

COMITÉ MARITIME INTERNATIONAL
INTERNATIONAL WORKING GROUP (ARCTIC & ANTARCTIC)

17 June 2014
(revised 19 July 2014)

1. The IWG comprises:

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

2. Since CMI Dublin, the work of the IWG has largely been conducted via e-mail. On 15 June 2014 a number of IWG Members were able to meet for a pre-conference working session convened at the Hotel Atlantic Kempinski in Hamburg. In attendance at the meeting were Aldo Chircop (Acting Chair), Kiran Khosla, Nicolò Reggio, Lars Rosenberg Overby, Peter Cullen, Howard M. McCormack (observer), Jaime Casado Ruiz (observer), and Phillip A. Buhler (observer). Further IWG work discussions during the conference on 16-17 June included David Baker, Tore Henriksen and Alexander Skaridov.

3. In Hamburg the IWG reviewed the progress of work, made adjustments to the work plan originally reported to the Assembly in Dublin, and identified the next tasks (see attachment).

4. The IWG recommends that it be authorized to pursue work on the basis of the updated work plan and to perform the identified tasks.

Respectfully submitted by,

Professor Aldo Chircop
Acting Chair

17 June 2014

ATTACHMENT

IWG (ARCTIC & ANTARCTIC)

WORK PLAN & STATE OF WORK (15 June 2014)

(1) Inventory of international organizations` initiatives

Task:

Develop an inventory of what the International Maritime Organization (IMO), International Chamber of Shipping (ICS) and Baltic and International Maritime Council (BIMCO) are currently doing or not doing with respect to the international maritime conventions, regulations, codes, guidelines, codes and other maritime legislative initiatives for the polar regions.

Work to date:

The CMI is generally liaising more closely with the IMO, ICS and other United Nations bodies (Nigel Frawley). It was agreed that work on the inventory should continue and that it be expanded to include particular regional organizations such as the Arctic Council and European Union. Aldo Chircop agreed to prepare a first draft summary of IMO work concerning polar shipping regulation which will be circulated to IWG members for further inputs. It was agreed that the inventory should be reviewed and updated periodically.

Next step:

(a) A draft inventory of polar regulation initiatives should be prepared for further inputs by IWG members.

(2) Review of all private international maritime law conventions

Task:

Systematic review to consider applicability and non-applicability to the polar marine environments.

Work to date:

Convention for the Unification of certain Rules with respect to Assistance and Salvage at Sea, 1910 and Protocol, 1967

International Salvage Convention, 1989

Unesco Convention on the Underwater Cultural Heritage, 2001

Nigel Frawley reviewed the Convention on Assistance and Salvage at Sea, 1910 and Protocol, 1967 and International Salvage Convention, 1989 and concluded that they apply to the Arctic Ocean beyond national jurisdiction and in Arctic waters within national jurisdiction. He also reviewed the Unesco Underwater Cultural Heritage Convention, 2001 and concluded that it applies to the Arctic Ocean beyond national jurisdiction. The conclusion is that these three Conventions do not need specific amendments specifically dealing with any of the waters in the Arctic polar region.

As to the applicability of these three Conventions in the Southern Ocean, the three Conventions on their face appear to apply to those waters. However, the Antarctic Treaty System gives rise to particular considerations. As Professor Don Rothwell pointed out at p. 17/18 of his October 18, 2012 paper presented at the CMI Conference in Beijing:

"While the Southern Ocean is not sui generis and remains subject to the same laws of the sea and maritime law that apply elsewhere, there are a range of unique issues that arise in the Southern Ocean. The first is the absence of recognised coastal states with capacity to exercise both proscriptive and enforcement jurisdiction off the Antarctic coast. The second, arising from the first, is the predominant reliance upon flag state jurisdiction. The third is the particular issues arising from undertaking maritime regulation and enforcement in one of the world's most remote oceans and associated maritime safety and security issues."

As a result, no recommendation for amendments that might improve the applicability of those three Conventions in those waters is advanced.

International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 (Hague Rules)

Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1968 (Hague/Visby Rules)

United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules)

United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, 2008 (Rotterdam Rules)

The concept of seaworthiness in these conventions was discussed with reference to the higher standards expected in polar shipping emerging in recent and current IMO regulation (e.g., Intact Stability Code, 2008 amendment; Draft Polar Code, 2014; amendments to the International Convention for the Safety of Life at Sea, 1974; International Convention for the

Prevention of Pollution from Ships, 1973/78; International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978). The IWG agreed that a working paper on the demands of seaworthiness for carriage and other maritime contracts in a polar navigation context should be studied to better understand the higher demands of seaworthiness in polar environments (i.e., “polarworthiness”). Aldo Chircop and Peter Cullen agreed to commence work on the working paper.

International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, 1967

International Convention on Maritime Liens and Mortgages, 1993

The IWG considered these conventions and concluded that no further consideration in a polar shipping context is needed at this time.

Convention on Limitation of Liability for Maritime Claims, 1976 and 1996 Protocol

International Convention Relating to the Limitation of the Liability of Owners of Sea-Going Ships, 1957 and 1979 Protocol

The IWG decided that the consideration of these two instruments is better placed with other liability conventions.

The IWG decided that other conventions listed on the 2 April 2013 list prepared by Nigel Frawley should be considered after preliminary reviews are completed by the IWG Members tasked with those reviews.

Next steps:

(a) A working paper on “polarworthiness” should be prepared for future discussion.

(c) Reviews of the remaining conventions should be continued and concluded.

(3) Pollution liability regime for polar regions

Tasks:

Consider the pollution liability regime specifically for polar regions and produce a working paper in which a study is made regarding how the existing pollution liability regimes actually apply (or do not) apply to the polar regions (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.).

Work to date:

The IWG discussed in detail preliminary work to be presented at the conference by Lars Rosenberg Overby. The IWG agreed that a number of important issues were raised that merited more in-depth study, in particular 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, limited capability to deal with oil spills, limited options for disposal of recovered oil, etc. , all raising question as to what criteria would be employed to determine the reasonableness of measures within the CLC and IOPC Funds framework. It was agreed that these issues should be explored further in a working paper. Lars Rosenberg Overby agreed to lead the preparation of the working paper with assistance from other IWG members.

Next steps:

(a) Preparation of a draft working paper on the civil liability regime for oil pollution in a polar context.

(4) Focus on selected international public maritime law conventions

Task:

Continue studies of certain identified public law conventions.

Work to date:

International Convention on Load Lines, 1966 (LLC)

A scoping study of the LLC has been prepared and presented in Hamburg by a subgroup composed of Aldo Chircop, Bert Ray, Nicolò Reggio and David Snider led by Aldo Chircop. The study identified a number of important gaps and issues that require further technical and legal study. It was agreed that the LLC merited further study in view of advancing an appropriate recommendation to the Assembly.

Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS)

The IWG discussed various issues concerning the application of the collision avoidance regulations in a polar navigation context, in particular in the Arctic. The IWG observed possible gaps (e.g., convoys) and some uncertainty as to how particular rules apply in polar environments (e.g., action to avoid collision). It was agreed that a sub-group be established to consider the convention in greater depth. Peter Cullen agreed to lead the sub-group with inputs from Lars Rosenberg Overby, Aldo Chircop, Alexander Skaridov (to be invited) and David Snider (to be invited).

International Convention on Safety of Life at Sea, 1974 (re routing measures)

The IWG considered a proposal by Kiran Khosla to study SOLAS routing measures in an Arctic context. It was agreed that the proposal should be looked into and that the Acting Chair will consult the Chair and members on the matter.

Other conventions (e.g.: International Convention for the Prevention of Pollution from Ships, 1973/78; International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004) should continue to be monitored by the IWG.

Next steps:

- (a) Work on the LLC should continue and the draft scoping paper finalized.
- (b) Work on a COLREGS study should be started by the identified subgroup.

5. Other

IWG members made the following presentations in CMI Hamburg 2014:

- UNCLOS in the Arctic (Aldo Chircop)
- Civil Liability in Polar Marine Environments (Lars Rosenberg Overby)
- Load Lines when Navigating in Polar Waters (Aldo Chircop, Bert Ray, Nicolò Reggio, David (Duke) Snider)
- The IMO Polar Code (Tore Henriksen)
- Northern Sea Route (Alexander Skaridov)