



POSITION PAPER ON ARCTIC SHIPPING

PURPOSE AND SCOPE

The International Chamber of Shipping (ICS) is the principal international trade association for shipowners, representing all sectors and trades and over 80% of the world merchant fleet. ICS membership comprises national shipowners' associations from 36 countries, including nations located within and outside the Arctic Circle.

Reported changes to the world's climate appear to be increasing the accessibility of the Arctic to international shipping.¹ These changes, as well as new interest in developing the Arctic's natural resources, are likely to increase shipping traffic navigating through the region.

As the volume of Arctic shipping gradually increases, there is a growing awareness and concern within the international community about the potential sensitivity of Arctic ecosystems to the impact of such activity and the necessity for a high degree of care when ships navigate Arctic waters. These concerns are fully acknowledged and shared by international ship operators, as represented by ICS which is totally committed to the protection of the environment and the prevention of pollution.

The following position paper is therefore intended to establish some key principles with respect to the governance of maritime activity in the Arctic and the regulation of ships navigating Arctic waters.

¹ There is widespread concern about the possible effects of global warming caused by increased CO₂ emissions, and the negative impact that this may have upon the climate and the delicate environmental balance that exists within the Arctic region. International shipping fully shares these concerns and acknowledges its part in further reducing CO₂ emissions from merchant ships. With the full support of shipowners, international shipping is the only industrial sector to be covered by a binding global agreement to reduce CO₂ emissions through technical and operational measures. For more information see www.shippingandco2.org

INTRODUCTION

Arctic shipping has become a key issue of focus at the United Nations International Maritime Organization (IMO). This includes the current development by IMO Member States of a mandatory code to be complied with by all ships operating in polar waters.

When finalised, it is anticipated that the International Code of Safety for Ships Operating in Polar Waters ('Polar Code') will become mandatory through amendments to the IMO Safety of Life at Sea Convention (SOLAS) and the IMO Convention for the Prevention of Pollution from Ships (MARPOL).² These IMO Conventions are already widely ratified and enforced on a global basis.

Indications of thinner ice and longer ice free (northern) summer periods have opened up the possibility of increased international shipping activity:

- Increased offshore support vessel activity (supporting offshore exploration and extraction of oil and gas);
- Increased destination transport, with ships moving raw materials (and goods) from and between Arctic ports and the rest of the world;
- The beginnings of commercially viable intercontinental Northern sea routes, connecting the Atlantic and Pacific Oceans via the Northeast Passage/Northern Sea Route and, potentially in the future, via the Northwest passage.

Offshore support vessel activity already represents a significant form of shipping in the Arctic region, while destination transport is anticipated to grow considerably in the next few years as new sources of raw materials, such as iron ore, are developed.

Although the expected timeline for the opening up of intercontinental sea routes is currently very unclear, and for the immediate future their impact on traditional shipping routes should probably not be overestimated, use of the Northern Sea Route is already a reality for a small but increasing number of merchant ships during the northern summer months.

Independent of climate change, the development of new technologies that make possible operations in remote regions with hostile sea and weather conditions is stimulating an increased interest in Arctic shipping. This is driven to a large extent by rising commodity prices and the search for natural resources such as gas, oil, metal ores and minerals throughout the Arctic region. As well as increasing the demand for shipping services that can support the extraction of seemingly abundant natural resources, maritime trade between Arctic destinations and the rest of the world is expected to increase as a result of this new economic activity.

² The Polar Code will supersede the current IMO Arctic Shipping Guidelines and the IMO Polar Shipping Guidelines.

The demand for maritime tourism in the Arctic is also expected to grow, facilitated by increasing accessibility and improvements to ship design and maritime safety.

PRINCIPLES

ICS and its member national shipowners' associations advocate the following principles with respect to the governance of maritime activity in the Arctic and the regulation of ships navigating Arctic waters:

1. Formulation of a mandatory, uniform regulatory framework concerning Arctic shipping to ensure maritime safety and environmental protection

IMO is the appropriate forum for the development of standards for vessels operating in the Arctic, as it has the necessary legal and technical expertise to facilitate engagement by, and take into account the interests of, all of the world's maritime nations including flag States and coastal States.

In order to ensure a workable and enforceable regulatory approach that will deliver safe marine navigation and security, enable commercially viable operations and optimise environmental protection, all current national maritime regulatory regimes applicable to Arctic waters, within the jurisdiction of States that are members of the Arctic Council,³ should be harmonised in conformity with the final IMO 'Polar Code', as well as all other relevant IMO Conventions and Codes, consistent with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS). Arctic nations should only apply requirements to foreign flag ships consistent with 'generally accepted international rules and standards' (GAIRAS).

ICS believes that the development of a mandatory IMO Polar Code needs to be undertaken in a manner that is genuinely risk-based, so that requirements imposed on ships take full account of the hazards relevant to the type of ship operation, the ship location and the season of operation. Furthermore, the risk mitigation measures that are adopted into the Code should be performance-based. For example, pending the future development by IMO of unified international requirements for the construction and operation of 'ice-class' ships, the Code should not arbitrarily require conformity with any particular 'ice-class' standards that currently exist to the exclusion of other standards that deliver comparable performance with respect to safety and environmental protection.

The particular interest and engagement in maritime issues exhibited by those nations that comprise the Arctic Council is welcome and fully acknowledged. However, it is

³ The full members of the Arctic Council are Canada, Denmark including Greenland, Finland, Iceland, Norway, Sweden, Russian Federation and the United States. Finland, Iceland and Sweden, however, do not have Arctic maritime zones as defined by the current IMO Arctic Shipping Guidelines.

important that the Arctic Council or any other nations or bodies with an interest in Arctic shipping refrain from calls to develop alternative instruments or requirements that cut across or cause conflict with regulations or guidance developed by IMO.

Any country, including Arctic nations, that has not yet ratified UNCLOS is strongly encouraged to do so as soon as possible.

Regional Memorandums of Understanding on Port State Control may also have a role in developing uniform procedures for the inspection and enforcement of regulations that have been adopted by IMO within the Arctic region, including the Polar Code.⁴

2. Development of Arctic maritime infrastructure to support safety and environmental protection

While the IMO Polar Code will provide the regulatory framework, the infrastructure needed to ensure safety and environmental protection in the Arctic must also be developed. This includes *inter alia* aids to navigation, nautical charts, means of satellite communication, bunkering facilities, port reception facilities for ship's waste, pilotage in shallow passages, possible ice-breaking assistance, as well as search and rescue infrastructure developed for defined incident scenarios and the provision of adequate 'places of refuge' should ships be in distress.⁵

In particular, a commitment is required by IMO (and IHO) Member States to conduct the necessary hydrographic surveys in order to bring Arctic navigational charts up to a level acceptable to support safe navigation, as well as systems to support the real-time acquisition, analysis and transfer of meteorological, oceanographic, sea ice and iceberg data.

Serious challenges related to life-saving and oil spill clean-up capability in remote or hostile waters or where sea ice potentially presents an obstacle must be also addressed. In particular, in co-operation with IMO, this requires increased co-ordination amongst Arctic nations to promote the region's Search and Rescue (SAR) capability.⁶

3. Full participation of shipping nations

Given the important implications for all IMO Member States of current and future regulatory discussions, it is vital that all maritime nations, in their capacity as flag States and coastal States, are fully and actively involved in all decision making processes that impact on Arctic shipping.

⁴ The Paris MOU includes all Arctic nations (with the United States participating as an observer).

⁵ In conformity with IMO Resolution A.949(23) *Guidelines on places of refuge for ships in need of assistance*.

⁶ The Arctic Council's Agreement on Co-operation in Aeronautical and Maritime Search and Rescue in the Arctic, signed in May 2011, is an important development in the respect.

ICS believes that it is particularly important that non-Arctic nations are fully included in any regulatory discussions affecting Arctic shipping from the outset. The rights of coastal States located within the Arctic (Canada, Denmark including Greenland, Norway, Russia, and the United States) must be acknowledged. However, such rights must always be exercised in a manner that remains consistent with UNCLOS and IMO Conventions.

Coastal States should not impose discriminatory treatment or other measures upon ships registered with non-Arctic nations that might prejudice the interests and rights of nations or ship operators under international maritime law. Examples of potentially prejudicial measures include: unilateral ship construction, design and equipment standards; navigation requirements including mandatory navigation or ice-breaker service fees; and the imposition of additional insurance requirements.

4. Full market access and freedom of navigation

Unilateral, national or regional regulations governing ship safety, environmental protection and other shipping matters should be avoided and they must not disadvantage ships registered with non-Arctic States. This includes regulations and enforcement mechanisms that Arctic coastal States might seek to introduce within ice-covered waters inside the 200 nautical mile Exclusive Economic Zone (EEZ), which should be addressed internationally via the regulatory framework provided by IMO.

ICS believes that the UNCLOS regime of transit passage for straits used for international navigation (as codified in Part III of UNCLOS) takes precedence over the rights of coastal States under Article 234. Maintenance of this principle also has implications for other international straits outside the Arctic that have vital strategic and political significance.

Regulations governing market access should be consistent with commitments made by governments at the World Trade Organization (WTO) and, where relevant, with the Principles of Common Shipping Policy adopted by the Organization for Economic Co-operation and Development (OECD) in 2000.

5. Need for legal clarity about status of Arctic

ICS suggests that the legal status of Arctic waters needs to be clarified at the United Nations level.

In general, in all waters save 'internal waters', the right of 'innocent passage' within the Exclusive Economic Zone (EEZ), as enshrined by UNCLOS, must always apply. However, clarification is needed about the definition of internal waters, including the use

of straight baselines with respect to islands situated off a mainland, as Arctic sea routes become more accessible.

The relationship between UNCLOS Article 234 and the UNCLOS regime of transit passage for straits used for international navigation also needs to be clarified, now that straits in the Arctic region are actually starting to be used by international shipping.

The above notwithstanding, Article 234 of UNCLOS permits coastal States to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of EEZ, where particularly severe climatic conditions and “the presence of ice covering such areas for most of the year” create obstructions, or where “exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance”.

However, ICS believes a debate is required as to what is meant in UNCLOS by “most of the year” as Arctic waters become ice free for longer periods. Questions need to be resolved about the rights of coastal States to enforce unilateral laws and charges when Arctic waters are indeed “ice free”, the definition of “ice free”, and the extent to which hazards to navigation may be regarded as “exceptional” during ice free periods.

It is also vital that international ship operators have clarity with respect to which nations or organisations are responsible for ensuring the safety of maritime transport in Arctic waters. This applies particularly to waters beyond the territorial sea.

The need for answers to political questions about the extent of the continental shelf of Arctic nations is also of indirect concern to shipping. So long as it remains unclear which nations are entitled to develop natural resources in the Arctic, uncertainty about demand for shipping services and the need to invest in supporting infrastructure will remain. The right to navigate ships in the Arctic should not be treated as a bargaining counter in disputes about the right to exploit natural resources.

6. Transparency of national regulations

As stated above, national regulations should be consistent with UNCLOS, IMO Conventions and Codes, and the principle of ‘generally accepted international rules and standards’ (GAIRAS).

Wherever national rules apply to ship operations in Arctic waters, they should be transparent and comprehensible. As well as being made readily available to shipping companies and ships’ crews via the internet, they should always be available in the English language.

7. Reducing bureaucracy and setting appropriate fees for services

Consistent with coastal States' rights and obligations under UNCLOS, the development of Arctic shipping must take the commercial requirements of ship operators into consideration. For example, national requirements concerning long periods of advance notification prior to use of some Arctic sea routes are often impractical and incompatible with the way in which international shipping markets operate. In bulk shipping, moreover, the destination ports frequently change during the course of a ship's voyage.

While the environmental challenges associated with operations in the Arctic are fully acknowledged, the especially high level of fees for some ice-breaking and other navigational services also needs to be examined if Arctic sea routes are to provide a commercially viable alternative to the Suez Canal or trans-Pacific sea routes. Likewise, if frequent and reliable international shipping services are to be provided between Arctic ports and the rest of the world, or natural resources in the region are to be developed in a manner that reconciles the need for both environmental and economic sustainability, this will require the provision of maritime services that are competitive and cost efficient.



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