



REPORT OF THE 17TH SESSION OF THE IALA LEGAL ADVISORY PANEL (LAP)

3 to 5 October 2016

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Report of the 17th session of the IALA

Legal Advisory Panel (LAP)

3 to 5 October, 2016

Executive Summary

The 17th session of the Legal Advisory Panel was held from 3 to 5 October 2016 at Helsinki VTS Centre, Finland, with Jon Price as Chairman and Marie-Hélène Grillet as Secretary.

The Panel was welcomed by Tiina Tuurnala, IALA Councillor for Finland, who was hosting the meeting. Since it was the first LAP meeting opened to all national members, new participants attended on behalf of national members in Belgium, Bulgaria, Estonia and Indonesia.

The participants were briefed about the main developments since their last meeting concerning the increase in IALA membership, the success of the Academy and progress made in the IGO project.

LAP focused on reviewing the draft General Regulations for the Change of Status Advisory Group (CoS), which will again work by correspondence to be able to submit the document to the IALA Council in December.

The work on AIS data used as evidence in court cases that was declared completed at LAP16 was given further consideration at the request of the IALA Council. A paper prepared by the ENAV Committee was considered, to which LAP will add a legal introduction. LAP also considered a draft paper on compelling needs to amend IMO Resolution A.857(20) prepared by the VTS Committee.

Work was done on the IALA Standards and their formulation and the Strategic Vision with input papers to PAP32 being prepared.

Finally, LAP finalized a proposed policy on patents for submission to the IALA Council for noting and reviewed the IALA and WWA Risk Registers.



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Report of the 17th session of the IALA

Legal Advisory Panel (LAP)

GENERAL

The 17th session of the Legal Advisory Panel was held from 3 to 5 October 2016 at Helsinki VTS Centre, Finland, with Jon Price as Chairman and Marie-Hélène Grillet as Secretary.

0. WELCOME ADDRESS FROM THE FINNISH MARITIME AUTHORITY

Tiina Tuurnala, Director, Traffic Management, Finnish Transport Agency, opened the meeting by welcoming all participants in Finland and assuring that IALA was very important for the Finnish Transport Agency. She went on adding that Finland had challenging navigation conditions, with shallow waters and prevailing ice conditions for over 110 days a year. She informed the participants that cooperation had been established with the neighbouring countries, especially Estonia and Russia, and such cooperation had proved to be instrumental in avoiding accidents in the coastal waters of these countries with a great deal of information being provided to the vessels. She wished all a very fruitful meeting.

1. INTRODUCTION FROM LAP CHAIR AND SECRETARY-GENERAL

The Chair welcomed those present and set out the key issues for consideration by the meeting, which were a further review of the General Regulations, the request for some advice on IALA Standards; the Strategic Vision and a proposed IALA policy on patents. The Panel also had on the agenda a draft paper setting out the compelling needs to amend IMO Resolution A.857(20) prepared by the VTS Committee.

The Secretary-General reported that IALA was more successful than ever with many new members joining in a short time, including a number of national members. He identified three main reasons to this success: IALA offers good products in the form of professional guidance documents, the Academy had been very active in having IALA known in the countries where not much activity had been carried out so far, and the change of status project attracted interest with the opportunity of acting at Government level.

He continued in presenting the very busy programme that IALA had in 2016, with the VTS Symposium that attracted more than 350 participants, the e-Navigation Underway conferences, a number of Workshops on various subjects and a Seminar.

He concluded with news on the rebranding project, the new Website that had been launched recently and the work started for the organisation of the next IALA Conference and Symposium.

1.1 Introductions and apologies

The Chair reported that apologies were received from Mary Dean (AMSA, Australia).

This was the first LAP meeting open to all national members and there were many new participants at this meeting, who introduced themselves.

A list of attendees is provided at ANNEX B.

2. APPROVAL OF THE AGENDA

The Agenda (paper LAP17-2.1) was adopted with a change in the sequence of discussions, to have Agenda items 13 – Legislative relationship between VTS and Aids to Navigation, and item 15 – Proposed changes to IMO Resolution A.857(20) discussed consecutively. For practical reasons, discussions are however reported in the present document in their original order.

The Agenda is provided at ANNEX A.

3. REVIEW OF ACTION ITEMS FROM LAP16

Input paper LAP17-3.1 refers.

All action items were noted as completed or in hand.

4. REVIEW OF INPUT PAPERS

There were two late papers – the IALA Risk Register as submitted to the IALA Council session 62 (C62-12.1.6) and the World-Wide Academy Risk Register (LAP17-17.1) tabled at the meeting.

5. REPORT OF IALA COUNCIL 62

The only paper under this Agenda item was the IALA Basic Documents submitted for information under reference LAP17-5.2.

Secretary-General Francis Zachariae reported verbally on the main outcomes of the 62nd session of the IALA Council:

- The IALA Basic Documents were approved as the IALA governance document and the internal procedures were being updated accordingly;
- The LAP Terms of Reference were approved as part of the Basic Documents;
- The PAP Dictionary Working Group got power to approve new terms and definitions;
- The VTS strategy as reviewed by the Committee was approved and the Committee had developed a paper on compelling needs to revise the IMO Resolution A.857(20);
- The report on AIS used as evidence at court cases raised interest and the Council wished to have the project of producing a guideline restarted.

6. PAP32 – VERBAL BRIEFING ON THE MEETING TO BE HELD ON 6 & 7 OCTOBER

LAP Chair Jon Price reported that the main work of the PAP would again be on IALA Standards. Inputs had been requested for the mid-term review of the IALA Strategic Vision. The case for change of IMO Resolution A.857(20), and the proposed “Technical Directions”, which aim at developing statements on various subjects within the remit of IALA, were also for review by the PAP.

7. IALA CHANGE OF STATUS PROJECT

7.1 Update on project

Secretary-General Francis Zachariae reported that the action plan prepared by the Council Advisory Group on the IALA Change of Status Project (CoS) consisted of four parts: financial, communications, diplomacy and draft Convention text.

A comprehensive report was produced on the financial aspects of the project, with the support of Christina Schneider of Germany, a regular participant in the LAP. An information paper had been submitted to the IMO in English, French and Spanish and with regards to the draft Convention text it was circulated to all members for comments. Diplomacy had received strong support from the French Ministry of Foreign Affairs, which committed to bring the project forward on time for the 2018 IALA Conference, and the Government of the Republic of Korea confirmed that they were prepared to host a Diplomatic Conference in 2018.

The Secretary-General presented the next steps, which would consist in discussing further the organisation of a pre-diplomatic meeting with all countries in which IALA has national members, possibly at IALA Headquarters. There would be a joint invitation from the French Ministry of Foreign Affairs and IALA. The draft Convention text would be attached to the invitation. On this occasion the Secretary-General informed

that French would be a working language for IALA as an IGO, as it is quite common that IGOs have more than one working language, one of them being the one of the host country.

Answering questions from the participants the Secretary-General added that: national members would be invited to be accompanied by representatives of their Ministries of Foreign Affairs; the CoS group had not been disbanded but was working by correspondence; and the special group of interested countries mentioned in the Council report was no longer necessary.

7.2 Draft General Regulations for IALA as an IGO

Input paper LAP17-7.2 refers.

Reviewing the draft General Regulations was the main work of the LAP at this session. The result of this review is output paper LAP17-23-1.

During this revision the following remarks were made:

- Generally, the word “shall” must be used instead of “should”: IGO General Regulations are compulsory for Contracting Parties members and the Secretariat;
- Article 1.2: having the document hierarchy in the General Regulations as opposed to the Convention gives more flexibility;
- Article 2.2: designing a point of contact must be compulsory (done in IHO);
- Article 2.5(a): the Council determining the amount of contributions and fees is provided for in the draft Convention text. This allows the Organization to adapt the amount to the current situation. However, the Diplomatic Conference may decide otherwise;
- Proposed new article 2.5(e): suspension of rights of Contracting Parties in arrears is mentioned in the Convention and the Financial Regulations and there is no need to repeat it in this article;
- Article 3.5(b): achieving a widespread representation on the Council is difficult. This was taken out of the draft Convention text at the Council’s request to be moved to the General Regulations;
- Article 3.5(g): the question of the General Assembly Chair running for election to the Council was debated and it was agreed that misconduct was extremely unlikely with two scrutineers.
- Article 7.1 and 7.2(c): the appointment of the Secretary-General and Deputy Secretary-General was discussed. The Secretary-General may be elected like in IMO but the Deputy Secretary-General should be appointment. This may be changed by the Diplomatic Conference;
- Article 7.3: the clause on not accepting instructions from outside the Organization cannot apply to the President and Vice-President. Being representatives of their countries they would quite rightly take their instructions from their countries;
- Article 10.1(a): there was a discussion on how to calculate the interest rates. And this was not considered as the best way to have the contributions paid. The article was not amended, however.

The representative of Japan Coast Guard stated that since more careful consideration and review of the draft General Regulations should be needed, the Japan Coast Guard made reservation on the result of the review at LAP 17.

In addition to these remarks on the draft text the question was raised of a French name and French acronym for the Organization. Most IGOs have two names and two acronyms (IMO – OMI; IHO – OHI; ICAO – OACI, etc.).

Action item 1

The Secretary-General is requested to forward the revised General Regulations to the CoS by correspondence with a view to having it forwarded to Council 63 for approval.

7.3 Draft Convention text as approved by Council 61

Input paper LAP17-7.3 refers.

LAP noted the draft Convention text as approved by Council 61, which was submitted for information.

8. REVIEW OF IALA CONSTITUTION

Input paper LAP17-8.1 was reviewed as an ongoing task for LAP. The revised draft Constitution is at Working Paper LAP17-24.1.

The Committees' concern regarding a harmonized definition of "marine aids to navigation" was noted.

9. IALA STANDARDS

Secretary-General Francis Zachariae reported that the IALA Standards would be submitted to the General Assembly for approval in 2018. They are developed together with the Policy Advisory Panel in accordance with the IALA Strategic Vision, with the aim of having marine aids to navigation harmonized world-wide. The Standards will not be mandatory but will be mandatory for those countries that will claim conformity.

9.1 Development of an IALA Standard

LAP noted the introductory input paper LAP17-9.1.

9.1.1 Draft IALA Standard template – introduction

Input paper LAP17-9.1.1 refers.

Secretary-General Francis Zachariae reported that the headings of the seven proposed IALA Standards had been approved by the Council at its 62nd session. The details of subjects to be covered by each Standard were still under development. It was suggested to list the subjects with the more general coming first and then the more detailed ones.

Action item 2

The Secretariat is requested to reorganise the list of Standard subjects to have them starting with the more general ones.

9.1.2 Draft IALA Standard example template

Input paper LAP17-9.1.2 refers.

Comments were made and amendments suggested to the draft Standard template for further consideration by thePAP. It was agreed to forward it to PAP32 as output paper LAP17-23.3.

Action item 3

The Secretariat is requested to forward to PAP32 the draft IALA Standard example template as amended by LAP17.

9.1.3 Definitions of Recommendations and Guidelines

Input paper LAP17-9.1.3 refers.

LAP considered the proposed definitions of Recommendations and Guidelines and requested the Secretariat to forward the amended document LAP17-23.4 to PAP32.

Action item 4

The Secretariat is requested to forward to PAP32 the draft definitions of Recommendations and Guidelines as amended by LAP17.

9.2 Preamble text for Recommendations

Input paper LAP17-9.2 refers.

LAP suggested amendments to the draft, which was to be submitted to PAP32 in its revised version as LAP17-23.2.

Action item 5

The Secretariat is requested to forward to PAP32 the draft revised preamble text for IALA Recommendations as amended by LAP17.

10. PATENT POLICY

Input papers LAP17-10.1 and LAP17-10.2 refer.

Secretary-General Francis Zachariae reported that a lawyer had been consulted, who amended the draft Guidelines.

The representative for Belgium Lynn Pauwels remarked that the three levels of patents (national, European and international) had not been considered.

With regards to Para. 4.4 a mechanism was needed when a patent is reported and this should be reflected in the Rules of Procedures for Committees.

Action item 6

Lynn Pauwels was invited to submit to LAP18 an explanation paper on patents.

Action item 7

The Secretariat was requested to forward LAP17-10.2 (output paper LAP17-23.5) as a policy paper to the Council to note.

Action item 8

The Secretariat was requested to develop procedures for reported patents when the Rules of Procedures for Committees are revised.

11. REVIEW OF IALA STRATEGIC VISION

Input papers LAP17-11.1 and LAP17-11.2 refer.

LAP was in favour of removing the reference to Standards in the last part of Goal 1, this being achieved when the next working period start. Also in Goal1 a proper way to address VTS and maybe pilotage, should be found. A broad definition should be developed.

The motto “successful voyages, sustainable planet” was discussed: such a motto can apply to any transportation activity.

A question was raised on the relevance of IALA addressing the climate change. This question should be referred to PAP.

Finally it was agreed, again to highlight IALA’s field of activity, to use the term “marine aids to navigation” throughout the document.

Action item 9

The Secretariat was requested to amend the Strategic Vision taking account of the above remarks, i.e. removing the reference to Standards as a Goal and using the term “marine aids to navigation”.

Action item 10

The Secretariat was requested to consider redefining marine aids to navigation in the Strategic Vision, in a way that it can include VTS and pilotage and consider.

Action item 11

The Secretariat was requested to invite PAP to consider the relevance of IALA addressing the climate change.

12. AIS DATA USED AS EVIDENCE AT COURT CASES

Input paper LAP17-12.1 refers.

The IALA Council, at its 62nd session in June 2016 had requested that the LAP, together with the ENAV Committee, consider again developing a Guideline on the subject. As a consequence the ENAV Committee had started to draft a document, to which it was considered best to add a legal introduction.

Christina Schneider volunteered to draft the introduction for LAP18 to consider.

Action item 12

Christina Schneider is requested to draft a legal introduction to the ENAV paper ENAV19-11.18 (input paper LAP17-12.1).

13. LEGISLATIVE RELATIONSHIP BETWEEN VTS AND AID TO NAVIGATION

LAP commented input paper LAP17-13.1, developed after the 2016 VTS Symposium where concerns regarding the legislative relationship between VTS and AtoN was raised.

The situation was found unclear, especially as situations are different from one country to another. The SOLAS Convention addresses VTS and AtoN in two different Regulations of Chapter V, 12 and 13 respectively but IALA tends to consider VTS as an AtoN. However, with the Maritime Service Portfolios the remit of the VTS is enlarging, adding to the lack of clarity.

14. IALA DICTIONARY

Input paper LAP17-6.4.1 refers.

LAP discussed the issues related to the Dictionary management, highlighting the importance of definitions when IALA is an IGO. The main issues identified were the following:

- It is difficult to reach agreement between the group and face to face meetings might be a better solution than GoToMeeting;
- Definitions in languages other than English may need professional translations rather than being made by volunteers;
- The Wiki based web support may not suit IALA as an IGO; a better support should be identified;

A paper was needed for the next LAP meeting to address potential disclaimers and translations, taking into account the views expressed by the PAP at its 32nd meeting. Such a paper should be oriented to the change of IALA status.

Action item 13

LAP to prepare an input paper to LAP18 on the need for disclaimers for the IALA Dictionary, addressing translations and taking account of the views to be expressed at PAP32.

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

Input paper LAP17-15.1 was noted.

An INF paper will be prepared for the IMO MSC Committee, for submission by IMO Member States with the support of IALA. The first draft will be submitted to VTS43.

Action item 14

The Secretariat is requested to keep LAP informed of the developments concerning amendments to IMO Resolution A.857(20).

16. REVIEW OF IALA RISK REGISTER

The IALA Risk Register (input paper LAP17-16.1) was superseded by paper C62-12.1.6, which was the latest version of the IALA Risk Register as amended after LAP16. Participants were requested to provide their comments to the Secretariat within one week after the issue of this report.

Action item 15

LAP participants are invited to send comments on the IALA Risk Register to the Secretariat within one week after the issue of the meeting report.

17. REVIEW OF THE WORLD-WIDE ACADEMY RISK REGISTER

The WWA Risk Register was tabled as a late paper LAP17-17.1.

Action item 16

LAP participants are invited to send comments on the WWA Risk Register to the Secretariat within one week after the issue of the meeting report.

Action item 17

18. LAP CHAIR / THE SECRETARIAT TO PREPARE A REPORT ON THE REVIEW OF THE RISK REGISTERS FOR SUBMISSION TO COUNCIL 63. ANY OTHER BUSINESS

There was no other business.

19. REVIEW OF OUTPUT AND WORKING PAPERS

The list of output and working papers is at Annex C.

20. REVIEW OF ACTION ITEMS

The list of action items is at Annex D.

21. DATE AND PLACE OF NEXT MEETING

The next LAP meeting (LAP18), originally scheduled on 6 and 7 April 2017 will take place at IALA Headquarters on **3 and 4 April 2017**.

22. APPROVAL OF THE REPORT

The report of LAP17 was to be approved by correspondence.

Legal Advisory Panel17th Session

Agenda item 1

LAP 17-2.1

October 3 - 5, 2016

Helsinki, Finland

The 17th meeting of the IALA **Legal Advisory Panel** will be held from 3rd to 5th October 2016. The venue for the meeting is the Gulf of Finland VTS Centre, Finnish Transport Agency, Katajanokanlaituri 4B, K-6, 00160 Helsinki, Finland.

The meeting will commence at 1000 hours on 3rd October and is expected to finish at 1300 hours on the 5th.

LAP 17 - PROVISIONAL AGENDA

(2016-08-17)

0. Welcome address from the Finnish Maritime Authority
1. Introduction from LAP Chair & Secretary General
2. Approval of the agenda
3. Review of action items from LAP16
4. Review of input papers
5. Report of IALA Council 62
 - Basic Documents including LAP's terms of reference (for information)
6. PAP32 – Verbal Briefing on Meeting to be held on 6 & 7 October
7. IALA change of status project
 - 7.1. Update on Project
 - 7.2. Draft General Regulations for IALA as IGO
 - 7.3. Draft Convention text as approved by Council 61 (for information)
8. Review of IALA Constitution
9. IALA Standards
 - 9.1 Development of an IALA Standard
 - 9.1.1 Draft IALA Standard Example Template – Introduction
 - 9.1.2 Draft IALA Standard Example Template
 - 9.1.3 Definitions of Recommendation and Guideline
 - 9.2 Preamble text for Recommendations
10. Patent policy
11. Review of IALA Strategic Vision
12. AIS data used as evidences at court cases
13. Legislative relationship between VTS and Aids to Navigation
14. IALA Dictionary

15. Proposed changes to IMO Resolution A.857(20)
16. Review of IALA Risk Register
17. Review of World Wide Academy Risk Register
18. Any other business
19. Review of output and working papers
20. Review of Action Items
21. Date and place of next meeting
22. Approval of the report

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Meeting	Agenda Item	Title / Author (if required)	Source	Output/working papers
LAP17	0.1	Meeting venue and hotels map	Secretariat	None
LAP17	2.1	Provisional Agenda	Secretariat	None
LAP17	2.2	Meeting timetable	Secretariat	None
LAP17	3.1	Action items from LAP16	Secretariat	None
LAP17	5.1	Report of Council 62	Secretariat	None
LAP17	5.2	IALA Basic Documents approved June 2016	Secretariat	None
LAP17	6.4.1	IALA Dictionary Management	Secretariat	None
LAP17	7.2	General Regulations for IALA as an IGO	Secretariat	LAP17-23.1
LAP17	7.3	Draft Convention text	Secretariat	None
LAP17	8.1	Draft IALA Constitution	Secretariat	LAP17-24.1
LAP17	9.1	Development of IALA Standards	Secretariat	None
LAP17	9.1.1	Draft IALA Standard – Example template, introduction	Secretariat	None
LAP17	9.1.2	Draft IALA Standard – Example template, text	Secretariat	LAP17-23.3
LAP17	9.1.3	Definitions of Recommendations and Guidelines	Secretariat	LAP17-23.4
LAP17	9.2	Preamble text for Recommendations	Secretariat	LAP17-23.2
LAP17	10.1	Legal advice on patent policy	Secretariat	None
LAP17	10.2	Draft IALA Patent Policy Guideline	ENAV	LAP17-23.5
LAP17	11.1	Review of Strategic Vision	Secretariat	None
LAP17	11.2	IALA Strategic Vision 2014-2026	Secretariat	LAP17-24.2
LAP17	12.1	ENAV paper on AIS data used as evidence at court cases	ENAV19	None
LAP17	13.1	Legislative relationship between VTS & AtoN	Matti Eronen	None
LAP17	15.1	Compelling needs to review IMO Resolution A.857(20)	VTS42	None
LAP17	16.1	IALA Risk Register (superseded by C62-12.1.6)	Secretariat	None
C62-12.1.6	16.2	IALA Risk Register as submitted to Council 62	LAP16	LAP17-23.6
LAP17	17.1	WWA Risk Register	WWA	LAP17-23.7

Meeting	No.	Title	Action
LAP17	23.1	General Regulations for IALA as an IGO	To CoS for comments
LAP17	23.2	Preamble text for Recommendations	To PAP32
LAP17	23.3	Draft IALA Standard – Example template, text	To PAP32
LAP17	23.4	Definitions of Recommendations and Guidelines	To PAP32
LAP17	23.5	IALA patent policy	To Council to note
LAP17	23.6	IALA Risk Register	To Council to consider
LAP17	23.7	WWA Risk Register	To WWA to consider
LAP17	23.8	Report LAP17	To Council to note
LAP17	24.1	Draft IALA Constitution	To LAP18
LAP17	24.2	IALA Strategic Vision 2014-2026	To Secretariat to consider

1. *The Secretary-General is requested to forward the revised General Regulations to the CoS by correspondence with a view to having it forwarded to Council 63 for approval.*
2. *The Secretariat is requested to reorganise the list of Standard subjects to have them starting with the more general ones.*
3. *The Secretariat is requested to forward to PAP32 the draft IALA Standard example template as amended by LAP17.*
4. *The Secretariat is requested to forward to PAP32 the draft definitions of Recommendations and Guidelines as amended by LAP17.*
5. *The Secretariat is requested to forward to PAP32 the draft revised preamble text for IALA Recommendations as amended by LAP17.*
6. *Lynn Pauwels was invited to submit to LAP18 an explanation paper on patents.*
7. *The Secretariat was requested to forward LAP17-10.2 (output paper LAP17-23.5) as a policy paper to the Council to note.*
8. *The Secretariat was requested to develop procedures for reported patents when the Rules of Procedures for Committees are revised.*
9. *The Secretariat was requested to amend the Strategic Vision taking account of the above remarks, i.e. removing the reference to Standards as a Goal and using the term “marine aids to navigation”.*
10. *The Secretariat was requested to consider redefining marine aids to navigation in the Strategic Vision, in a way that it can include VTS and pilotage and consider.*
11. *The Secretariat was requested to invite PAP to consider the relevance of IALA addressing climate change.*
12. *Christina Schneider is requested to draft a legal introduction to the ENAV paper ENAV19-11.18 (input paper LAP17-12.1).*
13. *LAP to prepare an input paper to LAP18 on the need for disclaimers for the IALA Dictionary, addressing translations and taking account of the views to be expressed at PAP32.*
14. *The Secretariat is requested to keep LAP informed of the developments concerning amendments to IMO Resolution A.857(20).*
15. *LAP participants are invited to send comments on the IALA Risk Register to the Secretariat within one week after the issue of the meeting report.*
16. *LAP participants are invited to send comments on the WWA Risk Register to the Secretariat within one week after the issue of the meeting report.*
17. *LAP Chair / the Secretariat to prepare a report on the review of the Risk Registers for submission to Council 63.*



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