

COMMENTS ON THE DRAFT CONVENTION ON THE INTERNATIONAL ORGANIZATION FOR MARINE AIDS TO NAVIGATION (IALA)

1. General Remarks

The Republic of Korea (hereinafter referred to as “Korea”) appreciates the hard work done by the IALA Secretariat, the Secretary-General, and the Legal Advisory Panel in preparing the draft Convention on the International Organization for Marine Aids to Navigation (IALA), and welcomes this opportunity to provide comments on the draft Convention. As this draft is only the first draft, Korea expects that minor technical issues found in the draft Convention will be corrected in due course. With that in mind, Korea focuses its comments on the substance of the specific provisions. As for the other provisions not mentioned here, Korea in principle has no particular objections. Notwithstanding the comments made here, Korea reserves its right to make additional comments on any revised draft Conventions in the future.

2. Comments on Specific Provisions

Title: Draft Convention on the International Organization of Marine Aids to Navigation (IALA)

Since IALA has been used as the acronym for the former non-intergovernmental organization, Korea suggests using a different acronym that better reflects the title of the new organization. It is also unusual to include the acronym of the organization in the title of the convention. Korea therefore suggests deleting the acronym from the title.

Article 1: Establishment of the International Organization

1.3. The official languages of the Organization shall be English, French and Spanish. The working languages of the Organization shall be English and French.

Having 3 official languages and 2 working languages would result in high operating cost. In the interest of cost and efficiency of the operation, Korea suggests designating English as the sole official and working language.

1.4. The operation of the Organization shall be as set out in the General Regulations.

Article 1.4 seems unrelated to the establishment of the Organization. Korea suggests moving this provision to Article 5.

Article 4: Membership

4.2. Members shall include, and the General Regulation may make provision for all matters related to, Associate and affiliate members.

According to Article 4.2, the rules regarding the membership are to be found in the draft General Regulations. Since membership constitutes an essential component of the structure of the Organization, the rules regarding it should be stipulated in the draft Convention itself.

4.4. Each Contracting Party shall pay a contribution to the Organization on an annual basis in the amount determined in accordance with in Article 7.6 (e) and Article 10.

4.5. Contracting Party contributions and member fees shall be due and payable in accordance with the General Regulations.

4.6. Failure to make a contribution when such payment becomes due may result in the Contracting Party being charged interest, the rate of which will be determined by the Council.

4.7. Any Contracting Party which is two years in arrears in making contributions shall, after notification, be denied the rights and benefits conferred on Contracting Parties by this Convention until such time as the outstanding contributions have been paid.

Articles 4.4-4.7 are concerned with contributions and member fees, which are the primary source of funding. Korea therefore suggests placing them under Article 10 or making a separate article on finances.

Article 4.7 states the consequences of failing to make contributions on time. There may be situations in which a State is unable to pay contributions due to exceptional circumstances outside of its control. In order to take into account such situations, the draft Convention should also contain a process for relief by the General Assembly.

Article 5: Structure of the Organization

5.2. There shall be a President and a Vice President of the Organization elected in accordance with Article 7.

Article 5 should stipulate clearly that the President and the Vice President of the Organization chair both the General assembly and the Council.

Considering the importance of the Organization's technical expertise, the candidacy for president and vice president should be limited to the representatives of the States' relevant authorities for the marine aids to navigation.

Article 6: The General Assembly

Crucial issues regarding the General Assembly such as the composition, functions, authority, and rules of procedure (including voting and decision making) should be stipulated clearly in the draft Convention.

The General Assembly should have the power to decide on the location of the secretariat.

Article 7: The Council

Crucial issues regarding the Council such as the composition, sessions, functions, authority, and rules of procedure (including voting and decision making) should be stipulated clearly in the draft Convention.

Article 7 should contain a paragraph on the councillor's term of office and the possibility of re-election.

7.2. The Council shall consist of up to twenty three (23) Councillors elected from amongst the Contracting Parties and one (1) non-elected Councillor.

7.4. The Contracting Party of the State in which the seat of the Organization is located ("Host Nation") shall be the non-elected Councillor.

Articles 7.2 and 7.4 state that the Host Nation shall be a non-elected councillor. It is difficult to find precedents regarding non-elected councillors in an intergovernmental organization. Korea suggests that the provisions regarding non-elected councillor be deleted.

7.5. At the Council Contracting Parties shall preferably be represented by the head of a national authority legally responsible for the regulation, provision, maintenance or operation of marine aids to navigation of that Contracting Party, or his or her representative.

Considering the technical nature of the Organization, Korea suggests deleting the word 'preferably' from Article 7.5 and making the attendance of the head of a national authority responsible for the regulation of marine aids to navigation, or his or her representative mandatory.

7.6. The Council shall:

(a) Elect the President and the Vice President from amongst its members;

According to Article 7.6(a) the President and the Vice President are to be elected by the Council. However, considering the importance of such positions, they should be elected through the General Assembly.

7.6. The Council shall:

(h) Appoint a Secretary-General in accordance with the General Regulations;

Currently, the draft General Regulations regulates the appointment of the Secretary-General. Considering the importance of the matter, Korea suggests the procedure for the appointment of the Secretary-General be stipulated in the draft Convention.

Article 9: Secretariat

9.2. The staff of the Secretariat shall be appointed by the Secretary-General on such terms and to perform such duties as the Secretary-General may determine.

It is essential that there is oversight of the Secretary-General's staffing. Korea suggests that the draft Convention require the Secretary-General to seek approval of the Council regarding its appointment of the staff.

The Secretary-general and the staff of the Secretariat's duty to act in good faith should be clearly stipulated in the draft Convention.

Article 10: Funding and Expenditure

10.1. The expenditure available for the functioning of the Organization shall meet the amount of

financial resources provided by:

(d) other sources approved by the Secretary-General.

Considering the importance of funding and expenditure, the approval of other sources in Article 10.1(d) should be from the Council rather than the Secretary-General. Korea therefore suggests changing the phrase 'by the Secretary-General' in Article 10.1(d) to 'by the Council'.

The draft Convention should clearly delineate the General Assembly's and the Council's power with regard to the handling of the budget.

Article 11: Legal Personality, Privileges and Immunities

11.3. The Organization may cooperate with governments, organisations and other bodies, and conclude agreements with them.

Article 11.3 seems unrelated to legal personality or privileges and immunities. Korea suggests inserting a separate article regulating the Organization's relations with other organizations.

Article 12: Amendments

12.1. Any Contracting Party may propose an amendment to this Convention, in writing, to [the Government of France, in its role as] the Depositary.

12.2. The Depositary [Government of France] shall circulate the amendment proposal to all Contracting Parties and the Secretary-General at least six months in advance of its consideration by the General Assembly.

With regard to Articles 12.1 and 12.2, amendments should be proposed to and circulated by the Secretariat in the interest of efficiency.

12.4. Any amendment adopted in accordance with Article 12.3 shall be notified by the Depositary [Government of France] to all Contracting Parties and the Secretary General. The amendment shall be deemed to have been accepted at the end of a period of twelve months after the date of notification, unless within that period not less than one-fourth of the States that were Contracting Parties at the time of the adoption of the amendment have communicated to the Depositary that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

The amendment procedure stipulated in Art. 12.4 of the draft Convention seems to allow for an easier amendment process compared to other conventions of similar nature. Whereas many other conventions require the consent to be bound by more than two-thirds of the States for an amendment, the draft Convention allows for an amendment simply after a period of 12 months after the date of notification, unless not less than one-fourth of the States have notified their disagreements. Korea suggests modifying the amendment procedure to be more in line with other conventions.

Article 13: Interpretation and Disputes

13. Any question or dispute concerning the interpretation or application of the present Convention arising between or amongst Contracting Parties which is not settled through consultation or negotiation or by the good offices of the Council may be referred to a panel of three independent arbitrators appointed by the Secretary-General of the Permanent Court of Arbitration, unless the

parties to the dispute agree upon another mode of settlement.

Korea suggests that, in the interest of efficiency, questions and disputes be referred to an independent arbitrator appointed by the President of the International Court of Justice, rather than a panel of three arbitrators appointed by the Secretary-General of the Permanent Court of Arbitration.

Article 16: Withdrawal

16.1. Any Contracting Party may withdraw from this Convention by giving at least twelve month written notice to the Depositary [Government of France], who will immediately inform all Contracting Parties of such notification.

In the interest of efficiency, a written notice of withdrawal should be sent to the Secretariat, rather than the Depositary.