

REPORT OF CMI IWG (POLAR SHIPPING) ACTIVITIES

(1 July-31 December 2016)

IWG Membership: Aldo CHIRCOP, *Chair*; Frida ARMAS PFIRTER; David BAKER; Peter CULLEN; Nigel FRAWLEY, *advisor*; Gen GOTO; Tore HENRIKSEN; Kiran KHOSLA; Young-Kil PARK; Bert RAY; Nicolò REGGIO; Henrik RINGBOM; Lars ROSENBERG OVERBY; Donald ROTHWELL; Alexander SKARIDOV; David (Duke) SNIDER, *Technical Advisor*

1. INTRODUCTION

The IWG continued its work on the basis of its last annual report to Assembly and the Executive Council (5 April 2016) and its meeting in New York (3 May 2016).

2. MEMBERSHIP MATTERS

Periodically, the IWG Chair, in consultation with members, reviews the composition of the membership to ensure working group capacity to address the work planned and when members are inactive. As a result of such consultations, the Chair proposes the addition of two new members to assist the IWG's work on Antarctic shipping and collision avoidance regulations (COLREGS) in polar shipping, as follows:

- Kim Crosbie, Executive Director of the International Association of Antarctic Tour Operators. Ms Crosbie coordinates the work the Association's committees and working groups, and directs IAATO's efforts with the Antarctic Treaty Parties and other government bodies relevant to Antarctic tourism, including the International Maritime Organization.
- Stephanie Johnston, senior solicitor at Brodie LLP, Scotland. Ms Johnston specialises in both wet and dry shipping and transport cases, and her case work has included, among other, ship collisions. She has advised on high profile fatal accidents at sea involving investigations by, among other, the Maritime and Coastguard Agency (MCA), Marine Accident Investigation Branch (MAIB) and Fatal Accident Inquiries.

The Chair respectfully requests the Executive Council to approve the addition of K. Crosbie and S. Johnston to the IWG and to discontinue the membership of Dr F. Armas Pfirter.

3. IWG ACTIVITIES SINCE CMI NEW YORK

3.1 Review of private maritime law conventions

The review of the private maritime law conventions undertaken by N. Frawley (subgroup chair), G. Goto, T. Henriksen, B. Ray, H. Ringbom and A. Skaridov has been completed following revisions, including incorporation of changes recommended at the New York meeting. Updates were undertaken by N. Frawley with inputs from D. Baker. The revised report is now undergoing final editing for uploading on the IWG page on the CMI website for the information of the CMI membership, and will replace an earlier version.

The IWG Chair takes the opportunity of this report to thank N. Frawley, subgroup contributors and D. Baker for the work on this informative report.

3.2 Load lines in polar shipping

In New York the IWG was of the view that the working paper on polar load lines would benefit from additional work to take into consideration scientific updates, any class requirements for load lines in polar environments, and comparative national load line requirements of Arctic States and practices in Antarctic waters. The subgroup was requested to produce a revised working paper for consideration by the IWG at CMI Genoa in September 2017. A memo was circulated after the New York meeting for this purpose (Annex I).

To enable additional work on these issues, the subgroup membership (originally A. Chircop as chair, B. Ray, N. Reggio and D. Snider) was expanded during and after the New York meeting to include additional members drawn both from within and outside of the IWG (K. Crosbie, D. Baker, T. Henriksen, P. Pamel, L. Rosenberg Overby, and B. Ray). At the time of writing, the subgroup chair is in the process of coordinating inputs concerning practices in Antarctica (Baker and Crosbie), Denmark (Rosenberg Overby) and United States (Ray). Inputs on Canada (Pamel), Norway (Henriksen) and Russian Federation (Skaridov) will be added in due course.

3.3 The pollution liability regime in polar regions

At the New York Meeting the IWG requested the subgroup (L. Rosenberg Overby as chair, D. Baker, P. Cullen, K. Khosla, B. Ray, S. Skaridov; by invitation, E. Røsæg and O. Gayazova) to examine expected new IOPC guidelines on environmental damage assessment and adapt the content of the working paper to any changes as necessary. At the New York meeting and subsequent to the meeting, there was a healthy exchange of views on aspects of the report among subgroup members that necessitated post-meeting consultations with the IWG Chair.

Following the New York meeting, the IWG Chair obtained a copy of the IOPC Funds draft document (shared with the subgroup chair) on guidelines for environmental damage assessment. The Chair was informed that the draft guidelines would be considered at a Funds meeting in October 2016 and with the expectation of completion by the end of the year and with planned

adoption in April 2017. In view of this development, the IWG Chair, and after consulting the CMI President, is of the view that the working paper would benefit from consideration of the guidelines as finally adopted by the IOPC Funds parties. The IWG Chair also continued with subgroup members concerning aspects of the report that required further discussion. The IWG Chair's expectation is that the working paper will require some revision and updates.

3.4 COLREGs in polar environments

The membership of the COLREGS subgroup (originally composed of A. Chircop as chair, P. Cullen and N. Frawley) was expanded as follows: A. Chircop as chair, P. Cullen, N. Frawley, Stefanie Johnston, Y-K Park, L. Rosenberg Overby, A. Skaridov, and D. (Duke) Snider (technical expert). The subgroup chair communicated a memorandum (Annex II) concerning the subgroup's work based on the provisional outline of the working paper adopted at the New York meeting. The purpose of the working paper is to study the context, purpose and significance of the COLREGS in polar environments (especially Arctic waters) and how the COLREGS interact with other polar shipping regulation. At this time, the paper is intended to explore this topic for the benefit of the CMI membership. Preliminary exchanges concerning the scope of the working paper continue in the subgroup.

4. FUTURE INTENTIONS

During the 1 January-30 July 2017, and through CMI Genoa, the IWG will be working on the following:

- Final editorial work of the revised conventions report.
- Produce an updated civil liability working paper.
- Continue work on gaps and updates on polar load lines and prepare a revised working paper.
- Continue work on the COLREGS working paper.

Respectfully submitted,

Professor Aldo Chircop
Chair, CMI IWG (Polar Shipping)
8 November 2016

ANNEX I

CMI/IWG POLAR SHIPPING

Polar Load Lines Subgroup (5 October 2016)

This memo is to follow up on a deliberation of the IWG at its New York 3rd June meeting concerning further work that should be undertaken on the polar load lines working paper (attached). In reviewing the Chair's notes (also attached), it seems to me that there are some core questions, answers to which would help advance the working paper, namely:

1. How, if at all, do Arctic States and other key States address load lines requirements for Arctic shipping?
2. How, if at all, do IACS safety requirements address load lines for polar shipping?
3. What does the latest science indicate as possible concerns for load lines in Arctic shipping?

QUESTION 1

This question requires more focused attention, possibly at two levels: (a) practices of selected jurisdictions, especially Arctic States; (b) explore more general inputs from the CMI member associations in the form of a questionnaire, as advised by the NY meeting.

(a) Practices of selected jurisdictions

On a first level we could attempt to identify what are the load lines practices in the Arctic States, and several IWG members and other colleagues offered assistance in this regard, as follows:

- Canada: Peter Pamel (Canadian Maritime Law Association)
- Denmark/Greenland: Lars Rosenberg Overby
- United States: Bert Ray
- Antarctic waters: David Baker

Peter, Lars, Bert, David: can you please confirm?

At the meeting, we also suggested:

- Russian Federation: Alexander Skaridov
- Norway: Tore Henriksen

Alex, Tore: can you please confirm?

We could also consider similar inquiries specifically on China, Japan and South Korea. With regards to South Korea, Young Kil Park has agreed to explore the question within that jurisdiction. I will explore possible contributors for China and Japan. Are there others that should be added?

I expect that the summary practice could be reproduced in a one page brief, perhaps even less if there are no dedicated provisions for load lines for polar shipping. Is a 31 December 2016 target date for these one-page briefs be realistic for everyone?

(b) Questionnaire

I would be grateful for your views on whether we should proceed with a questionnaire, and if yes, (a) how should the question(s) be framed, (b) whether we should also seek information on regulations, standards and practices with respect to shipping in Antarctic waters as well (in addition to David B's task above), and (c) timeline, including how much time should be given for completion of questionnaires.

Ideally, we should have a revised version of the paper for consideration at a possible IWG pre-conference meeting at CMI Genoa conference on 6-8 September 2017.

QUESTIONS 2 AND 3

Would Nicolo and Duke be interested in joining me in tackling this question?

SUBGROUP MEMBERSHIP

The original membership of the subgroup consisted of Aldo (chair), Bert, Nicolo Reggio, and David (Duke) Snider (technical expert). I would like to propose expansion of the membership to reflect the participation of Peter, Lars, Alex, Tore, David B and Young Kil. Additional IWG members/colleagues may be invited to join us as needed.

I look forward to your feedback.

Aldo Chircop
Polar Load Lines Subgroup
CMI/IWG (Polar Shipping)

ANNEX II

CMI/IWG POLAR SHIPPING

COLREGS Subgroup (5 October 2016)

At its last meeting in New York on 3rd June (notes attached), the IWG approved the outline for a working paper on COLREGS in Polar Navigation (attached) and confirmed membership of an ad hoc subgroup composed of A. Chircop (chair), P. Cullen, N. Frawley, Stefanie Johnston (Brodie LLP, Scotland), L. Rosenberg Overby, Y-K Park, A. Skaridov, and D. (Duke) Snider (technical expert), with additional technical experts to be invited as needed. The purpose of the working paper would revisit the context, purpose and significance of the COLREGS as they are expected to apply in polar environments, focusing on Arctic waters, in particular where ice is present. It will also study how the COLREGS interact with other aspects of polar shipping regulation, most especially the Polar Code and STCW Convention and Code as amended recently.

I am now writing to you (albeit belatedly) to mobilize our collective efforts to produce the working paper, ideally in time for discussion at a potential IWG pre-conference meeting at CMI Genoa conference on 6-8 September 2017.

As a starting point, I propose the following working outline based on the attached outline approved by the IWG:

1. INTRODUCTION

- Rationale for the working paper and timing

2. CONDITIONS AND CHARACTERISTICS OF POLAR NAVIGATION

- Conditions and hazards of navigation (what distinguishes Arctic navigation?)
- What are the standards of good seamanship in polar navigation?
- Role of ice navigator

3. COLREGS IN POLAR NAVIGATION

- Context, purpose and significance of the COLREGS (including presumptive application to polar shipping)
- Interaction of COLREGS with Polar Code and other instruments

4. NATIONAL PRACTICES/EXPERIENCES

- Role of national modifications, if any, and where applicable
- Canadian Arctic waters (NWP; include Great Lakes?)

- Russian Federation Arctic waters (NSR)
- Denmark/Greenland
- Norway
- United States (include Great Lakes?)
- Baltic Sea

5. RULES OF SPECIFIC FOCUS

- Rule 5 – Proper look out
- Rule 6 – Safe speed
- Rule 7 – Risk of collision
- Rule 8 – Action to avoid collision
- Rule 9 – Narrow Channels
- Rule 13 – Overtaking vessel
- Rule 17 – Action by stand-on vessel
- Rule 18 – Responsibilities between Vessels
- Others?
- Rules on lights, shapes and sounds?

6. ASSESSMENT

I seek your views as to (a) whether this is a viable working outline and if it can be improved; (b) the assumption all along was that the focus is on Arctic shipping – should we include consideration in Antarctic waters? Or are conditions of navigation there very different and may not raise issues for COLREGS?; (c) which aspects of the outline you feel individually interested in contributing to? (the more, the merrier!).

I look forward to your responses. Ideally, we should agree on the outline and tasks by the end of this month to give us a good head start on the work. We should aim at submitting individual contributions producing not later than 1 April 2017, so that I can piece together a first draft for further consultation and revision as needed. We should produce an advanced draft for IWG circulation by 1 August. Is this a realistic timeline?

Aldo Chircop
COLREGS Subgroup
CMI/IWG (Polar Shipping)