

COMITÉ MARITIME INTERNATIONAL

International Working Group on Polar Shipping

Report to Antwerp Assembly, 21 October 2022

Over the course of the year, the IWG continued to work through subgroups, namely on Passenger's Rights in Arctic Shipping led by Lars Rosenberg Overby and Esther Mallach, and Antarctic Shipping led by David Baker. Both subgroups significantly advanced our work. A third subgroup on COLREGs in polar navigation did not progress. At our meeting at Fransen Luyter, we discussed three working papers.

- The first paper concerned Passengers' rights in Arctic shipping led by Lars Rosenberg Overby and has been completed. The comparative paper examined the legal regimes applicable in the five Central Arctic Ocean states and concluded that those regimes and the Athens Convention as applicable, appear to provide sufficient protection of passengers' rights.
- The second working paper concerns passengers' rights in Antarctic shipping and is led by Esther Mallach. The paper is in an advanced draft stage and will be finalized after the addition of an annex indicating the flags of cruise ships in Antarctic waters. The paper underscores the important roles of flag states, given that Antarctic cruise shipping does not occur in zones of recognized national jurisdiction. Accordingly, to understand the protection of passengers' rights it is necessary to look at the flag state's law and the law applicable to the standard form and accompanying terms, including choice of law and forum, issued by the carrier.
- The third working paper led by David Baker with co-principal authors Stacey Fraser and Young CMLer Emily Ferguson, focuses on liability and compensation for ship-sourced pollution damage in Antarctic waters. The provisional findings indicate there is significant uncertainty in the applicable law for several reasons: the Liability Annex to the Protocol on Environmental Protection of the Antarctic Treaty, while based on the LLMC 1976, is not in force; the limits of liability in the Annex have not developed *pari passu* with the revised limits of the LLMC; Antarctic waters are not within recognized national jurisdictions and are subject to the regime of the high seas in the law of the sea; and accordingly, the IMO civil liability conventions do not apply. The subgroup is now considering recommendations. The current draft of this working paper is open for further comments and feedback by IWG members by 31 December.

As the IWG has completed the first and is nearing completion of the second and third working papers, we started discussing potential new topics and will continue to deliberate through email. At this time, two ideas we are exploring concern the implications of the implementation of the UNDRIP for the regulation and good practices for Arctic shipping, and the matter of coastal State responsibility for the provision and maintenance of navigation aids in Arctic waters.

The IWG also contributed a panel on polar shipping at the Conference during which working papers were presented by Lars Rosenberg Overby, Esther Mallach and Phillip Buhler.

I conclude by expressing the IWG's gratitude to Vincent Fransen for enabling the IWG to convene its meeting at the splendid and beautiful premises of Fransen Luyten, and for the warm hospitality offered to participants.

Respectfully submitted by Aldo Chircop, IWG Chair.