RADIOCOMMUNICATIONS AND SEARCH AND RESCUE

Proposed amendments to the Convention on the
International Mobile Satellite Organization

Submitted by the International Mobile Satellite Organization (IMSO)

SUMMARY

Executive summary: Amendments to the IMSO Convention have been proposed by the Party of Denmark which focus, inter alia, on the need to maintain, strengthen and enlarge the scope and oversight of IMSO to include future providers of GMDSS satellite services.

Action to be taken: Paragraph 2.1

Related documents: Resolution A.888(21)

1 Introduction

1.1 The Maritime Safety Committee will note that, since 15 April 1999, under its present Convention, the International Mobile Satellite Organization (IMSO) has been responsible for overseeing the performance of the public interests in the operations of Inmarsat Limited. These public interests include the provision of global maritime satellite distress and safety communications services for the GMDSS.

1.2 By adopting resolution A.888(21), Criteria for the Provision of Mobile-Satellite Communication Systems in the Global Maritime Distress and Safety System (GMDSS), IMO has foreseen the future participation of other satellite operators in the provision of GMDSS services.

1.3 On 28 February 2002, amendments to the Convention on the International Mobile Satellite Organization were proposed by the Party of Denmark, and have been circulated to all IMSO Parties for their consideration and approval at the Sixteenth Session of the IMSO Assembly to be held in London from 17 to 19 September 2002. These proposed amendments focus, in particular, on the need to maintain, strengthen and enlarge the scope and oversight of IMSO, to include future providers of GMDSS satellite services as envisaged in resolution A.888(21).

1.4 Explanatory Notes on the proposed amendments are set out in the annex to this document.
2  Action requested of the Committee

2.1  To consider and decide in principle on the future scope of IMSO’s oversight of GMDSS, in an environment where there will be more than one provider of mobile satellite services for the GMDSS which meets the criteria of IMO Assembly resolution A.888(21).

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ANNEX

EXPLANATORY NOTES ON THE PROPOSED AMENDMENTS TO THE IMSO CONVENTION

BACKGROUND

1 The establishment of Inmarsat was based on two international public law instruments developed under the auspices of the International Maritime Organization (IMO). These are:

(a) Convention on the International Maritime Satellite Organization (Inmarsat) between States Parties to the Convention; and

(b) Operating Agreement between telecommunications entities public or private (one per Party) called “Signatories” designated by a State.


2 The purpose of Inmarsat was to make provision for the space segment necessary for improved maritime communications and, in particular, for improved safety of life at sea communications and the Global Maritime Distress and Safety System (GMDSS). This purpose was later extended through amendments to the Convention and Operating Agreement to provide the space segment for land mobile and aeronautical communications, and the name of the organization was changed to the International Mobile Satellite Organization to reflect the amended purposes.

3 After twenty years of successful operation, Member States and Signatories of the intergovernmental organization Inmarsat decided to challenge rapidly growing competition from private providers of satellite communications services and pioneered the first ever privatization of all assets and business carried on by the intergovernmental organization while adhering to the continuous provision of the public service obligations and governmental oversight as a prerequisite to the privatization.

4 At its Twelfth Session in April 1998, the Inmarsat Assembly adopted amendments to the Inmarsat Convention and Operating Agreement which were intended to transform the Organization’s business into a privatized corporate structure, while retaining intergovernmental oversight of certain public service obligations and, in particular, the GMDSS. The Assembly and Council of Inmarsat subsequently decided to implement the amendments as from 15 April 1999, pending their formal entry into force. In doing so, it was recognised that early implementation of the new structure was needed to maintain the commercial viability of the system in a rapidly changing satellite communications environment, and thereby ensure continuity of GMDSS services and other public service obligations, namely: peaceful uses of the system, non-discrimination, service to all geographical regions and fair competition. The restructuring amendments entered into force on 31 July 2001 and became binding upon all Parties, including those which had not accepted them, and the Operating Agreement terminated on the same date.

5 The restructuring of Inmarsat involved the incorporation of holding and operating companies, located in England and registered under British law on 15 April 1999, as planned. On the same day, the Headquarters Agreement between the UK Government and IMSO was
signed. A Public Services Agreement between IMSO and the privatised Inmarsat was also executed with immediate effect. The Operating Agreement was terminated and the Signatories received ordinary shares in the privatised Inmarsat in exchange for their investment shares. The Inmarsat satellites and all other assets of the former IGO were transferred to the privatised operating Company which continues to manage the global satellite communications system and to provide maritime and distress and safety services for GMDSS at either no cost or at a special rate.

6 The residual intergovernmental organization (IMSO) continues with 87 Parties, operating through the Assembly of Parties, its Advisory Committee and a small Secretariat, headed by the Director who is the Chief Executive Officer and legal representative of the Organization. Under the relevant provisions of the Convention, the Public Services Agreement and the Articles of Association of the Company, IMSO is charged with overseeing, and under some circumstances may enforce fulfilment of the Company’s public service obligations and, in particular, GMDSS services. In performing this role, IMSO acts as the natural ally of IMO and watchdog of proper provisions and implementation of IMO’s requirements in respect of GMDSS by Inmarsat Ltd. To facilitate these functions, an Agreement of Cooperation has been concluded between IMSO and IMO. Under a similar Agreement with the International Civil Aviation Organization (ICAO), IMSO ensures that Inmarsat Ltd. takes into account the applicable ICAO Standards and Recommended Practices and regularly informs ICAO accordingly.

THE NEED FOR CHANGE

7 After the restructuring of Inmarsat, the process of privatisation and liberalization of global and regional satellite communications services is fast developing: most recently Intelsat and Eutelsat have been privatised. In both these cases, the mechanisms of intergovernmental oversight of public interests in provision of their services have been established and, to this end, residual international organizations similar to IMSO have been put in place. At the same time, new, strictly commercial and private providers of satellite communications other than Inmarsat have emerged. These are neither subjected to any form of intergovernmental oversight nor have they any public obligations imposed on them by Governments in provision of these services.

8 The process of widening access to outer space by private providers of communications services leads to the ever increasing commercialisation of these services and lack of interest to serve the remote and rural areas of the world where there is a public need to serve, but there is not an immediate profit achievable. This applies, in particular, to many rural and remote areas of the developing countries where there is an acute social need to serve, but no alternative to satellite communications services is available. As long as communications services of these areas will not be commercially profitable, the Organization shall focus on existing international and national mechanisms dealing with technical assistance with the aim of seeking to ensure that all those areas are provided with mobile satellite communications services and, in particular, the rural and remote areas of developing countries.

9 In recent years, the horizons of mobile satellite communications have expanded with ever-increasing speed, and there are several different options for the design and capability of new services. In line with these developments, the adoption by the IMO Assembly of Resolution A.888(21) - Criteria for the Provision of Mobile-Satellite Communication Systems in the Global Maritime Distress and Safety System (GMDSS), has provided a clear indication of IMO’s intention to consider opening up provision of GMDSS services in the future to any satellite operator whose system fits these Criteria.
10 Under these circumstances, there is a real probability that, in the foreseeable future, there will be more than one provider of mobile satellite services for the GMDSS which meets the criteria of IMO Assembly Resolution A.888(21), and as such may obtain the approval of IMO to provide these services on an equal footing with Inmarsat Ltd. This could, under the present regime, have a direct and negative impact on the quality and global accountability of different system operators, whereby:

(a) Inmarsat Ltd would continue to provide GMDSS services and adhere to other public obligations, under the cover of the present Convention as overseen by IMSO, and, at the same time;

(b) Operators, other than Inmarsat Ltd. would provide GMDSS services and might or might not adhere to other public service obligations under the cover and oversight of different national regulatory regimes, or

(c) Inmarsat Ltd could terminate the Public Services Agreement with IMSO under Clause 18 (c) thereof, putting itself on an equal and competitive footing with other satellite system operators: as a result, international oversight of public service obligations including GMDSS would cease to exist.

11 This would be a highly undesirable and unfortunate step backwards in the provision and oversight of the existing coherent and robust global satellite communications system for GMDSS, posing a real threat to the safety of life at sea. It may also adversely affect the smooth operation of the system as a whole.

12 In the light of the foregoing, the main reason which prompted the Party of Denmark to submit amendments to the IMSO Convention is to be as proactive as at the time of the restructuring of Inmarsat and not to be overtaken by events. The proposed amendments are, therefore, focussing on the following:

(a) the need to maintain, strengthen and enlarge the scope of IMSO to include future providers of GMDSS satellite services;

(b) the need to maintain, strengthen and enlarge the scope of IMSO in oversight of other public services, including aeronautical safety services;

(c) the practical need to revert to the title of “Directorate” rather than “Secretariat”, based on the fact that it is headed by the Director and bearing in mind that, prior to the privatisation of Inmarsat, the title “Directorate” was used; and

(d) the need to assist developing countries to serve their remote and rural areas with mobile satellite communications where there is a public interest to serve, but neither immediate profit nor alternative communications services are available.