

Comments from Canada on the Draft Convention on the International Organization for Marine Aids to Navigation

February 13, 2020

# of remark	Location in document	Original Text	Suggested text	Rationale for Proposal
1	Article 1(4)	The General Regulations are subject to the provisions of this Convention. Where there is a conflict between the Convention and the General Regulations or any other basic documents covering the governance of the Organization, the Convention shall prevail.	The General Regulations are subject to the provisions of this Convention. Where there is a conflict between <u>this</u> Convention and the General Regulations or any other basic documents covering the governance of the Organization, <u>this</u> Convention shall prevail.	For consistency and clarity, “the Convention” should be replaced with “this Convention”.
2	Article 2(2)	Member State means a State [, which has consented to be bound by this Convention and] for which this Convention is in force.		Canada supports the inclusion of the text in square brackets, as it is verbatim the definition of party from the <i>Vienna Convention on the Law of Treaties</i> (Article 2(1)(g)).
3	Article 2(3)	Associate Member means a territory or group of territories for which a Member State has responsibility for its international relations and for which it has requested membership which has been approved by the General Assembly. National members of the International Association of Marine Aids to Navigation and Lighthouse Authorities from States that are not Member States in accordance with the Annex paragraph 5.	Associate Member means a territory or group of territories for which a Member State has responsibility for its international relations and for which it has requested membership which has been approved by the General Assembly, <u>and</u> national members of the International Association of Marine Aids to Navigation and Lighthouse Authorities from States that are not Member States in accordance with the Annex paragraph 5.	The second paragraph is grammatically incorrect and is missing an “and”.
4	Article 5(3)	The Council may require or a Member State may request that aspects of an application for Affiliate Membership be reviewed	The Council may require or a Member State may request that aspects of an application for Affiliate Membership be reviewed by the Member State (or	Canada would recommend using “may”, as it is optional for the Council to grant the Affiliate membership. Using “shall” creates an obligation on the Council to grant membership and seems to make the Member States’

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		by the Member State (or Member States) where the applicant carries out its activities or has its principal place of business or registered office. If supported by the Member State (or Member States), who requested the review, then Affiliate membership [shall/may] be granted by the Council.	Member States) where the applicant carries out its activities or has its principal place of business or registered office. If supported by the Member State (or Member States), who requested the review, then Affiliate membership <u>may</u> be granted by the Council.	support the only applicable criterion. This would be contrary to Article 8(7)(d) of the Convention which stipulates that it is the Council that decides on Affiliate Membership. We also suggest the deletion of the unnecessary comma before “who requested”.
5	Article 11(5)	The election of the Council shall be made by secret ballot in accordance with the General Regulations. Each Member State shall have one vote per vacant seat on the Council.	The election of the Council shall be made <u>[with the highest number of votes of the Members States present and voting through a secret ballot]</u> .	<p>Canada would recommend that the voting standard for the election of Council be revisited in plenary and included in Article 11(5) so as to avoid confusion with the rest of Article 11.</p> <p>Please note that Article 11(5) should be read in conjunction with what is stipulated in Articles 11 and 1 of the Convention:</p> <p>Article 11(1) states: All efforts shall be made for the General Assembly and the Council to adopt decisions by consensus among Member States</p> <p>Article 11(2) states: Where decisions of the General Assembly or Council cannot be adopted by consensus, they shall be adopted by a two-thirds majority of Member States present and voting through a secret ballot.</p> <p>Article 1(4) states: The General Regulations are subject to the provisions of this Convention. <i>Where there is a conflict between the Convention and the General Regulations or any other basic documents covering the governance of the Organization, the Convention shall prevail.</i> [emphasis added]</p>

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				<p>Given that the Convention prevails over the General Regulations, the current voting standard for elections applicable to Article 11(5) would be to have all efforts being made at consensus (Article 11(1)), and where no consensus is possible, then a 2/3 majority standard would be followed (Article 11(2)).</p> <p>However, pursuant to the report of the 3rd Pre Diplomatic Conference, it does not seem that there was agreement with the voting standard being 'all efforts being made at consensus and where not possible then a 2/3 majority vote'. We do not consider that the aim of reaching consensus, which is generally highly proper, should apply to elections.</p> <p>Canada proposes that the voting standard for Council election be for Member States receiving the highest number of votes as per standard practice. Our suggested language is provided in square brackets.</p>
6	Article 12	The official languages of the Organization shall be [English, French and Spanish].	The official languages of the Organization shall be <u>English, French and Spanish</u> .	Canada would support a multilingual approach with English, French and Spanish being the official languages of the prospective organization, as this would be consistent with IALA's current policy and practice under its status as a non-governmental organization.
7	Article 15(5)	An amendment to this Convention shall come into force for Member States having accepted the amendment six months after written notification of the acceptance to the Depositary by two-	An amendment to this Convention shall come into force for Member States having accepted the amendment six months after written notification of the acceptance to the Depositary by two-thirds of Member States and thereafter	Canada recommends the deletion of the text in square brackets. We do not support amendments automatically coming into force for all Member States. It is up to individual Member States to decide what international legal obligations to take on. In addition, creating a 6-

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		<p>thirds of Member States and thereafter for each remaining Member State upon acceptance by it.</p> <p>[The amendment shall come into force for all Member States six months after written notifications of acceptance by two-thirds of the Member States have been received by the Depositary. The Depositary shall inform the Member States and the Secretary-General of the fact, specifying the date of entry into force of the amendment.]</p>	<p>for each remaining Member State upon acceptance by it.</p> <p>[The amendment shall come into force for all Member States six months after written notifications of acceptance by two-thirds of the Member States have been received by the Depositary. The Depositary shall inform the Member States and the Secretary-General of the fact, specifying the date of entry into force of the amendment.]</p>	<p>month timeframe for entry into force for all Member States would not take into account the widely differing timeframes for completion of domestic approval processes.</p> <p>To have amendments coming into force only for Member States having accepted them is in line with standard treaty law (See Article 40(4) of the <i>Vienna Convention on the Law of Treaties</i>) and we see no reason to depart from this practice.</p>
8	Article 19(2)	<p>For each State ratifying, accepting, approving or acceding to this Convention after its entry into force the Convention shall enter into force on the thirtieth day after the deposit of its instrument of ratification, acceptance, approval or accession.</p>	<p>For each State ratifying, accepting, approving or acceding to this Convention after its entry into force <u>this</u> Convention shall enter into force on the thirtieth day after the deposit of its instrument of ratification, acceptance, approval or accession.</p>	<p>Canada suggests modifying “the Convention” to “this Convention” for consistency and clarity.</p>
9	Testimonium	<p>DONE at [xxx] on [xxx] in the [English, French and Spanish] languages, each text being equally authentic, the original of which shall be deposited in the archives of the Depositary. The Depositary shall transmit certified copies thereof to all the [signatory and acceding] governments and to the Secretary-General of the Organization.</p>	<p>DONE at [xxx] on [xxx] in the <u>English, French and Spanish</u> languages, each text being equally authentic, the original of which shall be deposited in the archives of the Depositary. The Depositary shall transmit certified copies thereof to all the [signatory and acceding] governments and to the Secretary-General of the Organization.</p>	<p>Canada supports the conclusion of the Convention in all three languages.</p>