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3 – 4 October 2005

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**REPORT OF THE TWELFTH MEETING OF THE
ADVISORY COMMITTEE**

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REPORT OF THE TWELFTH MEETING OF THE ADVISORY COMMITTEE

1 OPENING OF THE MEETING

The Advisory Committee met at IMSO Headquarters on 3 and 4 October 2005. The Agenda, List of Participants and Terms of Reference are attached at Annexes I to III, respectively, to this Report. The representative of the Russian Federation, the delegate from the United States Department of Commerce, and the observer from Portugal attended via conference call.

2 APPOINTMENT OF CHAIRMAN

2.1 The Committee was informed that Mr Mohamed Dukuly of Liberia was no longer available to be Chairman, and noted that the Director had consulted among some members of the Committee regarding an appropriate replacement. The results of the consultation were circulated to all members of the Committee on 21 September 2005.

2.2 The Committee decided to appoint Captain Esteban Pacha Vicente, the Permanent Representative of Spain to IMO, as Chairman of the Committee, by acclamation. Captain Esteban Pacha thanked the Committee for the honour that had been bestowed on him personally and on the Party of Spain.

2.3 In response to a question concerning the procedures for consultation and appointment of the Chairman, the Director explained that, under its Terms of Reference, the Committee appoints its own Chairman.

2.4 The Committee expressed its appreciation to Mr Mohamed Dukuly for the excellent and fair manner in which he had chaired the Ninth to Eleventh Sessions of the Committee.

3 APPROVAL OF AGENDA

The Committee approved the Agenda, which is attached at Annex I.

4 **OUTCOME OF THE ELEVENTH SESSION OF THE ADVISORY COMMITTEE**

The Committee noted the report of its Eleventh Session, which was held on 24 and 25 May 2005. The report was sent to all Parties on 24 June 2005.

5 **DRAFT REFERENCE PUBLIC SERVICES AGREEMENT**

5.1 The Committee agreed that representatives of the present and potential future providers could attend the meeting for discussions on the draft Reference Public Services Agreement, as observers, and they were encouraged to contribute to the discussions on the draft Reference Public Services Agreement. Delegations from Inmarsat and Iridium therefore joined the meeting for this agenda item.

5.2 The Committee recalled that, at its Eleventh Session, it had agreed most of the Clauses of the draft Reference PSA, with only a few items remaining in square brackets, as indicated in Annex V to the Report of that Session, and agreed that it would finalize its consideration of the text of the Reference Public Services Agreement at its next meeting, following which it would invite the Director to submit the document to the Assembly for approval.

5.3 The Committee noted document AC/12/2, which had been submitted by the Director, "Draft Reference Public Services Agreement and Amendments to IMO Resolution A.888"; in particular the text of the draft Reference PSA. In this regard, the Committee recalled that:

- (a) the IMO MSC has requested IMSO to agree to undertake the oversight of multiple satellite operators providing GMDSS services, and the IMSO Assembly has already agreed to do so, subject to appropriate amendment to the IMSO Convention; and
- (b) subject to amendment of the IMSO Convention, the new oversight regime for GMDSS satellite services will be based on a revised IMO Assembly Resolution A.888(21) and a new Reference Public Services Agreement between IMSO and each GMDSS satellite service provider.

5.4 In considering document AC/12/2, the Committee noted that, since its last session:

- (a) the Secretariat had met with Mr Vos, Adviser, Government Relations, Inmarsat, and discussed the outcome of the Eleventh Session of the Advisory Committee in relation to the PSA; Mr Vos had been invited to consult with other members of the informal group of potential providers in this respect; and
- (b) the Director and the Head of Technical Services had met with members of the IMO Secretariat to discuss both the draft Reference Public Services Agreement and the amendments to IMO Resolution A.888(21).

5.5 The Committee also noted that document AC/12/2 incorporated the outcome of informal consultation between the Secretariats of IMO and IMSO concerning the development of text comprising the duties and responsibilities of both organizations for the GMDSS regime, which had been requested by the Committee. The results of the consultation led to the following conclusions:

- (a) thorough analysis of the texts of the constituent instruments of IMO and IMSO clearly indicated that:
 - (i) the IMSO Convention gives IMSO the direct right to oversee commercial mobile satellite communications operator(s) (Article 4 applies); the IMO Convention does not provide the same scope for IMO;
 - (ii) the IMSO Convention provides IMSO with the legal mandate to conclude contractual arrangements (such as the PSA) with a private company (Article 4 again applies); the IMO Convention does not provide the same scope for IMO; and
 - (iii) the IMSO Convention specifically exonerates IMSO from liability (Article 11 applies); the IMO Convention does not provide such a protection clause;

- (b) the practical consequences of these differences in the legal status of the two organizations are significant:
- (i) IMSO cannot oversee satellite communications operators on behalf of IMO nor share such responsibility with IMO because IMO has no legal mandate to do so; IMSO can carry out such oversight solely on the basis of the IMSO Convention, and take full responsibility for its actions, as at present;
 - (ii) IMO policies, standards and regulations do not apply directly to the satellite communications operator(s); they will apply to the operator(s) on the basis only of contractual arrangements (PSA) between IMSO and each satellite communications operator, as is done in respect of Inmarsat plc; and
 - (iii) whilst IMSO could conceivably be sued by a satellite communications operator, IMO Parties are not legally liable for their actions nor for the consequences of those actions; however, IMO Parties would be liable when sued;
- (c) in the light of the above analysis, and considering that IMO has already decided that the international oversight provided by IMSO of GMDSS in respect of Inmarsat plc shall be extended to all other potential providers of mobile satellite services for the GMDSS, it is essential to establish a CLEAR CUT principle between the regulatory functions of IMO and the oversight functions of IMSO, as envisaged in the constituent instruments of both organizations, and to reflect this principle harmoniously in the Reference Public Services Agreement and IMO Resolution A.888;
- (d) in practical terms, this clear cut principle means that IMO must continue to confine its role as regulator to the establishment of standards and regulations within which IMSO and the operators would work, and may choose, through the Maritime Safety Committee, to establish relevant policies and express general views on the subject, leaving the implementation of those policies, standards and regulations to IMSO; and

- (e) this has been reflected in the latest text of the draft Reference Public Services Agreement and in the amendments to IMO Resolution A.888.

5.6 The Committee thanked the Director and the Secretariat for clearly outlining the legal issues. The representatives of Japan, Italy and Denmark informed the Committee that they had each received legal advice that the clear distinction, which specifies IMSO as the responsible organization for oversight of GMDSS, as detailed in the present draft of the draft Reference PSA, is the correct approach. In the light of this, the majority of members of the Committee agreed that this principle should form the basis for the draft Reference PSA and the revision of Resolution A.888. However, some members of the Committee were not in a position to support the principle at this time because they had not yet received legal opinion on the issue.



5.7 In this regard, the representative of the United States informed the Committee that he would be unable to agree specific parts of the text of the draft Reference PSA at this session, including: “Whereas (b)”, the definition of GMDSS services, paragraphs 2.1, 2.1.2, 2.1.3, 6.2, 6.3, 7.9, 8.5 and Annexes 1 and 2.

5.8 The Committee also noted information provided by Inmarsat that the providers had not yet had the opportunity to complete their review of the new version of the Reference PSA. On behalf of the Providers, Inmarsat also informed the Committee that, from the Providers perspective, the following issues remained to be resolved in the draft text:

- (a) the period of agreement of five years, which the providers considered was too long in a commercial arrangement;
- (b) the need for an appeal procedure since, with IMO no longer part of the consultation process, the only resort for providers in the event of dispute would be the arbitration process;
- (c) the winding up procedure (Clause 12), which does not take account of the common practice of banks to insist on the right to wind up a company under certain circumstances when making loan finance available to that company;
- (d) the determination and apportionment of costs; and

- (e) the procedures for evaluation and verification of services by a independent Group of Experts, as presently proposed, required further clarification as to how the group would be constituted and funded.

5.9 The Committee noted the concerns expressed by the Russian Federation which are set out in Annex IV to this Report.

5.10 The Committee therefore reviewed the draft Reference Public Services Agreement, taking into account the new "clear distinction" principle proposed by the IMO and IMSO Secretariats, and the issues that remained outstanding from the perspective of the Providers.

5.11 In conducting this review, the Committee:

- (a) noted that the legal and procedural framework proposed by the IMO and IMSO Secretariats is reflected in the present draft reference PSA, and the IMO COMSAR Correspondence Group is working on the text of revised Resolution A.888 to accommodate the same legal and procedural framework; it will be essential to ensure that both documents are consistent;
- (b) agreed that an independent Group of Experts would be needed to evaluate and verify the operational, technical and other characteristics of services being proposed for inclusion in the GMDSS if IMO establishes the regulatory framework under which IMSO undertakes oversight responsibility, and invited the Director to explore how such a Group of Experts could be established and to develop the constitution, terms of reference and costs for such a Group, and present this at the next Committee meeting;
- (c) agreed that each provider should bear the costs of its own evaluation, including the whole cost of the independent Group of Experts convened to evaluate and verify its GMDSS services, if these functions are performed by IMSO;
- (d) discussed the notice period in Clause 2.1.4, and recognised the desire of the Providers to limit this period, perhaps to no more than three years; however, in view of the precedent already established

by IMO in relation to the closure other GMDSS satellite services, in which IMO had preferred a period of eight or ten years and only reluctantly accepted a period of five years, agreed to retain the figure of five years in the draft text; in order to provide the Director with some flexibility in the application of this Clause, the Committee advised the Director to add the word "... normally ..." into the notice requirement stated in the Clause;

- (e) reviewed the confidentiality clause in paragraph 5.3 in the context of certain national "freedom of information" requirements but considered that the phrase "subject to national laws and regulations" would take care of any concerns in this regard;
- (f) noted that the appeal and arbitration processes in Sections 7 and 8 no longer included the possibility of appeal to IMO; noting also that the PSA provided for an escalating scale of informal and formal consultations to resolve any disputes, with arbitration as a last resort; the Committee agreed that flexibility should be provided to give either party the right to appeal, at its own cost, in the event of a dispute, to the Advisory Committee; the Committee requested the Director to develop a procedure for inclusion in the final Reference PSA;
- (g) considered the matter of the formula for budget apportionment and costs; in this regard the Committee noted the opinion of the United Kingdom that an equal division of the total GMDSS-related costs of the Organization between all providers subject to oversight by the Organization could be the most equitable way forward; the Committee noted that the Director will develop proposals on the formula for inclusion in the Organization's budgetary policies;
- (h) discussed the issues raised by the Providers in relation to Clause 12, Winding Up, and the rights of banks to force a company to which they have lent money to wind up under certain circumstances; the Committee agreed with the opinion of the Director that, since the major purpose of the Convention was to maintain stable provision of GMDSS, this clause was essential; the Providers informed the Committee that providers might not be able to sign the PSA if Clause 12 remains in its current form; the Committee considered that, in

relation to the ability of banks to wind up companies to which they had made loans under certain defined circumstances, it could be necessary for the independent Group of Experts to review any such loan arrangements entered into by an applicant Provider before signature of the PSA, and for the Organization to be informed of any such arrangements that might be entered into by a Provider subsequent to signature of the PSA;

- (i) expressed the opinion, in relation to Annex 1, that the procedure whereby a Government applies on behalf of a service provider needs to be defined; the Director indicated that consultations were continuing with IMO, in particular concerning the role of the MSC; the procedure will be clearly set out in the revised Resolution A.888 which was expected to be completed by IMO COMSAR in March 2006; it was anticipated that IMO would decide that an application should be made by a Government to the IMO MSC, which would consider any policy implications but which would not comment on the service, operational or technical attributes of the application, and then forward it to IMSO for evaluation, verification and subsequent decision; and
- (j) agreed that the termination of the current PSA and simultaneous signing of the new PSA with Inmarsat, based on the text of the Reference PSA, would not be possible until after the entry into force of the amendments to the IMSO Convention, either provisionally or formally depending on the decision of the Assembly; until that time, the provisions of the current PSA would continue to apply, and advised the Director to further consider any other practical issues.

5.12 The Committee noted that the Director will further develop the text of the draft Reference PSA for final review at its next session, and encouraged the Director to work with members of the Committee, Inmarsat and potential service providers to resolve the small number of outstanding issues before its next session.

6.1 The Committee noted document AC/12/3, which had been submitted by the Director, "Budget Apportionment between Service Providers"; in particular that, at its Eleventh Session, the Advisory Committee had:

- (a) *noted that the methodology for budget approval and apportionment needed further consideration;*
- (b) *also noted information provided by Inmarsat that, although the operators acknowledge that it is the Assembly that will determine the method of apportioning costs and ultimately setting budgets, following appropriate consultation between IMSO and potential new providers of mobile satellite services for the GMDSS, there also needs to be sufficient certainty to allow operators (and particularly new operators) to plan for expenditure on a medium term basis and to be assured that the budget will be controlled. Inmarsat noted that rolling or longer term budgets and other methods to achieve the twin goals of a strong independent regulator and a fair and transparent method of setting and apportioning budgets could be considered;*
- (c) *noted a suggestion by Colombia: "... that there could be alternative mechanisms for establishing the Budget, including charging fixed fees to the providers according to criteria to be defined. This could have the advantage that the budget would be approved by the Assembly without any intervention by the providers and the Director would assume the responsibility of preparing a detailed annual or biannual budget to be covered by those fees following the principle that the Member States do not have to pay any contribution, as is the current situation."*

6.2 The Committee noted that, since the Eleventh Session of the Advisory Committee, the Director has again met with the group of Inmarsat and the potential providers to discuss issues in relation to the development and apportionment of the budget.

6.3 The Committee also noted that, after a thorough analysis of all the possibilities in this regard, and in the light of experience gained during discussions of this issue with Inmarsat and the potential providers, it is the view of the Director that the present system of developing the budget is a legacy of the privatisation of Inmarsat, and should not be carried forward into

a future when the Organization oversees services provided by multiple providers. The new situation faced by the Organization requires a different approach and in this respect, the proposal by Colombia offers the most advantageous way forward.

6.4 The Committee noted that, based on his analysis, the Director proposed that the arrangements for development, approval and apportionment of the Organization's budget, following amendments to the Convention and implementation of a new Public Services Agreement to allow oversight of more than one provider, should be as follows:

- (a) the Assembly, by means of a Resolution, delegates its annual agreement of the Organization's budget to the Advisory Committee. The Director will be responsible for ensuring that the proposed budget properly identifies and separates the costs of GMDSS oversight from those of any other business the Organization may undertake, and is required to report on the budget to each regular two-yearly session of the Assembly;
- (b) the Director develops detailed budget proposals for the next financial year (year one), plus indicative budgets for the following two years (years two and three), during the third quarter of each calendar year. It is intended that the indicative budget for year two will be sufficiently accurate to allow for realistic financial planning by the Providers, while the budget for year three will be indicative only;
- (c) the Director consults individually and informally with each Provider, during the month of September;
- (d) the Director presents the proposed budget for the following year to the Advisory Committee for agreement, plus the indicative budgets for the following two years for information, at a meeting to be held during October of each year;
- (e) once the Advisory Committee has agreed the Director's budget proposals for year one and noted the proposed budget for year two, the Director will propose, for approval at the same session, the level of Fixed Annual Fee to be paid by each provider subject to oversight by the Organization in year one and the Indicative Level of Fixed

Annual Fee expected to be levied in year two. The level of Fixed Annual Fee will be kept as low as is reasonable. It will be developed by the Director and approved by the Advisory Committee taking account of the agreed budget for the year and any prudent need for contingencies; and

- (f) during the first quarter of each calendar year the Director will report to the Advisory Committee on actual expenditure compared with the approved budget for the previous year. The accounts will be subject to independent audit each year and the Auditors Reports will be provided to the Advisory Committee and the Assembly. The Director may report on expenditure versus budget to the Advisory Committee at any time. The Budget shall be a permanent item on the agenda of the Advisory Committee.

6.5 The Committee also noted that the Director believed that this proposal will have the following advantages for the Organization:

- (a) the proposal features full control of the budget by the Organization;
- (b) the process of budget setting and approval will be totally transparent, independent from any question of influence by the Providers;
- (c) the Organization will have certainty over the level of its income and a formal process for planning future expenditure to meet the operational needs of its oversight task;
- (d) the current practice of returning budget surpluses to Inmarsat will cease, allowing the Organization to adjust its budget to reflect surpluses that may accumulate, in the light of any need for a contingency fund (such as is currently held to cover the possible cost of litigation against the Provider); and
- (e) the same system can be easily extended to include any other function that may, in future, be undertaken by the Organization (for example: LRIT).

6.6 The Committee also noted that the proposed arrangements are broadly similar in their aims, objectives and implementation to those used by Intelsat/ITSO and Eutelsat/Eutelsat IGO.

6.7 The Committee noted that the Director also believed that this proposal will offer a similar level of advantage to the Providers, namely:

- (a) the Providers will have the assurance that the Organization's budget is developed in a transparent environment and controlled by the Assembly;
- (b) the Providers will have certainty at any time in relation to the level of their costs for the current year, and a clear indication of costs in the second and third years to the accuracy within which these can be forecast;
- (c) the current practice of informal consultation with the Providers over the development of the budget will be incorporated into the new PSA; and
- (d) the draft Reference PSA offers the Providers the right to participate as observers and make representations at sessions of the Assembly and Advisory Committee, including those at which the budget is considered.

6.8 The Committee noted that the Director proposed that the Fixed Annual Fee should be set at a sufficient level for recovery of the Organization's costs in relation GMDSS oversight plus any prudent need for contingencies. The Fixed Annual Fee should not take account of the costs of any other business the Organization might undertake. If the Organization were to undertake any such "other business", the Headquarters, Staff and other fixed costs should be apportioned between all the various lines of business.

6.9 One immediately foreseeable example of this is the evaluation and verification within the context of IMO Resolution A.888(21) of the technical capabilities and implementation of GMDSS services by potential new providers. The Director proposed and the Committee agreed that, in order to avoid the cost of such verification falling upon the existing Providers, who will be in commercial competition with any new Provider, such costs should be charged to the applicant Provider concerned, also as a fixed fee to be assessed by the Director and agreed by the Advisory Committee.

6.10 The Committee noted, in relation to the legal and contingency fund that, during the privatisation of Inmarsat, it was recognised that the Organization might need to take legal action to ensure the continuing provision of GMDSS or other services by the company. Such action is expensive, and the costs could not be met out of the Organization's normal budget. Also, it was deemed inappropriate that the Organization should be put in the position of having to request funds for this purpose from the company, which was likely to be a party to any such action and might thus have to fund an action against itself.

6.11 The Committee noted that discussions within the Advisory Committee have suggested that it will be prudent for the Director to have access to a small fund for contingencies, in order to avoid the necessity to draw down additional off-budget funding for unexpected requirements that will arise from time-to-time.

6.12 The Committee noted that the Director proposed that the Organization establishes a Legal and Contingency Fund to enable the Director to meet the cost of arbitration or other legal proceedings, and any unexpected but necessary commitments that may be agreed by the Advisory Committee.

6.13 In summary, the Director was proposing a process by which the Organization's budget can be:

- (a) developed by the Director, as a three-year rolling budget, in informal consultation with the Providers;
- (b) agreed by the Advisory Committee on behalf of the Assembly; and
- (c) paid for by Fixed Annual Fees, set at a level appropriate for each year and agreed by the Advisory Committee.

The Director believes this proposal offers significant advantages to both the Organization and the Providers, and is in line with the clear philosophy developed by the Organization.

6.14 The Committee considered the proposals of the Director in relation to the processes of establishing and apportioning the budget and agreed that it was important that the budgetary processes of the Organization should be transparent. After a wide-ranging discussion, the Committee:

- (a) agreed that the development of the budget is a matter for the Organization and invited the Director to develop proposals for an objective and fair formula for the apportionment of the budget between all Providers that are subject to oversight by the Organization at any time, for review by the Committee; the Committee further invited the Director to take into account the principle that Providers should pay for all oversight services from which they accrue benefit;
- (b) accepting the desire of the Providers to have “*sufficient certainty to plan for expenditure on a medium term basis and to be assured that the budget will be controlled*”, discussed whether the Assembly should approve a biannual budget to be controlled on yearly basis by the Committee, or whether the three-yearly rolling budgetary process proposed by the Director would be better; the Committee concluded that the biennial budgetary procedure was more appropriate for larger international organizations, such as some specialised agencies of the UN, and that the three-yearly procedure proposed by the Director would be more appropriate for IMSO; and
- (c) was informed that the Organization currently held a Legal Fund which had been established upon privatisation in the sum of £100,000; the Committee agreed that it was vital for the Organization to have sufficient funds to be able to take arbitration or other legal proceedings to enforce its decisions against a Provider at any time, and discussed various options for achieving this; these options included establishing a requirement for every Provider to make a contribution to the Organization’s Legal Fund, or alternatively requiring each Provider to deposit a sum with the Organization sufficient for taking action against that Provider only.

6.15 Recalling that Member States do not contribute to the budget and that this principle was embodied in the Convention, the Committee agreed that the following principles should be embodied in the budget apportionment scheme:

- (a) the budget should be established on the three-year rolling basis proposed by the Director;
- (b) the Director's budget proposals should be agreed annually by the Advisory Committee, on behalf of the Assembly;
- (c) the budget should be paid by the providers as a fixed annual fee, payable in advance;
- (d) the full costs to evaluate and verify each new application, including the cost of independent Group of Experts established should be paid by the applicant company; and
- (e) the proposed legal and contingency fund should be established as two separate funds: a Legal Fund and a Contingency Fund, to be used in the event of any litigation and for unexpected financial commitments; the Director should seek the Committee's agreement to any proposed expenditure from these funds.

6.16 The Committee noted that the  Director will further refine the budget apportionment scheme as well as detailed proposals for how the legal and contingency funds will be developed, funded and operated, taking into account comments made.  Members of the Committee and service providers were urged to provide comments to the Director.

7 LONG RANGE IDENTIFICATION AND TRACKING OF SHIPS (LRIT)

7.1 The Committee noted document AC/12/4, which had been submitted by the Director, "Long Range Identification and Tracking of Ships (LRIT)"; in particular that, at its Eleventh Session, the Advisory Committee had "*considered the request from the IMO MSC whether IMSO would be willing and able to undertake the oversight of the LRIT system on behalf of IMO; and had noted that a number of issues should be further considered regarding the oversight of IMSO in the developing LRIT, including:*

- (a) *the implementation timetable within IMO and IMSO, including the correspondence groups and the intersessional working groups which have been established by IMO to work on the principles;*
- (b) *the architecture of the system, including the technical and practical details;*
- (c) *the scope of IMSO's role, as appropriate, and the budgetary and staffing implications; and*
- (d) *the possible reintroduction of one of the amendments to the IMSO Convention proposed by the IWG but which were not pursued by the Assembly at its Seventeenth Session; or an alternative means of incorporating LRIT oversight within the Convention."*

The Committee had also noted that the Director will keep members of the Committee informed of progress in relation to the development of the LRIT system, and will report thereon to the next Session of the Committee.

7.2 The Committee noted that the current amendments to the IMSO Convention, which were approved in principle at the Seventeenth Session of the IMSO Assembly, do not specifically provide for the possibility of IMSO assuming other oversight functions such as are envisaged in relation to LRIT. However, the IWG, in its proposals to the Assembly, had proposed alternative texts to cover such an eventuality as follows:

Either: new paragraph (1) (bis) to Article 3 "Purpose":

"Subject to the decision of the Assembly, the Organization may assume any other [oversight] functions or duties [at the request of xxx]."

Or: new paragraph in Article 9 "Functions of the Assembly:

"At the request of a Member State or at the initiative of the Director, the Assembly can consider a proposal to entrust new functions to the Organization, and the Assembly will take a decision on the proposal in accordance with Article 8."

7.3 Although this proposal was not taken up by the Assembly at its Seventeenth Session, the Director was recommending that the amendment be considered by the next Session of the Assembly, in the light of the developments within IMO, particularly the request from the IMO MSC "whether IMSO would be willing and able to undertake the oversight of the LRIT system on behalf of IMO".

7.4 The Committee considered the proposal made by the Director. While some delegations (Japan, Russian Federation, United States) were not in favour of this proposal arguing that any amendment to the Convention should be done in accordance with its Article 18, other delegations (Marshall Islands, Spain, Liberia) expressed the view that the proposals submitted to the Sixteenth Session of the Assembly and considered by the IWG are still valid and could be taken into account by the next Extraordinary Assembly for that purpose. The United States supported the principle of LRIT oversight but expressed doubts on how this function could be carried out by the Organization.

7.5 The Director informed the Committee that the IMO MSC was convening an intersessional Working Group to consider draft regulations for the SOLAS Convention for implementing the LRIT system and introduced various documents which had been submitted to that session, which were made available at the meeting, as follows:

- (a) MSC/ISWG/LRIT/1/3/2 by 25 countries of the European Union, plus Bulgaria, Norway, Romania and the European Commission, which states in paragraph 4.3:
“The resolution should also address the oversight function, which should be undertaken, according to the co-sponsors, by IMSO on behalf of IMO.”
- (b) MSC/ISWG/LRIT/1/3/3 by Australia and Canada, which refers, *inter alia*, to “requirements relating to ... the oversight function and single oversight body ...”; and
- (c) MSC/ISWG/LRIT/1/3/4 by the Russian Federation, which states in paragraph 9: *“There are no objections that IMSO could be a candidate for oversight LRIT system performance as an organization which oversee the performance of satellite systems ...”*

7.6 The Committee agreed that:

- (a) whether IMSO should carry out the oversight of the LRIT system is a policy matter which goes beyond the current Convention; however, in the light of developments within IMO, it could be appropriate that IMSO carries out this function. It would therefore be necessary to seek amendment to the Convention to enable the Organization to carry out this function;
- (b) any amendment to Convention to enable the Organization to carry out the oversight of LRIT must follow the procedure in Article 18 and should be proposed by a Party six months before an Assembly Session, noting that this period could be reduced to three months by decision of the Assembly; since no such amendment has been put forward in time for it to be considered at the Extraordinary Session in December, the matter could be discussed at the next regular session of the Assembly in the last quarter of 2006, provided an appropriate proposal is made in time, unless the Extraordinary Assembly decides otherwise; and
- (c) IMSO would be *willing* to carry out the LRIT oversight function but it would not be possible to indicate that IMSO is *able* to carry out such oversight until IMO has agreed what the oversight functions would be.

7.7 The Committee noted that the Russian Federation did not associate with paragraph 7.6, as indicated in the statement by the Russian Federation attached at Annex IV to this Report.

7.8 The Committee therefore recommended that the Eighteenth (Extraordinary) Session of the IMSO Assembly decide to respond to IMO that IMSO would be willing to undertake the oversight of the LRIT system within the legal framework established by IMO, but that IMSO was not in a position to state that it was able to undertake oversight of the LRIT system until the operational requirements had been sufficiently developed by IMO.

8 DRAFT INDICATIVE BUDGET FOR 2006

8.1 The Committee noted document AC/12/5, which had been submitted by the Director, "Indicative Report on Financial Accounts for 2005 and Draft Budget for 2006". The Committee noted that the Secretariat is in a state of transition between the financial services provided by the Cospas-Sarsat Finance Officer (who left in July 2005) and those provided under contract by Mazars.

8.2 The Committee noted that, in advance of this Session, the Director had anticipated that the budget for 2005 will be underspent by approximately £17,910. However, this projection did not take into account the additional meetings of the Advisory Committee in November and December, nor the full costs of the Extraordinary Session of the Assembly in December. The Committee also noted the Director's draft indicative budget for 2005, which totalled £522,672, an increase of £23,350 (approximately 6 percent) over the 2005 budget. The Committee noted that a more accurate forecast for 2005 and draft budget for 2006, taking into account actual figures, will be provided to the next Session of the Advisory Committee, at which the Mazars Accountant will be present.

8.3 The Committee noted the suggestion by some delegations that more detailed information should be provided in the budget submission in order to achieve higher transparency, particularly in relation to the Director's travel proposals. However, the Committee considered that it was not appropriate for it to seek to micromanage the Director's budgetary activities and expenditure and did not pursue the idea further.

9 ANY OTHER BUSINESS

9.1 Extraordinary Session of the IMSO Assembly

9.1.1 A few delegations expressed concerns about the dates for the next Extraordinary Session of the Assembly, considering that more work was necessary to finalize outstanding issues relating to the Public Services Agreement. However, the majority of delegations considered it appropriate to maintain the dates of the Assembly but to convene an extra meeting of the

Committee in order to finalize the draft Reference Public Services Agreement.

9.1.2 A statement by the Russian Federation is attached at Annex IV to this Report.

9.1.3 The Committee noted that the Director will formally convene the Eighteenth (Extraordinary) Session on 14 to 16 December 2005, at IMSO Headquarters, for the purpose of adopting the amendments to the IMSO Convention which had been approved in principle at the Seventeenth Session of the Assembly, approving the Draft Reference Public Services Agreement, approving provisional application of the amendments, and dealing with the question from IMO regarding oversight of the LRIT system.

9.2 **Next Regular Session of the IMSO Assembly**

The Committee noted that the next regular Session of the Assembly could be held in the last quarter of 2006. Recalling that the IOPC Assembly will take place during the week of 23 October 2006 and that the ITU Plenipotentiary Conference will take place in November 2006, the Committee noted that the Director would propose suitable dates for the Assembly in December 2006 or January 2007.

9.3 **Dates of Next Meetings of the Advisory Committee**

The Committee agreed that the Thirteenth Session of the Advisory Committee would be held on 15 and 16 November 2005, and that the Fourteenth Session would be held on the day before the Eighteenth (Extraordinary) Session of the Assembly on 13 December 2005.

10 **APPROVAL OF THE REPORT**

The Meeting approved the Report of its Twelfth Session by correspondence.

**AGENDA FOR THE TWELFTH SESSION
OF THE IMSO ADVISORY COMMITTEE**

1. Opening of the Meeting
 2. Appointment of Chairman
 3. Approval of Agenda
 4. Outcome of the Eleventh Session of the Advisory Committee
 5. Draft Reference Public Services Agreement
 6. Budget Apportionment between Service Providers
 7. Long Range Identification and Tracking of Ships (LRIT)
 8. Draft Budget for 2006
 9. Any Other Business
 - 9.1 Eighteenth (Extraordinary) Session of the IMSO Assembly
 - 9.2 Date of the Thirteenth Session of the Advisory Committee
 10. Approval of Report
-

LIST OF PARTICIPANTS

COLOMBIA	Ms Martha Ines Ortegon Second Secretary (Human Rights) Embassy of Colombia, London
DENMARK	Mr Jørgen Rasmussen Chief Ship Surveyor Danish Maritime Authority
ITALY	Rear Admiral ICG Giancarlo Olimbo Maritime Attaché Representative of Italy to IMO Embassy of Italy, London Cdr Cosma Scaramella Italian Coast Guard
JAPAN	Mr Akira Nishihara Director, International Organizations Office International Affairs Department, Telecommunications Bureau, Ministry of Internal Affairs and Communications Mr Shuji Yamaguchi First Secretary Embassy of Japan, London
LIBERIA	Captain Armett E. Hill Acting Permanent Representative of the Republic of Liberia to IMO
MALTA	Ms Anne Marie Sciberras Malta High Commission. London
MARSHALL ISLANDS	Mr David J. F. Bruce Permanent Maritime Representative of the Republic of the Marshall Islands to IMO.
MEXICO	Mr Hector Rodriguez Mexican Embassy, London

POLAND

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RUSSIAN FEDERATION

Mrs Nadya Nesterenko
Morsviazputnik

via conference call

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Mr Guillermo Permanyer
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UNITED KINGDOM

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Office of International Affairs
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INMARSAT

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Mr Nick Rowe
General Counsel

IRIDIUM

Mr Gregory Francis

Mr Christopher Snowdon

IMSO

Mr Jerzy W. Vonau
Director

Mr Andy Fuller
Head of Technical Services

Ms Jenny Ray
Head of Administrative Services

TERMS OF REFERENCE FOR THE ADVISORY COMMITTEE**1 ADVISORY COMMITTEE**

The Advisory Committee established at the Fourteenth (Extraordinary) Session of the Assembly, consisting of 15 representatives from the Parties of Bangladesh, Brazil, Colombia, Denmark, France, Japan, Liberia, Portugal, Romania, the Russian Federation, Saudi Arabia, Tanzania, Ukraine, the United Kingdom and the United States of America will continue to carry out, on behalf of and under delegation from the Assembly, the tasks set forth below, until the next regular session of the Assembly.

2 TASKS

2.1 The Committee shall appoint its own Chairman.

2.2 The Committee shall consult with the Director and give its guidance and advice to the Director on the following matters:

- (a) preparation by the Director of the annual budget of the Secretariat, and accounting and auditing procedures;
- (b) determination by the Director of the staffing structure of the Secretariat, and standard terms of employment of Secretariat staff, and the Staff Rules;
- (c) any proposed action by the Director to convene an extraordinary general meeting of the Holdings Company or initiate arbitration or judicial proceedings in the event of any alleged breach by the Companies of their obligations under the PSA, provided that if the Committee so requests, or the Director so decides, the Director shall convene an extraordinary session of the Assembly to authorize appropriate enforcement action; and
- (d) any other matters delegated by the Assembly.

2.3 The Committee shall monitor the application of the relevant decisions of the Assembly during the transitional period to the new Inmarsat structure and, in this respect, put forward recommendations to the Assembly with a view to guaranteeing the rights of Parties and Signatories, including the possibility of convening an Extraordinary Session of the Assembly.

2.4 The Committee shall approve the regular report of IMSO to the IMO envisaged in Article 4.3 of the Public Service Agreement (PSA), prepared and submitted by the IMSO Director.

3 WORKING METHODS

3.1 The Rules of Procedure for the Assembly shall *mutatis mutandi* apply to the Advisory Committee.

3.2 The Committee shall determine its own working procedures, including the frequency and location of its meetings.

3.3 The Director is requested to provide such practical assistance to the Committee as may be necessary. In arranging its work and holding meetings, the Committee shall endeavour to minimise costs to the extent possible.

4 COSTS

Costs associated with all travel, accommodation and subsistence of the members of the Committee at their meetings shall be borne by their respective Parties.

5 REPORTING TO THE ASSEMBLY AND PARTIES

The Committee shall, through its Chairman or the Director, send regular reports to Parties on the results of its work, and shall also submit a report thereon to the Assembly.

6 TERM OF COMMITTEE'S APPOINTMENT

The term of the Committee's appointment shall be from the Fifteenth Session of the Assembly until the Assembly's next regular session.

STATEMENT OF THE RUSSIAN FEDERATION

Considering the fact that the formal adoption of the Amendments to the IMSO Convention would presume that the new text of the Reference Public Service Agreement (PSA) between IMSO and each future GMDSS satellite service provider, as well as the IMO Assembly Resolution A.888(21) are both approved by relevant bodies, the Russian Federation has serious reservations against holding the Extraordinary Assembly meeting on 14 to 16 December 2005 for several reasons:

- 1) Even though the remaining unresolved issues within the new draft text of the PSA are few in number – they are of a serious and critical nature in substance being for one - the formula to evaluate the apportionment of annual fees to be paid by the Providers to the Organization and the winding down term – neither the AC members nor the Providers have seen or been able to agree on the proposals of the Secretariat and the issues have been delayed until the November meeting of the AC which leaves only 30 days for the Parties to study and evaluate.
- 2) Considering the new principle pronounced at the AC meeting by the Director of IMSO dividing the regulatory functions of IMO and the oversight functions of IMSO, which would lead to an increased workload on the Secretariat, the AC is yet to see a detailed action plan of how the Secretariat plans to cope with the new responsibilities, not to mention how it is going to be supported within the Budget of the Organization, especially considering the fact that the work on Resolution 888 is still in progress and therefore the exact future scope of work required under the new role of the IMSO is still not confirmed by IMO. Again, this matter has been moved to November for further discussion in line with the budget and formula discussions and that in our opinion leaves very little time for the Parties to form an in-depth understanding of the issues at hand.
- 3) In our opinion the AC did not agree on the LRIT issue, not to mention amending the Convention to support this new responsibility of the Secretariat and the Organization. Therefore it is a firm belief of this Party that submitting the LRIT issue as an agenda item for the next Assembly is not possible.

With regards to the above we feel that holding an Assembly meeting in December would be premature. The Seventeenth Session of the Assembly clearly stated that the dates of the Extraordinary Assembly should be debated and decided by the Advisory Committee, and holding an Assembly for the final approval of the proposed GMDSS Amendments to the IMSO Convention rests on the approval of the package of documents supporting the Amendments, i.e. the Draft PSA and Resolution 888 – therefore in our opinion there was no set date - only documental prerequisites, hence moving the date of the Extraordinary Assembly in order to achieve a better prepared and more complete set of documents and thus giving Parties more time to study and evaluate all issues before them is the way forward.