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Mr Francis Zachariae  
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Dear Francis,

Enclosed at Annex the advice you requested as to whether it would be possible for IALA, once it transforms into an IGO, to continue to have, among its membership, associate and industrial members which are not part of any government or government agency.

As made clear in the attached advice, I have no doubt that this will be possible, although, as you have suggested, IALA might think it advisable to change the names of these categories of membership.

Please let me know if I can be of any further assistance.

With best wishes,

Rosalie Balkin

## ANNEX

You have requested my advice as to whether IALA, once it transforms from a Non-Governmental Organization (NGO) to an Inter-Governmental Organization (IGO), would be in a position to retain its much-valued Associate and Industrial Members.

My **short answer** is that it would be possible for IALA, once it transforms from a Non-Governmental Organization (NGO) to an Inter-Governmental Organization (IGO), to retain its Associate and Industrial Members including the acceptance of annual financial contributions. This is on the understanding, however, that Associate and Industrial Members would not enjoy the same rights as States Parties to the new IALA constitution, that is, as full Members.

### 1. BACKGROUND

1.1 The member groups of IALA at present comprise National Members, Associate Members, Industrial Members and Honorary Members.

1.2 National membership may be applied for by a National Authority of any country, or any part of that country, legally responsible for the provision, maintenance or operation of marine aids to navigation within that country, or any part of that country.

1.3 Associate membership may be applied for by any other service, organization or scientific agency that is concerned with aids to navigation or related matters.

1.4 Industrial membership may be applied for by manufacturers and distributors of marine aids to navigation equipment for sale, or organizations providing marine aids to navigation services or technical advice under contract.

1.5 Honorary membership may be conferred for life upon any individual who is considered by the IALA Council to have made an important contribution to the work of IALA.

1.6 By way of example, in relation to Australia, the Australian Maritime Safety Authority (AMSA) is a National Member; the Port of Melbourne Authority is an Associate Member; and the Australian Maritime Systems is an Industrial Member.

1.7 As I understand it, the main concern for IALA, once it transforms to an IGO, is to have the ability to appoint Associate and Industrial Members, as these Members make a considerable contribution to the success of the Organization through their active participation in IALA affairs.

### 2 DEFINITION AND MAIN CHARACTERISTICS OF IGOS

2.1 The term "IGO" is often used interchangeably with the term "international organization"; so much so that Article 2(1)(i) of the Vienna Convention on the Law of Treaties, 1969 defines an "international organization" as meaning an "intergovernmental organization". Accordingly, any references to "international organizations" in this advice should be taken as also referring to IGOS.

2.2 There appears to be no single, universally acknowledged, definition of either term —as noted by one leading UK academic international lawyer, this is due to the wide variety of organizations that are international in character, which makes it “difficult to lay down a satisfactory and all-encompassing definition which distinguishes those organizations considered as ‘international organizations’ under international law from other types of organizations”: Malcolm Evans (editor) **International Law**, OUP, Third edition, 200 , at p253.

2.3 Professor Ian Brownlie, **Principles of International Law**, OUP, 2003, at p649, for example, defines the criteria as follows:

- a permanent association of States, with lawful objects, equipped with organs;
- a distinction, in terms of legal powers and purposes, between the organization and its Member States; and
- the existence of legal powers exercisable on the international plane and not solely within the national systems of one or more States.

2.4 The list of criteria in Evans *op cit* p254 are slightly different:

- an IGO must be composed predominantly of States although the membership may extend to other entities as well;
- an IGO must be established under international law, either by treaty (the usual method) or by other means, such as by resolution of a conference of States or other international organization;
- an IGO must possess autonomous organs free of control by any one of its Member States;
- an IGO must possess separate legal personality from that of its members.

2.5 Despite the differences in formulation of the key criteria, an examination of the authorities reveals that, with regard to the membership of IGOs, decisive importance is given by all experts in the field to the membership consisting of States or State organs: see, for example, authorities cited in Finn Seyersted, **Common Law of International Organizations**, Martinus Nijhoff, 2008, at p37ff.

2.6 It is, however, equally clear from the authorities that membership of IGOs need not be confined solely to States. In this connection, Article 2(a) of the International Law Commission’s 2009 **Draft Articles on the Responsibility of International Organizations** provides that international organizations (read IGOs) “may include as members, in addition to States, other entities”.

2.7 Similarly, Clive Archer, **International Organizations**, Routledge, Third Edition, 200, at p33, and following an examination of several other authorities cited therein, notes that, while an international organization should draw its membership from two or more sovereign States, “membership need not be limited to States or official State representatives such as government ministers”.

### 3 Different types of membership of IGOs

3.1 Henry G Schermers and Niels M Blokker **International Institutional Law**, Martinus Nijhoff, Fourth Edition, 200, at p53 identify four categories of IGO membership, namely

- full members, which may participate with full rights in all activities of the Organization;

- associate and affiliate members, which may participate but have no voting rights in the principal organs; and
- partial members, which participate in some activities only.

3.2 In addition, they note also that these types of members are not necessarily the only participants in international organizations: “often, non-members or other entities may be admitted to meetings of international organizations to which they may contribute as observers” (Schermers and Blocker, *loc cit*).

3.3 **Full Membership** of IGOs is reserved for States which generally (but not always) constitute the majority of the membership. Many constitutions of IGOs expressly require statehood as a condition for membership, for example the UN Charter, Article 3, which provides that “(t)he original members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having signed the Declaration by the United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110”.

3.4 In similar vein, Article 4(1) of the UN Charter goes on to provide that UN Membership is “open to all other peace-loving states which accept the obligations contained in the present Charter and which, in the judgement of the Organization, are able and willing to carry out these obligations.”

3.5 Other IGOs, such as the International Maritime Organization (IMO), provide in their constitutions that “(M)embership in the Organization shall be open to all States...”: IMO Convention, 1958, Article 4.

3.6 **Associate Membership** of IGOs is generally available to Territories or groups of Territories which may be largely autonomous and self-governing in practice but which nevertheless do not enjoy full sovereignty in their own right. In this connection, for example, Article 8 of the IMO Convention provides as follows:

“Any Territory or groups of Territories to which the Convention has been made applicable under Article 72, by the Member State having responsibility for its international relations or by the United Nations, may become an Associate member of the Organization by notification in writing given by such Member or by the United Nations, as the case may be...”

3.7 Associate Members enjoy significant rights, including generally the right to full participation in the IGO in question, apart from the right to vote or to hold office in certain organs of the IGO. In this connection, for example, Article 9 of the IMO Convention provides as follows:

“All Associate Members of IMO “shall have the rights and obligations of a Member under the Convention except that it shall not have the right to vote or to be eligible for membership of the Council...”.

3.8 Other examples include the Council of Europe, where Associate Members are entitled to be represented in the Consultative Assembly only (see **Bowett’s Law of International Institutions**, Philippe Sands Q.C. and Pierre Klein, Sweet and Maxwell, 200 , at p541) and the World Health Organization (WHO), which has regulated the rights and obligations of Associate Members by a resolution of the first Health Assembly, which deprives Associate members of a vote in the Assembly or main committees and of membership of the Executive Board :(Off. Rec. 13, 100, 337, also cited in **Bowett’s Law of International Institutions**, *loc cit*).

3.9 In practical terms, in most IGOs, despite the restrictions, Associate Members are not necessarily placed at a disadvantage as compared to full Members. They may generally attend meetings and

otherwise participate fully in the work of the various committees, and have the ability to make both written and oral submissions. Many IGOs these days try to avoid formal votes (although the Rules of Procedure of the various organs and committees will invariably include provisions on voting rights and procedures). The full extent of the participation of Associate Members depends on the constitutions or other rules and regulations adopted by any particular IGO.

3.10 IMO has at present three Associate Members, namely, Hong Kong, China (1967), Macau, China (1990) and the Faroe Islands (2002).

3.11 Some IGOs (although not IMO) also have another special category of membership—that of **Affiliate Membership**. As is the case with Associate Membership, Affiliate Members may enjoy significant rights of participation in the work of an IGO but may be restricted from voting and from holding office in certain organs of the IGO. Again, the precise level of participation depends on the constitutions or other rules and regulations adopted by any particular IGO.

3.12 The World Tourism Organization (UNTWO) provides a prime example of an IGO that has Affiliate Members as an important element of its membership. At present, UNTWO has 156 Member States, six Associate Members and 450 Affiliate Members. The provision for Affiliate Membership and the rights and obligations of such members is included in the UNTWO Constitution. The Rules of Procedure of the Committee of the Affiliate Members state explicitly in paragraph 2 (e) that Affiliate Members have the obligation to pay their contributions as defined in the Statutes.

3.13 Many of these Affiliate Members are companies, associations, boards, colleges, councils and other agencies and enterprises involved in the business of promoting tourism. A full list may be found on the UNTWO public website.

3.14 As part of the requirements for Affiliate membership, aspirants must, *inter alia*, provide UNTWO with a letter of acceptance of the Statutes of UNTWO of commitment of the UNTWO Global Code of Ethics for Tourism as well as with a letter of official support from the national tourism administration of the government of the State of residence of the aspirant body.

3.15 The requirements listed in paragraph 3.14 above, while necessary for UNTWO membership, may not be appropriate for Affiliate membership of other IGOs—they are provided however in this advice as an example of what an IGO may require. It is up to each IGO to decide such requirements for itself, based on its mission and purpose.

3.16 The International Transport Forum (ITF), which is part of the Organisation for Economic Co-operation and Development (OECD) provides another example of what might be regarded as a form of Affiliate Membership, although in this case the term used by ITF to describe the participation of such entities is “Corporate Partnership Board” (CPB).

3.17 As stated on the Forum’s public website, the CPB is the organisation’s platform for dialogue with business. “Created in 2013 to enrich global discussions with a private sector perspective, it brings together companies with a clear international perspective in their activities that play an active role in transport and associated sectors.”

3.18 The composition of the CPB is stated to be limited to companies (“Partners”) with a clear international perspective and participation in the CPB is by invitation only, to be made by the ITF Secretary-General.

3.19 The creation by the ITF of the CPB and the requirements for participation once again reflect the individual needs of the IGO.

#### **4 OBSERVERS**

4.1 Most, if not all, IGOs have an additional membership category, that of observers. In IMO, as with many other UN Specialized Agencies, the IMO Convention does not provide for this category but the Organization has developed special rules to enable their full participation in the work of the various committees as well as in the Organization's governing bodies (the Council and Assembly).

4.2 In IMO, the grant of observer status is limited to other IGOs and to NGOs, but once again this is just a rule of the Organization itself. Other IGOs may wish to grant observer status to other entities and this is perfectly possible.

4.3 One such example may be found in the adoption, on 22 November 1974, by the UN General Assembly of Resolution 3252, the effect of which was to invite the Palestine Liberation Organisation (PLO) to participate as an observer in the UN General Assembly and in its international conferences.

4.4 The UN Charter does not provide for observer status but, even before this, the General Assembly had granted it to some non-member States and to regional IGOs. The resolution proposing the grant observer status to the PLO, which was neither a State nor an IGO, although somewhat controversial for that reason, was nevertheless carried.

4.5 In IMO, as in many other IGOs, Observer delegations may generally participate fully in the work of the Organization, that is to say, they may attend meetings and make written and oral submissions on issues of importance to themselves—indeed they are actively encouraged to do so. And, while they do not have the right to vote, this is not really a disadvantage as, in practice, formal voting in IMO takes place only very rarely.

4.6 As with the categories of Associate and Affiliate membership, it is up to each individual IGO to decide for itself as to the precise nature and extent of the participation to be allowed to observer delegations.

#### **5 HONORARY MEMBERSHIP**

5.1 The constitutions of many NGOs, including IALA, contain provisions for the grant of Honorary Membership to individuals who have made a significant contribution to the work of the organization.

5.2 This category of membership is not appropriate in the context of IGOs and I am aware of no instances in which it has been granted.

#### **6 SUMMARY OF CONCLUSIONS**

6.1 Although the main membership category of IGOs is undoubtedly Full Membership, which is only open to States, all IGOs have additional membership categories, such as Associate and Affiliate Membership, as well as Observer status, which enables them to benefit from the participation of entities other than States and State organs.

6.2 The rules governing different categories of membership differ from IGO to IGO. Most IGOs include some provisions relating to membership in their constitutions (that is, the treaty creating the IGO) but these provisions are generally limited to allowing for Full Membership.

6.3 Other categories of membership are generally catered for in the Rules and Regulations adopted by IGOS, which may be subject to change from time to time, according to the needs of the IGO in question.

6.4 It is open to each IGO to define the limits of participation of each category of membership according to their needs including the obligation to pay annual financial contributions, in the light of the purpose and function of the IGO. Generally, the fullest participation, including the right to vote and to hold office in the IGOs governing bodies, is limited to Member States.

6.5 I see no reason in principle why IALA should not be able to retain the participation of its much valued National, Associate and Industrial Members, once it transforms into an IGO and examples of other IGOs, in particular, UNTWO and the International Transport Council of the OECD, have been provided above. Other creative membership categories may be found in other IGOs, not covered in this advice, such as the International Labour Organization (ILO), which in effect has trade union and management membership as well as governmental representation.

6.6 However, the category of Honorary Membership is not appropriate in the context of IGOs but there is nothing to prevent IGOs from honouring individuals in other ways.

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