



REPORT OF A MEETING OF  
NATIONAL MEMBERS ON IALA  
CHANGE OF STATUS  
(Fourth Extraordinary LAP meeting)  
21 to 22 November 2018



## **Report of a meeting of National members on IALA change of status (Fourth Extraordinary LAP Meeting)**

**21 to 22 November, 2018**

### **Executive Summary**

The fourth Extraordinary Legal Advisory Panel (LAP) meeting, which gathered National members to work on the draft Convention text for IALA as an IGO was held at IALA Headquarters on 30<sup>th</sup> and 31<sup>st</sup> October 2017.

The meeting was chaired by Christina Schneider of the Federal Waterways and Shipping Authority of Germany, the LAP Chair. The Vice Chair was Mr Henning Teigene Osnes from the Coastal Administration of Norway.

The draft text had been revised by the LAP Chair, Vice Chair and the IALA Secretariat prior to the meeting to reflect comments received from members and governments after the second preparatory diplomatic conference held in Marrakesh, Kingdom of Morocco in February 2018.

The Extraordinary LAP meeting considered the legal issues of the revised text, commented and further amended it and identified matters requiring discussion at diplomatic level.

Due to the decision made at the second Preparatory Diplomatic Conference the draft General Regulations were not considered as they will be an issue for the General Assembly of the new Organization, when established.

The amended text will be submitted, together with supporting papers, as an input paper to the 3<sup>rd</sup> Preparatory Conference to be held from 12<sup>th</sup> to 14<sup>th</sup> March 2019 in Istanbul, Turkey.

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## (Fourth Extraordinary LAP Meeting)

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### GENERAL

The meeting was held on 21 and 22 November 2018 at IALA Headquarters, with Christina Schneider as Chair, Henning Teigene Osnes as Vice Chair and Marie-Hélène Grillet as Secretary. Twenty-eight participants representing seventeen countries took part in the meeting.

### 1. WELCOME ADDRESS

Secretary-General Francis Zachariae welcomed the participants and gave a short safety and domestic information, before describing the latest developments within IALA, especially the latest Conference and the General Assembly, which elected a new Council for the period 2018-2022. He detailed the five types of official documents published by IALA as a result of the Committee work and explained the Strategic Vision and Goals for 2026, concluding with the success of IALA, which had reached a record number of 295 members.

### 2. INTRODUCTION TO THE LEGAL ADVISORY PANEL

The Secretary-General then introduced the tasks of the Legal Advisory Panel (LAP), the role of which is to assist with legal advice on the governance, administration and operation of IALA. The scope of the LAP includes:

- Providing legal support to the Council as required;
- Responding to issues and concerns that may be raised through the IALA Secretariat;
- Responding to requests from IALA Committees and other IALA bodies for legal advice;
- Providing IALA with information on legal issues that result, or may result, from providing guidance to the membership in the provision of Marine Aids to Navigation services;
- Preparing draft documentation and guidelines on items of common concerns;
- Identifying where external legal advice may be needed and assisting with the preparation of requests and briefs for such advice, as appropriate;
- Reviewing, updating, advising and reporting to the Council on IALA Risk Registers; and
- Providing a forum to discuss legal matters of common interest.

#### 2.1 Status of the IGO project

The Secretary-General summarized the various steps taken since IALA started to consider a change in its legal status and how the LAP was involved:

- 2010: first discussions in LAP in 2010, with the participation of the French Government;
- 2012: first draft Convention developed by the Council with the support of the LAP;
- 2014: General Assembly Resolution on the change of status;
- 2016: draft Convention text final review for consideration by a Preparatory Diplomatic Conference;
- 2017: Preparatory Diplomatic Conference, Paris, April
- 2018: Preparatory Diplomatic Conference, Marrakesh, February
- 2019: Preparatory Diplomatic Conference, Istanbul, March.

He reminded the participants that at each Preparatory Diplomatic Conference already held a roadmap was agreed, which contained all further steps needed until the convening of a Diplomatic Conference, after which

the Convention will be opened for signature. The roadmap involves the LAP in the revision of the draft text until the present meeting.

### 3. PARTICIPANT INTRODUCTIONS

The meeting was attended by 28 participants from 17 countries. The participants were invited to introduce themselves.

A list of attendees is provided at Annex B.

### 4. APPROVAL OF THE AGENDA

The Agenda (paper LAPEX4-4.1) was adopted.

The Agenda is provided at ANNEX A.

### 5. REVIEW OF INPUT PAPERS

There were three main input papers for the meeting:

- LAPEX4-7.1.1: comments and proposed amendments received from members after the 2<sup>nd</sup> Preparatory Diplomatic Conference gathered in one table;
- LAPEX4-7.1.2: all original comments and proposed amendments received from members after the 2<sup>nd</sup> Preparatory Diplomatic Conference; and
- LAPEX4-2.1 and 2.2: draft IALA Convention amended according to the comments and proposals received from members.

In addition to these main input papers a comment paper received the last day before the meeting had been made available to the participants as a supporting document.

### 6. STATUS AND RESULTS OF THE SECOND PREPARATORY DIPLOMATIC CONFERENCE

The LAP Vice-Chair Henning Osnes Teigene reported that at the kind invitation of the Minister of Equipment, Transport, Logistics and Water of the Kingdom of Morocco, a second preparatory diplomatic conference took place in Marrakesh from 7 to 8 February 2018 to further progress the process needed to achieve IALA's planned change of status to that of an Intergovernmental Organization (IGO). A first conference had been held in Paris on 17 and 18 April 2017.

The conference considered the draft IALA Convention text as revised following comments from National members and Governments and work by the IALA Legal Advisory Panel as a follow-up to the Paris conference and the road map.

The attendance was similar to the Paris conference with 147 delegates representing 50 countries from around the world and three international organizations. Six of the countries represented were not yet IALA National members.

The conference concentrated on the first 11 articles of the draft Convention text and the transitional arrangements. Amendments were discussed and the Conference agreed on a number of articles:

- Preamble. There was a discussion about the acronym "IALA" when the name is changed and also having regard to the change of status. The majority view was that "IALA" was a well-recognised and well-respected identity within the maritime community, which should be retained.

The term "Contracting State" was removed in the Preamble and subsequent text as it introduced unnecessary complexity.

- Article 1 (Establishment) was amended to highlight the intergovernmental and technical nature of the Organization. The reference to the General Regulations was removed as it was considered unnecessary.

There was a lengthy discussion on the official and working languages of the Organization. A compromise proposal from the Chair was that the Convention text should cover the official languages - English, French and Spanish. The practical arrangements for the working language would be covered by the General Regulations. This would be the same as the way the current IALA operated. A new Article has been added on languages (Article 11).

- Article 2 (Definitions) was extended to include definitions for both Associate and Affiliate Members, the definitions of which had previously been covered in Article 5 (Membership) following support for such a change from delegates. The generic term “Member” was removed.
- Article 5 (Membership) was simplified with the deletion of references to current IALA members. Such references were moved to Article 20. The cross reference to the General Regulations making provision for matters related to members was removed following support for such a change on the basis that it was unnecessary. The conference agreed that Article 5.2 on territories and groups of territories should be amended to harmonize the use of terms with those used in the IMO Convention. The conference agreed to move the new Article 5.3 from the General Regulations to the Convention text.
- Article 6 (Structure) was amended to clarify various aspects of the structure. It was agreed that, having regard to the consensus approach of the Convention, all decisions should be taken on a two-thirds majority basis except where otherwise specified.
- Article 7 (General Assembly) was amended to include two functions previously with the Council: approval of Associate membership and approval of agreements with other organizations. The exclusion from the quorum of Member States denied their rights and benefits was removed in keeping with the arrangements of other IGOs. Geographical representation on Council was discussed and the majority was in favour of dealing with the issue in the General Regulations.
- Article 8 (Council) was amended to clarify various points.
- Article 9 (Committees) was broadened to include Committee functions.
- Article 11 (new 12 - Income and Expenditure) was renamed Finance and amended with the addition of provisions for late payment or non-payment of contributions or fees, originally in Article 5.4 to 5.6. The method of determining Member State contributions was discussed and the majority was in favour of the contributions being set at the same rate for each Member State.
- Article 20 (Transitional Arrangements). It was suggested that the transitional arrangements should be moved to an annex. A cross reference has been added to Article 17 (new Article 18 – Entry into force).

The delegates agreed on a number of Articles: Preamble, Aim and Objectives, Functions, General Assembly, Council, Secretariat and Finance.

It was clear that further work would be needed on some aspects of the Convention text, mainly the transitional arrangements, Associate membership for Member States’ territories, the role of Committees and official and working languages. The power balance between the General Assembly and the Council was reviewed.

## 7. DRAFTING SESSION ON THE CONVENTION TEXT

### 7.1 Introduction

The Chair explained that the meeting would focus on preparing a new draft for the 3<sup>rd</sup> Preparatory Diplomatic Conference, on the basis of the amended draft prepared by the LAP Chair and Vice-Chair and the Secretary-General in view of the comments received.

This new draft should address the legal issues that may arise from the amended Convention text, with political aspects to be dealt with at the next Preparatory Diplomatic Conference.

The other output of the meeting, in addition to the report, would present the comments made during the meeting.

The Japanese delegate, supported by the delegates from China, Finland, The Netherlands and Norway mentioned that as the meeting was not a Diplomatic Conference his Government's view was that all areas of concern could be discussed again at the next Conference in Istanbul in March 2019.

To this remark the French delegates answered that having the text reviewed by legal experts would help in the next discussions and no conclusions from the LAP would pre-empt the ones made by the Preparatory Diplomatic Conference.

The Secretary-General added that this was in agreement with the roadmap that had been approved in Marrakesh and the text amended during the meeting would be clearly marked.

The participants then went through the text, which commented and amended as appropriate.

### 7.2 Drafting session on the draft Convention text

A number of amendments were made to the draft Convention text, which are reflected in output paper LAPEX4-9.2 – Commented amended draft Convention text.

Specific discussions were held on three specific items, which will need to be addressed by the next Preparatory Diplomatic Conference:

- Article 1 – Definitions: Different views were expressed on keeping the well-known acronym 'IALA'. A number of delegates were in favour of having an acronym that would reflect the actual name of the Organization.
- Article 5 – Membership, paragraph 2: This article needs clarification with regard to the responsibility for the international relations, for which an alternative wording is desirable. Mention of the National members of the current IALA may also help.
- Article 5 – Membership, paragraph 3: An alternative wording for approval of Affiliate members may be considered.
- Article 6 – Organs: There was a doubt regarding the capacity in which the President and the Vice-President would act. Two alternative texts were drafted, one for President and Vice-President being elected in their personal capacity and the other one for them to be elected in their national capacity. One of the alternative will need to be chosen, taking the practical consequences into account.
- Article 11 – Languages: It is common for IGOs to have more than one official language. IALA will be outside the UN rules and thus has freedom to organize its languages and decide what arrangements suits the Organization best. A remark was made by the French and Canadian delegates, who stated that, whatever the final decision about official languages, the Convention would need to have an original in French language in order to be ratified.

The Secretary-General offered to make a paper to support the discussions at diplomatic level presenting normal practices within IGOs and the financial aspect of having more than one official language, as well as the geographical widespread of current IALA National members together with an indication of their official languages.



- Article 15 – Amendments and Article 17 – Signature, Ratification and Accession, paragraph 5: These Articles may need an alternative wording with regard to reservations.
- Article 16 – Interpretation and disputes: This Article is expected to be debated at diplomatic level.
- Annex – Transitional arrangements: It was made clear that the transitional arrangements were of particular importance in order to secure a smooth formal change from the current association to the IGO without losing members of the current association or disrupting the important work of IALA.. Many comments were received in order to make the arrangements more clear and this will be reflected in the amended version of the Convention text.

### 7.3 Review of output papers

The meeting output papers, i.e. the amended draft text of the Convention, with and without comments by the delegates, will be input papers to the 3<sup>rd</sup> preparatory diplomatic conference.

In addition the Secretary-General was requested to prepare an input paper to the next Preparatory Diplomatic Conference on the practical and financial impact of multiple languages.

## 8. CONCLUSIONS AND CLOSING

The Chair closed the meeting at 1530 on Thursday 22 November 2018, requesting the Secretariat to prepare a short report of the meeting containing a list of issues to be solved.

She then thanked all participants for their cooperation in a very productive meeting.

## LAPEX4 – AGENDA

The 4<sup>th</sup> Extraordinary Meeting of the IALA Legal Advisory Panel (LAPEX4) will be held at IALA Headquarters, 10 rue des Gaudines, 78100 Saint-Germain-en-Laye, France, commencing at 1000 on 21<sup>st</sup> November 2018. The meeting is expected to finish at 1300 on 23<sup>rd</sup> November.

### DAY 1 – Wednesday, 21 November 2018

Time	Activity
1000	<ol style="list-style-type: none"> <li>1. Welcome address</li> <li>2. Introduction to Legal Advisory Panel</li> <li>3. Participant introductions</li> <li>4. Approval of the draft Agenda</li> <li>5. Review of input papers</li> <li>6. Status and result of 2nd Preparatory Diplomatic Conference</li> </ol>
	7. <b>Drafting session on Convention text</b>
1300 – 1400	Lunch
1400	<b>Draft session on Convention text continues</b>
1730	Free evening

### DAY 2 – Thursday, 22 November 2018

Time	Activity
0900	<b>Drafting session on Convention text continues</b>
	Tea/Coffee break
	<b>Drafting session on Convention text continues</b>
1300 – 1400	Lunch
1400	<b>Drafting session on Convention text continues</b>
1730	Free evening

### DAY 3 – Friday, 23 November 2018

Time	Activity
0900	<b>Drafting session on Convention text continues</b>
	Tea/Coffee break
	<b>Drafting session on Convention text continues</b>
	8. <b>Conclusions and closing</b>
1300 – 1400	Lunch

## ANNEX B LIST OF PARTICIPANTS

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