A Note on Making the Polar Code Mandatory

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Introduction

The International Maritime Organization (IMO) is the specialized agency of the United Nations system with responsibility for the safety and security of international shipping and the prevention of marine pollution from ships. It has met its responsibility through the adoption of technical regulations annexed to the 1974 International Convention for the Safety of Life at Sea (SOLAS)\(^1\) and the International Convention for the Prevention of Pollution from Ships (MARPOL).\(^2\) These conventions contain provisions enabling the rapid adoption of amendments to those annexes (known as the tacit acceptance procedure) that keep the regulations current and enable them to adapt to new circumstances, thereby enhancing the safety and security of commercial shipping and the prevention of marine pollution from commercial ships. The SOLAS and MARPOL Conventions are widely ratified, and cover more than 99% of the world’s merchant shipping tonnage.\(^3\) This contribution discusses the use of the tacit acceptance procedure to cope with the consequences of increased shipping in the Arctic and Antarctic Oceans.

The reduction in size and scope of the Arctic ice cap in the latter part of the twentieth century led to increased ship traffic in and through Arctic waters. It also led to concern that there was insufficient guidance for ships operating in those waters. The United States participated actively in the development of, and supported, the 2002 IMO Guidelines for Ships Operating in Arctic


Ice-Covered Waters. The Guidelines addressed construction, equipment, ship operation, and environmental protection and damage control. The increase in tourist shipping in Antarctic waters led to a similar effort to provide guidance to ships operating in the Southern Ocean. Ultimately, in 2009, the IMO Assembly adopted a revised version of the non-binding guidelines for application in Antarctic as well as Arctic waters, the Guidelines for Ships Operating in Polar Waters.

On the initiative of Denmark, Norway and the United States, in 2009, the IMO’s Maritime Safety Committee (MSC) and Marine Environment Committee (MEPC) agreed to add to the agenda of the Sub-Committee on Ship Design and Equipment (DE), a new high-priority work program item on “Development of a mandatory Code for ships operating in polar waters,” with a target completion date of 2012. However, the complexity of this effort has led to an extension of DE’s target completion date to 2014. Assisted by a correspondence group, the annual meetings of the DE Sub-Committee in 2010, 2011, 2012 and 2013 made progress in developing a Code.

Tacit Acceptance Procedure

Technology and techniques in the shipping industry change very rapidly. As a result, not only are new conventions required but existing ones need to be kept current.

In many conventions, amendments come into force only after a percentage of contracting States, usually two thirds, have accepted them. This normally