



To: All Parties to the IMSO Convention

From: IMSO Director

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

Date: 7 December 2007

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

Dear Sirs

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

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

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

I would draw your attention to the following salient points:

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

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

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

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

Yours faithfully



Esteban Pacha-Vicente
Director

IMSO



International
Mobile Satellite
Organization

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

7 December 2007

Dear Mr Lantz

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

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

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

and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours sincerely

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

Esteban Pacha
Director