

DRAFT REPORT OF CMI IWG (POLAR SHIPPING) ACTIVITIES

(July-December 2014)

The IWG comprises:

Aldo CHIRCOP, *Chair*
Frida ARMAS PFIRTER
David BAKER
Peter CULLEN
Nigel FRAWLEY
Tore HENRIKSEN
Kiran KHOSLA
Bert RAY
Nicolò REGGIO
Henrik RINGBOM
Lars ROSENBERG OVERBY
Donald ROTHWELL
Alexander SKARIDOV
David (Duke) SNIDER, *Technical Advisor*

During the reporting period (July-December 2014) the IWG conducted its work within the framework of the plan of activities set out in the last report to Assembly (17 June 2014) and primarily through e-mails, telephone conferences and occasional meetings when possible, as appropriate.

1. IWG ACTIVITIES

1.1 Inventory of polar shipping law initiatives

A. Chircop has commenced work on the task of preparing an inventory of polar shipping law initiatives of pertinent organizations which will be updated periodically. It is expected that the first draft of the inventory will be circulated in the IWG in January for further additions as needed.

1.2 Review of private maritime law conventions

N. Frawley has been guiding the IWG on the systematic review of private maritime law conventions to ascertain their applicability to the Arctic and Antarctic, and whether they need amending in that context. A number conventions remain under review.

1.3 The pollution liability regime in polar regions

In Hamburg, L. Rosenberg Overby presented on civil liability for oil pollution in the Arctic. Following the conference, in September 2014 the presentation was worked into a paper and was submitted for publication in the CMI Yearbook with the title “Civil Liability (for Oil Pollution) in Polar Marine Environments.”

L. Rosenberg Overby and D. Baker organized an IWG Sub-Group focused on civil liability. In addition, the sub-group will include the following IWG members: Kiran Khosla, Peter Cullen, A. Skaridov and B. Ray. E. Røsæg (Scandinavian Maritime Institute, University of Oslo, Norway) was also invited to the sub-group. The work of the sub-group is described as follows:

The International Working Group (IWG) on Polar Shipping has agreed that a working paper should be developed regarding how the existing pollution liability regimes¹ actually apply (or do not) to the Polar Regions. The scope of the work is oil spills from vessels (i.e. not only tankers) only so the working paper should not extend to oil exploration and production or pipelines etc.

At the IWG meeting in Hamburg on 17 June 2014, the WG considered that an in-depth study should be undertaken in this regard, in particular on the issues that can be expected to arise with regard to claims for preventative measures and pollution damage in a polar context; the likely large expense for logistics to be available in the Polar Regions; limited capability to deal with oil spills, limited options for disposal of recovered oil, etc. and the question of reasonableness of measures within the CLC and IOPC Funds framework.

This draft working paper seeks to explore these issues further by describing the international compensation, limitation and liability regimes in a Polar context; applicable national environmental laws and emergency response measures in the Polar Regions, any potential gaps that may exist with regard to compensation and liability in the event of pollution damage in the Polar Regions and the resources needed to respond to such an event. It also proposes to establish a Sub-Group on Civil Liability to undertake the study and prepare a report.

The sub-group plans to complete a draft of the working paper by Istanbul.

¹ (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.).

1.4 Load lines in polar shipping

In Hamburg, A. Chircop gave a presentation on the IWG's work on Polar Load Lines. The presentation was the collaborative work of the Load Lines Sub-group (Chircop, N. Reggio, D. Snider and B. Ray). In October 2014 the paper upon which the presentation was based was finalized and submitted for publication in the CMI Yearbook with the title "Polar Load Lines for Arctic Shipping: A Missing Link in Maritime Safety Regulation?"

A. Chircop will be making the same presentation on a panel on "Safe, Efficient and Sustainable Shipping in the Arctic" at one of the major conference circuits on the Arctic, ArcticNet, Ottawa, 8-12 December 2014. ArcticNet is a network of centres of excellence on Arctic studies in Canada.

The next step for the sub-group is to consider whether there is sufficient basis for advising the IWG to recommend an initiative with regards to the Load Lines Convention.

1.5 Applicability of the international collision avoidance regulations in polar environments

This new topic is being studied by a sub-group initially composed of P. Cullen, N. Frawley and A., Chircop.

1.6 Seaworthiness in polar shipping

In September A. Chircop, P. Cullen and N. Frawley have commenced discussions on issues of seaworthiness in polar environments and prepared an abstract for a presentation at the 6th Arctic Shipping Summit, 19 March 2015, convened by Active Communications International Ltd. P. Cullen agreed to give the presentation with the title "Polarworthiness: An emerging new standard of seaworthiness for Arctic Shipping?"

1.7 Other

In September 2014, T. Henriksen's Hamburg presentation on the "The Polar Code: Ships in Cold Water, Arctic Issues Examined" was finalized and submitted for publication in the CMI Yearbook.

The Chair is currently in dialogue with the World Maritime University regarding a conference on Arctic shipping to be convened by WMU under the IMO umbrella and with Arctic Council cooperation in May 2015. The Chair is tentatively exploring the possibility of an IWG contribution.

2. CMI CONFERENCE AND MLAUS SPRING MEETING (3-6 MAY 2016)

On 25 August 2014 Stuart Hetherington (CMI President) and Robert Clyne (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 in 2016 a combined success. Following an preliminary exchange of messages, on 6 November 2014 Phillip Buhler (Chair, MLAUS Committee on International Organizations, Conventions and Standards, IOCS), Aldo Chircop (Chair, CMI International Working Group on Polar Shipping John Kimball (Chair, CMI Sub-Committee, MLAUS) and Nigel Frawley (CMI IWG) participated in a telephone conference to exchange views on a joint Arctic session in May 2016.

The discussion explored a range of matters for possible cooperation. In particular, the high profile that the Arctic is receiving was noted. Participants felt that this topic has the potential to attract a large audience to the CMI New York Conference and MLAUS Spring Meeting. It was agreed that the possibility of a collaborative high profile “Polar Issues” session, lasting three to four hours, should be explored further. The session could double as a major conference session with high profile speakers and a continuing legal education activity.

Discussion on possible speakers continues. The key speaker should be Admiral Robert J. Papp Jr., who recently retired as United States Coast Guard Commandant and has been appointed by President Barack Obama and Secretary of State John Kerry as the State Department’s Special Representative for the Arctic in anticipation of the United States’ assuming the Chairmanship of the Arctic Council in 2015. The other speakers should include a senior Canadian Coast Guard official and ideally participants from Denmark, Norway and the Russian Federation to the extent feasible.

The conference participants agreed to follow-up on these ideas.

3. IWG MEMBERSHIP

The Chair continues to consult with CMI regarding the membership of the IWG with the aim to recommend to the CMI Executive Council to include participants from Asian countries where substantial work on polar shipping is taking place, in particular China, Japan and South Korea. The expansion of membership to include participants from key Asian countries will greatly assist the IWG and better inform the committee on a number of Arctic and Antarctic issues under consideration. Discussions include the possibility of including a participant from New Zealand to strengthen the IWG on Antarctic issues.

To date the following persons have expressed interest in being considered for IWG membership:

Dr. Young-Kil Park, Korean Maritime Institute. Dr. Park is member of a government Task Force that developed the Arctic Policy Master Plan of Korea adopted on December 10, 2013. He has been involved in several government projects on the Arctic Ocean.

Dr. Gen Goto is Associate Professor, University of Tokyo, Graduate Schools for Law and Politics and Visiting Scholar, Harvard Law School, East Asian Legal Studies. He is a member of the Japanese Maritime Law Association and has represented the Association at the CMI since 2008. He has been following Arctic and Antarctic shipping since the colloquium in Buenos Aires in 2010. He has been designated by JMLA to report on these issues at the CMI Beijing (2012) and Hamburg (2014) conferences.

The IWG Chair recommends to the Executive Council that Drs. Park and Goto be invited to join the IWG.

4. DIRECTIONS AND NEXT STEPS

To date the IWG has organized the conduct of its work through four sub-groups (Load Lines; Civil Liability; Polarworthiness; Colregs) and delegation of particular tasks to IWG members (e.g., N. Frawley is leading the survey of private maritime law conventions tasked to various IWG members). The Chair will continue consultations with IWG members regarding the possibility of establishing a new sub-group to focus on routing measures in the Arctic.

The Chair expects further discussion on polar load lines and consult IW members regarding whether and sufficient work has been completed to justify an appropriate recommendation to the CMI.

The Chair will continue to consult on IWG membership and looks forward to the Executive Council's endorsement of the recommendation to add participants from Japan and South Korea.

The facilitator of the Civil Liability sub-group expects to conclude a full draft of the working paper on the civil liability regimes in the Arctic in time for Istanbul.

The Chair expects (with N. Frawley) to engage in further discussion on the proposed polar session for New York 2016 and in particular to secure appropriate speakers as discussed with MLAUS counterparts.

By Istanbul, the IWG will have at least three papers published in the forthcoming edition of the CMI Yearbook and will have two of its members present IWG work in at least two major Arctic conference circuits.

The Chair also plans to discuss with the CMI Secretary-General how the CMI website page on the IWG's work can be updated and better organized, especially since the IWG is increasing the volume of documents that should be posted online.

Respectfully submitted,

Professor Aldo Chircop
Chair, CMI IWG on Polar Shipping

13 November 2014