

IALA Legal Advisory Panel – 6th meeting (LAP6)

Meeting Report

General

The sixth meeting of the IALA Legal Advisory Panel (LAP6) was held on 1st and 2nd October 2009, at the IALA Headquarters in Saint Germain en Laye, France, with Svend Eskildsen, Director General of the Danish Maritime Safety Administration (DaMSA), as Chairman. The Secretary for the meeting was Marie-Hélène Grillet.

Welcome

The Chairman opened the meeting by welcoming all participants.

Apologies for absence

Apologies for absence were received from Martin Dyas of Ireland, Kjersti Tusvik of Norway, Siegbert ?? and Alex Weller of the USA, who however took part by telephone in the discussions pertaining to Agenda item 4.2 – US policy on AIS data sharing.

1 Approval of the agenda

The agenda for LAP6, as set out in LAP6/1/1 was approved without any changes.

2 Review of action items from LAP 5

The Action Items from LAP5 were noted as completed or in progress with the following comments and exceptions:

Action item 3: Legal issues will be discussed at the next IALA-NET Workshop scheduled in Copenhagen October 5 - 9. LAP6 was to produce a liaison note to be presented at the meeting by DaMSA and to be send to IALA Council.

Action item 6: Jacques Manchard and Barham Touré presented verbally consultancy contracts used in France.. Jon Price offered for inspiration to forward standard contracts used by Trinity House.

3 Review of input papers

Input papers to the meeting were reviewed (cf. List of input papers). LAP6/7/1 and LAP6/8/1 were tabled at the meeting and added to the list.

4 Requests for advice from other IALA bodies – From Council: Legal aspects in relation to the IALA-NET project (legal issues re. controlling and retransmitting AIS data)

4.1 – EU Directive on AIS data

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Input documents LAP6/4/1 (Dissemination of AIS data – Trinity House position), LAP6/4/2 (Dissemination of AIS data – Norwegian Coastal Administration Position), and LAP6/4/3 (US policy on AIS data sharing) were examined, together with the Danish input paper from LAP 5/4/2 concerning Legal aspects of IALA-NET project.

Jon Price explained that he had chosen to take the Trinity House perspective as each country has its own law regarding AIS data sharing.

The 2002/59/EC Directive is to be superseded by Directive 2009/17/EF, and the member states are required to bring the law into force by November 2010 at the latest.

The EU Directives aim at facilitating AIS data sharing between EU and EEA countries but not outside this area.

The European Maritime Safety Agency (EMSA) has started to build regional AIS data sharing services, which might involve countries outside the EU (1st service in the Baltic Sea, then North Sea, etc., down to the Mediterranean).

Bahram Touré reported that a meeting he attended in Brussels drew the Member States' attention on the possible prior manipulation of AIS data. They were encouraged to check the source and use data coming from administrations only.

Discussion then took place on what exactly AIS is: AIS is not a system that gives the position only. It adds information on other aspects but does not attain information related to an identified or identifiable natural person.

It was then again made clear that the principle of IALA-NET is to share AIS data with countries only. IALA-NET would not have customers or commercial stakeholders.

Individual countries' positions regarding dissemination of AIS data are varying, as are their own regulations on the dissemination of data. Based on the example of a private company starting launching a satellite system with AIS capability, the participants recognised that the technology cannot be stopped and mitigation measures should be found. In Denmark the mitigation measure is the introduction of a delay in the dissemination of the information. It was also added that the binary messages transmitting encoded, confidential information, would not be part of IALA-NET.

In Australia, there is directive governing AIS data dissemination. Individual MOUs are started with individual countries.

The conclusion was that there is no legal obstacle within the EU to sharing AIS data within or outside the EU. This was the same for those countries present not in the EU. The IMO concern also expressed in the EU 2009 Directive preambles that the publication of AIS data transmitted by ships could be detrimental to the safety or security of ships and port facilities or the protection of the environment. Care must be taken however not to disseminate confidential information.

Jon Price and Barbara Pearson met to extract information from the input papers and prepare a liaison note for the next IALA-NET steering Group meeting.

Action item 1:

The Secretariat is requested for forward LAP6-output-02 on the legal aspects of the IALA-NET project to the next meeting of the IALA-NET Steering Committee and the IALA Council.

5 Possible relocation of IALA Headquarters

The Secretary General gave a brief introduction to this agenda item.

There are several parties interested in the improvement of the IALA Headquarters, especially since the return of the e-Navigation in HQ, which with its 95 participants brings it beyond its possibilities.

The Netherlands came with a bid book to host the Headquarters, with 800 m² instead of the current 542 m². The bid book was scrutinized by a small group before it is submitted to the Council with some recommendations.

France is also keen in keeping IALA in the country and they investigate different possibilities.

An independent company, specialised in moving businesses was hired by IALA to make a comparison between the two countries, using Richmond on Thames in the UK as a benchmark. If the benchmark proves to be a better option than the other two, the Council might choose the benchmark.

He added that other countries seemed to be interested in hosting IALA, and that recognition by the host country is as important as the square metres.

After a few questions asked to the Secretary General, the participants agreed that the following aspects should be taken into consideration when the decision to move is made:

- There is an absolute necessity of taking legal advice on the status of the new entity;
- The new Headquarters must be close to a international airport;
- Access to working permits for staff from outside the EU ;
- The economic implications: moving, legal advice in both the previous and future countries, payment off the staff. An estimation of costs is needed.

Action item 2:

Location Strategy Management to assess the risks of the consequences associated with the future location of IALA

6 Possible development of a MOU between IALA and its Host Country

Input document LAP6/6/1 (Draft MOU between IALA and its Headquarters Host Nation) was presented by Barbara Pearson.

Gary Prosser had suggested a MOU skeleton to be submitted to the Council listing the types of issues to be considered. The purpose was to highlight what the Host Country is prepared to provide. The MOU would be subject to the NGOs status in the Host Country. An MOU is not a legally enforceable contract.

On the question about what the Host Nation would expect back, Jacques Manchard said that France, as the present Host Country was not expecting any local benefit. His personal view was however that France might ask for more care being taken of developing countries, which do not have the possibility to follow the very high tech developments and are often “left behind”.

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He added that in general he found in the draft MOU the arrangements that his country was already prepared to provide.

Action items 3:

Jon Price to ask Jeremy de Halpert to make a contribution to the MOU and open the bid book to evaluate it against the MOU.

Barbara Pearson and Jon Price to develop a new draft MOU based on the contents of the bid book.

The Secretariat to submit the revised draft MOU to the IALA Council.

7 Standard contract for IALA consultancy services

The discussion focused on the court supposed to deal with disputes. Although it could be beneficial to use a neutral court, the French court of Versailles was recommended: it is more difficult to find good information on foreign laws and a court is often more in favour of an organization that has its seat in the same country.

Contracts can be bilingual.

Action item 4:

Jacques Manchard to meet with Jean-Charles Leclair to harmonize standard draft contract with standard contracts used under French law.

8 Responsibilities of pilot authorities

Svend Eskildsen said that due to Kjersti Tusvik being unable to attend the Norwegian case accident she was supposed to present would be postponed until the next meeting. He reported however that in Denmark a special body had been formed to deal with pilots errors where the loss is above 250,000 Euros. Furthermore he mentioned the homepage www.igpandi.org where to find information concerning shipowners liability.

A new input paper was introduced, LAP6/8/1 – The grounding of Minerva Concert on 14 May 2007.

In this specific case the Pilotage Authority considered that the pilot wasn't liable for the grounding. However, bad communications occurred with the Master in a very busy area.

A discussion followed on the various interpretations of liability in the various countries:

- In Denmark it is the master who is responsible for the ship. The pilot's liability is unlimited but is insured. Claims for damages will be limited according to what the pilot is paid compared to the value of the loss.
- In Australia pilots are regarded as service providers but at the end the ship-owner is liable.
- Finland has the same limitations as Denmark, except under special circumstances such a pilot being under the influence of alcohol at the time of the accident. However, if the employer was proved aware of the pilot's drinking problems, the employer is sued. Two different types of damage are also taken into consideration: damage to the environment or a third parties; and damage to the ship. The situation is also different according to the pilotage being given by a private company or a State agency.

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- In the UK pilots are not liable for more than a certain amount of Pounds Sterling

9 Review of IALA risk register

The Risk Register was reviewed.

Paragraph 2 was amended to add “Refer to the original document” when articles on IALA guidance documents are published.

With regard to Paragraph 3.1 there was a need to revise Workshop Guidelines in order to add a list of items (including insurance) to be taken into account when organising a workshop.

Action item 5:

The secretariat is requested to ask the PAP to revise the Guidelines on the Organisation of Workshops and Seminars taking into account the LAP advice (Risk Register Para. 3.1)

10 Any other business

Svend Eskildsen suggested discussing the value of AIS data in court cases - are they accepted as evidence? at the next meeting.

Action item 6:

All LAP members to bring examples of AIS data taken as evidence in court cases

11 Review of output and working papers

The list of input / output papers is attached as Annex 2.

12 Review of action items

The list of action items is attached as Annex 3.

13 Date and place of next meeting

The 7th meeting of the IALA Legal Advisory Panel (LAP67) will be held at IALA Headquarters on 1st-2nd October 2010.

Due to some members experiencing problems with the Website, it was agreed that any information and papers related to the meeting and the LAP in general should be sent by e-mail.

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Annex 1 – LAP6 Participants

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Annex 2 – Input / Output / Working papers

Input Papers

Number	Title	Comments
LAP 6/1/1	Draft Agenda	Approved
LAP 6/4/1-1	Dissemination of AIS data – Trinity House position	LAP6-output-02
LAP 6/4/1-2	Dissemination of AIS data – Norwegian Coastal Administration position	
LAP 6/4/2	Dissemination of AIS data – United States Coast Guard position	
LAP 6/6/1	Draft MOU between IALA and its Headquarters Host Nation –	LAP6-output-04
LAP6/7/1	Trinity House conditions for consultancy	Noted
LAP 6/8/1	The Grounding of MINERVA CONCERT	Noted
LAP 6/9/1	IALA Risk Register	LAP6-output-03

Output Papers

<i>Number</i>	<i>Title</i>	<i>Comments</i>
LAP6-output-01	Draft report of LAP6	Members to comment and send to Council
LAP6-output-02	Liaison note to IALA-NET Steering Group	Send to IALA-NET Workshop in Cph. and IALA Council
LAP6-output-03	IALA Risk Register	Send to Council
LAP6-output-04	Revised draft MOU with IALA Host country	Members to comment <u>by end of October 2009</u> and send to Council

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Annex 3 – List of Action Items

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