

II. Increased Maritime Transportation and Marine Environmental Protection

Specific Regulations for Shipping and Environmental Protection in the Arctic. The work of the International Maritime Organization.

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INTRODUCTION

The International Maritime Organization (IMO) sole specialized agency of the United Nations with an exclusive mandate to adopt international rules on safety of navigation and prevention of marine pollution, addresses the particular kind of hazards posed to shipping navigating the Arctic through recommendatory provisions of an entirely technical kind, to be implemented within the jurisdictional framework of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) as well as in accordance with the two main IMO safety and antipollution treaties, respectively:

- International Convention for the Safety of Life at Sea (SOLAS 1974); and
- International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)

Other IMO instruments apply, as appropriate, in connection with training of seafarers and routeing, respectively:

- International Regulations for Preventing Collisions at Sea, 1972 (COL-REG), as amended;
- International Convention on Load Lines, 1966, (LL) as amended;
- International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978/1995 (STCW), as amended;
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter at Sea, 1972 and its Protocol of 1996; and
- International Management Code for the Safe Operation of Ships and for Pollution Prevention, (IMS) as amended.

Bearing in mind this basic treaty law framework IMO has adopted Guidelines containing additional technical measures recommended for commercial ships operating in the Arctic environment, on account of the unique risks implied in Arctic navigation, namely:

- Poor weather conditions and the relative lack of good charts, communication systems and other navigational aids pose challenges for mariners.
- The remoteness of the areas makes rescue or clean-up operations difficult and costly.
- Cold temperatures may reduce the effectiveness of numerous components of the ship, ranging from deck machinery and emergency equipment to sea suction.
- When ice is present, it can impose additional loads on the hull, propulsion system and appendages.

* The opinions expressed in this paper are of the author and do not necessarily reflect the views of the United Nations or IMO.

These circumstances result in additional demands on ship systems, including navigation, communications, life-saving, main and auxiliary machinery, etc. All ship systems should be capable of functioning effectively under anticipated operating conditions and providing adequate levels of safety in accident and emergency situations.

ICE COVERED AREAS IN UNCLOS

Article 234 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) recognizes the right of 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 the exclusive economic zone. This right is subject to the following conditions:

- The area must suffer “particularly severe climatic conditions” presumably determined in comparison with other sea areas.
- The area must be covered by ice for most of the year, create obstructions or exceptional hazards to navigation.
- Pollution of the marine environment in the ice covered area could cause major harm to or irreversible disturbance of the ecological balance.
- The laws and regulations to be adopted and enforced by the coastal State shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

It should be noted that although article 234 is contained in Section 8 of Part XII on the Protection and Preservation of the Marine Environment, the reference to “obstructions or exceptional hazards to navigation” expands the purely environmental hazard to include safety issues.

THE WORK OF IMO

Unlike other UNCLOS provisions, article 234 of UNCLOS does not explicitly prescribe the need for specific domestic coastal State legislation for ice-covered areas to conform to international shipping rules adopted by the competent international organization (IMO).

Nevertheless, article 234 should be read together with other provisions of UNCLOS according to which coastal States should abide to international rules and standards adopted by IMO in matters of safety of navigation and prevention of marine pollution from ships.

Accordingly, special laws to be adopted by coastal States in accordance with article 234 should neither contradict nor overlap the shipping rules and standards contained in SOLAS and MARPOL.

The IMO Maritime Safety Committee, at its seventy-sixth session (2 to 13 December 2002), and the IMO Marine Environment Protection Committee, at its forty-eighth session (7 to 11 October 2002), approved Guidelines for ships operating in Arctic ice-covered waters. These guidelines and should be considered as additional to the mandatory and recommendatory provisions contained in SOLAS and MARPOL.

The Guidelines are recommendatory in nature. However, States can incorporate them into their national laws, thus making their application compulsory in the ice waters under their jurisdiction.

CONTENTS OF THE GUIDELINES FOR SHIPS OPERATING IN ARTIC ICE-COVERED WATERS

The Guidelines aim to promote the safety of navigation and to prevent pollution from ship operations in Arctic ice-covered waters.

The provisions recommended in the Guidelines should be considered as additional and beyond existing requirements of the SOLAS Convention. These additional measures are justified by the particular climatic conditions of Arctic ice-covered waters and to meet appropriate standards of maritime safety and pollution prevention. Thus the single most significant factor in shipping Arctic operations addressed by the Guidelines are the serious structural hazards to all ships represented by sea and glacial ice.

The Guidelines recognize that this is best achieved by an integrated approach, based on requirements in existing Conventions which cover the design, outfitting, crewing and operation of ships for the conditions which they will encounter. The Guidelines also depart from the fact that the Arctic environment imposes additional demands on ship systems, including navigation, communications, life-saving, main and auxiliary machinery, etc. They emphasize the need to ensure that all ship systems are capable of functioning effectively under anticipated operating conditions and providing adequate levels of safety in accident and emergency situations.

Not all ships which enter the Arctic environment will be able to navigate safely in all areas at all times of the year. A system of Polar Classes has therefore been developed to designate different levels of capability. In parallel to the development of the Guidelines, the International Association of Classification Societies (IACS) has developed a set of Unified Requirements which, in addition to general classification society rules, address all essential aspects of construction for ships of Polar Class.

The Guidelines specifically state that the recommendations proposed in their text are not intended to infringe on national systems of shipping control. They also state that they do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by the State and used for the time being, only on government non-commercial services. However each State should ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft, that they act in a manner consistent with the Guidelines.

The Guidelines include constructions provisions for ships classified in different *polar classes* bearing in mind the different classification assigned upon IACS' unified requirements depending on the degree of exposure during a year to different hazards posed by ice covered waters. All polar class ships should have double bottoms. Other provisions of the guidelines address the following subject matters:

- Accommodation and escape measures;
- directional control systems;
- anchoring and towing arrangements;
- machinery;
- auxiliary machinery systems;
- electrical installations;
- fire safety equipments;
- life-saving appliances and survival arrangements;
- navigational equipment;
- operational guidelines;
- crew training; and
- environmental protection and damage control.

FROM ARTIC TO ANTARTIC

In 2004 the XXVIIIth Antarctic Treaty Consultative Meeting invited IMO to consider amending the Guidelines for ships operating in the Arctic ice covered waters (hereinafter “the Guidelines”) with a view to enable its application to ice covered waters in the Antarctic Treaty Area. Not only did the Meeting referred to safety in general but also called the attention of IMO on a specific environmental issue, namely whether full double bottom construction would be necessary for ships operating in Antarctic ice-covered waters.

Although the existing Guidelines particularly refer to the Arctic, all ships should comply with basic safety and anti-pollution measures contained in other IMO treaties, notably the Convention for the Safety of Life at Sea (SOLAS) and the Convention for the prevention of marine pollution from ships (MARPOL).

Main problem in the case of Antarctica is that due to the freezing of claims on sovereignty, there is not coastal or port State control to check, or impose, compliance with safety and anti-pollution requirements. In other words: the flag State is responsible to ensure that ships flying its flag comply with safety and anti-pollution standards but the flag State cannot be checked, called to answer, or interfered in any way by coastal or port States, as it happens in other regions of the world. There is not such a thing as a port or a coastal State in Antarctica because port or coastal State jurisdiction can be established on the basis of an uncontested claim on sovereignty over ports, coasts and adjacent waters. As a result, there is no deterrent for flag States and shipowners that ignore their obligations.

In the wake of recent incidents such as the *Explorer* the IMO's DE Sub-committee discussed the issue at its 51 session, held in Bonn, Germany, from 18 to 22 February 2008. Canada, Germany, the UK and the observer delegation of IACS presented a submission for DE's consideration, namely “Comments on the proposals by the Antarctic Treaty Consultative Parties”. In general, the document reflects agreement to the revision of the Guidelines and also suggests a series of amendments, mainly of a technical kind.

The DE agreed to prepare a complete revision of the Guidelines, as opposed to amendments to the existing Guidelines. To this effect, a correspondence Group under the co-ordination of Canada has been established. A report with draft revised Guidelines will be submitted to the next, 52 session of the DE in 2009.

The Antarctic area is a special area under MARPOL Annexes I, II and V. Proposals have been made at the IMO Marine Environment Protection Committee to address vessel ice strengthening standards; banning use of heavier grade fuel oils; discharges of oily substances, sewage, grey water and waste; introduction of alien species through ballast water, hull-fouling and other pathways; and the establishment of a vessel traffic monitoring and information system for vessels operating in the Antarctic area.