



SES Conference
First session
Agenda item 4

SES CONF 1/4/2
Origin: Director General
Date: 30 June 2020

**INTERNATIONAL CONFERENCE OF CONTRACTING PARTIES TO THE
INTERNATIONAL AGREEMENT ON THE USE OF INMARSAT SHIP EARTH STATIONS
WITHIN THE TERRITORIAL SEA AND PORTS**

Consideration of amendments or termination of SES Agreement

Draft texts for amendments, modifications, or termination

<i>Executive Summary:</i>	This document provides draft texts for consideration and adoption at the Conference.
<i>Action to be taken:</i>	Paragraph 11
<i>Related documents:</i>	A 25/4.4, A 25/14/RD, ASSEMBLY/13/Report, ASSEMBLY/14/Report, ASSEMBLY/15/Report, ASSEMBLY/18/Report, ASSEMBLY/21/Report, ASSEMBLY/122 Report and SES Agreement

Amendment or termination

1 Since there are no provisions for amendment and termination in the SES Agreement itself, the basic principles prescribed in the Vienna Convention on Law of Treaties, 1969 (“Vienna Convention”) shall be applied.

2 The Article 39 of the Vienna Convention provides the following provision on general rule regarding amendment of treaties:

“A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except insofar as the treaty may otherwise provide.”

3 For entry into force of amendment of the SES Agreement, all parties to the present SES Agreement shall conclude amendment by consent such as (a) signature, or (b) signature subject to ratification, acceptance, approval, followed by ratification, acceptance or approval, or (c) accession or adhesion in accordance with the Article 39 of the Vienna Convention.

4 The Article 54 of the Vienna Convention provides the following provision on termination of or withdrawal from a treaty under its provisions or by consent of the parties:

“The termination of a treaty or the withdrawal of a party may take place:
(a) in conformity with the provision of the treaty; or
(b) at any time by consent of all the parties after consultation with the other contracting States.”

5 For entry into force of termination of the SES Agreement, all parties to the present SES Agreement shall conclude termination by consent such as (a) signature, or (b) signature subject to ratification, acceptance, approval, followed by ratification, acceptance or approval, or (c) accession or adhesion in accordance with the Article 54(b) of the Vienna Convention.

6 At present, 49 States are Parties to the SES Agreement. All these States shall conclude an agreement for either amendment or termination to be entered into force. It should be noted that 27 years were required to reach this number. (Note; The last State which became a Party to the SES Agreement is Mauritius which concluded in 2012).

Modification

7 The Article 41 of the Vienna Convention provides the following provision on agreements to modify multilateral treaties between certain of the parties only:

“1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:
(a) the possibility of such a modification is provided for by the treaty; or
(b) the modification in question is not prohibited by the treaty and:
(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.
2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

8 There is no provision which prohibit the modification in the SES Agreement itself. Therefore, if the two conditions laid out in the clause 1(b) of the Article 41 can be confirmed at the Conference, two or more of Parties may conclude the agreement to modify the SES Agreement as between themselves alone without awaiting the conclusions of all Parties.

Proposals by the Director-General

9 Bearing in mind the notes described above, the Director-General has prepared three options for consideration at the Conference:

- Draft Terminating Agreement given in Annex 1;
- Draft Modifying Agreement given in Annex 2; and
- Draft Amending Agreement given in Annex 3.

10 If the Conference prefers to adopt the Amending Agreement given in Annex 3, it might be better to consider a completely new Agreement, in other word “Protocol to the SES

Agreement”, with an eased entry into force conditions. The Article 30 of the Vienna Convention provides the following provisions on “Application of successive treaties relating to the same subject matter”. However, it requires more time for consideration and is beyond the scope of this Conference.

“3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.
“

“4. When the parties to the later treaty do not include all the parties to the earlier one:
(a) as between States Parties to both treaties the same rule applies as in paragraph 3;
(b) as between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations. “

Action requested of the Conference

11 The Conference is invited to:

- .1 consider necessity of continuation of the SES Agreement, and then;
 - if termination is the most appropriate option, consider the Draft Terminating Agreement given in Annex 1; or
 - if continuation is required, consider whether two conditions laid out in the clause 1(b) of the Article 41 of the Vienna Convention can be met or not, and then;
 - if the two conditions are met, consider the Draft Modifying Agreement given in Annex 2; or
 - if the two conditions are not met, consider the Draft Amending Agreement given in Annex 3; and
- .2 adopt the text in the selected Annex for signatures by Parties or consider the suggestion in paragraph 10 as appropriate.

ANNEX 1

(For termination)

TERMINATING AGREEMENT TO THE INTERNATIONAL AGREEMENT ON THE USE OF INMARSAT SHIP EARTH STATIONS WITHIN THE TERRITORIAL SEA AND PORTS

THE PARTIES TO THE PRESENT AGREEMENT:

BEING PARTIES to the International Agreement on the use of Inmarsat Ship Earth Stations within the Territorial Sea and Ports ("the Agreement"),

TAKING NOTE that use of the Inmarsat Ship Earth Stations within the territorial sea and ports had been restricted in many States in order to avoid harmful interferences to the telecommunication services around territorial sea and ports and a multilateral agreement was needed to lift such restrictions to improve the distress and safety of life at sea communications when the Agreement was adopted in 1985,

TAKING FURTHER NOTE that there is no further need to promote conclusion of the Agreement since the technology has been improved since 1985 and such restrictions are no more seen in the recent years,

BEARING IN MIND that the Article 54 of the Vienna Convention on Law of Treaties, 1969 prescribes that the termination of a treaty or the withdrawal of a party may take place at any time by consent of all the parties after consultation with the other contracting States,

Recognizing that the provision for termination is not provided in the Agreement, thus, all Parties to the Agreement shall conclude for this Terminating Agreement to be effective

HAVING CONFIRMED that Parties to the Agreement have no issues to avoid harmful interference without the Agreement,

HAVE AGREED TO TERMINATE THE AGREEMENT AS FOLLOWS:

Article I

The Agreement shall be terminated.

FINAL CLAUSES

Article II

Signature, Ratification and Accession of Modifying Agreement

- (1) This Terminating Agreement shall remain open for signature in London from xxxx until xxxx.
- (2) All Parties to the Agreement may become Party to this Terminating Agreement by:

- (a) signature not subject to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

(2) Ratification, acceptance, approval or accession shall be effected by the deposit of the appropriate instrument with the Depositary.

Article III

Entry into Force of this Terminating Agreement

This Terminating Agreement shall enter into force on the date on which all Parties to the Agreement have become Parties to this Terminating Agreement.

Article IV

Depositary

(1) The Director General of the International Mobile Satellite Organization shall be the Depositary of this Terminating Agreement.

(2) The Depositary shall, in particular, promptly notify all Parties to this Terminating Agreement of:

- (a) any signature of this Terminating Agreement;
- (b) any deposit of instruments of ratification, acceptance, approval, or accession; and
- (c) any other notifications and communications relating to this Terminating Agreement.

Article V

Authentic Texts

This Terminating Agreement is established in a single original in the English, French, Russian and Spanish languages, all the texts being equally authentic, and shall be deposited with the Depositary, who shall send a certified copy to Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Terminating Agreement.

DONE AT LONDON on this ninth day of November, of the year Two Thousand and Twenty.

ANNEX 2

(For modification)

MODIFYING AGREEMENT TO THE INTERNATIONAL AGREEMENT ON THE USE OF INMARSAT SHIP EARTH STATIONS WITHIN THE TERRITORIAL SEA AND PORTS

THE PARTIES TO THE PRESENT AGREEMENT:

BEING PARTIES to the International Agreement on the use of Inmarsat Ship Earth Stations within the Territorial Sea and Ports (“the Agreement”),

TAKING NOTE that an additional mobile satellite service provider other than Inmarsat has been recognized at the Maritime Safety Committee of the International Maritime Organization as a provider for the GMDSS service and further providers are expected to be recognized,

BEARING IN MIND that the Article 41 of the Vienna Convention on Law of Treaties, 1969 prescribes that two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if the modification in question is not prohibited by the treaty and does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole,

HAVING CONFIRMED that the proposed modified text as consequence of the participation of the additional mobile satellite service provider does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the Agreement as a whole,

HAVE AGREED TO MODIFY THE AGREEMENT AS FOLLOWS:

Article I

The word “INMARSAT” in the title of the Agreement is deleted.

Article II

The words “provided by the International Maritime Satellite Organization (INMARSAT)” in Article 1 are deleted.

Article III

The words “INMARSAT Ship Earth Station” in Article 1, Article 2, Article 3, and Article 5 are deleted and replaced by “Ship Earth Station”.

Article IV

The word “INMARSAT” in Article 10 is deleted and replaced by the words “International Mobile Satellite Organization (IMSO)”.

FINAL CLAUSES

Article V

Signature, Ratification and Accession of Modifying Agreement

- (1) This Modifying Agreement shall remain open for signature in London from xxxx until xxxx.
- (2) All Parties to the Agreement may become Party to this Modifying Agreement by:
 - (a) signature not subject to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
- (3) Ratification, acceptance, approval or accession shall be effected by the deposit of the appropriate instrument with the Depository.

Article VI

Entry into Force for a Parties to the Agreement

This Modifying Agreement shall enter into force on the date on which 2(two) Parties to the Agreement have become Parties to this Modifying Agreement for themselves. For a Party to the Agreement which has fulfilled the requirements of paragraph (2) of Article V after the date on which 2(two) Parties to the Agreement have become Parties to this Modifying Agreement, this Modifying Agreement shall enter into force on the date of signature or of the deposit of such instrument with the Depository respectively.

Article VII

Depository

- (1) The Director General of the International Mobile Satellite Organization shall be the Depository of this Modifying Agreement.
- (2) The Depository shall, in particular, promptly notify all Parties to this Modifying Agreement of:
 - (a) any signature of this Modifying Agreement;
 - (b) any deposit of instruments of ratification, acceptance, approval, or accession; and
 - (c) any other notifications and communications relating to this Modifying Agreement.

Article VIII

Authentic Texts

This Modifying Agreement is established in a single original in the English, French, Russian and Spanish languages, all the texts being equally authentic, and shall be deposited with the Depositary, who shall send a certified copy to Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Modifying Agreement.

DONE AT LONDON on this ninth day of November, of the year Two Thousand and Twenty.

ANNEX 3

(For amendment)

AMENDING AGREEMENT TO THE INTERNATIONAL AGREEMENT ON THE USE OF INMARSAT SHIP EARTH STATIONS WITHIN THE TERRITORIAL SEA AND PORTS

THE PARTIES TO THE PRESENT AGREEMENT:

BEING PARTIES to the International Agreement on the use of Inmarsat Ship Earth Stations within the Territorial Sea and Ports ("the Agreement"),

TAKING NOTE that an additional mobile satellite service provider other than Inmarsat has been recognized at the Maritime Safety Committee of the International Maritime Organization as a provider for the GMDSS service and further providers are expected to be recognized,

BEARING IN MIND that the Article 39 of the Vienna Convention on Law of Treaties, 1969 provides general rule regarding the amendment of treaties,

Recognizing that the provision for amendment is not provided in the Agreement, thus, all Parties to the Agreement shall conclude for this Amending Agreement to be effective,

HAVING CONSIDERED the proposed amendment to the Agreement,

HAVE AGREED TO AMEND THE AGREEMENT AS FOLLOWS:

Article I

The word "INMARSAT" in the title of the Agreement is deleted.

Article II

The words "provided by the International Maritime Satellite Organization (INMARSAT)" in Article 1 are deleted.

Article III

The words "INMARSAT Ship Earth Station" in Article 1, Article 2, Article 3, and Article 5 are deleted and replaced by "Ship Earth Station".

Article IV

The word "INMARSAT" in Article 10 is deleted and replaced by the words "International Mobile Satellite Organization (IMSO)".

FINAL CLAUSES

Article V

Signature, Ratification and Accession of Amending Agreement

- (1) This Amending Agreement shall remain open for signature in London from xxxx until xxxx.
- (2) All Parties to the Agreement may become Party to this Amending Agreement by:
 - (a) signature not subject to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
- (3) Ratification, acceptance, approval or accession shall be effected by the deposit of the appropriate instrument with the Depositary.

Article VI

Entry into Force of this Amending Agreement

This Amending Agreement shall enter into force on the date on which all Parties to the Agreement have become Parties to this Amending Agreement.

Article VII

Depositary

- (1) The Director General of the International Mobile Satellite Organization shall be the Depositary of this Amending Agreement.
- (2) The Depositary shall, in particular, promptly notify all Parties to this Amending Agreement of:
 - (d) any signature of this Amending Agreement;
 - (e) any deposit of instruments of ratification, acceptance, approval, or accession; and
 - (f) any other notifications and communications relating to this Amending Agreement.

Article VIII

Authentic Texts

This Amending Agreement is established in a single original in the English, French, Russian and Spanish languages, all the texts being equally authentic, and shall be deposited with the Depositary, who shall send a certified copy to Parties.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Amending Agreement.

DONE AT LONDON on this ninth day of November, of the year Two Thousand and Twenty.
