

Malta, 29 September to 3 October 2008
Agenda Item 13

AMENDMENTS TO THE IMSO CONVENTION
PROPOSAL TO CONSIDER AND ADOPT THE AMENDMENTS TO THE IMSO
CONVENTION AND TO CONSIDER THEIR PROVISIONAL APPLICATION
AS SUBMITTED BY THE PARTY OF THE UNITED STATES

Executive Summary: This document discusses the amendments to the IMSO Convention proposed by the Party of the United States And proposes that the Assembly consider and adopt those Amendments and consider their Provisional Application

Action to be taken: Section 1.2 and 2.1 below.
Related documents: Assembly/20/13

1 BACKGROUND

1.1 At its Eighteenth Session, the IMSO Assembly adopted amendments to the IMSO Convention concerning both the Global Maritime Distress and Safety System (GMDSS) and the Long Range Identification and Tracking of Ships (LRIT). At its Nineteenth Extraordinary Session, the IMSO Assembly decided by “an overwhelming majority of delegations” that the amendments adopted at the Eighteenth Assembly should be provisionally applied by the Parties that so agreed as of 7 March 2007 pending their formal entry into force in accord with Article 18 of the IMSO Convention. Several Parties, including the United States, objected to this decision on the basis that the previously adopted one sentence LRIT amendment was insufficient to enable IMSO to properly perform as LRIT Coordinator and that the decision to provisionally apply the LRIT and GMDSS amendments was flawed because it was not taken by consensus. The United States believes that the one sentence LRIT amendment, which authorizes IMSO to assume the duties of LRIT Coordinator, does not provide a firm legal foundation for IMSO to perform that function and that more is needed in the IMSO Convention to properly authorize IMSO to perform that role as well as to provide for transparency and accountability by the Organization.

1.2 The Party of the United States has proposed amendments to the IMSO Convention that it believes will provide IMSO a sound legal basis to perform the role of LRIT Coordinator and make it more transparent and accountable to the IMSO Parties. The United States also chaired an Informal

Correspondence Group of Parties to receive comments and suggestions for improvements to its proposal. It has reported the results of that Informal Correspondence Committee to the IMSO Parties, including a revised set of amendments that it believes are improvements on the United States' original proposals. Those amendments will be considered for adoption at the Twentieth Session of the Assembly. The United States recommends that the IMSO Assembly consider and adopt those amendments at the Twentieth Session of the Assembly of Parties.

1.3 As reflected in Assembly/20/13, there is no legal objection to adoption of the amendments proposed by the Party of the United States. However, adoption does not, in and of itself, make those amendments applicable to the Organization. That requires either formal entry into force of the amendments in accord with the IMSO Convention or provisional application of the adopted amendments.

1.4 Article 18(2) of the IMSO Convention provides that “[i]f adopted by the Assembly, * * * amendment[s] shall enter into force one hundred and twenty days after the Depositary has received notices of acceptance from two thirds of those States which, at the time of adoption by the Assembly, were Parties. Upon entry into force, the amendment shall become binding on those Parties that have accepted it. For any other State which was a Party at the time of adoption by the Assembly, the amendment shall become binding on the day the Depositary receives its notice of acceptance.”

1.5. Formal entry into force of the amendments proposed by the United States under Article 18(2) of the IMSO Convention may take years and is unlikely to occur quickly enough to meet the need to promptly establish a firm legal foundation upon which IMSO can perform its duties and functions as LRIT Coordinator. However, the Parties may decide at the Twentieth Assembly to provisionally apply amendments adopted at that session as a way forward to allow the Organization to promptly and properly perform its role as LRIT Coordinator. The Party of the United States would welcome consideration of this approach. The Party of the United States reminds the Parties of its view, expressed at the Nineteenth Extraordinary Session of the Assembly, that a decision by the Parties to provisionally apply amendments would need to be taken by consensus. Such an approach would be consistent with good treaty practice regarding the modification of treaties.

2 PROPOSAL TO CONSIDER AND ADOPT AMENDMENTS AT THE TWENTIETH ASSEMBLY AND TO CONSIDER THEIR PROVISIONAL APPLICATION

2.1 Because of the likely delay in formal entry into force of the amendments proposed by the United States, and because IMSO is in immediate need of a firm legal foundation upon which to perform its

important functions as LRIT Coordinator, the United States proposes that the Twentieth Assembly consider and adopt the amendments proposed by the Party of the United States, and, if the amendments are adopted, that provisional application of the amendments be considered by the Parties.

ACTIONS REQUIRED

The Assembly is invited to

- (a) Consider the above;
- (b) Decide as appropriate.