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FOURTH INTERSESSIONAL
WORKING GROUP

92FUND/WGR.4/15

REPORT ON THE FIFTH MEETING OF THE FOURTH INTERSESSIONAL WORKING GROUP

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

Note by the Director

Summary:

At its fifth and final meeting, held on 25 June 2008, the Working Group concluded its discussions relating to the study carried out by the Secretariat to consider which measures concerning hull insurance would be capable of promoting quality shipping of oil. The Group then reached final conclusions in respect of all other issues covered by its mandate for submission to the Assembly at its October 2008 session.

Action to be taken:

Note the conclusions of the Working Group set out in section 8.

1 Introduction

- 1.1 The 4th intersessional Working Group was established by the Assembly at its 10th extraordinary session held in February/March 2006 to consider non-technical measures to promote quality shipping for carriage of oil by sea (document 92FUND/A/ES.10/18, paragraphs 5.8-5.13).
- 1.2 The Group held its first, second, third and fourth meetings on 23 and 24 May 2006, 15 March 2007, 14 June 2007 and 13 March 2008, respectively, under the Chairmanship of Mrs Birgit Sølling Olsen (Denmark).
- 1.3 In accordance with the decision of the Assembly, all governments, inter-governmental and non-governmental organisations having the right to participate in the 1992 Fund Assembly were invited to participate in the Working Group. Representatives from the industry, eg shipowners, oil importers, insurance companies and classification societies were encouraged to participate. The participation of the International Maritime Organization (IMO) was also sought.

2 Participation

- 2.1 The following Member States were represented at the Working Group's fifth meeting:

Algeria	Germany	Panama
Angola	Ghana	Papua New Guinea
Argentina	Greece	Philippines
Australia	India	Poland
Bahamas	Ireland	Portugal
Belgium	Italy	Qatar
Bulgaria	Japan	Republic of Korea
Cameroon	Latvia	Russian Federation
Canada	Liberia	Singapore
China (Hong Kong Special Administrative Region)	Lithuania	Spain
Colombia	Malaysia	Sri Lanka
Cook Islands	Malta	Sweden
Denmark	Marshall Islands	Trinidad and Tobago
Dominican Republic	Mexico	Tunisia
Fiji	Morocco	Turkey
Finland	Netherlands	United Kingdom
France	Nigeria	Uruguay
Gabon	Norway	Venezuela
	Oman	

- 2.2 The following non-Member States were represented as observers at the meeting:

Benin	Kuwait	Syrian Arab Republic
Ecuador	Saudi Arabia	Ukraine

- 2.3 The following intergovernmental and international non-governmental organisations participated in the Working Group's meeting as observers:

Intergovernmental organisations:

European Commission
International Maritime Organization (IMO)
Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)

International non-governmental organisations:

Comité Maritime International (CMI)
European Chemical Industry Council (CEFIC)
International Association of Independent Tanker Owners (INTERTANKO)
International Chamber of Shipping (ICS)
International Group of Liquefied Natural Gas Importers (GIIGNL)
International Group of P&I Clubs
International Tanker Owners Pollution Federation Ltd (ITOPF)
International Union of Marine Insurance (IUMI)
Oil Companies International Marine Forum (OCIMF)

3 The Working Group's mandate

3.1 The mandate of the Working Group, as determined by the Assembly at its 10th extraordinary session in February 2006 (document 92FUND/A/ES.10/18, paragraph 5.8), was:

- (a) to develop proposals in respect of non-technical measures and guidelines for Contracting States and the industry to promote quality shipping by ensuring that effective checks and procedures are in place to establish that ships insured and certificated are suitable for the carriage of oil by sea covered under the CLC/Fund regime;
- (b) to make a proposal to the Assembly's October 2006 session on a time-frame for its work;
- (c) to report on the progress of its work at each regular session of the Assembly;
- (d) to identify related issues other than those referred to below as it may deem helpful to complete its task within the current Conventions and make the appropriate recommendations to the Assembly; and
- (e) to make recommendations to the Assembly upon the completion of its work.

3.2 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.

4 Discussions at previous meetings of the Working Group

Lists of documents issued in connection with the first, second, third and fourth meetings of the Working Group are contained in documents 92FUND/WGR.4/INF.2, 92FUND/WGR.4/INF.4, 92FUND/WGR.4/INF.6 and 92FUND/WGR.4/INF.8 respectively. The reports of those meetings are contained in documents 92FUND/WGR.4/3, 92FUND/WGR.4/5, 92FUND/WGR.4/8 and 92FUND/WGR.4/11.

5 Documents submitted to the Working Group's fifth meeting

The following documents were submitted to the Working Group:

92FUND/WGR.4/13	Non-technical measures to promote quality shipping for carriage of oil by sea – Study by the Secretariat
92FUND/WGR.4/14	Non-technical measures to promote quality shipping for carriage of oil by sea – Conclusions of the Working Group

6 Chairperson's introduction

- 6.1 On opening the fifth meeting of the Working Group, the Chairperson reminded the Group of her statement at the closure of the Group's fourth meeting that, taking into account the limited number of documents submitted to that meeting, it had become apparent that, unless further substantive documents were submitted, the Group's work was drawing to a close. She also reminded the Group of her encouragement at that meeting to any Member States or observers which considered that there were any items which had not been discussed, which were of interest and which fell within the Working Group's mandate, to take the final opportunity to bring them to the Group's attention at its fifth meeting. She noted from the documents submitted to the fifth meeting that no new issues had been raised and concluded that, depending on the outcome of the discussions relating to the hull insurance study carried out by the Secretariat, it was likely to be the final meeting of the Working Group.
- 6.2 At the suggestion of the Chairperson, the Working Group decided to deal first with the study relating to hull insurance (section 7) and then to consider the document prepared by the Chairperson summarising all of the issues put forward and the achievements of the Group over its four meetings (section 8), with the aim that, if agreeable to Member States, that document would form the basis of the Working Group's report to the Assembly to be submitted by the Group's tentative deadline of October 2008.

7 Outstanding issues: The role of hull insurance in the promotion of quality shipping for carriage of oil by sea

- 7.1 The Chairperson reminded the Working Group of the study which had been requested by the French delegation at the third meeting of the Working Group in June 2007 relating to hull insurance (document 92FUND/WGR.4/8, paragraphs 7.1.24 – 7.1.38).
- 7.2 The Director introduced document 92FUND/WGR.4/13 setting out a brief historical background to the issue (sections 1 and 2) followed by the results of the study (section 3) and the Director's analysis and conclusions (section 4).

- 7.3 The Working Group recalled that at the June 2007 meeting the French delegation had expressed concerns regarding the absence of an obligation to insure vessels' hulls, the varying quality or rigorousness of providers of hull insurance and the diversity of types of contracts and the effect of these factors on ship quality. That delegation had proposed a series of questions (paragraph 2.4 of document 92FUND/WGR.4/7/3) and had suggested that, in order to answer those questions, the Working Group should initially identify possible correlations between hull insurance provided for tankers and incidents recorded that might involve the liability of their owners. Then, if certain links were found, that delegation had suggested that it would be appropriate to study which measures concerning hull insurance would be capable of promoting quality shipping of oil (mandatory insurance, an obligation on the insurer or the owner to provide information, etc.).
- 7.4 The Working Group had invited the Secretariat to go ahead with the required study, in cooperation with the parties concerned, in order to answer the questions raised in document 92FUND/WGR.4/7/3.
- 7.5 At the Working Group's fourth meeting in March 2008, the Director gave a brief update on the progress of the study and warned the Working Group that there was a possibility that it would become clear in June that the Group was unable to draw a firm conclusion on this matter due to lack of information.
- 7.6 The Working Group noted that the Secretariat had proceeded with the study as originally proposed by the French delegation and had in particular investigated the following four questions:
- How many oil tankers are navigating without hull insurance?
 - Is there a link between the absence of hull insurance and the number of incidents in which an oil tanker is involved?
 - What possibilities do hull insurers have to examine the quality of ships and what is the quality of these controls?
 - Is there a correlation between the type of contract underwritten and the loss record of the ship?
- 7.7 The Working Group noted that, following its fourth meeting, all responses had been received from the three parties concerned and that on the basis of these responses the Director had made a preliminary study and analysis of the issues.

How many oil tankers are navigating without hull insurance?

- 7.8 With regard to the first question, it was acknowledged that if ships without hull insurance were to be involved in incidents more often than ships which did have hull insurance, it might be worthwhile investigating whether this effect could be compensated by more stringent or more frequent checks in other frameworks, such as, for example, Port State controls. The Director pointed out, however, that since there was no central register of uninsured vessels in any sector of the industry, it did not seem possible to assess accurately the number of vessels which were uninsured either within the tanker sector or any other maritime vessel category without extensive factual research. He concluded that accurate information regarding this question did not, therefore, seem to be available. The observer delegation of IUMI confirmed its belief that a large part of the world tanker tonnage afloat was insured but stated that it was unable to indicate how many vessels were uninsured.

Is there a link between the absence of hull insurance and the number of incidents in which an oil tanker is involved?

- 7.9 The Director explained that the responses to the second question were based on general assumptions rather than precise information, since unfortunately uninsured vessels were not sufficiently recorded statistically to allow IUMI to provide any data directly relevant to this question. He pointed out that IUMI had assumed that uninsured tonnage would not comply with the same requirements as insured tonnage and that it would tend to be older and not subject to regular periodic quality checks. On that basis IUMI had also made the assumption that uninsured vessels would produce a higher number of incidents than insured tonnage but had reiterated that they had no conclusive evidence to this effect.
- 7.10 The Director pointed out that the rest of the information received in response to this question, as set out in paragraph 3.4 of document 92FUND/WGR.4/13, had led to the conclusion that accurate, directly relevant information was not available at the present time. He stated, furthermore, that it was difficult to predict whether such information could be acquired by field surveys and other research aimed at collecting statistically reliable data. He explained that the information available on the correlation between the quality of the ship and its operation and the likelihood that it would be involved in a serious incident could give rise to the assumption that there was a similar correlation with an absence of hull insurance, but that without further research it was not possible to draw any firm conclusion that the presence of hull insurance would equate to the quality of the ship or otherwise.

What possibilities do hull insurers have to examine the quality of ships and what is the quality of these controls?

- 7.11 The Director pointed out that the third question appeared to be relevant to the work of the Working Group since the identification of a useful role for hull insurers in the promotion of quality tanker transport was of course only conceivable if they actually had the possibility of examining the quality of the ships which they insured. He also pointed out that the value of the actual contribution to safety which hull insurers were making at present depended on the quality of the mechanisms which were in place to make sure that the quality checks were actually carried out in such a manner that they fulfilled their purpose.
- 7.12 The Working Group noted that, in the view of the French delegation, it should also be investigated whether there are any mechanisms for the sharing of information between hull insurers on the state of ships, to what extent the quality of the controls or audits which they carry out is checked, and to what extent there is homogeneity of practices in this area.
- 7.13 The Working Group noted the response received from IUMI in respect of the question relating to the quality of checks and surveys carried out and/or verified by hull insurers, namely that most hull insurers would follow underwriting guidelines and internal rules and regulations which would make it mandatory for the insurer to make sure that classification and surveys were carried out by reputable organisations and that periodic checks and dry-docking were performed at appropriate intervals.
- 7.14 IUMI had pointed out in its response that it regularly provided comments on quality aspects, showing how important it was to be able to rely on dependable and well-known classification societies and on good quality surveys. IUMI had also pointed out that insurers had access to reliable information on the quality of a ship through Equasis, SIRE, Green Awards, US Qualship, etc and that, within the available legal framework, IUMI was trying to make information available but that the strong competition regulations limited the degree to which insurers could share information.
- 7.15 The Director explained that although it was clear from the information available that hull insurers had already taken considerable steps towards being more sensitive to and critical of the risks they insured, and that in particular they made a conscious effort to find out the quality of the shipowner they insured, he had nevertheless reached the conclusion that, due to the competitiveness of the hull

insurance market in particular, the contribution that the hull insurance market could make to quality shipping would, as long as market conditions remained as they were, be rather limited. The Director pointed out that this corresponded to the conclusions, in this respect, of the report by the Organisation for Economic Co-operation and Development (OECD) of June 2004 concerning the contribution of the insurance sector to the elimination of substandard shipping, as referred to in document 92FUND/WGR.4/13, paragraph 1.2. The OECD report is available in English and French via the OECD website (<http://www.oecd.org/dataoecd/58/15/32144381.pdf> and <http://www.oecd.org/dataoecd/39/4/34029659.pdf> respectively).

Is there a correlation between the type of contract underwritten and the loss record of the ship?

- 7.16 In response to the fourth question, IUMI had stated that it believed that this information was not, statistically-speaking, available. It had, however, made a general comment that shipowners who bought hull policies with high deductibles tended to show higher financial standing than shipowners who were only prepared to carry a minimal deductible for their own account. It was pointed out that high financial standing normally meant that funds were available to be used on quality management.
- 7.17 The Director pointed out that, with no information available other than that provided by IUMI, it was not possible to draw any conclusions in respect of this question. He explained that extensive research aimed at collecting the relevant data would need to be carried out if this issue were to be pursued further.

Debate and conclusions

- 7.18 Having analysed the responses submitted, the Director confirmed his earlier concern, expressed at the Working Group's March 2008 meeting, that there was a general lack of information which was readily available and which could be applied directly to the questions which formed the basis of the study. He explained that although some information had become available, as set out above, it was very fragmented and not sufficiently conclusive for the purposes of the Working Group. He further explained that this lack of information could, in his view, only be resolved by in-depth research and fact-finding which would not only require specific expertise of the hull insurance market but also of scientifically-sound methods of collecting statistically reliable data. Therefore, if it was the wish of the Working Group that such a study would be pursued, he would see no other option but to hire a researcher or consultant who was familiar with the hull insurance market conditions and familiar with collecting and analysing statistical data.
- 7.19 He explained that it was impossible to state with any certainty whether that research would make the necessary information available since, even if it were possible to generate this kind of information, it would be highly dependent on the cooperation of the industries involved. The Director also explained that at the present time it was not possible to give a clear indication of the costs involved in conducting the research since it was unclear what the magnitude of such research would need to be.
- 7.20 Several delegations expressed their thanks to the Secretariat for its document and acknowledged that there was insufficient information available to draw any firm conclusions with respect to the issues discussed. Several delegations also considered that, given the possibility that further research would not necessarily yield any firmer results, the Secretariat should not pursue the matter further.
- 7.21 A number of delegations commented again on the issue of the barriers which exist which prevent the sharing of information among the marine insurance industry and which had been the subject of an earlier study carried out by the CMI at the request of the Working Group. This study had been discontinued following a decision by the Working Group at its March 2008 meeting. In particular the observer delegation of IUMI encouraged Member States to consider modifying national and regional laws and regulations to allow a freer flow of information.

- 7.22 The observer delegation of CMI referred in particular to the OECD report, pointing out that that report also underlined the significant impact that modifications to the appropriate laws and regulations could make to the insurance industry and their access to information about the quality of ships and their operators.
- 7.23 The observer delegation of CMI acknowledged the Working Group's earlier decision not to continue to sponsor the study into this area but nevertheless stated that, in its view, further work in this area did need to be carried out and reminded the Working Group that CMI had decided to continue with that study.
- 7.24 The Chairman, on behalf of the Working Group, thanked the Secretariat for document 92FUND/WGR.4/13 and for its efforts to obtain answers to the questions previously raised by the French delegation. The Chairman also thanked the French delegation for assisting the Secretariat in uncovering the relevant information available as well as the observer organisations of IUMI and CMI for their continuous efforts to assist the Working Group.
- 7.25 The Chairman concluded that, based on the debate at this meeting, there was no support for continuing with the hull insurance study. She pointed out, however, that such a decision did not imply that the Working Group did not recognise the importance of the issue and the ways in which insurance companies could assist in promoting quality shipping. She suggested that regardless of whether the 4th Working Group continued, the issue was likely to be raised again at some stage in discussions within the IOPC Funds' governing bodies.

8 Issues discussed and conclusions reached over the five meetings of the Working Group

8.1 Consideration of the Chairperson's document

- 8.1.1 The Working Group noted document 92FUND/WGR.4/14, submitted and introduced by the Chairperson, which contained a summary of the issues put forward and the achievements of the Group over its four meetings. The Working Group approved the use of the summary document as the basis for this report to the Assembly.
- 8.1.2 During the Working Group's four meetings, the Chairperson had 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 had responded with the submission of over 20 documents which facilitated varied and fruitful debates covering all of the topics set out in paragraph 3.2 above and more. The conclusions of those debates are set out in sections 8.2-8.9 below.

8.2 Preliminary question

- 8.2.1 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.
- 8.2.2 The Working Group concluded at its second 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.

8.3 Common criteria for issuing CLC certificates

Issue

- 8.3.1 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.
- 8.3.2 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.
- 8.3.3 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.
- 8.3.4 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.
- 8.3.5 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).
- 8.3.6 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

- 8.3.7 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 also take note of the practices in those States which spoke on this issue, 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.

8.4 Sharing of information between marine insurers

Issue

- 8.4.1 With reference to point (b) of paragraph 2.1 above, at its first meeting the Working Group had taken 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 had been 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 had 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.
- 8.4.2 At its first meeting, the Working Group had extended an invitation to 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.
- 8.4.3 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.
- 8.4.4 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.
- 8.4.5 At its fourth meeting, the Working Group had 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 CMI had 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 had recommended that the Working Group pursue the enquiry.

- 8.4.6 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.
- 8.4.7 Whilst several delegations had 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 had 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 had 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.
- 8.4.8 The observer delegation of the International Group of P&I Clubs had 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 had 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.
- 8.4.9 The Working Group had 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 had been 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 had been 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 had also been noted that, based *inter alia* on the possibility of such a situation arising, some Clubs were uneasy about adopting such a rule.
- 8.4.10 The observer delegation of the International Group had 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.
- 8.4.11 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.
- 8.4.12 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

8.4.13 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.

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

Issue

8.5.1 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 had 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 had been 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 had 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.

8.5.2 Both the representative of the International Group of P&I Clubs and the representative of IACS had 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

8.5.3 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.

8.6 Denial or withdrawal of CLC certificates

Issue

8.6.1 In relation to point (d) of the areas of focus in document 92FUND/WGR.4/2/3 which it had submitted to the first meeting, the International Group of P&I Clubs had 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.

- 8.6.2 A substantive discussion on this issue had also taken 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.
- 8.6.3 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).
- 8.6.4 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.

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

Issue

- 8.7.1 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 had been 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 had been 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 had also been 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 had 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

- 8.7.2 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.

8.8 Hull insurance

Issue

- 8.8.1 At its third meeting, following a proposal by the French delegation, the Working Group had invited the Secretariat to undertake a study in cooperation with 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.
- 8.8.2 The Director had written to the French Government, IUMI and CMI, requesting information and inviting their views as to how such a study might best be undertaken. The Secretariat had proceeded with the study as originally proposed by the French Delegation and had in particular investigated the following four questions:
- How many oil tankers are navigating without hull insurance?
 - Is there a link between the absence of hull insurance and the number of incidents in which an oil tanker is involved?
 - What possibilities do hull insurers have to examine the quality of ships and what is the quality of these controls?
 - Is there a correlation between the type of contract underwritten and the loss record of the ship?
- 8.8.3 Following its fourth meeting all responses had been received and on the basis of these responses the Director had made a preliminary study and analysis of the issues as set out in document 92FUND/WGR.4/13.

Conclusion

- 8.8.4 Having analysed the responses submitted, the Director concluded that there was a general lack of information which was readily available and which could be applied directly to the questions which formed the basis of the study. The Director suggested that this lack of information could, in his view, only be resolved by further in-depth research and fact-finding which would require not only specific expertise of the hull insurance market but also of scientifically sound methods of collecting statistically reliable data. He also pointed out that it could not be guaranteed that such research and fact-finding would actually make the necessary information available.
- 8.9 The Chairman concluded that, based on the debate at the Working Group's fifth meeting, there was no support for continuing with the hull insurance study. She pointed out, however, that such a decision did not imply that the Working Group did not recognise the importance of the issue and the ways in which insurance companies could assist in promoting quality shipping. She suggested that regardless of whether the 4th intersessional Working Group continued, the issue was likely to be raised again at some stage in discussions within the IOPC Funds' governing bodies.

8.10 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 had gathered insufficient support among the Working Group.

9 Final Conclusions

- 9.1 The Working Group noted the conclusions of the Chairperson set out in section 4 of document 92FUND/WGR.4/14 in which she commended the industry on its achievements in amending its practices to assist in the promotion of quality shipping and stated that she found it interesting to note the similarities amongst Member States in their practices. The Chairperson also encouraged 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.
- 9.2 The Working Group noted that, in the Chairperson's view, the Working Group had focused on the areas suggested in its mandate but that additional ideas had also been considered and that where these did not meet the majority view of the Working Group, the Chairperson had nevertheless advised delegations that they should not be dissuaded from pursuing their ideas further if they felt strongly about them.
- 9.3 The Chairperson thanked the Member States who had participated in the Working Group, especially those who had submitted documents and those who had expressed opinions which had enabled the Group to exchange views on many different issues. She also thanked the observer delegations, particularly those who had participated with documents, informing the Working Group of industry procedures, as well as CMI and IUMI who had greatly assisted the Secretariat and Working Group with their expertise.
- 9.4 The Chairperson pointed out that the measure of success of the Working Group should not be the number of proposals put forward to the Assembly but other aspects of its work, such as the creation of awareness and the willingness to participate, discuss and encourage initiatives to promote quality shipping.
- 9.5 The Chairperson expressed particular appreciation for the efforts made within the industry to promote quality shipping by non-technical measures and the transparency with which these measures had been achieved. She suggested that measures had been taken by the industry which would not have been feasible five years ago, when the OECD, report which had been frequently referred to during debates in the Working Group, had originally been issued.
- 9.6 The Working Group thanked the Chairperson for her leadership and guidance of the Working Group and agreed that, since the areas referred to in paragraph 3.2 had been fully explored in so far as this had been possible, the Group's mandate should not be extended.
- 9.7 The Chairperson finally concluded by stating that, although the Working Group had been terminated, the efforts to promote quality shipping should continue.

10 Action to be taken by the Assembly

The Assembly is invited to take note of the conclusions of the Working Group set out in section 8.
