



Draft Report of the 10th Session of the IALA Legal Advisory Panel

April 12-13, 2012

Executive Summary

Session 10 of the IALA Legal Advisory Panel (LAP10) concentrated on its Agenda items 4 to 7 related to a Headquarters Agreement with the Republic of France, which would grant the Association an international status, and the vehicles to be used to obtain such an agreement. Discussions are summarized in section 4 on pages 4 and 5.

Other items of interest were AIS data used as evidences at court cases (page 6) and a proposal of new conditions of use for IALA-NET, which will be submitted to the IALA Council for approval at its 53rd session in June 2012.

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Legal Advisory Panel
10th Session

12-13 April 2012

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1 General

The 10th meeting of the **Legal Advisory Panel** was held on 12 and 13 April 2012 at IALA, with Francis Zachariae as Chair and Jon Price as Vice Chair. The Secretary for the meeting was the IALA Administration Manager, Marie-Helene Grillet. The meeting was attended by 11 participants representing 6 National Members.

Apologies for absence were received from Matti Eronen of Finland and the US Coast Guard's representative.

1.1 Welcome

The Secretary General opened the meeting by welcoming all participants, especially its new Chair Francis Zachariae (Denmark), and the new participants Mary Dean and Mike Kinley, both from AMSA (Australia).

1.2 Approval of the agenda

The agenda for LAP10, as set out in LAP10/1/1 was reviewed and approved.

2 Review of action items from LAP 9

The action items for the Secretariat were noted completed or in hand with the following exception:

- Action item 3: The letter of conditions to participate in IALA-NET was posted to the Website as working paper LAP9/WP3 but the LAP members had not been clearly warned that they had to take action. The paper was recirculated at the meeting and finalized.

Other action items were discussed further:

- Action item 7: The purpose of making a summary of copyrights laws needed to be clarified. It is aimed at ensuring that IALA holds copyrights compatible with laws in force in as many countries as possible.
- Action item 9: An article about the legal status of IALA Recommendations and Guidelines will be published in issue 2010/3 of the IALA Bulletin scheduled for September 2012. The LAP is requesting that the article appears in English, French and Spanish.

Action item 1: The IALA Bulletin Editor to arrange for French and Spanish translations of the proposed article to appear in IALA Bulletin issue 2012/3.

3 Review of input papers

The input papers were reviewed.

There were 5 late papers tabled at the meeting.

4 Headquarters Agreement between IALA and the Government of the French Republic (covering Agenda items 4 to 7)

The purpose of the Agreement is to raise the profile of IALA. IALA so far is an international association but still considered as a charity under the French “1901” Law governing associations of any nature, and there is no other option at the time being. The MOU signed with the Directorate for Maritime Affairs is a commitment to ease IALA working life but does not give the association a higher profile in France.

Both IALA as an organisation and its members would benefit from the Headquarters agreement:

- IALA would at last be considered at its right level;
- IALA would be relieved from the administrative burden when hiring people outside the European Union;
- IALA would not need to use IGOs like the IHO when sending staff members to countries for which a visa might be difficult to obtain – this is very important in the context of the WWA growing in importance;
- IALA would give its Members a better service with the same budget by saving on taxes and social charges;
- IALA Membership could be marketed at IMO; (this is not open to NGOs)
- Members would have less difficulties to pay their fees to IALA – some experience difficulties with paying their fees because of the “unclear” status of IALA;
- Members would have less difficulties in obtaining visas for their participants in IALA meetings;
- Potential members would join more easily an international organisation than a French charity.

The LAP strongly supports the pursuance of a Headquarters agreement and recommends it to the Council accordingly.

Discussions have been held between the IALA Secretary General, the LAP Chair and Vice Chair and Emmanuel Cocher, a member of the French Ministry of Foreign Affairs – Mr Cocher attended LAP9 – with a view to identifying the best option for IALA to conclude a Headquarters agreement with the Host Nation.

It was stated during the discussions that the condition for such an Agreement would, however, to have a formal document (agreement, convention, etc.) – signed and ratified at Government level by IALA Member **States**, giving the Association the status of an Intergovernmental organization.

The Maritime Buoyage System Agreement (MBS) was seen as the simplest way to have such an agreement but it required some changes to introduce the necessary institutional clauses.

The LAP Chair had sent a note to all Councillors explaining the reasons for such a revision. Comments were received from Spain, The Netherlands and the US. These comments show a need for further clarifications; the Council would need to understand what IALA is trying to achieve, and why.

The LAP considered that it was not desirable to amend the MBS Agreement to have it as a vehicle for the Headquarters Agreement:

1. The institutional clauses are mostly a duplication of the IALA Constitution. A change in the Constitution may require a revision of the MBS Agreement;
2. The new Agreement would enter into force for its State Parties only. All those unable to become parties to it would remain parties to the previous one, which would stay into force but not open to new signatures;

3. Countries who would wish to become parties to an MBS Agreement but not become an IALA Member would have “nowhere to go”.

Bahram Touré explained that HQ Agreements exist with two kinds of international organisations, as follows:

- Organisations having member states only; the member states decide on who is representing them at the organisation; other parties can only be observers.
- Organisations gathering administrations; other parties can be members; they are “technical associations”.

The LAP examined the means used by other organizations to obtain their Headquarters agreement with the Government of France. Interpol had its Constitution acknowledged by the UN as an international agreement.

Initial advice from the IMO indicates that IALA, because of its hybrid nature, could be recognized by IMO as an international association. A prerequisite would be to remove the term NGO from the IALA Constitution and enter into a co-operation agreement with IMO.

Based on the above discussions a new road map to obtain a Headquarters agreement was agreed.

- The Council will be asked to discontinue its research of credentials to sign a new MBS agreement;
- A meeting will be organised, before June, with the Secretary General, the LAP Chair and Vice Chair and the French Foreign Affairs to make sure that an acknowledgement by IMO would suffice;
- The IALA Secretary General and the LAP Chair will meet with the IMO to explore the matter in further details;
- A change to the Constitution – removing the term NGO – will be proposed to the Council in June 2012.
- Should the Council agree, an electronic and postal vote on the proposed change to the Constitution will be carried out.
- If the change in the Constitution is approved IALA will write to IMO to have its request for a co-operation agreement considered by the IMO Council in December 2012.
- IALA concludes a Headquarters agreement with the Government of France.

Action item 2: The Secretary General, LAP Chair and Vice Chair to implement the road map to obtain a Headquarters agreement.

5 Changes to the IALA Constitution

Changes to the IALA Constitution is a standard Agenda item. The Constitution will be circulated to the LAP as a working paper to identify further changes, among which, in addition to those identified at previous meetings:

- the need to retain the requirement for National Member's support of applications from associate or industrial members;
- the need to mention the WWA

Action item 3: The Administration Manager to circulate the IALA Constitution to LAP Members.

6 Requests for advice from other IALA bodies

6.1 From Council: Report of the 52nd session of the IALA Council

The report was noted. Action items for the LAP were dealt with.

6.2 From Council: Inputs for the 2014-2018 IALA Strategy – deadline by October 2012

LAP members agreed to prepare inputs to the Strategy for the next meeting.

Action item 4: The Administration Manager to provide LAP members with the Strategy template in order for them to suggest new items.

7 World Wide Academy

The Council decision on the creation of the World Wide Academy (WWA) that was supposed to be reviewed at this meeting had been approved by correspondence. The reason for this early approval was a donor awaiting formal creation to start the donation process.

The Secretary General added that the WWA runs its own budget but reports to the IALA Council.

8 IALA as the custodian of reference implementation for maritime open source software

Discussions on this Agenda item were postponed to the next meeting.

Action item 5: Dorthe Vestergaard-Pedersen to produce a paper on IALA as the custodian of reference implementation for maritime open source software for the next meeting.

9 AIS data used as evidences at court cases

A presentation was made by Stefan Jenner on the District Court in Kiel using AIS data recorded by VTS centres as evidence in a legal case. The case was a speed violation having caused high and dangerous waves. The conclusion was that AIS data are usable as evidences under certain conditions:

- A long sequence of AIS data has to be recorded;
- The data records must reflect an overall plausible straight-line course; isolated readings that deviate from a straight course may not be considered;
- To compensate for possible measurement errors 1 knot is to be deducted - in the case of a ship navigating at an 8 knots speed.

In addition, AIS data allowing access to personal information on the owner and behavior of the mariners responsible for navigation, a special legal authorization is required to collect and exploit the data.

The conclusions of the court case were published in *HANSA* but Stefan Jenner would provide the LAP with a pdf copy.

Action item 6: Stefan Jenner to provide the LAP with a copy of the court case conclusions.

From the discussions that followed the presentation it appeared that the capabilities and limitations of AIS are not fully appreciated. It is important to raise awareness of AIS as a tool for compliance and enforcement, including its use as evidence in courts.

It was agreed that the best way to achieve this goal would be to have a paper prepared by the AIS group under the auspices of the e-NAV Committee.

Action item 7: The Secretariat to invite the Council to add a new task on the e-NAV Committee Work Programme: the production of a paper on the reliability of AIS data for use by technical experts. Such a paper would be an IALA document submitted to the Council for approval.

10 Update on IALA-NET

The next meeting of the IALA-NET Steering Group had been postponed to a date still to be decided and there was nothing to report at this stage.

The LAP however mentioned that IALA-NET claims that AIS data are protected but in real facts AIS data are available from everywhere, especially in Europe.

Action item 8: The Administration Manager to have AIS data protection on the next LAP Agenda.

11 Review of the criteria for admission to IALA-NET and proposal of a new Recommendation for consideration by the Council

The LAP did not feel comfortable with the word "letter". The document was renamed "conditions of use.." and further reviewed. (LAP10/output-02). The conditions of use shall be incorporated into IALA-NET access.

Action item 9: The Secretariat to send the IALA-NET Conditions of use to the Council for approval.

Action item 10: The IALA-NET Webmaster to incorporate the Conditions of use in IALA-NET

12 Report of Workshop on Global Sharing of Maritime Data

The Workshop was successful. It is interesting to note that S-AIS data are now used for marine spatial planning purposes in addition to vessel tracking.

13 Review of IALA Risk Register

The LAP reviewed the Risk Register that had been adapted to a new format (LAP10/output-03).

It was agreed that an explanatory note should be prepared for the Council to facilitate the use of the Risk Register.

Action item 11: Jon Price to prepare an explanatory note on the IALA Risk Register to the next session of the IALA Council.

14 Any other business

A group was created in Norway to review the Pilotage Act. Other countries have also started a similar process.

Action item 12: LAP members to send to Henning Osnes Teigene information on any law or report addressing pilotage.

15 Review of output and working papers

Output papers and working papers were reviewed and approved as they appear at Annex D.

16 Review of action items

Action items are at Annex E.

17 Date and place of next meeting

The 11th meeting of the IALA Legal Advisory Panel (LAP11) will be held at IALA Headquarters from 19th to 21st September 2012, commencing 10h00 on the 19th and finishing 13h00 on the 21st.

18 List of Annexes

- A. Agenda
A copy of the agenda is at Annex A.
- B. Participants
A list of LAP10 participants is at Annex B.
- C. Input Papers
A list of input papers is at Annex C.
- D. Output and Working papers
A list of output and working papers is at Annex D.
- E. Action Items
A list of action items is at Annex E.

ANNEX A LAP10 AGENDA**Legal Advisory Panel**10th Session

Agenda item 1

LAP 10 / 1 / 1

April 12 - 13, 2012

The 10th meeting of the IALA **Legal Advisory Panel** will be held on 12th and 13th April 2012, at the **new** IALA Headquarters, **10 rue des Gaudines**, in Saint Germain en Laye, France.

The meeting will commence at 10h00 hours on 12th April and is expected to finish at 1700 hours on the 13th.

LAP 10 - PROVISIONAL AGENDA

- 1 Approval of the agenda
- 2 Review of action items from LAP9
- 3 Review of input papers
- 4 Headquarters Agreement between IALA and the Government of the French Republic
- 5 Review of the Agreement on the IALA Maritime Buoyage System
 - 5.1 Explanatory note for Council Members
 - 5.2 Roadmap for obtaining credentials in order to have 10 – 12 signatures by June 2012
- 6 Potential new status for IALA
- 7 Changes to IALA Constitution
- 8 Requests for advice from other IALA bodies
 - 8.1 From Council: Report of the 52nd session of the IALA Council
 - 8.2 From Council: Inputs for the 2014-2018 IALA Strategy – deadline by October 2012
- 9 World Wide Academy
- 10 IALA as the custodian of reference implementation for maritime open source software
- 11 AIS data used as evidences at court cases
- 12 Update on IALA-NET
- 13 Review of the criteria for admission to IALA-NET and proposal of a new Recommendation for consideration by the Council
- 14 Report of Workshop on Global Sharing of Maritime Data
- 15 Review of IALA Risk Register
- 16 Any other business
- 17 Review of output and working papers
- 18 Review of Action Items

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ANNEX C LIST OF INPUT PAPERS

Number	Title	Comments
LAP 10/1/1	Draft Agenda	
LAP 10/2/1	LAP 9 action items	
LAP 10/3/1	List of Input Papers	Late paper
LAP 10/4/1	Draft IALA HQ Agreement with Government of France	
LAP 10/4/1 INF	Draft IALA HQ Agreement – French version	Late paper
LAP 10/5/1-1	Correspondence between LAP Chair and IALA Councillors	
LAP 10/5/1-1 Add1	Comments from US Coast Guard	Late paper
LAP 10/5/1-2	Draft revised MBS	
LAP 10/5/1-2 Rev	Draft revised MBS with French lawyer's comments	Late paper
LAP 10/5/1-3	IALA Constitution	
LAP 10/14/1	Report on GSMD Workshop	
LAP 10/14/2	Presentation at GSMD Workshop on legal aspects of data sharing	
LAP 10/15/1	IALA Risk Register	
LAP9/WP3	Letter of conditions to participate in IALA-NET	Late paper

ANNEX D LIST OF OUTPUT AND WORKING PAPERS

Output documents are submitted for review by a body other than the LAP.

Number	Title	Status
LAP10/output-01	Draft Report	To Council to note
LAP10/output-02	Conditions of participation in IALA-NET	To Council to approve
LAP10/output-03	IALA Risk Register	To Council to note

Working papers are documents that will remain within the Panel for further review.

Number	Title	Status
LAP10/WP1	IALA Risk Register	Ongoing
LAP10/WP2	IALA Constitution	Ongoing
LAP10/WP3	Strategic items for IALA Strategy 2014-2018	To LAP111

ANNEX E ACTION ITEMS

Action item 1: The IALA Bulletin Editor to arrange for French and Spanish translations of the proposed article to appear in IALA Bulletin issue 2012/3.

Action item 2: The Secretary General, LAP Chair and Vice Chair to implement the road map to obtain a Headquarters agreement.

Action item 3: The Administration Manager to circulate the IALA Constitution to LAP Members.

Action item 4: The Administration Manager to provide LAP members with the Strategy template in order for them to suggest new items.

Action item 5: Dorthe Vestergaard-Pedersen to produce a paper on IALA as the custodian of reference implementation for maritime open source software for the next meeting.

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