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3.2 Background and Structure of Draft Convention and General Regulations

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Introduction

Opening unscripted.

My name is Jon Price and I am the chair of IALA's Legal Advisory Panel which advises IALA on legal, governance and risk issues. I have been involved with the Panel since its inception more than 10 years ago. I am also the Legal & Risk Manager and Company Secretary of the Lighthouse Service of Trinity House in the United Kingdom but I am representing IALA here today.

I would like to take the opportunity over the next 25 minutes or so to expand on the note from the Secretariat on the draft Convention text by providing some background as to how the Convention was drafted, the inputs to it and some explanation of each of the Articles within it and the relationship between the Convention and the General Regulations, which sit beneath it.

Following that we will open discussion to the floor for general comments on issues on the Convention text, although this is not a formal drafting session. There will be the opportunity for Governments and Members to submit written comments following this pre-diplomatic conference. More of that later today.

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Background

So, as many of you will know, IALA is currently a non-governmental organization governed by the French Law of Associations of 1901, although very much an international organization in the way that it operates. It is governed by a set of basic documents, which include a written constitution approved by its General Assembly and a set of General Regulations, together with a set of Financial Regulations. In this sense its documentation is very similar to that of an IGO already.



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In terms of the process for change, work started at looking at ways in which IALA might move to inter-governmental status over six years ago when the Secretariat and Legal Advisory Panel explored options for doing so with the French Ministry of Foreign Affairs. The reasons for seeking to move to IGO status have been documented and discussed by Francis earlier.

In addition to looking at whether the existing IALA constitution could be adapted, we looked at whether the Maritime Buoyage System Agreement might be adapted to provide the vehicle for the change in status but we quickly realised that this would not be appropriate. It is not an international treaty, but an agreement signed by Lighthouse Authorities from around the world, albeit it led to a uniform system of buoyage worldwide. It deals with a specific but important technical issue rather than the establishment of IALA, its aims, functions, membership and structure.

Draft Convention

It was therefore concluded that a Convention was the only way IALA could establish itself as an IGO. Most, if not all, IGOs are established through this process supported in many cases by a set of General Regulations.

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Under the supervision of the Council the Legal Advisory Panel supported by the Secretariat began work in 2013 on drafting the text of the Convention drawing on IALA's existing constitution as it appears now in its Basic Documents, the Vienna Convention on the Law of Treaties and the texts of the conventions of other IGOs, notably the International Hydrographic Organization, the World Meteorological Organization, the International Organization for Migration, the European Forest Institute and Global Green Growth Institute.

The aim was and remains to replicate the structure and operations of the current Association, as recorded in its Constitution, to the maximum extent possible. The current IALA is flexible and is able to achieve things quickly – traits which IALA wishes to retain in the future but at the same time drawing on the benefits of IGO status. To achieve this, all articles from the current constitution were as far as possible incorporated into either the draft Convention text or the General Regulations.

The IALA Council decided that the draft convention text should be made available to all National Members for comment and further development. To facilitate this process an extraordinary meeting of the Legal Advisory Panel was convened in October 2013. It was supported by the former Director of Legal Affairs and External Relations Division of the International Maritime Organization who participated as an advisor and gave a presentation on adopting an international instrument.

This was followed by a second extraordinary meeting of the Legal Advisory Panel to consider amongst other things the risks presented by the change in status, the opportunities arising from the change of status and a draft General Assembly Resolution seeking approval to move ahead with the change as soon as possible. As you have heard, this was approved by the General Assembly in A Coruña in May 2014.

Since then further work has been carried out by the Legal Advisory Panel under the guidance of the Council to develop the draft Convention Text and the General Regulations which sit beneath it. It is not intended that the General Regulations will form part of the Convention text. This is to facilitate the good governance of the Organization by allowing required changes to be managed within the organs of the Organisation, rather than through a more lengthy amendment process.

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So let's now have a look at the Title of, and Preamble to, the Convention and each of the Articles of the draft text as approved by the Council.

Title and Preamble

The draft Convention starts with the title by which it is proposed that it should be known, the Convention on the International Organization for Marine Aids to Navigation in brackets (IALA). As you will therefore see, the IALA name or brand, as it were, is retained, albeit its full title is different and reflects that of an IGO.

The preamble then recites the various steps that have led to the Convention - the key points in the present IALA's history from its establishment in 1957, its role, the two key Conventions underpinning its work – UNCLOS and SOLAS following the Vienna Convention on the Law of Treaties, its current legal status and the purpose of the Convention.

Establishment of the International Organization (Article 1)

Article 1 establishes IALA as an International Organization based in France with three official languages as it effectively has now - English, French and Spanish - and two working languages. IALA will continue to be hosted in France and, as you would expect, French and English will therefore be the two working languages.

The Article also sets out that, in line with many other IGOs like the International Hydrographic and World Meteorological Organizations, the operation of IALA will be governed by a set of General Regulations.

Aims (Article 2)

The nature of IALA is set out in Article 2.1 and will be similar to that of the International Hydrographic Organization – consultative and technical.

The aims of IALA as set out in Article 2.2 reflect amongst other things those of the current IALA and also draw on UNCLOS Article 266 which deals with the promotion and development of the transfer of new technology.



4.2.1

The definition of 'marine aids to navigation' is the same as that used in the current IALA's constitution and covers all IALA's present activities.

Functions (Article 3)

The functions of the Organization as set out in the Article 3 very much follow those in the current constitution but recognise that IALA will be operating in an IGO context and contact will be at an inter-governmental level, with the membership, and with specialized agencies of the UN like the IMO.

Developing recommendations and guidelines and commending them to Governments and members will be key to its work.

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Membership (Article 4)

The proposed membership merits some explanation. It is set out in Article 4.

There will of course be States Parties or Contracting Parties as with other conventions and only they will have a vote at General Assemblies and be eligible for election to the Council.

As IALA is a technical association it values highly the input that is provided by its Industrial Members from whom you heard yesterday and Associate Members, ports and scientific organizations, who have an interest in aids to navigation matters.

To achieve its goal of being recognised as the peak international technical body in its field, it strongly favours the retention of these members as integral elements of IALA as an International Organization of the future and they are described as Affiliate Members in the draft Convention.

Legal advice has been obtained that confirms that it is possible to have members of this type who are not part of any government or government agency drawing an analogy with the World Tourism Organization, which has 156 member states and some 500 Affiliate Members.

The draft Convention also proposes another category of member - Associate Member, which is open to territories for which a Contracting Party has responsibility and may also cover current IALA National Members whose country is not yet party to the Convention who will be transferred to the new IALA with the agreement of the Council and their agreement under transitional arrangements as set out in Article 18. Francis has already mentioned the transitional arrangements and I will cover them again a little later.

More detail on membership issues including these latter two categories and membership rights can be found in Article 2 of the draft General Regulations.

All Contracting Parties will pay the same contribution. All those in a particular membership category other than Contracting Parties will pay the same fee.

Structure of the Organization (Article 5)

The structure of the Organization as set out in Article 5 follows that of many IGOs and is already that found in the structure of the current IALA – that is to say a General Assembly, a Council, Committees and a Secretariat headed by a President and Vice-President.

It is not envisaged that this will materially change. There may of course be an adjustment in terms of the responsibilities between the General Assembly and the Council from the position of the current IALA.

The General Assembly (Article 6)

The proposed role and functions of the General Assembly are set out in Article 6 and again draw on the existing constitution but reflect how the General Assemblies of other IGOs operate such as those of the World Meteorological and International Hydrographic Organizations, albeit the terminology used in both cases is a little different.

The IALA General Assembly will be the principle decision making organ of IALA and, as now, will ordinarily meet every four years.

The specific functions of the General Assembly are set out in Article 6.7. It will decide the overall policy of IALA and its strategic vision. The General Assembly's other powers include determining the Organization's General Regulations and the election of the Council.

A quorum for the General Assembly will be a majority of Contracting Parties.

Article 3 of the General Regulations provides the detail as to how the Assembly will be organised and operate when in session.

It will be chaired by the President or Vice-President.

The decision making process of each is broadly based on that of the IMO and reflects the position of IALA today.

The Council (Article 7)

The proposed role and functions of the Council are set out in Article 7 and again the text of the Article draws on the existing constitution but reflects how the Councils of other IGOs operate, although, again, different terminology is sometimes used.



4.2.1

The specific functions of the Council are covered in Article 7.6 and are very much in line with the functions of the current Council. If there is any change, there is greater emphasis on the Council dealing with matters delegated to it by the General Assembly and the Council passing matters up to the Assembly.

The detail of how the Council will be organised and operate is covered in Article 4 of the General Regulations.

It is anticipated that Contracting Parties will be represented at the Council by heads of bodies responsible for marine aids to navigation following, for example, the model used in the World Meteorological Organization Convention. There will be 24 Councillors as is the case with the current IALA.

The Council will ordinarily meet twice a year. Two-thirds of Councillors including the President or Vice-President and a Member of the Finance & Audit Committee will need to be present for there to be a quorum.

It will be chaired by the President or Vice-President.

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Committees and Other Subsidiary Bodies (Article 8)

Article 8 of the draft Convention covers Committees and other subsidiary bodies like the Policy Advisory Panel. Committees operating under the direction of the Council are the work horses of IALA today and will, it is proposed, continue to be so as an IGO. As now, they will be technical bodies. Again, the wording of this Article follows the existing Constitution.

There will also be a Finance & Audit Committee, to which I have already referred, as there is today, in line with good governance. Article 5 of the General Regulations deals specifically with the establishment and operation of this Committee. Its membership will comprise up to five Councillors, one of whom will be elected by the Council as Treasurer.

The General Regulations (Article 6) cover in detail how the committees generally will operate.

The Secretariat (Article 9)

Article 9 deals with the Secretariat and its role. As with other IGOs, the Organization will be supported by a Permanent Secretariat headed by a Secretary General as IALA is today. The Secretary-General will be appointed for a term of four years renewable on one occasion.

Article 7 of the General Regulations deals with the process for the appointment of the Secretary-General and other staff and the functions and operation of the Secretariat.

Funding & Expenditure (Article 10)

Francis and other delegates have already mentioned funding. Funding and expenditure arrangements are set out in Article 10. The Article covers the potential sources of funding, budgeting and financial reporting.

The overall financial arrangements will be determined by the General Assembly including the outline budget for the following four years.

Contracting Parties will make annual contributions and Members will pay annual fees. All Contracting Parties will make the same contribution. Each member within each membership category will pay the same fee.

There is a set of Financial Regulations appended to the General Regulations which describes the budgeting and financial control and financial reporting arrangements in detail.

Legal Personality Privileges & Immunities (Article 11)

Article 11 covering legal personality privileges & immunities that IALA will enjoy as an IGO and draws very much on the wording of other conventions. It gives IALA its body corporate status.

Article 11.2 is from the World Meteorological Organization Convention. It is of note that Article 11.2 is subject to the agreement of each Contracting Party.

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Amendments (Article 12)

Articles 12 deals with amendments to the Convention. All the Conventions that I have looked at have a process for amendment, although the amendment procedure is a little different in each case.

In the case of IALA any proposed amendment will first be circulated to all Contracting Parties six months in advance of its consideration by the General Assembly. It will then require the approval of the General Assembly by a two-thirds majority of those Contracting Parties present and voting. Thereafter, all Contracting Parties will be notified of the amendment. The amendment will be deemed to have been accepted after 12 months unless in that time not less than 25% of Contracting Parties communicate that they do not accept the amendment.

Interpretation & Disputes (Article 13)

Article 13 deals with interpretation and disputes. The wording broadly follows that used by other IGOs.

It is proposed to use the Permanent Court of Arbitration, an IGO body, if any dispute cannot be resolved by consultation, negotiation or the Council unless the parties to the dispute agree otherwise.

Signature Ratification & Accession (Article 14)

Article 14 deals with signing, ratification, acceptance and accession to the Convention and is based on the wording of the conventions of International Hydrographic and World Meteorological Organizations.



4.2.1

Many nations sign a treaty subject to ratification, acceptance or approval to show their support without being bound by the treaty at that stage. That often follows with ratification or, if the convention has already come into force, accession.

Entry into Force (Article 15)

There was much discussion during the drafting stage as to how many instruments of ratification, acceptance, approval or accession there should be before the Convention comes into force.

The required number of such instruments varies from Convention to Convention.

As you will see from Article 15, the current IALA Council has set this at 30 to ensure sufficient Contracting Parties to run the Organization and in order to form the proposed 24 Member Council.

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Withdrawal (Article 16)

As with other Conventions, Contracting Parties will be able to withdraw from the Convention and Article 16 provides for this.

Notice of withdrawal will be able to be given following the Convention being in force for 12 months. The period is shorter than is the case with some other IGOs.

Termination (Article 17)

Article 17 provides for the termination or dissolution of the Organization by the General Assembly on a two-thirds majority basis of Contracting Parties present and voting.

The General Regulations (Article 10) provide more information on the actions to be taken by the Council on termination.

Transitional Arrangements (Article 18)

The Chair and Francis have already talked about the transition arrangements.

The aim of the transitional arrangements set out in Article 18, together with the relatively high bar to enable the Convention to enter into force, will enable IALA to transition its operations seamlessly. The transition rules endeavour to maintain the existing administrative and decision making structure so as to create a smooth transition to the new legal structure. The new category of 'Associate' membership will enable those existing National members whose Governments have not yet completed the Convention process to remain engaged in the governance and committee work of the Organization.

The arrangements also allow for there to be a transitional council, which will be the council of the existing IALA until the first General Assembly, which must be convened within six months.

The existing Committee structure and Secretariat will continue for this transitional period.

Other international organizations like the International Organization for Migration and the European Forest Institute have adopted transitional arrangements when they have migrated from an earlier arrangement.

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Finally, just a few more words in summary about the General Regulations.

As you will have seen, the General Regulations will provide the detail behind the Convention. They will deal for the most part with the membership of the Organization and the operation of its organs, providing a level of detail that would not normally be found in a Convention.

Where there is a conflict between the Convention and the General Regulations, the Convention will prevail.

The use of a set of General Regulations in this way follows the example of many other IGOs like the World Meteorological Organization.

Unlike the Convention, the General Assembly will be able to amend the General Regulations. This will allow for the Organization to be as flexible as possible in terms of the way that it operates.

I hope that this overview has provided some background to the draft Convention text in terms of its origins and its purpose and of how the associated General Regulations fit with it.

Thank you for your time this morning.