

LAP12/5/5-2

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Development of the Agreement for IALA as an International Association – Version as at ~~22 January~~7 February 2013

| Item | Text of convention by Article | Reference | Comments |
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| 1 | Agreement on the International Marine Aids to Navigation Association | Vienna Convention Art. 1. (a) | Report of Council 54 noted re use of term 'Association'. Drafters prefer 'organization' for clarity of purpose. |
| 2 | <p>Preamble</p> <p>The States Parties to this Agreement, hereafter referred to as the Contracting Parties:</p> <p>RECALLING that the International Association of Lighthouse Authorities was established on 1st July 1957 following a conference of national lighthouse authorities held in Scheveningen, Netherlands;</p> <p>NOTING that the International Association of Lighthouse Authorities was renamed the International Association of Marine Aids to Navigation and Lighthouse Authorities by its General Assembly in Hamburg, Germany in 1998;</p> <p>RECOGNISING the role of the International Association of Marine Aids to Navigation and Lighthouse Authorities in the improvement and continued harmonisation of marine aids to navigation for the safe, economic and efficient movement of vessels;</p> <p>IN FURTHERANCE of the provisions of, in particular Part XIV, of the United National Convention on the Law of the Sea and Regulation 13 Chapter V of the International Convention for the Safety of Life at Sea 1974, as amended;</p> <p>CONSIDERING that the International Association of Marine Aids to Navigation and Lighthouse Authorities is classified as a charity under the domestic law of France; and</p> <p>CONSIDERING FURTHER that the improvement and harmonisation of marine aids to</p> | <p>Vienna Convention Art31</p> <p>Draft instrument prepared by Jon Price</p> <p>UNCLOS – see also Art 21.1 and 43</p> | <p>The Preamble will be used in interpretation of the Agreement text. Anything else to add for that purpose?</p> <p>UNCLOS Part XIV is headed 'Development and transfer of marine technology' and makes reference to international organisations and development of human resources and marine technology.</p> |

Commentaire [JP1]: Preference is to delete this para. but for discussion at LAP.

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| | navigation is best coordinated at the international level by one responsible international [intergovernmental] organisation; HAVE AGREED as follows: | | |
| 3 | <p style="text-align: center;">Article 1 Establishment</p> <p>1. The International Marine Aids to Navigation Association ('Association') is hereby established [as an international organization].</p> <p>2. Unless otherwise decided by changed by decision of the Council the Association shall have its seat in the vicinity of Paris, France.</p> <p>3. The official language of the Association shall be English.</p> <p>4. The functions and operation of the Association shall be set forth in detail in the Regulations, as approved in accordance with this Agreement from time to time.</p> | <p>IALA Constitution Art 1, 6 EFI Art 1</p> <p>IHO Art XI</p> | <p>Text in square brackets creates link with definition in Vienna Convention Art 2(i) ... 'international organization means an intergovernmental organisation'.</p> <p>Need to ensure that change of seat is within the ambit of Council in Regulations. <u>Agreed.</u></p> <p>Consider alternative location for this provision – perhaps after Art 9?</p> |
| 4 | <p style="text-align: center;">Article 2 Aim</p> <p>1. The Association shall have a consultative and purely technical nature.</p> <p>2. It shall be the aim of the Association, for the benefit of the maritime community and the protection of the environment, to:</p> <p>(a) foster the safe, economic and efficient movement of vessels through the improvement and harmonisation of aids to navigation worldwide and by other appropriate means;</p> <p>(b) bring together services and organisations concerned with the provision or maintenance of marine aids to navigation and allied activities at sea and on inland waterways;</p> <p>(c) [promote access to technical cooperation on all matters related to development and transfer of expertise, [science] and technology in relation</p> | <p>IALA Constitution Art 2 IHO Art II</p> <p>UNCLOS Art 266</p> | <p>Functions from IALA Constitution Arts 3 and 4 to Regulations. See also Art 17.9 re interim Regulations.</p> <p>Item (c) drafted for consideration. Any others?</p> |

Commentaire [JP2]: Delete word in brackets if this is possible.

Commentaire [mcd3]: 'Intergovernmental' should be stated somewhere – either here or by leaving reference to 'international organisation' in Art 1.1. Our preference is the latter.

Commentaire [JP4]: 'Association' agreed by Council and politically more acceptable.

Commentaire [mcd5]: See comment above

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Commentaire [JP6]: Item (c) for discussion at LAP.

Commentaire [JP7]: Words in brackets for discussion at LAP.

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| | to marine aids to navigation. | | |
| | 3. For the purposes of this Agreement the term 'Marine Aid to Navigation ' should be understood to be means a device, system or service, [external to a vessel], designed and operated to enhance safe and efficient navigation of individual vessels and/or vessel traffic. | IALA Constitution Art 1 | |
| 5 | <p>Article 3 Membership Categories</p> <p><u>[The Association shall be comprised of National members, Affiliate members, Associate members, Industrial members and other members.]</u></p> <p>1. The Contracting Parties shall be National members.</p> <p>2. The Regulations may make provision for:</p> <p>(a) Associate membership;</p> <p>(b) Industrial membership;</p> <p>(c) Affiliate membership;</p> <p>(c) Other membership.</p> <p>3. Any National member which is two years in arrears in making contributions required by the Regulations shall be by decision of Council denied the rights and benefits conferred on National members by this Agreement until such time as the outstanding contributions have been paid.</p> <p><u>[4. No member shall be liable, by reason of its status or participation in the Association, for acts, omissions or obligations of the Association.]</u></p> | IALA Constitution Art 5.1 EFI Art 4 IHO Art XV | <p>Affiliate membership has been included as a transition category for non-contracting parties who were previously National members. See Art 17 below.</p> <p>Regulations to pick up remainder of IALA Constitution Art 5, including fees for Affiliate members.</p> <p>Should Council be able to suspend National member's rights and benefits for <i>any reason</i> as per IALA Constitution Art 5.4? May be unacceptable at international law.</p> |
| 6 | <p>Article 4 Structure of the Association</p> <p>1. The organs of the Association shall be have as its principle organs the:</p> | IALA Constitution Art 7-9 | <p>Are 'committees and other bodies' 'organs'? Perhaps they can just be created by Council as per Art 6?</p> |

Commentaire [JP8]: Would it be acceptable if contracting parties signed the agreement in the knowledge that this could be a consequence of non-payment?

Commentaire [JP9]: Yes, if by doing so, they can be created by Council.

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| | <p>(a) General Assembly; (b) Council; (c) <u>Finance and Audit Committees and other bodies</u>; (d) Secretariat.</p> <p><u>[2A Other subsidiary organs may be established, if the Council so decides, as necessary to support the Association's activities.]</u></p> <p>2. There shall be a President and Vice President of the Association elected in accordance with the Regulations.</p> | <p>WMO Art 4, 8(h) IHO Art IV</p> | <p>If so, should the instrument name the Financial Advisory Committee be as a mandatory Committee? If so, should it have specific role?</p> |
| 7 | <p>Article 5 The General Assembly</p> <p>1. The General Assembly <u>[is the primary decision-making body of the Association and]</u> shall:</p> <p>(a) meet at intervals not exceeding five (5) years <u>[in ordinary session, or otherwise as decided]</u> upon being convened by order of the Council, and be governed by the rules of procedure established in the Regulations;</p> <p>(b) set the policy framework for the Association;</p> <p>(c) make decisions on general issues of a technical, financial or administrative nature submitted by Council or the Secretariat,;</p> <p>(d) elect the members of Council in accordance with the Regulations.</p> <p>2. Each member from each membership category may attend each General Assembly.</p> <p>3. Only National members have voting rights in the General Assembly, and each National member shall:</p> <p>(a) have one vote; and (b) designate one of its delegates, who should be the head of the national authority legally responsible for the provision, maintenance or operation</p> | <p>IALA Constitution Art 7</p> <p>EFI Art 6</p> <p>WMO Art 7(b)</p> | <p>References to the GA changing the Constitution have been removed.</p> <p>Is there a need for a mechanism for convening an extraordinary and/or out of session GA?</p> <p>Should all voted decisions be made by simple majority? 2</p> <p>Is there a need to distinguish between 'those present and voting at GA meetings' and 'all eligible national members' for the purpose of establishing simple majority for</p> |

Commentaire [JP10]: Council has agreed (although this may be ultra vires) that the committee be known as 'Finance and Audit Committee'

Commentaire [JP11]: Is 'not exceeding 5 years' sufficiently flexible to allow this?

Commentaire [JP12]: In keeping with current Constitution.

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| | <p>of marine aids to navigation, as it principal delegate at the General Assembly.</p> <p>4. Decisions Except where otherwise specified, decisions of the General Assembly shall be taken by simply majority of votes cast by members present [and voting] at the General Assembly. In the event of a tied vote, the President shall have a second, and deciding, vote.</p> | | <p>out of session votes? See IHO Art VI .5 and .6</p> |
| 8 | <p>Article 6 The Council</p> <p>[1A. The Council <u>is the executive organ of the Association and shall be responsible for directing the activities of the Association.</u>]</p> <p>1. <u>The Council</u> shall consist of up to twenty one (21) elected councillors and three (3) non-elected councillors.</p> <p>2. Elected councillors:</p> <ul style="list-style-type: none"> (a) shall be elected by ballot at the General Assembly; (b) may include only one councillor from each National member; (c) will, so far as is possible, be drawn from different regions of the world; (d) may include persons who have previously been elected as councillor. <p>3. Non-elected councillors will include:</p> <ul style="list-style-type: none"> (a) a representative of the National member of the country in which the seat of the Association is located; (b) a representative of the National member of the country in which the next Association Conference is to be held; (c) a representative of the National member of the country in which the last Association Conference was held. <p>4. Eligibility for election to the office of councillor shall be confined to the head of the technical body responsible for the provision, maintenance or operation of marine</p> | <p>IALA Constitution Art 8</p> <p>WMO Art 6</p> | <p>This article, in relation to non-elected councillors, may be problematic if the non-elected councillor's states do not become party. See Art 17.6 for suggested interim approach.</p> <p>Do we need rules for replacement of councillors who cannot fulfil their term? For example see EFI Art 2.d or IHO Art X.2 – perhaps in Regulations? Also Quorum.</p> <p>Does Council have any role to play at GA? Affects wording of 5.</p> |

Commentaire [JP13]: If possible, please keep wording in line with that in current Constitution.

Commentaire [mcd14]: We think it would add clarity to include a provision to this effect. Perhaps the need for this can be ascertained by reference to existing procedures for out of session voting?

Commentaire [JP15]: Currently, if a councillor retires, for example, he or she is replaced by his or her successor. Suggest this continues and we make no reference in the Regulations to the election of the President & Vice-President being on a personal basis. This would also assist re the quorum.

Commentaire [mcd16]: OK – should add replacement process to Regulations though

Commentaire [mcd17]: Will need to add duration of Councillor appointment to Regulations if no duration included in this Article

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| | <p>aids to navigation of each National member.</p> <p>5. The office of councillor is honorary.</p> <p>6. The Council shall meet at least annually and will operate in accordance with the Regulations.</p> <p>7. The Council will, amongst other things:</p> <ul style="list-style-type: none"> (a) appoint a Secretary General to act as legal representative and Chief Executive of the Association; (b) determine the powers, responsibilities and terms of engagement of the Secretary General, including those necessary for the establishment and management of the Secretariat; (c) implement the policy of the Association as determined by the General Assembly; (d) establish Committees and other bodies as it deems necessary; (e) consider, and if required, approve the Recommendations, Guidelines, Manuals and submissions developed by Committees; (f) Approve amendments to the Regulations. | | <p>Are transitional arrangements for committees etc. required?</p> |
| 9 | <p style="text-align: center;">Article 7 Committees & Other Bodies</p> <p>1. Committees and other bodies may be established by the Council to support the endeavours of the Association and will operate in accordance with the Regulations.</p> | <p>IALA Constitution Art 9</p> | |
| 10 | <p style="text-align: center;">Article 8 Secretariat</p> <p>1. The permanent Secretariat of the Association shall be comprised of the Secretary General and such technical and administrative staff as may be required for the work of the Association.</p> | <p>IALA Constitution Art 8.2.2 WMO Art 20, 22(b)</p> | |

Commentaire [JP18]: To be discussed at LAP.

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| | <p>2. The staff of the Secretariat shall be appointed on terms and conditions determined by the Secretary General and shall, under the leadership of the Secretary General:</p> <ul style="list-style-type: none"> (a) support the work and administration of the Association; (b) operate in accordance with the Regulations. <p>3. In the performance of their duties the Secretariat shall not seek or receive instructions from any authority external to the Association. They shall refrain from any action which might reflect on their position as international officers.</p> | | |
| 11 | <p style="text-align: center;">Article 9 Funding and Expenditure</p> <p>1. The financial resources necessary for the functioning of the Association shall be provided by:</p> <ul style="list-style-type: none"> (a) membership contributions as determined in accordance with the Regulations; (b) donations, bequests, grants, gifts and other sources permitted by law. <p>2. The budget and accounts of the Association shall be approved by Council.</p> <p><u>[3. The audited financial statements of the Association shall be distributed to members within [x] months of the end of each accounting year.]</u></p> | <p>IALA Constitution Art 11 EFI Art 10, 11 IHO Art XIV</p> | |
| 12 | <p style="text-align: center;">Article 10 Legal personality, privileges and immunities</p> <p>1. The Association shall have international and domestic legal personality <u>and have the capacity to:</u></p> <ul style="list-style-type: none"> <u>(a) to contract;</u> <u>(b) to acquire and dispose of immovable and movable property; and</u> <u>(c) to institute and defence itself in proceedings.</u> | <p>EFI Art 12 WMO Art 27</p> | |

Commentaire [mcd19]: We think we should leave this in, but perhaps amend to state that the Association enjoys immunities and privileges as negotiated with the Government of the Seat?

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| | <p>2. The Association shall enjoy in the territory of each National member such privileges and immunities as may be necessary for the fulfilment of its aim and for the exercise of its functions.</p> <p><u>[3. The Association may cooperate with other international organisations, and with the governments, organisations and institutions of its member States and non-Member States, and conclude agreements with them.]</u></p> | | |
| 13 | <p>Article 11 Amendments</p> <p>1. Any [currently financial and not suspended] National member may propose an amendment to this Agreement, in writing, to the Secretary General.</p> <p>2. The Secretary General shall circulate the amendment proposal to all members at least six months in advance of its consideration by the General Assembly.</p> <p>3. The amendment proposal shall be accepted by vote of the General Assembly upon a two-thirds majority of National members present and supporting the amendment <u>The Secretary General shall communicate any amendment so accepted to all [National] members.</u></p> <p>4. The amendment will take effect<u>enter into effect</u> for all Contracting Parties [on the day that/60 days after] [some percentage/all] National members have advised the Depositary that all formalities required with respect to the amendment have been fulfilled.</p> <p>5. [Any amendment to this Agreement that has not entered into force is null and void at the date of opening [closing] of the next General Assembly, unless the General Assembly decides otherwise.]</p> | <p>IALA Constitution Art 12 WMO Art 28 EFI Art 17.2 IHO Art XXI</p> <p>WMO Art 28</p> <p>EFI Art 17</p> <p>IHO Art XXI (pending amendment)</p> | <p>Art to be discussed at LAP.</p> <p>See Treaty Handbook p 22 for discussion</p> <p><u>As an alternative to 4. : "An amendment to this Agreement shall enter into force for Contracting States that have accepted the amendment on the date of deposit of acceptances by a majority of the States which were Contracting States at the date of adoption of the amendment. Thereafter it shall enter into force for any remaining Contracting Party on the date of deposit of its instrument of acceptance."</u></p> |
| 14 | <p>Article 12 Interpretation and Disputes</p> | IHO Art XVII | See Treaty Handbook p 21 for |

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| | Any question or dispute concerning the interpretation or application of the present Agreement <u>arising between or amongst Contracting Parties</u> which is not settled by negotiation [or by the good offices of Council] [within ... months of being raised] shall be referred to an independent arbitrator appointed by the President of the International Court of Justice, unless the parties <u>concerned to the dispute</u> agree upon another mode of settlement. | WHO Art29 | discussion Art to be discussed at LAP. |
| 15 | <p style="text-align: center;">Article 13 Signature, Ratification and Accession</p> <p>1. This Agreement shall be open for signature at [location of General Assembly?] between [date of opening] and [date of closure] [and subsequently at [place], herein referred to as the Depositary, [for the period ...]]</p> <p>2. This Agreement is subject to ratification, acceptance or approval by the signatory States.</p> <p>3. This Agreement shall be open for accession by any State which has not signed the Agreement from the day after the date on which the Agreement closes for signature.</p> <p>4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary, who shall then notify each National member and the Secretary General of the Association thereof.</p> <p>5. [Ratification, acceptance, or approval of, or accession to, this Agreement shall be without reservation.]</p> | IHO Art XVIII WMO Art 32 | <p>Art to be discussed at LAP.</p> <p>It would appear that the UN may not accept the role of repository (see Treaty Handbook p3-4). If not, then France? Secretary <u>General</u>?</p> <p>Should the Agreement remain open for signature after the GA? <u>Yes</u></p> <p>There should be no need for reservations however allowing same does provide some flexibility and may encourage signature.</p> |
| 16 | <p style="text-align: center;">Article 14 Entry into force</p> <p>[1. The present Agreement shall <u>come-enter</u> into force on the [xth] day after the</p> | WMO Art 35 | <p>Art to be discussed at LAP.</p> <p>See Treaty Handbook p 20-21 for discussion of alternatives. <i>Draft text</i></p> |

Commentaire [JP20]: Preference is for it to be IALA, thereby retaining 'control' over the process.

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| | <p>date of deposit of the [xth] instrument of ratification, acceptance, approval or accession.</p> <p>2. For each State ratifying, accepting, approving or acceding to the Agreement after its entry into force the Agreement shall enter into force on the [day of/xth day after] the deposit of its instrument of ratification, accession or approval.]</p> | | <p><i>provided as sample only.</i></p> <p>May be upon [xth] instrument and signature by France? Or from 1 January following[xth] instrument ..</p> <p>For 2. as an alternative see IHO Art XX requiring approval by [General Assembly] post entry into force</p> |
| 17 | <p>Article 15 Denunciations</p> <p>1. Upon the expiry of a period of [three/five] year after its entry into force, this Agreement may be denounced by any Contracting Party by giving at least [12] months written notice to the Depositary.</p> <p>2. The denunciation shall take effect [at the conclusion of the membership year/on December 31 or] following the expiration of the notice and the Depositary shall inform the National members and the Secretary General accordingly.</p> | IHO Art XXII | <p>Art to be discussed at LAP.</p> <p>See Treaty Handbook p 25 for discussion</p> |
| 18 | <p>Article 16 Termination</p> <p>1. This Agreement shall [may] be terminated if at any time after its entry into force:</p> <ul style="list-style-type: none"> (a) there are less than [x] Contracting Parties; or (b) a vote of the General Assembly upon a two-thirds majority of National members present supports the termination. <p>2. The date of termination will be [x] months after the date of the terminating event and in the intervening period the Council shall be responsible for distribution of the Association's assets in accordance with the Regulations.</p> | EFI Art 19, IALA Constitution Art 13 | <p>Art to be discussed at LAP.</p> |

The subject matter of draft Article 17.3-7 should also be the subject of a GA resolution when the text of the Agreement is being adopted so as to allow this to happen under the then existing authority of the GA.

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| | <p>OR:</p> <p>[Within x months of/after] entry into force of this Agreement the transition Council shall initiate negotiations with the Council of IALA on the transfer of the latter's activities, funds, assets and liabilities to the Association.]</p> <p>8. Until such time as the Secretariat of the Association has been established the secretariat of IALA shall serve as and perform the functions of the Secretariat. The Secretary General of IALA shall serve as the Secretary General of the Association until the Council appoints the Secretary General in accordance with Article 6.</p> <p>9. The Regulations in effect at the date of entry into force of this Agreement for IALA shall become the Regulations for the Association. [The interim Regulations shall remain in effect until [adopted/amended] [in accordance with this Agreement/at the first meeting of Council/General Assembly]].</p> | <p>EFI Art 16.2</p> <p>GGGI Art 17</p> | <p>Responsibilities have been left with transition Council – could be Secretary General if transitioned as per .7 below. See IALA Constitution Art 13. Would require resolution by IALA GA that IALA should be wound up – date determines actions.</p> <p>Regulations may not need to be interim. Could just be attached to the Agreement and enter into force with it. The attachment could reflect the Regulations last approved by the IALA GA (done at the meeting where the Agreement is open for signature).</p> |
| 20 | <p>IN WITNESS THEREOF-WHEREOF the undersigned, being duly authorised by their respective Governments, have signed the present Agreement.</p> <p>DONE at [location] on the [day] of [month] [year] in the English and French languages, each text being equally authentic, the original of which shall be deposited in the archives of [Depositary]. The [Depositary] shall transmit certified copied thereof to all the signatory and acceding Governments and to the President of the General Assembly.</p> | | <p>For info: Only this document to be in two languages. Otherwise English is the official & working language.</p> |