



Report of the 8th Session of the IALA Legal Advisory Panel

May 4-5, 2011

Executive Summary

- Joint meeting with the IALA Pilotage Authority Forum (PAF).
- Review of Working Procedures for IALA Committees
- Review of Host Country Memorandum of Understanding for agreement by Council and signature by the Host Country representative and IALA Secretary General.
- Review of IALA Risk Register.

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Legal Advisory Panel
8th Session

4-5 May 2011

Report of the 8th Session of the IALA Legal Advisory Panel

1 General

The 8th meeting of the **Legal Advisory Panel** was held on 4 and 5 May 2011 at IALA, with Svend Eskildsen as Chair. The Secretary for the meeting was Marie-Helene Grillet.

Apologies for absence were received from Mary Dean of Australia. IALA has not heard from Alex Weller of the USCG.

1.1 Welcome

The Chairman opened the meeting by welcoming all participants. Each participant introduced themselves. He regretted that the short time (2 days) allocated to the meeting prevented members from other parts of the world to attend and requested that the Panel thinks of a solution to allow these members to attend. Teleconference/videoconference was suggested, as well as arranging for the meetings to be held back to back with the IMO Legal Committee meetings.

1.2 Approval of the agenda

The agenda for LAP8, as set out in LAP8/1/1 Rev1 was reviewed and approved.

2 Review of input papers

The input papers were reviewed.

3 Review of action items from LAP 7

The Action Items from LAP7 were noted as complete or in progress with the following comments:

Action item 7 was still pending due to the IALA-NET current situation.

4 Requests for advice from other IALA bodies

4.1 From ANM Committee: Legal requirements surrounding the IMO Wreck Removal Convention

This item was completed prior to the meeting and was a good example of work by correspondence. The IMO Wreck Removal Convention could well require a review of national laws, to bring them into line with the Convention. There was the potential for two legal systems to be in operation if a country adopted the Convention for the area from its territorial sea to the end of its exclusive economic zone but did not opt to apply it to its territorial sea area. The Panel thought it would be easier to amend national laws where needed, rather than seeking to amend the Convention, which could take many years.

4.2 From PAP: update on IALA Dictionary disclaimer

Editorial corrections were made to the disclaimer prepared by Omar-Frits Eriksson. The question of languages other than English was raised. The conclusion was that a disclaimer should be prepared stating that the English version, English being the IALA working language, is the authentic version. The same should appear in all IALA publications. Jon Price volunteered to draft such a disclaimer. It is desirable to study the need for translations of such disclaimers.

Action item

Jon Price to prepare a draft disclaimer for all IALA documents stating that the English version is the authentic version (for review at LAP9).

Discussions on IALA documentation also raised a question about copyrights: is copyright automatic in France or not? It was agreed that the French member should look into the national legislation and report.

Action item

The French member to explore what is the French law regarding copyrights and report to LAP9.

4.3 From PAP: review by LAP of definitions of terms contained in the IALA Dictionary that might be legally sensitive

The LAP cannot look into all terms in the Dictionary. Committees are requested to harmonize the definitions between themselves and refer to the LAP when they have identified terms that might be legally sensitive.

Action item

The IALA Technical Co-ordination Manager should ask the Committees to send to the LAP the terms in the IALA Dictionary they think are legally sensitive.

4.4 From PAP: how to reflect the necessary neutral national positions of delegates in the IALA Constitution and Rules of Procedures for IALA Committees

The reason for requesting advice is the statements made too often by the participants as national and/or political statements. It should be made clear that the Committees are resources of experts, not national representatives, and as such should act as technical experts only. The LAP looked at the Rules of Procedures and agreed some changes in Paragraph 4, replacing the previous mentions to "representation" with "membership".

It was agreed that the Panel does not qualify to propose ways of reducing the attendance to some Committees and that it would look into changes to the Constitution when discussion have started at Council.

5 Review of the IALA Maritime Buoyage System Agreement

There was nothing to report under this Agenda item.

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

The case was not exactly similar to the IWRAP one but IALA could be asked to maintain the software, with the support of some National Members to assist with maintenance, and the Secretary General was seeking LAP advice before he goes further.

The LAPs first reaction was that a disclaimer should be published, stating that the software is available but IALA does not take responsibility for it. More information was needed before a definitive response could be provided.

7 Draft MOU between IALA and its Host Country

A new paper superseding input document LAP8/7/1 was tabled at the meeting. This was a final revision of the various drafts already provided, all based on the bid book presented by The Netherlands in support of their candidature to be the IALA Host Country. Several articles were not in accordance with the French situation and Jacques Manchard invited the Panel to scrutinize and amend it according to the information he would give on each article.

Detailed review was made and the LAP agreed a new text for approval by the Council and subsequent signature by the French Government representative and the IALA Secretary General when the French version is ready. In this particular case it was agreed that both French and English versions would be equally authentic.

The main changes concerned the way in which IALA was defined (International association instead of NGO) and support by the host country was extended to meeting participants in addition to the staff. As a first step to implementation it was agreed that the IALA contact at the Ministry of Foreign Affairs should be invited to the next meeting. This would be an opportunity for him to learn more about IALA with a view to ascertaining whether IALA would benefit from a new status for international organisations, which is being considered at Governmental level.

Action items

The Secretariat to invite Emmanuel Cocher to the next LAP meeting, to discuss progress made regarding a potential new status for IALA.

Jacques Manchard to forward amended draft MOU to the Director of Maritime Affairs and circulate it again to LAP if changes are made, by May 20th to have it submitted to the next Council.

8 AIS data used as evidences at court cases

There was no input paper under this Agenda item. AIS data have not been used for this purpose yet but some court cases were ongoing in the UK and Germany and it was agreed that Jon Price and Stefan Jenner would prepare reports in advance to the next meeting.

Action item

Jon Price and Stefan Jenner to prepare summaries on cases where AIS data are used as evidences for circulation to the LAP members before the next meeting.

9 Update on IALA-NET

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

Problems were reported with the search of a proper software. Another issue is the fact that not all IALA Members are responsible for AIS data, which means that they do not have access to them.

Many countries are reluctant to sign individual contracts, which could create legal problems. The LAP was in favour of circulating a simple letter stating the conditions of use; becoming part of the network would mean that the conditions are known and accepted.

11 Changes to IALA Constitution

This Agenda item is a standard one that will be repeated at each meeting. The next opportunity to change the IALA Constitution, should it be needed, is 2014. The LAP should have done its part at

the end of 2012. Among the subjects to be considered by the LAP are MOUs, neutrality in Committees, definition of Aids to Navigation, and others still to be identified.

The Committees may be asked to input changes to the Constitution subject to approval by the Council.

Action item

Secretary General to discuss with Council IALA Committees being invited to consider potential changes to the IALA Constitution.

12 Review of IALA Risk Register

The IALA Risk Register was reviewed and updated. It was agreed that the Secretariat should find a way to highlight high levels of risk to make it easier to read by Council.

Action item

The Secretariat to find a way to highlight high level of risk to make the IALA risk register easier to read by Council.

13 Any other business

The issue of non participation from members outside Europe was raised again. It was agreed that the meetings, as far as practicable, should be held back to back with the IMO Legal Committee and LAP members participating in the IMO Legal Committee should inform the Secretariat of the dates of its 2012 Spring meeting as soon as they are known.

In the meantime it was agreed that the next meeting of the Panel **(LAP9) will be held at IALA Headquarters on 2nd and 3rd November 2011.**

Action item

LAP members participating in the IMO Legal Committee to inform the Secretariat of the dates of its 2012 Spring meeting as soon as they are known.

14 Review of action items

The action items for the meeting were reviewed and agreed.

The list of action items is attached as Annex C.

15 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.

16 Date and place of next meeting

The 9th meeting of the IALA Legal Advisory Panel (LAP9) will be held at IALA Headquarters on 2nd & 3rd November 2011.

17 List of Annexes

- 1 Agenda
 A copy of the agenda is at Annex A.
- 2 Participants

A list of LAP8 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.

18 Joint meeting with Pilotage Authority Forum

As both PAF and LAP were again meeting simultaneously, the opportunity was taken to hold a joint meeting, which began with a presentation of the Rocknes case by Ms Kjersti Tusvik of the NCA. This intriguing case, which has now progressed to the Norwegian Supreme Court, was used to draw out implications for the liability of not only the ship and pilotage but also national hydrographic organisations and AtoN providers.

Following the presentation, the responses to the comments made by the LAP about an earlier draft Guideline 1080 was reviewed and further helpful comments about the current text provided.

ANNEX A LAP8 AGENDA**AGENDA**

The 8th meeting of the IALA Legal Advisory Panel will be held on 4th and 5th May 2011, at the new IALA Headquarters, 10 rue des Gaudines, in Saint Germain en Laye, France.

The meeting will commence at 10h00 hours on 4th May and finish at 1300 hours on the 5th.

Please note that a joint session with the Pilotage Authority Forum will be held in the afternoon of Wednesday 4th May. An Agenda for the joint meeting can be found at page 2.

- 1 Approval of the agenda
- 2 Review of action items from LAP7
- 3 Review of input papers
- 4 Requests for advice from other IALA bodies
 - 4.1 From ANM Committee: Legal requirements surrounding the IMO Wreck Removal Convention (*item completed by correspondence*)
 - 4.2 From PAP: update on IALA Dictionary disclaimer
 - 4.3 From PAP: review by LAP of definitions of terms contained in the IALA Dictionary that might be legally sensitive
 - 4.4 From PAP: how to reflect the necessary neutral national positions of delegates in the IALA Constitution and Rules of Procedures for IALA Committees
- 5 Review of the IALA Maritime Buoyage System Agreement
- 6 IALA as the custodian of reference implementation for maritime open source software
- 7 Draft MOU between IALA and its Host Country
- 8 AIS data used as evidences at court cases
- 9 Update on IALA-NET
- 10 Review of the criteria for admission to IALA-NET and proposal of a new Recommendation for consideration by the Council
- 11 Changes to IALA Constitution
- 12 Review of IALA Risk Register
- 13 Any other business
- 14 Review of output and working papers
- 15 Review of Action Items

Joint session LAP / PAF
4th May p.m.

AGENDA

- The Rocknes case (presented by Ms Kjersti Tusvik)
- IALA Guideline for Competent Pilotage Authority and Pilotage Service Providers – status and discussion on legal concerns

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ANNEX C LIST OF INPUT PAPERS

Number	Title	Comments
LAP8/1/1 Rev	Draft Agenda - Revised	
LAP8/2/1	Review of action items from LAP 7	
LAP8/3/1	Review of input papers	
LAP8/4/1/1	Liaison note from ANM on IMO Wreck Removal Convention	Circulated by e-mail
LAP8/4/1/2	Note from LAP to ANM on IMO Wreck Removal Convention	Agreed by correspondence
LAP8/4/2/1	IALA Dictionary disclaimer	LAP8/output/2
LAP8/4/4/1	Rules of Procedures for IALA Committees	LAP8/output/4
LAP8/4/4/2	IALA document quality assurance process	
LAP8/6/1	Letter to IALA CG regarding custodian of open source software	
LAP8/7/1	Draft MOU IALA-Host Nation	LAP8/output/3
LAP8/12/1	IALA risk register	LAP8/output/5

ANNEX D LIST OF OUTPUT AND WORKING PAPERS

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

Number	Title	Status
LAP8/output/1	Draft Report	To Council to note
LAP8/output/2	Revised disclaimer for IALA Dictionary	To Omar-Frits Eriksson
LAP8/output/3	Revised MOU between IALA and its Host nation	To Jacques Manchard
LAP8/output/4	Revised rules of procedure for IALA Committees	To PAP and Council for approval
LAP8/output/5	IALA Risk Register	To Council for consideration

ANNEX E ACTION ITEMS

Action Items for Secretariat

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|---|--|---|
| 1 | The IALA Technical Co-ordination Manager should ask the Committees to send to the LAP the terms in the IALA Dictionary they think are legally sensitive. | 4 |
| 2 | The Secretariat to invite Emmanuel Cocher to the next LAP meeting, to discuss progress made regarding a potential new status for IALA. | 5 |
| 3 | Secretary General to discuss with Council IALA Committees being invited to consider potential changes to the IALA Constitution. | 6 |
| 4 | The Secretariat to find a way to highlight high level of risk to make the IALA risk register easier to read by Council. | 6 |

Action Items for Members

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|----|--|---|
| 5 | Jon Price to prepare a draft disclaimer for all IALA documents stating that the English version is the authentic version (for review at LAP9). | 4 |
| 6 | The French member to explore what is the French law regarding copyrights. | 4 |
| 7 | The IALA Committees should send to the LAP the terms in the IALA Dictionary they think are legally sensitive. | 4 |
| 8 | Jacques Manchard to forward amended draft MOU to the Director of Maritime Affairs and circulate it again to LAP if changes are made, by May 20th to have it submitted to the next Council. | 5 |
| 9 | Jon Price and Stefan Jenner to prepare summaries on cases where AIS data are used as evidences for circulation to the LAP members before the next meeting. | 5 |
| 10 | LAP members participating in the IMO Legal Committee to inform the Secretariat of the dates of its 2012 Spring meeting as soon as they are known. | 6 |