

## OPERATING AGREEMENT ON THE INTERNATIONAL MARITIME SATELLITE ORGANIZATION (INMARSAT)

The Signatories to this Operating Agreement,

Considering that the States Parties to the Convention on the International Maritime Satellite Organization (INMARSAT)<sup>1</sup> have undertaken therein to sign, or to designate a competent entity to sign, this Operating Agreement,

Agree as follows:

### *Article I.* DEFINITIONS

(1) For the purposes of this Agreement:

- (a) "Convention" means the Convention on the International Maritime Satellite Organization (INMARSAT) including its annex.
- (b) "Organization" means the International Maritime Satellite Organization (INMARSAT) established by the Convention.
- (c) "Amortization" includes depreciation; it does not include compensation for use of capital.

(2) The definitions in article 1 of the Convention shall apply to this Agreement.

### *Article II.* RIGHTS AND OBLIGATIONS OF SIGNATORIES

(1) Each Signatory acquires the rights provided for Signatories in the Convention and this Agreement and undertakes to fulfil the obligations placed upon it by these two instruments.

(2) Each Signatory shall act consistently with all provisions of the Convention and this Agreement.

### *Article III.* CAPITAL CONTRIBUTIONS

(1) In proportion to its investment share, each Signatory shall make contributions to the capital requirements of the Organization and shall receive capital repayment and compensation for use of capital, as determined by the Council in accordance with the Convention and this Agreement.

(2) Capital requirements shall include:

- (a) All direct and indirect costs of the design, development, acquisition, construction and establishment of the INMARSAT space segment, of the acquisition of contractual rights by means of lease, and of other property of the Organization.
- (b) Funds required for operating, maintenance and administrative costs of the Organization pending availability of revenues to meet such costs, and pursuant to article VIII(3).
- (c) Payments by Signatories pursuant to article XI.

(3) Interest at a rate to be determined by the Council shall be added to any amount unpaid after the scheduled date for payment determined by the Council.

(4) If, during the period up to the first determination of investment shares on the basis of utilization pursuant to article V, the total amount of capital contributions which Signatories are required to pay in any financial year exceeds 50 per cent of the capital ceiling established by or pursuant to article IV, the Council shall consider the adoption of other arrangements, including temporary debt financing, to permit those Signatories

<sup>1</sup> See p. 106 of this volume.

which so desire to pay the additional contributions in subsequent years by instalments. The Council shall determine the rate of interest to apply in such cases, reflecting the additional costs to the Organization.

#### *Article IV. CAPITAL CEILING*

The sum of the net capital contributions of Signatories and of the outstanding contractual capital commitments of the Organization shall be subject to a ceiling. This sum shall consist of the cumulative capital contributions made by Signatories pursuant to article III, less the cumulative capital repaid to them pursuant to this Agreement, plus the outstanding amount of contractual capital commitments of the Organization. The initial capital ceiling shall be 200 million US dollars. The Council shall have authority to adjust the capital ceiling.

#### *Article V. INVESTMENT SHARES*

(1) Investment shares of Signatories shall be determined on the basis of utilization of the INMARSAT space segment. Each Signatory shall have an investment share equal to its percentage of all utilization of the INMARSAT space segment by all Signatories. Utilization of the INMARSAT space segment shall be measured in terms of the charges levied by the Organization for use of the INMARSAT space segment pursuant to article 19 of the Convention and article VIII of this Agreement.

(2) For the purpose of determining investment shares, utilization in both directions shall be divided into two equal parts, a ship part and a land part. The part associated with the ship where the traffic originates or terminates shall be attributed to the Signatory of the Party under whose authority the ship is operating. The part associated with the land territory where the traffic originates or terminates shall be attributed to the Signatory of the Party in whose territory the traffic originates or terminates. However, where, for any Signatory, the ratio of the ship part to the land part exceeds 20 : 1, that Signatory shall, upon application to the Council, be attributed a utilization equivalent to twice the land part or an investment share of 0.1 per cent, whichever is higher. Structures operating in the marine environment, for which access to the INMARSAT space segment has been permitted by the Council, shall be considered as ships for the purpose of this paragraph.

(3) Prior to determination of investment shares on the basis of utilization pursuant to paragraphs (1), (2) and (4), the investment share of each Signatory shall be established in accordance with the annex to this Agreement.

(4) The first determination of investment shares based on utilization pursuant to paragraphs (1) and (2) shall be made not less than two nor more than three years from the commencement of operational use of the INMARSAT space segment in the Atlantic, Pacific and Indian Ocean areas, the specific date of determination to be decided by the Council. For the purposes of this first determination, utilization shall be measured over the one-year period prior to such determination.

(5) Subsequent to the first determination on the basis of utilization, investment shares shall be redetermined to be effective:

- (a) Upon one-year intervals after the first determination of investment shares on the basis of utilization, based on the utilization of all Signatories during the previous year.
- (b) Upon the date of entry into force of this Agreement for a new Signatory.
- (c) Upon the effective date of withdrawal or termination of membership of a Signatory.

(6) The investment share of a Signatory which becomes a Signatory after the first determination of investment shares on the basis of utilization, shall be determined by the Council.

(7) To the extent that an investment share is determined pursuant to paragraph (5)(b) or (c) or paragraph (8), the investment shares of all other Signatories shall be adjusted in the proportion that their respective investment shares, held prior to this adjustment, bear to each other. On the withdrawal or termination of membership of a Signatory, investment shares of 0.05 per cent determined in accordance with paragraph (8) shall not be increased.

(8) Notwithstanding any provisions of this article, no Signatory shall have an investment share of less than 0.05 per cent of the total investment shares.

(9) In any new determination of investment shares the share of any Signatory shall not be increased in one step by more than 50 per cent of its initial share, or decreased by more than 50 per cent of its current share.

(10) Any unallocated investment shares, after application of paragraphs (2) and (9) shall be made available and apportioned by the Council among Signatories wishing to increase their investment shares. Such additional allocation shall not increase any share by more than 50 per cent of a Signatory's current investment share.

(11) Any residual unallocated investment shares, after application of paragraph (10), shall be distributed among the Signatories in proportion to the investment shares which would otherwise have applied after any new determination, subject to paragraphs (8) and (9).

(12) Upon application from a Signatory, the Council may allocate to it an investment share reduced from its share determined pursuant to paragraphs (1) to (7) and (9) to (11), if the reduction is entirely taken up by the voluntary acceptance by other Signatories of increased investment shares. The Council shall adopt procedures for the equitable distribution of the released share or shares among Signatories wishing to increase their shares.

#### Article VI. FINANCIAL ADJUSTMENTS BETWEEN SIGNATORIES

(1) At each determination of investment shares after the initial determination upon entry into force of this Agreement, financial adjustments between Signatories shall be carried out through the Organization on the basis of a valuation effected pursuant to paragraph (2). The amounts of these financial adjustments shall be determined with respect to each Signatory by applying to the valuation the difference, if any, between the new investment share of each Signatory and its investment share prior to the determination.

(2) The valuation shall be effected as follows:

- (a) Deduct from the original acquisition cost of all property as recorded in the Organization's accounts as at the date of the adjustment, including all capitalized return and capitalized expenses, the sum of:
  - (i) The accumulated amortization as recorded in the Organization's accounts as at the date of adjustment.
  - (ii) Loans and other accounts payable by the Organization as at the date of adjustment.
- (b) Adjust the results obtained pursuant to sub-paragraph (a) by adding or deducting a further amount representing any deficiency or excess, respectively, in the payment by the Organization of compensation for use of capital from the entry into force of this Agreement to the effective date of valuation relative to the cumulative amount due pursuant to this Agreement at the rate or rates of compensation for use of capital in effect during the periods in which the relevant rates were applicable, as established by the Council pursuant to article VIII. For the purpose of assessing the amount representing any deficiency or excess in payment, compensation due shall be calculated on a monthly basis and relate to the net amount of the elements described in sub-paragraph (a).

(3) Payments due from and to Signatories pursuant to this article shall be effected by a date decided by the Council. Interest at a rate to be determined by the Council shall be added to any amount unpaid after that date.

#### *Article VII. PAYMENT OF UTILIZATION CHARGES*

(1) Utilization charges established pursuant to article 19 of the Convention shall be payable by Signatories or authorized telecommunications entities in accordance with arrangements adopted by the Council. These arrangements shall follow as closely as practicable recognized international telecommunications accounting procedures.

(2) Unless otherwise decided by the Council, Signatories and authorized telecommunications entities shall be responsible for the provision of information to the Organization to enable the Organization to determine all utilization of the INMARSAT space segment and to determine investment shares. The Council shall adopt procedures for submission of the information to the Organization.

(3) The Council shall institute any appropriate sanctions in cases where payments of utilization charges have been in default for four months or longer after the due date.

(4) Interest at a rate to be determined by the Council shall be added to any amount unpaid after the scheduled date for payment determined by the Council.

#### *Article VIII. REVENUES*

(1) The revenues earned by the Organization shall normally be applied, to the extent that such revenues allow, in the following order of priority, unless the Council decides otherwise:

- (a) To meet operating, maintenance and administrative costs.
- (b) To provide such operating funds as the Council may determine to be necessary.
- (c) To pay to Signatories, in proportion to their respective investment shares, sums representing a repayment of capital in the amount of the provisions for amortization established by the Council and recorded in the accounts of the Organization.
- (d) To pay to a Signatory which has withdrawn from the Organization or whose membership has been terminated, such sums as may be due to it pursuant to article XIII.
- (e) To pay to Signatories, cumulatively in proportion to their respective investment shares, the available balance towards compensation for use of capital.

(2) In the determination of the rate of compensation for the use of capital of Signatories, the Council shall include an allowance for the risks associated with investment in INMARSAT and, taking into account such allowance, shall fix the rate as close as possible to the cost of money in the world markets.

(3) To the extent that the revenues earned by the Organization are insufficient to meet operating, maintenance and administrative costs of the Organization, the Council may decide to meet the deficiency by using operating funds of the Organization, by overdraft arrangements, by raising a loan, by requiring Signatories to make capital contributions in proportion to their respective current investment shares or by any combination of such measures.

#### *Article IX. SETTLEMENT OF ACCOUNTS*

(1) Settlement of accounts between Signatories and the Organization in respect of financial transactions pursuant to articles III, VI, VII and VIII shall be arranged in such a manner that funds transferred between Signatories and the Organization, as well as funds at the Organization's disposal in excess of the operating funds determined by the Council to be necessary, shall be kept at the lowest practicable level.

(2) All payments between the Signatories and the Organization pursuant to this Agreement shall be effected in any freely convertible currency acceptable to the creditor.

*Article X. DEBT FINANCING*

(1) The Organization may, upon decision by the Council, enter into overdraft arrangements for the purpose of meeting financial deficiencies pending receipt of adequate revenues or capital contributions.

(2) In exceptional circumstances the Organization may raise loans upon decision by the Council for the purpose of financing any activity undertaken by the Organization in accordance with article 3 of the Convention or for meeting any liability incurred by it. The outstanding amounts of such loans shall be considered as contractual capital commitments for the purpose of Article IV.

*Article XI. LIABILITY*

(1) If the Organization is required by a binding decision rendered by a competent tribunal or as a result of a settlement agreed to or concurred in by the Council, to pay any claim, including any costs or expenses associated therewith, which arises out of any act or obligation of the Organization carried out or incurred in pursuance of the Convention or this Agreement, the Signatories shall, to the extent that the claim is not satisfied by indemnification, insurance or other financial arrangements, pay to the Organization the amount unsatisfied on the claim in proportion to their respective investment shares as at the date when the liability arose, notwithstanding any ceiling established by or pursuant to article IV.

(2) If a Signatory, in its capacity as such, is required by a binding decision rendered by a competent tribunal or as a result of a settlement agreed to or concurred in by the Council, to pay any claim, including any costs or expenses associated therewith, which arises out of any act or obligation of the Organization carried out or incurred in pursuance of the Convention or this Agreement, the Organization shall reimburse the Signatory to the extent the Signatory has paid the claim.

(3) If such a claim is asserted against a Signatory, that Signatory, as a condition of payment by the Organization, shall without delay notify the Organization of the claim, and shall afford it the opportunity to advise on or to conduct the defence or other disposition of the claim and, to the extent permitted by the law of the jurisdiction in which the claim is brought, to become a party to the proceeding either with the Signatory or in substitution for it.

(4) If the Organization is required to reimburse a Signatory under this article, the Signatories shall, to the extent that the reimbursement is not satisfied by indemnification, insurance or other financial arrangements, pay to the Organization the unsatisfied amount of the claimed reimbursement in proportion to their respective investment shares as at the date when the liability arose, notwithstanding any ceiling established by or pursuant to article IV.

*Article XII. EXONERATION FROM LIABILITY ARISING FROM THE PROVISION OF TELECOMMUNICATIONS SERVICES*

Neither the Organization, nor any Signatory in its capacity as such, nor any officer or employee of any of them, nor any member of the board of directors of any Signatory, nor any representative to any organ of the Organization acting in the performance of their functions, shall be liable to any Signatory or to the Organization for loss or damage sustained by reason of any unavailability, delay or faultiness of telecommunications services provided or to be provided pursuant to the Convention or this Agreement.

*Article XIII. SETTLEMENT UPON WITHDRAWAL OR TERMINATION*

(1) Within three months after the effective date of withdrawal or termination of the membership of a Signatory pursuant to articles 29 or 30 of the Convention, the Council shall notify the Signatory of the evaluation by the Council of its financial status in relation to the Organization as at the effective date of its withdrawal or termination and of the proposed terms of settlement pursuant to paragraph (3). The notification shall include a statement of:

- (a) The amount payable by the Organization to the Signatory, calculated by multiplying its investment share, as at the effective date of withdrawal or termination, by the amount established from a valuation effected pursuant to article VI as at that date.
- (b) Any amount to be paid by the Signatory to the Organization representing its share of capital contributions for contractual commitments specifically authorized prior to the receipt of notice of decision to withdraw or, as the case may be, prior to the effective date of termination, together with the proposed schedule for payment.
- (c) Any other amounts due from the Signatory to the Organization as at the effective date of withdrawal or termination.

(2) In its evaluation pursuant to paragraph (1), the Council may decide to relieve the Signatory in whole or in part of its responsibility for contributing its share of the capital contributions for contractual commitments specifically authorized and liabilities arising from acts or omissions prior to the receipt of notice of decision to withdraw or, as the case may be, the effective date of termination.

(3) Subject to payment by the Signatory of any amounts due from it under sub-paragraphs (1)(b) and (c), the Organization, taking into account article VIII, shall repay to the Signatory the amounts referred to in sub-paragraphs (1)(a) and (b) over a period consistent with the period over which the remaining Signatories will be repaid their contributions, or sooner if the Council so decides. The Council shall determine the rate of interest to be paid to or by the Signatory in respect of any amounts which may, from time to time, be outstanding for settlement.

(4) Unless the Council decides otherwise, a settlement pursuant to this article shall not relieve the Signatory of its obligation to contribute its share of the non-contractual liabilities arising from acts or omissions of the Organization prior to the date of receipt of notice of decision to withdraw or, as the case may be, prior to the effective date of termination.

(5) The Signatory shall not lose any rights acquired by it, in its capacity as such, which would otherwise continue after the effective date of withdrawal or termination, and for which it has not been compensated by the settlement pursuant to this article.

*Article XIV. EARTH STATION APPROVAL*

(1) In order to utilize the INMARSAT space segment, all earth stations shall require approval by the Organization in accordance with criteria and procedures established by the Council pursuant to article 15(c) of the Convention.

(2) Any application for such approval shall be submitted to the Organization by the Signatory of the Party in whose territory the earth station on land is or will be located, or by the Party or the Signatory of the Party under whose authority the earth station on a ship or on a structure operating in the marine environment is licensed or, with respect to earth stations located in a territory or on a ship or on a structure operating in the marine environment not under the jurisdiction of a Party, by an authorized telecommunications entity.

(3) Each applicant referred to in paragraph (2) shall, with respect to earth stations for which it has submitted an application, be responsible to the Organization for com-

pliance of such stations with the procedures and standards specified by the Organization, unless, in the case of a Signatory which has submitted an application, its designating Party assumes this responsibility.

*Article XV. UTILIZATION OF THE INMARSAT SPACE SEGMENT*

(1) Any application for utilization of the INMARSAT space segment shall be submitted to the Organization by a Signatory or, in the case of a territory not under the jurisdiction of a Party, by an authorized telecommunications entity.

(2) Utilization shall be authorized by the Organization in accordance with criteria and procedures established by the Council pursuant to article 15(c) of the Convention.

(3) Each Signatory or authorized telecommunications entity for which utilization of the INMARSAT space segment has been authorized shall be responsible for compliance with all conditions established by the Organization with respect to such utilization unless, in the case of a Signatory which has submitted an application, its designating Party assumes the responsibility for authorizations made with respect to all or some of the earth stations not owned or operated by that Signatory.

*Article XVI. SETTLEMENT OF DISPUTES*

(1) Disputes arising between Signatories, or between Signatories and the Organization, relating to rights and obligations under the Convention or this Agreement, should be settled by negotiation between the parties to the dispute. If within one year of the time any party to the dispute has requested settlement a settlement has not been reached, and if a particular procedure for settling disputes has not been agreed between the parties to the dispute, the dispute shall be submitted to arbitration in accordance with the annex to the Convention at the request of any party to the dispute.

(2) Unless otherwise mutually agreed, disputes arising between the Organization and one or more Signatories under agreements concluded between them shall be submitted to arbitration in accordance with the annex to the Convention at the request of one of the parties to the dispute within a period of one year from the time that settlement was requested by any party to the dispute.

(3) A Signatory which ceases to be a Signatory shall remain bound by this article in respect of disputes relating to rights and obligations arising from its having been a Signatory of this Agreement.

*Article XVII. ENTRY INTO FORCE*

(1) This Agreement shall enter into force for a Signatory on the date on which the Convention enters into force for the respective Party in accordance with article 33 of the Convention.

(2) This Agreement shall continue in force for as long as the Convention is in force.

*Article XVIII. AMENDMENTS*

(1) Amendments to this Agreement may be proposed by any Party or Signatory. Proposed amendments shall be submitted to the Directorate, which shall inform the other Parties and Signatories. Three months' notice is required before consideration of an amendment by the Council. During this period the Directorate shall solicit and circulate the views of all Signatories. The Council shall consider amendments within six months from circulation. The Assembly shall consider the amendment not earlier than six months after the approval by the Council. This period may in any particular case be reduced by the Assembly by a substantive decision.

(2) If confirmed by the Assembly after approval by the Council, the amendment shall enter into force one hundred and twenty days after the Depositary has received notice of its approval by two thirds of those Signatories which at the time of confirmation by the Assembly were Signatories and then held at least two thirds of the total investment shares. Notification of approval of an amendment shall be transmitted to the Depositary only by the Party concerned and the transmission shall signify the acceptance by the Party of the amendment. Upon entry into force, the amendment shall become binding upon all Signatories, including those which have not accepted it.

*Article XIX.* DEPOSITARY

(1) The Depositary of this Agreement shall be the Secretary-General of the International Maritime Consultative Organization.

(2) The Depositary shall promptly inform all signatory and acceding States and all Signatories of:

- (a) Any signature of this Agreement.
- (b) The entry into force of this Agreement.
- (c) The adoption of any amendment to this Agreement and its entry into force.
- (d) Any notification of withdrawal.
- (e) Any suspension or termination.
- (f) Other notifications and communications relating to this Agreement.

(3) Upon entry into force of this Agreement the Depositary shall transmit a certified copy to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Agreement.

DONE at London this third day of September one thousand nine hundred and seventy-six in the English, French, Russian and Spanish languages, all the texts being equally authentic, in a single original which shall be deposited with the Depositary, who shall send a certified copy to the Government of each of the States which were invited to attend the International Conference on the Establishment of an International Maritime Satellite System, to the Government of any other State which signs or accedes to the Convention and to each Signatory.

ANNEX

INVESTMENT SHARES PRIOR TO THE FIRST DETERMINATION ON THE BASIS OF UTILIZATION

(a) The initial investment shares of the signatories of the States listed below shall be as follows:

|  |       |                            |      |
|--|-------|----------------------------|------|
| United States                            | 17.00 | Spain                      | 2.50 |
| United Kingdom                           | 12.00 | Sweden                     | 2.30 |
| USSR, Byelorussian SSR and Ukrainian SSR | 11.00 | Denmark                    | 2.10 |
| Norway                                   | 9.50  | Australia                  | 2.00 |
| Japan                                    | 8.45  | India                      | 2.00 |
| Italy                                    | 4.37  | Brazil                     | 1.50 |
| France                                   | 3.50  | Kuwait                     | 1.48 |
| Germany, Federal Republic of             | 3.50  | Poland                     | 1.48 |
| Greece                                   | 3.50  | Argentina                  | 0.75 |
| Netherlands                              | 3.50  | Belgium                    | 0.75 |
| Canada                                   | 3.20  | Finland                    | 0.75 |
|  |       | German Democratic Republic | 0.74 |

|             |      |                             |        |
|-------------|------|-----------------------------|--------|
| Singapore   | 0.62 | Liberia                     | 0.10   |
| New Zealand | 0.44 | Algeria                     | 0.05   |
| Bulgaria    | 0.33 | Egypt                       | 0.05   |
| Cuba        | 0.33 | Ghana                       | 0.05   |
| Indonesia   | 0.33 | Iraq                        | 0.05   |
| Iran        | 0.33 | Thailand                    | 0.05   |
| Chile       | 0.25 | Turkey                      | 0.05   |
| Peru        | 0.25 | United Republic of Cameroon | 0.05   |
| Switzerland | 0.25 | TOTAL:                      | 101.45 |

(b) Any signatory to the Operating Agreement designated by a State listed above may, prior to the entry into force of the Convention and the Operating Agreement, accept an initial investment share higher than that listed in paragraph (a) if:

- (i) Other signatories accept a correspondingly lower initial investment share; or
- (ii) The Convention and the Operating Agreement have not entered into force twenty-four months after they were opened for signature.

The signatories concerned shall inform the Depositary, who shall prepare and distribute a revised list of initial investment shares to all States included in the list of initial investment shares.

(c) A signatory of a State not listed in paragraph (a), on signing the Operating Agreement prior to its entry into force, shall declare to the Depositary its initial investment share, which shall correspond to its projected proportionate utilization of the INMARSAT space segment. The Depositary shall add the new signatory and its initial investment share to the list of initial investment shares in paragraph (a). The revised list shall be sent to all States included in the list. The initial investment share of the new signatory shall be subject subsequently to approval or adjustment by the Council. If the Council adjusts the share, it shall adjust proportionately the initial investment shares of all Signatories and, subsequently, the investment shares of all Signatories.

(d) Upon entry into force of the Operating Agreement, the investment shares of Signatories shall be determined by adjusting the initial investment shares of Signatories proportionately so that the sum of all investment shares amounts to 100 per cent.

(e) The initial investment share of any Signatory which is not included in the list in paragraph (a) and which signs the Operating Agreement after its entry into force, and for any Signatory included in the list of initial investment shares for which the Operating Agreement has not entered into force thirty-six months after it was opened for signature, shall be determined by the Council and shall be included in a revised list of initial investment shares of all Signatories.

(f) When a new Party enters the Organization or when a Party withdraws from the Organization or its membership is terminated, the investment shares of all Signatories shall be determined by adjusting proportionately the initial investment shares of all Signatories so that the sum of all investment shares amounts to 100 per cent.

(g) Investment shares of 0.05 per cent determined in accordance with paragraph (8) of article V of the Operating Agreement, shall not be increased pursuant to paragraphs (c), (d), (e) and (f) of this annex.