

REPORT OF CMI IWG (POLAR SHIPPING) ACTIVITIES

(1 November 2019-31 October 2020)

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1. INTRODUCTION

This report covers the reporting period from 1 November 2019 to 31 October 2020. The IWG Chair acknowledges updates provided by the subgroup chairs.

2. MEMBERSHIP MATTERS

In early 2020 the IWG was saddened by the news that former CMI Secretary-General Nigel Frawley died on 22 January 2020. Nigel was the architect and founding chair of the IWG on Arctic and Antarctic Shipping, now known as IWG on Polar Shipping. Although stepping down as IWG Chair at CMI Hamburg in 2012, Nigel continued to advise the working group and chaired a subgroup which produced a report on the application of the international maritime conventions to polar shipping. The obituary was published in *The Globe and Mail* (25-29 January 2020, <https://www.legacy.com/obituaries/theglobeandmail/obituary.aspx?n=nigel-h-h-frawley&pid=195156423>).

In January 2020, the IWG Chair welcomed a proposal by the CMI President to appoint Professor Dr. Didem Light, Vice-President of the Turkish MLA, as a new member of the IWG. In the past Dr. Light works also with the Turkish Polar Research Center and in the past attended a number of IWG meetings, including in Mexico City.

3. IWG ACTIVITIES SINCE CMI MEXICO CITY

The IWG continues to operate 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). While progress has been made, unfortunately the COVID-19 pandemic has affected aspects of the IWG's work.

3.1 Antarctic shipping

D. Baker chairs this subgroup composed of P. Buhler, K. Crosbie, G. Goto, K. Khosla, D. Rothwell and Haco van der Houven van Oordt (AKD Benelux Lawyers). Professor Goto and Mr. van der

Houven van Oordt agreed to join the subgroup at the meeting in Mexico City. Mr. Chao Wu (UK P&I Club) has left the subgroup. At the start of 2020, and as a follow up to the IWG's meeting in Mexico City in October 2019, the Antarctic subgroup agreed that the next steps to consider should be the following:

- To consider a study of the interface between the IMO liability regimes (including the Wreck Removal Convention) and the Liability Annex under various scenarios, including the applicability of the IMO regimes in Antarctic waters in the event the Annex does not enter into force. This study could again be conducted by Young CMIers under the direction of the subgroup, and
- To consider further study of the issues raised by the Liability Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty. Haco van der Houven van Oordt agreed to provide a brief outlining the issues, including jurisdictional considerations and potential conflicts between the Annex and Article 18 of the 1976 LLMC Convention and the impact of the Annex on the position of State Parties. Haco van der Houven van Oordt has done so and circulated a brief to the subgroup.

To date, the subgroup has focused on the former work stream and has engaged a Young CMIer – Emily Ferguson at McElorys law firm in New Zealand - to prepare an initial analysis for the subgroup's consideration. The subgroup is working on the basis of receiving the initial analysis by the end of 2020 with a view to reviewing and finalising and then considering whether the conclusions merit further work. It is likely that, at that point, the subgroup will consider the latter work stream mentioned above.

3.2 COLREGS in polar environments

The membership of the COLREGS subgroup consists of S. Johnston (chair), A. Chircop, P. Cullen, Y-K Park, L. Rosenberg Overby, A. Skaridov, and D. (Duke) Snider (technical expert). In Mexico City it was agreed that the subgroup chair would invite Captain Neil Gardiner, a Master Mariner who has acted as expert witness in judicial and arbitral proceedings in the UK and abroad, to advise the subgroup.

The goal of the subgroup is to produce a working paper exploring the application of the COLREGS in polar environments. In Mexico City it was agreed the subgroup would undertake a number of enquiries, including what consideration COLREGS were given during the development of the Polar Code, and reports of relevant casualty investigations including data from IATTO and on the Northern Sea Route. The IWG Chair has not received further updates on the subgroup's data gathering work at the time of submission of this report.

3.3 Cruise passengers' rights

The subgroup has the following members: L. Rosenberg Overby (chair), P. Buhler, K. Crosbie, E. Mallach and D. Rothwell. At the meeting in Mexico City the subgroup chair and Esther Mallach

agreed to work together to revive the work. While the aim continues to be the development of a working paper, difficulties in gathering information have been encountered. There are no further updates to report at this time.

4. CMI TOKYO

The IWG has been discussing IWG contributions to the CMI Tokyo conference with the organizers and hosts of CMI Tokyo, both before the postponement of the 2020 meeting and subsequently in preparation for 2021. The IWG has proposed two sessions, one each on Arctic and Antarctic shipping as follows:

Session: Arctic (chaired by Gen Goto, University of Tokyo and Japanese MLA) (confirmed)

- The IMO's continuing work on the Polar Code (RADM Frederick Kenney, Director, Legal Affairs and External Relations Division, IMO, London) (originally confirmed for 2020; awaiting reconfirmation for 2021)
- Arctic shipping: A perspective from a user state (Professor Kentaro Nishimoto, Tohoku University, Sendai) (confirmed)
- Cruise passenger rights in Arctic waters (Lars Rosenberg Overby, IUNO, Copenhagen) (confirmed)

Session: Antarctic (chaired by David Baker, International Group, London)(confirmed)

- Legal status of Antarctica and implications for shipping (Professor Akiho Shibata, University of Kobe) (confirmed)
- Environmental liability issues in the Antarctic Area (Dharshini Bandara, Fleet Hamburg LLP) (YoungCMI) (confirmed)
- Management and self-regulation of cruise tourism in the Antarctic (Esther Mallach, Arnecke Sibeth Dabelstein, Hamburg) (confirmed)

4. WEBSITE

At the time of reporting, the IWG's page on the CMI website is up to date until 2018. The IWG Chair has requested the CMI Secretariat to upload the 2019 reports. This report will follow in due course.

Respectfully submitted,

Aldo Chircop

Chair, IWG (Polar Shipping)

31 October 2020