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| From: Legal Advisory Panel | VTS47-5.1.4 |
| To: VTS Committee | 6 May 2019 |

LIAISON NOTE

Review of IMO Resolution A.857(20) on Guidelines for Vessel Traffic Services

# Introduction

The Legal Advisory Panel (LAP) at its 19th meeting, considered two input papers from the VTS Committee concerning the review of IMO Resolution A.857(20) on Guidelines for Vessel Traffic Services. One paper was related to the consideration of ‘changing traditional boundaries’ and ‘VTS and future developments’ (in the context of the use of VTS on a mandatory basis beyond a States territorial sea with the second paper being the latest version of the draft revised Guidelines for review and comment.

# Mandatory use of a VTS beyond a States territorial sea

The LAP considered input paper LAP19-13.1 which was based on an input paper on the same topic submitted to VTS45 (VTS45-8.1.9).

The LAP considered the provisions of SOLAS Chapter V, Regulation 12 on Vessel Traffic Services which, at paragraph 2 states that ‘*The use of VTS may only be made mandatory in sea areas within the territorial seas of a coastal State’.* Reference was also made to the extant IMO Resolution A.857(20) which states in Annex 2, section 2.2.2 that the *‘Guidelines should not be construed as conferring any additional power on authorities with respect to the operation of a VTS outside territorial seas’*.

The VTS Committee sought clarification as to whether articles 33 (contiguous zone) and 111 (right of hot pursuit) of the United Nations Convention on the Law of the Sea (UNCLOS) could provide a basis for the mandatory use of VTS outside of a States territorial sea.

Having considered both the UNCLOS and SOLAS articles and regulations referred to above, the LAP concluded that articles 33 and 111 of UNCLOS have no linkage/applicability to VTS implementation. The articles do not provide a basis for the mandatory use of VTS beyond the territorial sea of a State and that, in accordance with SOLAS Chapter V Regulation 12, any VTS provided outside of a States territorial sea can only be used on a voluntary basis.

# Draft revised IMO Resolution on Guidelines for Vessel Traffic Services

The LAP considered input paper LAP19-3.1.1 which provided the latest version of the draft revised IMO Assembly Resolution on Guidelines for Vessel Traffic Services (VTS46-13.2.5). The LAP reviewed the draft Resolution and associated Guidelines and provide the following comments and suggestions for further consideration by the VTS Committee.

## Section 3 – regulatory and legal framework

It is suggested that section 3.1 is deleted as this is general in nature and not specifically related to VTS. Furthermore, the manner and methods of the implementation of international treaties is a national matter.

Within section 3.3, it is suggested that the text *‘and geographic and environmental conditions’* is deleted. This would serve to harmonise the section with SOLAS Chapter V, Regulation 12 (paragraph 2) and that geographic and environmental considerations would be sufficiently encompassed in an assessment of the volume of traffic and degree of risk.

## Section 4 – responsibilities

Within section 4.1, noting that the draft Resolution text is directed to ‘Governments’ and that ‘Governments’ are referred to elsewhere in the draft Guidelines, it is suggested that the term ‘Contracting Government’ be deleted from section 4 and replaced with ‘Government’.

It is suggested that within section 4.1.1 the text of *‘promulgate laws and regulations to’* is deleted for the same reasons as the proposed deletion of section 3.1 reflecting that the manner and methods of the implementation of international treaties is a national matter.

Within section 4.4, it is not clear as to what is meant by *‘the provisions and instructions given to the ship by the VTS’.* Whilst the term ‘provisions’ is contained within SOLAS Chapter V, Regulation 12 (paragraph 4) it is not clear what is meant by this. It may be beneficial to articulate what is meant by ‘provisions’ (which may be the procedures/regulations/rules of a VTS). It may also be beneficial to define what is meant by a ‘participating ship’.

Considering the proposed text stating that a Master *‘may be required to report on their actions should they disregard any instruction, advice or request given by a VTS’*, whilst the basis for such a report for disregarding an instruction is relatively clear, with the IMO Standard Marine Communication Phrases (SMCP) stating that *‘the recipient has to follow this legally binding message unless s/he has contradictory safety reasons which then have to be reported to the sender’* the situation may not be so clear with respect to advice and request.

The SMCP states that *‘advice does not necessarily have to be followed but should be considered very carefully’*. Therefore, it is not considered that a VTS may ‘require’ a Master to report on their actions if advice is disregarded.

Furthermore, the SMCP definition of request is *‘this indicates that the following message is asking for action from others with respect to the vessel. The use of this marker is to signal: I want something to be arranged or provided, e.g. ship´s stores requirements, tugs, permission, etc’* and that the term request ‘*must not be used involving navigation, or to modify COLREGS’* it is therefore suggested that the inclusion of the term request in this section is not appropriate.

## Section 5 – purpose of a VTS

Within section 5.2, and bearing in mind the proposed change in structure of the three types of VTS, it is suggested to modify the text to better articulate the purpose of a VTS related to the giving of ‘*information, advice, warnings and instructions to manage the safe and efficient navigation of ships…’*. It is further suggested to substitute the term ‘*transit’* for ‘*navigation’*.

Sections 5.1.1 and 5.2.2 provide examples of what a VTS may do with respect to the provision of timely and relevant information and the monitoring and management of traffic. However, section 5.2.3 states that a VTS should respond to developing unsafe situations but goes on to provide examples of such unsafe situations without providing any guidance on what such a response may include.

Further within section 5.2.3, with respect to the provision of an instruction, it is contradictory to assist with a decision on board that was made onshore by a VTS. Although the final decision remains with the Master (see section 6.1), this will only be relevant in cases when there is an imminent danger for the ship or its crew by following the instruction. Therefore, it cannot be assistance to the decision-making process onboard. This could lead to an interpretation that instructions issued by a VTS are not binding and everything will be up to the Master. This would also question the status of a VTS. The main message within section 5.2.3 must be addressed to the VTS and not the Master onboard to ensure that the VTS absolutely has to act in unsafe situations to maintain or regain an acceptable level of safety.

To better articulate what is expected of a VTS in response to a developing unsafe situation the text could possibly be amended to *‘Responding to developing unsafe situations by undertaking all necessary measures to maintain or regain an acceptable level of safety. Such unsafe situations may include:...’*.

## Section 6 – general principles

Two minor modifications are suggested in sections 6.1 and 6.2

## Section 7 – qualifications and training

The footnote of section 7.2 refers to ‘the standards published by IALA’. Whilst the relevant IALA Standard is S1050 on Training and Certification, the second part of the footnote refers to Recommendation R0103 on the standards for the training and certification of VTS personnel. This text may benefit from review to avoid any confusion between S1050 and R0103.

# Action requested

The VTS Committee are requested to:

1. Note the information provided with respect to the mandatory used of a VTS beyond a States territorial sea.
2. Review the suggested amendments to the draft IMO Guidelines for Vessel Traffic Services and incorporate them into the document, as appropriate.