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OIL POLLUTION  
COMPENSATION  
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FOURTH INTERSESSIONAL  
WORKING GROUP

92FUND/WGR.4/5  
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## REPORT ON THE SECOND 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:***

The Working Group's second meeting, held on 15 March 2007, continued to discuss current and planned procedures and practices of the marine insurance industry and States to promote quality shipping. In particular, the Working Group noted a number of recent measures taken by the International Group of P&I Clubs to contribute positively to global efforts to improve ship quality and safety standards. The discussions also covered the sharing of information relating to the quality of shipping and possible barriers to sharing such information.

***Action to be taken:***

Information to be noted.

## **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 and second meetings on 23 and 24 May 2006 and 15 March 2007 under the Chairmanship of Ms. Birgit Sølling Olsen (Denmark).
- 1.3 In accordance with the decision of the Assembly
- 1.4 , 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 IMO was also sought.

## **2 Participation**

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

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

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

Brazil	Saudi Arabia
Ecuador	Syrian Arab Republic

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

*Intergovernmental organisations:*

International Oil Pollution Compensation Fund 1971 (1971 Fund)

International Oil Pollution Compensation Supplementary Fund (Supplementary Fund)

*International non-governmental organisations:*

BIMCO

Comité Maritime International (CMI)

International Association of Classification Societies Ltd (IACS)

International Association of Independent Tanker Owners (INTERTANKO)

International Chamber of Shipping (ICS)

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 First meeting of the Working Group**

4.1 The Working Group's first meeting focused on current and planned procedures and practices of the marine insurance industry and States to promote quality shipping. The Working Group also discussed the sharing of information relating to the quality of shipping and barriers to sharing such information.

4.2 The Working Group decided to undertake a study to:

- (a) identify factors that allow/require/prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practices; and
- (b) identify whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil.

4.3 The Working Group also decided to undertake a study to determine the extent to which the main focus of the Working Group's attention should be ships falling outside the ambit of the classification societies belonging to the International Association of Classification Societies and the P&I insurers belonging to the International Group of P & I Clubs.

4.4 The following documents were submitted to the Working Group at its first meeting:

92FUND/WGR.4/2	Tanker Management and Self Assessment Guide (OCIMF)
92FUND/WGR.4/2/1	Sharing of information between marine insurers (Canada, France, Japan, Netherlands, Nigeria, Portugal, United Kingdom and Uruguay)
92FUND/WGR.4/2/2	Economic incentives to quality tanker operators (INTERTANKO, OCIMF, International Group of P&I Clubs and BIMCO)
92FUND/WGR.4/2/3	Measures taken by the International Group of P&I Clubs in relation to quality shipping and suggestions for specific actions that might be taken by States to address specific areas of focus of the Working Group's mandate (International Group of P&I Clubs)
92FUND/WGR.4/2/4	Note by the Acting Director re Study on the removal of insurance from substandard shipping carried out by the Maritime Transport Committee of the Organisation for Economic Co-operation and Development (OECD)

4.5 The report of the first meeting of the Working Group is contained in document 92FUND/WGR.4/3.

#### **5 Documents submitted to the Working Group's second meeting**

The following documents were submitted to the Working Group:

92FUND/WGR.4/4/1	Non-technical measures to promote quality shipping for carriage of oil by sea - Pollution incidents involving ships falling outside the ambit of the International Association of
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92FUND/WGR.4/4/2	Classification Societies and the International Group of P&I Clubs (Note by the Director) Non-technical measures to promote quality shipping for carriage of oil by sea – The process by which CLC certificates are issued in the United Kingdom (United Kingdom)
92FUND/WGR.4/4/3	Non-technical measures to promote quality shipping for carriage of oil by sea (Norway)
92FUND/WGR.4/4/4	Non-technical measures to promote quality shipping for carriage of oil by sea - Update of the measures taken by the International Group of P&I Clubs in relation to quality shipping (International Group of P&I Clubs)

## **6 Chairperson's introduction**

- 6.1 On opening the second meeting of the Working Group, the Chairperson reminded the Working Group of its mandate, referring particularly to the development of 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.
- 6.2 The Chairperson also reminded the Working Group of its discussions at its first meeting based on the documents submitted at that meeting relating to OCIMF's Tanker Management and Self-assessment (TMSA) Guide, to the possible barriers to the sharing of information relating to quality shipping, possible economic incentives to promote quality shipping and to the measures being considered and/or implemented by the International Group of P&I Clubs to promote the same.
- 6.3 At the suggestion of the Chairperson, the Working Group decided to structure the discussion in order of the documents submitted to the meeting as follows:
- The new Ship Safety Act adopted by the Norwegian Government and the subsequent removal of the legal barrier previously preventing the sharing of information among the Norwegian marine insurance industry regarding substandard ships and substandard operators.
  - Results of the study to determine the extent to which ships falling outside the ambit of classification societies that are members of IACS and P&I insurers belonging to the International Group of P&I Clubs should be the main focus of the Working Group's attention.
  - The measures taken by the International Group of P&I Clubs (International Group) in relation to quality shipping.
  - The procedures followed by the United Kingdom's Maritime Administration when granting CLC certificates.

## **7 Issues considered by the Working Group**

### **7.1 Sharing information relating to the quality of shipping and barriers to sharing such information**

- 7.1.1 The Working Group took note of the information contained in document 92FUND/WGR.4/4/3 submitted by Norway. In its introduction to the document, the Norwegian delegation expressed the view that a key element in combating substandard shipping was the sharing of information relating to the safety of a ship with other relevant parties. That delegation explained that debates within the 1992 Fund Working Group as well as information provided by Clubs within the International Group of P&I Clubs and the Central Union of Marine Underwriters in Norway had brought to the

Government's attention the barriers which existed in national law which prevented insurance companies from sharing information about clients.

- 7.1.2 The Working Group noted that the Norwegian Government had submitted a proposal for a new Act regarding ship safety to the Norwegian Parliament in 2006, incorporating a new paragraph which permitted insurance companies to share information on clients when related to the safety of a ship, and that the proposal had been adopted by the Parliament and would enter into force on 1 July 2007. It further noted that this information could be shared with other insurance companies, the P&I clubs in the International Group, international maritime organisations, classification societies and national or international maritime authorities.
- 7.1.3 The Norwegian delegation expressed the view that the Act would enable the Norwegian marine insurance industry to play a more active part in improving safety at sea.
- 7.1.4 The observer delegation of IUMI offered to explore the outcome of the new legislation in Norway to consider whether any similar international agreement could be practicable, assuming that the legal obstacles such as defamation and anti-competition laws could be overcome. That delegation also pointed out that, according to the new Norwegian Ship Safety Act, the insurer was under an obligation to send the insured a copy of the information rendered, which could, in that delegation's view, cause further legal difficulties.
- 7.1.5 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.
- 7.1.6 The delegation of Canada informed the Working Group that it was in the process of researching whether any such barriers existed within its national legislation and that at the time of the meeting had found no such barriers.
- 7.1.7 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.
- 7.1.8 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.
- 7.1.9 That delegation informed the Working Group that under UK law there were generally no barriers to sharing information on the condition of ships but that Clubs had to be careful that the information rendered was true and that it would be in the best interests of the Clubs to obtain permission from the insured before sharing such information. That delegation also expressed the view that since the anti-competition law issues had been satisfactorily solved in Europe he would expect that the anti-trust laws under United States law would be solved in a similar way.
- 7.1.10 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 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.

- 7.1.11 The observer delegation of the International Group stated that a possible solution to the difficulties set out in paragraph 7.1.10 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.

*Study by CMI*

- 7.1.12 The Chairperson reminded the Working Group of the invitation it had extended at its first meeting 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.

- 7.1.13 The Director informed the Group that after its first meeting the previous Director and he had met with representatives of CMI to discuss the study in detail. He explained that at that meeting it became clear that CMI would be unable to carry out the study itself but that it would need to be commissioned and paid for by the 1992 Fund. The Director pointed out that, whilst the budget was not necessarily an issue, the difficulty arose in that it was unclear what the exact nature of the problem was. He explained that without clarification the study would have to be very broad which could then prove to be not cost effective.

- 7.1.14 The Director informed the Group that after the meeting with CMI, the Secretariat had written to BIMCO, the International Group of P&I Clubs, INTERTANKO and OCIMF, the organisations which were likely to be struggling with the problem, to obtain a clearer perspective as to its exact nature. The Director explained that on the basis of the information received from these Organisations, it had been hoped that the Secretariat would have been in a better position to decide how to focus the study and by whom the study should be carried out. However, the Director informed the Group that the responses had taken some time to collect and that they either did not indicate a major problem, did not clearly pinpoint the problem or were contradictory.

- 7.1.15 It was noted that by the time the information was collected the second meeting of the Working Group was close to taking place and the Director had decided to consult the Working Group as to how best to proceed.

- 7.1.16 The Working Group confirmed that the study should not be undertaken until the Group could give a more precise focus for the questions it would like answering.

- 7.1.17 The Working Group invited the Secretariat, IUMI and the International Group of P&I Clubs to discuss which questions should be included in the study and report their conclusions to the Group at its next meeting in June.

- 7.1.18 The Working Group invited all States to look into their national legislation and report any barriers they were to find which prevented the sharing of information about ship safety to the Working Group.
- 7.1.19 Some delegations suggested that it would be helpful if IUMI and the International Group of P&I Clubs could provide States with guidelines as to which questions they should ask when looking into their national legislation for any barriers which may exist to the sharing of information.
- 7.2 Pollution incidents involving ships falling outside the ambit of the International Association of Classification Societies and the International Group of P&I Clubs
- 7.2.1 The Working Group recalled that at its first meeting in May 2006 it had decided to undertake a study to determine the extent to which ships falling outside the ambit of classification societies that were members of IACS and P&I insurers belonging to the International Group of P&I Clubs should be the main focus of the Working Group's attention. The Deputy Director/Technical Advisor introduced document 92FUND/WGR.4/4/1 and reported the findings of the study which had been carried out by the Secretariat.
- 7.2.2 The Working Group noted that the study had been carried out using information in the oil spill database maintained by ITOPF and using the IOPC Funds' experience in dealing with 137 oil spill incidents between 1978 and 2006.
- 7.2.3 The Deputy Director/Technical Advisor pointed out that the ITOPF database did not include information on which classification society a vessel was classed with at the time of an oil spill incident, but did include the identity of the P&I insurer where this was known. He also pointed out that, for the purpose of the study, ITOPF had not included incidents involving vessels with a gross tonnage exceeding 29 548, since there were no spills known from vessels not insured with a P&I insurer outside the International Group of P&I Clubs.
- 7.2.4 The Working Group noted that a total of 1 313 incidents over a 35-year period had been identified involving spills of persistent oil from tankers entered in clubs belonging to the International Group of P&I Clubs and that in contrast there were only 15 such incidents involving vessels not entered in clubs belonging to the International Group of P&I Clubs or reinsured through the International Group's pooling agreement.
- 7.2.5 The Working Group noted that of the 137 incidents that the IOPC Funds had been involved in over the 28-year period a total of 14 involved vessels, all under 2 000 DWT, were not insured by clubs of the International Group of P&I Clubs. It was noted that eight of these vessels had had no insurance cover at all and that the remaining six had been insured with fixed premium insurers.
- 7.2.6 The Deputy Director/Technical Advisor pointed out that it was possible that ITOPF's database did not capture a representative sample of spill incidents involving vessels falling outside the ambit of the International Group of P&I Clubs, since much of the data had historically been provided from the P&I Clubs, most of which were in the International Group.
- 7.2.7 He explained, however, that when the ITOPF data was combined with the IOPC Funds' experience of 123 spills out of a total of 137 (89.8%) involving vessels that were entered with a P&I insurer belonging to the International Group of P&I Clubs, it supported the claim that the International Group of P&I Clubs covered approximately 90% of tankers under 29 548 gross tonnage.
- 7.2.8 He also explained that the combined data of ITOPF and the Funds also supported the conclusion that vessels falling outside the ambit of the International Group of P&I Clubs were not more likely to be involved in pollution incidents than vessels within the ambit of the International Group of P&I Clubs



and should not therefore be the primary focus of the Working Group's attention as regards the issue of quality shipping.

- 7.2.9 The Deputy Director/Technical Advisor stated that, although the ITOPF and IOPC Funds' data did not include information on vessels' classification societies, it was understood that very few vessels entered with P&I insurers belonging to the International Group of P&I Clubs were classed by non-IACS members (document 92FUND/A.11/28, paragraph 7.3.8). He further stated that it could therefore be inferred that vessels falling outside the ambit of IACS were not more likely to be involved in pollution incidents than vessels within the ambit of IACS and should not therefore be the primary focus of the Working Group's attention.
- 7.2.10 The delegation of Cyprus requested more information as to the distribution of the spills over the 35-year period covered by the study, particularly whether the frequency of spills from vessels falling outside the ambit of the International Group of P&I Clubs had increased or decreased. In reply, the observer delegation of ITOPF stated that it had the impression that there was no indication that the rate of spills was increasing over time but that it would need to look into it in further detail in order to provide a more definitive response.
- 7.2.11 The Working Group invited ITOPF to consider the data and report to the Working Group at its next meeting as to whether the frequency of spills involving ships falling outside the ambit of the International Group of P&I Clubs had increased or decreased over the 35-year period covered by its oil spill database.
- 7.2.12 The Working Group concluded that, taking into account the results of the study undertaken by the Secretariat, 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.
- 7.3 Measures taken by the International Group of P&I Clubs (International Group) in relation to quality shipping
- 7.3.1 The Working Group took note of the information contained in document 92FUND/WGR.4/4/4 submitted by the International Group of P&I Clubs.
- 7.3.2 In introducing the document, the observer delegation of the International Group referred to the discussions which had taken place at the first meeting of the Working Group. That delegation reminded delegates that the International Group of P&I Clubs' Ship Standards Sub-Committee, which was involved in insurance management issues, and the Ship Technical Committee, which dealt with club surveys, had undertaken detailed reviews of the ways in which member clubs of the International Group, individually and collectively, could more effectively address the issue of quality shipping. It was noted that the Ship Standards Sub-Committee had made recommendations to the International Group and that these recommendations had subsequently been approved and adopted/implemented by the International Group Clubs.
- 7.3.3 The Working Group noted that the ship quality measures agreed and implemented within the International Group included:
- New underwriting guidelines for vessel entry for new members providing for specified indicators of quality to be checked on each application including vessel type, age, flag, build and any subsequent modification details, current and previous Classification, the International Safety Management Code (ISM Code) & the International Ship and Port Facility Security Code (ISPS

Code) certification details, area and type of trade, officer and crew nationalities, management details, P&I condition survey history, claims and port state control records and details of any previous refusal to cover or withdrawal of cover.

- Harmonisation of ship survey target criteria by the introduction of new more stringent condition survey triggers (including past carriage of Heavy Fuel Oil cargo) and reporting procedures for suspected substandard vessels.
- Common minimum scope of information for club condition surveys.
- Establishment of a central ship survey database updated monthly by all clubs with details of vessels surveyed to be consulted by club underwriters prior to quoting on vessels.
- 'Designated vessel' procedure for vessels failing to meet acceptable quality standards. A database of designated vessels will be maintained by the Group.
- Double retention mechanism for 'designated vessels'.

7.3.4 The observer delegation of the International Group of P&I Clubs pointed out that the above new measures included both a desk-based risk assessment (the new underwriting guidelines) as well as an operational/physical risk assessment. The delegation also pointed out that the P&I Clubs' surveys were somewhat different from the surveys carried out by classification societies in that the Clubs were looking at the ships in terms of liability and would specifically cover the following:

- Shipboard Management
- Safety and environmental awareness
- Fire safety
- Life saving appliances
- Pollution
- Navigation
- Structural condition
- Machinery
- Cargoworthiness
- Maintenance and housekeeping

7.3.5 The Working Group noted that the new 'designated vessel' and double retention procedure had been implemented with effect from 20 February 2007. It also noted that the new procedure, which was incorporated in an Appendix to the International Group Pooling Agreement, provided that a Club would be able to nominate a vessel which it considered did not meet the minimum acceptable standards expected of vessels entered with Group Clubs for inspection by an independent committee and, if the committee were to conclude that the vessel did not meet those standards, it would be deemed a 'designated vessel'. The Working Group further noted that the inspection would be carried out on the basis of a standard survey form and common scoring system and that the procedure

incorporated an appeal process. It was noted that the 'designated vessels' would attract a double retention (2x US\$ 7 million for 2007) under the International Group claims pooling system pending rectification of the deficiencies identified, and, in the event that this was not done within 12 months of the vessel being designated, claims arising thereafter would be excluded from pooling.

- 7.3.6 The observer delegation of the International Group of P&I Clubs explained that deeming a ship a 'designated vessel' and subsequently making it subject to a double retention as explained above would inevitably make it difficult for the shipowner to obtain insurance cover for the ship in its present condition. The delegation also explained that this approach had been preferable to simply 'blacklisting' such ships and had been adopted in order to avoid any difficulties in connection with competition law. The delegation further explained that the legal advice received by the International Group indicated that the measures that had been put in place would not infringe EC competition rules or US anti-trust legislation.
- 7.3.7 A number of delegations commended the International Group of P&I Clubs on its achievements and expressed satisfaction with the arrangements that the Clubs had put in place to promote quality shipping.
- 7.3.8 In response to a question as to whether the International Group would cancel the insurance of a ship which had failed to rectify deficiencies within the 12 months, the observer delegation of the International Group of P&I Clubs explained that they had considered that such a provision would be academic given that the pooling system was an essential protection to a Club and that no Club would be willing to expose itself to the risk of insuring a shipowner without any limit.
- 7.3.9 The observer delegation of IUMI explained that although IUMI worked differently to the International Group of P&I Clubs, it was also giving great attention to the problem. The delegation offered to submit a document to the June meeting of the Working Group giving further details as to the measures taken by IUMI to improve the quality of shipping.
- 7.3.10 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.
- 7.4 Procedures followed by the United Kingdom's Maritime Administration when granting CLC certificates
- 7.4.1 The Working Group noted the information contained in document 92FUND/WGR.4/4/2 submitted by the United Kingdom setting out the procedures followed by the United Kingdom's Maritime and Coastguard Agency (MCA) when granting certificates attesting that insurance is in place in accordance with the 1992 Civil Liability Convention (CLC certificates).
- 7.4.2 It noted that the 1992 Civil Liability Convention was implemented in the United Kingdom by the Merchant Shipping Act 1995 and that Section 163 of that Act required the owner of any United Kingdom ship carrying more than 2 000 tons of persistent oil in bulk as cargo to maintain such insurance and the ship to carry a State-issued certificate attesting that this insurance was in place.
- 7.4.3 It also noted that this requirement was promulgated to shipowners and masters through a Merchant Shipping Notice which outlined the legal requirements for maintaining compulsory insurance against liability for pollution damage.
- 7.4.4 It further noted that an application for a CLC certificate required an application form, proof of financial security (usually in the form of a blue card issued by a Club belonging to the International Group of P&I Clubs), a letter from the shipowner or manager requesting a CLC State certificate to be

issued and payment of a fee of £30. The Working Group noted that if the proof of financial security was provided by an International Group Club, no further checks in respect of the insurer were taken but that if, however, the proof of financial security was provided by an insurer which was not an International Group Club, further checks were undertaken by the Financial Services Authority (FSA).

- 7.4.5 It was noted that the FSA was an independent body set up by the Government to regulate financial services and protect consumer rights and that it set standards that companies had to meet and took action if companies did not meet them. It was also noted that the FSA held a register of companies that were regulated by them to provide financial services in the United Kingdom and that the FSA would check that a non-International Group insurer was approved to issue insurance or that it was affiliated to another approved financial provider. It was further noted that if this was not the case, the MCA would not certify the insurance.
- 7.4.6 The Working Group recalled that Article VII (2) of the 1992 Civil Liability Convention provided that CLC Certificates may only be issued by a State Party for ships registered in that State Party or in a non-Contracting State. It also recalled that certificates might not be issued for ships registered in other States Parties to the 1992 Civil Liability Convention.
- 7.4.7 The Working Group noted that in 2006 the United Kingdom administration had issued 336 CLC certificates of which 99 were issued to vessels registered in the UK and that the other 237 were issued to ships registered in *inter alia* the United States, Brazil, Iran, Saudi Arabia, Kuwait and China. It also noted that in 2006 only two CLC certificates had been issued in respect of vessels insured by non-International Group of P&I Clubs members.
- 7.4.8 It was noted that a ship could not enter or leave a port or terminal in the United Kingdom unless there was a valid CLC certificate, ie a certificate complying with the requirements of section 163 (3) of the Merchant Shipping Act 1995. It was also noted that if the ship was registered in the United Kingdom, the certificate had to be issued by the Secretary of State; if the ship was registered in another CLC State it had to be certified by that State; and if the ship was registered in a non-CLC State the certificate had to be issued by the Secretary of State or by any other 1992 CLC State.
- 7.4.9 It was also noted that if a ship contravened these provisions, the master or owner was liable on conviction to a fine not exceeding £50 000 and that the penalty for failing to carry or failing to produce on demand a certificate was an amount not exceeding £2 500. It was further noted that if a ship attempted to leave a port in the United Kingdom in breach of chapter 3 section 163 of the Merchant Shipping Act 1995, it could be detained.
- 7.4.10 It was noted that since 1999 no United Kingdom vessel had been detained in a foreign port for failure to provide a Civil Liability Certificate and that since 1993 no foreign-flagged vessel inspected in the United Kingdom under the Port State Control regime had been detained for failure to provide a Civil Liability Certificate.
- 7.4.11 The United Kingdom delegation explained that the process outlined above was reasonably straightforward and had been in place for 20 years but enquired after the processes in place in other Member States in order to verify whether the UK could do more.
- 7.4.12 The German delegation offered to submit a document to the Working Group's next meeting explaining the procedures in place in Germany. That delegation also enquired, given that the CLC certificate was normally valid for a year in the UK, as to whether at the time of renewal any new information in relation to the condition of the ship was taken into account. It was pointed out that the 1992 Civil Liability Convention only obliged the State to look into the insurer of a ship before issuing a CLC certificate.

- 7.4.13 The delegation of the United Kingdom confirmed that the CLC certificates were issued yearly at the same time as the insurance was due to be renewed and that upon renewal, if still insured by an International Group Club, no further check of the ship was carried out. That delegation explained that even when further checks were undertaken it was only in terms of the financial viability of the insurance provider and not the quality of the ship.
- 7.4.14 One delegation asked whether the UK Government had any experience with insurance providers which were not members of the International Group of P&I Clubs or not UK-based and, if so, what evaluation process if any did the UK Government have in such cases. The United Kingdom delegation stated that the insurance provider did not have to be based in the UK to be FSA-approved, but would have to check whether any difficulties had been experienced with non UK-based or non-International Group insurance providers.
- 7.4.15 The delegation of Greece informed the Working Group that the procedures followed in Greece were almost identical to those carried out in the United Kingdom, mainly that if the insurance was provided by a member of the International Group, no further checks were undertaken by the issuing Greek authority. The delegation explained that in the case where the insurance provider was not a member of or affiliated to the International Group and the relevant guarantees could not be provided by the International Group, then the certificates were not issued. The delegation also confirmed that, with one exception in 2007, all certificates issued were to ships insured by Clubs belonging to the International Group of P&I Clubs. That delegation pointed out that it was reluctant to accept certificates from ships insured by state-owned insurers and that under Greek law a denial of entry had to be imposed on ships which did not hold a valid CLC certificate.
- 7.4.16 The delegation of Cyprus reminded the Working Group that, as explained at the first meeting of the Working Group, the procedures in place in Cyprus for issuing CLC certificates were very similar to those in place in the United Kingdom. The delegation informed the Working Group however, that in terms of the checking of quality shipping prior to the issuing of a CLC certificate, the issuing authority would consult the file which contained, *inter alia*, the safety record of the ship and that if a red flag were present in relation to the condition of the ship a CLC certificate would not be issued. The delegation further explained, however, that if no red flag were present no other procedures were in place to enable the issuing authority to evaluate the condition of the ship.
- 7.4.17 The delegation of Australia informed the Working Group that it also followed very similar procedures to those outlined in the document submitted by the United Kingdom. The delegation explained that Australia had a relatively small tanker fleet and that all of the ships held insurance provided by members of the International Group of P&I Clubs and, as a result, the issuing authorities of the CLC certificates carried out no further checks with regards to the condition of the ship. The delegation also explained, however, that they were beginning to align the inspection process with the certification process and were 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. The delegation stated that Australia occasionally received non-Australian flag vessels which were not insured by members of the International Group of P&I Clubs and that extensive procedures for checking such insurance providers were not in place but they usually satisfied themselves through rather simple measures.
- 7.4.18 The observer delegation of IUMI emphasised that it was not only the condition of the ship but also the security of the insurance provider which was being questioned, particularly given that in terms of liability for claims which were often long term, it was vital that the insurance provider had long-term strength. The delegation agreed 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.

- 7.4.19 The Chairperson thanked all delegations who had spoken and provided information on their own practices and encouraged others to submit documents to the Working Group detailing their own procedures in this regard. She suggested that all States should look into their own system and share information and perhaps look into whether those practices could be improved.
- 7.4.20 The Chairperson noted that the discussions had led to questions as to whether there should be an alignment of the safety issue and the quality of the ship. She suggested that all States should look into that procedure and see whether certificates were issued purely based on the Conventions or whether the issuing authorities, the Flag State and the industry were benefiting from all of the information that could be available in relation to the quality of the ship.
- 7.4.21 The Chairperson pointed out that based on the discussions it would appear that States did not encounter difficulties when a ship was insured by a member of the International Group but that States should look into whether they had the correct checks in place and whether these checks were enforced when the insurer was not a member of the International Group. She suggested that the Working Group should give consideration ahead of the June meeting as to whether common procedures could be adopted by all States, particularly in areas where difficulties arise.
- 7.5 Future work
- 7.5.1 The Chairperson invited the Working Group to make suggestions for future discussions and work falling within its mandate.
- 7.5.2 The French delegation stated that it was impressed with the progress made by the International Group of P&I Clubs particularly with regard to the implementation of 'designated vessel' procedure but asked what other sectors of the marine insurance industry were doing to promote quality shipping. The delegation also asked why shipowners were not obliged to have hull insurance and why some vessels were uninsured.
- 7.5.3 The observer delegation of IUMI confirmed that there was no compulsion on shipowners to insure their ship but that if an owner required any financial assistance most banks and financial institutions would require the shipowner to show that valid insurance cover was in place. In response to why a ship would not have insurance, it stated that perhaps the ship was in such a condition that no insurer wished to provide cover or that the shipowner was so confident that it would not receive claims that it self-insured.
- 7.5.4 The Chairperson thanked the delegation of France for posing further questions for consideration by the Working Group and invited the observer delegation of IUMI to look into the matter further and elaborate on their response at the June meeting, including providing information on the number of uninsured vessels, to give the Working Group an idea as to how big or small an issue this was.
- 7.5.5 The Chairperson concluded the meeting by encouraging States to submit documents to the June meeting in Montreal, Canada and reminded delegates that the results of the Working Group were dependant on its participants.
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