



Final Report of the 13th Session of the IALA Legal Advisory Panel

September 29-30, 2014

Executive Summary

This was the first regular meeting of the Legal Advisory Panel after its two Extraordinary Meetings devoted to the IALA Change of Status Project, held in October 2013 and March 2014.

Back to its normal business the LAP however considered the proposal of an MOU between China and IALA when it has become an IGO. Such an MOU, however, is not intended for approval by the current Council and will need further consideration.

A draft IALA Documentation Policy issued by PAP28 was considered before its submission for approval by the IALA Council session 59.

The LAP revised the IALA Risk Register for the Council to note and advised the IALA Academy on its own (WWA) Risk Register.

AIS data were debated with reference with two aspects:

1. When used as evidences at court cases there are a number of arguments commonly opposed to them. The LAP is considering producing a paper, in cooperation with the ENAV Committee, to prepare the IALA Members to these arguments, which may especially concern the reliability aspects of AIS data. The format of such a paper has still to be defined.
2. AIS data protection raises a concern about their reliability. The LAP wishes to obtain information on AIS data in the countries, especially the way they are collected and administered. LAP members were invited to provide the Panel with such information and indicate if there exist restrictions with regard to sharing data. The LAP intends to look into IALA-NET as well.

Amendments to the IALA Constitution were drafted, which is a LAP ongoing task until the next IALA General Assembly.

The meeting was attended by 16 participants representing 9 National Members represented at Council.

Table of Contents

1	General	3
1.1	Welcome	3
1.2	Approval of the agenda	3
2	Review of action items from LAP 11 & 12	3
3	Review of input papers	3
4	Report of IALA Council 57 and 58	3
5	Update on IALA Change of Status	3
5.1	MOU between IALA and China	4
5.2	Draft International Agreement	4
6	Review of IALA Constitution	5
7	IALA Document Policy	5
8	Request for advice from other IALA bodies	6
9	World Wide Academy	6
9.1	ToRs for WWA technical visits	6
9.2	Consultancy contracts	6
9.3	WWA Risk Register	6
10	AIS data used as evidences at court cases	6
11	AIS data protection	7
12	Update on IALA-NET	7
13	Disclaimer for IWRAP Mk2	7
14	IALA as the custodian of reference implementation for maritime open source software	7
15	Review of IALA Risk Register	7
16	Any other business	7
17	Review of output and working papers	8
18	Review of action items	8
19	Date and place of next meeting	8
20	Approval of the report	8
21	List of Annexes	8
	ANNEX A LAP13 Agenda	9
	ANNEX B LAP13 Participants	10
	ANNEX C List of input papers	13
	ANNEX D List of Output and Working Papers	14
	ANNEX E Action Items	15



Legal Advisory Panel
13th Session

29-30 September 2014

Draft Report of the 13th Session of the IALA Legal Advisory Panel

1 General

The 13th meeting of the **Legal Advisory Panel** was held on 29th and 30th September 2014 at IALA, with Francis Zachariae as Chair and Jon Price as Vice Chair. The Secretary for the meeting was the IALA Administration Manager, Marie-Helene Grillet. The meeting was attended by 16 participants representing 9 National Members.

Apologies for absence were received from Japan and the US.

1.1 Welcome

The Chair opened the meeting by welcoming all participants, and inviting them to introduce themselves.

1.2 Approval of the agenda

Before approving the Agenda the Chair recalled that there had been two extraordinary LAP meeting, open to all National Members, since its session 12. In agreement with the Panel he decided that this session should be numbered session 13. All input papers would be re-numbered accordingly.

The agenda for LAP13, as set out in LAP13-1-1 was reviewed and approved.

2 Review of action items from LAP 11 & 12

The action items were noted completed, with the exceptions of action items 9 & 11 from LAP12, which need further work in connection with the Change of Status project.

3 Review of input papers

A late paper was introduced as LAP13-13-2 (Disclaimer for IWRAP Mk2) and the List of Input Papers was noted with this addition.

4 Report of IALA Council 57 and 58

An important matter arising from the IALA Council session 57 was the *One China Policy* and the resulting MOU requested by China. The Council had tasked the LAP to prepare a draft text and this is reported on below at section 5.2.

5 Update on IALA Change of Status

The General Assembly Resolution was passed in May 2014. A Council Working Group will be formed to consider how to pursue the change of status project. The role of the LAP will be limited to give advice on the legal aspects of the project.

The LAP requested to be kept informed of the developments at Council.

Action item 1: The Secretariat to keep LAP informed of the developments at Council regarding the IALA change of status project.

5.1 MOU between IALA and China

This Agenda item flows from Council session 57 (input paper LAP13-4-1 action item 11.1 page 10), which requested the LAP to prepare a draft MOU.

The participants from China MSA submitted a draft MOU (input paper LAP13-5.1-2) for comments. The draft is similar to MOUs that China has signed with other international organizations.

The *One China Policy*, agreed by the UN, is a condition for China to become party to the international agreement that will form IALA as an IGO.

For China it is important that the following two points are reflected:

- Among IALA members under the heading of “China”, the People’s Republic of China shall be the only full member as a sovereign state. In no cases shall any organization or institution of Chinese Taiwan be allowed to become any form of IALA members.
- “Taiwan, China” or “Chinese Taiwan” shall be the standard expression, and any expressions that may give rise to the interpretation of “Two Chinas” or “One China, One Taiwan” shall not be used by IALA.

It was made clear that the draft MOU was not intended for signature by the Council of the current IALA but presented as part of the preparation work needed for the future IALA, in order to give time to all concerned to consider it and approach their Foreign Ministries. When ready the draft MOU will be forwarded to the IALA Council for consideration, comments and potential forwarding to the new Council, taking into account that the current IALA Council cannot approve any document on behalf of the Council of the future IALA.

Having considered the issue the LAP requested that:

- China should provide the next LAP meeting with examples of MOUs signed with other intergovernmental organizations (action item 2);
- LAP members should consider the draft and provide questions or comments to Yang Liang (yangliang@msa.gov.cn);
- LAP 14 would consider the issue again based on a revised draft MOU provided by China; and,
- When all available information has been gathered and proper advice has been agreed by the LAP, the draft MOU or any other relevant document will be forwarded to the Council.

Action item 2: China to provide LAP14 with examples of MOUs with other international organizations

5.2 Draft International Agreement

The draft International Agreement was a supporting document to the General Assembly held in May 2014. There were unsolved issues however, which were the subjects of footnotes, and the LAP went through those that could be clarified.

Note 2: The General Regulations will preferably not be part of the Agreement to permit easy changes. They need however to be attached to it and it should be the task of the Secretariat to propose a mechanism for the General Regulations.

Action item 3: The Secretariat to propose a mechanism for General Regulations for submission to LAP14.

Note 5: The Vienna Convention does not have a rule regarding the type of members of Intergovernmental Organizations and IALA will need to keep members other than National. The LAP

is aware that this would be an obstacle for some countries and the wording avoiding the term “member” seems desirable for this article.

The footnote was removed and Jon Price was asked to propose an alternate wording for this part of the draft Article 3.

Action item 4: Jon Price to suggest an appropriate wording avoiding the term “members” as an answer to footnote 5 of the draft International Agreement.

Note 7: The question was whether the Secretariat should be considered as an organ of the organization or not. Although the answer seems to be “yes”, Jon Price would look in other IGOs’ General Regulations and report to LAP.

Action item 5: Jon Price to consider General Regulations of other IGOs.

Note 15: The domestic legal personality of IALA as an IGO may vary according to the countries. It was decided to remove the footnote.

Note 16: The corresponding portion of the draft Agreement was checked against the Vienna Convention. The footnote was taken out.

Note 17: A mechanism may be needed for National Members of the current IALA to become Affiliate Members of the new IALA, as the automatic nature of the process is a concern to some countries. The footnote was kept.

There was also concerns regarding:

Article 2bis: Some LAP participants were not in favour of IALA issuing standards that would bind members. The phrasing of this article however does not suggest that such standards would become mandatory;

Article 5.2: It should not be up to IALA to decide who should represent its national members. The wording was similar in the IHO Agreement and softened by the term “preferably”. As a consequence the LAP was not in favour of amending it as it insists on the technical nature of the organisation.

The amended draft International Agreement is LAP13-WP2 and will be submitted again to LAP14.

Jon Price introduced input paper LAP13-5.2-3, which is an English version of the French law governing IALA, as a reference paper.

6 Review of IALA Constitution

The IALA Constitution, as approved at the General Assembly held in May, was submitted as an ongoing task for the LAP.

Proposed changes already recorded were the conditions for industrial members at exhibit at Conferences and the order in which IALA publications are listed in the document.

Action item 6: The Secretariat to edit the ongoing draft amended Constitution in order for standards to be on top of the list each time IALA documents are described or listed.

7 IALA Document Policy

The paper had been prepared to match the IALA current documentation and IALA Strategy. The LAP revisited it, clarifying the standards’ non-mandatory nature and their approval process at General Assemblies, and confirming that, according the current Constitution, General Assembly votes by correspondence are not provided for.

The revised document was to be sent to PAP28 as an input paper.

Action item 7: The Secretariat to forward to PAP28 the LAP comments on the proposed IALA Documentation Policy.

8 Request for advice from other IALA bodies

This is a standard Agenda item and there was no paper submitted to this session.

9 World Wide Academy

The Academy, independently funded, continue to grow in the world. It is considering hiring one full time staff in addition to the three part time for day to day business.

9.1 ToRs for WWA technical visits

This Agenda item was postponed until LAP14.

9.2 Consultancy contracts

Three options were to be considered, according to the mission expenses being entirely paid by the consultant's parent organization (option 1), shared between IALA and the parent organization (option 2), or entirely paid by IALA (option 3).

Due to a mix-up in the input documents only options 1 and 2 were able to be considered. There were no general comments on these documents. Editing requests should be passed onto Marie-Hélène Grillet.

Option 3 will be circulated inter-sessionally, however the LAP recommended to ask for legal advice on this particular draft contract.

Action item 8: Participants to send to Marie-Hélène Grillet any edits needed on consultancy contracts options 1 and 2.

Action item 9: Marie-Hélène Grillet to circulate the participants with the correct version of option 3 for comments.

9.3 WWA Risk Register

It was noted that the WWA risk register contained mitigation measures that were the same in two places.

Action item 10: Jon Price to pass LAP comments on the WWA Risk Register onto the Dean of the Academy.

10 AIS data used as evidences at court cases

The paper postponed from LAP12 was presented as describing a particular and national example, which does not reflect a world-wide practice.

Based on this comment the LAP suggested producing guidelines or any other appropriate document, which would be integrating the advice received from the ENAV Committee on reliability of AIS data and collecting information on what can be opposed to the use of AIS data.

A Working Group, consisting of Jan Gabrielsen, Christina Schneider and Maarten Berrevoets, should start drafting a paper in cooperation with the ENAV Committee for the technical part.

Action item 11: The Working Group on AIS data used at court cases (Jan Gabrielsen, Christina Schneider and Maarten Berrevoets) to start drafting a paper on the use of AIS data at court cases in cooperation with the ENAV Committee.

The format of such a paper was then discussed and the LAP, together with the Secretariat, was invited to consider how the document would fit in the IALA documentation and how to cooperate with the ENAV Committee.

Action item 12: The Secretariat and Panel to determine how a document on the use of AIS data at court cases would fit in the IALA documentation

11 AIS data protection

AIS data are widely used for various purposes. Their level of protection vary according to the countries and their availability from various sources raises a concern about their reliability.

It was suggested centralizing similarities in national practices in an attempt to harmonize the level of protection, with a view to countries sharing data – for example through IALA-NET – knowing what they are sharing exactly.

The LAP members were therefore encouraged to provide answers of approximately half a page to the question contained in action item 13. The LAP may also look into IALA-NET.

Action item 13: Interested LAP members to provide LAP14 with answers to the question: “How is AIS data collected and administered in your country? What, if any, are the restrictions on sharing such data with public entities/administrations in other states?”

12 Update on IALA-NET

IALA-NET is a common AIS data sharing free platform. It gets information from National Members. IALA-NET is different from long range vessel tracking; supplemented with satellite data, it can provide global AIS information.

IALA-NET was reported as working well, although the number of participation countries does not increase.

13 Disclaimer for IWRAP Mk2

The proposed IWRAP Mk2 disclaimer, which presented two different options, was discussed.

The LAP agreed to select the tick box option for download and add a mention of not passing it to other people.

Action item 14: Jon Price to finalize the disclaimer for IWRAP Mk2.

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

This item was introduced on the LAP Agenda some years ago but never dealt with, due to lack of information.

It was decided that it should be withdrawn.

15 Review of IALA Risk Register

The Risk Register was discussed and amendments agreed for Strategic Risks (associated with the change of status project); Operational Risks associated with the introduction of IALA standards and documentation policy; and, the potential loss of expertise within IALA.

The Risk Register is an ongoing document and will be submitted, as amended to LAP14.

16 Any other business

Matti Eronen is needing for research purposes information on VTS at court cases. He was requested to provide the Secretariat with a specific question that would be passed onto the VTS Committee and all IALA National Members.

Action item 15: Matti Eronen to provide the Secretariat with a question on VTS at court cases, to be answered by the VTS Committee and IALA National Members.

17 Review of output and working papers

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

18 Review of action items

Action items are at Annex E.

19 Date and place of next meeting

The 15th meeting of the IALA Legal Advisory Panel (LAP14) is provisionally scheduled in China, provided that suitable information can be provided the members on Chinese specific subjects to be addressed at the meeting.

20 Approval of the report

Due to the tight time frame the report was to be approved by correspondence. Deadline for comments was 15th October 2014.

21 List of Annexes

- A. Agenda
A copy of the agenda is at Annex A.
- B. Participants
A list of LAP13 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 LAP13 AGENDA**Legal Advisory Panel**13th Session

Agenda item 1

LAP 13-1-1

September 29-30, 2014

The 13th meeting of the IALA **Legal Advisory Panel** will be held from 29th to 30th September 2014, at IALA Headquarters, **10 rue des Gaudines**, in Saint Germain en Laye, France.

The meeting will commence at 1000 hours on 29th September and is expected to finish at 1600 hours on the 30th.

LAP 13 - PROVISIONAL AGENDA

1. Approval of the agenda
 2. Review of pending action items from previous meetings
 3. Review of input papers
 4. Report of IALA Council 57 & 58
 5. Update on IALA change of status
 - 5.1. MOU between IALA and China
 - 5.2. Draft International Agreement
 6. Review of IALA Constitution
 7. IALA document policy
 8. Requests for advice from other IALA bodies
 9. World Wide Academy
 - 9.1. ToRs for WWA technical visits
 - 9.2. Consultancy contracts
 - 9.3. WWA Risk Register
 10. AIS data used as evidences at court cases
 11. AIS data protection
 12. Update on IALA-NET
 13. Disclaimer for IWRAP Mk2
 14. IALA as the custodian of reference implementation for maritime open source software
 15. Review of IALA Risk Register
 16. Any other business
 17. Review of output and working papers
 18. Review of Action Items
 19. Date and place of next meeting
- Approval of the report

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ANNEX C LIST OF INPUT PAPERS

Number	Agenda item	Title	Comments
LAP 13-1-1	1	Draft Agenda	
LAP 13-2-1	2	Pending action items from LAP11 & LAP12	
LAP 13-3-1	3	List of Input Papers	
LAP 13-3-1 Rev 1	3	List of Input Papers	Updated 25 Sept
LAP 13-4-1	4	Report of IALA Council 57	
LAP 13-4-2	4	Report of IALA Council 58	
LAP 13-5.1-1	5	MOU with China	
LAP 13-5.1-2	5	Draft MOU with China	Late paper submitted by China
LAP 13-5.2-1	5	Legal issues - Draft International Agreement	
LAP 13-5.2-2	5	Draft International Agreement	
LAP 13-5.2-3	5	French Law of 1901 on associations	Late paper
LAP 13-6-1	6	Review of IALA Constitution	
LAP 13-7-1	7	IALA Documentation Policy	
LAP 13-9.2-1	9	Draft consultancy contracts - Introduction	
LAP 13-9.2-2	9	Draft consultancy contracts – Option 1	
LAP 13-9.2-3	9	Draft consultancy contracts – Option 2	
LAP 13-9.2-4a	9	Draft consultancy contracts – Option 3a	
LAP 13-9.2-4b	9	Draft consultancy contracts – Option 3b	
LAP 13-9.3-1	9	WWA Risk Register	From LAP12
LAP 13-10-1	10	Liaison note from e-NAV Committee	
LAP 13-11-1	11	Legal base for harmonized data protection	From LAP12
LAP 13-13-1	13	Disclaimer for IWRAP Mk2 introductory note	From LAP12
LAP 13-13-2	13	Disclaimer for IWRAP Mk2	Late paper
LAP 13-15-1	15	IALA Risk Register	
LAP 13-15-1 Rev 1	15	Updated IALA Risk Register	Ongoing

ANNEX D LIST OF OUTPUT AND WORKING PAPERS

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

Number	Title	Status
LAP13-output-01	Draft Report	To Council to note
LAP13-output-02	Liaison note on Policy on IALA Documentation	To PAP 28
LAP13-output-03	IWRAP Mark2	To Secretariat to forward to IWRAP Steering group
LAP13-output-04	Contracts options 1 & 2	To the Dean of the WWA
LAP13-output-05	WWA Risk Register	To the Dean of the WWA
LAP13-output-06	IALA Risk Register	To Council to consider

Working papers are documents that will remain within the Panel for further review.

Number	Title	Status
LAP13-WP1	Draft MOU between IALA and China	To LAP14
LAP13-WP2	Draft International Agreement	To LAP14
LAP13-WP3	IALA Constitution	Ongoing
LAP13-WP4	IALA Risk Register	Ongoing

ANNEX E ACTION ITEMS

1. *The Secretariat to keep LAP informed of the developments at Council regarding the IALA change of status project.*
2. *China to bring examples of MOUs with other IGOs to LAP14 together with a revised draft MOU.*
3. *The Secretariat to propose a mechanism for General Regulations to LAP14.*
4. *Jon Price to suggest an appropriate wording avoiding the term “Members” as an answer to footnote 5 of the draft International Agreement.*
5. *Jon Price to consider General Regulations of other IGOs.*
6. *The Secretariat to edit the ongoing draft amended Constitution in order for Standards to be on top of the list each time IALA documents are described or listed.*
7. *The Secretariat to forward to PAP28 the LAP comments on the proposed IALA Documentation Policy*
8. *Participants to send to Marie-Hélène Grillet any edits needed on consultancy contracts options 1 and 2.*
9. *Marie-Hélène Grillet to circulate the participants with the correct version of option 3 for comments.*
10. *Jon Price to pass on LAP comments on the WWA Risk Register to the Dean*
11. *The Working Group on AIS data used at court cases (Jan Gabrielsen, Christina Schneider and Maarten Berrevoets) to start drafting a paper on the use of AIS data at court cases in cooperation with the ENAV Committee.*
12. *The Secretariat and Panel to determine how a document on the use of AIS data at court cases would fit in the IALA documentation*
13. *Interested LAP members to provide LAP14 with answers to the question: “How is AIS data collected and administered in your country? What, if any, are the restrictions on sharing such data with public entities/administrations in other states?”*
14. *Jon Price to finalize the disclaimer for IWRAP Mk2*
15. *Matti Eronen to provide the Secretariat with a question on VTS at court cases, to be answered by the VTS Committee and IALA National Members*