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Simone Courteix

National Center of Scientific Research

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EUTELSAT: Europe's Satellite Telecommunications

Simone Courteix*

INTRODUCTION

In the 1950s long distance telephone communication by wire or Herz circuit was extremely limited and usually very expensive. In 1956, the installation of the first transatlantic telephone cable, TAT 1, signalled the beginning of the present era in intercontinental telecommunications. However, it soon became apparent that underwater cables would not meet the ever-increasing demand for communications created by expanding global economic activity. At the same time, radio communications also experienced growing demand, and suffered from overcrowded frequencies. It was therefore natural that the first application of telecommunications technology in space focused on the improvement of intercontinental circuits.

As early as 1962, telecommunications satellites (first "Telestar" in 1962 and then "Early Bird" in 1965) displayed their extraordinary capacity to relay international communications at low cost. Since that time, their number and capacity have grown considerably and, most importantly, the price of communications has significantly declined.¹ In addition to its relatively low cost, and its ability to relay long-distance communications, the telecommunications satellite can be used for numerous newly-developed functions. The need for information transport is multiplying in almost every area of communication: television, simultaneous composition of newspapers in multiple locations, high-output data transmission, inter-enterprise communication, business teleconferencing, and others.

In response to this extraordinarily diverse and growing demand for space telecommunications, there has been a proliferation of organizational systems and structures on global, regional, and national levels for managing telecommunication by satellite. On the global level, three international

* Simone Courteix is a Master of Research at the National Center of Scientific Research in Paris, member of the French Society of International Law and of the International Institute of Space Law. (Translated by Jennifer Levin.)

organizations have been formed. INTELSAT, founded in a provisional form in 1964, has ensured telephone connections and intercontinental television for the entire world. Since its creation in 1971, INTERSPUTNIK has carried out the same function for the socialist member nations. INMARSAT, founded in 1979, has had a mandate, from both Western and Eastern bloc participants, to manage the specialized maritime satellite communications sector.

In addition to these three global satellite systems, numerous regional and national systems have been created in recent years to meet the needs of specific countries or groups of countries. There are many reasons why countries in the same geographic area might wish to improve their means of communication, and why they find a useful solution in space technology. Motives may be political and economic, as well as cultural and linguistic. Various types of regional systems have been established and others are planned.

Europe was first to establish a regional system to take advantage of telecommunications satellites with the goal of complementing rather than competing with existing earth-based modes of communication. Europe's example was followed by other regions in need of a system which would encourage development, and, in the process, strengthen ties between member nations. Besides Europe's space projects and the Arab League's ARAB-SAT system, other regional telecommunications satellite networks are being completed or are under study. These include the PALAPA system between Southeast Asian countries (already in use by Indonesia under its national plan), a Latin American system, and also the shared AFSAT system which the members of the African Postal and Telecommunications Union hope will bring them improved services. Finally, at the national level, numerous countries have already established domestic satellite telecommunications networks. The prospect of such important markets has given rise to intense competition between suppliers of international telecommunications services.

Europe has succeeded in acquiring a degree of autonomy with respect to its satellite telecommunications organization called Interim EUTELSAT. The organization was organized as a provisional entity on May 13, 1977 and became permanent on July 15, 1982, the date when the final agreements establishing the new organization were opened for signing. Although EUTELSAT has provided Europe with telecommunications autonomy, all systems besides the global INTELSAT system must, as specified in the agreements founding that organization, be technically and economically compatible with the INTELSAT network. These provisions raise problems for the newly established EUTELSAT organization which will be discussed at length below.

This article will first discuss the origins of the establishment in Europe

of a space telecommunications system, the implementation of Interim EUTELSAT and the renegotiation of the provisional agreements. It will then examine the final agreements and the future of EUTELSAT, especially with respect to its relationship to the parent organization, INTELSAT.

STEPS TOWARD EUROPE'S SATELLITE TELECOMMUNICATIONS

Origins of Interim EUTELSAT²

In April 1970, the European postal and telecommunication ministers met in Brussels and urged the administrative bodies of the member states of the European Postal and Telecommunication Conference (CEPT)³ to participate in a European satellite telecommunications system that would provide an economical means of buttressing earth-based communication links. The CEPT carried out the necessary studies in close collaboration with CERS/ERSO,⁴ the forerunner of the European Space Agency (ESA), which as early as 1973 had decided to create a European telecommunications satellite program. By late 1976, detailed planning for satellite development had become necessary to ensure that satellites could actually be integrated into the operational telecommunications scheme; at that point issues regarding the relationship between the ESA and the CEPT, and their respective responsibilities, had come sharply into focus. Given its mission and structure, the CEPT was ill-suited to oversee the operation of satellite systems. Therefore it met to establish an arrangement between ESA, whose convention provides that "it should guarantee, on behalf of the interested operating organizations, launching, orbiting and control of operational satellites,"⁵ and a body representing the interests of the members of CEPT, to be called "EUTELSAT." In this way EUTELSAT, in tandem with the ESA, would bring satellite telecommunications to Europe. This "European INTELSAT," called Interim EUTELSAT, was created on June 30, 1977, by seventeen administrations, or authorized private operating entities, which are members of CEPT.

Implementation of the Provisional Organization "Interim" EUTELSAT

Just as the INTELSAT agreements were concluded in two stages—first an agreement setting up a provisional regime (August 20, 1964), then an agreement establishing a definitive regime (August 20, 1971)—the agreement establishing Interim EUTELSAT⁶ set up a provisional regime which was ultimately to be replaced by a definitive regime. The agreement on the

provisional regime, which contains the fundamental principles, entered into force on June 30, 1977.

The drafters of the EUTELSAT agreement chose to incorporate several aspects of the INTELSAT AND INMARSAT agreements, which they clearly used as models. Yet, although both INTELSAT and INMARSAT have distinct space segments, the agreement establishing Interim EUTELSAT called for two space segments under its single management. Both space segments, one for the fixed satellite service, European Communication Satellite (ECS) and the other for the mobile maritime service, "MAROTS" were placed under the authority and control of ESA.

As originally conceived, Interim EUTELSAT had two essential objectives. First, it was intended to develop and operate a regional European satellite telecommunications system to supplement the existing fixed land-based service. The system was intended to relay approximately one-third of intra-European public telecommunications traffic between stations over 800 kilometers apart, and also to provide a new means of liaison between broadcasting authorities who were members of the European Broadcasting Union (UER) in order to facilitate the exchange of television programs coordinated by this organization (the EUROVISION system). Second, it was intended to set up a mobile maritime telecommunications service by satellite. To achieve these goals, it was necessary to develop and operate a "multiservice" satellite system in Europe, made up by a part of the space segment of ECS satellites and completed by EUTELSAT with rented circuits on the satellite TELECOM-1, operated by the French Administration of Post, Telephone, and Telegraph (PTT).

The operational and financial structures of these two space segments were set forth in two additional annex agreements to the agreement establishing Interim EUTELSAT. The first additional agreement, relating to the fixed satellite service (ECS) of Interim EUTELSAT, was adopted and opened for signing in March 1978 and entered into force on September 14, 1978. The second additional agreement, relating to the utilization of MAROTS/MARECS satellites,⁷ entered into force on October 22, 1977.⁸ The remaining "arrangement to be concluded" between Interim EUTELSAT and the ESA, which provided for the above-mentioned space segments in accordance with article 2(a) of the Constitutive Agreement, was signed on May 15, 1979. However, INMARSAT, which is charged with the implementation of a world wide system of maritime satellite telecommunications, wished to integrate the MARECS satellites into its own network of maritime satellites. ESA obtained the authority, with the consent of Interim EUTELSAT, to supply MARECS satellites directly to INMARSAT, thereby simplifying INMARSAT'S supply process. Thus, Interim EUTELSAT'S sole responsibility was the implementation and management of the

first European satellite telecommunications system, the satellites to be developed and launched by ESA.

Before the agreement establishing Interim EUTELSAT, the European private sector had already shown its capacity in the field of satellite telecommunications. Indeed, the success of the first experimental program, "Symphonie,"⁹ conceived in 1967 by France and Germany, amply demonstrated the Europeans' capacity for cooperation on an important space program and allowed Europe to move confidently toward its own regional satellite telecommunications system. The first stage of this program took the form of a prototype telecommunications satellite called "OTS" which was built by ESA and launched into orbit by NASA in May 1977. This development triggered the process of forming EUTELSAT, which has since ordered from ESA an operational system of satellites derived from OTS and is planning their use. By the terms of the agreement reached on May 15, 1979,¹⁰ the capacity of the space segment is guaranteed by ESA, which in return for annual lump sum payments from EUTELSAT, will provide a total of five satellites to assure service during the first ten-year period.

Also during this provisional period, to fulfill its original goals, Interim EUTELSAT entered into a rental contract with the European Broadcasting Union (UER). The agreement, signed January 20, 1982, gives UER full-time use and exclusive title for ten years to two transponders of the space segment of the EUTELSAT/ECS system to transmit television programs between members of the UER, which include forty broadcasting entities of the European broadcasting zone. As a result of this contract, transmissions will be made by way of earth stations of EUTELSAT signatories in return for the payment of an annual fee to EUTELSAT. The agreement also states that the UER will use the ECS satellites as soon as the first two are positioned, functioning and linked with at least five earth stations.¹¹

Since Interim EUTELSAT was not a legal person, the French PTT was authorized by the signatory nations to act as its legal representative. The organization's structure was relatively simple: an assembly of signatory parties to the agreement in charge of the general policy of the organization, an administrative board to manage the space segment of ECS, and the permanent general secretariat, which is an executive organ responsible to the above two organs, especially for program development.

Article 20 of the Constitutive Agreement of Interim EUTELSAT requires "that at least six months before the foreseen implementation date of operating the space segment of ECS, the assembly of parties would submit to the signatory parties of the said agreement a report presenting their recommendations on the definitive arrangements for the EUTELSAT organization," which was to be considered during an international conference convened for this purpose.

Preparation of the Final Agreements

The Assembly of Parties met in an extraordinary session (the twelfth meeting of Interim EUTELSAT) to finalize, after two years of preparatory work, the draft agreements that would give the organization a definitive status. At that time Interim EUTELSAT included twenty member states. Four countries financed one-half the cost of the ECS space segment: France, 16.4 percent; United Kingdom, 16.4 percent; Italy, 11.48 percent; and West Germany, 10.82 percent. The other half of the cost was divided among the remaining members: Austria, Belgium, Cyprus, Denmark, Finland, Greece, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and Yugoslavia.¹²

During these two years of preparation, the Assembly of Parties had to resolve a number of problems relating to the form the definitive regime would take; unsettled issues were enumerated in article 20 of the agreement. Among the matters to resolve were: the legal personality of EUTELSAT; the transfer to EUTELSAT of the functions delegated to the authorized administration; the means and frequency of determining each member state's investment share as well as the conditions for financial adjustments between the signatories; the conditions of remuneration of investment capital; and the fees for use of the space segment. When an international conference was convened by the French government in Paris from May 3-14, 1982 to determine the final form of the permanent regime of EUTELSAT, only a few points remained to be resolved, since the selection of a headquarters for the permanent organization (for which France was the candidate) the admission of new members, and the expansion of activities had already been decided.

The May 1982 conference in Paris brought together the twenty member nations of Interim EUTELSAT, as well as the telecommunications administrations of Lichtenstein, Monaco, St. Marino, and St. Siege, all members of the CEPT, and the permanent charter was adopted. The structure of the adopted regime is the subject of the next section of this article, which examines four major issues: the principles which form the foundation of the new organization; its objectives; its legal status and organizational structure; and the operation of the system and its coordination, as a regional system, with the INTELSAT world network.

EUTELSAT: THE EUROPEAN MECHANISM FOR THE MANAGEMENT OF SATELLITE TELECOMMUNICATIONS

At the May 1982 intergovernmental conference, two international agreements were concluded:¹³ an intergovernmental Convention which formed

the organization for European satellite telecommunications, "EUTELSAT," linking member states designated by the term "parties"; and an Operating Agreement relating to "EUTELSAT," whose "signatories" are either governments themselves or authorized telecommunications entities, according to each nation's governmental structure.

The Convention and the Operating Agreement were opened for signature on July 15, 1982, and will enter into force no later than December 1988,¹⁴ as soon as two-thirds financial participation has been achieved (Convention, art. XXII; Agreement, art. 23). These final agreements, for which the French government is the depository, are strictly interdependent. By signing the Convention, a party becomes obligated itself to sign, or to designate a public or private telecommunications entity to sign, the Operating Agreement which will remain in force for the duration of the Convention (Convention, art. II).

The organization's headquarters will continue to be located in Paris, but a protocol on the privileges and immunities of EUTELSAT, analogous to those held by other similar international organizations, remains to be negotiated (Convention, art. XVII). EUTELSAT is open to all states in Europe that are members of the International Telecommunications Union. Indeed, it is principally patterned after INTELSAT and INMARSAT.

Like INTELSAT, EUTELSAT is primarily responsible for providing fixed satellite services. Its principal purpose, according to article III(a) of the Convention, is "the design, development, construction, establishment, operation and maintenance of the space segment of the European telecommunications system or systems." Therefore, EUTELSAT'S first goal is to provide a space segment which meets the needs of "international public telecommunications services in Europe" (art. III (a)). Nevertheless, the Convention provides that this space segment could also be used "for domestic public telecommunications services in Europe, either between areas separated by areas which do not fall under the jurisdiction of the same Party [*e.g.*, West Berlin] or between areas falling under the jurisdiction of the same Party but separated by the high seas [*e.g.*, the Canary Islands or the Azores]" (art. III (b)).

In order to carry out these goals, EUTELSAT'S final agreements grant it a true legal status; it must abide by a certain number of principles which are for the most part enunciated in the Preamble to the Convention.

Legal Status of EUTELSAT and Fundamental Principles of the Agreements

Article IV of the Convention makes EUTELSAT a legal person. Therefore, it can enter into contracts, acquire movable and immovable property, be a party to legal proceedings and conclude agreements with states and

international organizations. As provided in article 3 of the Operating Agreement, on the date of entry into force of the final agreements, Interim EUTELSAT must transfer to the new organization all its rights and obligations, and ownership of all assets acquired under the Constitutive Agreement, or the ECS Agreement will vest in EUTELSAT. Similarly, all contractual obligations assumed by Interim EUTELSAT will pass to EUTELSAT.

The Preamble of the Convention sets forth five principles upon which the new organization rests.

A European System

"Underlining the importance of telecommunications by satellite for the development of relations between their peoples and their economies" (Preamble, para. 1), the member states of EUTELSAT aim to strengthen their cooperation in this area, by continuing "the establishment of these telecommunications satellite systems as part of an improved European telecommunications network for providing expanded telecommunications services to all participating states" (Preamble, para. 4). This regional system will thus be restricted to member states of the CEPT and all other European states which belong to the ITU (for this purpose the term "Europe" means the countries of Western Europe).

Unrestricted and Equal Access to Services for All.

The system is open to all participating states (Preamble, para. 4), and EUTELSAT embraces the principle of nondiscrimination among signatories in the implementation of its activities (Convention, art. III(d)).

Conformity with the Provisions of the Space Treaty of 1967

The Preamble of the EUTELSAT Convention adheres to the Outer Space Treaty,¹⁵ which affirms in article I that space should be used for the welfare and interest of all nations. The Convention also specifies that the Organization may supply specialized telecommunications services on the condition that they are not used for military purposes (Convention, art. III(e) and (f)).

A Commercial System with the Purpose of Providing a Public Interest Service

This should be accomplished "without prejudice to any rights and obligations of the States which are parties" to the INTELSAT Agreement or the INMARSAT Convention (Preamble, para. 4). As a commercial enterprise, EUTELSAT should function according to norms of commercial management, providing "the most efficient and economic facilities possible" (Preamble, para. 5), and "having regard to accepted commercial principles" (art. V(b)).

Compatibility

This system should be compatible with the use of radio frequencies and space orbital slots, in "the most efficient and equitable" manner possible (Preamble, para. 5).

Organizational Structure of EUTELSAT

Unlike INTELSAT, whose organizational structure was substantially modified by its final agreements, EUTELSAT'S organizational structure underwent little change.

The Assembly of Parties

The Assembly is made up of all the parties (*i.e.*, the governments of the member states), with each exercising one vote. Meetings are held when needed, but at least once every two years. The Assembly develops "general policy and long-term objectives of EUTELSAT" through recommendations (art. IX(a)(i)). By general rules or specific decision, it authorizes either utilization of the EUTELSAT space segment, or the provision of satellites and associated equipment separate from the EUTELSAT space segment, in order to furnish specialized telecommunications services (art. IX(a)(iii)). The Assembly decides matters relating to official relations between EUTELSAT and states whether or not they are parties, or with international organizations (art. IX(vi)). It can debate and enact amendments to the Convention and to the Operating Agreement (art. IX(ix)). It also considers all requests by parties for membership or withdrawal from EUTELSAT.

Decisions on matters of substance are made by an affirmative vote cast by at least two-thirds of the parties present, or represented, and voting, whereas procedural issues are decided on the basis of a simple majority of parties present and voting (art. VIII(b) and (c)).

The Board of Signatories

The Board is the principal management organ. It is composed of Board Members, each representing one signatory, which is to say one telecommunications entity (art. X(a)). Each signatory casts its vote weighted in proportion to its financial investment which, until the first determination of investment shares based on utilization, is fixed by the terms of Annex B of the Operating Agreement (art. XI(a) and (b)). However, no signatory shall have more than 20 percent of the total voting participation in EUTELSAT (art. XI(c)).

The Board meets as often as necessary, but at least three times a year (art. XI(j)), and has "responsibility for the design, development, construction, establishment, acquisition by purchase or lease, operation and maintenance of the EUTELSAT Space Segment" (art. XII(a)). The Board

has many important functions, including the following: adoption of procurement procedures, regulations, and contract terms and conditions; adoption of policies and procedures regulating rights relating to intellectual properties; establishment of financial policy; forecast of traffic; determination of the conditions of access to the EUTELSAT space segment; specifying the technical characteristics of earth stations; assuring the coordination between satellite systems; establishment of interconnection with land-based networks; and setting up the periodic determination of charges for utilization of the space segment (art. XII, para. b(i)-(xxiv) lists all the functions). The Board must appoint the Director General and can also remove him from office (art. XII(b)(xvi)).

In exercising its functions, the Board takes due account of recommendations of the Assembly (art. XII(c)) and, in turn, submits to the Assembly periodic reports on the activities of EUTELSAT (art. XII(b)(xix)). The Board strives for unanimity in its decision-making. In the absence of unanimity, however, all matters of substance have to be determined "either by an affirmative vote of Board Members representing at least four Signatories having at least two-thirds of the total voting participation of all the Signatories having the right to vote (art. XI(g)(i)), "or by an affirmative vote cast by at least the total number of Signatories present or represented minus three, regardless of the voting participation the latter (Signatories) represent" (art. XI(g)(i)). Special provisions are provided for any adjustment of the capital ceiling, while decisions on procedural matters are taken by a vote cast by a simple majority of the Board Members present and voting, each having one vote.

The Executive Organ

This organ of EUTELSAT is headed by the Director General who is appointed by the Board of Signatories and has a six-year mandate, subject to confirmation by the parties (art. XIII(a) and (b)). As the legal representative of EUTELSAT, he acts under the direction of the Board of Signatories and is directly responsible to it for the execution of all the functions delegated to the Executive Organ (art. XIII(d)).

The Operation of the European System

Article V(a) of the Convention provides that "EUTELSAT shall own or lease the EUTELSAT Space Segment and shall own all other property acquired by EUTELSAT." EUTELSAT is financed by two sources: the contributions of member states and the revenues produced by use of the telecommunications network.

Financial Contributions

Each signatory contributes to the capital needs of EUTELSAT in proportion to its investment share as determined by the provisions of the Operating Agreement. Indeed, as is true of INTELSAT and INMARSAT, each signatory's investment share of the EUTELSAT system corresponds to its percentage of utilization of the EUTELSAT space segment (art. V(c)). The determination of investment shares is based on two principles: the principle of investment in relation to use and the principle of annual readjustment. Thus each signatory has a financial interest in EUTELSAT which is proportionate to its investment share (Convention, art. V(c); Agreement, art. 6).

In order that each signatory have an investment share corresponding exactly to its percentage of utilization of the space segment, the Operating Agreement provides that the investment shares of all the signatories be subject to readjustment on an annual basis, whenever members become parties to or withdraw from the organization, and at the request of a signatory, as soon as the signatory has begun utilization of the space segment. Each signatory has an investment share which corresponds to its percentage of the utilization of the EUTELSAT space segment during the six preceding months, but no signatory may have an investment share of less than 0.05 percent of the total investment shares (Agreement, art. 6(b)-(g)).

In compliance with Annex B of the Operating Agreement, the initial investment share of a signatory is equivalent to the financial share that the signatory to the ECS Agreement held at the date of the Convention's entry into force:

Austria	1.97%
Belgium	4.92%
Cyprus	0.97%
Denmark	3.28%
Finland	2.73%
France	16.40%
Germany	10.82%
(Fed. Rep. of)	
Greece	3.19%
Ireland	0.22%
Italy	11.48%
Luxembourg	0.22%
Netherlands	5.47%
Norway	2.51%
Portugal	3.06%

Spain	4.64%
Sweden	5.47%
Switzerland	4.36%
Turkey	0.93%
United Kingdom	16.40%
Yugoslavia	0.96%

After the entry into force of the Operating Agreement, financial readjustments between the signatories will be carried out in conformity with Annex A.

Utilization Charges

As provided in Article V(e) of the Convention, all users of EUTELSAT space segment must pay utilization charges. These charges "have the objective of earning sufficient revenues to cover operating, maintenance and administrative costs of EUTELSAT, and the amortization of investments made by Signatories and compensation for use of capital by Signatories" (Operating Agreement, art. 8(a)). Thus the charges are characteristic of the commercial nature of the system. The signatories of the final agreements and the other users are charged at the same rate for the same type of utilization (Convention, art. V(e)(ii)).

Procurement

The rules relating to procurement and to intellectual properties¹⁶ are determined by article XIV of the Convention and articles 17 and 18 of the Operating Agreement. Article XIV(b) of the Convention states that "procurement of goods and services for EUTELSAT shall be effected by the award of contracts, based on responses to open international invitations to tender," with exception set forth in article 17(d) of the Operating Agreement. If several bids offer a comparable combination of quality, price, time of delivery and other important criteria of relevance to EUTELSAT, the contracts will be awarded according to the "general and industrial interests of the Parties" (Convention, art. XIV(c)). Procurement of goods and services from European industries, under comparable conditions, is therefore subordinated to the principle of preferential treatment. EUTELSAT's policy on intellectual properties is based on the principle of acquiring only the rights which are necessary to enable work to be executed by or for EUTELSAT, with the special provision that each contractor should retain its interest in the rights that it acquired in executing a contract financed by EUTELSAT (Agreement, art. 18(b)).

Technical Support: The European Network (ECS)

EUTELSAT is responsible for the development and operation of a regional satellite telecommunications system for intra-European and national transmissions. As we have seen, to this end EUTELSAT and ESA entered into an arrangement on May 15, 1979 by which ESA will supply and maintain the ECS space segment for a period of ten years. In return, EUTELSAT will make lump sum payments, regardless of the actual costs incurred by the member states of ESA for the construction and launching of the satellites by Ariane.

Under the terms of this agreement, the ECS space segment will include two orbiting satellites, one in use and the other held in reserve. It was originally planned that a first satellite would be launched in 1982 and the second one year after, but the launch calendar for Ariane rockets was modified following the failure of the first commercial firing of the European launch device. The satellite "ECS" was launched with success on June 16, 1983, and the second will be launched in April, 1984. Even so, the opening of service by the ECS network, which was initially planned for 1983, will probably be delayed. ECS satellites were ordered to assure permanent service for a ten-year period.

Once operational, the ECS space telecommunications network should provide more than 10,000 telephone circuits connecting international transit centers of the CEPT nations, and the distribution of two color television channels to the member organizations of the UER. Moreover, because of modifications of the ECS satellites carried out by Interim EUTELSAT, beginning with the second unit produced, these satellites (in conjunction with the installations of the French national space system TELECOM-1 which is rented by EUTELSAT) will permit the implementation of a system known as "multiservice satellite system." The system will offer a wide range of services particularly suited for businesses, such as video conferencing, teletext, data transmission, and informatics linkages. EUTELSAT will therefore be the first organization in the world to offer and manage business telecommunications services on an international level. The system will constitute an integrated "multiservice" network, conforming to the international agreements of ITU and INTELSAT then in force, because all the EUTELSAT signatories are also members of these two organizations.

Now that EUTELSAT has been permanently established and has begun to implement its European satellite system, problems of the coordination of its future activities with those of INTELSAT have arisen. The proposed activities raising the most questions are the expansion of the ECS satellites to serve business telecommunications needs for the benefit of European enterprises.

Coordination of the Regional European System with the Worldwide INTELSAT Network

The obligations that burden all regional organizations wishing to develop a space telecommunications network distinct from the INTELSAT world system were set forth in the famous Article XIV of the Washington Agreements on the INTELSAT world commercial satellites system, reached on August 20, 1971.¹⁷ Under this provision, the development of a separate network to supply public international telecommunications services (or "regional services") requires not only that technical compatibility be ensured, but also that the separate network "avoid all significant economic prejudice to the world system of INTELSAT." The plans for the development of operational regional systems have therefore been considered by the competent organs of INTELSAT. Thus the Assembly of Parties of INTELSAT, with the approbation of the Council of Governors, meeting in Manila in April 1979, adopted a recommendation in which it concluded that the two regional satellite systems planned by a number of INTELSAT members (specifically, the ECS system for Western Europe and the PALAPA-B system for some Asian countries) are "technically compatible with the present INTELSAT system and do not pose any substantial economic threat to INTELSAT."¹⁸

This coordination was therefore established in the prescribed manner with respect to the first ECS satellite.¹⁹ A new request for coordination was made to INTELSAT for the second ECS unit satellite, which offered supplementary services. INTELSAT, to the surprise of its European members, declared at a meeting of the Council of Governors in September 1982 that the expansion of the ECS system planned by EUTELSAT would possibly cause economic injury to INTELSAT. Therefore, the Council of Governors of INTELSAT considered that coordination between itself and the EUTELSAT system could only be assured for a limited period of time, until 1988, and that at that time, a new coordination with the INTELSAT system would be necessary.

This judgment of the Council of Governors, however, was not completely adhered to by the Assembly of Members of INTELSAT, the highest decision-making body of the international organization. At its meeting of October 4-8, 1982, the Assembly of Members in effect approved the EUTELSAT plan with one important reservation included in a recommendation adopted by the representatives to the INTELSAT Assembly,²⁰ requesting that a new coordination take place by the end of 1988 to determine if at this date the business services of EUTELSAT are causing any significant economic or technical detriment to INTELSAT.

What does this decision by the INTELSAT organization really mean, and what are the consequences that such a recommendation may have on

the operational and commercial future of business telecommunications service and the global space system of EUTELSAT? To understand the size of the stakes involved, it should be remembered that INTELSAT has enjoyed, since its creation, a veritable monopoly in the field of international space telecommunications, as well as telecommunications on the national level, since INTELSAT leases part of its satellite circuits to twenty countries for their national service. Despite large growth and expansion of its activities, INTELSAT presently lacks the means of satellite transmission which would permit it to route the type of inter-enterprise traffic offered by EUTELSAT.

Thus, in order to defend its monopoly, INTELSAT decided that EUTELSAT could handle this type of communication until 1988, hoping that by that time INTELSAT will have acquired the means of satellite transmission necessary to dispatch European communications. Currently INTELSAT has no plan to use satellite telecommunications services at 12-GHz bands, frequencies that will be used by the ECS satellites, and it has not yet made any investment in such services. Furthermore, it was only through a unilateral and strained interpretation of the provisions of Article XIV of the Washington Agreements that INTELSAT'S claim could be justified, an interpretation which amounts to retaining its monopoly on the profits of space telecommunications, not only in intercontinental telecommunications (for which INTELSAT was essentially founded) but also in regional and national telecommunications. INTELSAT'S attitude is a significant threat, not only to the future of EUTELSAT, but also to the other regional systems being built or planned.

Indeed, insofar as the Assembly of Members of INTELSAT (in which nineteen of the twenty member nations of EUTELSAT are represented) has adopted a recommendation specifying that "all aspects of the operation of the European network, or all material extension beyond 1988, are subject to new coordination with INTELSAT," there is some concern for the operational and commercial future of EUTELSAT. Considering the fact that in the space field the length of amortization of investments falls between seven and ten years (the life of an ECS satellite is approximately ten years), it is clear that in 1988 (barely five years after the implementation of a business telecommunications network) European investments in EUTELSAT will not be amortized. This is a source of serious danger for EUTELSAT if INTELSAT succeeds in putting a limit on its activity in 1988.

It is surprising that a global assembly in which numerous regional interests were represented (not only European, but also Arab, African, and Asian) did not obstruct the adoption of such a recommendation which directly threatened them. It is true that only a precatory "recommendation" is involved and that the outcome will depend on the future attitude that each European nation that is a member of both EUTELSAT and

INTELSAT adopts under the circumstances. Eventually the choice must be made between continuing to handle European traffic via EUTELSAT satellites or transmitting by INTELSAT. The odds are that the European countries will continue to transmit their inter-continental telecommunications via INTELSAT, but will look to EUTELSAT to handle their intra-European communications needs.

This prediction leads me to conclude that there is hope for the establishment, by means of the new organization EUTELSAT, of an enduring "Europe of telecommunications."

CONCLUSION

At a colloquium held in May 1982 in Nancy,²¹ Dean C. A. Colliard, evoking the diversity of European organizations as well as the goals they pursue, cited Robert Schuman, who, in May 1950, declared that "a unified Europe will not be created by a single act, but by the building up of many institutions." The creation of EUTELSAT with its integrated telecommunications system will link the many institutions of political Europe, economic Europe and scientific and technical Europe. Thus EUTELSAT will contribute to the construction of the Europe of tomorrow.

NOTES

¹ For example, the annual rental cost of the spatial segment corresponding to a link between Europe and the United States, for a half circuit used full time, has dropped continuously, from \$32,000 in 1965, to \$20,000 in 1966, to \$5,680 on January 1, 1981.

² See Courteix, *Organisations internationales à vocation mondiale ou régionale dans le domaine des télécommunications par satellites*, 8 JURISCLASSEUR DE DROIT INTERNATIONAL 21 (1979) (Fascicule 141); see also F. JOB & H. BILLIG, *THE EUROPEAN COMMUNICATION SATELLITE PROGRAMME* (1978) (published by the International Astronautical Federation); Labarrère, *Eutelsat interimaire*, 5 REVUE DES P.T.T. DE FRANCE 2 (1980); *Eutelsat*, TELECOM 2000, Feb. 1982 no. 2, at 7 (special edition).

³ The CEPT is responsible for technical coordination and meets annually to improve relations between member states and efficiency of services. For more on the organization, see C. Labarrère, *La C.E.P.T.* (unpublished doctoral dissertation at the University of Paris I).

⁴ CERS/ERSO is the European Organization for Space Research which was replaced in 1975 by the European Space Agency (ASE/ESA).

⁵ Convention for the Establishment of the European Space Agency, May 30, 1975, art. V(2)(c), 14 I.L.M. 864, 868.

⁶ The parties in the Interim EUTELSAT agreement were Austria, Belgium, Denmark, the Federal Republic of Germany, Finland, France, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and Yugoslavia. For further information on the various EUTELSAT agreements and press releases discussed in this article, write to:

EUTELSAT

Tour Maine-Montparnasse
33, avenue du Maine
75755 Paris Cedex 15, France.

⁷ MAROTS satellites became "MARECS" in 1978 when use of the experimental Orbital Test Satellite (OTS) platform was replaced by the more modern ECS system. Existing MARECS satellites are therefore immediately operational. The first one was launched into orbit December 20, 1981, but the second, MARECS-2, launched in September, 1982, was lost with the failure of the first commercial firing of the Ariane launcher.

⁸ The parties to the agreement were Belgium, the Federal Republic of Germany, France, Italy, the Netherlands, Norway, Sweden, and the United Kingdom.

⁹ See *Le programme Symphonie*, TELECOM 2000, Feb. 1982 no. 2, at 5 (special edition).

¹⁰ Joint press communique (No. 14) by the ESA and EUTELSAT, May 15, 1979.

¹¹ Press communique by Interim EUTELSAT, January 20, 1982.

¹² See EUTELSAT, NOTE D'INFORMATION SUR EUTELSAT INTERIMAIRE (1982).

¹³ On the final EUTELSAT agreements, see Caruso & Billig, *Eutelsat, a satellite system for the '80s*, in REPORT TO THE 33RD INTERNATIONAL ASTRONAUTICAL CONGRESS 20 (1982) (held at Paris from Sept. 27-Oct. 2).

¹⁴ As of August 18, 1983, nineteen European nations had signed the final agreements, including sixteen member nations of the provisional organization Interim EUTELSAT and three new members (Saint-Siege, Monaco, and Saint-Marino). The English texts of the Convention and Operating Agreement are on file with the MICH. Y.B. INT'L LEGAL STUD.

¹⁵ Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, *done* Jan. 27, 1967, 18 U.S.T. 2410, T.I.A.S. No. 6347, 610 U.N.T.S. 205.

¹⁶ According to article 18(a) of the Operating Agreement, " 'Intellectual Property' means the rights relating to inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, know-how, protection against unfair competition, copyright, and all other rights resulting from intellectual activity in the industrial and scientific fields."

¹⁷ Agreement Relating to the International Telecommunications Satellite Organization [INTELSAT], art. XIV, 23 U.S.T. 3813, T.I.A.S. No. 7532.

¹⁸ See Courteix, *supra* note 2, at 11.

¹⁹ The EUTELSAT agreements refer to this obligation to coordinate in the Preamble para. 4 of the Convention.

²⁰ Seventy-five countries were represented out of the 106 member nations of INTELSAT, of which 19 out of 20 EUTELSAT members belong.

²¹ Address by Dean C.A. Colliard, French Society for International Law Colloquium (May 1982), *published in* EUROPE IN INTERNATIONAL RELATIONS: UNITY AND DIVERSITY (1982) (Paris, Pedone).

