



Report of the 14th Session of the IALA Legal Advisory Panel

March 9-11, 2015

Executive Summary

The 14th LAP session noted progress on the Change of Status project and considered the development of General Regulations. The Secretariat was tasked to draft General Regulations for submission to LAP15 and then the IALA Council session 61.

The draft international agreement was renamed Convention and the draft text was noted to be reviewed by the Council Working Group on the project at its meeting in April.

A draft MoU with China on the One China Policy was refined for noting by the next session of the IALA Council.

The LAP considered requests for advice from other IALA bodies and submitted disclaimer texts for the IALA Website and links to other Websites, and invited IALA to development agreements with the host for the IALA Websites that are hosted by a member authority.

The IALA-NET agreement text was reviewed and agreed but the proposed Terms of Reference for WWA Technical Visits was considered needing a complete rewording. The Secretariat was tasked to propose a new text.

The introduction of IALA Standards had an impact on the ongoing review of the IALA Constitution. It was also agreed that the draft Standard template should be commented by the LAP participants inter-sessionally.

The LAP was still in need of information on AIS data used as evidence at court cases and all members should be invited to submit information to the Secretariat. The purpose being that IALA can help its members a common LAP/ENAV paper should be developed.

It was reported that many countries are still very protective regarding their AIS data. IALA should help harmonize rules and it was agreed to draw the Council's attention to this issue.

The IALA Risk Register was updated and will be submitted to the IALA Council.

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Legal Advisory Panel
14th Session

9-11 March 2015

Draft Report of the 14th Session of the IALA Legal Advisory Panel

1 General

The 14th meeting of the **Legal Advisory Panel** was held from 9th to 11th March at Seagull on the Bund Hotel, Shanghai (China) with Jon Price in the Chair. The Secretary for the meeting was the IALA Administration Manager, Marie-Helene Grillet. The meeting was attended by 12 participants representing 7 National Members.

Apologies for absence were received from Finland, Germany, Ireland, Japan and Norway.

1.1 Welcome

Mr Chen Xiao Guang, Deputy Director of Shanghai China MSA welcomed and congratulated all participants. He recalled that since its inception IALA is well known for its improving aids to navigation, maritime safety and shipping industry. IALA is now growing in importance with its project of becoming an IGO and he was hoping that this session of the LAP in Shanghai would achieve important steps towards this project.

The Secretary General thanked Mr. Chen for his welcome and hosting the meeting. He added that IALA was experiencing new challenges with its strategic vision, change of status project, success of its Academy and the Secretariat review.

1.2 Approval of the agenda

The agenda for LAP14, as set out in LAP14-1-1 was reviewed and approved.

2 Review of action items from LAP 13

The action items were noted completed, or to be dealt with at the meeting.

3 Review of input papers

The List of Input Papers was noted.

4 Report of IALA Council 59

Matters of particular interest to the meeting arising from Council session 59 were:

- The MoU with China: the IALA Council recognized that the One China Policy was a UN policy and was looking forward to a draft MoU from the LAP;
- The Secretariat review: the IALA Council considered the report presented and instructed the Secretary General to implement a change in the next few years. A need to strengthen IALA technical capabilities and get more support was already identified;

- Recruitment of the IALA Secretary General: there is a need for a documented process for future appointments and this should be built in the General Regulations;
- Change of status project: a Council Working Group was formed, which is to meet for the first time on 9-10 April 2014 in Madrid;
- Briefing from the French Ministry of Foreign Affairs: the diplomatic action was carried out and answers received:
- LAP Chairmanship: with the LAP Chair selected as the new IALA Secretary General the LAP needs a new Chair.

5 IALA Change of Status project

5.1 Progress report

The French diplomatic action consisted in sending a diplomatic note to all countries in which IALA has national members and recording their answers. Fifteen replies were received, i.e. 20% of the countries that had been contacted. Answers were recorded as supportive, neutral or with reservation, or against the project. IALA should now progress with the drafting of the agreement text. Other countries may also wish to support France in its efforts in view of the Diplomatic Conference.

The process can take some time but the IALA Conference in Korea in 2018 seems to be a reasonable target date. Since the General Assembly Resolution was passed there is no more uncertainty with regard to completing the project.

The Council IGO Working Group will consider a communication package.

5.2 Mechanism for General Regulations

Input paper LAP14.5.2 was introduced. Two main issues were raised:

1. Should the General Regulations be part of the Agreement text; and,
2. Should they be approved by the “old” IALA General Assembly;

1. The general opinion was that the General Regulations should preferably be separate from the Agreement text, which is the case at IMO and IHO, making them easier to amend. The Agreement however should set out the process for approval and modification of the General Regulations.

2. Further consideration of the timing and procedure in the making of General Regulations until the Agreement is required. In the interim, some procedures have already been developed that can easily be integrated into General Regulations when the Agreement enters into force.

The conclusion was that General Regulations should be developed for the current IALA and approved by the Council. Should they work well, they would form a basis for the General Regulations of IALA as an IGO. A small working group was set up consisting of Francis Zachariae, Jon Price, Jan Gabrielsen, Maarten Berrevoets, Yang Liang and Marie-Hélène Grillet. The latest version of the draft General Regulations will be made available to all participants to return comments as soon as possible.

Action item 1. *The Secretariat to develop draft General Regulations for submission to LAP15, then to Council session 61 (December 2015).*

5.3 Answer to footnote 5 of the draft International Agreement

The footnote was introduced to take into account the concern of some countries, which feared that an IGO could not have members other than States. Solutions were identified: stating that contracting parties can only be States, and/or stating that all members can take part in General Assemblies but only contracting parties can vote. The LAP agreed that was no issue from a legal perspective with the use of the term members other than for contracting parties.

It was agreed to remove footnote 5 from the draft Agreement text.

5.4 Draft international agreement text

Input paper LAP14.5.4 was introduced.

On the basis that the international agreement was a convention it was decided to rename it "Convention".

The revised text is at LAP14-output-2.

Footnote 15 relating to "domestic" legal personality in Article 10 was questioned as it may refer to the intended Headquarters Agreement with the Government of France.

Action item 2. *Vincent Denamur to check with the French Ministry of Foreign Affairs and report back to LAP15.*

Action item 3. *The Secretariat to forward the amended Agreement text to the IGO Working Group after resolution of action item 2, time permitting.*

5.5 Roadmap

A Roadmap will be developed by the IGO Working Group in April 2015 but it was mentioned that 2018 could be a good target date.

5.6 MOU between IALA and China

Input paper LAP14.5.6 was introduced. The LAP considered the text submitted by China. The proposal was discussed and modified and the final amended draft MoU is at LAP14-output-3.

Action item 4. *After China has consulted with its Ministry of Foreign Affairs the Secretariat should forward the revised draft MoU between IALA and China to the IALA Council for noting.*

5.7 Input to IGO Working Group

There was no specific input requested from the LAP at this stage.

6 Review of IALA Constitution

Input paper LAP14.6 was presented as a standard Agenda item. IALA Standards were introduced in Article 7.

The revised draft IALA Constitution is at LAP14-output-4.

7 Request for advice from other IALA bodies

7.1 From PAP 28

7.1.1 To advise the Secretariat on how to manage hosted IALA Websites and non-IALA Websites linked to IALA

7.1.2 To provide wording for an IALA disclaimer for links to other Websites

Input papers LAP14.7.1.1 and LAP14.7.1.2 refer.

The LAP was of the opinion that no disclaimer was needed for the Websites hosted by IALA Members that are purely IALA. These ones, however, should be mentioned in the general disclaimer that was developed at the meeting for the IALA Website and an agreement should be developed and signed between IALA and the host(s). In the future, these Web pages could be integrated in the IALA Website.

The LAP developed two disclaimers: one for the IALA Website (LAP14-output-5), and another one addressing the link issue (LAP14-output-6), for publication after their review by the PAP.

Action item 5: *The Secretariat to forward the disclaimers to the PAP.*

Action item 6: *The Secretary General to develop an agreement with Website host authority.*

7.1.3 To review and update the IALA-NET Agreement text

Input paper LAP14.7.1.3 was introduced.

The LAP revised the text of the draft agreement and questioned whether the purpose was for the Agreement to be legally binding.

The revised text is at LAP14-output-7.

Action item 7: *the Secretariat should forward the amended IALA-NET agreement to the IALA-NET Steering Committee, advising them that the LAP worked on the current wording only.*

7.1.4 To consider the legal aspects of IALA Standards

Input paper LAP14.7.1.4 was introduced. The approval process of IALA standards is now clearly with the General Assembly. There was a discussion at the PAP, which developed a hierarchy of IALA documents, approved by Council 59, in which standards are at the highest level.

A draft plan was developed, where standards stand as a framework for IALA Recommendations and Guidelines, according to main subjects that are not necessarily relevant to one Committee. A presentation was made by the Secretary General, which is available from the IALA Website, LAP area, and a very first draft of a draft standard template was presented (LAP-output-8).

The LAP was requested to look into what a standard should be. Basically a standard was to be WHAT, a Recommendation HOW and a guideline BEST PRACTICE. The main goal of an IALA standard should be to foster the safe and efficient movement of vessels by way of harmonization (recommendations and guidelines).

It was agreed that the draft template (LAP14-output-8) should be circulated to the LAP participants for comment.

Action item 8: *The Secretariat to make the draft template for standards available to LAP participants for comment.*

8 World Wide Academy

The Secretary General reported briefly on the Academy, which started in 2012 and achieved to have more than 900 delegates from 62 target states being trained in many places in the world. The Academy is recognized by IMO as part of its "Delivering as One" initiative.

8.1 Expert mission contracts

The LAP looked at option 3 only and agreed that the Secretariat should seek advice from a French lawyer in the first instance.

Action item 9: *The Secretariat to seek legal advice from a French lawyer on option 3 of the draft expert mission contracts, prior to further consideration of this option by the LAP.*

8.2 ToRs for WWA technical visits

The document was considered as mixing both a statement on process and contractual provisions. A new draft was required concentrating on a statement of process.

Action item 10. *The Secretariat to review the document entirely and submit a new draft to LAP15.*

8.3 WWA Risk Register

All remarks made at the last meeting were taken into account. A further remark was made regarding financial risk No. 2.1 where the level of pre-mitigation risk was shown lower than the post-mitigation position and should be reviewed.

Action item 11: *The Academy to amend the level of risk No. 2.1.*

9 AIS data used as evidence at court cases

Jan Gabrielsen reported that the information gathered was still poor to draw conclusions and provide general information, although a number of input papers were submitted under this Agenda item: LAP14.9.1 from Australia, LAP14.9.2 from UK, LAP14.9.3 from Sweden and LAP14.9.4 from Denmark.

Jan Gabrielsen urged others to submit similar information and requested the Secretariat to invite members to submit similar information.

Action item 12: *The Secretariat to invite members to submit information on AIS data used as evidence at court cases.*

The purpose of the data gathering is that IALA can help its members and it was agreed that a paper was needed addressing also the technical aspects of AIS, the reliability of which is often questioned at court.

Action item 13: *The Secretariat to request the PAP to advice on how a common LAP/ENAV paper would fit into the IALA documentation.*

10 AIS data protection

Input paper LAP14.10.1 was noted.

It was noted that many countries are still very protective. IALA could help harmonize rules taking into account that IALA-NET and European data sharing systems are not for commercial purposes and to not infringe laws protecting personal data. More information was still needed from IALA Membership.

Action item 14: *The Secretary General to mention the issue to the Council as part of the LAP report.*

Action item 15: *The Secretariat to refer to PAP for advice on technical aspects.*

11 Update on IALA-NET

IALA-NET has 34 participating countries and achieves global coverage but has not recently acquired many new members.

12 Review of IALA Risk Register

Input paper LAP14.12 refers. The Strategic Risks and Operational Risks sections were amended and the revised version is at LAP14-output-9.

Action item 16: *The Secretariat to forward the Risk Register to Council session 60 for consideration.*

13 Any other business

There was no other business.

14 Review of output and working papers

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

15 Review of action items

Action items are at Annex E.

16 Date and place of next meeting

The 15th meeting of the IALA Legal Advisory Panel (LAP15) is tentatively planned for 14, 15 and 16 September 2015 at IALA Headquarters.

17 Approval of the report

The report for LAP14 was approved.

18 List of Annexes

- A. Agenda
A copy of the agenda is at Annex A.
- B. Participants
A list of LAP14 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 LAP14 AGENDA

Legal Advisory Panel

14th Session
Agenda item 1

LAP 14-1-1
March 9-11, 2015
Shanghai, China

The 14th meeting of the IALA **Legal Advisory Panel** will be held from 9th to 11th March 2015. The venue for the meeting is Seagull Hotel in Shanghai, China.

The meeting will commence at 1000 hours on 9th March and is expected to finish at 1600 hours on the 11th.

LAP 14 - PROVISIONAL AGENDA **(revised 2015-03-04)**

1. Welcome address by the Head of Shanghai Maritime Safety Administration
2. Approval of the agenda
3. Review of action items from LAP13
4. Review of input papers
5. Report of IALA Council 59
6. IALA change of status project
 - 6.1. Progress report
 - 6.2. Mechanism for General Regulations
 - 6.3. Answer to footnote 5 of the draft International Agreement
 - 6.4. Draft international agreement text
 - 6.5. Roadmap
 - 6.6. MOU between IALA and China
 - 6.7. Input to IGO Working Group
7. Review of IALA Constitution
8. Requests for advice from other IALA bodies
 - 8.1. From PAP28
 - 8.1.1. To advise the Secretariat on how to manage hosted IALA websites and non-IALA websites linked to IALA.
 - 8.1.2. To provide wording for an IALA disclaimer for links to other websites.
 - 8.1.3. To review and update the IALA-NET Agreement text
 - 8.1.4. To consider the legal aspects of IALA standards
9. World Wide Academy
 - 9.1. Expert mission contracts
 - 9.2. ToRs for WWA technical visits
 - 9.3. WWA Risk Register
10. AIS data used as evidences at court cases
11. AIS data protection

12. Update on IALA-NET
13. Review of IALA Risk Register
14. Any other business
15. Review of output and working papers
16. Review of Action Items
17. Date and place of next meeting
18. Approval of the report

ANNEX B

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ANNEX C LIST OF INPUT PAPERS

Number	Agenda item	Title	Comments
LAP 14.1.1	1	Draft Agenda	
LAP 14.2	2	Action items from LAP13	
LAP 14.3	3	List of Input Papers	
LAP 14.4	4	Report of IALA Council 59	
LAP 14.5.2	5	Mechanism for General Regulations	
LAP 14.5.4	5	Draft International Agreement	
LAP 14.5.6	5	MOU between IALA and China	
LAP 14.6	6	IALA Constitution 2014	
LAP 14.7.1.1	7	Request for advice on hosted IALA Websites	
LAP 14.7.1.2	7	Request for disclaimer for links to other Websites	
LAP 14.7.1.3	7	Request for updating IALA-NET agreement text	
LAP 14.7.1.4	7	IALA standards	
LAP 14.8.1	8	Note on contracts for WWA experts	
LAP 14.8.1.1	8	Agreement for WWA experts – option 1	From LAP13
LAP 14.8.1.2	8	Agreement for WWA experts – option 2	From LAP13
LAP 14.8.1.3	8	Agreement for WWA experts – option 3	From LAP13
LAP 14.8.2	8	ToRs for WWA technical visits	
LAP14.8.3.1	8	WWA Risk Register	
LAP 14.9.1	9	AIS data at court cases - Australia	
LAP 14.9.2	9	AIS data at court cases - UK	
LAP 14.9.3	9	AIS data at court cases - Sweden	
LAP 14.9.4	9	AIS data at court cases – Denmark	
LAP 14.10.1	10	AIS data sharing - Australia	
LAP 14.12	12	IALA Risk Register	

ANNEX D LIST OF OUTPUT AND WORKING PAPERS

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

Number	Title	Status
LAP14-output-1	Draft Report	To Council to note
LAP14-output-2	Draft Convention text	To Secretariat
LAP14-output-3	Draft MoU between IALA and China	To Council to note
LAP14-output-4	Draft IALA Constitution	To LAP15
LAP14-output-5	Disclaimer for IALA Website	To PAP
LAP14-output-6	Disclaimer for links to external Websites	To PAP
LAP14-output-7	Amended IALA-NET Agreement text	To IALA-NET Steering Committee for implementation
LAP14-output-8	Draft standard template	To LAP participants for comments
LAP14-output-9	IALA Risk Register	To Council to consider To LAP15

ANNEX E ACTION ITEMS

Action item 1: *The Secretariat to circulate LAP participants with the latest version of the draft General Regulations for comments by end of May 2015.*

Action item 2: *Vincent Denamur to check with the French Ministry of Foreign Affairs and report back to LAP15.*

Action item 3: *The Secretariat to forward the amended Agreement text to the IGO Working Group after resolution of action item 2, time permitting.*

Action item 4: *The Secretariat should forward the revised draft MoU between IALA and China to the IALA Council for noting.*

Action item 5: *The Secretariat to forward the disclaimers to the PAP.*

Action item 6: *The Secretary General to develop an agreement with Website host authority.*

Action item 7: *the Secretariat should forward the amended IALA-NET agreement to the IALA-NET Steering Committee, warning them that they worked on the wording only.*

Action item 8: *The Secretariat to make the draft template for standards available to LAP participants for comments.*

Action item 9: *The Secretariat to seek legal advice from a French lawyer on option 3 of the draft expert mission contracts.*

Action item 10: *The Secretariat to review the document entirely and report at LAP15.*

Action item 11: *The Academy to amend the level of risk No. 2.1 and mention this possible action from the Secretariat as a mitigation measure.*

Action item 12: *The Secretariat to invite members to submit information on AIS data used as evidence at court cases.*

Action item 13: *The Secretariat to request the PAP to advise on how a common LAP/ENAV paper would fit into the IALA documentation.*

Action item 14: *The Secretary General to mention the issue to the Council as part of the LAP report.*

Action item 15: *The Secretariat to refer to PAP for advice on technical aspects.*

Action item 16: *The Secretariat to forward the Risk Register to Council session 60 for consideration.*