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MARITIME SAFETY COMMITTEE  
83rd session  
Agenda item 6

MSC 83/6/2  
18 July 2007  
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## LRIT MATTERS

### Outcome of the MSC/ISWG/LRIT 2

#### Note by the Secretariat

#### SUMMARY

- Executive summary:** This document contains the report of the intersessional meeting of the MSC Working Group on Long-range identification and tracking
- Action to be taken:** Paragraph 142
- Related documents:** MSC 82/24, paragraph 8.63 and Circular letter No.2787

### REPORT OF THE INTERSESSIONAL MEETING OF THE MSC WORKING GROUP ON LONG-RANGE IDENTIFICATION AND TRACKING

#### INTRODUCTION

1 The Intersessional MSC Working Group on Long-Range Identification and Tracking met from 9 to 13 July 2007 under the Chairmanship of Dr. Sam Ryan (Canada), who was elected at the opening of the session.

1.2 The session was attended by delegations from the following Member Governments:

ALGERIA	MALTA
ARGENTINA	MARSHALL ISLANDS
AUSTRALIA	NETHERLANDS
BRAZIL	NORWAY
BULGARIA	PANAMA
CANADA	PHILIPPINES
CHILE	PORTUGAL
CHINA	REPUBLIC OF KOREA
CYPRUS	ROMANIA
DENMARK	RUSSIAN FEDERATION
EGYPT	SINGAPORE
FINLAND	SYRIAN ARAB REPUBLIC
GERMANY	SWEDEN
GREECE	TURKEY
INDIA	UNITED KINGDOM
IRAN (ISLAMIC REPUBLIC OF)	UNITED STATES
JAPAN	

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1.3 The session was also attended by observers from the following intergovernmental organizations:

EUROPEAN COMMISSION (EC)  
INTERNATIONAL MOBILE SATELLITE ORGANIZATION (IMSO)

and by observers from the following non-governmental organization in consultative status:

INTERNATIONAL RADIO-MARITIME COMMITTEE (CIRM)

#### **TERMS OF REFERENCE**

2 The Working Group (the Group) recalled that MSC 82 when considering the report of the Working Group on LRIT<sup>1</sup> matters agreed (MSC 82/24, paragraph 8.63 and annex 16) that, in addition to authorizing a series of meetings of the *Ad Hoc* Working Group on engineering aspects of LRIT (the *Ad Hoc* Engineering Group), it was necessary to hold a further intersessional meeting of the MSC Working Group on LRIT for consideration of all issues (other than those related to engineering) which have a bearing on the timely establishment of the LRIT system and authorize the holding of the meeting between COMSAR 11 and MSC 83. As a result, the Secretary-General issued Circular letter No.2787 inviting representation to the meeting.

#### **ADOPTION OF THE AGENDA AND RELATED MATTERS**

3 The Group adopted the agenda as set out in document MSC/ISWG/LRIT 2/1. The documents considered under each agenda item are set out in annex 1, which also lists all related documents considered by the Group. The Group considered a number of documents submitted for consideration by MSC 83 when those making such submissions explicitly requested their consideration by the Group.

4 The Group was advised that the *Ad Hoc* Working Group on engineering aspects of LRIT had already held the series of meetings authorized by MSC 82 and it had submitted its report which was being processed.

5 The Group noted that document MSC/ISWG/LRIT 2/3/Add.1 (Secretariat) provided salient extracts from the report of the *Ad Hoc* Engineering Group and document MSC/ISWG/LRIT 2/J/4 provided working versions of some of the standards and technical specifications<sup>2</sup> developed by the *Ad Hoc* Engineering Group which are related to the issues the Group needed to consider and provide its recommendations to MSC 83.

6 The Group also recalled that MSC 82 had agreed that there were many issues relating to the timely establishment of the LRIT system which needed to be finalized at its next session and, in order to ensure the timely implementation of regulation<sup>3</sup> V/19-1, decided (MSC 82/24, paragraph 8.65) to establish a Working Group on LRIT matters during MSC 83.

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<sup>1</sup> *LRIT* means Long-range identification and tracking of ships.

<sup>2</sup> *Technical specifications* means the draft standards and technical specifications developed by the *Ad Hoc* Engineering Group.

<sup>3</sup> *Regulation* means a regulation contained in the annex to the 1974 SOLAS Convention.

**FINANCIAL ASPECTS RELATING TO THE ESTABLISHMENT AND SUSTAINED AND VIABLE OPERATION OF THE LRIT SYSTEM, OTHER THAN MATTERS RELATING TO THE TASKS OF THE LRIT CO-ORDINATOR**

***Intentions of Contracting Governments***

7 The Group recalled that MSC 81, when adopting resolution MSC.202(81) through which it adopted the 2006 SOLAS (chapter V) amendments on LRIT, also adopted resolution MSC.211(81) on Arrangements for the timely establishment of the LRIT system which, *inter alia*:

- .1 invited Contracting Governments<sup>4</sup> to advise MSC 82 of their firm intentions in relation to the establishment of National, Regional and Co-operative LRIT Data Centre(s) (operative paragraph 1); and
- .2 recommended that Contracting Governments to take early appropriate actions to ensure that all necessary infrastructures are in place, timely, for the establishment of the LRIT system (operative paragraph 10).

8 The Group also recalled that during MSC 82 and in response to the provisions of resolution MSC.211(81), the delegations of Argentina, Brazil, Chile and China informed the Committee that they were intending to build or had already established a National LRIT Data Centre (NDC) to fulfil their obligations. In addition, Brazil indicated that the NDC might subsequently be utilized as a Regional LRIT Data Centre (RDC). The delegation of the Russian Federation also advised that their present National Vessel Monitoring Centre might be upgraded to an International LRIT Data Centre (MSC 82/24, paragraph 8.56).

9 The Group further recalled that COMSAR 11:

- bearing in mind the related decisions of MSC 81 and MSC 82;
- noting that the implementation of the LRIT system appeared to have fallen behind what was contemplated during MSC 81; and
- taking into account the fact that those contemplating to put forward proposals in relation to the establishment and operation of the International LRIT Data Centre (IDC) and International LRIT Data Exchange (IDE) needed to have a clear understanding of the volume of LRIT information the IDC and IDE were expected to handle in association with the demand for the provision of LRIT information to Contracting Governments pursuant to the provisions of regulation V/19-1.8.1,

requested, once more, Contracting Governments to provide for consideration by the Group, *inter alia*:

- .1 the approximate volume of LRIT information packages that they are likely to request in a particular period (COMSAR 11/18, paragraph 14.36); and
- .2 their firm intentions in relation to the establishment of NDCs, RDCs and Co-operative LRIT Data Centres (CDCs) (COMSAR 11/18, paragraph 14.37).

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<sup>4</sup> *Contracting Government* means a Contracting Government to the 1974 SOLAS Convention.

10 The delegation of the United States (MSC 83/6/4<sup>5</sup>) advised that they contemplated requesting the provision of LRIT information in all cases foreseen in regulation V/19-1.8.1 (i.e. as a flag<sup>6</sup>, port<sup>7</sup> and coastal<sup>8</sup> State) and it has been estimated that approximately 3,000 ships would be tracked in any 24-hour period, 450 of which were ships entitled to fly the flag of the United States. The United States indicated that as a coastal State they would be seeking LRIT information transmitted by ships operating within 1,000 nautical miles (nm) off its coast. The United States also indicated that they were planning to establish an NDC to be located at the United States Coast Guard Operations Systems Centre in Kearneysville, West Virginia. In addition, the United States stated that they had not yet been formally approached by any other Contracting Governments regarding participation in an RDC or CDC and advised that any decision on such a request would be considered on an individual basis.

11 The delegation of Australia (MSC/ISWG/LRIT 2/3/1) advised that it was contemplating requesting the provision of LRIT information as a flag, port and coastal State and it has been estimated that approximately 2,500 ships would be tracked in any 24-hour period. Australia indicated that as a coastal State it would be seeking LRIT information transmitted by ships operating within 1,000 nautical miles (nm) off its coast. Australia, bearing in mind its geographic location and that the Performance Standards<sup>9</sup> stipulated that the shipborne equipment should be capable of being configured remotely to transmit LRIT information at variable intervals and following receipt of polling commands, would be requesting the provision of LRIT information at 12-hour intervals. Australia intended to establish an NDC which, subject to discussions with other Contracting Governments in its region, could be expanded to become an RDC.

12 The delegation of the Russian Federation advised of their intention of setting up an NDC, which might be upgraded to a CDC and stated their willingness to potentially provide a back-up location and server for the IDE, even if another location was chosen as the IDE, as they had the technical capabilities and facilities to provide this service.

13 The Chairman requested each of the Contracting Governments attending the meeting, other than Australia and the United States, to provide information on its intention with respect to:

- .1 requesting the provision of LRIT information, to indicate if they would be doing so as a flag, port or coastal State and in the latter case to specify the distance off its coast within which it would be requesting such information;
- .2 the estimated number of LRIT information packages to be requested in any 24-hour period or the estimated number of ships (as a flag, port and coastal State) to be tracked in any 24-hour period; and
- .3 establishing an NDC, RDC or CDC or using the services to be provided by the IDC, on the understanding that the information provided to the Group was not to be formally recorded in the report of the meeting and such information was non-binding and merely reflected expressions of the present intent of the Contracting Governments concerned.

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<sup>5</sup> To be read in combination with MSC 83/6/3 (United States) and MSC 83/6/5 (United States).

<sup>6</sup> The term *flag State* is used for simplicity and refers to the cases when a Contracting Government is requesting LRIT information pursuant to the provisions of regulation V/19-1.8.1.1.

<sup>7</sup> The term *port State* is used for simplicity and refers to the cases when a Contracting Government is requesting LRIT information pursuant to the provisions of regulation V/19-1.8.1.2.

<sup>8</sup> The term *coastal State* is used for simplicity and refers to the cases when a Contracting Government is requesting LRIT information pursuant to the provisions of regulation V/19-1.8.1.3.

<sup>9</sup> Performance standards and functional requirements for the long-range identification and tracking of ships adopted by resolution MSC.210(81).

14 At the end of the discussion the Chairman advised that it was clear that Contracting Governments need to seriously consider their obligations under regulation V/19-1, the Performance Standards and resolution MSC.211(81). He indicated that continuation of the current situation of vagueness and uncertainty was not an option and would lead to the collapse of the efforts of MSC 83 to ensure the timely establishment and operation of the LRIT system which, in turn, would seriously undermine the efforts of the Organization to enhance the security of States and thus contribute to the global efforts to combat terrorism and ensure sustained economic growth.

15 The Group agreed that it was imperative that each Contracting Government should provide to MSC 83 its firm and definite intentions with respect to issues identified in paragraph 12 and concluded that without such information MSC 83 would be unable to take any decisions in connection with the financial aspects which have a bearing on the establishment of the LRIT system and in particular with respect to the IDC and IDE.

16 During the discussion the delegation of one of the Contracting Governments pointed out that from their own perspective and in view of their geographic location they saw limited value in seeking the provision to them of LRIT information solely for security purposes. However, if they were able to obtain and make use of LRIT information for safety and/or environmental purposes then seeking such information would be of much greater interest to them and would justify the public expenditure associated with requesting and receiving LRIT information.

17 The Group recalled that MSC 79, when discussing the purpose and scope of LRIT (see MSC 79/23, paragraphs 5.65 to 5.72), *inter alia*:

- .1 agreed that the purpose and scope of LRIT should be extended to include safety and environmental protection applications;
- .2 agreed that before being able to embark on the detailed technical consideration of the extension of LRIT it would be necessary for the Committee to define the safety applications and for the Marine Environment Protection Committee (MEPC) to define the environmental protection applications for which LRIT would be used;
- .3 advised COMSAR 9 to bear in mind that the ultimate objective was to extend, at the appropriate time, the purpose and scope of LRIT to include safety and environmental protection applications;
- .4 instructed COMSAR 9, in order to avoid causing any delays in the development of LRIT, to proceed first with the development of LRIT as a tool which Contracting Governments might use for the enhancement of maritime security; and
- .5 reaffirmed that Contracting Governments should be able to seek, receive and use LRIT information for the rescue of persons in distress at sea.

18 The Group further recalled that MSC 80, in the light of the discussions at that time, agreed (MSC 80/24, paragraph 5.115) to concentrate on the development of LRIT for maritime security purposes and when that task had been completed then the Committee<sup>10</sup> and the MEPC would consider and provide appropriate instructions to the subsidiary bodies which might be entrusted with the extension of the scope of the LRIT so as to have safety and environmental applications.

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<sup>10</sup> *Committee* means the Maritime Safety Committee.

19 The delegation of one of the Contracting Governments stated that it was not seeking or envisaging to propose any amendments to regulations V/19-1 as, from its point of view, the LRIT information specified in regulation V/19-1.5 was adequate, and of use, for safety and/or environmental purposes. However, the wording of regulation V/19-1.8.1 allowed it to request the provision of LRIT information only for security purposes. In addition, in view of the regulation V/19-1.10.4, which stipulates that Contracting Governments shall use the information they might receive in a manner consistent with international law, it would be in breach of its treaty obligations if it was to use any LRIT information it had obtained for either safety or environmental purposes.

20 During the discussion, the delegations of a number of other Contracting Governments pointed out that at the current stage of the implementation of the LRIT system and in view of the difficulties which were faced in ensuring the timely establishment of the system it would be unwise to seek to amend in any way regulation V/19-1.

21 In this respect the delegations of some of the Contracting Governments pointed out that the wording of regulation V/19-1.8.1 allowed the Organization to agree and authorize the use of the LRIT information specified in regulation V/19-1.5 for other purposes such as safety and environmental ones, without necessarily needing to adopt any amendments to regulation V/19-1.

22 The Group acknowledged that the use of LRIT information for safety and/or environmental purposes was an issue which one or a number of Contracting Governments could propose for consideration by the Committee. In this respect the Group noted that such a proposal would need to comply with the requirements of MSC-MEPC.1/Circ.1 on Guidelines on the organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies.

### ***Proposals in relation to the establishment of the IDC and IDE***

#### *Offer by the United States*

23 The delegation of the United States (MSC 83/6/3) recalled that on several occasions, most recently during MSC 82 and COMSAR 11 had offered to host, build, and operate the IDC and IDE on an interim basis until such time as there was a viable alternative. However, these offers received little or no apparent support. The United States stated that it was fully prepared to offer to host, build, and operate the IDE on a interim basis. At this time, the United States is prepared to build, host, and operate the IDC on a interim basis, provided that participating Contracting Governments using the services to be provided by the interim IDC themselves pay the costs for the delivery to the interim IDC of the LRIT information transmitted by the ships entitled to fly their flag (communication cost). The interim IDE effort did not place the same significant, recurring and largely unknown cost burden that building and hosting the interim IDC did. That cost burden had forced the United States to reconsider and withdraw its original offer to build, host and operate on an interim basis the IDC free of charge. The offer of the United States with respect to the interim IDC and interim IDE was contingent on the Committee having no other acceptable offer put forward. In case MSC 83 was to accept the contingent offer of the United States to host, build, and operate the interim IDC and interim IDE, these would be located at the same place with the NDC the United States is planning to establish (see paragraph 10 above).

As a result of the discussions during COMSAR 11 and taking into account the earlier discussions within the Group, the United States now believed that there was a significant risk to operating the interim IDC. It was not known how many Contracting Governments would associate the ships entitled to fly their flags with the interim IDC. More importantly, it was not known which of these Contracting Governments would choose not to request LRIT information from the interim IDC. Thus, operating the interim IDC was likely to result in a potentially significant, recurring and largely unknown cost burden in the form of unpaid-for LRIT information packages received by the interim IDC.

As indicated above the offer of the United States to build, host and operate the interim IDC and interim IDE was conditional on each Administration deciding to use the interim IDC, instructing the ships entitled to fly its flag to transmit LRIT information to the interim IDC and paying the Communications Service Provider (CSP) and Application Service Provider (ASP) for communications costs. The United States governmental structure and authority did not readily allow the United States to invoice each of such Administrations for the communication cost. The United States was not readily capable of being in an accounts receivable situation or of recouping costs to operate the interim IDC. The United States was prepared to investigate its authority to contract out the invoicing, accounting and collection for an interim IDC and whether a contractor could charge for and receive payment in order to make a self-sustaining system, i.e. for cost recovery. The United States would consider funding alternatives for the interim IDC, such as, Administrations that associate themselves with the interim IDC paying for the communications cost or whether their domestic law permitted, that they could charge costs to the ships concerned as provided in regulation V/19-1.11.2.

In the event the contingent offer of the United States to build, host, and operate the IDC on an interim basis was not accepted and there was no other viable alternative for an IDC, the United States was still prepared to build and operate the IDE on an interim basis until another viable offer to build and operate the IDE was accepted and it becomes operational. This offer allowed the LRIT system to be established on schedule with multiple LRIT Data Centres (DCs) operating and joined by the IDE. In the absence of an IDC, it would, however, require Contracting Governments to associate the ships entitled to fly their flag with an NDC, RDC or CDC.

24 The delegation of the United States further explained that their offer to host, build and operate the IDC and IDE on an interim basis was not a proposal for the establishment and operation of an IDC and IDE in response to the request for submission of proposals issued by IMSO, acting in the capacity of the LRIT Co-ordinator, which was brought by the Secretary-General to the attention of Contracting Governments through Circular letter No.2794.

The United States stated that their offer was a contingency for an alternative interim arrangement and was not an offer to host, build and operate the IDC and IDE on a permanent basis.

The United States clarified that its present intention was that, in case MSC 83 was to accept their offer to host, build and operate the interim IDC, consistent with its domestic laws and procurement regulations, the capital, operating and maintenance costs for the interim IDC would be borne by the United States. Its present intention was that the Administrations deciding to use the interim IDC and instructing the ships entitled to fly their flag to transmit LRIT information to the interim IDC, provided they pay the CSP and ASP the communications cost for the LRIT information transmitted to the interim IDC, would not be required to make any payment to the United States for the services provided by the interim IDC.

The United States also clarified that its present intention was that, in case MSC 83 was to accept their offer to host, build and operate the interim IDE, consistent with its domestic laws and procurement regulations, the capital, operating and maintenance costs for the interim IDE would be borne by the United States. Its present intention was that none of the DCs and none of the Contracting Governments would be required to make any payment to the United States for the services provided by the interim IDE.

*The proposal submitted by the Marshall Islands*

25 The Group agreed that, as the Marshall Islands (MSC 83/6/6) had not explicitly requested that the proposal they presented in response to the request for submission of proposals issued by IMSO be brought to the attention of the Group for any form of consideration, they were not obliged to introduce the submission. However, the Group also agreed that it would be in the interest of the efforts to ensure the timely establishment of the LRIT system if the Marshall Islands was to provide an overview of the proposal and in particular details of the financial considerations set out in annex 3 to the annex to document MSC 83/6/6 on the understanding that the evaluation and discussion of the merits of the proposal was outside the mandate of the Group.

26 The delegation of the Marshall Islands accepted the request of the Group and advised that they were merely acting as a conduit for the submission of the proposal in the annex to document MSC 83/6/6 by an LRIT Consortium (the Consortium) consisting of Pole Star Space Applications Limited (a legal entity incorporated in the United Kingdom), GateHouse A/S (a legal entity incorporated in Denmark) and Wallem Innovative Solutions Inc. (a legal entity incorporated in the Philippines). The Marshall Islands stated that, as indicated in paragraph 4 of document MSC 83/6/6, they submitted the proposal without obligation or intent to be involved in any way in the LRIT Consortium.

27 A representative of the Consortium as part, but not on behalf, of the delegation of the Marshall Islands highlighted for the benefit of the Group a number of aspects of the proposal of the Consortium. The Group agreed, with a view to avoiding in any way prejudicing the consideration of the proposal of the Consortium, not to include in the report of the meeting the information or a summary of the information provided on behalf of the Consortium.

28 The Group noted the following aspects and financial considerations of the proposal as summarized by the Secretariat below for the convenience of the Group on the understanding that it was the obligation of each Contracting Government to study the proposal and make its comments when the matter would be considered by MSC 83:

- .1 the IDC and IDE form an integrated system (referred in the proposal as “the System”) and there are no separate or distinct proposals for the IDC and the IDE. It appears that this is proposed in order to take advantage of co-development, co-location and co-management efficiencies. Although the System is an integrated development, it also appears that the IDC and IDE are two physical entities hosted on separate servers with separate back-up and redundancy strategies in place;
- .2 the project implementation in two phases each having two sub-phases as follows:
  - .1 Phase 1a relates to the development and it is proposed to develop a System operationally compliant to the Performance Standards using existing proven and resilient commercial systems, licensed by the Consortium’s primary partners. It is stated that the commercial systems to be used would be enhanced to comply with the basic communication protocol, system

- security performance requirements and external interface to the LRIT Data Distribution Plan (DDP). In the view of the Consortium this strategy allows for an operationally-compliant System to be implemented in the shortest possible timeframe with the minimum risk;
- .2 Phase 1b is a 3 year operational phase where the System is utilized by Contracting Governments for tracking ships in a combination of flag, port, and coastal State capacities and where on an annual basis any revenue generated from usage that exceeds the quoted budgetary requirements would be accumulated to create a set-aside budget for the implementation in Phase 2a of a fully technically compliant System;
  - .3 Phase 2a relates to an upgrade of the System to be fully technically compliant with the technical specifications developed by the *Ad Hoc* Engineering Group; and
  - .4 Phase 2b is a 2 year operational phase where, similarly to Phase 1b, on an annual basis any revenue generated from usage that exceeds the quoted budgetary requirements would be accumulated to create a set-aside budget to fund future enhancements to the System.
- .3 a simplified financial model of a dual-user concept is used whereby a Contracting Government might be a “provider” and/or “user” of System services i.e. a Contracting Government providing its flagged-ships to the System for LRIT management and a Contracting Government using the System to obtain LRIT information respectively. To participate in the System, all Contracting Governments – both providers and users – would be required to take out a funded subscription. The Consortium, through IMSO and IMO, would seek early subscription commitments from Contracting Governments in order to provide the comparatively small start-up budget required for Phase 1a;
  - .4 the proposal states that the Consortium has taken into account the core documentation prepared by the Committee as specified in section 4.2 of the request for submission of proposals issued by IMSO and it is the view of the Consortium that the proposal includes sufficient technical, operational, financial, legal and administrative details to allow IMSO to evaluate the proposal and the Committee to take a decision on where the IDE and IDC shall be located and who would operate it;
  - .5 in expectation that, in the timeframe from the meeting of the Group and MSC 83, Contracting Government(s) do commit to subscription and usage, and assuming the proposed financial model is approved in principle, then the Consortium commits to entering into detailed contract negotiations with IMSO and the IMO Secretariat in order to conclude a formal agreement for the provision of the LRIT facilities concerned. At this stage detailed plans and costings can be presented and discussed, and the legal aspects detailed in the request for submission of proposals issued by IMSO addressed i.e. data protection assurances, legal regime and organizational status;
  - .6 the proposal is valid until 31 December 2007. In the event that post MSC 83 there remains no commitment to use the System, the Consortium reserves its right to retract this proposal on the grounds that the financial model is unsustainable;

- .7 for purposes of technical and financial modelling it has been assumed that an approximate total of 20,000 ships would be managed by the System on behalf of those Contracting Governments not establishing a NDC, RDC or CDC. It appears that the System is scalable in this regard and in the event that the number of ships subscribing to the IDC was less than 20,000, it could be scaled and costed to accommodate for example 5,000, 10,000, 15,000-ship volumes;
- .8 the legal formulation of the Consortium would be decided during the contract negotiation phase. A formal Joint Venture (JV) might be established between two or more of the partners or alternatively services offered by one or more of the partners might be based upon a traditional commercial service provision contract to the other partner(s);
- .9 the costs are presented were rough-order-of-magnitude costs and detailed component costs would be disclosed at the contract negotiation stage;
- .10 the system communications are based upon standard commercial rates as of July 2007 and the use of Singapore Telecommunications Limited (SingTel) is a condition. To take advantage of bulk purchase discounts it is proposed to enter into a service agreement with SingTel for the provision of Inmarsat C and Iridium airtime for sea areas A1 to A3 and A4 respectively;
- .11 Contracting Government Subscription/ Ship Integration Fee is proposed to form the start-up budget to fund a proportion of Phase 1 at GBP 100.00 per ship on the basis of a minimum number of 20,000 ships using the System and transmitting LRIT information at 6-hour intervals. Contracting Government Subscription/Ship Integration Fee (one-time setup charges) are non-refundable. It appears that the proposed financial terms are flexible and that there could be a trade-off between the subscription fee and position report fee depending upon the number of subscribers and usage commitment;
- .12 for the System to be economically viable a critical mass of Contracting Governments are required to commit to the defined subscription level (presumably 20,000 ships x GBP 100.00 = GBP 2,000,000.00) and usage to a level above 10 million position reports per year (presumably 10,000,000 reports x GBP 0.30 per report = GBP 3,000,000.00). It appears that the System is scalable in respect and the System costs per year and cost per position report could be recalculated on the basis of a different usage commitment;
- .13 the cost of each position report decreases with increases in the demand for position report;
- .14 the minimum contract term is 3 years;
- .15 the service termination charge is 100% of the remaining contract term; and
- .16 the proposal, as indicated above, is scalable and the financial terms are negotiable.

*Observations of the Group*

29 The Group, without entering into any discussions with respect to the merits of the proposal (MSC 83/6/6 (Marshall Islands)) or the contingency offer (MSC 83/6/3 (United States)), reaffirmed its previous conclusion that MSC 83 would be unable to engage in any discussions with either the Consortium or the United States without having before it the information specified in paragraph 13 above and once more agreed that it was imperative that Contracting Governments provided the needed information forthwith.

30 The Group further agreed that those Contracting Governments not planning to establish NDCs, RDCs or CDCs or to seek from these to provide services to them need to come to MSC 83 fully prepared and with appropriate instructions to engage in detailed and committing discussions *vis-à-vis* the Committee and the rest of the Contracting Governments.

31 The Group inferred that with respect to the proposal of the Consortium the critical minimum number of Contracting Governments and the associated usage to a level above 10 million position reports per year might be possibly achieved in a combination of requests from Contracting Governments in a flag, port and coastal State capacity. However, the critical minimum number of Contracting Governments that are required to commit to the defined subscription level was something which Contracting Governments as flag States might need to provide.

32 The Group noted that as matters presently stood, in general and simplistic terms:

- .1 the contingency offer of the United States meant that:
  - .1 the Contracting Governments deciding to use the interim IDC which the United States was offering to host, build and operate on an interim basis had to finance the functioning of that part of the LRIT system as flag States by covering the expenditure associated with the communication cost for LRIT information transmitted by each of the ships entitled to fly their flags transmitting LRIT information to the interim IDC on their instructions;
  - .2 Contracting Governments deciding to use the interim IDC had the freedom to levy charges to the requesting Contracting Governments when LRIT information transmitted by the ships entitled to fly their flags to the interim IDC were requested and received by other Contracting Governments; and
  - .3 the interim IDE was provided by the United States to all other Contracting Governments free of any charges subject to its domestic law; and
- .2 the proposal of the Consortium to provide facilities of IDC and IDE in an integrated system on the other side, meant, in broad terms and subject to a detailed study of the elements of the proposal, that:
  - .1 Contracting Governments deciding to use these facilities had to:
    - .1 finance the functioning of that System as flag States by:

- .1 paying a non-refundable Contracting Government Subscription/Ship Integration Fee of the order of GBP 100.00 per ship;
- .2 providing as flag States at least a total of 20,000 ships;
- .2 provide a critical number of Contracting Governments and an associated usage to a level above 10 million position reports per year;
- .2 the cost for establishing, operating and maintaining the IDE was being borne only by the Contracting Governments using the facilities provided by the Consortium whilst the IDE was of use to all Contracting Governments; and
- .3 it was necessary to have a thorough understanding of the business and financial model and, in particular, of the sliding scale of position report costs against position report targets and its financial implications. It is assumed that the report of the LRIT Co-ordinator to MSC 83 on the evaluation of the proposal of the Consortium would provide the needed clarifications and analysis.

33 The Group also noted that, as the cost for establishing NDCs, RDCs and CDCs was the responsibility of the Contracting Governments establishing such DCs (which in essence meant by the flag States concerned) and as the cost for the IDC in the Consortium proposal and the contingency offer had to be paid by the Contracting Governments using the IDC (which in essence again meant the flag States concerned), those Contracting Governments which had to finance the LRIT system would expect that, consistent with ensuring the long-term sustainability of the LRIT system, all Contracting Governments would have to request and receive an equitable number of LRIT information as port and/or coastal States so as to reduce the one-sided financial burden on those Contracting Governments which were financing the LRIT system as flag States. Such an approach would keep the charges to be levied when a Contracting Government requests and receives LRIT information within fair and reasonable levels.

34 The Group further noted that, as a result, all Contracting Governments had to contribute at different levels in order to meet the expenditure associated with ensuring the sustained financial viability of the LRIT system.

35 The delegation of Panama, in the light of the discussions, reserved, initially, its position regarding the aforesaid (paragraphs 33 and 34) and subsequently on the rest of the discussions of the Group on matters related to the financing of the LRIT system. In the view of Panama, which has actively participated in the discussions, the approach taken by a number of Contracting Governments, acting as port or coastal States in relation to LRIT matters, was not proportional and did not reciprocate to what they were asking other Contracting Governments to do as flag States.

## ***Matters resulting from the work of the Ad Hoc Engineering Group***

### *Introduction*

36 The delegation of the United States (MSC 83/6/5) presented the view of the United States on the vital question of how to ensure that the LRIT system survives start up and is available to all Contracting Governments, whether rich or not, so that all enjoy the benefits that the system was designed to serve and advised that if the system was not built on a sound economic footing, it would cease to be used and would sooner or later cease to exist.

The United States stated that, having agreed to regulation V/19-1 and the Performance Standards, it was committed to doing all it can to make LRIT succeed and expressed the hope that every one else in the Group was committed to finding a way to make the system as a whole fair, reasonable, non-discriminatory and economically sustainable.

The United States indicated that its participation in the work of the *Ad Hoc* Engineering Group and in particular in the development of the draft LRIT Technical costing and billing standard and its offer to build and operate the IDC on an interim basis had convinced it that the Group should endeavour to find ways that all who participate in the LRIT system recognize that they have an interest in sustaining the system. In its view Contracting Governments should, therefore, approach the issues relating to the financing of the LRIT system not by seeking to establish ways to avoid doing their part in sustaining the system but by asking how they can do their part to sustain the system. A question that had answers that were both easy and difficult.

The United States recalled that the LRIT was built on the concept of the user pays and thus suggested that from an economic standpoint each Contracting Government, as a flag, port and coastal State, should seriously look at what it needs to do to sustain its share in making the system economically sustainable.

The United States pointed out that:

- If the LRIT system was not economic or if the costs for obtaining LRIT information fell disproportionately on any one or very few Contracting Governments or elements of the system, the LRIT system would die. If it died, Contracting Governments would take alternative measures to protect their security and this meant that it was impossible to predict on what or whom the costs of such alternatives would fall, however it was safe to assume that it would not be to everyone's satisfaction;
- In order to establish an economically sustainable LRIT system it was necessary to have a reasonable per LRIT information package cost. If the projection of USD 0.25 per LRIT information package was to be considered as reasonably accurate, this meant that the cost per ship per day was only USD 1.00;
- Contracting Governments needed to recognize that the LRIT information transmitted to NDCs, RDCs and CDCs had to be paid by the DCs concerned and the IDC had to ensure the charges of LRIT information transmitted to the IDC were paid;
- The LRIT system as designed allowed Contracting Governments that have paid, as flag States, the cost for the LRIT information transmitted by ships entitled to fly their flag to obtain reimbursement from the other Contracting Governments

that request and receive the information. As the level of reimbursement was directly proportional to the volume of LRIT information Contracting Governments were requesting and receiving as ports or coastal States, provided enough information were requested participation in the LRIT system could be worthwhile.

37 The Group considered<sup>11</sup> the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, items 1 to 8 and 12) and, after an extensive and detailed discussion of the issues involved, agreed to recommend, in an effort to balance the expectation that the Administrations should finance the operation of the LRIT system by paying for the 6-hour interval transmission of LRIT information transmitted by ships entitled to fly their flags, that MSC 83 should consider the recommendations set out in below in lieu of those advanced by the *Ad Hoc* Engineering Group.

*Cost recovery and/or profit for Contracting Governments*

38 The Group considered the issue raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, items 1) in relation to whether Contracting Governments were entitled to recover costs, and/or realize profits when LRIT information they have paid for were provided to other Contracting Governments that have requested them.

39 The Group recalled that the LRIT system was being established for the purpose of enhancing the security of all States. Security was a public responsibility of each Contracting Government. The Group agreed that whilst it was reasonable to expect that Contracting Governments might seek to recover at least some part of the expenditure they incurred for the 6-hour interval transmission of LRIT information they have paid for, Contracting Governments should not seek to make any form of profit or generate income by providing that LRIT information to other Contracting Governments.

*Profit for commercial entities*

40 The Group considered the issue raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 2) in relation to whether commercial entities in case they operated DCs and/or the IDE were entitled to realize profits.

41 The Group agreed to recommend that in cases where the establishment and operation of an NDC, RDC, CDC, had been contracted to a commercial entity (i.e. a private legal entity incorporated under the laws of a State for the purpose of conducting business for profit in which no State has any form of interest), it was reasonable to accept that the commercial entity concerned would be making a fair and reasonable profit from the services it would be providing. Notwithstanding the aforesaid, the Group agreed that Contracting Governments expected that the Contracting Government(s) which had let such contracts would monitor and regulate the level or margin of profit so as to ensure the sustained financial viability of the LRIT system.

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<sup>11</sup> In the present report only the references to the report of the *Ad Hoc* Engineering Group (MSC 83/6/1) are cited and all corresponding references to the annexes to document MSC/ISWG/LRIT 2/3/Add.1 (Secretariat), which provided to the Group the related extracts, have been omitted.

*Contracting Government(s) establishing National LRIT Data Centres (NDCs) or Regional or Co-operative LRIT Data Centres (R/CDCs) not wishing to pay for regular transmission of LRIT information*

42 The Group considered the issue raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 3) in relation to whether a Contracting Government establishing an NDC, or a group of Contracting Governments establishing an R/CDC, could avoid paying for the 6-hour interval transmissions of LRIT information transmitted by ships entitled to fly its/their flag?

43 The Group agreed to recommend that, on the basis of the previous discussions, the LRIT system would be financially unsustainable and would eventually collapse if the Contracting Governments establishing NDCs, RDCs and CDCs did not pay for the 6 hour-interval transmission of LRIT information, which should be considered as being part of the normal operating costs of such DCs. It was also noted that such an approach would ultimately result in a continuous reduction of the number of LRIT information within the system and thus the system would cease to function. In such a case those seeking LRIT information would have no option but to use alternative methods some of which were outside the control of the Organization. As a result, the Group agreed to recommend that the initial costs relating to the establishment; the annually recurring costs relating to the operation and maintenance; and any incidental costs relating to the upgrading, of NDCs, RDCs and CDCs were the responsibility of the Contracting Governments establishing such NDCs, RDCs and CDCs.

*Access to LRIT information/ sharing of LRIT information within DCs*

44 The Group considered the issue raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 4) in relation to the following issues:

- .1 If an R/CDC and/or the IDC receives the same message multiple times in accordance with the DDP entries, then how many times should it pay for it;
- .2 Is an R/CDC and/or the IDC allowed to request a LRIT information once and then route it internally within the R/CDC? If so, how many times must it pay; and
- .3 Are these interactions inside or outside of the LRIT system.

45 The Group, following extensive discussions, agreed to recommend that all DCs were entitled to charge other DCs for the LRIT information they provided to them via the IDE an amount equal to the ship-to-shore communication cost for delivering the LRIT information to the DCs to which the ship concerned was transmitting (including the cost of the CSP and ASP) plus "X" per cent to cover overheads each time such information was provided.

46 The Group agreed that in the absence of reliable data it was practically impossible to either estimate or distribute the overheads on a different basis without resulting in complex algorithms for the calculation of the charges. The figure "X", which might be of the order of 10 should be determined by MSC 83, so as to enable Contracting Governments to secure internally the financing needed for the operation of the LRIT system as from 31 December 2008.

47 The Group agreed that charging each time that an LRIT information package was provided meant that several Contracting Governments would be called upon to pay for the same LRIT information package. However, the Group agreed that in view of the uncertainties associated with the establishment of the system and in particular the lack of data as to how many LRIT information packages would be purchased by port and coastal States, such an approach was expected to provide the Administration financing the system with some degree of comfort and lead them to commit, before MSC 83, that they would do so.

48 The Group noted that as a result of the phased-in implementation of regulation V/19-1, which would end on 30 December 2009 (for the Contracting Governments which were not State Parties to the 1988 SOLAS Protocol) and on 30 March 2009 (for the Contracting Governments which were also State Parties to the 1988 SOLAS Protocol), the first year of full operation would end on 30 March 2010. During the period up to 31 March 2010 the Committee should monitor the effect of the present recommendation and amend it accordingly so as not to create any adverse effects. In addition, it was expected that DCs applying the present recommendation should review the results and impact and should either provide rebates or reduce accordingly the charges that they would be levying during the subsequent financial period.

*Access to LRIT information/ sharing of LRIT information outside DCs*

49 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 5) in relation to: (1) the circumstances under which a Contracting Government can share with other entities (i.e. other DCs, other Contracting Governments) outside its DC (NDC, R/CDC, or the IDC) LRIT information the Contracting Government is entitled to, has requested and has received; and (2) whether there were any cost implications associated with the sharing of information.

50 The Group agreed to recommend that RDCs and CDCs should be able to internally forward LRIT information transmitted by ships entitled to fly the flag of the Contracting Governments establishing or using the services of such centres without routing these through the IDE. The Group agreed that, during the initial phase of establishment of the LRIT system, it would be advisable to generate journals for such transactions so as to enable the LRIT Co-ordinator and the Committee to have a complete overview of the functioning of the entire LRIT system.

51 The Group agreed to recommend that, subject to compliance with all the applicable provisions of regulation V/19-1, LRIT information received and stored by an RDC, CDC or the IDC from other DCs at the request of one of the Contracting Governments establishing or participating in that DC could be provided to another Contracting Government associated with that DC and requesting such information, without initiating a new cycle of request and receipt. However, in order to establish the needed audit trail it was necessary to adopt amendments to the Performance Standards and to the technical specifications which was not possible at this stage. The Group agreed to recommend that this issue might be pursued at a later stage.

52 The Group agreed to recommend that Contracting Governments were free to share, for security purposes, subject to compliance with the provisions of their national statutes, with other Contracting Governments the LRIT information they had requested, obtained and paid for provided such practices were not used as a means to either by-pass the provisions of regulation V/19-1 or for financial gains.

*Differentiation of costs & Charging of overhead*

53 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, items 6 and 7) in relation to: (1) how the costs for LRIT information should be differentiated or set; and (2) how overheads should be apportioned and charged.

54 The Group agreed to recommend that, in the light of its earlier discussions, the charge to be levied for each LRIT information package should be based on the ship-to-shore communication cost which was reported as being in July 2007 of the order of USD 0.25. The Group agreed to recommend that any charges exceeding twice the ship-to-shore communication cost should be considered as unfair and unreasonable.

55 The Group agreed to recommend that the charges for the services of the IDE should be borne by the DCs using the services of the IDE. The charges should be calculated on the basis of a simple formula with reference to the volume of LRIT information handled by the IDE for each DC.

56 The Group agreed to recommend that nothing prevented DCs from entering into agreements or arrangements governing the exchange of LRIT information and the settlement of accounts provided such arrangements did not result in unfair charging practices within the LRIT system.

#### *SAR services overhead costs*

57 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 8) in relation to: (1) whether the provision of LRIT information for the search and rescue of persons in distress at sea (i.e. when providing archived LRIT information and information transmitted following polling commands or of commands to transmit information at different time intervals) was in all cases free of charge; and (2) who should be charged with the related costs.

58 The Group agreed to recommend that the charges for the provision of LRIT information for the search and rescue of persons in distress at sea should in all cases be free of charge to the search and rescue service of the Contracting Government (SAR service) requesting such information and the costs involved should be on the account of the DCs providing such information to the DC which has requested or is requesting these on behalf of the SAR service concerned (the requesting DC). Notwithstanding the aforesaid, the cost of any LRIT information, including archived ones, provided to a SAR service and originating from ships which have been instructed by their Administrations to transmit LRIT information to the requesting DC should be on the account of the requesting DC.

#### *Non-payment*

59 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 12) in relation to the situations which could arise when LRIT Data Users, other than the search and rescue services of Contracting Governments, are requesting and receiving LRIT information but not paying for such data.

60 In this respect the Group considered also the issues raised by IMSO (MSC 83/6/7, paragraphs 26 and 27) in relation to the non-payment of the LRIT Co-ordinator by DCs, the IDE and ASPs for tasks it is required to perform under the provisions of the Performance Standards.

61 The Group agreed that all cases of non-payment place an undue burden on the entity not being paid, as well as on the sustainability of the LRIT system as a whole, and thus cannot reasonably be expected to continue unabated. The Group agreed to recommend that barring principles should be implemented in order to cultivate sound business practices, *inter alia*, in the following circumstances:

- .1 if Contracting Governments fail to pay DCs for the LRIT information they request and receive;
- .2 if DCs fail to pay other DCs for the LRIT information they request and receive from them;
- .3 if DCs fail to pay the IDE for the services it provides to them;
- .4 if DCs, the IDE or ASPs fail to pay the LRIT Co-ordinator for its services;
- .5 any other circumstances which might be warranted by the Committee.

62 The Group agreed to recommend that any needed amendments to the Performance Standards and the technical specifications should be adopted in order to ensure an effective system barring and the removal of barring when the circumstances which have lead to imposing barring have been addressed, subject to clarifying the position of the ships which may be affected vis-à-vis the Contracting Governments which are entitled to receive the LRIT information such ships transmit.

63 The Group requested IMSO to advise MSC 83 whether it would be able to submit draft rules governing the imposition and removal of barring for the consideration of MSC 84.

#### ***Other issues***

64 The delegation of Greece requested the Group to consider the transmission of LRIT information in cases when a ship is undergoing repairs or has been laid up or is awaiting instructions in relation to its next employment and the resulting financial consequences. However, the Group, in the absence of specific proposals on how such matters should be addressed, did not engage in any detailed discussions in this respect.

#### **ISSUES (OTHER THAN FINANCIAL MATTERS) RELATING TO THE ESTABLISHMENT AND OPERATION OF THE LRIT SYSTEM**

##### ***Issues related to IDC and IDE***

##### *Aspects related to the evaluation of proposals by IMSO*

65 The Group concurred with the proposal of IMSO (MSC/ISWG/LRIT 2/3/2) that IMSO should evaluate the proposals received in response to the request<sup>12</sup> it had issued for the submission of proposals for the establishment of the IDC and the IDE on the basis of their compliance with the applicable requirements of regulation V/19-1, the Performance Standards, resolution MSC.211(81) and any additional information provided in response to other issues it has stipulated in the aforesaid request. In this respect the Group agreed that the evaluation process should not take into account the technical specifications developed by the *Ad Hoc* Engineering Group as these had not been considered or approved by the Committee and those set out in the annex to MSC.1/Circ.1219 on Interim LRIT technical specifications and other matters merely represented work in progress.

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<sup>12</sup> See Circular letter No.2794.

66 The Group also concurred with the proposal of IMSO that results of the evaluation should be presented to MSC 83 in the form of a “compliance matrix” which essentially would be a table of the established requirements, including their respective references, versus the proposal’s compliance with those requirements. The Group requested IMSO to identify against each requirement the salient elements of the proposal (or any supplementary information to be provided (see paragraph 69 below) to enable easy consideration of the issues during MSC 83.

67 The Group also accepted that, as IMSO had drawn attention in the request it had issued for the submission of proposals to a number of other non-technical issues which the MSC 83 might wish to take into account when reviewing any proposals, it should bring to the attention of the MSC 83 at the end of the “compliance matrix” any information on these, or other relevant issues, voluntarily included in any proposals on which it would report.

68 The Group noted that, subject to securing the required start-up funding, IMSO intended to work with any successful proposer(s) during the implementation period to ensure compliance with all relevant requirements and a timely delivery of the operational LRIT system. The Group further noted that IMSO expected to report on progress with implementation to MSC 84 and on the successful completion of the process to MSC 85. The Group agreed to recommend that MSC 83 and MSC 84 would need to waive the strict adherence to the deadlines for the submission of documents related to LRIT for consideration by MSC 84 and MSC 85, respectively, so as to allow IMSO to report in writing on the latest related progress or situation in a comprehensive manner.

69 The Group recognized that the objective evaluation process was bound to lead to requests for the submission of additional information, clarifications or of supporting documentation. The Group noted the intention of IMSO to request such matters as necessary. The Group requested IMSO to attach such documents and all related correspondence to the “compliance matrix” and to include appropriate references to enable easy consideration of the issue during MSC 83. The Group requested also the Secretariat, notwithstanding the deadlines for submission of documents for consideration by MSC 83, to make the necessary arrangements, so as to ensure that all related documents are submitted before MSC 83.

*Matters resulting from the work of the Ad Hoc Engineering Group*

70 The Group considered the technical criteria to be taken into account when establishing the IDC and IDE developed (MSC 83/6/1, paragraphs 15 to 17) by the *Ad Hoc* Engineering Group pursuant to the instructions of MSC 82 and prepared revised the criteria, as set out in annex 2. The Group agreed to recommend for consideration and adoption the criteria set out in annex 2 in lieu of those developed by the *Ad Hoc* Engineering Group.

71 The Group requested IMSO to consider including in the “compliance matrix” information on the compliance of the proposals with respect to the aforesaid criteria, in case such information was readily available or could be provided to IMSO. In the latter case the related correspondence and documents should be attached to the “compliance matrix” which should include appropriate references to enable easy consideration of the issue during MSC 83.

### ***Issues related to all elements of LRIT system***

#### *General*

72 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, items 9, 10, 15, 16, 18 and 19) and, after an extensive and detailed discussion of the issues involved, agreed to recommend that MSC 83 should consider the recommendations set out in below in lieu of those advanced by the *Ad Hoc* Engineering Group.

#### *Centralized versus decentralized billing*

73 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 9) in relation to centralized versus decentralized billing.

74 The Group, although a number of delegations expressed a preference to a centralized billing system agreed that, at least for the initial stages of the implementation of the LRIT system, it might be easier if a decentralized billing system was to be implemented and that the billing system should be kept as simple as practically possible. The Group agreed that the simpler the costing and billing framework between DCs, the less complicated and less costly the LRIT system would be.

75 The Group agreed to recommend that each DC desiring to levy any charges for the LRIT information it was providing (other than those for search and rescue purposes) should produce its own invoices at some common frequency. The LRIT Co-ordinator would audit all of the invoices during the performance review and audit process. This would require each DC to have an invoicing function. Since the journal was maintained by the IDE, each DC should ask the IDE for its portion of the journal so that it could generate its invoices. The Group further agreed that DCs were free to decide whether the services of sub-contractors, i.e. commercial entities that specialize in billing and invoicing, for various functions could be required or economically advantageous.

76 The Group agreed also to recommend that DCs should publish their charges with reference to a common currency or with reference to the Special Drawing Right (SDR). In addition, the DCs should also publish their charges in the IDE.

#### *Provision of archived LRIT information and associating costing and billing*

77 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 10) relating to the provision of archived LRIT information and associated costing and billing.

78 The Group agreed to recommend that Contracting Governments should have access to archived LRIT information throughout the period during which such information was kept in storage. However, their rights of access to such information were governed by their treaty relations at that particular time and in particular, as far as port States were concerned, by applying the restrictions imposed by regulation V/19-1.8.1.2 and as far as coastal States were concerned by applying the restrictions imposed by regulation V/19-1.8.1.3 and by other Contracting Governments pursuant to the provisions of regulations V/19-1.8.1.4 and V/19-1.9.

In relation to port State access, the Group agreed that, notwithstanding any standing order which was applicable at the time, the Contracting Government requesting such information was entitled to receive LRIT information as from the time a particular ship had tendered a notice of arrival at a port facility or port or place under its jurisdiction.

In relation to coastal State access, the Group agreed that, notwithstanding any standing order which was applicable at the time, the Contracting Government requesting such information was entitled to receive LRIT information transmitted by ships within 1,000 nautical miles off its coast.

79 The Group also agreed that the charges to be levied for providing archived LRIT information should be those prevailing at the time that the information is provided and not those applicable at the time the information was received by the DC concerned.

*Back-up systems*

80 The Group considered the views of the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 15) in relation to the integrity of the LRIT system.

81 The Group agreed to recommend that Contracting Governments should be advised that it would be in the collective interest of all Contracting Governments if NDCs, RDCs and CDCs were to comply with the specifications for back-up systems stipulated in the draft Technical specification for the International LRIT Data Centre (MSC 83/6/1, annex 2) in relation to backup systems for the IDC.

*Port State Notice of Arrival*

82 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 16) in relation to the verification by the Administration of Notice of Arrival tendered by ships entitled to fly its flag to a port State in order to enable the port State concerned to initiate the process of tracking a specific ship proceeding to its port, if it so wishes.

83 The Group recalled that MSC 80 had instructed COMSAR 10 to ensure that the ship should not be required to transmit to the LRIT Tracking Service or the LRIT Data Centre, any additional information (except the transmission of a notice that the ship is proceeding to a particular port, to enable the LRIT Data Centre to provide the port State with the LRIT information to which it was entitled) and that the transmission of LRIT information should not require any intervention by shipboard personnel (MSC 80/24, paragraph 5.97).

84 The Group agreed to recommend that those Administrations wishing to engage in such verifications, should instruct the ships entitled to fly their flag to transmit a copy of the Notice of Arrival it tendered to a port State to the DC to which the ship is transmitting LRIT information. In this manner it would be up to each Administration, if it wished, to validate the requests of any Contracting Government as a port State.

85 The Group also agreed to recommend that the adoption of any required consequential amendments to section 7 of the Performance Standards, so as to ensure that each DCs had the required functionality and the storage of the related notices transmitted by the ships, as it appeared that this issue had been overlooked during the development of the Performance Standards.

*Protection of routing messages using the incorrect DDP version*

86 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 18) in relation to whether the IDE should check whether each DC implemented the latest version of the DDP before it routed a message, other than to those requesting LRIT information for search and rescue purposes.

87 The Group agreed that the correct implementation of the provisions of regulations V/19-1.7, V/19-1.8 and V/19-1.9 implied that each DC and the IDE used and applied the latest available version of the DDP. As a result the Group agreed to recommend that the IDE should carry out the required verification check before it routes the various messages other than those requesting LRIT information for search and rescue purposes. Consequently, the Group agreed to recommend that the functionality proposed in this respect in draft Technical specification for the International LRIT Data Exchange (MSC 83/6/1, annex 1) should be accepted.

88 The Group noted that the proposed time delay of 24 hours was not consistent with the provisions of regulation V/19-1 for security related purposes and that the acceptable delay would need to be considered and agreed by MSC 83.

89 In this respect, the Group requested the Secretariat to provide to MSC 83 with salient information on technical capabilities of the DDP in relation to access and downloading.

*Remove the port State standing order from the DDP*

90 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 19) in relation to the removal of the port State standing order from the DDP, and agreed that as a result of the recommendation it was making with respect to the port State Notice of Arrival, this issue did not need to be considered further by MSC 83.

**DETERMINATION OF ADDITIONAL MILESTONES RELATING TO THE ESTABLISHMENT OF THE LRIT SYSTEM, TAKING INTO ACCOUNT THE TARGET DATES STIPULATED IN RESOLUTION MSC.211(81)**

91 The Group agreed that, in view of the fact that thus far the implementation of the LRIT appeared to be falling behind what had been envisaged by MSC 81, the timely establishment of additional deadlines to supplement those stipulated in resolution MSC.211(81), was becoming imperative so as to ensure the necessary control and monitoring.

92 The Group agreed that for example the establishment and testing of the IDE and the integration and testing of the interface between the IDE and the DDP, as soon as possible, was critical.

93 The Group, assuming that the DDP would be on-line by 1 January 2008, agreed to recommend the establishment of the following additional milestones, taking into account the provisions of operative paragraphs 5 to 8 of resolution MSC.211(81) and subject to discussion and agreement on the dates with those to be selected to establish the IDE and IDC:

- Preliminary design review for the IDE and the IDC;
- Critical design review for the IDE and the IDC;
- Identification of any issues with the technical specifications (first review of the specifications);
- In lab testing of the IDE and the IDC;
- Identification of any issues with the technical specifications (second review of the specifications);
- MSC 84 is provided with a progress report;
- IDE, IDC and DDP are integrated and have initial functions;
- IDE, IDC and DDP are tested;
- Identification of any issues with the technical specifications (third review of the specifications);

- IDE, IDC and DDP are integrated with other DCs (preferably two or more) and have initial functions;
- IDE, IDC, DDP and other DCs (preferably two or more) are tested;
- Identification any issues with the technical specifications (fourth review of the specifications);
- IDE, IDC, DDP and DCs that have been tested start operating;
- Additional DCs are integrated and tested;
- IDE, IDC, other DCs and the DDP have full functions;
- Ships are integrated into the system on a voluntary basis to enable full scale testing;
- Complete testing of the integrated system; and
- MSC 85 is advised that the LRIT system is operational.

94 In this respect the Group agreed that the initial and full functions should be defined during the design phase if this is required to meet the timeline to be agreed by MSC 83.

#### **ISSUES RELATING TO THE SHIPBORNE EQUIPMENT TO BE USED FOR TRANSMITTING LRIT INFORMATION AND INTEGRATION OF SHIPS INTO THE LRIT SYSTEM**

##### *Background*

95 The Group recalled that COMSAR 11, *inter alia*:

- .1 drew the attention of Contracting Governments to the potential problems they might face when establishing DCs due to problems with legacy shipborne equipment (COMSAR 11/18, paragraph 14.39);
- .2 noted CIRM's intention to submit for consideration by the Group information pertaining to the viability of the shipborne equipment for LRIT (COMSAR 11/18, paragraph 14.40); and
- .3 agreed to bring to the attention of the Committee the fact that due to technical difficulties during the terminal activation and de-activation process, transmission of LRIT information might not be available during this process at the prescribed 6-hour intervals (COMSAR 11/18, paragraph 14.41).

96 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, items 13 and 14) and, after an extensive and detailed discussion of the issues involved, agreed to recommend that MSC 83 should consider the recommendations set out in below in lieu of those advanced by the *Ad Hoc* Engineering Group.

##### *Issues related with legacy equipment*

97 The United States (MSC 83/6/4) advised that it noted the potential problems with some legacy shipborne equipment. The United States stated that it intended to comply with LRIT requirements, including those imposed on it as an Administration for the ship entitled to fly its flag and noted that, if there was a need for upgrading or replacing existing shipborne equipment, its flag ships had that opportunity and obligation.

98 The observer from CIRM stated that it had been almost impossible to get information about some of the older legacy Inmarsat-C equipment already at sea and their compliance with the LRIT requirements.

CIRM reminded the Group that GMDSS was implemented over 15 years ago and some of the manufacturers of the equipment no longer existed and were therefore unable to provide updated software. CIRM stated however that the Inmarsat-C equipment being sold today met the current requirements for LRIT, as set out in the latest Inmarsat System Definition Manual.

CIRM noted that the Marshall Islands trial reported showed that about 10% of the terminals in the field did not comply with the LRIT requirements. CIRM suggested that if the existing equipment was performing correctly for the GMDSS, then it was sensible to leave it doing that and fit a new terminal for LRIT purposes only.

CIRM reminded the Group that there were two submissions for consideration by NAV 53 about software issues and they understood that it was the intention of the United Kingdom to propose a new work programme item to study the maintenance of software at sea for consideration by MSC 83.

99 The Group noted that between the date of adoption of regulation V/19-1 and the commencement of its implementation on 31 December 2008, each ship would undergo at least two surveys of the radio installation and thus the Company operating the ship had ample opportunities to make arrangements for inspecting the shipborne equipment for compliance with regulation V/19-1 and the related provisions of the Performance Standards and putting plans in place to ensure the timely compliance of the ship with its obligation to transmit LRIT information.

100 The Group agreed to recommend that Administrations should consider issuing appropriate instructions to the ships entitled to fly their flag, so as to ensure their timely compliance. In this respect it was recalled that shipborne equipment should be of a type approved by the Administration and thus Administrations should make the necessary arrangements with a view to ensuring that an adequate number of type approved shipborne equipment was available in the market on time.

*Ship non-transmitting due to outside failure of the LRIT system*

101 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 13) in relation to a situation when LRIT information transmitted by a ship cannot be received by those entitled to receive such information due to a failure outside of the ship's control, for example due to a failure of the CSP, ASP, or DC and the related recommendation namely, that in view of the fact that the failure was outside of the control of the ship, Contracting Governments should not impose sanctions on the ship due to circumstances outside of its control.

102 The Group agreed to recommend that, as matters were beyond the control of the ship, no grounds arise for either delaying or detaining the ship pursuant to the provisions of regulation I/19 and V/16. However, it was possible that a Contracting Government, unaware of the circumstances, might decide to impose control measures or steps pursuant to regulation XI-2/9. To avoid such action it would be advisable for the ship to notify the port State of the situation. However, for doing so it needed to be made aware of the failure of the system. The Group agreed that those causing the failure of the system should advise the ship accordingly if the duration of the failure was expected to exceed for example 6 hours and when the ship was being polled or was providing information on demand. The Group agreed to invite MSC 83 to consider the issue and to determine the maximum duration of such failure beyond which the ship concerned would need to inform the Contracting Governments concerned.

103 The Group noted that the question of imposition of any sanctions under the laws of the Administration was an internal issue for the Contracting Government concerned and thus concluded that it was not in a position to offer any advice. However, it was expected that Administrations should show a reasonable understanding of the circumstances.

*Ship non-transmitting LRIT information due to change of flag*

104 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 14) in relation to a time lag in certain circumstances between the decommissioning of the ship from the Contracting Government of the State whose flag the ship was entitled to fly hitherto and the commissioning of the ship under the flag of the new Administration.

105 The Group noted that in all such cases the shipborne equipment transmitted the required information. However, for a variety of reasons, some of which are of a commercial nature, the radio communication equipment was not decommissioned on time so as to be commissioned with the relevant identities under the new Administration.

106 The Group agreed to recommend that as a matter of principle, Contracting Governments should establish procedures which ensure the timely decommissioning and commissioning of the shipborne equipment when a ship changes flag, at least as far as issues which fall under their responsibility and control are concerned, including the prompt registration and updating of information in the registration databases provided for in resolution A.887(21) on Establishment, updating and retrieval of the information contained in the registration databases for Global Maritime Distress and Safety System (GMDSS).

107 The Group also agreed to recommend that the issue of time lag might be resolved by the Administration concerned by providing appropriate information and instructions to the relevant ASPs in relation to the correct routing of the information during the interim period until the issues which had frustrated the prompt commissioning are resolved.

**RECOMMENDATIONS IN RELATION TO ARRANGEMENTS TO BE MADE FOR THE PERIOD BETWEEN MSC 83 AND MSC 84**

108 The Group considered the issues raised (MSC 83/6/1, annex 7, item 17) by the *Ad Hoc* Engineering Group in section 6 of the draft Protocols for the development testing of the LRIT system and for testing the integration of new LRIT Data Centres into the system (MSC 83/6/1, annex 5) and, after an extensive and detailed discussion of the issues involved, agreed to recommend that MSC 83 should consider the recommendations set out in below in lieu of those advanced by the *Ad Hoc* Engineering Group.

109 The Group agreed that the timely review and approval of test plans and results were critical to the on-schedule development and operation of the LRIT system. The Group also agreed that to ensure the sustainability of the LRIT system it was necessary to review and approve, in a timely manner, the needed modification, and change to the control process procedure during the in-service phase of the LRIT system which might entail amendments of the technical specifications as these might be approved by MSC 83.

110 The Group agreed that, in order to ensure the timely implementation of the LRIT system during the design, development, implementation and testing phase and in view of the fact that COMSAR 12 was tentatively scheduled to take place in April 2008 and MSC 84 in May 2008, this meant that the *Ad Hoc* Engineering Group was proposing that a body would need to be authorized and empowered to decide matters on behalf of the Committee and of all Contracting

Governments and, in particular, to agree and adopt amendments to technical specifications and standards previously approved by the Committee; to determine and agree testing schedules, to witness, review and accept or approve test results; and, in the end, the Committee would have to accept and endorse in retrospect its decision.

111 The Group was advised that there was no precedence within the Organization of a similar nature and so far the Committee had not entrusted or delegated authority to any subsidiary body or to any external body or organization to decide on matters which were within the exclusive prerogative of the Committee or the Contracting Governments or State Parties to a treaty for which the Secretary-General or the Organization was the depository.

112 The Group agreed that it was theoretically impossible to reject, beyond any doubt, the argument that it was probable that the technical specifications and standards, as they might be approved by MSC 83, might give rise to difficulties or prove to be unrealistically impracticable during the establishment of NDCs, RDCs, CDCs, the IDC and the IDE, their interface with the DDP and their integration into a robust, functioning and resilient LRIT system. The Group also agreed that a quick review of the draft Protocols for the development testing of the LRIT system and for testing the integration of new LRIT Data Centres into the system was suggesting that further detailed work was required in particular with respect to the testing schedules and criteria for acceptance of tests, which needed to be conducted at every stage of the establishment of the various elements of the LRIT system.

113 The Group, recognizing the impasse, the potential risks and in the interest of ensuring the timely implementation of the LRIT system and thus contribute to the enhancement of the security of all States, agreed that the matter was of an exceptional nature and deserved a special and diligent consideration.

114 The Group agreed to recommend, on the strict understanding that the approach it was recommending did not constitute, and would not at any time hereafter considered as being a precedent, that the Committee should consider establishing a dedicated *Ad Hoc* subsidiary body, at no cost to the Organization, on matters related to the timely implementation of the LRIT system open to all Contracting Governments and to the LRIT Co-ordinator with the following terms of reference:

- .1 to consider identified needed amendments to the technical specifications and standards as these might be approved by the Committee and to justify and agree any such amendments;
- .2 to consider, justify and agree test schedules and programmes and test acceptance criteria; and
- .3 to witness tests and to review and accept test results,

on condition that it was not authorized in any way to consider or agree any matters which had an impact, consequence or entailing to a need for the adoption of amendments to regulation V/19-1 or the Performance Standards and on the understanding that the Committee would consider and, unless it deemed it to be unreasonable, would accept and endorse the actions taken in retrospect as if they had been taken by the Committee.

115 The rules of procedure of the Committee should apply to the conduct of the business of the *Ad Hoc* body. However, the unanimous agreement of the Contracting Governments establishing NDCs, RDCs, CDCs, the IDC and the IDE and the non-objection of the rest of the Contracting Governments present would be required before anything was deemed as agreed, on condition that at least 50 percent of the Contracting Governments establishing a DC and the Contracting Government establishing the IDE were present.

Notwithstanding the aforesaid, it would be the responsibility of such Contracting Governments to ensure the presence and participation of their representatives. For matters which had a bearing on the DDP, the agreement of the Secretariat on behalf of the Organization would be required and no decision should be made which, in the opinion of the Secretariat, entailed a financial burden on the Organization.

In case MSC 83 was to decide that the Consortium should establish the IDC and/or IDE, a representative of the Consortium should be able to attend and the Consortium should be treated, for decision making purposes, as a Contracting Government. Contracting Governments should communicate to the Organization for each meeting of the *Ad Hoc* body the names of their representatives and alternates.

116 The Group requested the Secretariat to consider the issue further and to advise on any issues it deemed necessary or appropriate including on matters relating to the deadlines for submission of reports on the activities of the *Ad Hoc* body for consideration by MSC 84, which in the view of the Group and in light of the nature of the issues involved, should not be strictly observed if the Committee was interested in ensuring the timely establishment of the LRIT system.

117 The Group requested IMSO, in view of the difficulties encountered in relation to securing the required start-up funding, to advise MSC 83 whether it would be willing and able to attend such an *Ad Hoc* body in an *ex-officio* capacity and if so what would be the impact on the budget estimates and other issues it presented in MSC 83/6/7 (IMSO).

**ISSUES RELATING TO THE TASKS OF THE LRIT CO-ORDINATOR WITH RESPECT TO THE INITIAL ESTABLISHMENT AND THE PERFORMANCE REVIEW AND AUDIT OF THE LRIT SYSTEM**

118 The observer from IMSO (MSC 83/6/7) advised that the IMSO Assembly, at its nineteenth (Extraordinary) session which was held in London in March 2007, was informed of the decision of MSC 82 to appoint IMSO as the LRIT Co-ordinator, and decided that IMSO might assume the functions and duties of the LRIT Co-ordinator with effect from 7 March 2007, at no cost to IMSO Parties, in accordance with decisions of the Organization, where article 4 of the amended IMSO Convention would be applied on a provisional basis.

IMSO provided an overview of the budget estimates which they needed to undertake the various tasks of the LRIT Co-ordinator envisaged in section 14 of the Performance Standards and provided information on the accounting procedures to be followed, the contemplated organizational structure, the resulting staff needs, the associated programme of recruitment and its needs and plans with respect to office accommodation.

IMSO stated that it would levy a range of charges for providing its services and would need to establish a formal basis for performance review, audit, charging, resolution of disputes, etc. This would be carried out through a legally binding public/civil contract called the IMSO LRIT Public Service Contract. The IDE, all DCs, and those ASPs providing services to the IDC would be required to sign an LRIT Public Service Contract with IMSO which was under development similar to the Public Services Agreement presently in use to establish the basis for oversight of GMDSS satellite operators.

IMSO advised that the current estimates indicated that for the period 2007 to 2010, in order to perform the tasks of the LRIT Co-ordinator, it would incur expenditure of the order of GBP 2,505,000 against estimated revenue of the order of GBP 876,960. As a result, IMSO had calculated that it would require a start-up funding of GBP 1,445,150, distributed over the period. For each year during the period 2007 to 2010 the start-up capital had been assessed to be GBP 314,000, GBP 671,000, GBP 424,325 and GBP 35,825. Since MSC 82, IMSO had actively solicited the provision of the start-up funding needed and had so far received promises of funding in cash or kind amounting to no more than GBP 10,000 in total. Until now no significant source for start-up funding had been identified and the development could prejudice the ability of IMSO to fulfil its functions as LRIT Co-ordinator.

The Director of IMSO informed the Group that IMSO was therefore seeking contributions, on a voluntary basis, from Contracting Governments, IMSO Parties, interested international organizations and others, to a level of GBP 1.5 million, to enable IMSO to begin actively co-ordinating the start-up of the LRIT System.

IMSO provided an overview of the charging policies it was contemplating to adopt when providing services as LRIT Co-ordinator and advised that, as an intergovernmental organization, it was not authorized by the IMSO Parties to incur any level of debt and, because of the way it was funded entirely from contributions paid by those it oversaw, did not have any money reserves. IMSO stated that it must therefore adopt terms of business that did not allow any credit on the part of those who were liable to pay IMSO for services within the LRIT system. IMSO would therefore insist that all fees and other payments for which LRIT system elements would become liable were paid in full before any service was provided.

IMSO also stated that it was in touch with various potential ASPs and data centre providers in industry and Contracting Governments, and had begun to develop procedures for undertaking the various tasks of the LRIT Co-ordinator. However, it was too early to provide specific details as to the procedures to be employed, given the fact that no specifics yet existed for the design and implementation of the various elements of the LRIT system. IMSO was already working with potential providers to ensure that they were aware of the requirements and thus they were making preparations to fulfil them. IMSO planned, in due course, to develop guidance on what was expected and how such data should be made available for performance review and audit.

Once the LRIT system was in operation, IMSO anticipated reporting to the Committee on an annual basis, as was currently the practice for GMDSS services. However, during the start-up period until 2010, it was expected that reports would be made more frequently to each session of the Committee.

119 The Group noted the information provided by IMSO and suggested that IMSO, subject to developments, should consider providing updated information for consideration by MSC 83, so as to enable MSC 83 to consider how matters should be handled in the absence of the start-up funding required by IMSO. The Group advised IMSO to consider providing MSC 83 with information on other options it had explored or it might explore in relation to securing the needed start-up funding.

120 The Group also agreed to recommend that Contracting Governments should consider the lack of start-up funding and the request of IMSO for the provision of the needed funds on a voluntary basis.

121 The United States stated that, notwithstanding its reservation with respect to the decisions of MSC 82 to appoint IMSO as the LRIT Co-ordinator without an appropriate contingency plan, it reaffirmed its statement made during MSC 82, that while not withdrawing the reservation, they assured the Committee that if their offer to host, build and operate the interim IDC and IDE was accepted by the Committee, the United States would meet all obligations imposed by the regulation V/19-1 and the Performance Standards regarding the operations of such facilities, including performance review and audit by the LRIT Co-ordinator (MSC 82/24, paragraphs 8.51 and 8.54).

122 With respect to paragraph 4 and 22 of MSC 83/6/7 (IMSO), and the discussion that followed regarding those paragraphs, and bearing in mind the Chairman's ruling that there should be no discussion within the Group on internal discussions among IMSO Parties in regard to those paragraphs, the United States stated that it respected that decision. Therefore, the United States did not wish to reiterate fully its position as to the reasons why it objected to the procedure adopted by IMSO reflected in paragraph 4, and made known at the Nineteenth Extraordinary session of the IMSO Assembly, to this Group. At the same time, the United States stated that it did not want its silence in that respect to be understood in any way to be a reversal by the United States of its position previously stated or that the United States now accepted or acceded to the procedure previously adopted because it did not.

123 Because IMSO had indicated that it intended to invoice for services the DCs, including the IDC and IDE, and expected to be paid in advance before those services were performed, the United States believed it was prudent to advise the Group that it was prohibited, under United States law to pay in advance for services, including performance review and auditing and other LRIT services that might be provided by the LRIT Co-ordinator. The allowable procedure would be for an estimate for services to be provided, the estimate is evaluated and a purchase order prepared (which might serve as a contract), the service rendered, an invoice provided, and payment made (commonly within about 30 days). Any contract for such services with the LRIT Co-ordinator entered into by the United States would have to be in accordance with the law and procurement regulations of the United States.

124 With reference to paragraphs 21 and 22 of MSC 83/6/7 (IMSO), Greece and Malta, citing paragraph 14.7 of the Performance Standards, which stated that neither the Organization nor any of the Contracting Governments should be responsible for making any direct payments to the LRIT Co-ordinator for the services it might provide, pointed out that any possible contributions to IMSO towards the start-up funding it was seeking in order to discharge the tasks of the LRIT Co-ordinator during the start up phase of the implementation of the LRIT system (i.e. before the LRIT system commences operation on 31 December 2008) should be on a voluntary basis.

125 The delegation of Portugal, supported by the delegations of Bulgaria, Cyprus, Denmark, Finland, Germany, Greece, Malta, the Netherlands, Romania, Sweden, the United Kingdom and the observer from the European Commission, expressed concern regarding a number of aspects of MSC 83/6/7 (IMSO), in which IMSO presented budget estimates for its LRIT activities for the period 2007-2010. Portugal *et al*, pointed out that the submission did not provide any information on what tasks or activities the LRIT Co-ordinator was planning to cover with the sums quoted in the estimates. The budget estimates were considerably higher than those they might have been expected. Therefore, Portugal *et al* stated that they were interested to have detailed information on what tasks the LRIT Co-ordinator was envisaging to carry out and how much it was calculating each of these tasks to cost. In their view it was impossible to determine whether the quoted figures were reasonable on the basis of the information provided in MSC 83/6/7 (IMSO) and thus it was equally impossible for a Contracting Government to decide if it should make a voluntary contribution towards the funding which IMSO was seeking.

Portugal *et al* suggested that IMSO should consider providing detailed information, as soon as possible for consideration by MSC 83, on what activities IMSO was contemplating to carry out, which were leading to the need to incur expenditures resulting to the budget estimates it was presenting.

Portugal *et al* also stated that they strongly believed that the charges to be levied by the LRIT Co-ordinator for conducting performance review and audit of the LRIT system should be calculated with reference to the workload necessary to perform the tasks and not based on the number of individual LRIT information packages handled by the DCs.

126 The delegation of Panama associated itself with most of the comments of Portugal *et al* and in addition pointed out that the charging policy of the LRIT Co-ordinator would need to take into account the size of the DCs and consideration should be given to adopting policies which did not adversely burden DCs of smaller size.

127 In response to the comments by Portugal *et al* and by Panama, the observer from IMSO informed the Group that, during previous week, the draft MSC 83/6/7 (IMSO) had been noted by the IMSO Advisory Committee during its nineteenth session. It also advised that that session of the IMSO Advisory Committee was attended by representatives of seven of the Contracting Governments which had expressed the aforesaid concerns and stated that, as the report of the session indicates, none of them had expressed such concerns at the time.

128 The Group considered the issues raised by the *Ad Hoc* Engineering Group (MSC 83/6/1, annex 7, item 11) in relation to the funding of the LRIT Co-ordinator and agreed to recommend that in the light of the aforementioned discussions the issues raised by the *Ad Hoc* Engineering Group did not require further consideration.

#### **DEVELOPMENT OF THE MODELS OF THE VARIOUS AGREEMENTS NEEDED**

129 The Group recalled that MSC 82 had instructed COMSAR 11 and the Group to consider the issue of the agreements which might be required for the establishment of the LRIT system. The Group noted that during COMSAR 11, the Secretariat pursuant to the instructions of MSC 82 provided a provisional list of such agreements which had been developed, taking into account the LRIT system architecture provided in the Performance Standards. The provisional list was discussed (COMSAR 11/WP.4/Add.1, paragraphs 15 to 22) and following the consideration of the report of that working group, COMSAR 11 instructed (COMSAR 11/18, paragraph 14.32) the Secretariat to:

- .1 study the issues pertaining to the draft agreements and templates listed in annex 18 of COMSAR 11/18) and to provide advice to the Group; and
- .2 prepare first drafts of the agreements and templates, other than any service contracts envisaged by IMSO.

130 In addition, COMSAR 11 had strongly urged (COMSAR 11/18, paragraph 14.33) Contracting Governments to submit their views on the issues to be addressed by the various agreements as soon as possible for the consideration of the Group.

131 The Secretariat recalled that it had advised during COMSAR 11 that:

- .1 the detailed development of the various agreements was to a large extent highly dependant on who in fact would be ultimately the parties to the agreement and whilst the Performance Standards might provide the bulk of the issues to be addressed there was a need to address a number of other issues, some of which might have not yet been debated by the Committee however, logic dictates so;
- .2 the fact that none of the Contracting Governments had provided until now, in response to resolution MSC.211(81), any proposals<sup>13</sup> on the issues that needed to be addressed in relation to the establishment of the IDC and the IDE or any other issues relating to the establishment, operation, performance review and audit of the LRIT system, which made the development of any required agreements difficult and more complex;
- .3 in order to compensate for the time lost due to the failure to submit, for consideration by MSC 82, the information requested by resolution MSC.211(81) and in an effort to keep the road map (MSC 82/24/Add.2, annex 16) agreed by MSC 82 on track, Contracting Governments should submit the information required by resolution MSC.211(81) and the road map, as soon as possible, for consideration by the Group which was at that time tentatively scheduled to take place in June 2007. The prompt submission of such information, as well as information in relation to intent to propose to MSC 83 the establishment of an IDC and/or IDE would be helpful in focusing and making the development of the various agreements an easier task;
- .4 subject to the availability of the needed information, the Secretariat was prepared to consider preparing draft for the various agreements which might be required for consideration by the contemplated meeting of the Group; and
- .5 in some cases, those contemplating in making an offer for establishing the IDC and/or the IDE appeared to be wishing to have a degree of clarity in relation to the terms of the agreement which might govern the issue. At the same time and as already indicated, some of the terms of such agreements would be dependant on whether the party involved would be a State, a public or private entity established in one of the Member States of IMO or in one of the Contracting Governments.

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<sup>13</sup> The proposals should have been submitted for consideration by MSC 82.

132 The Secretariat recalled that:

- .1 as the Group had noted earlier, with the exception of Australia and the United States, none of the Contracting Governments had submitted for consideration by the Group the information stipulated in resolution MSC.211(81); and
- .2 none of the Contracting Governments had submitted, in response to the request of COMSAR 11, views on the issues to be addressed by the various agreements for consideration by the Group.

133 The Secretariat advised that they had attempted, taking into account the discussions during COMSAR 11, to develop draft models for the agreements which might be needed, however in the absence of views on the issues to be addressed; information as to what DCs the Contracting Governments were envisaging to establish; and any proposals or offers in relation to hosting, building and operating the IDC and IDE and with 158 States being Contracting Governments, it has been an impossible task to develop something sensible.

134 The Secretariat stated that, notwithstanding the continued absence of the views of the Contracting Governments on the issues to be addressed, they had no alternative but to table for consideration by MSC 83 draft models of the various agreements on the basis of what the Secretariat considered to be reasonable and appropriate.

135 The Secretariat also stated that it was prepared to discuss with the Consortium and the United States matters related to the drafts of the needed agreements or head terms in relation to hosting, building and operating the IDC and IDE and to prepare relevant drafts taking into account the discussions during, and conclusions of COMSAR 11. However, such discussions would need to be conducted by correspondence or take place at the Headquarters of the Organization.

136 The Group recalled that, during COMSAR 11, it was pointed out that the agreement(s) in relation to the establishment and operation of the IDC and IDE needed to contain appropriate clauses which ensured immunity from legal actions to obtain the data and that data resident both within the database and transient through the IDC and IDE were only subject to the laws of the flag State of the ship concerned. The Group also recalled that during the aforesaid discussions it had been suggested that there was a need for such agreement(s) to contain appropriate clauses to ensure the integrity and secure handling of the data in order to avoid illegal access to flag State data.

137 The United States advised that, since COMSAR 11, it had investigated, when preparing its offer to host, build and operate the IDC and IDE on an interim basis whether it was possible legally to ensure that United States Courts did not take jurisdiction over disputes as to access to LRIT data. The United States had concluded, based on its investigation, that the answer was that it was not possible presently to guarantee that United States Courts would not take jurisdiction over such disputes. However, although no guarantees were possible, there might be steps that could be taken to minimize the risk that United States Courts would take jurisdiction over such disputes.

The United State indicated that these steps require the co-operation of all parties that have an interest in the LRIT data for individual ships. These parties included, *inter alia*:

- .1 the flag State whose flag the ship was entitled to fly;
- .2 the ship owner and in some cases, the managing owner or operator;

- .3 the Contracting Government in whose jurisdiction the DC was located;
- .4 the Contracting Government or Governments that had requested and received the data; and
- .5 the Courts of the flag State, and the States of Contracting Governments where the LRIT data was located;

and there might be other parties.

The United States advised that it would be prepared to work with all interested parties, should the Committee select the United States contingent offer to build, host and operate the interim IDC so as to minimize the risk that any court other than the courts of the flag State would take jurisdiction over disputes as to access to LRIT data.

138 The Group agreed that MSC 83 would need to have before it, a clear understanding of the legal environment in which the IDC and IDE would be established and operated when considering the proposal of the Consortium. The Group requested the Marshall Islands, which conveyed the proposal of the Consortium, to request the Consortium to provide clear information in relation to the legal environment, including, *inter alia*, the governing statutes, the legal entities involved, their place of incorporation and the places where they conducted business from and the associated governing laws, the physical location of the various parts of the IDC and IDE, including any backup systems and the locations in which data would be stored or transited through.

139 The Group also requested IMSO to indicate in the matrix they were contemplating to present to the Committee, when reporting the results of their evaluation of the proposal of the Consortium, to indicate whether the required information had been submitted.

140 The Group agreed that the consideration of the issues surrounding the legal environment was the responsibility of each Contracting Government and the Committee would need to consider matters and decide as accordingly.

#### **OTHER ISSUES**

141 The Group agreed to recommend that the Committee should consider initiating a process of consolidating and codifying its decisions in relation to LRIT matters, other than those which would be adopted as amendments to the Performance Standards or the technical specification, in a single document for example in an MSC.1 circular so as to enable easy identification and reference.

#### **Actions requested of the Committee**

142 The Committee is invited to:

- .1 determine the approach to be taken with a view to ensuring the timely establishment of the LRIT system on a sustained and viable financial basis, taking into account the discussions of the Group (paragraphs 7 to 35);
- .2 agree that, although Contracting Governments are entitled to recover any costs they incurred when LRIT information they have paid for is provided to other Contracting Governments that have requested them, they are not entitled to realize any form of profit (paragraph 39);

- .3 agree that commercial entities operating DCs and/or the IDE are entitled to realize profits (paragraph 41);
- .4 agree that Contracting Governments establishing an NDCs or RDCs or CDCs are responsible for all costs associated with the establishment and operation of such DCs, including the cost associated with all transmissions of LRIT information to such DCs by ships entitled to fly their flags (paragraph 43);
- .5 agree that all DCs are entitled to charge other DCs for the LRIT information they provide to them via the IDE an amount equal to the ship-to-shore communication cost for delivering the LRIT information to the DCs to which the ship concerned is transmitting (including the cost of the CSP and ASP) plus “X” per cent to cover overheads each time such information is provided and in this respect to determine the figure “X” (paragraphs 45 to 48);
- .6 agree that the charges to be levied when providing LRIT information during the period up to 31 March 2010 should be monitored with a view to amend, if need be, the aforesaid practice in relation to the charges to be levied (paragraph 48);
- .7 agree that RDCs and CDCs should be able to internally forward LRIT information transmitted by ships entitled to fly the flag of the Contracting Governments establishing or using the services of such centres without routing these through the IDE and that, during the initial phase of establishment of the LRIT system, it would be advisable to generate journals for such transactions so as to enable the LRIT Co-ordinator and the Committee to have a complete overview of the functioning of the entire LRIT system (paragraph 50);
- .8 agree that, at this stage as it requires the adoption of amendments to the Performance Standards and on the understanding that the matter should be pursued at a later stage, LRIT information received and stored by an RDC, CDC or the IDC from other DCs at the request of one of the Contracting Governments establishing or participating in that DC should not be provided to another Contracting Government associated with that DC without initiating a new cycle of request and receipt (paragraph 51);
- .9 agree that Contracting Governments are free to share, for security purposes, subject to compliance with the provisions of their national statutes, with other Contracting Governments the LRIT information they have requested, obtained and paid for provided such practices are not used as a means to either by-pass the provisions of regulation V/19-1 or for financial gains (paragraph 52);
- .10 agree that the charge to be levied for each LRIT information package should be based on the ship-to-shore communication cost which was reported as being in July 2007 of the order of USD 0.25 and that any charges exceeding twice the ship-to-shore communication cost should be considered as unfair and unreasonable (paragraph 54);
- .11 agree that the charges for the services of the IDE should be borne by the DCs using the services of the IDE and that the charges should be calculated on the basis of a simple formula with reference to the volume of LRIT information handled by the IDE for each DC (paragraph 55);

- .12 agree that nothing prevents DCs from entering into agreements or arrangements governing the exchange of LRIT information and the settlement of accounts provided such arrangements do not result in unfair charging practices within the LRIT system (paragraph 56);
- .13 agree that the provision of LRIT information for the search and rescue of persons in distress at sea should in all cases be free of charge to the search and rescue service of the Contracting Government requesting such information and that the costs involved should be on the account of the DCs providing such information (paragraph 58);
- .14 agree that those failing to promptly discharge their financial obligations should be subject to barring and in this respect direct the development of the needed amendments to the Performance Standards in order to establish the required functionalities (paragraphs 60 to 62);
- .15 note the discussions in relation to the evaluation by IMSO of proposals for the establishment, operation and maintenance of IDC and/or IDE and concur with the agreed approach (paragraphs 65 to 69, 71 and 139);
- .16 adopt the technical criteria to be taken into account when establishing the IDC and IDE and recommend their use in relation to other DCs (paragraph 70 and annex 2);
- .17 agreed that, at least for the initial stages of the implementation of the LRIT system, it might be easier if a decentralized billing system is implemented and that the billing system should be kept as simple as practically possible (paragraph 74);
- .18 agree that each DC desiring to levy any charges for the LRIT information it is providing (other than those for search and rescue purposes) should produce its own invoices at some common frequency (paragraph 75);
- .19 agree that DCs should publish their charges with reference to a common currency or with reference to the Special Drawing Right (SDR) and that DCs should also publish their charges in the IDE (paragraph 76);
- .20 agree that, subject to compliance with the provisions of regulations V/19-1.8 and V/19-1.9 as they applied at the particular time, Contracting Governments should have access to archived LRIT information throughout the period during which such information is kept in storage; and that the charges to be levied for providing archived LRIT information should be those prevailing at the time that the information is provided and not those applicable at the time the information was received by the DC concerned (paragraphs 78 and 79);
- .21 advise Contracting Governments that it would be in the collective interest of all Contracting Governments if NDCs, RDCs and CDCs were to comply with the specifications for back-up systems stipulated in the draft Technical specification for the International LRIT Data Centre (MSC 83/6/1, annex 2) in relation to backup systems for the IDC (paragraph 81);

- .22 recommend that those Administrations wishing to engage in port State request verifications, should instruct the ships entitled to fly their flag to transmit a copy of the Notice of Arrival it tenders to a port State to the DC to which the ship is transmitting LRIT information and direct the development of required consequential amendments to the Performance Standards, so as to ensure that each DCs has the required functionality (paragraphs 84 and 85);
- .23 agree that the IDE should check whether each DC implements the latest version of the DDP before routing messages, other than to those requesting LRIT information for search and rescue purposes, and in this respect decide the time delay to be allowed for the implementation of the latest version of the DDP (paragraphs 87 to 89);
- .24 agree that the port State standing orders should not be removed from the DDP (paragraphs 84, 85 and 90);
- .25 decide the additional milestones to be observed in relation to the establishment of the LRIT system, taking into account the target dates stipulated in resolution MSC.211(81) (paragraphs 91 to 94);
- .26 recommend that Administrations should consider issuing appropriate instructions to the ships entitled to fly their flag, so as to ensure their timely compliance with the provisions of regulation V/19-1 and that Administrations should make the necessary arrangements with a view to ensuring that an adequate number of type approved shipborne equipment is available in the market on time (paragraphs 97 to 100);
- .27 agree that, subject to the provisions of regulation XI-2/9 and provided arrangements are made to notify the Contracting Governments concerned, when LRIT information transmitted by a ship cannot be received by those entitled to receive such information due to a failure of the LRIT system, other than failure of the shipborne equipment, Contracting Governments, subject to the provisions of their statutes, should not seek to impose sanctions on the ships involved in such circumstances (paragraphs 102 and 103);
- .28 recommend that Contracting Governments should establish procedures which ensure the timely decommissioning and commissioning of the shipborne equipment when a ship changes flag, at least as far as issues which fall under their responsibility and control are concerned, including the prompt registration and updating of information in the registration databases provided for in resolution A.887(21) on Establishment, updating and retrieval of the information contained in the registration databases for Global Maritime Distress and Safety System (GMDSS) (paragraphs 105 and 106);
- .29 recommend that Administrations should address the issue of time lag in the provision of LRIT information when a ship changes flag by providing appropriate information and instructions to the relevant ASPs in relation to the correct routing of the information during the interim period until the issues which has frustrated the prompt commissioning of the shipborne equipment are resolved (paragraph 107);

- .30 consider the recommendations in relation to arrangements to be made for the period between MSC 83 and MSC 84 with a view to ensuring the timely establishment of the LRIT system (paragraphs 109 to 116);
- .31 note the discussion in relation to issues relating to the LRIT Co-ordinator and to decide on the approach to be taken (paragraphs 118 to 128);
- .32 note the discussion in relation to the development of the models of the various agreements needed for the establishment of the LRIT system and decide the approach to be taken (paragraphs 129 to 140);
- .33 decide the approach to be taken with respect to consolidating and codifying the decisions in relation to LRIT matters (paragraph 141); and
- .34 approve this report in general.

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## ANNEX 1

## LIST OF DOCUMENTS

**Agenda item 2 – Adoption of the agenda**

MSC/ISWG/LRIT 2/1		Provisional agenda
MSC/ISWG/LRIT 2/J/2		Provisional list of documents

**Agenda item 3 – Consideration of issues for the timely establishment of the LRIT system**

MSC/ISWG/LRIT 2/3	Secretariat	Information in relation to the submission and circulation of documents
MSC/ISWG/LRIT 2/3/Add.1	Secretariat	Information in relation to the submission and circulation of documents – Outcome of the <i>Ad Hoc</i> Working Group on engineering aspects of LRIT
MSC/ISWG/LRIT 2/J/4	Secretariat	Related Documents – (Originating from the work to <i>Ad Hoc</i> Working Group on engineering aspects of LRIT)
MSC/ISWG/LRIT 2/3/1	Australia	Comments on the outcome of COMSAR 11
MSC/ISWG/LRIT 2/3/2	IMSO	Evaluation of proposals for the International LRIT Data Centre and the International LRIT Data Exchange
MSC 83/6	Secretariat	Establishment of the LRIT in accordance with resolution MSC.211(81) and the Road map for the timely implementation of the LRIT system
MSC 83/6/Add.1	Secretariat	Procedure with respect to proposals received for the establishment, operation and maintenance of the International LRIT Data Exchange and International LRIT Data Centre

	Circular letter No.2794	Request for proposals for the establishment, operation and maintenance of the International LRIT Data Exchange and International LRIT Data Centre
MSC 83/6/3*	United States	International LRIT Data Centre and International LRIT Data Exchange
MSC 83/6/4*	United States	Comments on the outcome of COMSAR 11
MSC 83/6/5*	United States	Billing issues
MSC 83/6/6	Marshall Islands	Proposal for the establishment, operation and maintenance of the International LRIT Data Exchange and Data Centre
MSC 83/6/7	IMSO	Performance review and audit of the LRIT system

\* The United States has specifically requested the consideration of these documents during the meeting.

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*Related documents*

COMSAR 11/18, paragraphs 14.13 to 14.43 and annexes 7, 18 and 19	Report to the Maritime Safety Committee
COMSAR 11/WP.4/Add.1, paragraphs 15 to 51	Report of the E-Navigation Strategy and LRIT issues Working Group
MSC 82/24, paragraphs 8.25 to 8.68 and annex 16	Report of the Maritime Safety Committee
MSC 82/WP. 10	Report of Working Group on Engineering Aspects of Long-Range Identification and Tracking of Ships
C 98/10/Add.1	Outcome of the 19th (extraordinary) session of the IMSO Assembly
Resolution MSC.202(81)	2006 SOLAS (chapter V) amendments

Resolution MSC.210(81)

Performance standards and functional requirements for the long-range identification and tracking of ships

Resolution MSC.211(81)

Arrangements for the timely establishment of the Long-range identification and tracking system

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**ANNEX 2****CRITERIA FOR THE LOCATION OF  
THE IDC AND THE IDE***Physical location*

- 1 The physical location of the IDC and IDE should be such so as to ensure that the IDC and IDE meet the availability requirements and provide the expected quality of service.
- 2 The physical location of the IDC and IDE, including any backup sites should be accessible to the LRIT Co-ordinator.
- 3 The IDC and IDE should have a disaster recovery site accessible every day of the year 24 hours a day.
- 4 The IDC and IDE should have adequate physical security including protection from, *inter alia*, vandalism, environmental disasters and fire.

*Communications infrastructure*

- 5 The IDC should have access to reliable and adequate communication networks so as to have the needed links with Application Service Providers(s), Communications Service Provider(s), the IDE, other DCs and the DDP.
- 6 The IDE should have access to reliable and adequate communication networks so as to have the needed links with the IDC, other DCs and the DDP.
- 7 The IDC and IDE should have access to reliable and adequate communication networks to enable the LRIT Co-ordinator to have remote access to the IDC and the IDE.
- 8 The IDC and IDE should be able to accommodate multiple internet service providers (ISP).
- 9 The ISP links should be, if possible, fibre optic with satellite communications for back up. However, terrestrial microwave communications may also serve in a back up capacity.
- 10 The IDC and IDE should have the required redundant firewalls to ensure the required data integrity.
- 11 Although it is expected that communications links with the IDC and IDE will likely be over the internet, leased lines may also be used however, in no case should broadcast connections be used for any links within the LRIT system.
- 12 All communications links should have adequate and scaleable data bandwidth.

*Supply of power*

- 13 The IDC and IDE should be provided with an adequate power from a main, transitional and emergency power source so as to ensure their uninterrupted functioning and in order to meet the availability requirements.

*Equipment and spare parts*

14 The IDC and IDE should have local backup servers with seamless switch-over between servers locally.

15 The IDC and IDE should also have remote backup servers which should have close to seamless switch-over.

16 The IDC and IDE should have redundancy in IDC and IDE equipment.

17 The main and backup equipments and systems of the IDC and IDE should be geographically distributed to the extent that is practically and reasonably possible.

18 The IDC and IDE should be provided with an adequate supply of spare parts or should have arrangements in place which ensure the prompt and timely delivery of any needed spare parts.

*Availability*

19 The IDC and IDE should operate 24 hours a day 7 days a week with an availability of 99.9% over the year and 95% over any day.

*Observation*

20 The above criteria, although they have been developed in relation to location of the IDC and IDE, should be considered as applying equally to all DCs and the DDP.

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