

REPORT OF CMI IWG (POLAR SHIPPING) ACTIVITIES

(1 July 2018-31 August 2019)

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

1. INTRODUCTION

This report covers the reporting period 1 July 2018 to 31 August 2019. The IWG continued its work as indicated in its last annual report to Assembly in London and interim report to the ExCo (3 March 2019).

2. MEMBERSHIP MATTERS

The IWG welcomed new members appointed by ExCo, Phillip Buhler and Esther Mallach.

3. IWG ACTIVITIES SINCE CMI LONDON

The IWG is currently operating through three subgroups, namely on Antarctic Shipping (chaired by David Baker), COLREGS in Polar Environments (chaired by Stefanie Johnston) and Cruise Passengers' Rights (chaired by Lars Rosenberg Overby).

3.1 Antarctic shipping

D. Baker chairs this newly formed subgroup composed of P. Buhler, K. Crosbie, K. Khosla, D. Rothwell and C. Wu (UK Club).

The Antarctic Shipping subgroup chair continued work on the draft paper prepared by Young CMIs Ansam Okbani and Dharshini Bandara. A revised version of the paper was submitted to the International Group of P&I Clubs and used as a basis for the submission of a document to the Antarctic Meeting Consultative Meeting (ATCM) on 1-11 July in Prague. David Baker attended on behalf of the International Group (IG) and presented the document. Phillip Buhler from the IWG also attended the meeting as part of the International Group's delegation. David Baker's report, which will be discussed at the IWG's meeting in Mexico City, is attached. It is worth highlighting David Baker's remark that "The submission was well received by States at the meeting and who expressed their thanks for the paper and explanation of issues that might

usefully be addressed by States (and the ATCM) when seeking to give effect to the Liability Annex.”

The IWG will continue consideration of this issue in Mexico City.

3.2 COLREGS in polar environments

The membership of the COLREGS subgroup is composed of S. Johnston (chair), A. Chircop, P. Cullen, N. Frawley, Y-K Park, L. Rosenberg Overby, A. Skaridov, and D. (Duke) Snider (technical expert). The goal of the subgroup is to produce a working paper exploring the application of the COLREGS in polar environments.

In the March 2019 interim report to ExCo, the Chair reported that the COLREGS subgroup chair was retrieving casualty investigation reports and data concerning incidents in polar environments, including information from P&I clubs and insurers regarding what they are doing regarding risk, types of casualties in Arctic and Antarctic waters, and possible interaction between COLREGS and the Polar Code. The Chair has not received further progress reports.

The work of this subgroup will be discussed further in Mexico City.

3.3 Cruise passengers’s rights

The subgroup has the following: L. Rosenberg Overby (chair), P. Buhler, K. Crosbie, E. Mallach and D. Rothwell.

The Passengers’ Rights subgroup has a template for a working paper. The Chair did not receive further progress reports on the paper at the time of submission of this report. The IWG will consider how to advance work in this subgroup at the Mexico City meeting.

4. WEBSITE

The IWG’s page on the CMI website is up to date. The most recent documents uploaded included the annual report to ExCo and Assembly (London, 2018) and the ‘Supplement to the 2014 Working Paper on Load Lines’.

5. OTHER ACTIVITIES

The IWG, in partnership with the *Journal of International Maritime Law* (JIML) and a research project at Dalhousie University funded by the Ocean Frontier Institute, produced a special issue on the Polar Code (volume 24, issue 6, November-December 2018). Several IWG members contributed to the issue. The issue focused on the implementation of the Polar Code in Canada (Chircop, Pamel, Czarski), Denmark/Greenland (Rosenberg Overby), Norway (Rosaeg), Russian

Federation (Skaridova & Skaridov), and United States (Buhler). The issue has been very well received by professional and scholarly colleagues.

6. FUTURE

The IWG is planning a meeting at CMI Mexico. In addition to continuing work in the three subgroups, the IWG will explore new issues for future work.

Respectfully submitted,

Aldo Chircop

Chair
IWG (Polar Shipping)
31 August 2019

Attachment: IWG Polar Shipping - Antarctic subgroup - update for CMI colloquium – Mexico
(Report by David Baker)

From: David Baker <David.Baker@igpandi.org>

Sent: August 20, 2019 2:59 PM

To: Aldo Chircop <Aldo.Chircop@Dal.Ca>; nhfrawley@earthlink.net; Lars Rosenberg Overby <lro@hafnialaw.com>; Peter Cullen <PCullen@stikeman.com>; Gen Goto <gengoto@gmail.com>; Henriksen Tore <tore.henriksen@uit.no>; Alexander Skaridov <alexskar94@hotmail.com>; Kiran.Khosla@ics-shipping.org; henrikringbom@hotmail.com; Fridas Maria Armas Pfirter <frida_armas@yahoo.com>; Donald Rothwell <donald.rothwell@anu.edu.au>; Nicolò Reggio <n.reggio@club-marine.it>; yk405@daum.net; Kim Crosbie <kim@polhavet.se>; Stefanie Johnston <sjohnston@keoghs.scot>; hray@schwabe.com; Phil Buhler <pabuhler@mppkj.com>; Mallach, Esther <e.mallach@asd-law.com>

Cc: Captain David (Duke) Snider <snider@martechpolar.com>; rosaliebalkin1@gmail.com; Pamel, Peter G. <ppamel@blg.com>; Davis, Christopher <codavis@bakerdonelson.com>; Masamichi Hasebe <masamichi.hasebe@jamsldn.org.uk>

Subject: IWG Polar Shipping - Antarctic subgroup - update for CMI colloquium - Mexico

Dear CMI IWG Polar Shipping colleagues,

I am writing to you in my capacity as Chair of this IWG's Antarctic subgroup and on the matter of the work of that subgroup that will be discussed at the IWG meeting in Mexico City during the CMI colloquium.

You will recall from the discussions at the previous IWG meeting in London in November 2018 that this subgroup was focused on work within the Antarctic Treaty Consultative Meetings (ATCM) on States' implementation of the Liability Annex VI to the Environmental Protocol to the Antarctic Treaty (AT). That work had been initiated by the International Group of P&I Clubs (IG) and who had submitted and presented a paper on the Annex to the ATCM in Beijing in 2017. That paper, attached to this email, highlighted a number of issues with the Annex that States might wish to consider during the implementation stage.

As a result of the discussions on that paper at that ATCM, this subgroup (with the IG's blessing) then sought to analyse a number of the issues raised in that IG paper and engaged two lawyers from the Young CMI who prepared an analysis of the issues for this IWG's Antarctic subgroup to consider. The two Young CMIers were Dharshini Bandara and Ansam Okbani. You may recall that Dharshini attended the IWG's meeting in London in November 2017.

The analysis prepared by Dharshini and Ansam (who both did fantastic work and might appropriately be recognized more widely within the CMI) was reviewed by the subgroup and who then finalized that analysis as the basis for a submission by the IG to the ATCM in Prague in July this year. This was the route taken given that the IG had initiated this work and is currently (along with the IMO and IOPC Funds) an invited expert to the ATCMs. The IG welcomed that draft submission for consideration and then, after reviewing the draft, submitted the attached paper to the ATCM in July and that was based very heavily on this subgroup's draft.

I subsequently attended the ATCM as the IG's representative, alongside representatives from the IMO, IOPC Funds (who were providing information to the ATCM on the IMO Conventions and the operation of the Funds) as other invited experts to the ATCM.

The submission was well received by States at the meeting and who expressed their thanks for the paper and explanation of issues that might usefully be addressed by States (and the ATCM) when seeking to give effect to the Liability Annex. There were plenty of calls for more States to give effect to the Annex with many States still yet to do so.

In this regard, the Consultative Parties to the AT (there are 29 such States and that all need to give effect to the Liability Annex for it to enter into force) provided updated information on the status of their approval of the Liability Annex and implementation in domestic legislation. So far, the following Consultative Parties have approved the Annex:

Australia, Ecuador, Finland, Germany, Italy, the Netherlands, New Zealand, Norway, Peru, Poland, the Russian Federation, South Africa, Spain, Sweden, Ukraine, the United Kingdom and Uruguay.

The Netherlands picked up on the point in the submission about the lack of alignment between the Liability Annex limits and the 1996 LLMC Protocol (increased) limits and suggested that it may be necessary to update clause 9.2 of the Annex upon its entry into force in order for it to be brought into line with the 1996 LLMC Protocol limits. As a result, this has now been included as a work item on the ATCM's multi-year strategy work programme and, in line with a further suggestion from the UK in response to the IG's submission, also agreed that the ATCM Secretariat prepare a report for next year's ATCM summarising the state of affairs on the liability front. I take this to mean a report that summarises all relevant ATCM Measures and Resolutions previously adopted regarding liability matters, but we will see.

As a result of the submission and contribution to the meeting, the IG has been invited back to next year's ATCM as invited experts along with the IMO and IOPC Funds. Next year's ATCM will take place in Helsinki from 25 May to 4 June 2020.

I am happy to report further at the IWG's meeting in Mexico and then for consideration to be given to the direction of this IWG's Antarctic subgroup, if any.

I'm also more than happy to answer any questions in advance of the IWG's meeting.

Otherwise, I look forward to seeing you there.

Best regards

David