

Pre-DIPCON

7-8 February 2018
Marrakech

2.2 (E) – Introduction to the text of the draft Convention and draft General Regulations

Note by the Secretariat

1. GENERAL

This paper introduces the draft IALA Convention text and associated documents, the legal aspects of which have been considered by the IALA Legal Advisory Panel (LAP), by National members at three extraordinary LAP meetings and the IALA Council.

IALA General Assembly has agreed that IALA's aim to assist in the development and harmonisation of Marine Aids to Navigation worldwide can best be achieved if IALA has a strong, international legal framework that ensures transparency and good governance, that positions IALA to work in close collaboration with governments and other intergovernmental organisations, and that fosters the work of IALA as the peak international technical body in its field for the benefit of the maritime community as a whole.

A multilateral convention to create IALA as an International Intergovernmental Organisation (IGO) has been determined to be the path to achieve this outcome. LAP has been assisting Council in the development of a suitable instrument for this purpose and National Members of IALA submitted valuable comments after the first Preparatory Diplomatic Conference in April 2017 in Paris.

The following information is provided to assist the second Preparatory Diplomatic Conference in understanding how the Convention has reached its current form.

2. RELATED DOCUMENTS

An explanatory note and the current draft IALA Convention are provided as papers 2.2.1 and 2.2.2 in English, French and Spanish.

On the basis of this draft Convention draft General Regulations including Financial Regulations have been developed. These are attached as paper 2.2.3 in English and French. Work on the draft HQ agreement has been started by the Secretariat in co-operation with the French Ministry of Foreign Affairs. This document will be further developed during 2018.

3. DISCUSSION

The initial direction provided to LAP was that the Convention should replicate the structure and operation of the current Association, as recorded in its Constitution, to the maximum extent possible.

However, when IALA is an IGO all States parties may wish to be consulted about matters that will impact on the governance of the organisation. This has required some decisions which are currently made by Council being elevated to General Assembly level.

This was clear at the first Preparatory Diplomatic Conference and the many comments received from National Members and the draft Convention was changed during the extraordinary meeting of the LAP (EXLAP) in October 2017 to reflect these views. Similarly, the procedure for making amendments to



2.1(E)

the Convention has been modified such that it will not come into force for a State party until acceptance by it, again reflecting comments received.

The General Regulations are not to form part of the text of the Convention. This has been done to facilitate the good governance of the IGO by allowing required changes to be managed within the organs of the IGO, rather than through a lengthy treaty amendment process.

As IALA is a technical association it values highly the input that is provided by its current Industrial and Associate members. To achieve its goal of being recognised as the peak international technical body in its field, the Council strongly favoured the retention of these members as integral elements of the IGO. Accordingly, non-governmental membership has been retained, and as is currently the case, these members will not be able to be elected or appointed to Council or vote at a General Assembly. The LAP has not identified any legal barrier to such an approach, however careful consideration has been given to the terminology and resulting rights and entitlements.

Currently IALA fees are set by Council and the current fees model is a fixed rate for each membership type. The current contribution for National Membership is 15.240 € pr. year. This model and level of contribution is retained in the draft Convention for IALA as an IGO.

As an IGO IALA should be positioned in a way that will ensure that its goal of harmonisation can be better achieved. To assist in this regard, the IGO should be empowered to develop and circulate Standards for adoption by its members, and by the maritime community more broadly. IALA's existing Recommendations and Guidelines are not mandatory, and the new documents hierarchy scheme that will include Standards approved by the current IALA will not change that position.

IALA must be able to transition its operations seamlessly when the Convention enters into force. The transition rules endeavour to maintain the existing administrative and decision making arrangements so as to create a smooth transition to the new legal structure. A new category of 'Affiliate' membership will enable those existing National members who have not yet completed treaty processes to remain engaged in the governance and committee work of the Organisation. Transition to Affiliate membership should not be automatic but such a process should nevertheless be as seamless as possible.

As the host country of IALA the Government of France has indicated its willingness to act as the Depositary for the treaty.

4. THE CONFERENCE IS INVITED TO

- **Note** the information provided and to finalize the draft Convention text and give comments on the draft General Regulations. The Conference will work on the English text.