

Agenda item	14
	Requests for advice from other IALA bodies
Author(s) / Submitter(s)	Vice chair

## **World VTS Guide – reaction from LAP**

### **1. Summary**

The Secretariat and the World VTS Guide Advisory Board has asked LAP to consider the international legal obligation of States, through the SOLAS Convention and IMO Resolution A.857(20), to place VTS information to be published on the World VTS Guide.

It is the advice of LAP 15 that

- States not parties to the SOLAS Convention are not under any international legal obligation to publish VTS information on the World VTS Guide through IMO Resolution A.857(20).
- States parties to SOLAS are under the obligation to follow, where possible, the guidelines of IMO Resolution A.857(20). Seen in conjunction with the current wording of the guidelines, however, it would be bold to assume that there exist a direct international legal obligation on the states parties to publish VTS information on the World VTS Guide
- In communication with States parties to SOLAS it might be meaningful to refer to the obligation to follow the guidelines, and encourage the publication of VTS information on the World VTS Guide.

### **2. Background**

At the last meeting of the World VTS Guide Advisory Board the 11 June 2015 there was a discussion on SOLAS requirements which, it was thought, impose an obligation to place VTS information to be published on the World VTS Guide, through IMO Resolution A.857(20).

The discussion has been presented to LAP 15 by input paper LAP 15-14.1 and the Secretariat asks the LAP to

- Advise if there exist an obligation to place VTS information on the World VTS Guide and/or
- This “legal” obligation can be used to encourage authorities to participate in the Guide.

### **3. Discussion**

The question considered by LAP is whether states are under an international legal obligation to publish VTS information on the World VTS Guide.

Put simply, states can only be bound by treaties (and treaty obligations) they themselves are States parties to, and by customary international law (which is reserved for some of the most basic and long standing rules of international law). An obligation to publish VTS information on the World VTS Guide is clearly not customary international law.

The question to answer then is whether the IMO Assembly Resolution A.857(20) is in itself binding on states. The resolution carries considerable weight, being an IMO Assembly resolution. However, the IMO has no power to make binding international legislation by itself and the resolution does not create any binding obligations on states.

The SOLAS Convention, on the other hand, is a treaty and thus includes obligations on the States parties to it. It is, however, worth noting that obligations arising from the SOLAS Convention would not be binding on states that have not signed and ratified it. If limiting the scope to States parties to the SOLAS Convention there exist an international legal obligation in the Convention Chapter V, Regulation 12 no 3 to “follow the guidelines developed by” IMO. A footnote refers directly to the Resolution A.857(20) so there should be no ambiguity as to which guidelines the obligation refers to.

It is not generally accepted that a document referenced in the text would be considered an integral part of SOLAS and thus be considered legally binding in itself. (Or put another way, that the contents of Resolution A.857(20) would be given the same status at the SOLAS Convention text itself, by virtue of the reference to it). This view would also concur with the chosen wording of Regulation 12 no 3 whereby states “shall, where possible, follow the guidelines”. The obligation on the States parties to SOLAS is then limited to follow the guidelines, where possible. Which leaves states with ample room to consider whether it is, or is not, possible for them to follow the guidelines or parts of them.

In addition to the flexibility of states to consider the possibility or not to follow the guidelines, IMO Resolution A.857(20) itself provides flexibility for states on the subject of the World VTS Guide, through the use of “should” rather than the more compelling “shall” in the relevant chapters 2.2.3 no 8 and 2.3.5. This is not surprising, since IMO Resolution A.857(20) started its life as an IMO Assembly Guideline. It has since made the transition into a SOLAS referenced document, but has retained its original wording since it is only referenced and not transposed into SOLAS as such.

#### **4. Advise**

Considering the above, it is the view of LAP that

- States not parties to the SOLAS Convention are not under any international legal obligation to publish VTS information on the World VTS Guide through IMO Resolution A.857(20).
- States parties to SOLAS are under the obligation to follow, where possible, the guidelines of IMO Resolution A.857(20). Seen in conjunction with the current wording of the guidelines, however, it would be bold to assume that there exist a direct international legal obligation on the states parties to publish VTS information on the World VTS Guide

Strengthening the guidelines by using “shall” rather than “should” when referring to the publication of VTS information on the World VTS Guide would create a stronger obligation on states parties to SOLAS. However, introducing words carrying obligations would be complicated, as they would move the document away from being a guideline.

In communication with States parties to SOLAS it might be just as meaningful to refer to the obligation to follow the guidelines, and encourage the publication of VTS information on the World VTS Guide.