

CONTRIBUTION FROM THE DIRECTOR GENERAL TO THE SECOND MEETING OF THE AP-41 WORKING GROUP

INTRODUCTION

Building upon the key decision taken at AP-40 that the ITSO Agreement shall continue in effect and that ITSO shall continue to fulfill all of its responsibilities and obligations as set forth in the Agreement, AP-40 then addressed the difficult challenges that ITSO had faced over the past several years, including those arising from the Intelsat bankruptcy. Additionally, during the pendency of the Working Group efforts, an additional complexity was introduced by virtue of the announced acquisition of Intelsat by SES.

To more properly address all of these concerns, the Assembly established two ad hoc Working Groups (AP-40 WG-1 and AP-40 WG-2) that would report to AP-41 on measures necessary to secure the efficient and proper exchange of information between Intelsat and ITSO; to establish improved arrangements to assure proper funding of the Organization on a going forward basis; and to ensure the full and proper protection of the Parties' Common Heritage, including potential threats arising from any future bankruptcy or ownership change. In performing their work, both Working Groups considered key experiences of the past that limited the functioning and existence of ITSO, as well as possible future threats, and made recommendations to mitigate such threats and ensure that going forward, ITSO would be stronger, more effective and responsive, and more closely aligned to the evolving interests of all Parties and the future strategy of the Organization.

Both Working Groups presented detailed reports on their efforts to AP-41 covering progress that had been achieved while indicating that additional work would be required. As a result, a single new Ad Hoc Working Group was established by AP-41 (AP-41 WG), to continue and build upon the work previously undertaken by the prior AP-40 Working Groups, as well as to take account of recent developments in the satellite industry. The key objective of the AP-41 WG is develop measures aimed at shaping a stronger, more effective, and responsive ITSO. These measures should ensure that ITSO remains closely aligned with the evolving interests of all Parties and the future strategic direction of the Organization. This process will involve consultations with all relevant stakeholders, including but not limited to ITSO, Notifying Administrations, Intelsat (and now Intelsat/SES), ITU, and the Parties, to ensure comprehensive input and alignment with industry and regulatory advancements.

Specifically, nine Terms of Reference (ToR) for further inquiry were established, which will then guide the efforts of AP-41 WG. As discussed at the first meeting of the AP-41 WG on January 28, 2025, to facilitate the work effort involved, specific ToRs have been combined into three separate groupings. The first grouping consists of TORs 1, 3 and 5; the second grouping consists of TORs 2, 4 and 6; and the third grouping consists of TORs 7, 8 and 9.

OVERVIEW OF THE TORS ESTABLISHED FOR AP-41 WG

To further assist with the work of the AP-41 WG, the following summary of work previously done and potential areas for further exploration is provided.

First Grouping (ToRs 1, 3 and 5)

The terms of reference in the first grouping generally focus on the importance of ITSO's relationship with what is expected to be a combined SES/Intelsat going forward, including those directly governed by the terms of the Public Services Agreement (PSA), as well as those potentially influenced by external events.

ToR 1: Consider the circumstances, expertise and experience of ITSO, to include a focus on strengths, weaknesses and opportunities in the formulation of recommendations for a more successful ITSO, while including mechanisms to ensure the Company provides the minimum required funding for ITSO.

ToR 1 is intended to address ways in which the unique relationship that ITSO has with its 149 member countries can facilitate an improved collaborative relationship with the combined SES/Intelsat business enterprise. While the ITSO Agreement speaks of ITSO exercising supervisory control over Intelsat in certain respects, that does not automatically mean that the relationship is adversarial in nature. ITSO's mission to a large extent is intended to ensure Intelsat's ultimate business success, as that success is what ultimately ensures that Intelsat will be able to successfully fulfill the Core Principles. Conversely, actions taken by ITSO that could impede Intelsat's business success would prevent Intelsat from fulfilling the Core Principles. In light of this, it should be possible to more closely align ITSO's mandate of assuring that the Core Principles are achieved with the business objectives of the combined SES/Intelsat business enterprise. Indeed, rather than viewing the obligations to provide global connectivity and coverage, to serve lifeline connectivity users and to provide non-discriminatory access as burdensome or some sort of hardship, these obligations could instead be taken to represent features that could strengthen the combined company's business position and differentiate in a positive way the combined company from its competitors that are not subject to these requirements.

Collaboration, however, can only succeed if ITSO has the ability to properly function. To better assure ITSO's ability to do so, AP-40 WG-1 focused on establishing the minimum funding level required to meet specific obligations imposed on it by the terms of the ITSO Agreement, rather than the cap approach laid out in the PSA, as a basis for reasonable financing to be provided by SES/Intelsat going forward. A similar approach was taken with respect to the information that the PSA required be provided to ITSO by the Company (the term used in the PSA and in the ITSO Agreement to refer to Intelsat as well as any successor entities. The AP-41 WG should assess the extent to which progress has been made regarding this approach and what additional measures, if necessary, may need to be undertaken to better achieve these objectives.

ToR 3: Review and make recommendations on possible way to improve the PSA for better collaboration between Intelsat or any other operator and ITSO.

The AP-41 WG should consider possible modifications to the PSA that could strengthen the collaborative nature of the relationship between Intelsat and ITSO, as well as clarify those areas that have not worked as originally envisioned. Of particular importance here are matters relating to replenishment of the contingency fund or establishment of an alternate funding mechanism available in the event that ITSO finds it necessary to commence an arbitration proceeding against Intelsat pursuant to Article 6 of the PSA, and the current lack of any meaningful enforceability mechanisms, including penalty provisions, set forth in the PSA in respect of non-performance or partial performance of Core Principles by Intelsat.

Other related measures for consideration by the AP-41 WG regarding the terms or operation of the PSA include the following:

- Establish a regular periodic meeting ITSO-Intelsat to address all elements included in the PSA and which could be extended to cover issues that have been experienced in the past.
- Assist Intelsat to address the reports from Intelsat to ITSO to ensure they cover the elements expected from ITSO and in accordance with PSA.
- Clarify PSA ways to claim compliance against PSA requirements, including global coverage and connectivity, support for lifeline users, and non-discriminatory access.
- Identification of common areas of interest regarding ITU decisions that could affect the status of Common Heritage frequency assignments or other regulatory procedures governing space services.

Finally, in the event that an operator other than Intelsat is selected to operate a satellite at a Common Heritage orbital location, ITSO will need to have a form of PSA appropriately tailored to the specific circumstances that would arise. While some preliminary effort had been previously devoted to this issue, that occurred several years ago and may require further consideration or modification based on the experiences of the past few years.

ToR 5: Identify and make recommendations on the various issues that may arise in connection with specific decisions that could be undertaken by Intelsat or any other operator which have a direct impact on the Common Heritage such as bankruptcy, mergers, change of ownership, etc.

The AP-41 Working Group should address ways in which ITSO can fully protect its interests in the event of any future planned/proposed merger or acquisition, including assurance that any such activity would not weaken the Company's obligations as set forth under the ITSO Agreement and PSA. Similarly, the AP-41 WG should identify the procedures and mechanism necessary to insure that in the event of a future bankruptcy, the sanctity of the PSA as an instrumentality of the ITSO Agreement is not adversely affected by the actions of the Company in bankruptcy or by decisions of the bankruptcy court.

Additionally, to the extent that the provision of this information by Intelsat is not business sensitive and is publicly available, the AP-41 WG should address the need for further collaboration between the ITSO Director General and the Notifying Administrations on the development of bi-annual reports to ITSO, which seek to address:

- Licensed Intelsat satellite networks at each Common Heritage orbital location;
- Status of operational deployment of Intelsat satellites at each Common Heritage orbital location;
- Status of specific frequency assignments of Intelsat in each Common Heritage orbital location;
- Frequency band which is not in operation, and their risks of suppression at the ITU MIFR;
- Connectivity provided to ITSO Regions, such as satellite footprint maps;
- Updating the use of each orbital position and satellites deployed at each orbital position;
- Identification of mechanisms to anticipate potential suspension and mitigate risks of subsequent
- potential suppressions of frequency assignments;
- Identification of scenarios under which suspension of frequency assignments could occur.

Second Grouping (ToRs 2, 4, and 6)

The second grouping is primarily concerned with issues arising with respect to proper protection of the Parties' Common Heritage going forward, as governed by Article XII(c) of the ITSO Agreement, especially with respect to the interface that must occur in this regard between ITSO and the Notifying Administrations.

ToR 2: Taking into consideration recommendations of WG1 and WG2 approved by the AP-41, consider and make recommendations to enhance the collaboration between ITSO and the Notifying Administrations that supports the implementation of Article XII (c) of the ITSO Agreement.

Article XII(c) of the ITSO Agreement provides as follows:

- (c) Any Party selected to act as the Company's Notifying Administration shall, under applicable domestic procedure:
 - (i) Authorize the use of such frequency assignment by the Company so that the Core Principles may be fulfilled: and
 - (ii) In the event that the Company, or any future entity using the Common Heritage frequency assignments, waives such frequency assignment(s), uses such assignment(s) in ways other than those set forth in this Agreement, or declares bankruptcy, the Notifying Administrations shall authorize the use of such frequency assignment(s) only by entities that have signed a public services agreement, which will enable ITSO to ensure that the selected entities fulfill the Core principles.

While other aspects of measures needed to safeguard the Common Heritage are addressed in a number of the following ToRs, for purposes of ToR-2, the primary focus is on means for enhancing the collaboration between ITSO and the Notifying Administrations.

Some progress had been made in this regard, although further attention is necessary to ensure that lines of communication are established and remain open and the information that is required by ITSO is provided. AP-40 WG-2 had recommended that ITSO and Notifying Administrations implement a closer alignment for accessing to the information on the usage of the Common Heritage. The current management of ITSO's Common Heritage is conducted by Notifying Administrations acting based on ITU procedures. Indeed, closer coordination between ITSO and Notifying Administrations would be helpful in order to anticipate potential changes in the regulatory procedures governing space services, which ITU (via WRC modifications of the Radio Regulations) is continuously introducing at each WRC. These modifications are discussed in the context of Agenda Item 7 of each WRC. ITSO and the Notifying Administrations may also

wish to share information and positions regarding efforts needed to jointly defend the Common Heritage frequency assignments.

In addition to the requirements of Article XII(c), there are a number of other requirements imposed on the Notifying Administrations in Article XII(e) of the ITSO Agreement, and these may warrant further consideration as well. Specifically, Article XII(e) requires each Party selected to act as a Notifying Administration to: (i) report at least on an annual basis to the Director General on the treatment afforded by such Notifying Administration to the Company, with particular regard to such Party's adherence to its obligations under Article XI(c); (ii) seek the views of the Director General, on behalf of ITSO, regarding actions required to implement the Company's fulfillment of the Core Principles; (iii) work with the Director General, on behalf of ITSO, on potential activities of the Notifying Administration(s) to expand access to lifeline countries; (iv) notify and consult with the Director General on ITU satellite system co-ordinations that are undertaken on behalf of the Company to assure that global connectivity and service to lifeline users are maintained; and (v) consult with the ITU regarding the satellite communications needs of lifeline users.

ToR 4: Assess the processes and mechanisms for the assignment and management of the Common Heritage, ensure its protection and make appropriate recommendations for closer alignment between the work of ITSO and the Notifying Administrations.

The annual Common Heritage report prepared by ITSO Secretariat includes all relevant details concerning the notifications made by the Notifying Administrations to the ITU BR. The current annual report includes information on the evolution of the Common Heritage since 2001. Common Heritage has evolved since 2001, notably the frequency assignments and orbital positions. This data is obtained by the DG consulting the Notifying Administrations and, when necessary the ITU BR. The ITSO Secretariat monitors the notifications made to the ITU BR and, in case any modifications have been identified, such modifications are checked with the Notifying Administrations and ITU BR to ensure that nothing has been overlooked. Before 2015, the comparison was mostly made based on orbital locations registered by the Notifying Administrations. Since 2015, an additional high-level analysis has been prepared on the aggregated number of frequency assignments registered by the ITU for each Notifying Administration.

One particular area to address is with regard to Common Heritage available resources. It would be desirable to update the status of Common Heritage resources as of today. Note should be taken that when transferring Common Heritage to the Company, many of the orbit-spectrum resources were in the advanced publication or coordination procedures of the ITU, some of them being further notified as Common Heritage while others did not complete such process. The current status of Common Heritage resources should be aligned to the ITU registrations which indicate the corresponding notes of ITU (G32 and USA276) as pertaining to the Common Heritage.

WG-2, considering the mission of ITSO, identified additional data which could be further added to the annual report to show other complementary aspects such as:

- Level of utilization of each orbital position for each frequency band (effective utilization of the frequency assignments in comparison with the frequency assignments registered at MIFR).
- Level of connectivity of each orbital position with more details to show the level of connectivity between ITSO Regions, to help identifying the compliance against the requirement of global connectivity.
- Level of traffic and evolution of the technology to identify the efficiency related to the utilization and optimal use of the capacity.
- Development of systematic mechanisms for the reporting by National Administrations and Intelsat. These mechanisms would help ensuring that ITSO can monitor the level of compliance against:
 - global coverage;
 - serve its lifeline connectivity customers;
 - provide non-discriminatory access to the Intelsat's system;
 - updates on frequency coordination processes being followed with other administrations/operators.
 - For the above new benchmarking analysis, contribution and cooperation from Intelsat would be essential.
 - allow for exploitation of these assignments by other operators.

ToR 6: Identify the circumstances under which unused Common Heritage orbital locations could be suppressed and make recommendations for re-assignment to other operators.

Keeping in mind the overall goal of global connectivity, the periodic reports from Intelsat and the Notifying Administrations should allow assessing the level of compliance of this objective when using the Common Heritage resources. Such reports should provide sufficient information to allow identifying which Common Heritage resources are used for the goal of global connectivity and setting priority orbital positions to preserve compliance of such goal. Having this information well depicted, it would be feasible to assess the further impact when some Common Heritage resources are suspended or ultimately cancelled.

When a given Common Heritage resource (consisting of the combination of frequency assignments and orbital position) is at risk of being suspended or cancelled, should this Common Heritage resource be crucial for the compliance of the goal of global connectivity, a procedure should be implemented by the Notifying Administration in cooperation with ITSO to trigger the possibility for other satellite operators to exploit such Common Heritage towards re-establishment of the goal of global connectivity in the regions facing the risk of non-compliance due to suspension or cancellation of Common Heritage resources.

Third Grouping (ToRs 7, 8, and 9)

The third grouping deals with specific challenges that may arise in circumstances in which actual suppression of Common Heritage filings appears likely to occur, and the specific measures that would then be required in order to avoid loss of those filings, as well as the request submitted by Parties in Region D, originally at AP-40 and subsequently at AP-41, to assess the feasibility of and/or circumstances in which designation of additional Notifying Administrations may be desired.

ToR 7: Recommend mechanisms of transferring the non-exploited Common Heritage to another company that has undertaken to comply with PSA obligations, taking into account the ITSO Agreement.

In light of the recommendations of ToR 6 and having a clear list of the Common Heritage resources which are used for the objective of global connectivity, those gaps of non-compliance against this Common Heritage objective should be identified and specific examination take place to assess whether such Common Heritage could be exploited by another Company. Several scenarios may happen:

- The Notifying Administration establishes a national procedure to make available the resources to be exploited by other Company (national or foreign) working under the rules of the Notifying Administration jurisdiction and clearly supporting the minimum objectives of such new Company to provide global connectivity.
- The Notifying Administration declares no national feasibility to transfer such resources to any other Company and agree with another Administration to, permanently or temporarily, allow such other Administration to exploit such resources, under the ultimate responsibility of the Notifying Administration, but with the Common Heritage being operationally exploited by another Company which will follow the procedures established by another Administration. This other Administration should also ensure that the operating Company is committed to meet the objective of global connectivity. The new Company would need to sign a PSA with ITSO, with terms to be developed, reflecting the double responsibility of the operating Administration and the Notifying Administration.
- This procedure would not require a formal identification of new Notifying Administration to take unique responsibility over the new Company without any control or intervention from the Notifying Administration. The Notifying Administration would continue being the overall supervisor and responsible administration in front of ITU.

ToR 8: Recommend mechanisms to fill gaps that could lead to a replacement of suppressed Common Heritage filing by new filings from other Administrations other than the Notifying Administrations of the Common Heritage.

Overall, the purpose of ToR 8 is to specifically address the question of the extent to which suppression of Common Heritage filings before the ITU would adversely affect Intelsat's ability to meet the Core Principles and whether, in such circumstances, it would be possible to offset this impact by having an Administration other than the Notifying Administration file for the suppressed frequency assignments. Specifically, the issue would be what measures would be appropriate for ITSO to undertake when suppressed Common Heritage filings occur in terms of having other Administrations file for Common Heritage resources and be prepared to make them available to ITSO. This would include determination of the circumstances in which this would be appropriate and what safeguards, if any, would be necessary to ensure that such new filings would not have an adverse impact on existing Common Heritage filings at adjacent locations.

Possible scenarios which may necessitate consideration by ITSO to take specific actions include:

- Company not being capable of exploiting the full potential of Common Heritage due to economic, operational or business environment reasons.
- Company having financial problems that do not permit it to utilize the Common Heritage.
- Company entering into merger arrangements with another company with goals that are contrary to the objectives prescribed by the ITSO Agreement in the use of the Common Heritage.

ToR 9: Further consider and make recommendations on the proposal that was submitted by Region D to AP-40 to have one Notifying Administration per region

The issue of identifying new Notifying Administrations had to some extent been considered within the two AP-40 Working Groups. While efforts could continue to assess the merits and potential liabilities associated with designating additional Notifying Administrations, it may also be possible for AP 41 WG to work towards identifying new Notifying Administrations from the viewpoint of back-up Notifying Administrations, being prepared to assume the full responsibilities of a Notifying Administration in addition to the current Notifying Administrations or in substitution of one or the two Notifying Administrations in the future, when the need arises.

Given the possibility that at a future point in time, any of the current Notifying Administrations may decide to not continue its/their role of Notifying Administration, in such a case, having already identified a substitute Notifying Administrations would avoid a period of uncertainty until a new Notifying Administration can be identified. Consequently, in order to speed

up the work of identifying new Notifying Administrations, such identification should be assessed bearing in mind the scenario of withdrawal by any of the existing Notifying Administrations, and the need of ITSO to be prepared to face such scenario should it happen.

At AP-41 consideration was also given to a number of other recommendations submitted by the Parties from Region D, which were not specifically incorporated in any of the other ToRs established for consideration by AP-41 WG, but which AP-41 left open to the AP-41 Working Group to address to the extent that the AP-41 WG deemed necessary. It would make the most sense for those recommendations, to the extent the AP-41 WG believes necessary, to be addressed under ToR 9.