



International Mobile Satellite Organization

ASSEMBLY

Twentieth Session

Malta, 29 September to 3 October 2008

Agenda item 13

ASSEMBLY/20/13

Origin: Director

Date: 26 June 2008

**AMENDMENTS TO THE IMSO CONVENTION
AND DRAFT ASSEMBLY RESOLUTION
SUBMITTED BY THE PARTY OF THE UNITED STATES**

Executive Summary: this document discusses the proposed amendments to the IMSO Convention and draft Assembly Resolution submitted by the Party of the United States, in accordance with Article 19 of the IMSO Convention, as well as legal advice thereon

Action to be taken: Section 8

Related documents: ASSEMBLY/20/INF/7

1 BACKGROUND

1.1 At its Eighteenth Session, the Assembly adopted amendments to the IMSO Convention which, *inter alia*, included a new Article 4 “Other Functions”, as follows:

Subject to the decision of the Assembly, the Organization may assume functions and/or duties of Co-ordinator of Long-Range Identification and Tracking of Ships (LRIT), at no cost to Parties, in accordance with the decisions of the International Maritime Organization.”

1.2 At its Nineteenth (Extraordinary) Session, the Assembly decided that the amendments to the IMSO Convention adopted at the Eighteenth Session of the Assembly should enter into force on the basis of provisional application from 7 March 2007, pending their formal entry into force in accordance with Article 18 of the IMSO Convention.

1.3 The Assembly also decided that the Organization may assume the functions and duties of the LRIT Co-ordinator with effect from 7 March 2007, at no cost to Parties, in accordance with decisions of IMO, where Article 4 of the amended Convention will be applied on a provisional basis.

1.4 The Assembly noted a proposal made by the United States that the Assembly should consider a draft Resolution or further amendments to the Convention in order to cover the LRIT functions to be carried out by IMSO as well as financing of LRIT. Several Parties expressed the need for further amendments to the Convention to address this issue, while others considered that the principles could be taken care of in an Assembly Resolution, which could be developed by the Advisory Committee.

2 AMENDMENTS SUBMITTED BY THE UNITED STATES

2.1 The United States formally submitted amendments to the Convention, together with a proposed draft Assembly Resolution, on 22 June 2007. The amendments and draft Resolution were translated and circulated by the Director to all Member States and to Inmarsat in accordance to Article 19 of the IMSO Convention on 20 July 2007. The Director invited comments thereon. Copies of the proposed amendments, the proposed draft Resolution, and explanatory notes thereon, in the English, French, Russian and Spanish languages, are available as ASSEMBLY/20/INF/7.

2.2 The United States submitted a document to the Nineteenth Session of the Advisory Committee in July 2007, inviting the Committee to comment on the proposed amendments and the draft Assembly Resolution submitted by the United States.

2.3 The Advisory Committee *“recognised that it was outside of its mandate to discuss the document. However, taking into account comments made regarding the necessity for further amendments to the Convention, also expressed by some Parties at the Nineteenth (Extraordinary) Session of the Assembly, some members of the Committee recommended that the United States invite all IMSO Member States to participate in an informal correspondence group in order to improve, if necessary, the proposed amendments to the Convention and the proposed resolution on administrative issues, for consideration at the next Assembly session. The*

Committee recognised that the Director is already performing some of the functions recommended in the proposed amendments and resolution.”

2.4 Other Members of the Committee commented that *“there may be legal implications to further amendments being introduced to the IMSO Convention in relation to the 2006 amendments, and the Committee requested the Director to seek advice from IMO as the Depositary of the Convention.”*

3 LEGAL ADVICE FROM IMO

3.1 The Director, as requested by the Committee, requested the Secretary-General of the International Maritime Organization, as Depositary of the IMSO Convention to provide legal advice regarding whether there are any legal implications to further amendments being introduced to the IMSO Convention in relation to the 2006 amendments which were adopted by the Eighteenth Session of the IMSO Assembly and which are provisionally applicable from 7 March 2007, pending their formal entry into force.

3.2 The IMO Director of Legal Affairs and External Relations Division replied to the IMSO Director on 24 July 2007 providing legal advice. A copy of this letter was sent to all IMSO Parties on 28 August 2007. The United States wrote to the Director in relation to the IMO Legal Opinion on 3 December 2007, and this was transmitted to all Member States on 7 December 2007. Copies of this correspondence are contained in **Annex I to III** to this document.

3.3 At its Twentieth Session, in December 2007, the Advisory Committee noted the legal opinion received from IMO, and agreed to discuss the legal advice and procedural matters only regarding further amendments to the Convention as proposed by the United States at its next session.

3.4 The Committee suggested that *“members of the Committee should consider ensuring participation by their legal experts/advisors at the next Session of the Committee. The Committee noted that the United States had established an informal correspondence group in which it had invited all IMSO Member States to participate.”*

3.5 At its Twenty-First Session, in February 2008, the Advisory Committee noted that the Director had further discussed this issue with the IMO Director of Legal Affairs who reiterated the legal advice given by the Depositary. The Director also outlined the background and relevant documentation.

3.6 In this regard, the United States “*stated its belief that IMO is not a competent authority to provide legal advice to IMSO; the United States understands that the Vienna Convention on Treaties defines the functions of the Depositary which do not include the provision of legal advice; the United States therefore believes it is not proper for IMSO to be influenced by any legal opinion provided by the IMO Legal Division by reason of its status as the Depositary; the United States indicated that it was in the process of developing a formal submission to the Assembly concerning its proposals.*” A statement made by the United States to the Twenty-First Session of the Committee is attached at **Annex IV** to this document.

3.7 The Committee advised the Director to prepare a submission to the Twentieth Session of the IMSO Assembly containing as much detailed information as possible in order to assist Member States in their deliberations of this issue at the Assembly.

3.8 In conjunction with the legal advice provided by IMO, the Assembly may wish to consider the following:

- (a) in contemplating further amendments to the Convention, those further amendments should not affect the 2006 amendments as adopted by the Eighteenth Session of the Assembly as they have not yet formally entered into force, but are in the process of ratification in many Member States; and
- (b) alternatively, withdrawing the 2006 amendments or calling on States not to adopt them may create legal difficulties or uncertainties, particularly as one Party, the Slovak Republic, has already ratified the 2006 amendments, and one Party has become an IMSO Member State by ratifying the IMSO Convention as amended by the 2006 amendments (Cook Islands); many other Parties have indicated that they have already started the process of ratification of the 2006 amendments.

4 PROPOSED DRAFT ASSEMBLY RESOLUTION

4.1 As indicated in paragraph 2.1, in submitting the amendments to the Convention, the United States also submitted a draft Assembly Resolution.

4.2 The Advisory Committee, at its Nineteenth Session, "*recognised that the Director is already performing some of the functions recommended in the proposed amendments and resolution.*"

4.3 It should be noted that the Rules of Procedure for the Assembly do not provide for Assembly Resolutions, and the Assembly therefore takes decisions.

4.3 The Director submitted to the Eighteenth Session of the Assembly "Arrangements for the Development, Agreement and Apportionment of the Organization's budget", which the Thirteenth Session of the Advisory Committee had recommended that the Assembly adopt. This document deals with the arrangements for developing the Organization's budget for a multi-provider environment. The document was noted by the Assembly without comment.

4.4 The Director is in the process of reviewing these Arrangements to incorporate LRIT-specific budgetary procedures. It is expected that these Arrangements will be reviewed by the Advisory Committee at its Twenty-Second Session, and proposed to the Assembly, as an Addendum to this document, for decision.

4.5 In considering the amendments and draft Resolution proposed by the United States, the Director is of the opinion that the most effective way to meet the aspirations of some Member States will be to combine a short amendment to the Convention with a more detailed set of Procedures to be adopted as a decision by the Assembly. The amendments to the Convention should include no more than the high level terms of reference for the Organization in this regard. Detailed business and operational arrangements are more appropriately included in an Assembly decision element to adopt Procedures which can be modified or amended in the light of experience. Additionally, such Procedures can be implemented immediately with ease.

4.6 Such Procedures could be drafted to cover the concerns expressed by some delegations at the Nineteenth (Extraordinary) Session of the Assembly, the functions that the Director is already performing as recognized by the Advisory Committee at its Nineteenth Session, major elements of the US proposed text, and the Arrangements already agreed by the Advisory Committee at its Thirteenth Session.

4.7 In the Director's view, the adoption of such Procedures would allow a comprehensive legal and administrative framework to be put in place immediately so as to allow IMSO to fully carry out its new functions (both multi-GMDSS providers and LRIT Coordination) without any delay and in line with well established principles of international law and practices of international organizations.

5 COMMENTS RECEIVED FROM IMSO PARTIES

5.1 As indicated in paragraph 2.1, when distributing the amendments submitted by the United States, the Director invited comments thereon.

5.2 Comments were received from Belgium and Qatar, as follows:

Belgium: Mme Marielle Ver Elst, Minister Plenipotentiary, Department of Foreign Affairs, dated 26 July 2007

"In answer to your letter dated 20 July 2007 and to the letter dated 22 June 2007 from the Party of the United States of America, I have the honour to inform you that after consultation with the Belgian Directorate-general Maritime Transport and in view of the American explanatory views on the proposed amendments, the Party of Belgium has no objection to the proposed amendments by the Party of the United States of America to the Convention on the International Mobile Satellite Organization.

However, the Party of Belgium would like to submit to the views of the other Parties the following proposals concerning the text of the proposed amendments by the United States:

*Article 1 Definitions and Article 6 as well as in other Articles where appropriate **add LRIT Regional Data Centres** as was mentioned in our presentations and discussions to take into consideration for example a regional LRIT Data or*

exchange of information Centre in the European Union. (see also Letter dated 10 July 2007 from the Director of IMSO).

*New Article 13 Costs (3) add after... Convention. **However, voluntary funds from the Parties or industry are welcome to pay costs associated with LRIT, in particular during the LRIT start up period.***

Regarding the request by the Party of the United States of America to schedule the regular 2008 Session of the Assembly as early in 2008 as possible, the Party of Belgium is of the opinion that as stipulated in the report of the 19th session of the IMSO Advisory Committee, the Advisory Committee has to consider the issue at its Twentieth Session in December 2007 taking into account the results and calendar of other related organizations and meetings.”

Qatar: Embassy of the State of Qatar, London, dated 1 October 2007

“The Embassy of the State of Qatar presents its compliments to the International Mobile Satellite Organization (IMSO) and, with reference to the Director’s circular dated 20 July 2007, regarding the Proposed Amendments to the Convention of the International Mobile Satellite Organization, has the honour to inform that the competent authorities in Qatar, the Higher Council for Communication and Information Technology, have no objections to the amendments proposed by the USA and contained in the Director’s draft.”

6 DATES FOR THE TWENTIETH SESSION OF THE IMSO ASSEMBLY

6.1 Associated with the amendments was a request by the United States that the regular session of the Assembly in 2008 be scheduled as early as possible. In circulating the amendments as mentioned in the previous paragraph, the Director asked for comments on this request.

6.2 At its Twentieth Session, the Advisory Committee discussed potential dates for the Assembly taking into account the extremely busy conference schedule for 2008 as well as the workload for the Assembly Session, and agreed to recommend that the Twentieth Session of the IMSO Assembly should be held from 29 September to 3 October 2008.

7 ACTIONS REQUIRED

The Assembly is invited:

- (a) to consider the amendments to the IMSO Convention proposed by the United States;
 - (b) to consider the legal advice provided by IMO regarding legal implications to further amendments being introduced to the IMSO Convention in relation to the 2006 amendments; and
 - (c) to consider the draft Assembly Resolution proposed by the United States.
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**TEXT OF LETTER FROM THE IMO DIRECTOR OF LEGAL AFFAIRS AND
EXTERNAL RELATIONS DIVISION
TO THE IMSO DIRECTOR
DATED 24 JULY 2007**

Dear Mr Pacha-Vicente

On behalf of the Secretary-General, I acknowledge receipt of your letter dated 10 July 2007, reference number IMSO/2007/IMO/018, concerning amendments to the IMSO Convention being proposed by the United States to provide the legal framework for IMSO to perform the functions and duties of the LRIT Co-ordinator, with your request for our views on any legal implications to further amendments being introduced to the IMSO Convention in relation to the 2006 amendments which were adopted at the Eighteenth Session of the IMSO assembly and which are provisionally applicable from 7 March 2007, pending their formal entry into force. I have been asked to respond to you on behalf of the Secretary-General.

The amendments proposed by the United States appear to be consistent, in substance, with the decisions taken by the Maritime Safety Committee regarding the introduction and operation of the LRIT. Whether they are needed, in light of Article 4 (Other Functions) which is included in the 2006 amendments referred to above, and which explicitly provides authorization for IMSO to assume functions and/or duties of the LRIT Co-ordinator, must be left to the judgement of the IMSO Assembly.

With respect to drafting, we have one observation on the US proposal for subparagraph (h) of Article 11 (Assembly – Functions) which would require the IMSO Assembly “to review and approve any amendment made by the MSC to section 14 of the Annex to Resolution MSC.210(81).” Because the proposed amendments would presumably obligate IMSO to perform the LRIT Co-ordinator functions pursuant to arrangements agreed by MSC, we would raise a doubt about a process that also requires to the IMSO Assembly to “approve” the amendments already agreed in that Committee. There would theoretically be a risk that the IMSO Assembly would balk at or wish to revise the amendments already agreed by MSC, and this possibility should be avoided.

With regard to your concern about amending amendments which are not yet in force, we believe this can pose a problem from a treaty-making point of view. It is not possible to amend an amendment that is not yet in force. The amendments adopted in 2006 are not in force and therefore are not yet subject to the amendment process of Article 19 of the IMSO Convention. (We note that one third of the 91 Parties to the IMSO Convention must deposit instruments of acceptance before the 2006 amendments can come into force; and no such instruments have been received.) Where proposals have been made in the past to amend amendments to IMO Conventions which were not yet in force the amendments were actually scheduled to come into force on a specific date (under the tacit amendment process)

and an amendment could be adopted in reasonable anticipation of the coming into force of the text which was being modified. In effect, the amendment was then to a text which was already in force. The fact that the IMSO Assembly has agreed to apply the 2006 amendments on a provisional basis does not alter the fact that those amendments are not yet in force and therefore cannot be amended in their current form.

This is not to say that the IMSO Assembly could not consider and, if appropriate, adopt the proposed amendments subject to certain conditions. For example, the US proposals could be adopted with an explicit understanding that they would not come into force until some period (presumably 120 days as set in Article 19) after the date on which the 2006 amendments have entered into force; and, then, using the precedent of provisional application which has been agreed for the 2006 amendments, the amendments to expand the text for LRIT functions could also be the subject of provisional application (and provisional application of the 2006 amendments would be withdrawn). Alternatively, if the US proposals make no substantive change but simply involve consequential re-numbering of the paragraphs in the 2006 amendments and are a total replacement of those amendments, then the IMSO Assembly could adopt the US “package” as amendments to the text of the Convention which is currently in force, subject to the following conditions: (a) the Assembly would withdraw provisional application of the 2006 amendments and adopt a resolution calling on States not to adopt them; and (b) the Assembly would agree to apply the new set of amendments (i.e., the US package as adopted) on a provisional basis. Obviously, one important aim is to avoid a situation where two sets of incompatible amendments – even those involving editorial matters such as numbering – come into force.

We hope the above observations are helpful.

Yours sincerely,

[signed]
Dr Rosalie P. Balkin
Director, Legal Affairs and
External Relations Division

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ASSEMBLY/20/13
ANNEX II

**TEXT OF LETTER FROM UNITED STATES
RECEIVED 3 DECEMBER 2007**

S2013

ASSEMBLY/20/13
ANNEX III

**TEXT OF LETTER FROM IMSO DIRECTOR
DATED 7 DECEMBER 2007**

**STATEMENT BY THE UNITED STATES
MADE AT THE TWENTY-FIRST SESSION OF THE
ADVISORY COMMITTEE**

The United States supports LRIT and wishes LRIT to be implemented as soon as possible. As the Committee is aware, and as has been stated previously, the United States is in the process of implementing the IDE on an interim basis.

The United States recognizes IMSO as the LRIT coordinator, as appointed by the MSC. The United States' concern is that if IMSO is to provide the LRIT Coordinator service, it should carry out this function in a proper manner.

The United States believes that a one sentence amendment to the IMSO Convention is insufficient. This does not provide the necessary framework to undertake the functions and duties of the LRIT Coordinator, and does not comprehensively address issues of governance, accounting, authority for contracts, etc.

The text of the present IMSO Convention relates primarily to GMDSS oversight – the reason IMSO was established – and many Articles in the Convention refer to GMDSS. Looking at the LRIT Business Plan, the IMSO Budget is divided approximately equally between GMDSS and LRIT activities. It only makes sense that a reasonable portion of the Convention of the Organization is devoted to LRIT. At least some Articles – and a framework – are needed for LRIT.

The United States believes that further amendments to the Convention are necessary and has proposed a draft set of amendments which set forth suggested amendments.

An informal correspondence group has been established to discuss the proposals in the hope of developing a consensus position on a set of necessary amendments. The United States urges all Parties to participate fully so as to arrive at the Assembly as informed and prepared as possible.

It should be noted that there is a clear difference between provisional application and entry into force. Amendments can only enter into force under the IMSO Convention when an appropriate number of Parties have ratified them. Provisional application means that the amendments are applied by the Parties agreeing to their provisional application as if they were in force prior to their entry into force.

The United States would like to point out that the Vienna Convention of the Law on Treaties sets forth the duties of the Depositary. In accordance with the provisions of Article 77 of the Vienna Convention, the Depositary is not responsible for, nor required to nor expressly authorized to provide any legal opinions. Therefore, the IMO legal opinion is certainly not binding on IMSO. IMSO is an independent

intergovernmental organization and should not rely on another independent governmental organization, like IMO, for legal advice.

In response to the letter from the IMO Director of Legal Affairs, the United States is pleased that she agrees that the amendments proposed by the United States are consistent in substance with decisions taken by the IMO Maritime Safety Committee regarding the introduction and operation of LRIT.

The United States believes that there is no problem with consideration and adoption of the proposed United States amendments as a matter of international law, for two reasons:

Firstly, there is no limitation in the IMSO Convention that would prevent the consideration of the proposed amendments by the IMSO Assembly at its next regular session. The only restriction in the IMSO Convention relates to time periods between submission and circulation and consideration of the amendments. The United States and the Directorate have complied with that restriction.

Secondly, there is no prohibition in the IMSO Convention or elsewhere in international law to adopting amendments to previously adopted text before formal entry into force.

A noted text on international law (Aust, *Modern Treaty Law and Practice*, 222,23 Cambridge 2000) states "it may be necessary to amend a multilateral treaty even before it has entered into force". And "it is not uncommon for bilateral treaties to be amended before they have entered into force". *

The United States sees no legal bar to considering amendments once the required six months period between circulation and consideration has past.

The IMO Director of Legal Affairs does agree that there is no legal bar by stating that the Assembly could "consider, and if appropriate, adopt the proposed amendments subject to certain conditions".

The United States is sensitive to concerns about avoiding a situation with incompatible amendments entering into force.

The United States believes such a situation could be avoided. The proposed United States amendments are consistent with the amendments adopted by the Eighteenth Session of the IMSO Assembly and merely build on those amendments. The IMO Legal Director indicated there are several approaches to resolving any technical matters, including adopting a new package of amendments. An Assembly Resolution, similar to that already proposed by the United States, to handle administrative matters, could include an explanation of the adoption of new amendments.

- Examples: 1958 amendments to 1956 Olive Oil Agreement before entry into force; 1994 Agreement Amending the United Nations Convention on the Law of the Sea (prior to entry into force).
- 1971 Agreement re INTELSAT. In 2000, amendments were adopted despite the pending 1995 multi signatory amendment.



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Captain Esteban Pacha-Vicente
Director
International Mobile Satellite Organization
99 City Road
London EC1Y 1AX
United Kingdom

Dear Captain Pacha:

We are in receipt of your letter of 20 July 2007 to the Secretary-General of the International Maritime Organization (IMO), seeking IMO views on the amendments to the IMSO Convention proposed by the United States of America, as well as the 24 July 2007 response to that letter from the Director of Legal Affairs at the IMO. Both documents were circulated to all Parties to the International Mobile Satellite Organization (IMSO) Convention by your communication dated 28 August 2007.

We are pleased to learn that the IMO Director of Legal Affairs appears to agree that the amendments proposed by the United States are consistent, in substance, with the decisions taken by the Maritime Safety Committee (MSC) regarding the introduction and operation of Long-Range Identification and Tracking of ships (LRIT). We believe that the amendments proposed by the United States to the IMSO Convention are fully consistent with the decisions taken by the MSC regarding LRIT and have the best chance of timely advancing implementation of LRIT on a sound legal basis. However, we must take issue with her assertion that the amendments proposed by the United States can pose a problem as a matter of treaty-making because they are "amending amendments that are not yet in force." This is simply not the case. There is no problem with the amendments proposed by the United States as a matter of international law.

First, there is no limitation in Article 18 of the IMSO Convention that would restrict the consideration by the IMSO Assembly of such amendments. Article 18(1) of the IMSO Convention¹ that is currently in force between the Parties states as follows:

¹ We would note that the IMO Director of Legal Affairs refers in her letter to "Article 19" of the IMSO Convention, which appears to be in error. The relevant Article of the IMSO Convention currently in force is Article 18, which deals with amendments to the Convention. Article 19 of the IMSO Convention currently in force concerns the duties of the Depository of the Convention (which is the Secretary-General of the IMO). Article 19 is not, so far as we have been able to ascertain, relevant to this discussion.

Amendments to this Convention may be proposed by any Party and shall be circulated by the Director to all other Parties and to the Company. The Assembly shall consider the amendment not earlier than six months thereafter, taking into account any recommendation of the Company. This period may in any particular case be reduced by the Assembly by a substantive decision by up to three months.

As is evident, there are no restrictions in Article 18 on the nature of the amendments which may be offered by any party. Rather, the only restriction concerns the period of time after which the amendments may be considered by the Assembly of Parties. Hence, the amendments offered by the United States are fully consistent with IMSO procedures concerning consideration of amendments.

Second, there is no prohibition in the IMSO Convention or elsewhere in applicable international law to adopting amendments to previously adopted treaty text before that treaty text has formally entered into force. As one treatise on the subject notes, providing several examples, “[i]t may be necessary to amend a multilateral treaty even before it has entered into force” and “it is not uncommon for bilateral treaties to be amended before they have entered into force.” A. Aust, Modern Treaty Law and Practice 222-23 (Cambridge 2000). The examples provided by Aust of multiple amendments in the context of multilateral treaties include a 1958 amendment to the 1956 Olive Oil Agreement (prior to its entry into force) and a 1994 Agreement amending implementation of Part IX of the 1982 U.N. Convention on the Law of the Sea (also prior to its entry into force). The United States is also aware of another example that concerns amendments to the 1971 Agreement Relating to the International Telecommunications Satellite Organization or INTELSAT. In August, 1995, the 20th INTELSAT Assembly of Parties held in Copenhagen agreed to an amendment to the INTELSAT Agreement that would allow for Multiple Signatory arrangements to the INTELSAT Agreement for countries that wished to adopt such arrangements. In November, 2000, while this Multiple Signatory amendment was pending ratification, the 25th INTELSAT Assembly of Parties in Washington, D.C. adopted a package of amendments that privatized the operations of INTELSAT and entirely eliminated the provisions in the INTELSAT Agreement relating to signatories. The 2000 amendments received the necessary number of acceptances/ratifications from INTELSAT member states and came into force in 2003, notwithstanding the continuing pendency for ratification (even to this day) of the 1995 Multiple Signatory amendment.

In sum, there is no legal prohibition to adopting amendments to previously adopted treaty text before that treaty text has formally entered into force and, as Aust notes, in some cases such amendments are necessary. As the United States explained in the Explanatory Notes submitted with its amendments to the IMSO Secretariat for circulation to all IMSO Parties and Observers, the United States believes that the package of amendments that it submitted are needed to provide the necessary legal framework to allow IMSO to carry out LRIT Co-ordinator functions and duties:

[T]he United States strongly believes that the one sentence amendment adopted at the Eighteenth Session of the IMSO Assembly is substantively deficient and does not provide the necessary legal framework for IMSO to undertake the necessary functions and duties of the LRIT Co-ordinator, as established by the IMO.

The one sentence amendment does not comprehensively address issues facing IMSO in taking on the role of LRIT Co-ordinator. It does not provide for essential elements of governance, it does not provide for essential accounting between IMSO's role as GMDSS overseer and as LRIT Co-ordinator, and, it does not provide any guidance or authority with regard to entering into contractual relationships for LRIT services.

In short, the United States sees no legal bar to consideration and adoption of the amendments it has proposed by the IMSO Assembly once the six month period established by Article 18 of the IMSO Convention has expired (approximately 20 January 2008). In our 22 June 2007 letter transmitting those amendments to you, we requested that an Assembly meeting be scheduled in as early in 2008 as possible in order to meet the IMO's schedule for the implementation of LRIT. We reiterate that request at this time.

In fact, notwithstanding her statement that the United States proposal "can pose a problem," the IMO Director of Legal Affairs ultimately agrees that there is no legal bar and states that the IMO Assembly could "consider, and if appropriate, adopt the proposed amendments subject to certain conditions." We are sensitive to the concern expressed by the IMO Director of Legal Affairs about avoiding a situation with incompatible sets of amendments entering into force. The United States believes that such a result must and can be avoided. The amendments proposed by the United States are consistent with the amendments adopted by the Assembly in 2006 and build on the work already carried out by the Assembly at that time (while making minor adjustments to those amendments to accommodate the new provisions proposed by the United States concerning LRIT). As the IMO Director conceded at the end of her letter, there are several possible approaches to resolving these technical matters, including adoption by the Assembly of a new "package" of amendments (presumably containing the 2006 amendments, as modified by the most recent United States proposals) or inclusion of language in an Assembly resolution clarifying for Parties the order in which amendments adopted by the Assembly both in 2006 and subsequently would enter into force. In that connection, we would note that the United States has already proposed an Assembly resolution to clarify certain administrative matters and perhaps these concerns could also be reflected in that resolution. We are prepared to discuss these (and other possible approaches) with you as we move forward to a prompt Assembly meeting in early 2008.

Lastly, we would note that the IMO Director of Legal Affairs expressed concern about the United States proposal for Article 11(h), which would authorize the Assembly "to review and approve any amendment made by the MSC to section 14 of the Annex to Resolution MSC.210(81)." In that connection, we would note that, while the IMSO has expressed its willingness to the IMO to perform the LRIT Co-ordinator functions, the IMSO is a separate and distinct international organization from the IMO. The United States has previously expressed its concern about

creation of a situation where “the functions of the IMSO could expand based on decisions of a separate international organization,” a situation the United States would view as unacceptable. As a separate and distinct organization, the IMSO is not subject to the control of any other body and has the final determination over what tasks it will (and will not) perform. Article 11(h) simply seeks to preserve that state of affairs

Finally, we would like to observe that we respect and appreciate the efforts made by the IMO Director of Legal Affairs in addressing the request of the IMSO Director. However, we believe that the IMSO Director should in the first instance seek such advice from the IMSO Parties directly rather than seeking it from the legal counsel of a separate and distinct international organization.

We would request that you circulate a copy of this letter to all Parties to the IMSO Convention for their consideration.

Sincerely,



J.G. LANTZ
Director of Commercial Regulations
and Standards
U.S. Coast Guard



To: All Parties to the IMSO Convention

From: IMSO Director

Subject: **LEGAL OPINION ON THE AMENDMENTS TO THE
IMSO CONVENTION SUBMITTED BY THE UNITED
STATES**

Date: 7 December 2007

Reference: **IMSO/2007/MS/015**

Dear Sirs

I have the honour to refer to my letter **IMSO/2007/MS/012** dated 28 August 2007 by which I transmitted to IMSO Member States legal advice from the IMO Director of Legal Affairs and External Relations Division, dated 24 July 2007.

On 3 December, I received the attached letter from the United States, with the request for its circulation to all IMSO Parties for their consideration.

I have discussed this letter with the IMO Legal Office, as Depositary to the IMSO Convention, and have today responded to the United States, as attached.

I would draw your attention to the following salient points:

- the provisional application of the 2006 amendments to the IMSO Convention has been notified to all Parties as per IMO Circular Letter INMARSAT.6.Circ.1 dated 3 July 2007 and has also been registered with the Secretariat of the United Nations by the Depositary.
- I understand that no notifications regarding termination of the provisional application of the 2006 amendments to the IMSO Convention have been received in respect of any State as per article 25 of the Vienna Convention on the Law of Treaties, and

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have been advised that the amendments are therefore applicable to all Parties from 7 March 2007.

- the suggestion of the United States that the IMO Director of Legal Affairs "... appears to be in error ..." in referring to Article 19 of the IMSO Convention is therefore not borne out by the fact of the provisional application of the 2006 amendments.
- it is entirely proper that IMO should be asked to provide advice on matters that fall entirely under its functions as Depositary.
- the IMSO Advisory Committee specifically requested me to seek this legal advice from the IMO Secretary-General, and the Delegation of the United States to the Committee did not object to the request.

I have therefore most strongly rejected any implication by the United States that I may have acted improperly in requesting legal advice from the Depositary of the IMSO Convention. **There is no doubt that IMSO and IMO have acted with the utmost propriety in this issue.**

Yours faithfully



Esteban Pacha-Vicente
Director

IMSO



International
Mobile Satellite
Organization

Mr. J G Lantz
Director of Commercial Regulations and Standards
United States Coast Guard
2100 Second Street, S.W.
Washington, DC 20593-0001
United States

7 December 2007

Dear Mr Lantz

Thank you for your undated letter file number 1500, which was received in this office on 3 December 2007, in which you provide your response to my communication of 28 August 2007 concerning the advice I have sought and received from the Director of Legal Affairs of the International Maritime Organization (IMO), on behalf of the IMO Secretary-General and in his capacity as Depositary of the IMSO Convention.

I note that your letter is written throughout from a perspective which does not take into account the decisions of the Nineteenth (Extraordinary) Session of the IMSO Assembly, which decided, *inter alia*:

"7.5 ... that the amendments to the IMSO Convention adopted at the Eighteenth Session of the Assembly should enter into force on the basis of provisional application from 7 March 2007, pending their formal entry into force in accordance with Article 18 of the IMSO Convention."

and

"7.6 ... that such provisional application would mean that Parties will conduct themselves, in their relationships with each other and the Organization, within the limits allowed by their national constitutions, laws and regulations, as if the amendments were in force with effect from such date."
(ASSEMBLY/19/8, Record of Decisions)

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Website: www.imso.org

The provisional application of the 2006 amendments to the IMSO Convention has been notified to all Parties as per IMO Circular Letter INMARSAT.6.Circ.1 dated 3 July 2007 and has also been registered with the Secretariat of the United Nations by the Depositary.

I understand that no notifications regarding termination of the provisional application of the 2006 amendments to the IMSO Convention have been received in respect of any State as per article 25 of the Vienna Convention on the Law of Treaties, and have been advised that those amendments are therefore applicable to all Parties from 7 March 2007, on the basis of the above mentioned decisions*.

Your suggestion that the IMO Director of Legal Affairs "... appears to be in error" in referring to Article 19 of the IMSO Convention is therefore not borne out by the fact of the provisional application of the 2006 amendments.

I would like to address your final remarks regarding your belief that "... the IMSO Director should, in the first instance seek such advice from the IMSO Parties directly rather than seeking it from the legal counsel of a separate and distinct international organization".

While IMO is undoubtedly a separate and distinct international organization, in this respect IMO, as Depositary, acts on behalf of the IMSO Parties under the IMSO Convention, and it is entirely proper that IMO should be asked to provide advice on matters that fall entirely under its functions as Depositary.

May I remind you also that the IMSO Advisory Committee, which is a representative body elected by the Assembly of Parties, specifically requested me to seek this legal advice from the IMO Secretary-General, as follows:

*"8.4.4 Other Members raised that there may be legal implications to further amendments being introduced to the IMSO Convention in relation to the 2006 amendments, and **the***

* IMO Circular Letter INMARSAT.6/Circ.1 of 3 July 2007 and IMO document A25/21, Report on the status of conventions and other multilateral instruments in respect of which IMO performs functions, Annex, paragraph 29, refer.

Committee requested the Director to seek advice from IMO as the Depository of the Convention.
(IMSO/AC/19/Report)

You will note that the Delegation of the United States to the Committee did not object to the request.

I therefore most strongly reject any implication by the United States that I may have acted improperly in requesting legal advice from the Depository of the IMSO Convention. There is no doubt that IMSO and IMO have acted with the utmost propriety in this issue.

In the main body of your letter, you argue at length in favour of your position that: "*... the United States sees no legal bar to consideration and adoption of the amendments it has proposed by the IMSO Assembly ...*". Indeed, you state quite clearly the opinion of the United States that the advice provided by the IMO Director of Legal Affairs "*... is simply not the case*". Parties will no doubt express their own opinions on this matter in their own time. However, I have taken steps to ensure that the Advisory Committee will have the opportunity to consider the matter further at its 20th session, to be held 11 to 13 December 2007, under Agenda Item 8.2.

I specifically invited comments from all Parties on the United States' proposed amendments in my letter to them dated 20 July 2007. Once I have received all comments from Parties on this issue, it is my intention to collate them into a single document for consideration by the Assembly at its next session, following normal practice.

Regarding your request for an early session of the IMSO regular Assembly in 2008, in my letter to all Parties dated 20 July 2007, I drew attention to your request and invited Member States to comment on that proposal. In its consideration of the issue, the Advisory Committee, at its nineteenth session, agreed to consider the issue at its next session "*as it was not in a position to make a decision at this session taking into account its work programme*" and will therefore consider the date of the next regular session of the Assembly at its 20th session, under Agenda Item 8.4 (document IMSO/AC/20/8.4 refers).

In this context, I note with satisfaction your proposal for "... *an Assembly resolution to clarify certain administrative matters ...*" and your willingness to discuss these and other possible approaches. You will undoubtedly recall that, during and since the last Assembly, I have consistently spoken in favour of an amplifying Resolution to be adopted by our Assembly to address any outstanding issues. I am of the opinion that such a Resolution may allow a comprehensive legal and administrative framework to be put in place immediately so that IMSO is able to fully carry out its new functions without any delay and perfectly in line with well established principles and practices of international organizations. I look forward to further constructive discussions on this subject at your convenience.

Finally, I would like to confirm that, in accordance with your request, I am therefore circulating a copy of your letter, and my comments on it, to all Parties to the IMSO Convention, as well as to the Depositary of the Convention.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Esteban Pacha', is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Esteban Pacha
Director