



# International Chamber of Shipping

Shaping the Future of Shipping

Name: David Baker – Consultant to ICS

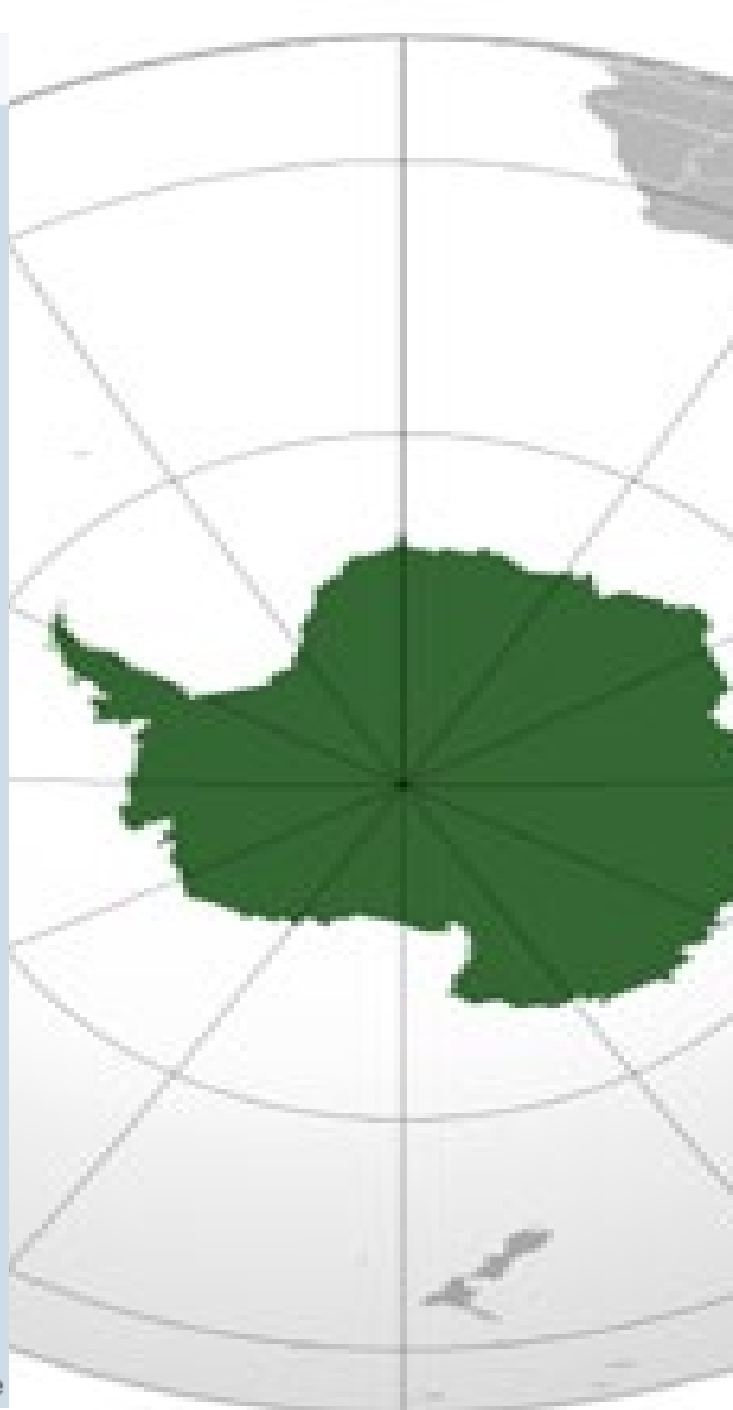
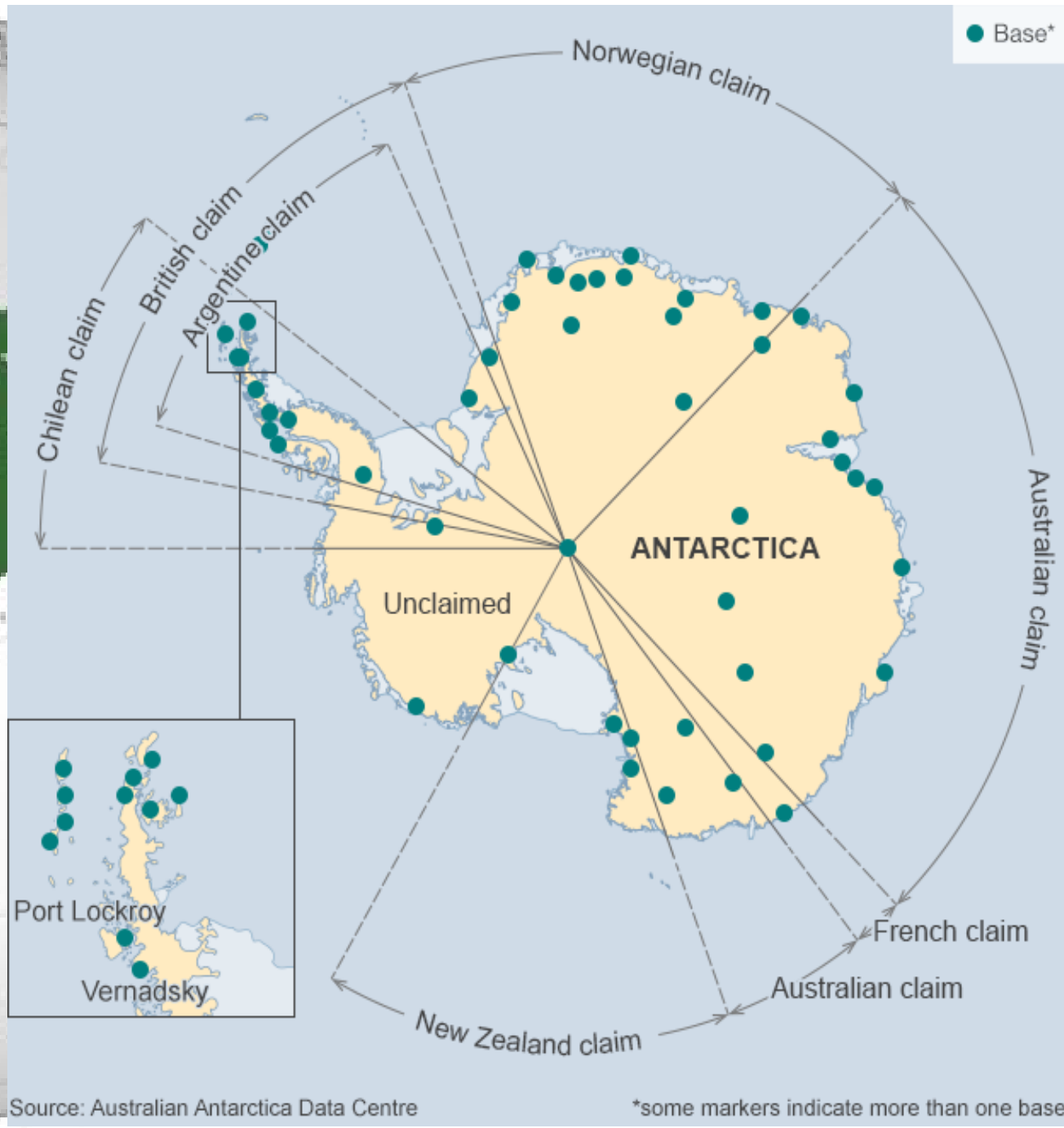
Presentation: Ship-sourced Pollution in Antarctic Waters: Liability and Compensation



# Liability and compensation for ship sourced pollution in Antarctic waters

- Antarctic territory
- Tourism activities in Antarctic waters
- Regulatory regime covering Antarctica:
  - Antarctic Treaty
  - IMO liability and compensation Conventions
  - Annex VI (Liability) to the Environmental Protocol to the Antarctic Treaty
- CMI work: Is the Annex fit for purpose?
- Conclusions





## Seaborne Tourism in Antarctica: Data\*

Year	No. of operators	No. of ships & yachts	No. of voyages	No. of passengers making landings	No. of cruise only passengers
2013-14	42	51	283	27,735	9,670
2014-15	37	44	267	27,243	9,459
2015-16	38	48	290	30,369	8,109
2016-17	38	47	308	36,938	7,475
2017-18	44	50	354	42,711	9,131
2018-19	44	56	406	44,619	10,889
2019-20	47	62	414	55,875	18,506
2021-22	40	48	243	23,508	0
2022-23	50	70	542	71,362	32,730
<b>2023-24</b>	<b>55</b>	<b>77</b>	<b>569</b>	<b>78,848</b>	<b>43,224</b>

\* Source: Information Paper Submitted by IAATO to ATCM 17





# Tourism activities in Antarctic waters



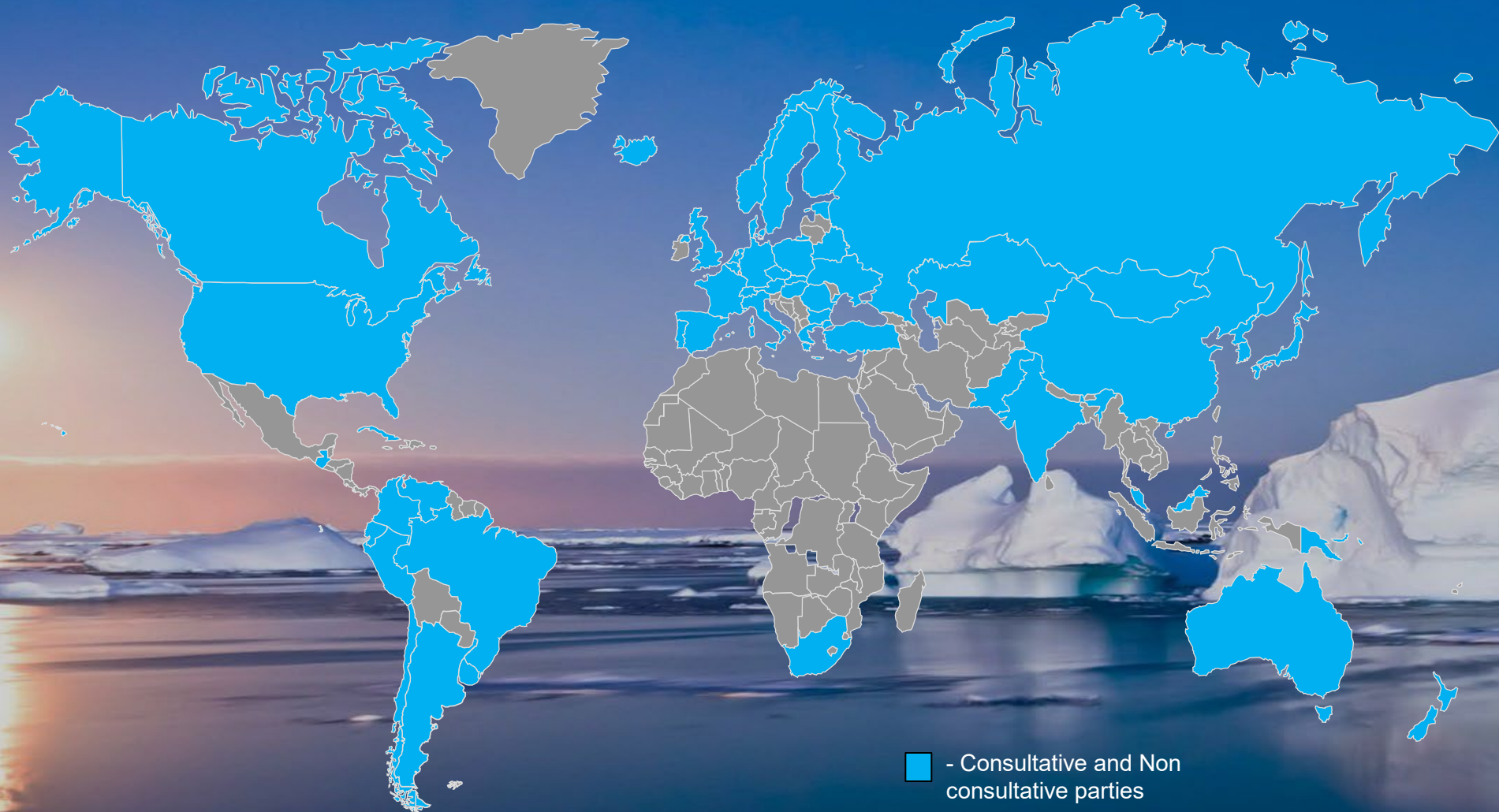
# Regulatory Regime: Antarctic Treaty (AT)

- Adopted in 1959 and entered into force in 1961
- Established a mechanism for international co-operation to protect and preserve Antarctica
- “Antarctica shall be used for peaceful purposes only” (Art. 1)
- Territorial claims, but all new claims frozen under the Treaty
- Treaty Remains in force indefinitely
- No provisions relating to liability and compensation for ship sourced pollution
- 58 States Parties
- 29 Consultative Parties & 29 non-Consultative Parties
- Annual ATCMs

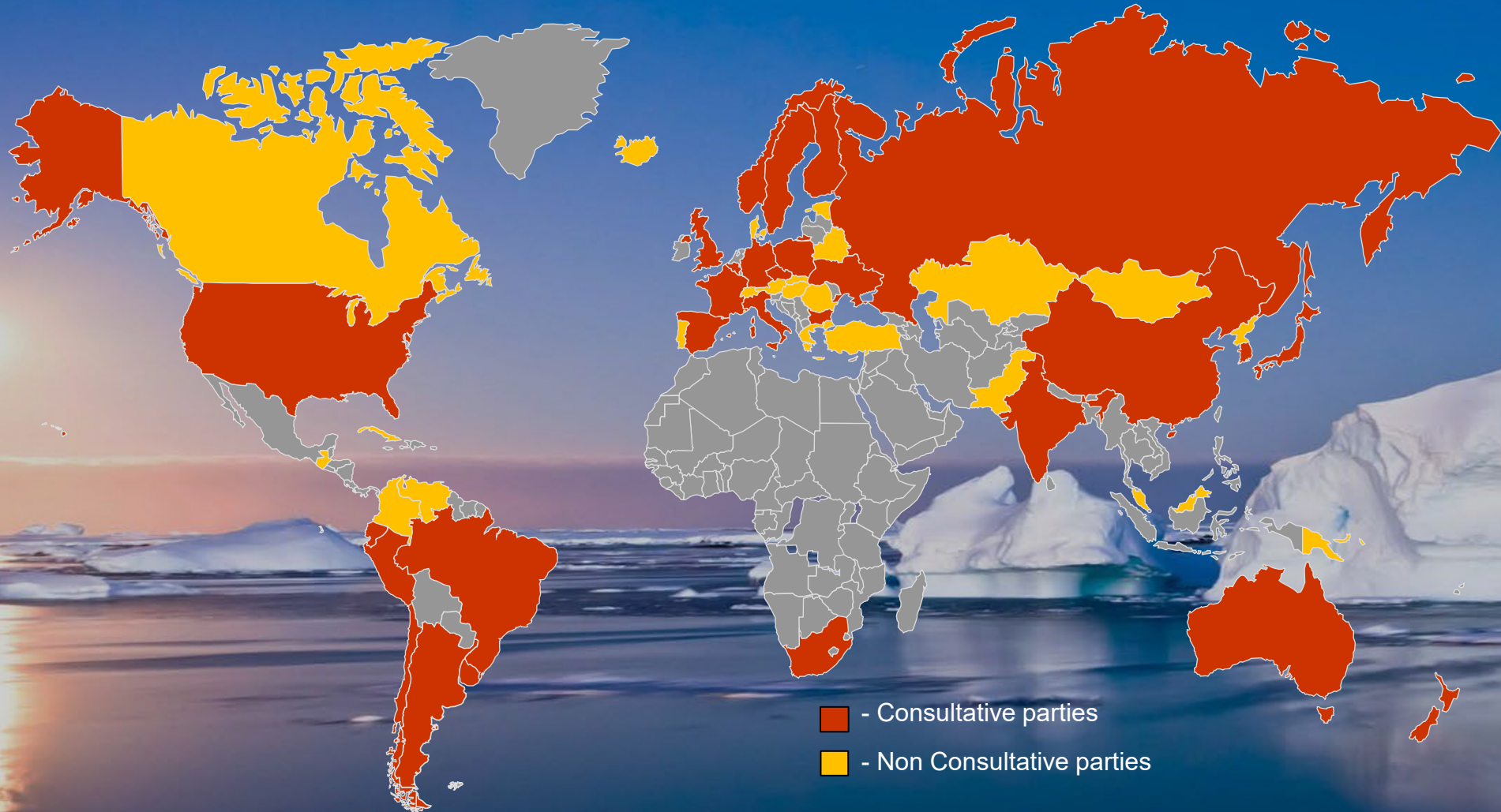




# Consultative & Non-consultative parties to the Antarctic Treaty:



# Consultative & Non-consultative parties to the Antarctic Treaty:





# Regulatory Regime: Protocol on Environmental Protection to the AT

- Adopted in 1991 and entered into force in 1998
- Article 2: designates Antarctica as a natural reserve devoted to peace and science
- Article 7: Prohibits any activity relating to mineral resources other than scientific research. Remains until 2048
- Provides that this prohibition cannot be removed without a binding legal regime
- Article 9 provides that: *the Parties undertake to elaborate rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by this Protocol*



# Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability Arising From Environmental Emergencies

- Adopted in 2005 – not yet in force
- All 29 Consultative States needed; 21 so far\*
- Scope of Annex VI – Beyond just shipping:

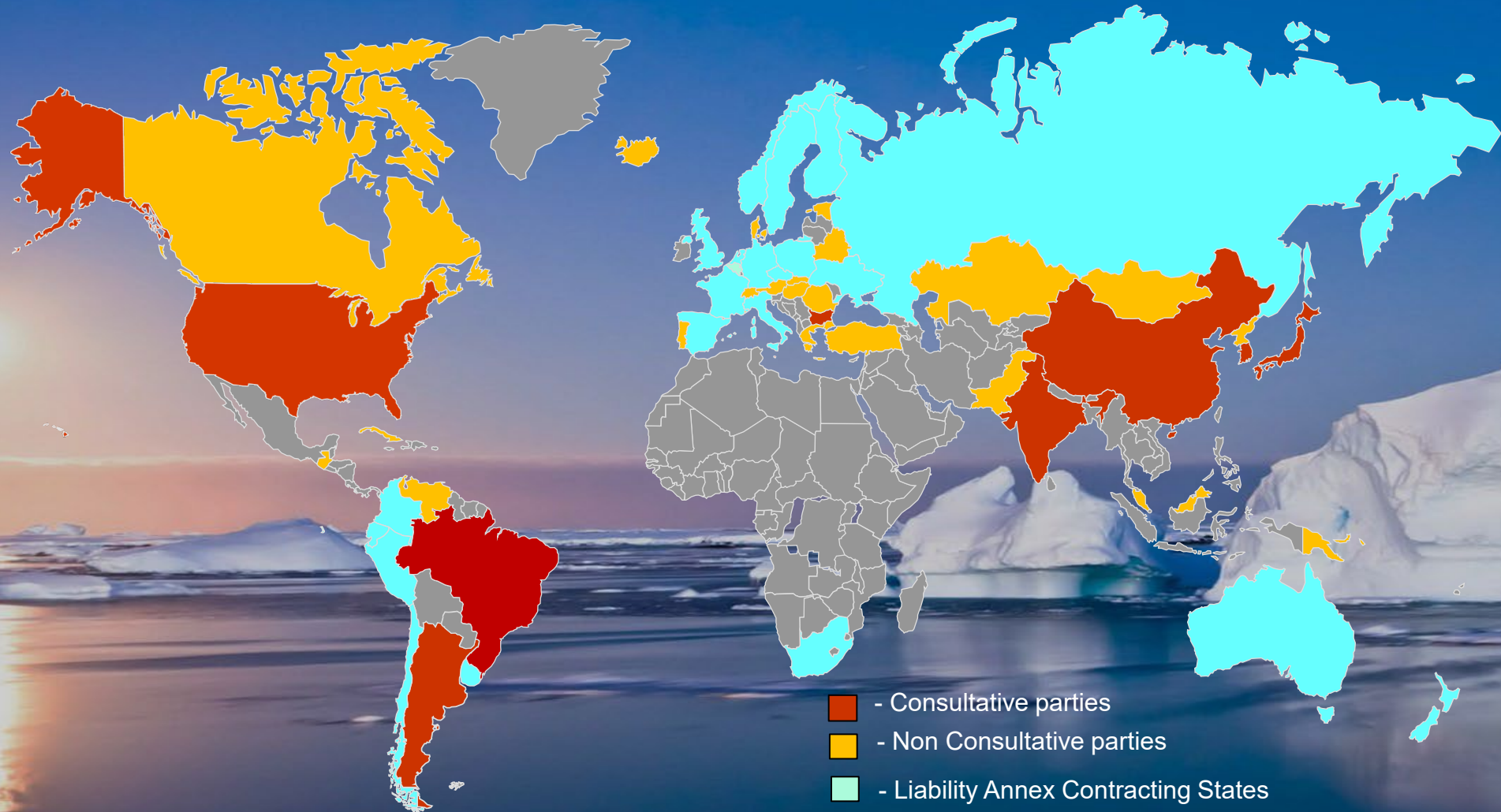
*This Annex shall apply to “environmental emergencies” in the Antarctic Treaty area which relate to scientific research programmes, tourism and all other governmental and nongovernmental activities in the Antarctic Treaty area*

- Definition of “environmental emergencies”:

*any accidental event that has occurred, having taken place after the entry into force of this Annex, and that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment.*



# Consultative & Non-consultative parties – Liability Annex:



# Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability Arising From Environmental Emergencies

- Adopted in 2005 – not yet in force
- All 29 Consultative States needed; 21 so far
- Scope of Annex VI – Beyond just shipping:

*This Annex shall apply to “environmental emergencies” in the Antarctic Treaty area which relate to scientific research programmes, tourism and all other governmental and nongovernmental activities in the Antarctic Treaty area*

- Definition of “environmental emergencies”:

*any accidental event that has occurred, having taken place after the entry into force of this Annex, and that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment.*





# Annex VI Liability Arising from Environmental Emergencies

## Key provisions:

- “Operator” to take prompt and effective response action to environmental emergencies
- Establish a liability on the “operator” for costs taken by States Parties in the event that the operator fails to respond
- “Operator” defined as:

*“any natural or judicial person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic area”*

- Establish a fund to provide for the reimbursement of reasonable costs taken by a State
- Requires the operator to maintain financial security to the limits established



# Regulatory Regime: IMO liability and compensation Conventions and CMI research on Annex VI to Environmental Protocol to AT

CMI work on the AT and ship sourced pollution damage: “Antarctica: The new Alsatia for Liability and Compensation for Ship-Sourced Pollution Damage? (Working Paper)”

## IMO liability and compensation Conventions:

- Application of the IMO liability and compensation regimes in Antarctic waters?
- No coastal States’ territory for the purposes of geographical scope of the IMO Conventions:  
*“pollution damage caused in the territory, including in the territorial sea, of a Contracting State, and in the exclusive economic zone of a Contracting State, established in accordance with international law....”*
- No extension of the IMO Conventions by State Parties to their Antarctic territories
- Convention financial security requirements do apply though to ships registered in IMO Convention States’ Parties



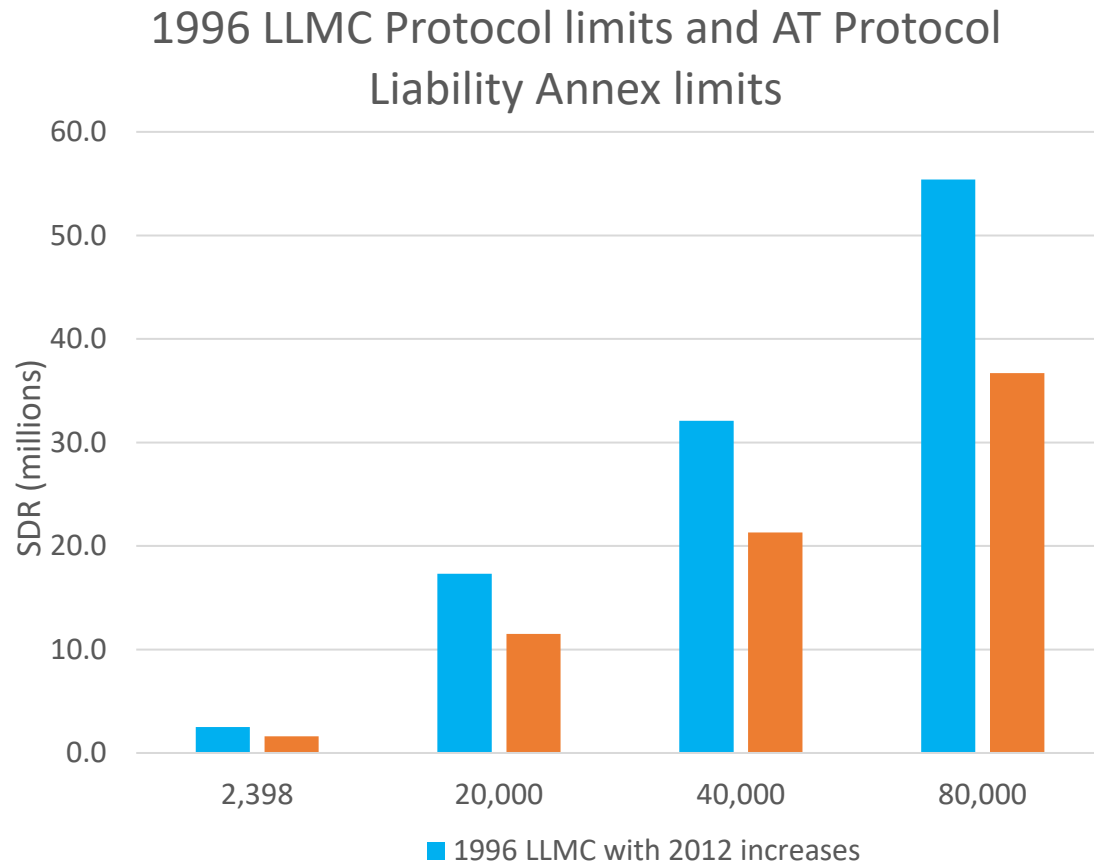
# Annex VI Liability Arising from Environmental Emergencies

## Annex VI Liability Annex vs IMO Conventions:

- No rights of direct action against the providers of financial security
- No Flag State certification provisions
- Albeit no additional administrative burden on IG P&I Clubs - CoE
- Self contained limitation regime – based on 1996 LLMC Protocol
- Limits do not take account of 2012 IMO increases
- Lack of clarity over “environmental emergencies” in comparison with “pollution damage”



## Annex VI Liability Limits and 1996 LLMC Protocol limits with 2012 increases



- Significant difference between two sets of limits
- Provision to increase Liability Annex limits
- Only when Annex is in force
- Suggestion that this could happen at first ATCM after entry into force
- Effective after one year





# Conclusions:

- Unclear which liability regime presently applies, in the absence of the entry into force of the Liability Annex
- Liability Annex still not in force some 20 years since negotiation
- If it is applied, then the absence of key provisions that exist in the IMO's liability and compensation Conventions makes the impact of the Liability Annex questionable
- Antarctic Treaty States could consider some aspects of the Liability Annex in the run up to entry into force, specifically the limits
- Unlikely, or at least questionable, that entry into force might ever be reached though given dependence on the US
- Does the IMO and the ATCM need to consider alternatives?



# Thank you for listening



[www.ics-shipping.org](http://www.ics-shipping.org)

