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Agenda item [[2]](#footnote-2) 8

Technical Domain / Task Number 2 1.1

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Review of Resolution A.857(20)

Consideration of ‘Changing Traditional Boundaries’ and ‘VTS and Future Developments’

# Summary

The purpose of this document is to seek the Committee views with regards to progressing two of the 8 key areas identified in the submission to the IMO for a revision of IMO Resolution A.857(20) that contribute to the broad interpretation and debate regarding VTS and which require clarification or update (MSC 99/20/3). These include:

* **Changing traditional boundaries** - Coastal States are increasingly providing VTS beyond territorial seas (e.g. in the approach to ports) as a means to ensure the safety, security and efficiency of navigation and the protection of the marine environment in a domain with increasingly diverse utilisation of space; and
* **VTS and Future Developments** - The current Resolution does not provide a framework to accommodate new trends, such as the development, adoption and implementation of Maritime Service Portfolios, e-navigation and other evolving instruments aimed at the facilitation of safe, secure and efficient maritime traffic and trade.

## Related documents

# Task 1.1.1 - Revision of IMO Resolution A.857(20) Guidelines on Vessel Traffic Services

# Discussion

## VTS Beyond Territorial Seas

It is known that many Coastal States provide, or wish to provide, VTS beyond the Territorial Sea but that SOLAS states that VTS can only be mandatory within the Territorial Sea. I would question whether the SOLAS statement is wholly correct.

The definition of the Territorial Sea is found in the United Nations Convention on the Law of the Sea (UNCLOS). This document also defines other areas (zones) that are considered as being under the responsibility of the Coastal State. The Contiguous Zone is the area beyond the Territorial Sea and extends to 24nm. Article 33 of UNCLOS defines the Contiguous Zone as follows:

*1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:*

*(a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;*

*(b) punish infringement of the above laws and regulations committed within its territory or territorial sea.*

*2. The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.*

It is clear that within this zone the Coastal State may exercise control to prevent infringement of many of its laws and regulations within the Territorial Sea and can punish such offenders. VTS relates to the approach to the Coastal State and therefore vessels that are en-route to a Coastal State Port are, by definition, en-route to the Territorial Sea. Therefore the Coastal State can exercise the control necessary to ensure compliance with its laws and regulations in the Territorial Sea and within the Contiguous Zone.

Article 33 (1b) states that the Coastal State can punish infringement of such laws within the Contiguous Zone and Article 111 of UNCLOS confirms that punishment can include hot pursuit. Article 111 states as follows:

*The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted.*

When it is possible to exercise control, punish infringement and pursue violating foreign vessels from within the contiguous zone, it must be possible to use these measures to establish and provide VTS within the contiguous zone. These articles therefore seem to include all provisions necessary for the Coastal State to declare a VTS in an area that covers the territorial sea and the contiguous zone. I do not think that this in any way impedes freedom of navigation for vessels passing through the Contiguous Zone but not entering the Territorial Sea, but for vessels approaching the coastline, it can enable the Coastal State to enact measures that would help improve safety (navigational and environmental) and security.

## Future Developments

The maritime world is currently in the early stages of some interesting technological changes. E-navigation and VDES are providing new ways of exchanging information with ships at sea and Sea Traffic Management (STM) has been enhancing Route Management principles with the aim (amongst others) of making voyages more environmentally friendly. Then there are the debates and developments relating to Digitalisation and Marine Autonomous Surface Ships (MASS).

It is clear that technologies are now enabling data exchange between ship and shore to a far greater extent than has been the case in the past. Information about planed arrivals can be received and continuously updated in real time (or near real time) such that VTS Authorities no longer need to wait until a vessel is within VHF radio range to get an accurate understanding about ETA and other factors. This enables the necessary planning to be carried out at an earlier stage to minimise environmental impact and to ensure the best possible safety of Navigation for all vessels

With data being exchanged in greater quantities and with greater frequency during the whole voyage it is could also possible for a VTS to influence the on board decisions at an earlier stage (outside the Territorial Sea and outside the Contiguous Zone). For MASS vessels approaching the coast, it is clear that the VTS will need much more information and may even need to take over the control at some stage of its approach. It is possible that this could be necessary within the first half of the next decade.

## Conclusions

Whilst I am not a legal expert, I would assume that UNCLOS is the senior document as UNCLOS defines the Territorial Sea and Contiguous Zone whereas SOLAS simply uses these definitions. On that basis, I would propose that UNCLOS is already providing the necessary hooks upon which a Coastal State could establish some mandatory VTS measures beyond the Territorial Sea, within the Contiguous Zone, without impacting the freedom of navigation of vessels that are not approaching the coastline.

Regarding future developments, I believe that a VTS Authority will soon begin to have greater interaction with many types of vessels throughout their voyage. The exchange of data will grow as the new technological developments come online and therefore a VTS could influence decision making at a much earlier stage. For MASS, the VTS may even require some ability to control or at least request changes to the voyage plan.

At the time that a new revision of Resolution 857 is being considered, I think that it is appropriate to re-visit both the current situation and consider future developments. The restriction on mandatory VTS to the extent of the Territorial Sea does not seem wholly correct and will probably impede future developments that are focussed on improving safety and environmental protection. Resolution 857 (20) is more than 20 years old. In another 20 years the maritime world may look very different. Therefore, the new resolution 857 should aim to provide the best possible framework for VTS application beyond the Territorial Sea in order to meet the demands of the next 20 years or more.

# Action requested of the Committee

The Committee is requested to:

1. Re-consider the possible conflict / flexibility that exists between UNCLOS and SOLAS relating to the application of VTS within the defined areas. If necessary, consider referring this matter to the Legal Advisor Panel of IALA
2. Consider the potential future applications and their impact on the need for VTS to be able to be provided beyond the Territorial Sea limit. If necessary, liaison with the e-navigation committee may be useful or appropriate.
3. Provide direction on this matter for the new version of Resolution 857

1. Input document number, to be assigned by the Committee Secretary [↑](#footnote-ref-1)
2. Leave open if uncertain [↑](#footnote-ref-2)