



REPORT OF THE 19TH SESSION OF
THE IALA LEGAL ADVISORY
PANEL (LAP)

16 to 17 April 2019

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Report of the 19th session of the IALA

Legal Advisory Panel (LAP)

16 to 17 April, 2019

Executive Summary

The 19th session of the Legal Advisory Panel was held on 16 and 17 April 2019 at IALA Headquarters, with Christina Schneider as Chair, Henning Osnes Teigene as Vice-chair and Marie-Hélène Grillet as Secretary.

The meeting focused on the revision of the Basic Documents and finalized the fourth edition of the document for approval by Council.

LAP also studied in detail the draft revised IMO Resolution A.857(20) – Guidelines for Vessel Traffic Services and provided legal advice on the draft text for further consideration by the VTS Seminar and VTS Committee.

Having considered a draft guidance document on maritime law with regards to AtoN, LAP concluded that such a document would not be appropriate for publication under IALA umbrella but may be used by the World-Wide Academy in advising individual countries.

LAP studied the input paper from the ARM Committee on liability aspects of SBAS being considered as an AtoN by IALA. It was concluded that a small working group consisting of technical and legal experts, together with the Secretariat should be convened and explore the issue further.

An updated Dictionary disclaimer was produced to take account of the multilingual version, for posting to the Website.

Routine business included the review of the Risk Registers for IALA and the World-Wide Academy.

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Report of the 19th session of the IALA

Legal Advisory Panel (LAP)

GENERAL

The 19th session of the Legal Advisory Panel was held on 16 and 17 April 2019 at IALA Headquarters, with Christina Schneider as Chair, Henning Osnes Tegene as Vice-chair and Marie-Hélène Grillet as Secretary.

1. INTRODUCTION FROM LAP CHAIR AND SECRETARY-GENERAL

The Chair Christina Schneider introduced herself as Jon Price's successor and welcomed those present, noticing that the LAP held its first meeting after a two-year interruption, mainly due to its intensive work on the IGO project.

The Secretary-General added that the LAP will be able to focus again on legal issues. He presented the Secretariat reorganisation with Omar Frits Eriksson being both the Deputy Secretary-General and the Dean of the World-Wide Academy, Minsu Jeon heading the Technical Operations department supported by Marie-Hélène Grillet and Tom Southall as new Committee Secretary and the Academy being reinforced with Kevin Gregory as a permanent staff member. The Administration department was also strengthened with one additional staff member.

Turning to the third preparatory diplomatic conference held in March in Turkey he reported that the meeting was successful and the Diplomatic Conference will be called in February or March 2020 in Kuala Lumpur.

Finally, he briefly reported on the establishment by the 2018 General Assembly of the World Marine Aids to Navigation Day on the 1st of July of each year, commencing in 2019. On this occasion Spain had organised a major event and he was hoping that other countries would plan national events as well.

2. APPROVAL OF THE AGENDA

The Agenda (paper LAP19-2.1) was adopted.

The Agenda is provided at ANNEX A.

3. REVIEW OF ACTION ITEMS FROM LAP18

Input paper LAP19-3.1 refers.

All action items were noted as completed.

4. REVIEW OF INPUT PAPERS

The Chair informed the participants that input paper LAP19-14.3.1 had been withdrawn. A list of input papers is provided at ANNEX C.

5. REPORTS OF IALA COUNCIL SESSIONS 65 TO 68

Input papers LAP19-5.1 to LAP19-5.4 refer.

The reports were noted.

6. REPORTS OF PAP SESSIONS 33 TO 37

Input papers LAP19-6.1 to LAP19-6.5 refer.

The reports were noted.

7. IALA CHANGE OF STATUS PROJECT

7.1 Update on project and Preparatory Diplomatic Conference on 12 to 14 March

Secretary-General Francis Zachariae reported that there were a few outstanding issues in the draft convention text to be sorted out in Kuala Lumpur, especially the language issue. Most delegations had come to the conclusion that it was not possible to have English as the only official language but agreed that it should be the only working language. It is likely that there will be more than one official language, the final decision remaining with the Diplomatic Conference.

During the period of time from this meeting until the Diplomatic Conference the draft General Regulations should be finalised in order to have them in Kuala Lumpur. The discussion and decision about the draft General Regulations will take place at the first General Assembly of the Organization.

7.2 Headquarters Agreement

The Secretary-General reported that there was a mature draft, similar to that of other IGOs. The draft will be discussed more in detail with the French Ministry of Foreign Affairs.

8. REVIEW OF IALA CONSTITUTION

The Chair said that this was a standard Agenda item. The Constitution had been agreed the year before and no change had been proposed so far.

9. REVIEW OF BASIC DOCUMENTS

Input papers LAP19-9.1, LAP19-9.1.1 and LAP19-9.1.2 refer.

The Chair suggested considering the document article by article, a process that was agreed by the participants.

Remarks were made as follows:

- Industrial Members Committee

The Secretary-General reported that structural developments since the creation of the Industrial Members Committee led the Secretariat to suggest replacing the Industrial Members *Committee* by an Industrial Members *Group* and their current *Constitution and Bye-Laws* by *Terms of Reference*. This will however require the approval of the General Assembly of Industrial Members and in the meantime the current wording and Annex have been kept in the draft revised document. He was about to meet with the IMC and discuss the matter.

- Annexes on PAP and LAP

The Secretariat should ensure consistency between the Annexes.

- All Articles

All sub-sections should be numbered.

A number of improvements were made to the text and it was agreed that the draft revised Basic Documents should be submitted to the Council for approval at its 69th session.

Action item 1

The Secretariat to finalise consistency between Annexes on PAP and LAP, number all sub-sections and submit the amended draft Basic Documents (output paper LAP19-22.1) to the Council for approval at its 69th session.

10. GUIDANCE DOCUMENT ON MARITIME LAW WITH REGARD TO ATON

Input paper LAP19-10.1 refers.

The paper was submitted by the ARM Committee to support the Academy in its maritime safety improvement missions.

There was a consensus that, although the aim of the guidance document was clearly understood, the Annex – a template for a draft national law – was found inappropriate. It is not the role of IALA to draft national laws.

This would not, however, prevent the Academy to use it as a supporting internal document, on request by a country and within the limits of a specific mission.

Action item 2

The LAP Chair and Vice-Chair to write an answer to the ARM Committee (output paper LAP19-22.2) conveying LAP advice not to publish a document presenting a draft Act for national laws.

11. LIABILITIES WITH REGARD TO SATELLITE BASED AUGMENTATION SYSTEMS (SBAS)

Input papers LAP19-11.1 and LAP19-11.1.1 to LAP19-11.1.4 refer.

The Chair introduced the papers and explained that the enquiry was about the liability issues for National members when beacons are used to forward the signals, if IALA declares that SBAS are marine aids to navigation.

The Secretary-General added that the issue came up from the cooperation with the European GNSS Agency. SBAS is a system used to improve the accuracy of the GNSS signals, in lieu of the land-based DGNSS, which has been discontinued in many places. SBAS, originally developed for the aviation, is now opening to maritime navigation.

He concluded by saying that according to the IALA definition of a Marine Aid to Navigation, SBAS is an AtoN, covered by SOLAS Chapter V, and as such there could be liability issues for the countries.

A lively debate followed these presentations, the highlights of which are as follows:

- Experts tend to think that liability should remain with the service provider, which may be specified in service agreements;
- There might be different national views on what an AtoN is;
- Clarification is needed on what part of the service is actually concerned: the whole service or only the beacons transmitting the signals;
- There are many communication services, not provided by national authorities, which are considered as AtoN;
- IALA issues best practices only. Should it decide that SBAS is an AtoN, this should not impact national liabilities.

The Chair came to the conclusion that LAP was not able, based on the current information, to provide any guidance at this point in time. She suggested calling a meeting with relevant technical experts to understand all consequences, not limited to liabilities. The outcome of such meeting may be adding the subject to the Work Programme, should IALA declare that SBAS is an AtoN.

Action item 3

The Secretary-General to call an inter-sessional meeting with technical experts and GSA to draft preliminary conclusions on the liability issues, should IALA declare SBAS an AtoN.

12. DISCLAIMERS FOR THE IALA DICTIONARY (IN VIEW OF 3 LANGUAGES)

Input papers LAP19-12.1 refers.

The Chair explained that the multilingual version had not been taken into account when the disclaimer was first developed.

LAP looked at the draft submitted, agreed some improvements and requested the Secretariat to post it.

Action item 4

The Secretariat is requested to post the revised Dictionary disclaimer (output paper LAP19-22.3) to the Website.

13. PROPOSED CHANGES TO IMO RESOLUTION A.857(20)

Input papers LAP19-13.1 and LAP19-13.1.1 refer.

Kevin Gregory explained that the revision of the Guidelines was on the Committee Agenda for a long time, and now IALA had been successful in having it on the IMO work programme. A correspondence group had worked hard on it and a provisional draft had been considered by the VTS Committee at its latest meeting.

During this meeting, which was attended by an IMO representative, the following comments were made: is it necessary to extend VTS boundaries or is this already covered by SOLAS; SOLAS Chapter V Regulation 11 provides for VTS outside boundaries when there is a mandatory ship reporting system only; SOLAS does not allow VTS beyond territorial waters.

LAP participants added the following remarks:

- Section 3 – regulatory and legal framework

It is suggested that section 3.1 is deleted as this is general in nature and not specifically related to VTS. Furthermore, the manner and methods of the implementation of international treaties is a national matter.

Within section 3.3, it is suggested that the text *‘and geographic and environmental conditions’* is deleted. This would serve to harmonise the section with SOLAS Chapter V, Regulation 12 (paragraph 2) and that geographic and environmental considerations would be sufficiently encompassed in an assessment of the volume of traffic and degree of risk.

- Section 4 – responsibilities

Within section 4.1, noting that the draft Resolution text is directed to ‘Governments’ and that ‘Governments’ are referred to elsewhere in the draft Guidelines, it is suggested that the term ‘Contracting Government’ be deleted from section 4 and replaced with ‘Government’.

It is suggested that within section 4.1.1 the text of *‘promulgate laws and regulations to’* is deleted for the same reasons as the proposed deletion of section 3.1 reflecting that the manner and methods of the implementation of international treaties is a national matter.

Within section 4.4, it is not clear as to what is meant by *‘the provisions and instructions given to the ship by the VTS’*. Whilst the term ‘provisions’ is contained within SOLAS Chapter V, Regulation 12 (paragraph 4) it is not clear what is meant by this. It may be beneficial to articulate what is meant by ‘provisions’ (which may be the procedures/regulations/rules of a VTS). It may also be beneficial to define what is meant by a ‘participating ship’.

Considering the proposed text stating that a Master *‘may be required to report on their actions should they disregard any instruction, advice or request given by a VTS’*, whilst the basis for such a report for disregarding an instruction is relatively clear, with the IMO Standard Marine Communication Phrases (SMCP) stating that *‘the recipient has to follow this legally binding message unless s/he has contradictory safety reasons which then have to be reported to the sender’* the situation may not be so clear with respect to advice and request.

The SMCP states that *‘advice does not necessarily have to be followed but should be considered very carefully’*. Therefore, it is not considered that a VTS may ‘require’ a Master to report on their actions if advice is disregarded.

Furthermore, the SMCP definition of request is *‘this indicates that the following message is asking for action from others with respect to the vessel. The use of this marker is to signal: I want something to be arranged or provided, e.g. ship’s stores requirements, tugs, permission, etc’* and that the term request *‘must not be used*

involving navigation, or to modify COLREGS' it is therefore suggested that the inclusion of the term request in this section is not appropriate.

- Section 5 – purpose of a VTS

Within section 5.2 and bearing in mind the proposed change in structure of the three types of VTS, it is suggested to modify the text to better articulate the purpose of a VTS related to the giving of 'information, advice, warnings and instructions to manage the safe and efficient navigation of ships...'. It is further suggested to substitute the term 'transit' for 'navigation'.

Sections 5.1.1 and 5.2.2 provide examples of what a VTS may do with respect to the provision of timely and relevant information and the monitoring and management of traffic. However, section 5.2.3 states that a VTS should respond to developing unsafe situations but goes on to provide examples of such unsafe situations without providing any guidance on what such a response may include.

Further within section 5.2.3, with respect to the provision of an instruction, it is contradictory to assist with a decision on board that was made onshore by a VTS. Although the final decision remains with the Master (see section 6.1), this will only be relevant in cases when there is an imminent danger for the ship or its crew by following the instruction. Therefore, it cannot be assistance to the decision-making process onboard. This could lead to an interpretation that instructions issued by a VTS are not binding and everything will be up to the Master. This would also question the status of a VTS. The main message within section 5.2.3 must be addressed to the VTS and not the Master onboard to ensure that the VTS absolutely has to act in unsafe situations to maintain or regain an acceptable level of safety.

To better articulate what is expected of a VTS in response to a developing unsafe situation the text could possibly be amended to 'Responding to developing unsafe situations by undertaking all necessary measures to maintain or regain an acceptable level of safety. Such unsafe situations may include: ...'.

- Section 6 – general principles

Two minor modifications are suggested in sections 6.1 and 6.2

- Section 7 – qualifications and training

The footnote of section 7.2 refers to 'the standards published by IALA'. Whilst the relevant IALA Standard is S1050 on Training and Certification, the second part of the footnote refers to Recommendation R0103 on the standards for the training and certification of VTS personnel. This text may benefit from review to avoid any confusion between S1050 and R0103.

14. ADVICE ON GUIDANCE DOCUMENTS UNDER DEVELOPMENT OR REVIEW

Input papers LAP19-14.2.1 and LAP19-14.2.2 refers.

LAP considered the draft recommendation and guideline on the Governance of AtoN Service and Delivery. No further comments were provided by the LAP at this stage.

15. REVIEW OF IALA RISK REGISTER

Input paper LAP19-15.1 refers.

LAP reviewed the IALA Risk Register that had been updated by the Secretary-General after the 3rd Preparatory Diplomatic Conference of March 2019. There were no changes required and the Risk Register should be submitted to Council 69 for consideration.

Action item 5

The Secretariat is requested to forward the IALA Risk Register (input paper LAP19-15.1) to Council69 for consideration.

16. REVIEW OF WORLD-WIDE ACADEMY RISK REGISTER

Input paper LAP19-16.1 refers.

LAP reviewed the World-Wide Academy Risk Register that had been updated to include personal safety risks for the WWA staff. There were no changes required and the WWA Risk Register should be sent to Council 69 for consideration.

Action item 6

The Secretariat is requested to forward the World-Wide Academy Risk Register (input paper LAP19-16.1 to Council 69 for consideration.

17. REVIEW OF OUTPUT AND WORKING PAPERS

The list of output papers is at Annex C. There were no working papers.

18. REVIEW OF ACTION ITEMS

The list of action items is at Annex E.

19. DATE AND PLACE OF NEXT MEETING

The next LAP meeting (LAP20), is scheduled for October 29-30, 2019.

20. APPROVAL OF THE REPORT

The report of LAP19 was to be approved by correspondence.

Legal Advisory Panel19th Session

Agenda item 1

LAP 19-2.1

April 16 - 17, 2019

IALA Headquarters

The 19th meeting of the IALA **Legal Advisory Panel** will be held on 16th and 17th April 2019 at IALA Headquarters, 10 rue des Gaudines, 78100 Saint-Germain-en-Laye, France.

The meeting will commence at 1000 hours on 16th April and is expected to finish at 1600 hours on the 17th.

LAP 19 - PROVISIONAL AGENDA

(2019-02-26)

1. Introduction from LAP Chair & Secretary General
2. Approval of the agenda
3. Review of action items from LAP18
4. Review of input papers
5. Reports of IALA Council sessions 65 to 68
6. Reports of PAP sessions 33 to 37
7. IALA change of status project
 - 7.1. Update on project and pre-Diplomatic Conference on 12 to 14 March
 - 7.2. Headquarters Agreement
8. Review of IALA Constitution
9. Review of Basic Documents
10. Guidance document on Maritime Law with regard to AtoN
11. Liabilities with regard to satellite based augmentation systems (SBAS)
12. Disclaimers for the IALA Dictionary (in view of 3 languages)
13. Proposed changes to IMO Resolution A.857(20)
14. Advice on guidance documents under development or under review
15. Review of IALA Risk Register
16. Review of World-Wide Academy 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 (29-30 October 2019)
21. Approval of the report

LAP Chair	Christina Schneider Federal Waterways and Shipping Agency Christina.schneider@wsv.bund.de
LAP Vice-Chair	Henning Osnes Teigene Norwegian Coastal Administration henning.osnes.teigene@kystverket.no
Denmark	Kasper Jespersen Danish Maritime Authority kin@frv.dk
Finland	Finnish Transport Agency Matti Eronen Matti.eronen@fta.fi
Sweden	Kerstin Hansdotter-Skold Swedish Transport Agency kerstin.hansdotterskold@sjofartsverket.se
UK	Thomas Arculus Trinity House Lighthouse Service Thomas.arculus@trinityhouse.co.uk
IALA	Secretary-General Francis Zachariae francis.zachariae@iala-aism.org Technical Operations Manager Marie-Hélène Grillet marie-helene.grillet@iala-aism.org Education and Development Manager, World-Wide Academy Kevin Gregory Kevin.gregory@iala-aism.org

Meeting	Agenda Item	Title / Author (if required)	Source	Output papers
LAP19-	2.1	Provisional Agenda	Secretariat	
LAP19-	3.1	Review of action items from LAP18	Secretariat	
LAP19-	5.1	Report of Council 65	Secretariat	
LAP19-	5.2	Report of Council 66	Secretariat	
LAP19-	5.3	Report of Council 67	Secretariat	
LAP19-	5.4	Report of Council 68	Secretariat	
LAP19-	6.1	Report of PAP33	Secretariat	
LAP19-	6.2	Report of PAP34	Secretariat	
LAP19-	6.3	Report of PAP35	Secretariat	
LAP19-	6.4	Report of PAP36	Secretariat	
LAP19-	6.5	Report of PAP37	Secretariat	
LAP19-	8.1	IALA Constitution May 2018	Secretariat	
LAP19-	9.1	Review of Basic Documents	Secretariat	
LAP19-	9.1.1	Draft IALA Basic Documents Ed.4 June 19 (tracked changes)	Secretariat	
LAP19-	9.1.2	Draft IALA Basic Documents Ed.4 June 19 (clean copy)	Secretariat	LAP19-22.1
LAP19-	10.1	Maritime law with regard to AtoN	ARM Committee	LAP19-22.2
LAP19-	11.1	Consideration of SBAS as AtoN and the IALA competent authority role	European GNSS Agency and Secretariat	
LAP19-	11.1.1	EMRF-SPWG 2018 Workshop Report	EMRF	
LAP19-	11.1.2	EGNOS service provision scheme	EMRF	
LAP19-	11.1.3	EGNOS Maritime and IWW Safety Information	EMRF	
LAP19-	11.1.4	EGNOS Working Arrangements Liabilities Scheme	EMRF	
LAP19-	12.1	Disclaimers for the IALA Dictionary	LAP Chair	
LAP19-	12.1.1	LAP8-output-02 IALA Dictionary disclaimer	LAP8	LAP19-22.3
LAP19-	13.1	Review of IMO Resolution A.857(20)	VTs Committee	
LAP19-	13.1.1	Draft revised IMO Resolution A.857(20) - Guidelines for Vessel Traffic Services	VTs Committee	LAP19-22.4
LAP19-	14.1.1	Draft Recommendation on Governance of AtoN Service Delivery (tracked changes)	ARM Committee	
LAP19-	14.1.2	Draft Recommendation on Governance of AtoN Service Delivery (clean version)	ARM Committee	LAP19-22.5.1

Meeting	Agenda Item	Title / Author (if required)	Source	Output papers
LAP19-	14.2.1	Draft Guideline on the Governance of AtoN Service Provision (tracked changes)	ARM Committee	
LAP19-	14.2.2	Draft Guideline on the Governance of AtoN Service Provision (clean version)	ARM Committee	LAP19-22.5.2
LAP19-	14.3.1	Guidelines with topics that are outside IALA's remit	Secretariat	
LAP19-	15.1	IALA risk register	Secretariat	LAP19-22.6
LAP19-	16.1	WWA risk register	WWA	LAP19-22.7

Meeting	No.	Title	Action
LAP19-	21.1	Report LAP19	To Council to note
LAP19-	22.1	Basic documents Edition 4, June 2019	To Council to approve
LAP19-	22.2	Note to ARM Committee on maritime law with regard to AtoN	To ARM Committee to note
LAP19-	22.3	Dictionary disclaimers with translations	To Dictionary manager
LAP19-	22.4	Draft revised IMO Resolution A.857(20)	To Seminar on the revision of the Resolution
LAP19-	22.5.1	Draft Recommendation on Governance of AtoN Service Delivery	To ARM Committee
LAP19-	22.5.2	Draft Guideline on the Governance of AtoN Service Provision	To ARM Committee
LAP19-	22.6	IALA risk register	To Council to consider
LAP19-	22.7	WWA risk register	To Council to consider

1. *The Secretariat to finalise consistency between Annexes on PAP and LAP, number all sub-sections and submit the amended draft Basic Documents (output paper LAP19-22.1) to the Council for approval at its 69th session.*
2. *The LAP Chair and Vice-Chair to write an answer to the ARM Committee (output paper LAP19-22.2) conveying LAP advice not to publish a document presenting a draft Act for national laws.*
3. *The Secretary-General to call an inter-sessional meeting with technical experts and GSA to draft preliminary conclusions on the liability issues, should IALA declare SBAS an AtoN.*
4. *The Secretariat is requested to post the revised Dictionary disclaimer (output paper LAP19-22.3) to the Website.*
5. *The Secretariat is requested to forward the IALA Risk Register (input paper LAP19-15.1) to Council 69 for consideration.*
6. *The Secretariat is requested to forward the World-Wide Academy Risk Register (input paper LAP19-16.1 to Council 69 for consideration.*

DRAFT



10, rue des Gaudines - 78100 Saint Germain en Laye, France
Tél. +33 (0)1 34 51 70 01- Fax +33 (0)1 34 51 82 05 - contact@iala-aism.org
www.iala-aism.org

International Association of Marine Aids to Navigation and Lighthouse Authorities
Association Internationale de Signalisation Maritime