Union and with other international organizations which make use of satellites for communications purposes, both its technical activities (the use of the frequency spectrum, the application of technical standards to communications channels and equipment standards) and its activities in the field of international regulation.

4. "Intersputnik" shall be a legal person. "Intersputnik" shall enjoy in the territory of States members of the organization the legal capacity necessary for it to carry out its functions and achieve its purposes.

This Article indicates that INTERSPUTNIK will "set up"—not own—an outer space network. "It may itself acquire such a network or lease" the facilities from member states. This language is consistent with Article 1 and tends to dispel the notion that the wording of Article 1 is the product of poor translation.

Paragraph 2 notes that INTERSPUTNIK shall operate the system, assigning channels to member and non-member states or to other users "in accordance with the provisions of this agreement." This is in accordance with Article 10, paragraph 1, where there is the provision that distribution of channels among states shall be made "on the basis of their need for communications channels." It is further stipulated that only channels in excess of the combined needs of the member states would be made available to non-members or other users. Article 10 also notes that channels shall be made available for use "against payment at the rates fixed by the Council." All of these provisions, i.e., Article 5, paragraph 2 and Article 10, lack any expressed notion of non-discriminatory access for all users. The draft places in the hands of the operating secretariat authority to refuse service to non-members or other users until all members' needs are met. There is also no stated requirement that rates for use of the system should be uniform, equitable or non-discriminatory.

Paragraph 3 notes that INTERSPUTNIK shall coordinate with the International Telecommunication Union and other (unnamed) international organizations both technical and international regulatory activities. "Its [INTERSPUTNIK] activities in the field of international regulation" is a curious and undeveloped phrase. It could mean simply that the organization will comply with all regulatory
constraints; but, as stated, it seems almost to imply that INTERSPUTNIK will do some regulating in its own right.

The draft agreement does not contemplate a single (in the sense of exclusive) global satellite system but expressly recognizes the need to coordinate with "other international organizations which make use of satellites for communications purposes."

Paragraph 4 declares INTERSPUTNIK shall be a legal person. There is also a provision intended to assure to the organization sufficient legal capacity to act as a jural entity in carrying out its functions and achieving its purposes. Curiously, the draft is silent on the point of whether or not the privileges and immunities normally accorded to public international organizations would be available to INTERSPUTNIK and its secretariat's employees, although the organization would involve cooperation among only states, since only states can be members.  

Article 6

1. In order to direct the work of "Intersputnik" the following main organs shall be established:

(a) A Council of representatives of States members of the organization, which shall be its governing body, and

(b) A Secretariat, which shall be the permanent executive and administrative organ, headed by a Director-General.

2. The Council may establish such subsidiary organs as may be necessary to achieve the purposes of this Agreement.

Here are set out the main organs of INTERSPUTNIK which are to be (a) a Council of representatives of member states "which shall be its governing body," and (b) a Secretariat, "which shall be the permanent executive and administrative organ headed by a Director-General," about whom a good deal is said in Article 8. It is provided that the Council may establish such subsidiary organs as may be necessary to achieve the purposes of the draft agreement. Under this latter provision the Council could, in its discretion, establish an executive body somewhat similar to a Board of Directors or Executive Committee which presumably could perform delegated functions in the period between annual Council sessions. There is no hint in this draft that such an executive body is proposed. On the other hand, no provisions of the present draft would prohibit or deny to the Council power to delegate selected functions. In light of the nature and scope of responsibilities and powers assigned to the Council in Article 7,

5. See Article 2 at p. 86 supra.
it would seem reasonable to assume that the members would want and need to establish a subordinate executive body or delegate some of its powers to the Director-General.

**Article 7**

1. The membership of the Council shall consist of one duly accredited representative of each State member of “Intersputnik”.

2. Each State member of “Intersputnik” shall have one vote in the Council.

3. The Council shall meet in regular session once a year at the headquarters of “Intersputnik”. At the invitation of the Governments of member States, sessions of the Council may, if it so decides, be held in the territory of other member States.

4. The Council may decide to convene a special session. A special session may also be held at the request of the Director-General or of any State member of the organization, subject to the agreement of not less than one third of the States members of the organization.

5. The Council shall be the organ which takes all the steps necessary to ensure that the programme annexed to this Agreement (annex 1)* is carried out in good time. For this purpose, the Council may consider any questions covered by this Agreement and shall, in particular, perform the following functions:

   (a) It shall consider and adopt measures for the establishment and operation of the outer-space complex and satellite control systems.

   (b) It shall consider plans for the further development and improvement of the communications system;

   (c) It shall adopt a programme of work for “Intersputnik” for the next calendar year;

   (d) It shall determine the financial and technical conditions for the admission of new members to the organization;

   (e) It shall adopt technical standards for ground stations;

   (f) It shall decide whether to include ground stations in the communications system;

   (g) It shall consider and approve a satellite-launching programme;

   (h) It shall lay down technical standards for communications satellites;

   (i) It shall approve a plan for the allocation of communications channels among States members of the organization and
the procedure and conditions for the leasing or use of channels by States not members of the organization or by other users;

(j) It shall fix the rate for the transmission of a unit of information by means of communications satellites or the cost of leasing a channel;

(k) It shall elect the Director-General and his deputy and shall supervise the work of the Secretariat;

(l) It shall approve the regulations, structure and establishment of the Secretariat, and the rules concerning the rights and duties of Secretariat staff;

(m) It shall consider the annual reports of the Secretariat on its work;

(n) It shall consider and approve the budget of the organization;

(o) It shall determine the amounts and dates of payment of contributions to be paid by Governments under article 9, paragraphs 2 and 4;

(p) It shall consider and adopt documents regulating the legal, administrative and technical activities of the organization;

(q) It shall consider proposals for amendments to the present Agreement and submit them to member States for their approval;

(r) It shall adopt rules of procedure to govern its work.

In performing its functions, the Council shall act within the limits of the Fund established under this Agreement.

6. Decisions of the Council shall be deemed to have been adopted if they have received not less than two thirds of the votes of the members of the Council. Two thirds of the total membership of the Council shall constitute a quorum.

7. The first session of the Council shall be convened not later than three months after the entry into force of this Agreement by the Government of the State in which the headquarters of the organization are established.

* Annexes 1 and 2 will be prepared later.

This Article recites that the Council shall consist of one duly accredited representative of each member state who shall have one vote. The Council would meet in regular annual sessions. Special sessions may be convened at the discretion of the Council, or at the request of the Director-General, or of any member state subject to the agreement
of not less than one-third of the members. The one-third concurrence requirement would apparently apply to a request emanating from a member state or the Director-General. The Council itself, apparently, could call a special session only by a two-thirds majority vote; however, this point is not clear.

Two-thirds of the Council comprise a quorum and decisions of the Council are carried by a two-thirds majority "of the members of the Council." There is no provision for routine or procedural decisions to be taken by a lesser or simple majority.

In discharging its several assigned functions it is interesting to note that the Council would alternately "consider," "adopt," "determine," "decide," "lay down," "approve," "fix rates," "elect [not appoint] the Director-General," and make all its decisions by a two-thirds majority. The terms "adopt, determine, decide, lay down, approve, fix and elect" connote a decisional function. The term "consider," however, is more vague. Note that the Council only "considers" plans for further development and improvement of the system; assumedly the plans are generated either by the Director-General or by members independently or collectively. It is curious that the Council would not "approve or adopt" such plans. It only "adopts" a work program for "the next calendar year" thus assuring considerable flexibility to the Council and to individual members in long range planning.

Subparagraph (f) provides that the Council shall decide whether to include ground stations in the communications system. The purpose of this provision is unclear. It may be an expressed reservation of the right to refuse access to the system, or it may indicate that INTERSPUTNIK would become an earth station operator; but the latter possibility would appear to run directly counter to the provision of Article 3, paragraph 4 which gives the individual member states earth station ownership rights. If the former possibility is what was intended, i.e., the right to deny access, the provision would seem superfluous in light of powers contained in subparagraphs 5(e), (i), (j) and (p) of Article 7.

The Council, as the governing body and supreme organ of the organization, "considers" amendments to the draft agreements and submits amendments to member states for their approval. It is not clear whether or not such consideration by the Council would include the power to recommend "for" or "against" a proposed amendment. Article 18 provides that upon approval by two-thirds of the members the amendment becomes effective; but only as to those members who specifically approve the amendment.
Article 8

1. The Secretariat shall consist of the Director-General, his deputy and the staff needed by the organization.

2. The Director-General shall be the principal administrative officer of the organization and shall in that capacity represent “Intersputnik” in its relations with States members of the organization concerning all questions related to its work and in international organizations with which the Council considers it necessary to co-operate.

3. The Director-General shall be responsible to the Council for the work of the Secretariat and shall submit to the Council each year a report on the work of the Secretariat during the previous year.

4. The Director-General shall perform the following functions:

   (a) He shall ensure that decisions taken by the Council are carried out;

   (b) He shall hold discussions with the communications administrations and the design and industrial organizations of States members of the organization concerning the design of the system as a whole and the design, manufacture and delivery of the components and units of the on-board equipment of communications satellites;

   (c) He shall hold discussions on matters related to satellite launchings;

   (d) On the instructions of the Council, he shall conclude the appropriate agreements and contracts within the scope of the authority conferred upon him by the Council;

   (e) He shall prepare budget estimates for the next financial year and submit them to the Council for its approval and shall report to the Council on the fulfillment of the budget for the preceding financial year;

   (f) He shall be responsible for the preparation, convening and conduct of sessions of the Council.

5. The Director-General and his deputy shall be elected for a term of four years and may be re-elected.

6. The Secretariat shall be composed of citizens of the States members of the organization. Staff shall be recruited with due regard to their professional competence and to the principle of equitable geographical representation of the States members of the organization.

7. The rights and duties of the Secretariat staff shall be defined in appropriate rules approved by the Council.
The Director-General is described in this Article as "the principle administrative officer of the organization." However, in describing the Secretariat, of which the Director-General is the head, Article 6, subparagraph 1(b) provides that it shall be the "permanent executive and administrative organ." Considering the functions assigned to the Director-General in Article 8, it would appear to be entirely appropriate to refer to him as the principal executive as well as administrative officer of the organization. Consider his functions: He shall represent the organization in its relations with international organizations; he shall carry out all decisions of the Council; he shall hold discussions with the design and manufacturing elements of industry of member states "concerning the design of the system as a whole and the design, manufacture and delivery of the components and units of the on-board equipment of communications satellites;" he shall discuss and arrange launchings (subject to Council approval); upon direction of the Council, he shall conclude the appropriate agreements and contracts on behalf of the organization; he shall develop and recommend the budgetary plan for Council approval; and "he shall be responsible for the preparation, convening and conduct of sessions of the Council" — which may be clearly read to include responsibility to set the Council's agenda, maintain all records and minutes, and provide for and control all administrative aspects, such as translators and interpreters, clerical and other support staff and facilities.

This man must be, first of all, an outstanding administrator, a capable financial planner, generally knowledgeable in industrial aerospace operations, a good negotiator, and a generally responsible manager. He has a position of substantial influence, if not control, over many aspects of the organization's services and programs and can have a profound impact on the work, attitudes, and decisions of the Council. Recalling that the Council meets in regular session only once each year, the Director-General is clearly vested with most, if not all, the powers of a chief executive as well as administrative officer. Once elected, he serves a four year term and is then eligible for re-election. Absent a strong and effective executive body under the Council but over the Director-General, it is entirely possible that the proposed organization could become an overly centralized control mechanism affecting international satellite communications among the socialist states.

Paragraph 6 of Article 8 provides that the Secretariat shall be composed of citizens of member states and that the staff shall be recruited with due regard to competence and to the principle of equitable
geographical representation. The meaning of “equitable” is not clear and is left to interpretation by the Council. “Equitable” could mean staff selected from member states in proportion to (1) population, (2) relative investment in INTERSPUTNIK, (3) levels of economic development, (4) political importance, (5) technical competence, or (6) all or some of these criteria. Only citizens of member states may be included.

Article 9

1. The international communications system using artificial earth satellites shall be established on the basis of the annexed technical programme (annex 1),* for which a fund in the amount of __________ shall be set up.

The said fund shall consist of:

A basic fund required to cover the following expenses of the organization:

(a) Scientific research and experimental and design work on communications satellites and ground stations;

(b) The design, construction, or acquisition of the outer-space complex;

(c) Payment of the cost of the launching and injection of satellites into orbit;

(d) The acquisition or leasing of ground control systems.

An administrative expenses fund required to cover the cost of Secretariat salaries, the holding of Council sessions and other administrative necessities. The amount of the administrative expenses fund shall be determined by the Council.

2. The fund of the organization shall be formed from contributions by member States. The amount of each member State’s contribution shall be proportionate to its use of communications channels. (A table indicating the amount of the contribution of each State member of the organization in absolute and percentage terms is given in annex 2.)*

3. Every State member of the organization shall pay its assessed contribution in accordance with the budget approved for each financial year and within the time-limit laid down by the Council.

4. If in the course of designing and creating the communications system it becomes necessary to increase the fund, such increase shall be effected in accordance with Article 18. The additional expenditure shall be distributed among States members of the organization in accordance with the provisions of paragraph 2 of this Article.
5. In the event of the admission of new members to the organization, or of the withdrawal of any members from it, the scale of assessments shall be adjusted accordingly.

6. Contributions to the fund of the organization shall be made in transferable rubles (under clearing arrangements) or in freely convertible foreign exchange.

7. A penalty of 6 per cent per annum shall be imposed in respect of sums not paid in due time.

8. Income derived from the operation of the communications system shall be distributed among the States members of the organization as follows:

   (a) Expenses connected with the cost of the outer-space complex, the launching of communications satellites and the cost or rental of ground control systems shall be reimbursed;

   (b) The balance of such income shall be distributed among the States members of the organization in proportion to the amounts of their contributions;

9. The organization's financial year shall commence on 1 January and end on 31 December of the calendar year.

* Annexes 1 and 2 will be prepared later.

This Article contains reference to a yet-to-be published annex which would set forth the technical program for the initial creation of INTERSPUTNIK. The fund to finance the program is to be contributed by member states in an unspecified but to-be-agreed amount, and would be used specifically to pay for research, experimental and design work on communication satellites and ground stations, purchase or lease of the space segment, launch costs, and purchase or lease costs of TT&C facilities. These expenses would all be borne by the "basic fund." There would be, in addition, an "administrative expenses fund" to defray costs of the Secretariat, meetings, and other administrative expenses. The amount of this latter fund would be fixed by the Council. The basic and administrative expense funds comprise the "fund of the organization," which "shall be formed from contributions by member states," each member contributing in proportion to its use of the communications channels. A table setting forth the relative percentages and specific amounts of contributions will form the second annex which is yet-to-be published.

The amounts due and times of payment would be promulgated by the Council with collection by the Secretariat. Pursuant to the amendment process described in Article 18, the ceiling on contributions
could be raised by consent of two-thirds of the members. The required additional contributions would continue to be in proportion to use. Among specific financial administrative provisions there is a stipulated penalty of 6% per annum on late payments.

Income from operation of the system is returned to the members first as repayment for contributions to the basic fund (but not the administrative fund) and any net operating revenues are distributed in proportion to contributions.

Article 10

1. The distribution of communications channels among States members of the organization shall be made on the basis of their need for communications channels. Communications channels in excess of the combined needs of all the States members of the organization may be leased to States not members of the organization or to other users.

2. Communications channels shall be made available for use against payment at the rates fixed by the Council.

As noted earlier, capacity in the space segment is to be distributed on the basis of need among member states. Available excess capacity may be leased to nonmember states "or to other users." This latter group is obviously intended to include nongovernmental international telecommunication operating entities like Kokusai Denshin Denwa (KDD) of Japan or the International Long Lines Department of the American Telephone and Telegraph Company (AT&T) or other international communications carriers.

Paragraph 2 of Article 10 has the smack of a "No Credit" sign, but may be intended only to indicate that there will be no free services provided on the INTERSPUTNIK system.

Article 11

1. Any State may withdraw from "Intersputnik" by notifying the depositary State in writing to that effect not later than three months before the end of the current financial year.

Withdrawal from the organization shall take effect at the end of the financial year during which the State announces its intention to withdraw. The State in question shall be required to pay its contributions for the current financial year within the time-limit set by the Council, and to fulfill all its other financial obligations.

2. The amount of the monetary compensation due to a State withdrawing from the organization shall be determined by the Council in accordance with the State's contributions to the formation of the basic fund, taking into account the tangible and in-
tangible depreciation of fixed assets, after the Council approves the report on the budget for the financial year in which the State announced its intention to withdraw.

The amount of the monetary compensation due to a State withdrawing from the organization shall be reduced by the amount of its arrears.

3. If a State member of the organization fails to meet its financial obligations for a period of ____________, the Council shall decide whether to suspend wholly or partially its rights deriving from membership in the organization.

This Article contains rather standard withdrawal provisions. Ninety days notice prior to withdrawal is required, and a state can "vacate" only at the end of the fiscal year during which notice is given, remaining liable for all assessed obligations incurred during that year. The Council determines how much repayment or "monetary compensation" a withdrawing state should receive. Any arrears accrued are subtracted from the repayment. The Council may also suspend a state's rights partially or fully as a sanction for failure to meet obligations over a period of time to be agreed.

Article 12

1. "Intersputnik" may be dissolved by agreement among the States members of the organization.

2. Monetary compensation shall be paid to States members of the organization in proportion to their participation in the capital expenditure for the creation of the communications system as a whole, taking into account tangible and intangible depreciation.

3. Upon the dissolution of "Intersputnik" its cash working capital excluding that part required for the payment of its obligations, shall be distributed among the States members of the organization on the day of its dissolution in proportion to their actual monetary contributions over the period of their membership in "Intersputnik".

The tenor of this Article suggests that INTERSPUTNIK is not looked upon by its proponents as a very permanent organization. While a prudent lawyer will generally include terms for winding-up a partnership or corporation in the basic agreement or charter, it may be overly prudent to state such a plan for dissolution of INTERSPUTNIK in a draft proposal to create the organization. Curiously, although the matter of dissolution was made the subject of an article, nothing is said therein about what will happen to the physical assets of the organization, its satellites in space, its patents, rights or data
developed in its research program, or TT&C facilities established by the organization, or any other physical assets for that matter. And what about some of the intangibles such as the frequencies allocated for use by INTERSPUTNIK satellites, and orbital parking positions which may be occupied by such satellites, or operating agreements between INTERSPUTNIK and “other users” or nonmember states?

Article 13
The official language of “Intersputnik” shall be ___________.
The working languages of “Intersputnik” shall be ___________.
The official and working languages are to be agreed.

Article 14
1. This Agreement shall be open for signature until ___________.
2. The Agreement shall be subject to ratification by signatory States. The instruments of ratification shall be deposited with the Government of ________________, which is designated the depositary of this Agreement.

This draft Agreement and the existing INTELSAT Agreements have a common provision for a single depositary government. In light of the universal membership aspirations of both organizations, one wonders whether this is a realistic provision. Given our political international community and the problems of transient diplomatic relations, nonrecognition, and continually emerging states, might it not be more appropriate to provide for two or more depositary governments, as was done in the cases of the nuclear nonproliferation treaty, the outer space treaty and the rescue and return of astronauts treaty?

Article 15
The Agreement shall enter into force when _________ States have deposited instruments of ratification.

The number of participating states required to bring the draft agreement into force is to be agreed.

Article 16
1. States which have not signed this Agreement may become parties to it.
2. The instruments of accession to the Agreement shall be deposited with the depositary Government.
3. A State acceding to the Agreement shall contribute to the fund of the organization in accordance with the provisions of this Agreement and shall undertake to pay its share of the costs of financing the work in progress on the date on which it deposits its instrument of accession. Such share of the cost of financing the work in progress shall be determined by the Council.
As a procedural article, Article 16 provides that acceding states will accrue obligations in proportion to their anticipated use on all work in progress at the time of accession. But note carefully that the share to be paid is to be determined by the Council. Recalling that the Council is expected to meet only annually in regular session, there is an element of inflexibility in this provision which could be overcome by delegation of some authority to either an executive committee or the Director-General to determine initial investment or contribution shares, possibly in accordance with defined criteria which the Council could establish.

Article 17
In respect of States whose instrument of ratification or accession is deposited after the entry into force of this Agreement, the Agreement shall enter into force on the date of the deposit of their instrument of ratification or accession.

Article 18
Amendments to this Agreement shall enter into force after their approval by two-thirds of the States parties to the Agreement. An amendment shall enter into force in respect of each party to the Agreement after its approval of the amendment.

The second sentence in this Article allows a member state to opt out of expenditures made beyond the limit of the original ceiling on contributions to be established under Article 9. The addition of the word “only” after the word “Agreement” in the second sentence would make this point more obvious. Paragraph 4 of Article 9 provides that the investment ceiling can be raised by an amendment adopted pursuant to Article 18. But even if two-thirds of the members agree to a higher level of investment, the nonconcurring states could argue that they are not liable for payments in addition to those initially agreed to. It is not clear whether failure to make required additional payments results in a 6% per annum interest charge plus applicability of the sanctions described in Article 11, paragraph 3.

Article 19
1. The Government depository of this Agreement shall inform all States which have signed or acceded to it of the date of each signature, the date of the deposit of each instrument of

6. This entire problem arises because of the Russian insistence that a state cannot become bound by any terms or agreements to which it has not assented. The Russians argue that an assumption that one state could become bound by the action of other states constitutes a denial of sovereignty. A recent specific case in point arose in London in November 1966 at the Third Extraordinary Session of the Assembly of the Intergovernmental Maritime Consultative Organization. The point under discussion was whether or not a particular amendment to the International Convention for the Safety of Life at Sea, 1960, was sufficiently important to be designated as a
ratification or accession and the date of the entry into force of the Agreement, and shall also inform them of all other notifications it receives.

2. This Agreement shall be registered by the depositary Government in accordance with the terms of Article 102 of the United Nations Charter.

Article 20

This Agreement, of which the Russian and ______________ texts are equally authentic, shall be deposited in the archives of the depositary Government. Duly certified copies of the Agreement shall be transmitted by the depositary Government to the Governments of the other signatory and acceding States.

In witness whereof the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at ______________ on ______________, 19_______.

Summary of Observations and Conclusions

Nature and Function of the Organization

The proposal suggests an international entity competent to coordinate and facilitate cooperation among states in their efforts to design, construct, establish and operate an international communication satellite system. The organization may, but need not, own the satellites or the command and control facilities related to the satellites. Thus, in contrast to INTELSAT, INTERSPUTNIK would be a coordinating organization bringing together the efforts of member states of the organization and the activities of the organization in an international system for satellite communications. There is no commitment to joint ownership of the system's space segment as substantial portions of the system may be leased under bilateral arrangements by the organization from member states. Thus considered, INTERSPUTNIK may be more appropriately considered a confederate operation of cooperating states rather than as an "organization" in the traditional sense.

fundamental part of the Convention so that under Article IX (e) thereof, if the amendment were adopted by the Assembly, any state which failed to accept and ratify the amendment within twelve months would be considered to be no longer a party to the Convention. The report of the United States Delegation to the Assembly indicates that this was the most controversial issue. The USSR and other communist countries argued that adoption of an amendment by the required number of members (two-thirds) could not operate to eliminate a non-concurring member as a party to the Convention. "The exercise of the 'important nature' clause, the Soviet delegate argued, was contrary to the generally accepted concepts of international law and prejudicial to sovereign rights." Report of the United States Delegation to the Third Extraordinary Session of the Assembly of the Intergovernmental Maritime Consultative Organization, at 9 (1966).
Composition of the Governing Body (Council) and Voting

The governing body of the proposed organization would be a Council of all members in which each member would have one vote. Anticipating any substantial level of membership, this body would probably soon become a cumbersome organ very likely to be unable to make critical, timely decisions as a consequence of the wide distribution of voting power and the two-thirds majority required for action.

Absence of an Executive Body

Although the proposal provides for an international Secretariat discussed above, there is no provision for a multi-national executive body comparable to INTELSAT's Interim Committee. There is, therefore, no "action focus" within the organizational structure outside of the Council unless, as suggested earlier, the Council were to create an executive organ or delegate some of its more operational authorities (such as earth station authorizations, allocating quotas for new members, etc.) to the Director-General.

Managerial Structure

The administrative and operational management of the proposed system would be in the hands of the proposed Secretariat under the Director-General who would serve a four year term and be eligible for re-election. He would have substantial authority and organizational powers sufficient to permit him to steer the organization in its decision-making processes. The management staff would be internationally recruited on an equitable geographical distribution basis. The proposal, therefore, puts a great deal of power into the hands of one man, subject only to annual review of his activity by the Council of members.

Independence of States Members and Freedom of Decision Making

Under this draft proposal, member states may unilaterally decide to launch satellites and establish TT&C facilities and lease the use of such facilities to INTERSPUTNIK. There is no requirement for prior authority or coordination and member states appear to be free to act within or outside of the organization in the communications satellite area as they see fit without obligation or constraint.
The Implication of Instability and Transitory Nature of the Organization

Article 11 provides in some detail for the withdrawal of members from the proposed organization. Article 12 further provides, in somewhat less detail, for the dissolution of the organization. These two Articles, although prudent provisions, seem to evidence some concern on the part of the drafters over the stability of the proposed organization. The general "non-entity" aspect of the organization (despite assignment of legal personality in Article 5, paragraph 4) is some further evidence of a tendency to shy away from a permanent structure which may develop an independent existence and authority.

Conclusion

The socialist states proposal for INTERSPUTNIK suggests creation of an organization substantially lacking in power and authority over the system it is supposed to control, subject to the operational control of one man, and supervised by a Council of its members of potentially cumbersome dimensions with unrealistic provisions for infrequent Council meetings and voting. It may be questioned whether the Soviet Union itself would be willing to accept such a proposal in light of the functional, organizational and managerial inadequacies of the proposed structure.

There is no provision anywhere in the proposal for a means to resolve conflicts in interpretation or application of the agreement by the members or by the Secretariat, despite the fact that the agreement contains numerous vague and ambiguous provisions. There is not even an appealable arbitration mechanism and consequently all power of final decisions resides in the annual meeting Council of all members.

The draft agreement is silent on procurement policy, patent rights, and data control, although the Secretariat may be presumed to have authority to place contracts of substantial dollar or ruble amount to obtain goods or services and to finance research and development programs.

Since participation in the organization is restricted to states, those states which have private entities handling and providing communication satellite services would have to join on behalf of their private operating entities or cloak such entities with a governmental mantle to facilitate use of the INTERSPUTNIK system on terms and conditions other than the terms for the lowest priority "other users." In addition, the operational decision-making organ — the Council —
comprises governmental representatives who may be as politically or "foreign office" oriented as telecommunications oriented.

As a draft agreement, the INTERSPUTNIK proposal contains many elements of a workable organization but is burdened by oversimplification of structure and too great a concentration of decision-making and management control powers in the Secretariat. The technology of satellite communications is progressively dynamic. The international cooperation and coordination required to utilize this technology for the benefit of all requires a progressively dynamic, versatile, and flexible organization; one which can adjust to changing circumstances on short notice, guarantee high levels of proficiency and competence in the technical and operational management of the system, and guarantee timely, informed decision making.