

CMI IWG Polar Shipping

Address to Assembly

The IWG Polar Shipping wishes to inform Assembly of developments at its most recent meeting in Montreal. The IWG had a productive meeting which was greatly enabled by our host, Norton Rose Fulbright, to whom we express our warmest appreciation.

1. The IWG's Antarctic shipping subgroup finalized a new working paper on Liability and Compensation for Ship-Sourced Pollution Damage in Antarctic Waters. The paper concludes that there is a legal vacuum of internationally agreed rules governing obligations, liabilities, or compensation for ship-sourced pollution in Antarctic waters. The Liability Annex of the Environmental Protocol to the Antarctic Treaty is not in force to provide protection and the existing IMO liability conventions are not helpful because their liability regime is based on incidents that arise in a coastal State's territorial sea or exclusive economic zone (or equivalent), whereas the Antarctic Treaty has suspended claims to Antarctica. The presumption is that Antarctic waters are high seas entailing flag State jurisdiction. Moreover, even when (hopefully) the Liability Annex comes into force, it will provide little protection because of its narrow focus on obligations to respond to an emergency rather than for 'damage' as referred to in the Protocol. Clearly, at a minimum, States should be urged to ratify the Liability Annex. The working paper explores possible solutions, each of which carries difficulties of its own. The IWG is of the view that the working paper highlights important legal issues that the IWG recommends should be communicated to the Secretariats of the ATCM, IMO and IAATO.
2. The IWG deliberated to discontinue work on COLREGS in the context of polar navigation and undertook the study of two new contemporary topics with the aim of producing working papers. We are now in the process of establishing the composition of the subgroup teams to undertake the work:
 - a. The interface between the regulation of Arctic shipping and Indigenous rights. The IWG is conscious of the growing importance of international Indigenous rights law and aims to explore and understand its relationship to the law of the sea and the IMO conventions. The working paper will scope out the relationship and identify any issues that might require further study.
 - b. Coastal states' responsibility for the establishment and maintenance of navigational aids and services in Arctic waters in response to the current and expected growth in Arctic shipping. The working paper will map out and analyze provisions concerning navigational aids and services in pertinent international legal instruments applicable to navigation in Arctic waters to help better understand the extent and content of coastal State responsibilities.