



## **Report of the 15<sup>th</sup> Session of the IALA Legal Advisory Panel**

**September 14-16, 2015**

### ***Executive Summary***

The 15<sup>th</sup> meeting of the IALA Legal Advisory Panel at IALA Headquarters in Saint-Germain-en-Laye focused on the legal aspects of the change of status project. They reviewed and amended the draft Convention text for the next meeting of the Change of Status Council Advisory Group (CoS), amended the proposed draft for an informative submission to IMO, progressed the work on the IALA Basic Documents for the current IALA as a first step towards an intergovernmental organization and considered the concept for IALA standards.

LAP15 also progressed the ongoing work on the IALA Constitution for approval by the next General Assembly in 2018 and reviewed the IALA risk register and the WWA register.

At the request of the Council, LAP15 considered the legal aspects of a draft IALA VTS questionnaire submitted by the IALA Committee. The ENAV Committee had requested that they look into a draft guideline on an IALA patent policy and the LAP meeting recommended that IALA should seek specialist advice. LAP also answered a query from the World VTS Guide Board regarding the Guide being potentially binding by IMO Resolution A.857(20). LAP concluded that this was the case for State parties to the SOLAS Convention only, and only for competent authorities, not individual VTSSs.

Finally, LAP not being able to provide guidance to the IALA membership on AIS data used as evidence in court cases and AIS in terms of data protection it was agreed that the topics would no longer be on the LAP agenda.

The next meeting of the IALA Legal Advisory Panel (LAP16) will take place at IALA Headquarters from 11<sup>th</sup> to 13<sup>th</sup> April 2016.

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Legal Advisory Panel  
15<sup>th</sup> Session

14-16 September 2015

## **Draft Report of the 15th Session of the IALA Legal Advisory Panel**

### **1 General**

The 15th meeting of the **Legal Advisory Panel** was held from 14<sup>th</sup> to 16<sup>th</sup> September 2015 at IALA Headquarters with Jon Price in the Chair. The Secretary for the meeting was the IALA Technical Operations Manager, Marie-Helene Grillet. The meeting was attended by 14 participants representing 10 National Members.

Apologies for absence were received from Denmark.

#### **1.1 Welcome**

Chair of Panel Jon Price welcomed all participants and said that the meeting had three main objectives: to finalize the draft Convention text; to progress the development of the IALA Basic Documents; and to consider IALA Standards and their legal aspects.

Secretary-General Francis Zachariae introduced the new structure for the IALA Secretariat and its three pillars: policy, operation and administration.

#### **1.2 Approval of the agenda**

The agenda for LAP15, as set out in LAP15-1-1 was reviewed and approved.

### **2 Review of action items from LAP 14**

Input paper LAP15.2.1 summarized action items from LAP15 or earlier meetings and their status. The action items were noted completed, or to be dealt with at the meeting.

### **3 Review of input papers**

There was no input paper for this Agenda item. The list of input papers is automatically generated by the IALA Website when downloading the papers.

It was noted that there was a need to have papers posted earlier and avoid late papers.

### **4 Report of IALA Council 60**

Matters of particular interest to the meeting arising from Council session 60 were:

- The Host nation issue was solved. Many meetings with the Directorate of Maritime Affairs were held and a single point of contact was appointed to support IALA with French administrative issues;
- Terms of Reference for the Council Strategy Group were approved;

- A new title was agreed for the Council working group on the change of status, which was renamed Change of Status Advisory Group (CoS);
- IALA was contracted by the European Commission to work on EffienSea2;
- A new time schedule was agreed for the Council and Committee meetings and the policy on Council meeting venues was reaffirmed with one annual Council meeting at IALA Headquarters.

The Secretary-General added that the A/V system at the Headquarters would soon be renewed and modernized and a French company had been hired to work on a corporate image for IALA.

It was agreed that LAP should also review its Terms of Reference at its next meeting for submission and approval by Council.

**Action item 1:** *The Secretariat to circulate LAP with the current Terms of Reference for review at LAP16.*

## 5 IALA Change of Status project

### 5.1 Report of Change of Status Advisory Group (CoS1)

Input paper LAP15-5.1 refers. CoS1 adopted an action plan with three main actions, which are being dealt with in relevant Working Groups focusing on: Communication, Finance and Diplomacy respectively.

Aline de Bievre was hired to work on Communication and she had already produced input paper LAP15-5.1.1, a draft information paper to the IMO General Assembly, an action that was requested by the CoS Communication working group.

Christina Schneider, the leader of the Finance working group has worked in cooperation with Christine Philip of the Secretariat and produced a paper identifying three scenarios for the future.

Finally, points of contacts have been identified in the various countries to facilitate the diplomatic process that will be initiated by France.

The next CoS meeting planned for November 2015 will consider all these aspects.

#### 5.1.1 Draft information paper to IMO

Input paper LAP15-5.1.1 refers. At its meeting in April CoS decided that an INF paper should be submitted to the IMO General Assembly in December. The draft submission prepared by Aline de Bievre was considered and amendments as well as actions were requested, as follows:

- The paper should be as concise as possible and not focus on IALA and IMO having different scopes (shore-side, ship-side);
- A new paragraph on a planned seamless transition to the IGO status was desirable;
- The paragraph on the Academy should be shortened;
- The paragraph on VTS was to be improved (Matti Eronen volunteered to submit a new draft);
- Mention made of ocean governance and coastal states interests should be taken out and in general any mention of IALA being concerned with maritime law.

It was agreed that having an input paper instead of an INF paper was desirable and the Secretariat should check if an NGO is able to submit input papers. In order to reach as many IMO member States as possible having the paper translated in French and Spanish was felt desirable. Finally, attention should be paid to national sensitivities and the paper should be written carefully. Timescales for submission should also be clarified.

**Action item 2:** *Matti Eronen to propose a new text for paragraph 8 dealing with VTS, insisting on IALA's role.*

**Action item 3:** *Aline de Bievre to submit a new draft (within 2 weeks) incorporating Matti's new text and taking into account the amendments requested as listed above;*

**Action item 4:** *Secretariat to check what kind of papers can be submitted to IMO by NGOs (input, INF?) and associated timescales*

**Action item 5:** *The Secretariat to arrange for French and Spanish translations of the paper and forward it to IMO via the IALA approval process (Council approval by email) after it has been viewed by CoS2.*

## **5.2 Draft Convention text**

The draft Convention text, as amended by CoS1, was submitted as input paper LAP15-5.2.2.

The meeting mainly focused on the changes made by CoS on the original draft, and specific comments were made on:

- Article 2.2(b): IALA dealing with inland waterways may cause problems to those countries having their own systems, most often under jurisdictions that are different from the maritime ones. The Secretariat should check if IALA actually published any document on the marking of inland waterways;
- Article 2.3: the definition of "marine aids to navigation" was discussed but the conclusion was that it was widely accepted and should not be changed;
- Article 2bis.1(a): reservations were expressed by those attending from Finland and Sweden regarding the statement that one of IALA's functions should be to draft conventions, considering their Governments' positions;
- Article 3: on the basis of a paper submitted by Dr. Rosalie Balkin (late input paper LAP15-5.2.4 tabled at the meeting) the question of an IGO having members other than Contracting Parties was clarified. To be in line with other IGOs LAP decided to amend the requirements for associate and affiliate memberships so that Government competent authorities would be associate membership and current associate and industrial members would be able to apply for affiliate membership. The only remaining issue was honorary membership, which may not be relevant in an IGO. Provision for associate and affiliate members should now be made in the draft Convention text.
- Article 12: the attendee from China MSA expressed reservations, considering China's policy not to accept independent arbitration.

The draft Convention text was considered in detail and several amendments were made, mostly for clarity and consistency. A number of action items was identified, as follows (draft Convention article numbers are the input paper's ones and do not take into account the changes made at the meeting):

**Action item 6:** *The Secretariat to check if IALA ever published guidance for inland waterways.*

**Action item 7:** *Francis Zachariae to consult with IMC about having Industrial Members within affiliate membership.*

**Action item 8:** *Mary Dean to draft the tacit amendment clause.*

**Action item 9:** *Jon Price to draft article 10.3 on privileges and immunities*

**Action item 10:** *The Secretariat to run an editorial check of the draft Convention text to ensure consistency.*

## **5.3 General Regulations**

There was no input paper under this Agenda item.

A draft had been produced for earlier LAP meetings. The draft will be amended by the LAP Chair and the Secretariat and circulated to LAP for consideration at an inter-sessional meeting on 12<sup>th</sup>

and 13<sup>th</sup> January 2016 at IALA Headquarters. New draft General Regulations will be submitted to LAP and then CoS for final approval by the IALA Council when appropriate.

**Action item 11:** *Jon Price and the Secretariat to draft General Regulations based on the first draft existing and basic documents.*

**Action item 12:** *LAP members to let Marie-Hélène Grillet know if they intend to take part in the inter-sessional meeting on 12-13 January 2016.*

The amended draft Convention text is at output paper LAP15-20.2.

#### **5.4 Draft MoU with China**

Input paper LAP15.5.4.1 was introduced.

The LAP considered the new text submitted by China. The main amendment compared to the previous draft was about observer status at IALA when an IGO and the participation of Taiwan in IALA's important activities.

There might be a need for clarification of the potential involvement in IALA activities of Organizations from Taiwan and Taiwanese individuals. The latter should still be able to be called upon when expertise on specific subjects does not exist within the IGO.

The meeting came to the conclusion that the application of the One China policy should be mentioned in an as concise way as possible, as done by other IGOs. It was recognized that the One China Policy should not pose a problem if the Contracting Parties are UN members but uncertainty remains with regards to associate and affiliate members.

The attendee from Japan stated that the Japan Coast Guard had reservations on this issue since it related to diplomatic matters. The reservation was duly recorded in the report.

The attendee from China reminded the meeting that IALA Council, at its 57<sup>th</sup> session in May 2014, had tasked LAP to prepare a draft MoU and report to them.

**Action item 13:** *The Secretariat and China to work together on an appropriate input paper to Council, based on examples of other similar MoUs and other agreements, with the current proposed MoU as an annex.*

#### **5.5 Input to CoS**

LAP15 will forward the revised draft Convention text, as amended after completion of action items 6 to 10, to CoS2 as an input paper.

**Action item 14:** *The Secretariat to finalize the draft Convention text and forward it to CoS2.*

### **6 IALA Basic Documents**

Input paper LAP15-6.1 refers. LAP focused on the revision of Article 10 of the Financial Regulations for which a slightly amended text was proposed.

They however went through the whole document making further amendments, which are reflected in output paper LAP15-20.3 that also contains comments on the changes made.

**Action item 15:** *PAP to look into Rules and Procedures for Committees and Terms of Reference with a view to have them integrated into the Basic Documents and approved by Council 61, and coming into force.*

### **7 Review of IALA Constitution**

Input paper LAP15-7.1 refers.

**Action item 16:** *The Secretariat to add a reference to the Basic Documents in the ongoing revised draft Constitution.*

## 8 IALA Standards

LAP looked at input papers LAP15-8.1 to LAP15-8.4.

The Deputy Secretary General reported briefly on the Council decision about the implementation of IALA standards and the pyramid structure for IALA documentation.

LAP recommended that standards should not be binding and the definitions of recommendations and guidelines should be amended to make clear that a recommendation should state what must be provided and the guideline how to provide it. A further recommendation was that the template should not contain examples and essential parts of the document (section 6.1) should be reviewed by PAP.

Amendments were made to input paper LAP15-8.3, reflected in output paper LAP15-20.4, for submission to PAP30 and then Council 61.

**Action item 17:** *The Secretariat to submit the revised standard template to PAP30 for approval by Council 61.*

A reservation was however expressed by the attendee from Sweden, who was of the opinion that the definition of a standard already approved by the Council should not be changed.

## 9 Requests for advice from other IALA bodies

### 9.1 From Council 60

#### 9.1.1 To review the draft VTS Questionnaire in view of potential legal issues

Input paper LAP15-9.1.1 refers. The only issue identified was the lack of data protection/retention policy. LAP suggested amending the document to state that data would be kept securely and recommended that IALA establishes a data protection/retention policy and that the VTS Committee ensures that the data gathered would not be made available in the public domain. The draft Questionnaire was slightly amended as shown in output paper LAP15-20.5.

**Action item 18:** *The VTS Committee to implement a formal process to keep the data securely and not have them made available in the public domain.*

**Action item 19:** *Aline de Bievre to provide the Secretariat with policies implemented by IGOs on data retention.*

**Action item 20:** *The Secretariat to develop a data protection/retention policy for review by LAP.*

### 9.2 From ENAV Committee

#### 9.2.1 Patent Policy

Input papers LAP15-9.2.1 & LAP15-9.2.2 refer. LAP agreed that first documents should be posted to the IALA Website as suggested by the ENAV Committee but recommended that specialist advice be sought from a lawyer before the draft Recommendation on Patent Policy be forwarded to the Council for approval.

**Action item 21:** *The Secretariat to seek specialist advice from a lawyer on patents.*

## 10 World Wide Academy

### 10.1 ToRs for WWA technical experts

The revised General Terms and Conditions for IALA experts submitted as input paper LAP15.10.1 did not call for any comments.



## **10.2 French legal advice on contracts for experts**

Input papers LAP15-10.2, & LAP15-10.2.2 refer. LAP was content with the information provided and the new contract templates.

## **10.3 World Wide Academy risk register**

The WWA risk register as submitted as input paper LAP15-10.3 was noted.

## **11 AIS data used as evidence at court cases**

Input paper LAP15-11.1 and LAP15-12.2 were presented. LAP was of the opinion that the Panel was not able to provide valuable guidance to the IALA membership on this item and recommended that it should be taken out its Agenda.

## **12 AIS data protection**

There was no input paper under this Agenda item and LAP recommended to take it out.

## **13 Update on IALA-NET**

Little progress was reported under this Agenda item, for which no paper had been submitted. IALA-NET might suffer from a lack of publicity. Advertising IALA-NET should however be made taking account that IMO was against a free dissemination of AIS data. Such publicity should therefore be aimed at IALA members only and use IALA communication means only.

Jon Price agreed to discuss with the Secretary General whether to remove this item from its Agenda

## **14 World VTS Guide**

LAP commented input papers LAP15.14.1 & LAP15.14.2.

IMO Resolution A.857(20) is binding only for States parties to the SOLAS Convention and aims at competent authorities, not individual VTSSs. Also, the reliability of the information published, not certified by competent authorities, was questioned.

**Action item 22:** *Henning Osnes Teigene to amend the proposed input paper to the World VTS Guide Board and have it reviewed by Mary Dean. The paper should also address information control.*

## **15 IALA Risk Register**

Input paper LAP15-15.1 refers. A few risks were taken out and new ones were identified. An updated risk register is at output paper LAP15-20.6.

## **16 Review of output and working papers**

Output papers and working papers were not reviewed at the meeting. They appear at Annex D.

## **17 Review of action items**

Action items were reviewed and agreed. They are at Annex E.

## **18 Date and place of next meeting**

The 16th meeting of the IALA Legal Advisory Panel (LAP16) is tentatively planned for 11, 12 and 13 April 2016 at IALA Headquarters.

## **19 Approval of the report**

The report for LAP15 was to be approved by correspondence.

## **20 List of Annexes**

- A. Agenda  
A copy of the agenda is at Annex A.
- B. Participants  
A list of LAP15 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      LAP15 AGENDA**

### **Legal Advisory Panel**

15<sup>th</sup> Session  
Agenda item 1

### **LAP 15-1-1**

September 14-16, 2015  
IALA Headquarters

The 15<sup>th</sup> meeting of the IALA **Legal Advisory Panel** will be held from 14<sup>th</sup> to 16<sup>th</sup> September 2015. The venue for the meeting is IALA Headquarters in Saint-Germain-en-Laye, France.

The meeting will commence at 1000 hours on 14<sup>th</sup> September and is expected to finish at 1600 hours on the 16<sup>th</sup>.

### **LAP 15 - AGENDA**

1. Welcome address by the Secretary General
2. Approval of the agenda
3. Review of action items from LAP14
4. Review of input papers
5. Report of IALA Council 60
6. IALA change of status project
  - 6.1. Report of Change of Status (CoS) Council Group meeting
    - 6.1.1. Draft information paper to IMO
  - 6.2. Draft Convention text
  - 6.3. General Regulations (plans for completion of draft)
  - 6.4. MOU between IALA and China
  - 6.5. Input to CoS Council Group
7. IALA Basic Documents (as NGO)
8. Review of IALA Constitution
9. IALA Standards
  - 9.1. Legal status of IALA Standards
  - 9.2. Standard draft concept
  - 9.3. Template
  - 9.4. Approval process
10. Requests for advice from other IALA bodies
  - 10.1. From Council 60
    - 10.1.1. To review the draft IALA VTS Questionnaire in view of potential legal issues.
  - 10.2. From ENAV Committee.
    - 10.2.1. Patent policy
11. World Wide Academy
  - 11.1. ToRs for WWA technical visits

- 11.2. French Legal Advice on contracts for experts
- 11.3. WWA Risk Register
- 12. AIS data used as evidences at court cases
- 13. AIS data protection
- 14. Update on IALA-NET
- 15. World VTS Guide
- 16. Review of IALA Risk Register
- 17. Any other business
- 18. Review of output and working papers
- 19. Review of Action Items
- 20. Date and place of next meeting
- 21. Approval of the report

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## **ANNEX B      LAP14 PARTICIPANTS**

### **Australia      Australian Maritime Safety Authority**

Ms Mary DEAN  
Level 5, 82 Northbourne Avenue  
Braddon ACT 2612  
GPO Box 2181 Canberra ACT 2601  
Australia

Phone                      +61 2 62 79 56 40  
Fax                        +61 2 62 79 50 17  
e-mail (main):        mcd@amsa.gov.au

### **China      Maritime Safety Administration**

Ms Yilin WANG  
11 Jianguomennei Avenue  
Beijing 100736  
People's Republic of China

#### **Maritime Safety Administration**

Mr Liang YANG  
Room 404  
18, Anhuaxili 3<sup>rd</sup> District  
Chaoyang  
People's Republic of China

Phone                      +86 186 1087 6369  
Fax:                        +86 10 6529 9561  
Mobile phone:        +86 186 1087 6369  
e-mail (main):        brightman.cmsa@gmail.com  
e-mail (alternative) 8460709@qq.com

### **Finland      Finnish Transport Agency**

Mr. Matti ERONEN  
P.O. Box 33  
Opastinsilta 12A  
FI-00521  
00181 Helsinki  
Finland

Phone                      +358 20 637 373  
Mobile phone:        +358 20 637 39 31  
e-mail (main):        matti.eronen@fta.fi

### **France      Direction des Affaires Maritimes**

Mr Vincent DENAMUR  
Arche Sud  
92055 La Défense cedex  
France

Phone                      +33 1 43 17 46 92  
Fax                        +33 1 43 17 46 91

e-mail (main):       vincent.denamur@developpement-durable.gouv.fr

**Germany       Federal Waterways and Shipping Agency – Northern Region Office**

Ms. Christina SCHNEIDER  
Hindenburgufer 247  
24106 Kiel  
Germany

Phone               +49 431 3394 8102  
Fax                 +49 431 3394 6399  
e-mail (main):     christina.schneider@wsv.bund.de

**IALA       Secretary-General**

Mr. Francis ZACHARIAE  
10 rue des Gaudines  
78100 Saint Germain en Laye  
France

Phone               +33 1 34 51 70 01  
Fax                 +33 1 34 51 82 05  
e-mail (main):     francis.zachariae@iala-aism.org

**Deputy Secretary-General**

Mr. Michael CARD  
10 rue des Gaudines  
78100 Saint Germain en Laye  
France

Phone               + 33 (0)1 34 51 70 01  
Fax                 + 33 (0)1 34 51 82 05  
e-mail (main):     michael.card@iala-aism.org

**Technical and Operations Manager**

Mme. Marie-Hélène GRILLET  
10 rue des Gaudines  
78100 Saint Germain en Laye  
France

Phone               + 33 (0)1 34 51 70 01  
Fax                 + 33 (0)1 34 51 82 05  
e-mail (main):     marie-helene.grillet@iala-aism.org

**Consultant**

Ms. Aline de BIEVRE  
54 Grosvenor Road  
Twickenham  
TWI 4AE  
UK

Phone               + 44 (0)20 8892 9233  
e-mail (main):     aline@debievre.co.uk

**Japan       Japan Coast Guard**

Cdr. Hideki NOGUCHI  
Director for Coordination of International Cooperation,  
Marine Traffic Department  
2-1-3 Kasumigaseki

Chiyoda-ku  
Tokyo 100-8976  
Japan

Phone: +81 3 3591 6361 (ext. 6106)  
Fax : +81 3 3591 3590  
e-mail (main): jcghkotsukikaku7-6r9i@mlit.go.jp  
e-mail (alternative) hideki.noguchi@gmail.com

**Netherlands Ministry of Infrastructure and the Environment**

Mr Maarten BERREVOETS  
P.O. Box 20901  
2500 EX The Hague  
Netherlands

Mobile phone: +31 6 21 812 766  
e-mail (main): maarten.berrevoets@minienm.nl  
e-mail (alternative): maartenber@gmail.com

**Norway Norwegian Coastal Administration**

Mr Henning Osnes TEIGENE  
Kongens Gt. II  
6003 Aalesund  
Norway

Mobile phone: +47 97 98 35 92  
e-mail (main): henning.osnes.teigene@kystverket.no

**Sweden Swedish Maritime Administration**

Mrs. Maria FYRBY  
S-601 78 Norrköping  
Sweden

Phone +46 10 478 4909  
Fax: +46 11 10 19 49  
e-mail (main): maria.fyrby@sjofartsverket.se

**UK Trinity House**

Mr. Jon PRICE  
Tower Hill  
London EC3N 4DH  
UK

Phone +44 20 7481 6913  
Fax +44 20 7480 7662  
mobile phone : +44 7785 950541  
e-mail (main): jon.price@thls.org

## ANNEX C LIST OF INPUT PAPERS

Number	Agenda item	Title	Comments
LAP15-1.1	1	Agenda for LAP15	
LAP15-2.1	2	Review of action items from LAP14	
LAP15-4.1	4	Report of IALA Council 60	
LAP15-5.1	5	Report of change of status Council group	
LAP15-5.1.1	5	Draft submission to IMO	
LAP15-5.2.1	5	Draft convention – Introduction	
LAP15-5.1.2	5	Draft convention – Proposed text	
LAP15-5.1.3	5	Draft convention text – Discussion paper	
LAP15-5.4	5	Revised draft MoU between IALA and China	
LAP15-5.4.1 Rev	5	Rev MoU with China	Supersedes LAP15-5.4
LAP15-6.1	6	Draft Basic Documents	
LAP15-7.1	7	Amendments to IALA Constitution	
C59-8.1.3	8	Background to IALA standards	
LAP15-8.1	8	Legal status of IALA standards	
LAP15-8.2	8	Draft concept for IALA standards	
LAP15-8.3	8	Draft template for IALA standards	
LAP15-8.4	8	Approval process for IALA standards	
LAP15-9.1.1	9	IALA VTS questionnaire	
LAP15-9.2.1.1	9	IALA patent policy – Introduction	
LAP15-10.1	10	General terms for experts	
LAP15-10.2	10	French legal advice on contracts for experts	
LAP15-10.2.1	10	Contracts for experts options 1 & 2	
LAP15-10.2.2	10	Contract for experts option 3	
LAP15-10.3	10	Academy risk register	
LAP15-11.1	11	AIS data in court cases – Germany	
LAP15-11.2	11	AIS data in court cases – Finland	
LAP15-14.1	14	World VTS Guide – Introduction	
LAP15-14.2	14	IMO Res. A.857(20)	
LAP15-14.3	14	MSC Circ. 586	
LAP15-14.4	14	Draft LAP output on WVTSG	
LAP15-15.1	15	IALA risk register	



## **ANNEX D      LIST OF OUTPUT AND WORKING PAPERS**

Output documents (LAP15-20.x) are submitted for review or approval by a body other than the LAP.

Number	Title	Status
LAP15-20.1	Report of LAP15	To Council 61 to note
LAP15-20.2	Draft Convention text	To CoS2 to review
LAP15-20.3	Draft IALA Basic Documents	To PAP30 to review
LAP15-20.4	Draft template for IALA standards	To PAP30 to review
LAP15-20.5	Draft IALA VTS questionnaire	To VTS40 to note
LAP15-20.6	Revised IALA risk register	To Council 61 to consider

## **ANNEX E      ACTION ITEMS**

**Action item 1:** *The Secretariat to circulate LAP with the current Terms of Reference for review at LAP16.*

**Action item 2:** *Matti Eronen to propose a new text for paragraph 8 dealing with VTS, insisting on IALA's role.*

**Action item 3:** *Aline de Bievre to submit a new draft (within 2 weeks) incorporating Matti's new text and taking into account the amendments requested as listed above;*

**Action item 4:** *Secretariat to check what kind of papers can be submitted to IMO by NGOs (input, INF?) and associated time scales*

**Action item 5:** *The Secretariat to arrange for French and Spanish translations of the paper and forward it to IMO via the IALA approval process (Council approval by email) after it has been viewed by CoS2.*

**Action item 6:** *The Secretariat to check if IALA ever published guidance for inland waterways.*

**Action item 7:** *Francis Zachariae to consult with IMC about having Industrial Members within affiliate membership.*

**Action item 8:** *Mary Dean to draft the tacit amendment clause.*

**Action item 9:** *Jon Price to draft article 10.3 on privileges and immunities*

**Action item 10:** *The Secretariat to run an editorial check of the draft Convention text to ensure consistency.*

**Action item 11:** *Jon Price and the Secretariat to draft General Regulations based on the first draft existing and basic documents.*

**Action item 12:** *LAP members to let Marie-Hélène Grillet know if they intend to take part in the inter-sessional meeting on 12-13 January 2016.*

**Action item 13:** *The Secretariat and China to work together to present an input paper to Council based on examples of other similar MoUs and other agreements, with the current proposed MoU as an annex.*

**Action item 14:** *The Secretariat to finalize the draft Convention text and forward it to CoS2.*

**Action item 15:** *PAP to look into Rules and Procedures for Committees and Terms of Reference with a view to have them integrated into the Basic Documents and approved by Council 61, and going into force.*

**Action item 16:** *The Secretariat to add a reference to the Basic Documents in the ongoing revised draft Constitution.*

**Action item 17:** *The Secretariat to submit the revised standard template to PAP30 for approval by Council 61.*

**Action item 18:** *The VTS Committee to implement a formal process to keep the data securely and not have them made available in the public domain.*

**Action item 19:** *Aline de Bievre to provide the Secretariat with policies implemented by IGOs on data retention.*

**Action item 20:** *The Secretariat to develop a data protection policy for review by LAP.*

**Action item 21:** *The Secretariat to seek specialist advice from a lawyer on patents.*

**Action item 22:** *Henning Osnes Teigene to amend the proposed input paper to the World VTS Guide Board and have it reviewed by Mary Dean. The paper should also address information control.*

