



NON-TECHNICAL MEASURES TO PROMOTE QUALITY SHIPPING FOR CARRIAGE OF OIL BY SEA

CONCLUSIONS OF THE WORKING GROUP

Note by the Chairperson

Summary:	In order to more easily identify the findings of each of the Working Group's meetings and to facilitate the preparation of the Working Group's report to the 1992 Fund Assembly in October 2008, in collaboration with the Secretariat, the Chairperson has prepared a summary of the issues put forward and the achievements of the Group over its four meetings.
Action to be taken:	(a) to consider the Chairperson's proposal not to extend the Working Group's mandate; and (b) to make final recommendations to the Assembly.

1 Introduction

- 1.1 The Working Group has now held four meetings, in May 2006, March 2007, June 2007 and March 2008 respectively and is aiming to complete its mandate by its October 2008 deadline, as tentatively agreed at its first meeting in May 2006 (document 92FUND/WGR.4/3, paragraph 7.4.4). Reports of the respective meetings of the Working Group were issued as documents 92FUND/WGR.4/3, 92FUND/WGR.4/5, 92FUND/WGR.4/8 and 92FUND/WGR.4/11. Upon the completion of its work the Working Group must make final recommendations to the Assembly (document 92FUND/A/ES.10/18, paragraph 5.8).
- 1.2 At the Working Group's fourth meeting, the Chairperson pointed out that, although there had been significant discussions and substantial information had been received from members of the industry on changes in practices, the Working Group did not yet have any fixed proposals to present to the Assembly. In order to more easily identify the findings of each of the meetings and to facilitate the preparation of the Working Group's report to the Assembly, in collaboration with the Secretariat, the Chairperson has prepared a summary of the issues put forward and the achievements of the Group over its four meetings. It is the Chairperson's intention that this summary document will form the basis of the Working Group's report to the Assembly (document 92FUND/WGR.4/11, paragraph 8.2).

2 Issues discussed

- 2.1 At its 10th extraordinary session, held in February 2006, the Assembly decided that, in conducting its work, the Working Group should focus on the following (document 92FUND/A/ES.10/18, paragraph 5.9):

- (a) consider and make proposals on the development of common criteria to be uniformly applied by Contracting States to ensure that fully effective insurance is in place before States issue CLC Certificates;
- (b) identify factors that prevent the sharing of information between marine insurers and seek to develop a common policy or other measures that would facilitate such sharing of information;
- (c) identify practical measures to achieve better and more transparent co-ordination between insurers, shipowners and cargo interests that would promote quality shipping;
- (d) consider possible measures for the denial or withdrawal of insurance cover in order to improve the safer transport of oil;
- (e) consider the feasibility and impact of differentiated insurance rates and premiums that would encourage quality shipping; and
- (f) examine ways of encouraging and strengthening the participation of classification societies in the promotion of quality shipping.

2.2 During the Working Group's four meetings the Chairperson regularly encouraged Member States and observers to submit documents and bring any items which were of interest and which fell within the Working Group's mandate to the Group's attention. The Working Group responded with the submission of over 18 documents which facilitated varied and fruitful debates covering all of the topics set out in paragraph 2.1 above and more. The conclusions of those debates are set out in section 3 below.

3 Issues and Conclusions

3.1 Preliminary question

3.1.1 At the Working Group's first session, the issue was raised as to whether ships falling outside the ambit of classification societies that were members of the International Association of Classification Societies (IACS) and outside the ambit of P&I Clubs that were members of the International Group of P&I Clubs should be the main focus of the Working Group's attention. After an exchange of views it was decided that the Secretariat should undertake a study, aimed at finding out whether such ships were more likely to be involved in pollution incidents than vessels within the ambit of IACS and of the International Group of P&I Clubs.

3.1.2 The Working Group concluded at its 2nd meeting that, taking into account the results of a study undertaken by the Secretariat (document 92FUND/WGR.4/4/1), ships falling outside the ambit of classification societies that were members of IACS and outside the ambit of P&I Clubs that were members of the International Group of P&I Clubs were not more likely to be involved in pollution incidents than vessels within the ambit of IACS and of the International Group of P&I Clubs and should therefore not be the main focus of the Working Group's attention.

3.2 Common criteria for issuing CLC certificates

Issue

3.2.1 At the Working Group's first meeting in May 2006, the International Group of P&I Clubs was the first to address point (a) of the specific areas of focus identified in the mandate, set out in paragraph 2.1 above. In document 92FUND/WGR.4/2/3 the International Group proposed that States should consider adopting common guidelines for issuing Civil Liability Convention (CLC) certificates on the basis of 'blue cards' issued by the Clubs of the International Group and that in the case of other financial providers, common criteria should be put in place for assessing their financial

viability with a view to establishing a list of approved providers against whose security CLC certificates could be issued by States.

- 3.2.2 Document 92FUND/WGR.4/2/2, submitted by INTERTANKO, OCIMF, the International Group of P&I Clubs and BIMCO, contained possible measures that States could take to promote quality shipping, although it was recognised that these fell within the ambit of IMO rather than the mandate of the Working Group. The co-sponsors of that document proposed that if a shipowner wished to transfer a ship from one flag State to another, the two flag States involved should co-operate so as to ensure that any deficiencies with the ship identified by the former flag State should be rectified before the ship was accepted by the new flag State. The co-sponsors also proposed that States should develop unified/harmonised Port State control standards and adopt a common and consistent database accessible to insurers, charterers, etc.
- 3.2.3 A number of States, including Germany, Liberia and the United Kingdom, submitted information on their procedures when granting CLC certificates (documents 92FUND/WGR.4/7, 92FUND/WGR.4/7/7 and 92FUND/WGR.4/4/2 respectively). Other States also spoke about their own practices during the discussion of these documents.
- 3.2.4 During these discussions the Working Group noted, in particular, the evaluation processes followed by those States which had volunteered information about their practices in relation to the issuing of CLC certificates to ships whose insurer was not a member of the International Group of P&I Clubs.
- 3.2.5 The observer delegation of IUMI had acknowledged at the Working Group's second meeting that when an insurer was not a member of the International Group of P&I Clubs it could prove difficult to check that insurer's security and suggested that perhaps the most appropriate source to approach when wishing to examine such an insurance provider would be the financial department or equivalent of an insurance regulator within that particular State (document 92FUND/WGR.4/5, paragraph 7.4.18).
- 3.2.6 During these discussions the Working Group also noted the processes followed by those States which had volunteered information about their practices in relation to any safety and quality checks carried out prior to issuing the CLC certificate. One delegation pointed out at the Working Group's second meeting that it was in the process of aligning the inspection process with the certification process by requesting Port State control inspections to be carried out within three months prior to the insurance renewal date so that details of the recent status of a ship was readily available (document 92FUND/WGR.4/5, paragraph 7.4.17).

Conclusion

- 3.2.7 Based on the discussions of this issue, it would appear that States do not encounter difficulties when a ship is insured by a member of the International Group. It is evident, however, that States should look into whether they have the correct checks in place and whether these checks are enforced when the insurer is not a member of the International Group. States should take note of the practices in those States which spoke, look into their own practices and consider whether common procedures could be adopted by all States, particularly in areas where difficulties arose. The initiative for such a procedure lies within Member States and no proposal for such a procedure has been presented to the Working Group. States should consider, in particular, whether there should be an alignment of the safety issue and the quality of the ship and whether certificates are issued purely based on the Conventions or whether the issuing authorities, the Flag State and the industry are benefiting from all of the information that could be available in relation to the quality of the ship.

3.3 Sharing of information between marine insurers

Issue

- 3.3.1 With reference to point (b) of paragraph 2.1 above, at its first meeting the Working Group took note of the information contained in document 92FUND/WGR.4/2 submitted by the observer delegation of OCIMF, which provided information on OCIMF's Tanker Management and Self-assessment (TMSA) Guide, a tool designed to help shipowners/operators measure and improve their management systems. It was noted that the TMSA Guide defined 12 key elements of management practice, which provided a checklist for shipowners/operators who aimed to achieve safety and environmental excellence, each element defining the objectives and the key performance indicators required to meet those objectives. It was also noted that OCIMF administered a website on which shipowners/operators could complete and regularly review their assessments online, with individual shipowners/operators having complete control over access to its TMSA data which the shipowner/operator could send to anyone it wished, eg charterers, insurers, flag State, port States etc. The Working Group noted that it was OCIMF's view that TMSA data could be a useful tool for many stakeholders such as insurers, flag and Port States, but that access to the information depended on the agreement of the shipowner/operator.
- 3.3.2 At its first meeting, the Working Group extended an invitation to the Comité Maritime International (CMI) to undertake a study with the following aims:
- (a) to identify factors that allow/require/prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practices; and
 - (b) to identify whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil.
- 3.3.3 The sponsors of document 92FUND/WGR.4/2/1, who had originally suggested the study, had further proposed that, in the light of the findings of the study, the Working Group could then make suggestions as to how Member States could remove the impediments so as to enable insurers to share information in the interest of promoting quality shipping and, if necessary, submit a common policy statement and action plan for approval by the Assembly.
- 3.3.4 Following its second and third meetings, the Working Group had decided that the study should focus on the difficulties faced by property insurers, had invited CMI to proceed on that basis and had approved the use of the questions proposed for the study in document 92FUND/WGR.4/7/4.
- 3.3.5 At its fourth meeting, the Working Group noted that the final questionnaire, as set out at the annex to document 92FUND/WGR.4/10, had been distributed to National Maritime Law Associations at the beginning of October 2007 and that at the time of that meeting nine responses had been received. The observer delegation of the CMI informed the Working Group that an initial review of the responses received had, in its view, highlighted the extreme differences in the practices of States and had given an indication of how difficult it was likely to be to synthesise the results into one set of principles that could be recommended to all States. Despite the complexity of the questions and variety of the responses received, the representative of the observer delegation of CMI recommended that the Working Group pursue the enquiry.
- 3.3.6 The Working Group had been informed at its second meeting that a similar study had already been carried out by the International Group of P&I Clubs (cf document 92FUND/WGR.4/4/4), the results of which had demonstrated that the problem according to that study however had only occurred under Norwegian legislation. This problem had been rectified and the Working Group had been informed of the change in Norwegian legislation in document 92FUND/WGR.4/4/3 submitted by Norway, which had also been presented at the Group's second meeting.

- 3.3.7 Whilst several delegations suggested that all States should look into their national legislation and report any barriers which prevented the sharing of information about ship safety to the Working Group, one delegation questioned whether, given that many P&I Clubs within the International Group were based in the United Kingdom and therefore subject to UK legislation, there was any need for States to look into their own legislation in that way. That delegation informed the Group that this question was also being considered by a Working Group within the European Union in relation to regulations on private international and insurance law.
- 3.3.8 The observer delegation of the International Group of P&I Clubs informed the Working Group that, although many P&I Clubs within the International Group were based in the United Kingdom, the International Group also had Clubs in Norway, Sweden, Japan and the United States, which were all obliged to issue insurance contracts under the terms set out in the national legislation of their country of residency. That delegation pointed out that, when considering the measures taken to promote quality shipping by the International Group (cf document 92FUND/WGR.4/4/4), the various legal systems in place in each of those countries had been taken into account.
- 3.3.9 The Working Group noted that the International Group had drafted a model rule to incorporate into insurance contracts for use by all Clubs within the International Group stating that the shipowner agreed to the sharing of information related to the condition of his ship. It was noted that the International Group had been informally advised that obliging the shipowner to agree in this way could raise issues of competition law if, for example, a ship were for sale and a change in the P&I Club into which it was entered was under consideration. It was further noted that the new P&I Club, when considering the application for insurance, would request a survey from the previous P&I insurer, and that the disclosure of this survey and the information contained therein could have an effect on the sale price of the ship. It was also noted that, based *inter alia* on the possibility of such a situation arising, some Clubs were uneasy about adopting such a rule.
- 3.3.10 The observer delegation of the International Group stated that a possible solution to the difficulties set out in paragraph 3.3.9 above would be that, should the previous Club be unable or unwilling to share the relevant information relating to the ship, then the new Club would have to ensure that a new survey was conducted on the ship before it could be entered.
- 3.3.11 Taking into account all of the discussions over the four meetings and following various concerns expressed, including that the CMI study was not sufficiently focussed to be of any real value to the Working Group and in particular that it should focus on tankers and not on ships in general, it became apparent that a slight majority of delegations opposed the continuation of the study.
- 3.3.12 The CMI observer delegation pointed out that, whilst it accepted the decision of the Working Group that CMI should desist from carrying out the study on its behalf, the subject remained on the agenda for the CMI Conference in October 2008 and it was likely, therefore, that CMI would continue with the study for its own interest. That delegation invited those CMI Member States belonging to the Working Group to still encourage their National Maritime Law Associations to respond to the questionnaire to ensure that CMI had as broad a response as possible. He stated that CMI was likely to publish a report of some description on its website in October 2008 from which the Working Group could still benefit.

Conclusion

- 3.3.13 It was hoped that the resolution of the difficulty in Norwegian legislation together with the incorporation of the International Group's model rule into its Clubs' contracts would facilitate and encourage the sharing of information among marine insurers, since this was the best and most practical way of ensuring the transparency necessary to enhance the quality of shipping, including the transportation of oil in bulk as cargo. The Chairperson urged Member States to carry out CMI's request to encourage their National Maritime Law Associations to respond to the questionnaire and to take note of the results of the study when they become available in October. Any further difficulties identified at that stage could then be brought to the attention of the Assembly for

consideration.

3.4 Practical measures to improve co-ordination between insurers, shipowners and cargo interests to promote quality shipping

Issue

- 3.4.1 On the issue of achieving better and more transparent co-ordination between insurers, shipowners and cargo interests (point (c), paragraph 2.1 above), the observer delegation of the International Group of P&I Clubs stated at the Working Group's first meeting that this was largely a matter of freedom of exchange of information between the relevant industry players and that the more information that could be freely exchanged between them the easier it would be for these parties to identify and target substandard ships. The point was made by that delegation that the International Group Clubs inspected between 10 and 20% of all entered ships and that it would be very beneficial to the Clubs if they could access data on ship inspection from other sources. That delegation suggested that States should direct efforts towards removing national barriers and impediments to the free exchange of information as discussed in section 3.3 above.
- 3.4.2 Both the representative of the International Group of P&I Clubs and the representative of IACS informed the Working Group that contact and co-operation between the organisations had improved and that they were very much working together to improve the quality of shipping.

Conclusion

- 3.4.3 It was considered that the improvement of co-ordination between insurers, shipowners and cargo interests was also dependent on their ability and willingness to share information and it was therefore hoped that the solutions set out in section 3.3 would also contribute to co-operation among the industry.

3.5 Denial or withdrawal of CLC certificates

Issue

- 3.5.1 In relation to point (d) of the areas of focus in document 92FUND/WGR.4/2/3 which it submitted to the first meeting, the International Group of P&I Clubs informed the Working Group that rules of all International Group Clubs provided for the right to terminate cover in the event a vessel became 'sub-standard' eg failed to meet, or comply with, Class requirements. In the context of the liability cover provided by the International Group clubs, ship quality evaluation measures were already in place, eg condition survey procedures and the power to require compliance with recommendations made following such surveys or in the course of implementation, e.g. the 'designated' ship procedure (paragraph 3.6 of that document). These measures, in particular those recently introduced and in course of implementation, would make it easier for the International Group Clubs to identify and target vessels which posed a threat to the safe transportation of oil with a view to satisfactorily addressing the threat, alternatively denying, or withdrawing, Club cover in respect of such vessels.
- 3.5.2 A substantive discussion on this issue also took place at the Working Group's third meeting, initiated by the presentation of a document by Canada and France, relating to a proposal that the quality of ships could be linked to the issuing or withdrawal of CLC Certificates. At that meeting the co-sponsors had invited the Working Group to discuss the ability of the Assembly to make a policy decision with regard to the authority of Member States to establish other conditions for the issuing of CLC Certificates.
- 3.5.3 The conclusion of the debate on that subject had been that, since there had been no clear majority in favour of the proposals, the Working Group was not yet in a position to make any recommendations to the Assembly (document 92FUND/WGR.4/8, paragraph 7.2.35).

- 3.5.4 At the fourth meeting, the Canadian delegation had drafted a revised proposal but, as a result of consultations with the French delegation and other interested States, had reached the conclusion that there was insufficient support to submit a document on the matter for consideration by the Group. It stated, however, that it continued to consider that the issue was of great importance and expressed its hope that it would have the opportunity to raise the matter again in the future within a session of the 1992 Fund Assembly.

Conclusion

It appeared that there was not sufficient support within the Working Group to pursue this matter.

- 3.6 The impact of differentiated insurance rates and premiums that would encourage quality shipping

Issue

- 3.6.1 On the question of the feasibility and impact of differentiated insurance rates and premiums on encouraging quality shipping it was noted that the International Group of P & I Clubs had found that there was no evidence to establish a direct correlation between substandard ships and a bad claims record and that the great majority of maritime casualties involved good quality vessels. The point was made at the Working Group's first meeting that a quality operator could have a bad claims record (due to fortuity or the nature of trade or trading areas in which the ship operated), whilst a substandard operator might have a good claims record (for similar reasons). It was noted that insurance costs formed a small part of a shipowner's operating costs and that even a substantial increase would, in the International Group's view, be unlikely to have a significant deterrent effect on the substandard operator bearing in mind the mutual nature of the insurance provided by the Clubs, which ensured that the financial burden of a substantial claim was shared between the Club's members up to the Club's individual retention and thereafter by all shipowner members of the International Group through the pooling agreement. It was also noted that the International Group believed that the objective should therefore be to identify and subsequently withdraw or deny insurance to the substandard operator rather than simply increase the costs of his insurance cover. For this reason the International Group urged States to focus on developing and supporting measures aimed at identifying substandard ships, so that if a ship was not brought up to the required standard, its insurance cover could be withdrawn and it would effectively be prevented from trading.

Conclusion

- 3.6.2 The Working Group concluded based on this information that differentiation of insurance rates and premiums was not likely to lead to a significant improvement in the quality of transportation of oil in bulk by sea.

- 3.7 Hull insurance

Issue

- 3.7.1 At its third meeting, following a proposal by the French delegation, the Working Group invited the Secretariat to undertake a study in cooperation with the International Union of Marine Insurance (IUMI) and CMI to examine the role that providers of hull insurance could play in the identification and elimination of substandard vessels, the promotion of insurance which was sensitive to the condition of vessels and in the promotion of conditions of operation and management which could contribute to quality transportation of oil.
- 3.7.2 The Director wrote to the French Government, IUMI and CMI, requesting information and inviting their views as to how such a study might best be undertaken. On the basis of the responses the Director has made a preliminary study and analysis of the issues. The Director has submitted a document setting out the results and containing suggestions as to how the Working Group could proceed with the issue, if it so wished (document 92FUND/WGR.4/13).

Conclusion

The Working Group has not yet reached a conclusion on this issue

3.8 Other issues considered

Economic incentives for quality shipowners

In document 92FUND/WGR.4/2/2 submitted by INTERTANKO, OCIMF, the International Group of P&I Clubs and BIMCO the co-sponsors had proposed the introduction of economic incentives, such as reduced port tariffs and fewer ship inspections, to encourage quality shipping. It was noted that some ports operated 'green award' schemes whereby ships meeting the highest standards were subject to lower port dues. However, the proposal gathered insufficient support among the Working Group.

4 Chairperson's recommendations

- 4.1 The Chairperson commends the industry on its achievements in amending its practices to assist in the promotion of quality shipping and finds it interesting to note the similarities amongst Member States in their practices. The Chairperson encourages States to continue to look into their own practices and compare them with those of other States, with a view to making appropriate alignments and improvements.
- 4.2 In the Chairperson's view, the Working Group has focused on the areas suggested in its mandate. However, additional ideas were also considered and where these did not meet the majority view of the Working Group, the Chairperson would nevertheless advise delegations that they should not be dissuaded from pursuing their ideas further if they felt strongly about them.
- 4.3 The Chairperson is of the view that the Working Group's mandate should not be extended since the areas referred to in paragraph 2.1 have been fully explored in so far as this has been possible. She suggests that the Working Group makes its final recommendations to the Assembly based on the conclusions set out in section 3 of this document.

5 Action to be taken by the Working Group

The Working Group is invited to:

- (a) take note of the information contained in this document;
 - (b) consider the Chairperson's proposal not to extend the Working Group's mandate; and
 - (c) make final recommendations to the Assembly.
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