

**National Interest Analysis [2024] ATNIA 6
with attachment on consultation**

Convention on the International Organization for Marine Aids to Navigation

(Paris, 27 January 2021)

[2024] ATNIF 9

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The proposed treaty action is accession to a multilateral treaty, the *Convention on the International Organization for Marine Aids to Navigation* (the Convention). The Convention establishes an intergovernmental organisation (IGO), the International Organization for Marine Aids to Navigation. The IGO replaces a non-government organisation (NGO), the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA), comprised of agencies that administer aids to navigation services worldwide. The move from an NGO to an IGO established by the Convention is intended to increase transparency and enhance governance of the organisation, and increase the weight, relevance and international acceptance of standards developed. IALA's membership and funding is also constrained by the fact some national governments and benevolent funds are restricted from working with NGOs. It is therefore expected that the move to an IGO will open membership to new parties and open new avenues for funding and cooperation.
2. In accordance with Article 20, the Convention will enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval, or accession. On 24 May 2024, the thirtieth such instrument was deposited. As such, the Convention will enter into force on 22 August 2024. As of 1 July 2024, 31 such instruments had been deposited.
3. Australia is currently an elected member of the NGO's Council. The Convention's Transitional Arrangements provide that States that are members of the NGO's Council when the Convention enters into force will be invited to become part of the first Council of the IGO. That Council will serve until the first General Assembly of the IGO is convened within six months of the Convention's entry into force. Acceding to the Convention in time to seek election to the IGO Council before the first session of the General Assembly (scheduled for 18 February 2025) would allow Australia to continue to contribute to key decisions in the initial stages of the IGO.

Overview and national interest summary

4. It is in Australia's national interest that all vessels operating in Australia's waters can safely navigate through its marine environment. This is achieved, in part, by provision of a network of approximately 11,250 charted aids to navigation (AtoN). IALA's Constitution defines an AtoN as 'a device, system or service, external to a vessel,

designed and operated to enhance safe and efficient navigation of individual vessels and vessel traffic'. Australia's AtoN network is managed, constructed, and maintained by a combination of Commonwealth and State and Territory agencies applying internationally recognised and implemented standards. The effective management of AtoN directly affects the safety and efficient operation of vessels.

5. IALA is the existing international peak body in relation to technical matters related to establishment, construction, and maintenance of AtoN, and has amongst its goals the harmonisation of AtoN worldwide. Although Australia, under the guidance of the Australian Maritime Safety Authority (AMSA), has chosen to rely on the IALA's non-mandatory standards, guidance, and technical assistance to administer the AtoN network, the status of those documents has been weakened by lack of sponsorship at the intergovernmental level. Establishing a permanent IGO to lead the development and implementation of standards, including in developing States through funded technical cooperation, will result in improved harmonisation and safe navigation internationally.
6. The maritime industry is in an era of unprecedented change and technological advancement. Australia's participation in the IGO would provide opportunities to influence the IGO's work and strategic priorities to align its objectives with Australia's national interests. Participation would also support Australia's interests by ensuring our AtoN network remains at the forefront of technological developments, which can be led and embraced by Australian industry with certainty.

Reasons for Australia to take the proposed treaty action

7. Australia has worked closely with the IALA NGO to influence international standards and practices for AtoN, to ensure that they remain fit for Australia's unique circumstances, including currently serving as a member of the NGO's Council. Working under the NGO structure, Australia has been involved in:
 - guiding and assisting the IALA in its capacity building activities in the Asia Pacific region by providing expert assistance to IALA projects, including to national authorities responsible for the provision of AtoN;
 - actively engaging in the work of IALA's technical committees, including leading in key areas such as e-navigation, engineering, and vessel traffic services and influencing outcomes in these areas;
 - participating in IALA sponsored seminars, conferences, and workshops, and presenting Australia's view on a wide range of AtoN matters; and
 - providing guidance and direction on the good governance of the NGO, including in matters of transparency, efficiency and accountability.
8. Engagement with the IALA NGO has enabled Australia to be at the forefront of the growth of digitalisation and other maritime technological advancements that specifically relate to navigation in our waters. Australia's active involvement has ensured our geographical, environmental and climate interests, and those of our region, were represented.

9. Acceding to the Convention would allow Australia to continue to influence the work and strategic priorities of the IGO just as with the NGO to ensure the outputs align with Australia's national interests.

Obligations

10. The primary purpose of the Convention is to create an IGO and establish governance arrangements for the IGO to function efficiently.
11. Article 3 sets out the aims and objectives of the IGO. These include bringing together governments and organizations concerned with the regulation, provision, maintenance and operation of Marine Aids to Navigation to further the objectives of: fostering the safe and efficient movement of vessels through the improvement and harmonization of Marine Aids to Navigation; promoting technical cooperation and capacity building; encouraging the adoption of the highest practicable standards; and providing for the exchange of information.

Governance

12. Article 4 sets out the functions of the IGO. These include to:
 - develop and communicate non-mandatory standards, recommendations, and guidelines;
 - consider and make recommendations on standards, recommendations, guidelines, manuals and other documents submitted to the IGO by Member States, Associate Members, Affiliate Members (the membership), the United Nations and other international organizations;
 - provide mechanisms for consultation and exchange information on recent developments and the activities of the membership;
 - develop international cooperation by promoting close working relationships and assistance among the membership;
 - facilitate assistance – technical, organizational and training – to governments, services and other organizations requesting help with Marine Aids to Navigation;
 - organize conferences, symposia, seminars, workshops and other events; and
 - liaise and cooperate with international and other organizations offering specialized advice.
13. Article 5(1) sets out that the membership of the IGO will be comprised of Member States, Associate Members and Affiliate Members. These categories are defined in Article 2 as:
 - Member State meaning a State that has consented to be bound by the Convention and for which the Convention is in force;
 - Associate Member meaning territories for which a Member State has responsibility for the international relations, and for which that Member State has applied for membership pursuant to Article 5(2). Associate Member can also mean national members of the NGO that are not Member States of the IGO; and
 - Affiliate Member meaning, in connection to Marine Aids to Navigation, a manufacturer, distributor, provider of services or technical advice, or an

organization or scientific agency, which has applied for membership and been approved by the IGO Council.

14. Article 5(3) provides that the IGO Council may require – or Member States may request – that applications for Affiliate membership be reviewed by the Member States where the applicant carries out its activities or has its principal place of business or registered office. Should Australia become a Member State, it would have the power to request a review or be required to review applications for Affiliate membership from interested Australian entities including businesses or research institutes.
15. Article 6(1) provides that the IGO will be comprised of a General Assembly, a Council, committees and subsidiary bodies necessary to support the IGO's activities, and a Secretariat. Article 6(2) provides the IGO will have a President and Vice President. The President will chair the General Assembly and the Council. Article 6(3) provides that the rules of procedure for the day-to-day governing of each of the IGO's organs will be set out in the regulations by which the IGO operates.
16. Article 7 sets out the functions of the General Assembly - the principal decision-making organ of the IGO, consisting only of Member States. The regular sessions of the General Assembly will take place once every three years (Article 7(4)). Article 7(7) sets out the role and responsibilities of the General Assembly, including the power to elect the President, Vice-President and Secretary-General. It can also decide the overall policy and strategic vision of the IGO, consider reports and proposals put to it by any Member State, Council or the Secretary-General, and make recommendations to Member States on matters within the aim of the IGO. In accordance with this article, Member States will be actively engaged in the business of the General Assembly which will decide the overall policy and strategic vision of the IGO, establish the regulations by which the IGO operates, set the budget, establish Committees and subsidiary bodies, approve standards, and decide on membership.
17. Article 8 sets out the functions of the Council – the executive organ of the IGO responsible for directing its activities. The Council consists of the President, Vice-President and 23 other Member States (Article 8(1)-(2)) and will meet at least once each year (Article 8(6)). Article 8(8) sets out the role and responsibilities of the Council, including exercising responsibilities as may be delegated to it by the General Assembly. The Council's role also involves coordinating the activities of the IGO, reporting to the General Assembly, and appointment of Committee chairs. As per the Annex to the Convention, Member States will choose to stand for election to Council (other than for the transition period between entry into force of the Convention and the holding of the first General Assembly, which must be no more than six months. During that period, the members of the IALA NGO Council will operate as the Council).
18. Article 9 governs committees and subsidiary bodies that will support the aims and objectives of the IGO, such as facilitating expertise-sharing and experience amongst Member States. Article 9(2) provides that committees will: prepare and review standards, recommendations, guidelines, manuals and other relevant documents; monitor

developments in the area of Marine Aids to Navigation; facilitate sharing of expertise and experience among the membership; and conduct other tasks as decided by the Council.

19. Article 17 obliges Member States to make every effort to prevent disputes on the interpretation and application of the Convention and to use their best efforts to resolve any disputes by peaceful means. This may include consultations, negotiations and other means agreed between the parties to the dispute.

Financial

20. Article 13 deals with the finances of the IGO and provides that Member States shall pay a contribution on an annual basis in the amount approved by the General Assembly and in accordance with the IGO's Financial Regulations. The contribution will be set at the same rate for each Member State. Australia already pays a contribution to the NGO. Article 7 stipulates that member contribution rates for the IGO are to be set by the General Assembly. However, as a member of the transitional Council, Australia will be involved in setting the IGO's budget for the first three years.

Administration

21. Article 10 outlines the form and function of the IGO Secretariat. Article 10(1) provides that the Secretariat will be comprised of the Secretary-General and such staff as may be required for the work of the IGO within its budgetary framework. The Secretary-General will be: elected for a term of three years and may be re-elected for up to two consecutive terms (Article 10(2)); responsible for the day-to-day management of the IGO, subject to guidance from the General Assembly or Council (Article 10(3)); and responsible for concluding agreements with States and international organizations (Article 10(4)).
22. Article 10(6) provides that the Secretariat will: maintain records, administer the IGO's finances under direction of the Council, in accordance with the General Regulations; prepare financial statements; keep the membership informed of the activities of the IGO; organize and support meetings of the General Assembly, Council, committees and subsidiary bodies; organise and support conferences and similar events; and perform other functions assigned by the Convention, the General Regulations, the General Assembly or the Council.
23. Article 10(7) provides that in the performance of their duties, the Secretary-General and the Secretariat will not seek or receive instructions from any government or other source external to the IGO. Each Member State undertakes to respect the international character of the responsibilities of the Secretary-General and Secretariat and to not seek to influence them in the discharge of their responsibilities.
24. Article 11 sets up arrangements for voting by the General Assembly and Council. All efforts are to be made for the General Assembly and Council to adopt decisions by consensus amongst Member States. Only Member States have voting rights. Article 11(2) provides that if 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. Article 11(4) provides that the election of the President,

Vice-President and Secretary-General will be by secret ballot and by a simple majority of Member States present and voting. Article 11(5) provides that the election of the Council will be with the highest number of votes of the Member States present and voting by secret ballot.

25. Article 12 establishes the six official languages of the IGO as Arabic, Chinese, English, French, Russian and Spanish.
26. Article 14 deals with the legal personality, privileges and immunities of the IGO. It provides that the IGO has international legal personality and has capacity, including to conclude agreements with governments. It also stipulates that in the territory of each Member State, the IGO shall, to the extent provided for in an agreement with that Member State, enjoy privileges and immunities necessary for the exercise of its functions and the fulfilment of its aims and objectives.

Future treaty action

27. Article 15 deals with amending the text of the Convention. Any Member State may propose an amendment in writing to the Secretary-General. The proposed amendments are to be circulated by the Secretary-General to all Member States at least six months before they are considered and voted upon by the General Assembly.
28. In accordance with Article 15(5), amendments would enter 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 Depository. However, if a Member State notifies the Depository, prior to the entry into force of the amendment, that the amendment would enter into force for that Member State only after a subsequent notification of its acceptance, this would be applied.
29. Notwithstanding this, Article 15(6) provides that the General Assembly may decide by consensus that the amendment would 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 Depository. If within this period of six months a Member State gives notification of withdrawal from the IGO on account of an amendment, the withdrawal takes effect on the date on which the amendment comes into force.
30. Any amendment would be subject to Australia's domestic treaty-making requirements, including tabling and consideration by the Joint Standing Committee on Treaties and the Federal Executive Council.

Withdrawal, denunciation and termination

31. Article 21 allows any Member State to withdraw from the Convention by giving at least twelve months' written notice to the Depository.
32. Notification of withdrawal may be deposited at any time after the expiration of six months from the date on which the Convention has entered into force and would take effect on 31 December of the year following that during which the notice was given.

33. Article 22 provides for the termination of the Convention. The Convention may be terminated by a vote of the General Assembly following at least six months of such a vote. The date of termination shall be twelve months after the date of the vote.

Implementation

34. No changes to domestic laws or national policies are required to implement the Convention. It is anticipated the AMSA will continue as Australia's primary agency engaging with the IGO given AMSA's statutory responsibility for establishing, maintaining, adding to, altering, or removing AtoN in accordance with the *Navigation Act 2012*, and its current relationship with the IALA NGO.

35. The Office of Impact Analysis has advised that an Impact Analysis is not required, as accession to the Convention does not involve any regulatory change, implementing legislation, or impact to industry or other domestic stakeholders.

36. If Australia seeks to extend privileges and immunities to cover the operation of the IGO in Australia, regulations would be made under the *International Organisations (Privileges and Immunities) Act 1963*.

Costs

37. There are no foreseeable extra financial costs for Australia to comply with the proposed treaty action.

Contact details

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International and Domestic Engagement
Policy & Regulation

Australian Maritime Safety Authority

ATTACHMENT ON CONSULTATION

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CONSULTATION

1. This proposed treaty action is a machinery change with respect to type of organisation. The IALA NGO will become an IGO, and members will be States rather than States' marine or infrastructure administrations. As a result, the impact on other governments, areas of government, industry, commercial operations, and the public will be minimal.
2. The change to an IGO would not have an impact on the States and Territories' operation, maintenance or governance of AtoNs. However, in line with consultation guidelines, States and Territories were consulted via the Standing Committee on Treaties. No issues were raised.
3. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts, the Department of Foreign Affairs and Trade, the Attorney-General's Department, the Australian Small Business and Family Enterprise Ombudsman and the previously named Office of Best Practice Regulation were consulted during the drafting of the Convention.
4. The change to an IGO will not directly affect Australian industry and no broad industry consultation has been undertaken. However, a small number of specialised industry groups and companies are currently members of the IALA NGO in the category of Associate Members and Industrial Members. For example, Australian Maritime Systems Group (AMSG) is a member of the IALA Industrial Members Group (IMG). Representatives of the IMG are responsible for keeping Industrial Members informed of the activities of IALA and bringing to the IMG any IALA-related concerns from their regional members. This has been the model since September 2013, allowing Industrial Members to be represented throughout the process of change to an IGO, including during drafting of the Convention. The IMG, and through it, the relevant Australian Industrial Members, have been consulted and support the transition.
5. It was assessed this proposed treaty action would not affect Australian NGOs or the Australian public and therefore no representatives were directly engaged in considering the matter.