

ANNUAL REPORT OF CMI IWG (POLAR SHIPPING) ACTIVITIES

(July 2014-June 2015)

The IWG comprises:

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1. INTRODUCTION

Since CMI Hamburg the IWG (Polar Shipping) conducted its work according to the plan of activities set out in the last report to Assembly (17 June 2014). A mid-year report was submitted to the CMI Executive Council (ExCo, 13 November 2014).¹ The work was conducted through e-mails, telephone conferences and occasional meetings when possible.²

The IWG's main work is conducted through the following subgroups:

- Conventions: N. Frawley (chair), G. Goto, T. Henriksen, B. Ray & H. Ringbom
- Load lines: A. Chircop (chair), B. Ray, N. Reggio & D. Snider
- Civil liability: L. Rosenberg Overby (chair), D. Baker, P. Cullen, K. Khosla, B. Ray, S. Skaridov; by invitation, E. Røsæg and O. Gayazova (Scandinavian Maritime Institute, University of Oslo, Norway)

¹ Available at:

<[http://www.comitemaritime.org/Uploads/Arctic%20and%20Antarctic/IWG%20\(Polar%20Shipping\)%20July-December%202014%20Report.pdf](http://www.comitemaritime.org/Uploads/Arctic%20and%20Antarctic/IWG%20(Polar%20Shipping)%20July-December%202014%20Report.pdf)>.

² The Chair had meetings on IWG work with L. Rosenberg Overby in Copenhagen (13 November 2014) and N. Frawley in Halifax (11 May 2015). N. Frawley and P. Cullen met in Toronto (13 November 2014; 23 April 2015).

- Polarworthiness: A. Chircop (chair), P. Cullen & N. Frawley
- Collision avoidance regulations: P. Cullen (chair), A. Chircop & N. Frawley

2. IWG MEMBERSHIP

Efforts in reviewing and diversifying the membership of the IWG to include participants from regions/countries where substantial work on polar shipping has or is taking place, especially in Asia, continued as reported in mid-year report. ExCo accepted the Chair's recommendation to invite Professor G. Goto (University of Tokyo, Japan) and Dr. Y-K Park (Korean Maritime Institute, South Korea) to join the IWG. The Chair explored a possible prospective new member from the People's Republic of China, but who declined the invitation. Efforts at recruiting participation from China continue. The Chair has received a recommendation (under consideration) from IWG members regarding possible representation from New Zealand to strengthen the IWG on Antarctic issues.

3. IWG ACTIVITIES

The IWG's activities are reported upon below without any particular order:

3.1 Review of private maritime law conventions

This activity consisted of a systematic review of 26 private and some public maritime law conventions to ascertain their applicability or otherwise to the Arctic and Antarctic, and whether they need amending to better address the needs of polar shipping. The review has been largely completed and a draft report prepared by sub-group chair N. Frawley for consideration by the IWG. In addition to N. Frawley, IWG members G. Goto, T. Henriksen, B. Ray, and H. Ringbom contributed to this report. The Draft Report recommends further study of seaworthiness issues for various maritime contracting purposes (e.g., carriage of goods by sea) and liability issues under the wreck removal convention (under consideration in the Polarworthiness subgroup). The report also expresses concern regarding the fact that the HNS Convention is not yet in force and the potential impacts of an HNS spill in polar areas. The draft report will be discussed in CMI Istanbul in view of finalization. On finalization, the report will be uploaded to the IWG page on the CMI website.

3.1 Load lines in polar shipping

After Hamburg the working paper on polar load lines was developed and submitted by A. Chircop on behalf of the subgroup for publication in the CMI Yearbook with the title "Polar Load Lines for Arctic Shipping: A Missing Link in Maritime Safety Regulation?" It is also uploaded on the CMI website.

A. Chircop also prepared a presentation (Box 1 below) on the subject at ArcticNet, a major conference circuit on the Arctic, as part of a panel on “Safe, Efficient and Sustainable Shipping in the Arctic”, convened in Ottawa on 8-12 December 2014. Unfortunately A. Chircop was unexpectedly unable to attend and the presentation was made on his behalf by Professor Ronald Pelot of Dalhousie University, Canada. The abstract was published and posted at: <<http://www.arcticnetmeetings.ca/ac2014/docs/web-oral-presentation.pdf>>.

Box 1

<p style="text-align: center;">ARCTIC CHANGE Shaw Centre, Ottawa, 8-12 December 2014</p> <p style="text-align: center;">“POLAR LOAD LINES” FOR ARCTIC SHIPPING: A MISSING LINK IN MARITIME SAFETY REGULATION?</p> <p style="text-align: center;">Aldo Chircop Schulich School of Law, Dalhousie University Chair, CMI IWG on Polar Shipping</p> <p>This paper discusses load lines for safe loading arrangements of vessels for international navigation in polar waters within the framework of a global system designed for safe carriage of goods and passengers. Recent science suggests that there is more fresh water in the Canadian Arctic than previously thought. The International Convention on Load Lines (LLC), 1966 as amended, establishes a regulatory framework for the limits of loading of ships on international voyages. The LLC is an important technical instrument that safeguards life and property at sea. In recent years the International Maritime Organization (IMO) has had a flurry of polar shipping regulatory activities, most especially the Polar Code, expected to be adopted with amendments to SOLAS and MARPOL in 2015. Currently, load lines for ships in polar navigation are not addressed by the LLC or Polar Code. This paper discusses the importance of load lines in polar navigation, considers the possible significance of increased freshwater in navigable areas and questions whether the current regulation of navigation in the Arctic should introduce polar-specific load lines requirements. The difficult navigation conditions in the Arctic require a higher standard of seaworthiness than usual, better termed “polarworthiness”, and load lines should play a significant role. Seaworthiness is essential to guide risk distribution in maritime contracts and can be expected to play an important commercial role in maritime trade in and through the Arctic. The paper draws on current work of the International Working Group on Polar Shipping of the Comité Maritime International.</p>

At the CMI Istanbul Colloquium in June 2015 the IWG will consider whether the issues raised in the paper are sufficiently addressed to support a recommendation to ExCo and Assembly to advise the International Maritime Organization to revisit the Load Lines Convention (LLC) with a view to ascertaining whether specific provision for load lines in polar waters as defined in the recently adopted Polar Code should be included in the LLC.

3.2 The pollution liability regime in polar regions

At CMI Hamburg the IWG agreed that a sub-group on civil liability in polar shipping be established with L. Rosenberg Overby as chair. Under his leadership the subgroup was populated and writing tasks were distributed to members on the basis of a draft working paper outline. The work of the sub-group is to develop a working paper explaining how the existing

pollution liability regimes³ actually apply (or do not) to the Polar Regions. The focus is on vessel-sourced spills, not restricted to tankers, but excluding spills from oil exploration and production, pipelines and other sources.

A substantial draft working paper has been prepared for discussion in CMI Istanbul under the leadership of L. Rosenberg Overby, and contributions from D. Baker, P. Cullen, K. Khosla, B. Ray, E. Røsæg, O. Gayazova and A. Skaridov. Following Istanbul, the paper will be finalized for presentation at CMI New York in 2016.

3.3 Seaworthiness in polar shipping

In Hamburg the IWG agreed that a working paper on seaworthiness in a polar shipping context should be developed to help inform the CMI membership on possible legal issues. Discussions on the topic involved A. Chircop, P. Cullen and N. Frawley which led to the submission of an abstract for a presentation at the 6th Arctic Shipping Summit, 19 March 2015, convened by Active Communications International Ltd. P. Cullen prepared a lengthy presentation (Box 2 below) which spoke to the work of the IWG to date. Discussions on the subject continue.

Box 2

**6TH ARCTIC SHIPPING SUMMIT: DEVELOPMENTS IN ARCTIC SHIPPING
OPERATIONS AND INFRASTRUCTURE
Montreal, QC, 18-19 March 2015**

“POLARWORTHINESS: AN EMERGING NEW STANDARD OF SEAWORTHINESS FOR ARCTIC SHIPPING?”

Peter J. Cullen
Partner, Stikeman Elliott LLP
Member, CMI IWG on Polar Shipping

- Raising standards of *seaworthiness* in the Polar context - the new frontier of *polarworthiness*.
- Implications for maritime contracting (risk management and risk sharing) in the *polarworthiness* environment.
- Navigating new Polar waters (Load Line Convention, Civil Liability and COLREGS issues)

3.4 Applicability of the international collision avoidance regulations in polar environments

Also agreed in Hamburg was the need to study the application of the international collision avoidance regulations in polar navigation conditions as maritime traffic in polar regions

³ (International Convention on Civil Liability for Oil Pollution Damage, 1969 and Protocols; International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 and Protocols; International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 and 2010 Protocol, etc.).

increases. This new topic continues to be studied by a sub-group composed of P. Cullen, N. Frawley and A., Chircop.

3.5 Inventory of polar shipping law initiatives

Work on an inventory of polar shipping law initiatives of pertinent organizations underway by A. Chircop is delayed. Work is expected to resume in the summer of 2015.

3.6 Other activities

3.6.1 Contributions to the CMI Yearbook 2014

Presentations made by T. Henriksen⁴ and L. Rosenberg Overby⁵ were finalized and uploaded on the IWG page on the CMI website. Other Hamburg presentations remain to be uploaded by the Secretariat. A. Chircop et al., T. Henriksen and L. Rosenberg Overby also finalized their Hamburg papers and were published in the CMI Yearbook 2014.⁶

3.6.2 Reorganized IWG page on CMI website

The IWG page on the CMI website was re-organized with the kind assistance of the Secretariat to include an introduction and three folders in which IWG documents are placed for CMI membership and public access.⁷ The print *opus* is now organized in three folders: (1) reports; (2) working papers; and (3) conference papers and presentations. The folders are populated with previously posted and newer IWG work materials.

3.6.3 Participation in international conferences

In addition to presentations by IWG members at ArcticNet 2014 and Arctic Shipping Summit 2015 reported above, IWG members have opportunities to present IWG work in other conferences. The Chair encouraged IWG members to consider submitting abstracts to International Conference on Safe and Sustainable Shipping in a Changing Arctic Environment (ShipArc 2015), 25 to 27 August 2015, at the World Maritime University (WMU) in Malmö, Sweden.⁸ The conference is convened jointly by the IMO, WMU and the Protection of the Arctic Marine Environment (PAME) working group of the Arctic Council. The Chair will be presenting a

⁴ "The Polar Code Ships in Cold Water – Arctic Issues Examined" available at: <<http://www.comitemaritime.org/Uploads/Arctic%20and%20Antarctic/Tore%20Henriksen%20The%20Polar%20Code%20presentation.pdf>>.

⁵ "Civil liability in polar marine environments" available at: <http://www.comitemaritime.org/Uploads/Arctic%20and%20Antarctic/Lars%20Rosenberg%20Overby_Civil%20Liability%20presentation.pdf>.

⁶ Papers published at 332-367, available at <http://www.comitemaritime.org/Uploads/Yearbooks/CMI_Yearbook_2014.pdf>.

⁷ Available at <<http://www.comitemaritime.org/Polar-Shipping/0,2793,19332,00.html>>.

⁸ Information available at: <<http://wmu.se/events/shiparc-2015>>.

paper at the workshop Governance of Arctic Shipping – Balancing Rights and Interests of Arctic States and User States, Singapore, 10 – 11 December 2015, convened by the Centre of International Law at the National University of Singapore and the Jebsen Centre for the Law of the Sea at the University of Tromsø, Norway.

4. 2016 CMI CONFERENCE AND MLAUS SPRING MEETING

On 25 August 2014 Stuart Hetherington (CMI President) and Robert Clyne (Maritime Law Association of the United States, MLAUS, President) jointly communicated a message to CMI IWG and MLAUS Committees to discuss how the two organizations can work together to make the CMI New York Conference and MLAUS Spring Meeting on 3-6 May 2016 a combined success.

The Chair and N. Frawley represented the IWG in a telephone conference on 6 November 2014 that included P. Buhler (Chair, MLAUS Committee on International Organizations, Conventions and Standards, IOCS) and J. Kimball (Chair, CMI Sub-Committee, MLAUS) to exchange views on the Arctic session in May 2016 (reported in detail in the mid-term report to ExCo). This session is particularly timely as it coincides with the United States' chairing of the Arctic Council (2015-2017). The conference call was followed by further email exchanges and a shorter follow-up conference call on 13 April between A. Chircop and P. Buhler. It was agreed that discussions would be resumed after the MLAUS spring meeting in New York. P. Buhler also agreed to address the IWG meeting in Istanbul regarding the planned Arctic session in New York.

5. DIRECTIONS AND NEXT STEPS

The next steps in the IWG's work are expected to be as follows:

- Convening of the IWG meeting in Istanbul in June 2015 (chaired pro temp by N. Frawley) with the following agenda:
 1. Review of draft agenda
 2. Review of progress of work since Hamburg:
 - (a) Load Lines Convention: working paper completion; the matter to discuss is whether the IWG is in a position to make a recommendation to ExCo and Assembly or should be undertaking more work (discussion moderated by N. Frawley).
 - (b) Pollution liability regime: review of progress on working paper (L. Rosenberg-Overby)
 - (c) Private maritime law conventions: state of reviews (N. Frawley)
 - (d) Polarworthiness: status (P. Cullen)
 - (e) Colregs in polar environments: status (P. Cullen)
 3. CMI New York, 3-6 May, 2016: cooperation with MLAUS on the planned "Arctic and Antarctic Shipping: Regulatory Challenges for Polar Navigation and Maritime Operations" (P. Buhler)

4. Membership matters

5. Any other business

- Substantive work matters:
 - Possible recommendation to ExCo and Assembly regarding polar load lines (2015).
 - Finalization of international conventions working paper in 2015.
 - Resumption of work on inventory of polar shipping shipping law initiatives (2015).
 - Finalization of civil liability working paper for presentation in New York 2016.
 - Preparation of draft working paper on polarworthiness (2015-2016).

- Organizational matters:
 - Continuing consultations regarding a possible new sub-group on routeing measures in the Arctic (2015).
 - Invitation of new members from China and New Zealand on the IWG (2015).
 - Assistance to organizers of CMI New York 2016 with regard to the Arctic session, as needed (2015-2016).
 - IWG member presentations at selected international maritime and polar conferences (2015-2016).
 - Periodical updates to the IWG page on the CMI website (2015-2016).

Respectfully submitted,

Professor Aldo Chircop
Chair, CMI IWG on Polar Shipping

27 May 2015