

REPORT OF CMI IWG (POLAR SHIPPING) ACTIVITIES

(1 July 2017-30 June 2018)

IWG Membership: Aldo CHIRCOP, *Chair*; Frida ARMAS PFIRTER; David BAKER; Kim CROSBIE; Peter CULLEN; Nigel FRAWLEY, *advisor*; Gen GOTO; Tore HENRIKSEN; Stefanie JOHNSTON; Kiran KHOSLA; 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 2017 to 30 June 2018 and includes an attachment. The IWG continued its work as indicated in its last annual report to Assembly and the Executive Council (1 July 2016-30 June 2017) and as further decided at its meeting at CMI Genoa (7 September 2017).

2. MEMBERSHIP MATTERS

There was no change in the formal membership of the IWG during the reporting period. In addition to contributions by members, several non-members generously contributed to the work of the various subgroups as described in the sections below.

The Chair recommends to ExCo to extend an invitation to P. Buhler to formally join the IWG. Mr. Buhler is a very active member of the Maritime Law Association of the United States and played a key role in CMI New York, most especially in co-convening the very successful polar session at the conference. Since then he has been an active participant in a number of IWG subgroups. He is well known to many at the CMI and his bio is accessible at <http://www.mppkj.com/attorneys/phillip-a-buhler/>.

3. IWG ACTIVITIES SINCE CMI GENOA

3.1 Antarctic shipping¹

D. Baker chairs this newly formed subgroup composed of P. Buhler, K. Crosbie, K. Khosla, D. Rothwell and C. Wu (UK Club). The subgroup's proposed work was discussed in Genoa.

The Antarctic subgroup is currently looking at the Liability Annex to the Environmental Protocol to the Antarctic Treaty (AT). The Liability Annex is not yet in force, but is currently the

¹ The report on the Antarctic subgroup was kindly prepared by D. Baker.

subject of discussions within the AT meeting of Consultative States (ATCM). Some of the issues surrounding the Annex that need clarity were raised by the International Group of P&I Clubs (IG) at the Beijing ATCM in May 2017, without any agreement reached on the issues raised by the IG in the attached paper. The next ATCM was planned for September 2018, and the IG's intention is to keep the issues raised in the IG paper on the ATCM's agenda so that some agreement can be reached on the points raised prior to the entry into force of the Liability Annex. The CMI does not have a status at those meetings, but the Antarctic subgroup has agreed to look into some of the issues raised in the IG's paper to try to assist the IG in terms of preparing a legal analysis of some those issues and perhaps coming to a landing on (some of) them that can then be considered by the IG and ultimately put to the next ATCM for discussion. The IG is aware of the proposed CMI assistance in this regard and is content with that approach.

The subgroup has decided to engage the Young CMI to assist in this endeavour. As a result, and with the assistance and oversight of Blythe Daly, both Ansam Okbani and Dharshini Bandara (as members of the Young CMI) have agreed to prepare a draft legal analysis for the subgroup's consideration and review. It is intended that Ansam and Dharshini will provide their first draft for consideration during the summer of 2018.

The ATCM meeting planned for September 2018 has recently been postponed though until 2019 and, instead, a shorter ATCM will take place in May 2018. However, this matter will not be on the May meeting agenda. It will be on the agenda for the ATCM in 2019 and so there is time for sufficient consideration to be given to the legal analysis and for liaison to take place with the IG.

3.2 Load lines in polar shipping

Chaired by A. Chircop, this subgroup is composed of K. Crosbie, D. Baker, T. Henriksen, P. Pamel, L. Rosenberg Overby, B. Ray and A. Skaridov. Additional assistance was provided by H. van der Houven van Oordt and P. den Hann.

In Genoa the IWG discussed the status of the revised working paper, specifically with respect to scientific updates, class requirements and comparative survey of national requirements in Arctic and Antarctic waters. Helpful clarifications were received from the United States Coast Guard and DNV GL). While work on scientific updates has progressed, the comparative section continues to be missing an accurate description of Russian Federation load line practices on the Northern Sea Route. Information received after Genoa included an input from the International Chamber of Shipping. However, the required information on Russian practices has yet to be generated.

3.4 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. The IWG meeting in Genoa discussed the subgroup's work. S. Johnston was unable to attend and the Chair stepped in to moderate the discussion and informed her of the outcome of the meeting. The subgroup chair is currently consulting with members on the relationship between the Polar Code and the COLREGS.

4. CRUISE PASSENGERS' RIGHTS

Following the Genoa meeting, consultations were conducted in the IWG with a view to exploring interest in the establishment of a new subgroup on Passengers' Rights in Polar Cruise Shipping.' Following consultation with L. Rosenberg Overby, the Chair circulated a proposed description of the subgroup as follows:

"Cruise and venture passenger vessels are increasingly extending their range and frequency of operations in Arctic and Antarctic waters. Navigation risks in these environments are heightened because many navigable waters and channels do not have charts or up to date charts, navigation aids might be minimal, and search and rescue services are generally located very far. As this type of passenger shipping increases in such areas an interesting question arises with respect to passenger rights with respect to the degree of risk exposure. It is proposed to explore if there are legal issues with respect to passenger rights in this context and what legal responses might be in place or emerging as good practices."

The subgroup was established with the following composition: L. Rosenberg Overby (chair), P. Buhler, K. Crosbie, and D. Rothwell. Following preliminary exchanges, the subgroup developed a provisional working table of contents to structure the work as follows:

1. Introduction
2. Definition of the areas/trade to be analysed.
3. Identify particularities/special risks
4. Description of the legislation in the relevant jurisdictions regarding passenger rights
 - a. Basis of liability (personal injury, fatalities, cancellation, delay and luggage)
 - b. Limitation
 - c. Jurisdiction (forum)
 - d. Insurance
 - e. Contracting and actual carriers and tour operators
 - f. Package deals
5. Terms of carriage or tickets (a couple of samples to be analysed)
6. National policies and regulation (tandem navigation, pilots etc.)

5. ARCTIC COUNCIL: PROTECTION OF THE ARCTIC MARINE ENVIRONMENT

On 30 October 2017 the CMI President received an invitation from the Arctic Council's Working Group on the Protection of the Arctic Marine Environment (PAME) for a representative of the

IWG to make a presentation at the PAME meeting on 12-14 February 2018 in Quebec City, Canada. The CMI was invited to address how its activities may contribute to enhancing Arctic marine safety and building the Arctic marine infrastructure as well as on any related activities pertaining to Arctic shipping. The CMI representative was also invited to participate in the pre-meeting of the shipping expert group on 11 February 2018 and to submit any materials to share with member governments in advance of the PAME meeting. The IWG Chair was nominated by the CMI President to present on the IWG's at PAME.

The IWG Chair presented under Agenda Item 6: Arctic Marine Shipping Assessment (AMSA I (A) - Linking with International Organizations). Following the presentation (attached) there was a discussion session during which he answered questions from delegates from Canada, Finland, and USA as well as from the EPPR Working Group and WWF. The PAME meeting formally thanked the IWG Chair in the Record of Decisions (attached).

Following the PAME meeting, the IWG Chair was invited by the Canadian and USA joint Chairs of the Shipping Experts Group to make any input with respect to the updating of the 17 recommendations contained in the Arctic Council's Arctic Marine Shipping Assessment Report 2009 by early June 2018. The Chair agreed to provide input and will consult IWG members.

6. WEBSITE

The finalized Conventions Report and Working Paper on the Legal Framework for Civil Liability for Vessel-Source Oil Spills in Polar Regions have been uploaded to the website together with the IWG's latest reports to ExCo and Assembly.

7. FUTURE INTENTIONS

The next steps of the IWG are:

- Continue work in the Antarctic, load lines, COLREGS and passengers' rights subgroups.
- Contribute to the revision of the recommendations of the Arctic Council's Arctic Marine Shipping Assessment Report 2009.
- Convene at CMI London on 9 November 2018.

Respectfully submitted,

Professor Aldo Chircop
Chair, CMI IWG (Polar Shipping)
4 April 2018

Attachment:
CMI/IWG PAME Presentation