



Draft Report of the 9th Session of the IALA Legal Advisory Panel

November 2-3, 2011

Executive Summary

The meeting was not well attended due to members being unable to travel long distances for a very short meeting (1 ½ day). To try and have better attendance at LAP10 and in view of the likely size of the agenda, it was decided to hold it back to back with the IMO Legal Committee and extend its duration by ½ day.

The members however worked along a busy Agenda and made good progress, especially with regard to:

- The legal issues associated with establishing, formally, the World Wide Academy
- Considering the proposal of creating a new class of membership to differentiate National Members “in good standing” from those in arrears
- Using European standards to categorize and analyze the types of risks IALA is facing and their residual consequences
- Legal status of IALA Recommendations and Guidelines
- Reviewing the admission criteria for IALA-NET
- Considering options for a new status for IALA with regard to French law
- Considering a review of the MBS Agreement in the light of the options available to change IALA’s legal status.

Council’s attention is particularly drawn to the portions of the report dealing with Agenda items 4.1, 4.2, 4.3, 4.5, 8 9 and 14.1.

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Legal Advisory Panel
9th Session

2-3 November 2011

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1 General

The 9th meeting of the **Legal Advisory Panel** was held on 2 and 3 November 2011 at IALA, with Jon Price (Vice Chair) as Chair. The Secretary for the meeting was the IALA Administration Manager, Marie-Helene Grillet.

Apologies for absence were received from Svend Eskildsen of Denmark, Mary Dean of Australia, Barham Touré of France, Stefan Jenner of Germany and Kjersti Tusvik of Norway.

1.1 Welcome

The Chairman opened the meeting by welcoming all participants.

1.2 Approval of the agenda

The agenda for LAP9, as set out in LAP9/1/1 Rev1 was reviewed and approved.

2 Review of action items from LAP 8

The action items were noted completed, with the exception of Action item 6 about copyright laws in France. Jacques Manchard presented briefly a paper prepared by Barham Touré, which still needed to be summarised and translated into English.

Action item: It was agreed that all LAP members should prepare summaries of their national laws and send them to Barham Touré for him to prepare a combined paper for the next LAP meeting.

3 Review of input papers

The input papers were reviewed.

4 Requests for advice from other IALA bodies

4.1 From Council: Advice on the draft Council decision formalising the existence of the WWA, including governance arrangements

Gary Prosser explained that the WWA was to make use of recommended Model courses to build up a body for members to be trained in a harmonized way. Jean-Charles Leclair was appointed Dean and potential donors were identified. Some IALA Workshops like the Risk Management Tool training seminars will now have to be seen as being under WWA.

Action item: The LAP should review the draft decision in the context of the IALA Constitution (is it broad enough?) and prepare a clean copy for the next meeting.

4.2 From Council: The creation of a new class of Membership called “members in good standing”

The new class of membership would consist of National Members paying their membership fees. The background to the proposal was as follows: many National Members are not paying their fees but kept on the list in the hope that they would come back. There would be a need to find a place to “park” them while reducing their membership rights in a way to be determined.

There is no room for this in the present Constitution and the proposal will have to be studied in accordance with amendments to the Constitution. Also, there is a risk that “inactive” members feel comfortable in such a position.

4.3 From Council: introduce the type of risk in the IALA Risk Register

Jon Price introduced the European standards for classification of risks and presented the template created by Trinity House, which was in accordance with the standards. Different colours are used to highlight the residual level of risk and arrows to indicate if the risk is increasing, decreasing or stable.

The LAP agreed to adopt the template for the IALA Risk Register and reviewed the level criteria according to the IALA activities and identified new items to be added: strategy, funding, finance crisis, PAF. The participants started the migration of the present Risk Register to the new one but this was found a too lengthy procedure, taking into account the limited time for the meeting.

Action item: It was agreed that the Administration Manager would complete the new Risk Register and send it back to the LAP for review at the next meeting. The Council will be informed that the LAP is working on the issue.

4.4 From Council: To look into the need to introduce into the MOU with the IALA Host nation a reference to a court when disputes have to be resolved

This item was completed by correspondence and the conclusion (no need to amend the text) sent back to the Council. The MOU has been signed by the Secretary General and sent to the French Director General for Maritime Affairs for signature.

4.5 From PAP: To prepare a brief for the Editor, The IALA Bulletin, in order to produce an article on the legal status of IALA Recommendations and Guidelines

Among the documents produced by IALA the Maritime Buoyage System agreement, recognized by IMO in an MSC Circular, stands at the highest level. The IALA Recommendations then state what to do and the Guidelines how to do it. Manuals are considered as being at the lowest level.

Recommendations are purely Recommendations, even IMO Recommendations, although many of them are regarded as mandatory. The example of the SOLAS Convention was given: the appendices are mandatory for the countries having signed the Convention. IMO states that the ships need to have the preparedness for Aids to Navigation but not that the country has to provide the system.

If an incident occurs and it is found that the IALA Recommendations and Guidelines are not applied, it is judged against the highest international standards or the best practices ‘customary laws’).

Action item: Jon Price to talk to Paul Ridgway to prepare a suitable article.

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

There was nothing to report under this Agenda item; the additional information requested at LAP8 was not available in time for the meeting..

Action item: Dorte Vestergaard Pedersen to collect information and prepare an input paper to LAP10.

6 AIS data used as evidences at court cases

Henning Osnes Teigene reported that the appeal to the Supreme Court of Norway in the Rocknes case (presented by Ms Kjersti Tusvik at LAP 8) had been rejected.

The presentation made by Jon Price concluded that AIS was not likely to be the sole factor in determining liability, rather it would be considered in conjunction with other evidence.

It has been used in some countries in the case of collision with Aids to Navigation.

Action item: the Administration Manager to remind Stefan Jenner that his paper on the subject, due for LAP9 is now awaited for LAP10.

7 Update on IALA-NET

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

Criteria for admission: The draft contract initially developed for countries wishing to become part of IALA-NET had been replaced by a letter stating the conditions of use. A letter is less formal than a contract but still binding. This prevents countries from going to their Foreign Affairs to have a contract signed.

Action items:

1. *The Administration Manager to circulate the text amended at the meeting (LAP9/WP3) to all LAP Members with a view of having further comments in advance to the next LAP meeting.*
2. *The Administration Manager to include in LAP10 input papers the presentation made on legal aspects of AIS by Prof. Lesley Jane Smith, Professor of Law at Leuphana University Lüneburg, Germany, at the IALA Workshop on the Global Sharing of Maritime Data.*

Recommendation: The Recommendation was considered a good way forward, provided that the Letter of conditions is annexed to it.

9 Potential new status for IALA

This Agenda item was addressed by Emmanuel Cocher of the French Ministry for Foreign Affairs, in charge of International Organisations' Headquarters in France.

He explained that IALA is not considered as an International Organisation – although it is in effect – but legally regarded as a French NGO, which prevents the host country from giving it the same benefits as UNESCO or OECD, for example. This means that the French Government Departments supporting IALA have to act on an *ad-hoc* basis with no legal framework.

The French Government realized that international associations having their Headquarters in France need better support from the country. A report had been prepared by the "Conseil d'Etat" to draw attention to this issue. Steps have been taken to develop a new status to offer better conditions to those associations that are not IGOs, through a new law that would look at candidate associations according to criteria defining their international characters. Such a new law would not be brought before Parliament before May 2012 at the soonest due to the elections taking place in April 2012.

There are however other possible options, from becoming part of a IGO – without losing independence – to having a specific law just for IALA. A realistic option might consist of using an existing international treaty to have the Government recognise the international character of IALA. An agreement, more formal than the current MOU, could therefore be signed between IALA and the French Government. The only international treaty generated by IALA so far is the Agreement on the International Maritime Buoyage System (MBS), which does not, at present, contain a proper

institutional chapter. The review of the MBS agreement may be an opportunity to mention the structure of IALA in the institutional chapter and introduce all changes needed. It would not be necessary to call it a “treaty” as long as all those who are signing are empowered by their Governments.

Action items

1. *A proper paper presenting all possible options should be prepared for the next LAP meeting*
2. *Access to the report by “Conseil d’Etat” should be provided to all LAP Members.*

Actions: Emmanuel Cocher

3. *The IALA Council to be made aware of the willingness of the French Government through the LAP9 report. Action: Administration Manager.*

10 Changes to IALA Constitution

The meeting looked briefly at the Constitution and started to identify changes that might be needed:

- Article 3 might need to be broadened to include the creation of groups other than Committees or Working Groups;
- Article 5: it might be needed to consider Individual Membership again; and,
- Generally: it might be useful to introduce the concept of R&D in the Constitution

11 Review of draft disclaimer for all IALA documents

The LAP recommends to the Council to integrate it in the templates for all IALA documents.

12 Review of IALA Risk Register

This was dealt with under Agenda item 4.3.

13 Review of the Agreement on the IALA Maritime Buoyage System

The Agreement will be reviewed at the next meeting in the light of the options given by Emmanuel Cocher to improve the IALA status.

14 Any other business

14.1 Due to changes in the Danish National Authority Svend Eskildsen, the current LAP Chair, will be unable to continue in this position. The Council is requested to appoint a new Chair for the Panel.

Action: Secretariat

14.2 It was agreed that a standard Agenda should be developed for the next meetings.

15 Review of action items

The action items for the meeting were reviewed and agreed.

The list of action items is attached as Annex C.

16 Review of output and working papers

The output and working papers were reviewed and their disposition was agreed.

The list of output papers is attached as Annex D.

17 Date and place of next meeting

The 10th meeting of the IALA Legal Advisory Panel (LAP10) will be held at IALA Headquarters on 12th and 13th April 2012, commencing 10h00 on the 12th and finishing 17h00 on the 13th.

18 List of Annexes

- 1 Agenda
 A copy of the agenda is at Annex A.
- 2 Participants
 A list of LAP9 participants is at Annex B.
- 3 Input Papers
 A list of input papers is at Annex C.
- 4 Output and Working papers
 A list of output and working papers is at Annex D.
- 5 Action Items
 A list of action items is at Annex E.

ANNEX A LAP9 AGENDA

Legal Advisory Panel

9th Session

Agenda item 1

LAP 9 / 1 / 1

November 2 - 3, 2011

The 9th meeting of the IALA Legal Advisory Panel will be held on 2nd and 3rd November 2011, at the new IALA Headquarters, 10 rue des Gaudines, in Saint Germain en Laye, France.

The meeting will commence at 10h00 hours on 2nd November and finish at 1300 hours on the 3rd.

LAP 9 - PROVISIONAL AGENDA (Rev. 1)

- 1 Approval of the agenda
- 2 Review of action items from LAP8
- 3 Review of input papers
- 4 Requests for advice from other IALA bodies
 - 4.1 From Council: *"Advice from the Legal Advisory Panel is requested with regard to the draft Council Decision formalizing the existence of the WWA. Governance arrangements will be drafted for the next Council session, with the support of the LAP, if needed."*
 - 4.2 From Council: *"The creation of a new class of membership called "members in good standing" wasn't found desirable. The LAP advice will be sought."*
 - 4.3 From Council: *"The type of risk (finance, reputation, etc.) should be added to the Risk Register."*
 - 4.4 From Council: *"The Legal Advisory Panel will look into the need to introduce into the MOU a reference to a court when disputes have to be resolved."* **Item completed by correspondence.**
 - 4.5 From PAP: To prepare a brief for the Editor, The IALA Bulletin, in order to produce an article on the legal status of IALA Recommendations and Guidelines.
- 5 IALA as the custodian of reference implementation for maritime open source software
- 6 AIS data used as evidences at court cases
- 7 Update on IALA-NET
- 8 Review of the criteria for admission to IALA-NET and proposal of a new Recommendation for consideration by the Council
- 9 Potential new status for IALA
- 10 Changes to IALA Constitution
- 11 Review of draft disclaimer for all IALA documents
- 12 Review of IALA Risk Register
- 13 Review of the Agreement on the IALA Maritime Buoyage System
- 14 Any other business
- 15 Review of output and working papers
- 16 Review of Action Items

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ANNEX C LIST OF INPUT PAPERS

Number	Title	Comments
LAP 9/1/1	Draft Agenda	
LAP 9/3/1	Input Papers	
LAP9/2/1	LAP 8 action items	
LAP9/4.0/1	Report of IALA Council 51	
LAP 9/4.1/1	Draft Council decision on the World Wide Academy	Late paper
LAP9/4.3/1	Standards for classification of risks	Late paper
LAP 9/6/1	The Western Neptune and the St Louis Express	
LAP9/8/1	Conditions of Participation in IALA-NET	Late paper
LAP 9/8/2	Draft IALA Guideline on the sharing of maritime data	Late paper
LAP 9/11/1	Draft IALA disclaimer	
LAP9/11/2	IALA Dictionary disclaimer in French	Late paper
LAP 9/12/1	IALA Risk Register	
LAP9/13/1	Maritime Buoyage System Agreement	

ANNEX D LIST OF OUTPUT AND WORKING PAPERS

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

Number	Title	Status
LAP9/output/1	Draft Report	To Council to note
LAP8/output/2	Disclaimer for IALA documentation	To Council to note

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

Number	Title	Status
LAP9/WP1	Draft IALA Council decision on the creation of the WWA	To LAP10
LAP9/WP2	IALA Risk Register	To LAP10
LAP9/WP3	Draft letter of conditions to participate in IALA-NET	To LAP10

ANNEX E ACTION ITEMS

Action Items for Secretariat

- 1 *The Administration Manager will complete the new Risk Register (LAP9/WP2) and send it back to the LAP for review at the next meeting. The Council will be informed that the LAP is working on the issue.*
- 2 *The Administration Manager will remind Stefan Jenner that his paper on AIS used as evidence in court cases needs to be an input to LAP10.*
- 3 *The Administration Manager to circulate the Letter of conditions to participate in IALA-NET amended at the meeting (LAP9/WP3) to all LAP Members with a view of having further comments in advance to the next LAP meeting.*
- 4 *The Administration Manager to include in LAP10 input papers the presentation made on legal aspects of AIS by Prof. Lesley Jane Smith, Professor of Law at Leuphana University Lüneburg, Germany, at the IALA Workshop on the Global Sharing of Maritime Data.*
- 5 *The Administration Manager to make the IALA Council aware of the willingness of the French Government to find better arrangements for IALA.*
- 6 *The Secretariat to invite the Council to appoint a new chair of the LAP.*

Action Items for Members

- 7 *All LAP members should prepare summaries of their national laws and send them to Barham Touré for him to prepare a combined paper for the next LAP meeting.*
- 8 *The LAP should review the draft decision in the context of the IALA Constitution (is it broad enough?) and prepare a clean copy for the next meeting.*
- 9 *Jon Price to talk to Paul Ridgway to prepare a suitable article on the legal status of IALA Recommendations and Guidelines.*
- 10 *Dorthe Vestergaard Pedersen to collect information on IALA as the custodian of reference implementation for maritime open source software and prepare an input paper to LAP10.*
- 11 *Emmanuel Cocher to prepare a proper paper presenting all possible options for IALA new status for the next LAP meeting*
- 12 *Emmanuel Cocher to give access to the report by “Conseil d’Etat” to all LAP Members.*