

Agenda item 13
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Legislative Relationship between VTS and Aids to Navigation

1 SUMMARY

This document provides LAP with a commentaire of the legislative relationship between VTS and Aids to Navigation (AtoN).

1.1 Related documents

The 13th International VTS Symposium 2016, Conclusions.

2 BACKGROUND

The 13th International VTS Symposium 2016 was held at Kuala Lumpur (Malaysia) from 08th to 12th August 2016.

The symposium included to its conclusions paragraph 10: "The legislative relationship between VTS and Aids to Navigation (AtoN) needs to be considered in the light of international conventions".

The item has been taken to the agenda of LAP 17.

3 COMMENTS

The main question is whether VTS is considered to be a part of Aids to Navigation. This is interesting from the legal point of view, because of the international conventions and their liability clauses. In case VTS was considered to be part of AtoN, it would have some consequences.

According to the SOLAS V / 12 (VTS): "VTS contribute to safety of life at sea, safety and efficiency of navigation and protection of the marine environment, adjacent shore areas, work sites and offshore installations from possible adverse effects of maritime traffic".

According to the SOLAS V / 13 (AtoN): "... such aids to navigation as the volume of the traffic justifies and degree of risk requires."

SOLAS V/13 refers to IALA Recommendations and guidelines and to SN/Circ.107, Maritime Buoyage systems.

According to the IALA VTS Manual (Navguide): "A marine aid to navigation is a device or system external to vessels that is designed and operated to enhance the safe and efficient navigation of vessels and/or vessel traffic...".

IALA VTS Manual (Navguide): "pilotage and Vessel Traffic Services (VTS) are covered in the chapter since these services can also satisfy the definition of an aid to navigation".

According to the IALA wordbook: "AtoN means "...a visual, acoustical or radio device to assist the safe and easy movement of ships". Alternative term: Seamark, which is most commonly used for a visual device.

The international legal framework is not clear and sound. SOLAS seems to keep VTS and AtoN separate. However IALA's Navguide seems to include the VTS to AtoN.

This matter is especially interesting in the light of liability clauses of many international conventions (such as CLC, HNS, Wreck Removal etc.):

” The registered owner shall be liable unless maritime casualty is caused by the negligence or wrongful act of the maintenance of lights or other navigational aids.”

In case VTS was considered to be a part of AtoN, it is likely that the owners of the ship would not be held liable if a marine accident would take place because of VTSO's negligence or causality. This would lead that the liability limitation rules of LLMC Convention would not apply. This also would lead that the ship's insurances would not cover the damages. The state would be directly liable to the full amount of damages. Also other consequences may occur.

However, even though Navguide does not make the difference between VTS and AtoN these are legally taken different things. At least according to Finnish legislation. As far as pilotage is concerned there is case law on it.

In Finnish national legislation VTS and AtoN are separated and covered with separate Codes.

Case: MT JOSE MARTI grounding on 7th January 1981. Svea Supreme Court in Sweden held that the pilot had caused the grounding. Court held that pilot is not a part of AtoN. Ship was held liable (Sweden, Svea Hovrätt, ND 1987 s. 64).

Could this lead to interpretation "ex anal" that VTS is not part of AtoN either according to Swedish legislation?

4 RECOMMENDATION

The wording of Navguide should be taken under review. It should be ensured that the current wording of Navguide expresses the intention of IALA.

In case the wording needs to be altered, action should be started in due course.

5 ACTION REQUESTED OF THE LEGAL ADVISORY PANEL

The LaP is invited to:

- (i) note this input paper;
- (ii) consider what, if any, additional actions should be taken; and
- (iii) provide any comments and proposals it considers appropriate to the institutions of IALA.