

LAPEx2	Decision
Agenda item	6
Author	Secretariat

## **Changes to the IALA Constitution**

### **1 SUMMARY**

This paper discusses some changes that are required to enable IALA to continue to operate efficiently under the existing IALA Constitution. It also notes a change that would facilitate transition to governance under the proposed International Agreement, should IALA undergo a change of status to that of international intergovernmental organisation.

Participants may recall that at the meeting LAP Extraordinary 1 all changes in the attached document were agreed, however it was noted that French legal advice was required before the changes suggested to Article 13 could be put forward to Council. That advice has now been received.

#### **1.1 Purpose of the paper**

The purpose of this paper is to provide participants with the opportunity to review changes to the current IALA Constitution which provides for IALA's current governance structure.

#### **1.2 Related documents**

Annex A - IALA's current Constitution in mark-up.

### **2 BACKGROUND**

IALA has been in existence since 1957. It is created as an association under the French Law on Associations of 1901. That law requires that IALA meet legislated requirements, one of which is to have a Constitution which documents its operations and various other matters.

The Constitution is rarely changed, and when this is required a two-thirds majority of National members attending a General Assembly are required to vote in favour of such amendment. The last amendment to the Constitution was approved on 23 May 2006.

In 2010 Council tasked LAP with the role of proposing amendments to the Constitution, based on suggestions from Council on a rolling basis, so as to be in a position to recommend such changes to the General Assembly in 2014.

In addition to change proposals generated in this way, LAP had identified one additional change to the Constitution that would facilitate automatic transition to the International Agreement, which will, by its nature, replace the existing IALA with a new legal entity. This change is in Article 13.

### **3 DISCUSSION**

#### **3.1 The existing IALA Constitution**

- 3.1.1 The current IALA Constitution is the governing instrument for IALA as an Association. It requires minor changes to allow IALA to continue to operate efficiently into the future.

- 3.1.2 The suggested changes have been agreed at various LAP meetings in the past and are thought to be non-controversial.

### **3.2 Preparation for the future**

- 3.2.1 The opportunity had also been taken to suggest a change that would ease the transition from Association to International Organisation following the entry into force of an International Agreement by introducing an automatic process.
- 3.2.2 This amendment would transfer the assets and liabilities of the Association to the new International Organisation and would also terminate the Association without further recourse to a General Assembly (which would otherwise be required).
- 3.2.3 LAP Ex1 agreed to this change, but suggested that external legal advice should be sought to ensure that the proposed methodology would also allow compliance with French law before the changes were recommended to Council for forwarding to the General Assembly.

### **3.3 French Legal Advice**

- 3.3.1 The Secretariat, assisted by the Deputy Chair of the Legal Advisory Panel, sought legal advice in regard to the requirements for termination of an entity created under the French Law on Associations of 1901.
- 3.3.2 That advice has confirmed the view that IALA will be able to transition its assets to an international organisation that has a similar interest in marine aids to navigation, and from this perspective there appears to be no bar to transfer to the International Organisation.
- 3.3.3 However the advice also indicated that it will be necessary for the French legal entity and the new International Organisation entity to be in existence at the same time. This is to allow for the formalities required by French law to be undertaken.
- 3.3.4 The legal advice also indicated that the transfer of liabilities, although possible, would complicate the transfer, and should be avoided if possible.
- 3.3.5 On the basis of this advice the current draft amendments to Article 13 have been amended slightly and are presented to LAP for further consideration. The changes:
- set a six month time period after entry into force of the International Agreement before IALA is automatically terminated.
  - task Council with undertaking the activities necessary for the winding up of the old IALA
  - remove the transfer of liabilities to the International Organisation.
- 3.3.6 If adopted, these changes will still have the effect of making the transfer as smooth as possible, requiring Council to deal with any liabilities before transferring assets,

## **4 REFERENCES**

Nil.

## 5 ACTION REQUESTED OF LAP

LAPEX2 is requested to:

- 1 **Consider** the information contained in this paper when reviewing the proposed amendments to the IALA Constitution provided in Annex A.
- 2 **Finalise** the amendments presented in Annex A.

**ANNEX A****ANNEX B ANNEX A – CHANGES TO THE IALA CONSTITUTION**

Article	Reason for change
<p><b>1 Article 1. Name</b></p> <p>The International Association of Marine Aids to Navigation and Lighthouse Authorities, hereinafter referred to as “IALA”, formerly called the International Association of Lighthouse Authorities / association Internationale de Signalisation Maritime, is <del>a non-governmental organization (ngo)</del> an international association established and governed by the French law of 1<sup>st</sup> July 1901 and the decree of 16<sup>th</sup> August 1901.</p> <p>The term “marine aids to navigation” referred to in the present Constitution should be understood to be a device, system or service, external to vessels, designed and operated to enhance safe and efficient navigation of individual vessels and/or vessel traffic.</p>	<p><i>IALA should not be regarded as a NGO, this would not allow the organization to have a Headquarters agreement with the government of France and mentioning the governing law is compulsory according to French law.</i></p>
<p><b>Article 2. Aim</b></p> <p>The aim of IALA is to foster the safe, economic and efficient movement of vessels, through improvement and harmonisation of aids to navigation worldwide and other appropriate means, for the benefit of the maritime community and the protection of the environment.</p> <p>IALA is secular and non-political.</p> <p>IALA brings 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><b>Article 3. Functions</b></p> <p>The aim of IALA is achieved by, among other things:</p> <ul style="list-style-type: none"> <li>• developing international cooperation by promoting close working relationships and</li> </ul>	

<p>assistance between members;</p> <ul style="list-style-type: none"> <li>collecting and circulating information about the activities of its members as well as encouraging, supporting and communicating recent developments;</li> <li><del>enhancing</del> <b>facilitating</b> mutual exchange of information with organisations representing the users of aids to navigation;</li> <li>formulating and publishing appropriate recommendations, <del>standards and</del> guidelines, <b>manuals and other appropriate papers</b>;</li> <li>encouraging IALA members to take into account the development of multi-purpose systems which may be also be used, for instance, to monitor the marine environment;</li> <li>establishing committees, <del>or</del> working groups <b>or other such bodies as may be appropriate</b> to study special issues;</li> <li><del>promoting</del> <b>facilitating</b> assistance to services or organisations requesting help within the marine aids to navigation and allied fields, whether technical, organisational or training;</li> <li>organising conferences, symposiums, seminars, workshops and other events relevant to its work.</li> </ul>	<p><i>To take WWA into account</i></p> <p><i>To better reflect what IALA is actually doing</i></p> <p><i>To integrate other groups such as Forums, etc.</i></p> <p><i>Again to take the WWA into account</i></p>
<p><b>Article 4. Relationship with other organisations</b></p> <p>IALA will maintain liaison and cooperate with relevant intergovernmental, international and other organisations, offering specialised advice where appropriate.</p>	
<p><b>Article 5. Membership</b></p> <p><b>5.1 Member groups</b></p> <p>IALA comprises National members, Associate members, Industrial members and Honorary members.</p> <ul style="list-style-type: none"> <li><b>National membership</b> may be applied for by a National Authority of any country, or any part of that country, legally responsible for</li> </ul>	

<p>the provision, maintenance or operation of marine aids to navigation within that country, or any part of that country (hereinafter referred to as National Authority).</p> <ul style="list-style-type: none"> <li>• <b>Associate membership</b> may be applied for by any other service, organisation or scientific agency that is concerned with aids to navigation or related matters.</li> <li>• <b>Industrial membership</b> may be applied for by manufacturers and distributors of marine aids to navigation equipment for sale, or organisations providing marine aids to navigation services or technical advice under contract.</li> <li>• <b>Honorary membership</b> may be conferred for life upon any individual who is considered by the Council to have made an important contribution to the work of IALA.</li> <li>• <del>individual membership</del></li> </ul> <p><b>5.2 Applications for membership</b></p> <p>All applications for membership and changes in the type of membership are subject to acceptance by the Council. The Council may require an application for Industrial or Associate membership to be <del>supported</del> reviewed by a National Authority of the area where the applicant carries out his activities or has his principal place of business.</p> <p>Application for membership constitutes an agreement to pay the appropriate annual subscription as laid down from time to time.</p> <p><b>5.3 Suspension or termination of membership</b></p> <p><b>5.3.1 some or all membership rights may be suspended:</b></p> <ul style="list-style-type: none"> <li>• by decision of the Council for non-payment of subscription; or</li> </ul>	<p><i>Individual membership was considered but rejected as it would make things more complicated if there's a HQ agreement or IALA becomes an IGO</i></p> <p><i>"reviewed" is less committing for National members than "supported"</i></p> <p><i>Suspension of rights was suggested by the IMC at Council session 51</i></p>
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<ul style="list-style-type: none"> <li>• by decision of the Council for any justifiable cause in the best interest of IALA until the member has met such financial or other obligations.</li> </ul> <p><b>5.3.2</b> <del>national, associate and industrial</del> membership may be terminated:</p> <ul style="list-style-type: none"> <li>• by resignation of the member;</li> <li>• by decision of the Council for non-payment of subscription; or;</li> <li>• by decision of the Council for any justifiable cause in the best interest of IALA.</li> </ul> <p><del>5.3.32 [industrial honorary membership may be terminated:</del></p> <ul style="list-style-type: none"> <li><del>• by resignation of the member, or</del></li> <li><del>• by decision of the Council for non-payment of subscription, or;</del></li> <li><del>• by decision of the Council for any justifiable cause in the best interest of IALA.</del></li> </ul>	<p><i>There is no need to keep two different Articles – one for National membership and the other for Associate and Industrial membership – stating exactly the same conditions.</i></p>
<p><b>Article 6. Seat</b></p> <p>The Headquarters and registered office of IALA is in the vicinity of Paris in Saint Germain en Laye, France. The location of the Headquarters may be changed by decision of the IALA Council, which will be ratified by the General Assembly.</p> <p><del>The duration of IALA is unlimited.</del></p>	<p><i>Ratification by the General Assembly is compulsory according to French law.</i></p> <p><i>Duration was moved to Article 13 – Duration and termination.</i></p>
<p><b>Article 7. General Assembly</b></p> <p>General Assemblies of members are held at intervals not exceeding five years and, normally, concurrently with IALA Conferences. A General Assembly will be convened by order of the Council (see Article 8).</p> <p><b>7.1 Functions of the General Assembly</b></p> <p>The General Assembly, among other things:</p>	

<ul style="list-style-type: none"> <li>• decides the overall policy of IALA.</li> <li>• elects the members of the Council (see Article 8). Councillors are elected for the period between two General Assemblies. Councillors may be re-elected.</li> <li>• decides upon changes to the constitution.</li> </ul> <p><b>7.2 Rules on participation</b></p> <p>Members of all categories may attend general assemblies.</p> <p><b>7.3 Rules on voting</b></p> <ul style="list-style-type: none"> <li>• only National members have voting rights at a General Assembly.</li> <li>• each National member has one vote.</li> <li>• decisions of the General Assembly, other than those relating to the Constitution (see Article 12) are taken on a simple majority of the votes cast. In the event of a tie vote, the President shall have a second, and deciding, vote.</li> </ul>	
<p><b>Article 8. Council</b></p> <p><b>8.1 Election of the Council:</b></p> <p>IALA is administered by a Council comprising up to <del>twenty-one</del> <del>twenty-two</del> elected Councillors and <del>two</del> <del>three</del> non-elected Councillors as follows:</p> <p><b>Elected Councillors:</b></p> <ul style="list-style-type: none"> <li>• the Heads of National member<del>s</del> <del>authorities or their representatives</del> elected by ballot of all National members attending a General Assembly; only one National member from any country may be elected to the Council;</li> <li>• elected Councillors shall, as far as possible, be drawn from different parts of the world with a view to achieving as widespread a representation as possible.</li> </ul>	<p><i>To take into account the requirement in the MOU with France (and the HQ Agreement if achieved) to give France a permanent seat at the Council, without extending the number of Councillors.</i></p> <p><i>For consistency with the French text.</i></p>



**Non-elected Councillors:**

- the Head, from time to time, of the National Authority of the IALA host nation;
- the Head, from time to time, of the National Authority of the country wherein the next IALA Conference will be held;
- the Head, from time to time, of the National Authority of the country wherein the last Conference was held.

The post of Councillor is honorary.

**8.2 Duties of the Council:**

The Council will meet regularly and at least once a year. Such meetings will be convened by the President or the Vice President, or the Secretary General, or at the request of two Councillors.

8.2.1 the Council upon election or, when necessary, will:

- from among its members elect a President and a Vice President on a personal basis. The President and the Vice President shall not hold their office for longer than the term between Conferences;
- from among its members elect a Financial ~~Advisory~~ and Audit Committee, comprising at least three persons, to assist the Council as necessary and elect a Committee member as Treasurer and Chairman;
- appoint Chairman and Vice-Chairman of each Committee for the term between Conferences.

**8.2.2 Appointment of the Secretary General**

The Council will appoint a Secretary General to act as legal representative and chief executive of IALA. The Secretary General's powers and responsibilities and his terms and conditions of employment will be decided by the Council. The Secretary General will be assisted in his tasks by a permanent Secretariat.

*To reflect current usage*

<p><b>8.2.3 Functions of the Council:</b></p> <p>The Council, among other things:</p> <ul style="list-style-type: none"> <li>• implements the overall policy of IALA as defined by its aims or by the General Assembly;</li> <li>• decides membership matters;</li> <li>• establishes committees <i>and/or facilitates other such bodies as may be appropriate</i> relevant to the aims of IALA;</li> <li>• determines rules of procedure for committees <i>and other such bodies as may be appropriate</i> and their terms of reference;</li> <li>• approves recommendations, guidelines, manuals and <del>submissions to other organizations</del> <i>other appropriate papers</i></li> <li>• <i>approves submissions to other organisations;</i></li> <li>• decides the venue and the year of the next IALA Conferences; <i>and symposiums</i></li> <li>• establishes rules for participation in IALA Conferences and symposiums;</li> <li>• convenes general assemblies;</li> <li>• approves the annual budget and accounts;</li> <li>• determines the rate of subscriptions;</li> <li>• decides upon the location of the Headquarters and registered office of IALA;</li> <li>• may authorise the purchase, sale, renting or letting of property and the granting and obtaining of loans whether or not secured by mortgage, required for the running of the association;</li> <li>• may grant any power of attorney as required.</li> </ul> <p><b>8.3 Council meetings</b></p> <p>A Council meeting can only be held when at</p>	<p><i>Amended in the light of having PAF an external forum hosted by IALA and taking the WWA into account.</i></p> <p><i>Made a separate paragraph Less restrictive</i></p> <p><i>Symposiums are missing in the current constitution</i></p>
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<p>least the President or the Vice President and one member of the Financial Advisory Committee are present.</p> <p><b>8.4 Voting procedures</b></p> <p>A Council decision can be made by a simple majority of those present at the meeting, subject to a minimum of seven votes being recorded in its favour. No Councillor may have more than one vote. In case of a tie vote, the President will have a second, and deciding, vote.</p> <p>The President or the Vice President may decide to carry out a postal [or electronic] vote among the Councillors.</p>	
<p><b>Article 9. Committees</b></p> <p>Committees are established by the Council to study <del>issues such as management, operations, engineering and training associated with topics like vts, radio aids, visual aids, and their associated technologies, support services and other matters</del> relevant to the aim of IALA matters, with the <del>aim</del> objective of preparing <del>to prepare</del> recommendations, guidelines and manuals for IALA members and submissions to other organisations. These recommendations, guidelines, manuals and submissions require the approval of the Council.</p> <p>Committees will work under the rules stated in the “Rules of Procedure for IALA Committees” approved by the Council.</p>	<p><i>To avoid exhaustive lists of subjects.</i></p>
<p><b>Article 10. Conferences and exhibitions</b></p> <p>All categories of IALA members are entitled to be represented at an IALA Conference.</p> <p>Non-members may only participate in an IALA Conference with the approval of the Council.</p> <p>An exhibition of aids to navigation equipment will be organised during the Conference period. Only IALA Industrial members who have paid the equivalent of the subscriptions for the two</p>	

years immediately prior to the year of the Conference plus the year of the Conference will have the right to exhibit their equipment.	
<p><b>Article 11. Funding</b></p> <p>IALA shall be funded from subscriptions, grants and gifts as generally permitted by law.</p>	
<p><b>Article 12. Changes to the Constitution</b></p> <p>Alterations to the Constitution can normally only be made by a two-thirds majority of National members attending a General Assembly. The Council can decide as an emergency measure to carry out a postal [or electronic] vote. Alterations to the Constitution by this method require a two-thirds majority of National members taking part in the <del>postal</del> vote.</p>	
<p><b>Article 13. Duration and termination</b></p> <p>The duration of IALA is unlimited.</p> <p>Except as noted below, the termination of IALA can be decided upon under the same conditions as required for the alterations to the constitution. On termination, the Council is responsible for the winding up of IALA and distribution of assets to charitable or technical organisations connected with marine aids to navigation.</p> <p>In the event of IALA being constituted as an international organisation based on an international agreement this Constitution will terminate without further action <del>when six months after the date on which the international agreement enters into force.</del> Council must arrange winding up of IALA and the formal transfer of ownership of all assets and liabilities will, at that date, be formally transferred free of charge and without reservation into the possession of the organisation constituted according to the international agreement.</p>	<p><i>Deleted from Article 6 – seat</i></p> <p><i>Inserted to allow for the automatic cessation and transfer of assets upon entry into force of the international agreement.</i></p>