Harmonised implementation of the IMO Polar Code

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Working Paper submitted by Argentina, Finland and Norway

Summary

This paper proposes that Parties strengthen their efforts in implementing the International Code for Ships Operating in Polar Waters (Polar Code) in a harmonised way.

***Background***

1. Pursuant to Resolution 8 (2009) adopted at the 32nd Antarctic Treaty Consultative Meeting (ATCM XXXII), the Chair of ATCM XXXII expressed to the International Maritime Organization (IMO) the Antarctic Treaty Parties’ wish that the IMO develop a mandatory shipping code for vessels operating in Antarctic waters.
2. The adoption of the mandatory International Code for Ships Operating in Polar Waters (Polar Code) by the IMO in 2014–2015 and its entry into force in 2017 were important milestones in ensuring safe shipping and the protection of polar marine environments by addressing maritime risks present in polar waters and not adequately mitigated by other instruments. Since 2017, ships operating in harsh Arctic and Antarctic waters have had clear rules and guidance on how to best tackle the additional demands on ships and their crews in the inhospitable, yet unique, seas surrounding our planet’s two poles.
3. However, in order to ensure the success of the Polar Code, it is important to keep working towards harmonised implementation and enforcement. There may be differences between Flag and Port States in ways to implement and enforce the Code, as well as among shipowners, operators and other stakeholders in the interpretation of the Code. Cooperation is key, and the IMO, the Antarctic Treaty Parties and the Arctic Council all have important roles to play on this topic.
4. Challenges related to the implementation of the Polar Code have been discussed, inter alia, in the Arctic Shipping Best Practice Information Forum under the auspices of the Arctic Council’s Working Group on Protection of the Arctic Marine Environment (PAME). This work has been supported in many ways by both Finland and Norway. Finland also was the convener of the first International Conference on Harmonized implementation of the Polar Code in Helsinki in February 2018 while chairing the Arctic Council.
5. As six years have now passed since the entry into force of the Polar Code, it may be a good time to take stock and think ahead also in Antarctic cooperation. How can we ensure the harmonized implementation of the Polar Code in Antarctic waters? Are there any need for improvements? What role may the Antarctic Treaty Parties have in better enforcing the Code?
6. IP 57 (ATCM XLIII in 2021) by Spain detailed Spain’s procedure implementing the Polar Code on the Spanish research vessel *Sarmiento de Gamboa*, and the work of the Spanish Maritime Administration to certify this vessel in accordance with the Code. Since then there has not been much discussion or information exchange on the Polar Code among Parties.
7. The ATCM Multi-year Strategic Work Plan includes priority 9: “Contribute to strengthening the consistent implementation of the Polar Code”. ATCM XLIV in 2022 invited Parties to share papers on the implementation of the Polar Code in the Antarctic at the next ATCM, and supported the organisation of a topical session to the agenda of the ATCM XLV to enhance and support harmonised implementation of the IMO Polar Code in waters around both poles.

***Key challenges***

1. The safety part of the Polar Code is the first “goal-based standard” instrument adopted by IMO. For national maritime administrations and the industry, the strongly conceded three layers of “goal”, “functional requirements” and “regulations” is a new type of legal framework. The regulations set out one way of meeting the goals and functional requirements, however, other solutions may be applied, as long as it is documented that the goal and the functional requirements are met. This gives all stakeholders larger freedom, but at the same time, it requires a higher level of knowledge and understanding of the risks to be mitigated and the necessary measures to be applied.
2. The mandatory operational assessment to be carried out by operators forms a basis for the determination of which set of functional requirements and regulations of the Polar Code shall apply to ships operating in polar waters. This will depend on, among other things, the area of operation, anticipated weather conditions, time of year, possible presence of sea ice, temperature and latitude.
3. The submitters’ experiences so far show that operators find parts of the Polar Code challenging with respect to the interpretation of requirements. The variable levels of knowledge and understanding of how and what to assess still constitutes a challenge.

***Recommendations***

1. It is recommended that the ATCM:
   1. Recognises the need to continue prioritising the harmonised implementation and effective enforcement the IMO Polar Code in the Multi-year Strategic Work Plan;
   2. Advises the Parties to keep promoting the Polar Code and its implementation to shipowners and operators calling their ports, as well as vessel designers, shipyards and other stakeholders in their national maritime clusters;
   3. Discuss possible ways for the Parties to cooperate with the Arctic Council States and other major Flag States for sharing information and best practices in implementing the Polar Code.