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Changes to the Legal Status of IALA

What is IALA's current legal status?

IALA has been located in France since its creation in 1957 and is established under French national law – the Law of Associations of 1901. This law requires that IALA operate in accordance with its Constitution, which must be registered with French authorities. The Association is also subject to other French domestic laws that are relevant to its operations, including those related to employment, taxation, health and safety, and customs and immigration (including working visas).

What is the legal status of an international intergovernmental organisation (IGO)?

IGOs are organisations created by governments. They do not need to rely on domestic legislation to provide them with legal personality. As a matter of practice, the government of the country in which the IGO is located enters an agreement with the IGO that releases the IGO from compliance with domestic law, through the offer of immunities and privileges. In this way the IGO stands outside the control of its host country.

Why change the current legal status of IALA?

There is no single factor that requires this change. IALA could continue to operate as an Association, with the same Constitution and operational model as it currently has. However, the environment in which IALA operates is not static. In the period since its creation growth in both volume and complexity of the use of waterways and advances in technology has changed the nature of aids to navigation. IALA's contribution to the harmonisation of aids to navigation is now more important than ever.

The roles, responsibilities and strategies of the International organisations with which IALA works most closely have also evolved. There is opportunity for IALA to play a leading role as a standard setter to both support these organisations, and to take the lead in new areas as they emerge, now and into the future. IGO status will facilitate this.

For further information see the IALA publication *IALA – an International Organisation – Navigating the Future* ([click here](#)).

IMO already sets standards – why does IALA need to?

IALA is a strong supporter of the IMO, and works consistently to provide that organisation with up to date, comprehensive, progressive and constructive input in regard to matters over which IMO has been recognised as having competence. However, IMO is looking for strategic partners to help share the increasing workload associated with maintaining standards in the rapidly growing and evolving maritime sector.

The Secretary-General of the IMO has suggested a strategic approach that relies on other organisations to provide technical standards to underpin IMO's higher level outputs, and has identified organisations such as the IHO, ITU (both IGOs) and IALA as such. In this way, IALA's sphere of influence, like those of the IHO and the ITU would overlap with, and underpin, the work of the IMO – supporting rather than competing, or being in conflict, with it.

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At the same time there are areas outside of IMO competence in which IALA fills a gap in current international standards coverage. For example, IALA is responsible for the maritime buoyage standards, IALA is the leader in shore side standards for e-navigation, IALA plays a vital role in the development of standards for both technical and operational delivery of vessel traffic services for both international and domestic shipping and IALA's risk assessment tools provide the means by which governments can assess their needs for aids to navigation.

IALA does not have to be an IGO to undertake this role. However, if IALA wants to achieve its goal of harmonisation of aids to navigation worldwide there are positive benefits from having such status.

There has been much debate regarding IALA's relationship with IMO if IALA is an IGO. Some see lack of clarity or conflict regarding the role of each organisation as a risk. Others do not see the need for another standard setting organisation at all. Yet others see this as an opportunity to establish a clear framework for the future.

There has been close liaison between senior officials of both organisations regarding this matter and positive support for the change of status has been received from the IMO. IALA and the IMO already have an MOU in place and an updated agreement could be developed to ensure that the interaction between the organisations is clear.

See the *Case for Change from an International Association to Intergovernmental Organisation* [web link]

Will a change of status change the aims of IALA?

IALA's current aim is to foster the safe, economic and efficient movement of vessels through improvement and harmonisation of aids to navigation worldwide. It is not intended that this will change if IALA is an IGO, but this will be a decision for governments.

Will a change of status alter the structure of IALA?

The current arrangements between the General Assembly, Council and its Committees, and the Secretariat have served IALA well. IALA recognises that governments will be interested in the administration and decision making aspects of IALA's operations and anticipates that some changes to the functions of these organs may occur. However IALA will recommend that each of these organs be maintained in a way that will support IALA's current technical nature and flexible approach.

IALA has a new Strategic Plan, which better defines its scope and focusses its efforts. Work is already underway to reconsider the range of documents produced by IALA, and to determine which organ should approve what documents. The Secretariat is working to introduce best practice policy and procedures so that governance is transparent. All of these matters will impact on the decision making structure for the future.

How is a change of status achieved?

Creation of an IGO is a matter for governments. It requires the development of an International Agreement (which may take the form of a Convention), by which governments

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agree to be bound. The text of the International Agreement is negotiated by government representatives through a diplomatic process. Once the text is finally agreed (often at a Diplomatic Conference), governments are able to choose to become a party to it. This may require the parliament to approve the Agreement in some countries.

How many governments must sign the International Agreement for it to commence?

This question will be decided by governments during diplomatic discussions. Advice to the Secretariat indicates that from five to 15 countries is a sufficient number to demonstrate international support, but there are views that this is too few. The draft Agreement currently proposes 15 signatories.

What will the International Agreement cover?

IALA will work closely with governments to develop the International Agreement. It is intended that the Agreement will cover matters including the establishment of IALA as an international Organisation; its aim; membership; the structure of the Association (General Assembly, Council, Committees and the Secretariat etc.) and the creation of general regulations; funding and expenditure; legal personality; the arrangements for bringing the Agreement into force and amending it; termination and transitional arrangements. The text of the current IALA Constitution has been used as the starting point for development of the new Agreement but its final form will not be known until the diplomatic process is complete, however it is not intended that Governments will face any new obligations under the IGO.

It has been noted that IALA will not be able to control the final content of the International Agreement, as this will be determined through the diplomatic process between governments. IALA agrees that this is a risk and notes that the 'starting position' for the text will be developed by IALA before the diplomatic process commences. During the process IALA will be in close contact with its national members providing input as requested.

Who will sign the International Agreement?

The International Agreement will be open for signature by States (not aids to navigation authorities, but their governments). The actual person signing the Agreement will need authorisation/credentials/powers of attorney established according to their national requirements.

When will the International Agreement commence?

The Agreement will enter into force in accordance with its terms. This means that governments will decide this when they are finalising the text. Most conventions enter into force a set time (like 30 days or 6 months) after when a specified number of governments have deposited an instrument of ratification, acceptance or approval. There may also be other criteria specified. For example, some IMO conventions have a tonnage requirement as well as a number of States. The draft Agreement currently suggests that the host government should be a signatory before entry into force so as to ensure that a Headquarters Agreement can be entered.

Because of the above process the date on which IALA will change to an IGO cannot be known. IMO experience shows that some conventions can enter into force quickly (like the

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1988 SOLAS Protocol, which was in force in 18 months). Other conventions can take much longer (the Maritime Labour Convention took 7 years) and yet others never commence.

IALA anticipates that its preparatory work on the draft International Agreement will be completed by the end of 2014. Supportive governments can then review the text and begin diplomatic processes to finalise it at an international level, but the timeframe for these discussions has not yet been established.

What is a Headquarters Agreement and what might it cover?

A Headquarters Agreement is an agreement between an IGO and its host government. Such an agreement would often be concluded at about the same time as the International Agreement enters into force.

In broad terms a Headquarters Agreement might cover IALA's immunity from local jurisdiction; its exemption from rates and taxes; the privileges and immunities of its staff, experts and consultants including those attending events organised by IALA at its headquarters.

A Headquarters Agreement should result in lower operating costs for IALA and the opportunity for engagement and participation by people from all jurisdictions, better reflecting its international character.

How will the International Agreement be implemented? (Transitional Arrangements)

IALA will suggest a suite of transition arrangements to take effect when the International Agreement enters force.

For example, those governments that have signed the Agreement will continue as National members, with voting rights. Those current National members, whose governments have not become party to the new arrangements, will become 'Affiliate' members (unless they choose not to). Affiliate members will not have voting rights. It is also proposed that all Associate, Industrial and Honorary members be automatically transferred to the new IGO.

The Council of IALA, as it existed for the Association, will become the Transitional Council for the IGO and will operate as such until the first General Assembly is convened under the International Agreement. Because of this, during the Transition Council period Affiliate members can continue on Council, as if they were National members with voting rights.

Suggested changes to the current IALA Constitution will mean that the assets of the Association will transfer to the IGO when the Association ceases.

Will the International Agreement cover all IALA's governance arrangements?

Governments will need to know what the governance arrangements for the IGO are. Some of these may be included in the Agreement, and others, perhaps regarding the day to day functions and operation of the IGO could be governed by a set of General Regulations, changes to which could be made without the need to seek an amendment to the International Agreement.

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The General Regulations could cover matters like the functions and operation of the IGO; arrangements for the election of the President and Vice President; the conduct of the General Assembly, the election of Councillors, and the operation of Committees, other bodies and the Secretariat.

Will the Secretariat grow?

IALA has a small staff – the equivalent of 8 fulltime officers – servicing the committees, the World Wide Academy, membership and all other administrative, coordination and outreach functions. Council has requested advice on what the most efficient structure for the current organisation might be, and this work is currently being undertaken. As there should be no difference in the standards that are applied to an NGO and an IGO in terms of modern, efficient and transparent administrative practice, the result of this work will inform debate about the role, and resulting size, of the Secretariat for a future IGO. It is noted that some IGOs have technical capacity within the Secretariat to assist in the development, scrutiny and approval of standards and this matter is being considered as part of the review.

Will membership contributions increase?

It has been suggested that there is a risk that the cost of operation of the IGO will be greater than at present, resulting in an increase in membership fees. This may result from growth of the Secretariat or in relation to additional costs for translation or as a result of a reduction in number of members, for example. IALA agrees that this is a risk, and the current assessment of the probability of this risk arising is estimated at ‘medium’. This will be a matter for the new IGO to assess and manage, noting that current contributions by National members are at the lower end of the scale for similar organisations, and that the effect of the Headquarters Agreement should be to reduce current costs

What will happen to the current IALA Constitution?

The IALA Constitution will remain the foundation document for the current IALA Association, and all IALA operations will be conducted in accordance with it. If the legal basis for the operation of IALA is changed to that of an IGO then the Constitution will no longer be required. At that time, as part of the termination of the Association, IALA Council will carry out the necessary processes for winding up under French law and the Constitution will then cease to have effect.

It has been identified that there is a risk that the winding up of the Association may be delayed, resulting in both the Association and the IGO operating at the same time. This risk is being managed by seeking French legal advice so that the necessary steps are well understood, and by ensuring that due diligence and necessary preparation is completed ahead of that process so that it can proceed smoothly and without complication.

Are there benefits and risks in changing to IGO status?

Changing status to become an IGO has the potential to create benefits for the maritime community and for IALA’s current and future members. As with any change, there are also potential risks for all stakeholder groups. Accordingly, for a balanced view both the benefits and risks must be identified when considering this important change. However the relative weight of each benefit and risk are individual to each entity so, for that reason, each

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government and current member will have to undertake their own assessment. These issues have, at the request of IALA Council, been considered by National Members, the Legal Advisory Panel and the IALA Secretariat. The resultant document *Case for Change from an International Association to Intergovernmental Organisation* can be accessed here: [web link]

What will the role of existing aids to navigation Authorities be in the future?

As IALA will remain a technical organisation the input of aid to navigation authorities will be critical to its ongoing relevance and success.

IALA will suggest that the International Agreement require each National member (government) to designate, as its principal delegate to the General Assembly, the head of the national authority legally responsible for the provision, regulation, maintenance or operation of marine aids to navigation. In addition, when a country is elected to Council, the office of Councillor should be devolved to the head of the technical body responsible for the provision, regulation, maintenance and/or operation of marine aids to navigation. This will ensure that the governing bodies will continue to include technical representatives responsible for aids to navigation provision. A similar approach has been used successfully by the IHO for many years.

Despite the above, there is a risk that IALA will become more bureaucratic if diplomatic rather than operational and technical officers attend IALA meetings. This might also mean that IALA processes and outputs are impacted to take account of national requirements. IALA cannot control who governments send to meetings, but given the strong technical focus of the organisation and the successful involvement of current National members for many years the impact of this risk is rated as 'medium'. It is anticipated that this rating will reduce as the IGO becomes established and its processes are better understood by governments.

What will the status of existing National members be in the new IGO?

On entry into force of the Agreement IALA's recommendation is that current National Members become Affiliate members until their government becomes a contracting party.

IALA will recommend that any Affiliate member who was on Council when the IGO commences be able to continue in that role until the following General Assembly. Affiliate members will not be able to vote at General Assembly and therefore are encouraged to assist their country ratify the Agreement so that they can fully participate in IALA's decision-making processes.

What will the impact on Associate, Industrial and Honorary Members be?

IALA values the support and the contributions made by all its members and will work to ensure that all current members can actively participate in the IGO in the future.

Although there is no single principle of international law that supports it, there has been suggestion that only governments can be members of an IGO; and that industry and others should have observer status rather than being members. Such an outcome would not

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change the current position significantly as Associate, Industry and Honorary members cannot currently vote at General Assembly nor be elected to Council or be the Chair of committees. Careful consideration of this issue, which encompasses the strength of what IALA is today, will be necessary as part of the diplomatic process. At this time the Industry Members Committee has indicated that it supports the move to IGO status for IALA and IALA will continue to liaise with all parties to achieve a satisfactory outcome.

Will IALA lose members?

IALA will work with governments during the diplomatic process to retain as many members as is possible, however, until the final structure of the IGO is determined it will not be possible to fully answer this question. It is also possible that as IALA grows as an IGO, and existing impediments are removed (for example, legal status as a French charity), membership will actually grow.

Loss of individual memberships has been raised as a potential risk for IALA as a result of reduction in income from membership fees (approximately 39% of membership fees come from Industrial and Associate members). More importantly IALA values and relies heavily upon the input of these members to achieve its goals and would suffer more than financial loss if membership decreased significantly.

What will happen at the General Assembly in A Coruna?

One of the functions of the General Assembly is to decide the overall policy of IALA. Because a change of status to become an IGO is a major policy decision the General Assembly will be asked to consider a Resolution on that matter.

The Resolution documents the General Assembly's recognition of the strong history of IALA, its ongoing desire to benefit its members and the international community and its position in relation moving forward in the future. If passed, the Resolution will become a mandate for the Council, with the assistance of the Secretary-General, to support its national members in bringing about a change of status for IALA. The IALA Constitution states that a decision of this nature requires a simple majority of votes cast.

The General Assembly will also be considering some changes to the existing IALA Constitution, one of which would allow for the termination of the current IALA Association if an agreement creating an IGO should enter into force. This would be done after taking account of the requirements of French law and the assets of the current IALA would pass to the new IGO.

Why change status now?

There is no single imperative that indicates that IALA must change its status at this moment in time – and it could not do so even if this were the case. The creation of a new international intergovernmental organisation will take a period of years and will be dependent upon the processes of governments. However, given this reality, it is time to raise this question.

The maritime community and national governments are facing an increasingly complex environment where harmonisation, efficiency and effectiveness are paramount. IALA has

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the opportunity to step forward and offer leadership, but to act effectively will require acceptance as a respected government advisor – a position that is strengthened if governments themselves are participants. Failure to do so may mean that the opportunity is lost.

Would IALA standards be binding?

The current draft of the International Agreement does allow for IALA to create standards. IALA standards would be binding only if its national members (governments) chose for them to be when agreeing the standard. As is the case with the IMO, in regard to matters that are not the subject of a convention (like SOLAS or MARPOL), resolutions 'urge' national members to implement standards, guidelines, interpretations etc. Passing the resolution does not, itself, bind the members.

As an IGO, IALA would also be in a position to work with governments to create new conventions (for example, to replace the Maritime Buoyage Agreement). If this were done, only those governments that ratify the new convention would be bound by it. Subsequent convention changes would be binding if the national member was party to the convention and either there was a tacit acceptance process, or they ratified the change.

Creating standards is a role for IGOs as it allows governments to establish known and accepted parameters that create certainty and increase harmonisation. IALA is ready and able to play a leading part in this process.

How can I contribute to the debate?

National members will consider a change of status for IALA at the General Assembly in A Coruna, Spain, in May 2014. A list of current national members is located here:

http://www.iala-aism.org/files/membership/listmbres_20_202014_03.pdf

Comments can also be sent to status@iala-aism.org