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FOURTH INTERSESSIONAL
WORKING GROUP

92FUND/WGR.4/8

REPORT ON THE THIRD MEETING OF THE FOURTH INTERSESSIONAL WORKING GROUP

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

Note by the Director

<i>Summary:</i>	The Working Group's third meeting, held on 14 June 2007, focused on two main areas: practices within the marine insurance industry to promote quality shipping for the carriage of oil by sea, including the sharing of information within the industry and possible barriers to sharing such information, and practices by Member States to promote quality shipping for the carriage of oil by sea, and more specifically whether these practices could be improved in any way.
<i>Action to be taken:</i>	Information to be noted.

International Group of P&I Clubs
International Tanker Owners Pollution Federation Ltd (ITOPF)
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 the first and second meetings 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 (IACS) and the P&I insurers belonging to the International Group of P&I Clubs.
- 4.4 A list of documents issued in connection with the first meeting of the Working Group is contained in document 92FUND/WGR.4/INF.2. The report of that meeting is contained in document 92FUND/WGR.4/3.
- 4.5 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.
- 4.6 At that meeting the Working Group also considered the results of the study mentioned in paragraph 4.3 above and concluded that 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 (document 92FUND/WGR.4/5, paragraph 7.2.12).
- 4.7 A list of documents issued in connection with the second meeting of the Working Group is contained in document 92FUND/WGR.4/INF.4. The report of that meeting is contained in document 92FUND/WGR.4/5.

5 Documents submitted to the Working Group's third meeting

The following documents were submitted to the Working Group:

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| 92FUND/WGR.4/7 | Non-technical measures to promote quality shipping for carriage of oil by sea - The CLC Certification process in Germany - Submitted by Germany |
| 92FUND/WGR.4/7/1 | 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 |

92FUND/WGR.4/7/2	Classification Societies and the International Group of P&I Clubs - Submitted by ITOFF Non-technical measures to promote quality shipping for carriage of oil by sea - The Issuing and Withdrawal of Financial Security Certificates under the 1992 Civil Liability Convention - Submitted by Canada and France
92FUND/WGR.4/7/3	Non-technical measures to promote quality shipping for carriage of oil by sea - The role of hull insurance in the promotion of quality shipping for carriage of oil by sea - Submitted by France
92FUND/WGR.4/7/4	Non-technical measures to promote quality shipping for carriage of oil by sea - Proposed Study by Comité Maritime International – Note by Director
92FUND/WGR.4/7/5	Non-technical measures to promote quality shipping for carriage of oil by sea - Submitted by IUMI
92FUND/WGR.4/7/6	Non-technical measures to promote quality shipping for carriage of oil by sea - Submitted by Greece
92FUND/WGR.4/7/7	Non-technical measures to promote quality shipping for carriage of oil by sea - The process by which CLC certificates are issued by the Republic of Liberia - Submitted by Liberia

6 Chairperson's introduction

- 6.1 On opening the third meeting of the Working Group, the Chairperson reminded the Group of its mandate and of the discussions and issues explored at its previous two meetings. The Chairperson pointed out that, whilst discussions at the Working Group's second meeting had focused primarily on the recent measures taken by the International Group of P&I Clubs to improve ship quality and safety standards, the Working Group had also drawn attention to a number of other issues which it considered needed further consideration.
- 6.2 The Chairperson was pleased to note that documents had been submitted to the third meeting of the Working Group relating to all of these outstanding issues, which would enable deliberations to continue as planned.
- 6.3 The Chairperson considered that the documents submitted to the meeting fell within two main categories: practices within the marine insurance industry to promote quality shipping, including the sharing of information within the industry and possible barriers to sharing such information, and practices by Member States to promote quality shipping, and more specifically whether these practices could be improved in any way.
- 6.4 At the suggestion of the Chairperson, the Working Group decided to structure the discussion as follows:
- (a) Practices within the marine insurance industry to promote quality shipping
- The proposed study by CMI – the results of the discussions by the Secretariat, IUMI and the International Group of P&I Clubs regarding which questions should be included in the study (documents 92FUND/WGR.4/7/4 and 92FUND/WGR.4/7/5).
 - The role of hull insurance in the promotion of quality shipping for carriage of oil by sea (document 92FUND/WGR.4/7/3).

- Pollution incidents involving ships falling outside the ambit of the International Association of Classification Societies and the International Group of P&I Clubs (document 92FUND/WGR.4/7/1).

(b) Practices by Member States to promote quality shipping

- The CLC Certification processes in Germany and Liberia (documents 92FUND/WGR.4/7 and 92FUND/WGR.4/7/7).
- The question of whether Member States could do more to promote quality shipping (documents 92FUND/WGR.4/7/2 and 92FUND/WGR.4/7/6)

7 Issues considered by the Working Group

7.1 Practices within the marine insurance industry to promote quality shipping

Study by CMI

7.1.1 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.

7.1.2 The report of the Working Group's second meeting stated that, following detailed discussions about the study between CMI and the previous Director after the Working Group's first meeting, it had become 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 (document 92FUND/WGR.4/5, paragraph 7.1.13). The Director pointed out at that meeting 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 to the Working Group that without clarification the study would have to be very broad, which could then prove to be not cost effective.

7.1.3 At its second meeting the Working Group had confirmed that the study should not be undertaken until the Group could give a more precise focus for the questions it would like answering and invited the Secretariat, International Union of Marine Insurance (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.

7.1.4 The Director informed the Working Group that, since the second meeting of the Working Group, the CMI had pointed out to the Secretariat that the report of that meeting could imply that the CMI would charge for any study to be carried out by them. He clarified, however, that CMI were happy to distribute questionnaires free of charge, but that the analysis of the questionnaires would require expertise which CMI could not supply and that this analysis by some other entity, for instance a university, could therefore incur a fee.

7.1.5 The Working Group noted the information contained in document 92FUND/WGR.4/7/4 submitted and introduced by the Director, who informed the Working Group that the Secretariat had met with

representatives of IUMI and the International Group on 30 May 2007. The Working Group noted that at that meeting, in discussing the problems currently faced by the industry it had become apparent that those faced by property insurers, as represented by IUMI, and liability insurers, as represented by the International Group of P&I Clubs, were somewhat different, largely as a result of the fundamental differences between the two sectors.

- 7.1.6 The Director pointed out that property insurers were separate, individual entities providing insurance cover on a commercial and profit-making basis with different selection criteria as regards specific risks. He explained that the variation in selection criteria, combined with the current over capacity in the market, made it relatively easy for shipowners to obtain the required cover and the potential for insurers to play a leading role in eliminating substandard shipping was therefore limited.
- 7.1.7 The Director informed the Working Group that IUMI attached great importance to the issue of quality shipping and encouraged best practice and the exchange of information to assist underwriters in their risk assessment and selection. He also informed the Working Group that it was the general view of the IUMI representatives present at the meeting on 30 May 2007 that a broad study along the lines proposed could raise the expectations of the Working Group but might not have a major impact on the industry, nor be of benefit to underwriters seeking to contribute to quality transportation of oil.
- 7.1.8 The Director pointed out that P&I Clubs, although also separate individual entities, were mutual insurance associations owned by shipowners and did not have a profit element, the amount payable by each shipowner member to obtain liability cover being proportional to the estimate of the risk posed by that member to the Club.
- 7.1.9 The Director explained that the measures already put in place by the International Group of P&I Clubs to address quality shipping, such as the procedure for 'designating' vessels that failed to meet acceptable standards and the introduction of the double retention mechanism for such vessels, had been designed in such a way as to avoid infringement of competition rules and the Group was confident that the systems that the Clubs had put in place were safe from an exchange of information point of view.
- 7.1.10 The Director informed the Working Group that it was the general view of the representatives of the International Group of P&I Clubs present at the meeting on 30 May 2007 that the P&I Clubs had taken all measures which could be considered effective and which could reasonably be asked of them at this stage and that those measures had already taken into account issues of sharing of information. The representatives therefore felt that there were no P&I insurance issues that would bring a more precise focus to any study. They also considered it necessary, before embarking on other measures, to await the experience of the measures that the P&I Clubs had already taken.
- 7.1.11 The Director stated that the general view of the meeting was that an alternative to undertaking a study, which would necessarily be of a rather general nature, might be for the Working Group to contact some leading competition authorities to obtain their general views on the possibility of free exchange of information about ship safety for the purpose of promoting quality shipping for the transportation of oil. He proposed that, on the basis of the information thus provided, the Working Group could be in a better position to determine whether to proceed further with this matter. He explained, however, that should the Working Group prefer to have a study of a more general nature undertaken by the CMI, a possible set of questions was set out in the Annex to document 92FUND/WGR.4/7/4 for consideration by the Working Group. He also explained that these questions, in particular those under section A, might also be useful if the Working Group were to decide on the alternative of obtaining the views of some leading competition authorities.

- 7.1.12 The Working Group recalled that at its second meeting a number of questions had been raised relating to the treatment of substandard ships within the hull insurance market. The Working Group noted the information contained in document 92FUND/WGR.4/7/5, submitted by IUMI, which covered the following topics: the operation of the hull insurance market; ways in which the operation of the hull insurance market differed from that of P&I Clubs; what was being done by marine insurers to promote quality shipping; and which measures could be encouraged through the IOPC Funds to assist marine insurers in sharing information to improve ship safety, bearing in mind legislative obstacles in certain jurisdictions.
- 7.1.13 In the absence of a representative from IUMI, the observer delegation of CMI introduced the document and referred in particular to the efforts made by national associations, and IUMI within the available framework to encourage best practice and to make available information which would assist underwriters in their risk selection. He pointed out that there was an underlying difficulty in that in many legislative regimes there were competition regulations which limited the degree to which insurers could share information. He also pointed out that, among a number of points made within the report by the Organisation for Co-operation and Economic Development (OECD), which had been referred to in the majority of documents submitted to the previous meetings of the Working Group, there was a recognition that insurers' efforts in this regard would be greatly assisted if national and regional laws and regulations could be modified as necessary to remove barriers to allowing a freer flow of information between insurers in relation to aspects which impacted on vessel quality.
- 7.1.14 That observer delegation also pointed out that, according to IUMI, the main barriers to the sharing of information were the legal restrictions which prevented sharing of information either from a competition perspective, or which could lead to the sharing of information which could be detrimental to a third party. IUMI pointed out in its document that those concerns were particularly prevalent within the European Union and the United States and that any steps which could be taken internationally to relax those restrictions in areas which would impact on sharing of information relating to vessel operations and quality could assist the marine insurance industry in supporting the drive towards quality shipping.
- 7.1.15 The observer delegation of CMI pointed out that all Members of the Working Group and industry representatives alike were in favour of quality shipping, but that it was for the Working Group to determine the best way to achieve that, firstly by deciding whether action in the form of a study could produce the required results. He reaffirmed that if CMI could assist, it would be happy to do so but to analyse the results of the study it would need to consult other advisors. He suggested a possible candidate for this analysis could be the Institute of Maritime Law of the University of Southampton (United Kingdom).
- 7.1.16 During the discussions several views were expressed. Some delegations questioned the need for a study at all.
- 7.1.17 The delegation of Norway reminded the Working Group that the issue of difficulties caused by barriers to the sharing of information within the marine insurance industry had originally been raised by the International Group of P&I Clubs and that the International Group had indicated that the national law in Norway could lead to such difficulties. That delegation further reminded the Working Group that, as set out in document 92FUND/WGR.4/3, submitted by Norway to the Working Group's second meeting, the national legislation had since been amended. Given that the difficulties had been resolved, that delegation questioned whether there was any need for further investigation. That delegation took the opportunity to clarify that, since the amendments to the Norwegian legislation, insurers were obliged to supply the shipowner with a copy of the information shared, but that this did not have to be done in advance of any sharing of information, as implied in paragraph 4.8 of document 92FUND/WGR.4/7/5, submitted by IUMI.

- 7.1.18 The observer delegation of the International Group of P&I Clubs referred to the second meeting of the Working Group at which it had given details of the problems it had encountered with particular systems of law and the measures it had taken to overcome those problems. That delegation considered that there was nothing more that the International Group could offer as a focus for a study.
- 7.1.19 Other delegations considered that, based on the document submitted by IUMI, not all issues had been resolved for the different areas of the marine insurance industry and that the situation needed to be further investigated.
- 7.1.20 Some delegations considered that Member States should consult their national competition authorities rather than conducting a general study. One delegation indicated that it had already done so and was awaiting the results. Another delegation pointed out that there could also be issues of data protection law and that the appropriate authorities could also be contacted
- 7.1.21 Other delegations expressed concern that it was likely to take time for States to identify the appropriate authorities and that their responses were likely to take considerable time to receive and analyse. Those delegations were concerned that such delays could result in the Working Group being unable to reach a conclusion on this issue by its October 2008 deadline.
- 7.1.22 The majority of delegations were in favour of the study being carried out by CMI. Several delegations expressed their confidence that CMI would carry out an efficient study in a timely manner.
- 7.1.23 The Working Group decided to accept the offer of CMI to carry out the study, and invited CMI to proceed based on further consultation with the Secretariat, IUMI and the International Group of P&I Clubs. Given that the problems originally identified by the International Group of P&I Clubs were now considered to have been resolved, the Working Group decided that, in response to the information provided by IUMI in document 92FUND/WGR.4/7/5, the study should focus on the difficulties faced by property insurers. The Working Group approved the use of the questions proposed for the study by the Director in document 92FUND/WGR.4/7/4, but suggested that the Secretariat and CMI should have the flexibility of amending those questions if considered necessary in the light of consultations with IUMI after the meeting given that they were not represented at the meeting to hear the discussion.

The role of hull insurance in the promotion of quality shipping for carriage of oil by sea

- 7.1.24 The Working Group noted document 92FUND/WGR.4/7/3, submitted by the French delegation. In introducing the document that delegation pointed out that the Working Group had, in accordance with point (a) of its mandate, focused at its first and second meetings on the liability insurance sector. That delegation reminded the Working Group that its mandate also encouraged members to consider 'related issues' (point (d) of the mandate) and proposed that one of the related issues that could be helpful in fulfilling the Working Group's task was that of hull insurance for vessels transporting oil.
- 7.1.25 It was pointed out that the issue of hull insurance was the subject of several discussions in the OECD report of June 2004 concerning the contribution of the insurance sector to the elimination of substandard shipping. 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/39/4/340299659.pdf> respectively).
- 7.1.26 It was also pointed out that, according to the OECD report, a provider of hull insurance was more interested in the state of the hull and machinery than an insurer providing liability insurance, because a provider of hull insurance was interested in everything that could malfunction and not just that

which could bring into question the liability to a third party. The report also noted that providers of hull insurance were increasingly taking into account issues of management and operation of vessels. The French delegation had therefore concluded in its document that hull insurance seemed to be more closely linked to considerations concerning the quality of vessels than liability insurance, stating that 'substandard' vessels would earlier and more frequently be faced with incidents that involved their hull insurance than with incidents that involved their liability insurance.

- 7.1.27 The French delegation further concluded that providers of hull insurance for vessels transporting oil could play a role in the identification and elimination of substandard vessels and, more generally, in the promotion of insurance which was very sensitive to the conditions of vessels (or fleets of vessels) and also to conditions of operation and management, capable of contributing to the promotion of the quality transportation of oil.
- 7.1.28 That delegation suggested that in that regard several difficulties arose, namely 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. The French delegation proposed a series of questions (paragraph 2.4 of document 92FUND/WGR.4/7/3) and 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 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 etc, to provide information).
- 7.1.29 The delegation of France requested the Working Group to invite the Secretariat to carry out the required study, in cooperation with the parties concerned, in order to answer the questions raised in their document.
- 7.1.30 In response to a question from one delegation, the delegation of France confirmed to the Working Group that whilst the OECD report had considered this matter in some detail, no clear recommendations had been given and that, as a result, any study carried out for the Working Group would not duplicate the work of the OECD.
- 7.1.31 The majority of delegations were in favour of conducting the study. Some delegations expressed doubts that the issue fell within the scope of the 1992 Civil Liability and Fund Conventions. However, the Chairperson clarified that, provided that the Working Group continued to seek non-technical measures to promote quality shipping and did not attempt to amend the Conventions, nor stray into the areas of IMO, then the study would fall within the mandate of the Working Group.
- 7.1.32 The Chairperson expressed the view that it was unfortunate that no representative of IUMI was present at the meeting, but that the Secretariat should have the flexibility to discuss the proposed questions with IUMI before embarking on the study. She suggested that some information may already be available, particularly in relation to the OECD study, which could be of use to the Secretariat and invited the Director to take this into account.
- 7.1.33 The Director confirmed that the Secretariat was willing to undertake the study, but suggested that perhaps external expertise may also be needed and expressed his hope that the Secretariat would be able to carry out the study with the assistance of IUMI, CMI and the French delegation.
- 7.1.34 The observer delegation of CMI offered assistance with the study. That delegation pointed out that hull insurance was a private contract between the insurer and the shipowner and that, unlike liability insurance a shipowner was under no obligation to produce a blue card to prove that hull insurance was in place and that it was therefore difficult to verify whether or not the ship was fully covered.

- 7.1.35 The observer delegation of CMI also pointed out that some larger companies preferred not to enter into contracts with insurance companies but to provide their own insurance. In light of that statement, that delegation requested clarification of the first question proposed by the French delegation relating to the number of vessels used to transport oil which navigated without hull insurance and whether there was a correlation between the absence of such insurance and the number of incidents recorded involving those vessels. That delegation asked whether the French delegation intended that ships referred to in this question as transporting oil 'without hull insurance' should extend to those which were self-insured.
- 7.1.36 The French delegation confirmed that the distinction between ships for the purpose of the study should be between ships which had no insurance and those which had insurance, either through an independent insurance company or through an insurance company which was very closely linked to itself. That delegation stressed that the study should then focus on those ships which had no insurance and whether more incidents occurred involving such ships.
- 7.1.37 In response to a question by one delegation regarding the possibility that the results of the study and subsequent conclusions of the Working Group could be that hull insurance should be mandatory and that the Working Group would therefore be led to making recommendations on an instrument outside of the 1992 Conventions, the Chairperson warned against jumping to any such conclusions and again stressed that the Working Group was simply discussing insurance practices and that it was not aiming to amend the Conventions. She repeated that the Working Group could make recommendations in areas which were not in conflict with the Conventions nor strayed into the areas of IMO, but that the Working Group was not at that stage.
- 7.1.38 The Working Group 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.

Pollution incidents involving ships falling outside the ambit of the International Association of Classification Societies and the International Group of P&I Clubs

- 7.1.39 The Working Group recalled that at its second meeting, held in March 2007, the Deputy Director/Technical Advisor had presented the findings of a study by the Secretariat to determine the extent to which ships falling outside the ambit of classification societies that were members of the International Association of Classification Societies (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.
- 7.1.40 The study was based on data compiled by the International Tanker Owners Pollution Federation Limited (ITOPF) and by the IOPC Funds' Secretariat. It was reported 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 there were only 15 such incidents involving vessels not entered in clubs belonging to the International Group or reinsured through the International Group's pooling agreement. The findings of the study were presented in document 92FUND/WGR.4/4/1.
- 7.1.41 The Working Group had concluded at that meeting 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.

- 7.1.42 However, following a question from one delegation concerning a possible trend in the distribution of the 15 spills falling outside the ambit of the International Group of P&I Clubs, ITOPF had been invited by the Working Group to consider whether the spill frequency in this subset of the data had increased or decreased over the 35-year period covered by the ITOPF database.
- 7.1.43 The observer delegation of ITOPF introduced document 92FUND/WGR.4/7/1 and explained that, as set out in the document, an examination of the data in question had revealed that the spills spanned the period 1970 to 2001 with the number of incidents in each year varying between zero and two. That delegation concluded that there was no discernible trend in the data to indicate that the spill frequency had increased or decreased. He further explained that the subset of data had also been examined for the existence of any other trends and pointed out that most of the ships involved were small, with ten vessels of less than 1 000 GT, five in the range 1 000 – 10 000 GT, and one larger vessel, but that no other significant features could be discerned in the data.
- 7.1.44 In response to a question by one delegation, the observer delegation of ITOPF confirmed that the study in March extended to 2006 but that the figures set out in the table in paragraph 2.2 of the document did not go beyond 2001 since there were no incidents in the years 2002-2005. He reminded the Working Group that whilst they may find some patterns in the figures provided, overall there were only 15 relevant incidents.
- 7.1.45 In response to a question from another delegation, the observer delegation of ITOPF informed the Working Group that the database used to obtain the information covered worldwide spills and did not take into account changes in the membership of the 1992 Civil Liability and Fund Conventions.
- 7.1.46 The Working Group concluded that, based on the information received and taking into account the very small number of incidents involved, there was no discernible upward nor downward trend in the frequency of spills involving ships falling outside the ambit of the International Group of P&I Clubs and that in some years there had been one or two spills whilst in others, including recent years, there had been no spills.

7.2 Practices by Member States to promote quality shipping

The CLC Certification process in Germany

- 7.2.1 The Working Group noted the information contained in document 92FUND/WGR.4/7 submitted by Germany setting out the procedures followed by the Federal Maritime and Hydrographic Agency, part of the Government's Department for Transport, Building and Urban Development, when granting certificates attesting that insurance was in place in accordance with the 1992 Civil Liability Convention (CLC Certificates).
- 7.2.2 It noted that the 1992 Civil Liability Convention had entered into force for Germany on 30 May 1996 and had been implemented by the Oil Pollution Damage Act and the Oil Liability Certification Regulation.
- 7.2.3 It also noted that applications for a CLC Certificate in Germany had to be made in writing and had to contain certain details relating to the shipowner (name, address of the principal place of business) as well as the ship (name, port of registration, registered tonnage); and that the applicant had to provide proof of financial security, usually in the form of a Blue Card in which an insurer confirmed that an insurance policy or other financial security satisfying the requirements of the 1992 Civil Liability Convention was in force.

- 7.2.4 The German delegation explained that under German legislation there must be a person resident in Germany (the ship's agent resident) who was responsible for receiving any official written documentation on behalf of the shipowner, such as a court injunction, and for ensuring that such documentation was passed on to the shipowner. He also explained that, therefore, the agent resident of any ship not flying the German flag, must also enclose in its application for a CLC Certificate a power of attorney of the shipowner.
- 7.2.5 The Working Group noted that a fee of €125 was charged for the initial issue of a CLC Certificate and that the fee for every subsequent certificate was €85. It further noted that the CLC Certificate was issued for a maximum period of 12 months and would not exceed the period of validity of the financial security. It also noted that the CLC Certificate could be withdrawn if the mandatory requirements for its issue were no longer met or if the applicant had provided incorrect or incomplete information in the application.
- 7.2.6 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. CLC Certificates could not be issued for ships registered in other States Parties to the 1992 Civil Liability Convention. The German delegation confirmed that the Federal Maritime and Hydrographic Agency had not issued a certificate to any non German-Flag State ship, but that in 2006 it had issued 29 CLC Certificates to ships registered in Germany.
- 7.2.7 The Working Group noted that if a shipowner were to contravene the provisions of the German Oil Pollution Act requiring that adequate financial security be in force, it would be considered a criminal offence and that, as a consequence, the shipowner could be fined or even imprisoned for up to two years and the Ship Safety Certificate withdrawn.
- 7.2.8 The Working Group also noted that if the shipowner failed to provide his ship with a CLC Certificate or if the master failed to carry a CLC Certificate on board or to produce it on demand, they would be liable on conviction to a fine not exceeding €5 000. In addition, the transport of more than 2 000 tons of oil in bulk or the transshipment of oil could be prohibited.
- 7.2.9 The delegation of Germany explained that a ship could not enter or leave a port or terminal in Germany unless there was a valid CLC Certificate in force and that the Water Police carried out mandatory checks on board of ships carrying more than 2 000 tons of oil in bulk.
- 7.2.10 The Working Group noted that since 1999, no German vessel had been detained in a foreign port for failure to provide a CLC Certificate. It also noted that since 1993, no foreign-flagged vessel inspected in Germany under the Port State Control regime had been detained for failure to provide a CLC Certificate.

The CLC Certification process in Liberia

- 7.2.11 The delegation of Liberia informed the Working Group that it shared the view expressed at earlier meetings that a uniform process should exist among Member States for the issuing of CLC Certificates and that for this reason it had submitted document 92FUND/WGR.4/7/7 detailing the procedures followed by the Office of the Deputy Commissioner, Bureau of Maritime Affairs, Liberia, in this regard.
- 7.2.12 The Working Group noted that the 1992 Civil Liability Convention had entered into force for Liberia on 10 May 1996, and that it was being implemented by the Liberian Maritime Regulation 2.35 pursuant to the 1992 Civil Liability Convention, which required the owner of any Liberian registered vessel carrying more than 2 000 tons of persistent oil in bulk as cargo, to maintain such insurance. It

also required Liberian flag ships to carry a certificate attesting that this insurance against liability for pollution damage was in place and issued by the Office of the Deputy Commissioner.

- 7.2.13 The Working Group noted that an application for a CLC Certificate in Liberia should contain 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 and payment of a fee of US\$150 plus courier charges.
- 7.2.14 The Working Group also noted that if the proof of financial security was provided by an International Group Club, no further checks were undertaken in respect of the insurer. If, however, the submitted proof of financial security was provided by an insurer which was not a member of the International Group of P&I Clubs, then further checks were undertaken by the Investigation Department of the Office of the Deputy Commissioner of Maritime Affairs. If there was doubt whether the company providing the insurance or other financial security would be able to meet the obligation under Article VII of the 1992 Civil Liability Convention or the insurance or other security would cover the shipowner's liability under the Convention, the Deputy Commissioner of Maritime Affairs may refuse to issue the CLC Certificate and ask the owner/operator for a Blue Card from another company. In response to a question from one delegation, the Liberian delegation explained that whilst this situation had not yet arisen, should the Deputy Commissioner make such a request the shipowner would have no choice but to find an alternative P&I Club or insurer which the Deputy Commissioner was happy with, regardless of how easy or not this would be to achieve.
- 7.2.15 It was noted that, for the 2006-2007 period, the Liberian Maritime Administration had issued 640 CLC Certificates to Liberian flag vessels, including the re-issuance of certificates due to a change of owner or other such reason, and that no Liberian CLC Certificates had been issued to non-Liberian registered ships.
- 7.2.16 It was also noted that if upon entry to a port it was discovered through port state control that a ship failed to have a valid CLC Certificate, the ship was subject to port state detention while every effort was made by the Officer of the Deputy Commissioner to issue the CLC Certificate if requested and if the valid supporting documentation and applicable fees were submitted. The Liberian delegation clarified that, whilst the Liberian Maritime Administration could issue such a port state detention, it was usually the ship operator which notified the Liberian Maritime Administration of the lacking certificate. The Liberian delegation pointed out that, as authorised by Liberian Maritime Regulation 2.35, contravention of International Conventions and treaties to which the Republic of Liberia is a Party, including the 1992 Civil Liability Convention, may result in the imposition of a penalty on the Master or shipowner of a Liberian flag vessel.
- 7.2.17 That delegation also pointed out that Liberian CLC Certificates were normally issued for a period of 12 months to cover 20 February of the current calendar year to 20 February of the following year and that in December of each year, the Liberia Administration sent out an annual reminder letter to Liberian shipowners and ship operators whose vessels required compliance with the 1992 Civil Liability Convention. They were reminded that timely submission of the required document and payment would avoid delay in the processing and forwarding of the CLC Certificate.

Could Member States do more to promote quality shipping?

- 7.2.18 The Working Group took note of the information contained in document 92FUND/WGR.4/7/2 submitted by Canada and France. In introducing the document the Canadian delegation reminded the Working Group that, at its second meeting, several States had indicated their interest in discussing at future meetings linking the quality of the ship to the issuing of CLC Certificates and that some States had informed the Working Group that they did indeed take into account the quality of the ship prior to issuing a CLC Certificate.

7.2.19 The Working Group recalled that the 1992 Civil Liability Convention currently gave States the ability to issue and/or withdraw a CLC Certificate based on the quality of a ship's insurance or financial security. However, the delegations of Canada and France were of the opinion that States may also have the ability to set other conditions or criteria for the issuance of a CLC Certificate, under Article VII, paragraph 6 of the CLC, which reads:

'The State of registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.'

7.2.20 The Working Group recalled that at its first meeting, the International Group of P&I Clubs 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. It also recalled that in her summarising of the discussion, the Chairperson of the Working Group had noted that there was general agreement regarding the importance of flag States and the need to encourage transparency between flag States through the sharing of information.

7.2.21 The Working Group noted that other international fora, namely the Maritime Transport Committee of the OECD, had also considered the creation of a website with lists of substandard ships obtained from a number of sources, including the various Port State Control Memoranda of Understanding (MOU) and Equasis.

7.2.22 The Working Group noted that the co-sponsors of the document had conducted some preliminary research using the databases of four of the ten Port State Control MOU regimes and concluded that in 2006 there were a total of 156 detained oil tankers in those four MOUs, with an average of 15 deficiencies per ship. It was also noted that 11% of the Paris MOU's list of banned ships were oil tankers as well as 9% of those banned by the European Union. The Working Group noted the view of the co-sponsors that a search of the other six Port State Control regimes was likely to produce similar results and that such information produced by the regimes could be a reliable and important source of information for States concerned with the quality of a ship requesting a CLC Certificate.

7.2.23 The co-sponsors invited the Working Group to discuss the ability of the Assembly to make a policy decision with regards to the authority of Member States to establish other conditions for the issuing of CLC Certificates.

7.2.24 The co-sponsors proposed that, should the Working Group agree to make a recommendation to the Assembly on the authority of Member States to issue and withdraw CLC Certificates based on the quality of the ship, it should consider developing measures that would link the quality of the ship to the issuing and withdrawal of CLC Certificates. They suggested that such a potential measure would be to utilize the information found in Port State Control Regimes and other sources, which, in their view, would allow a potential tracking of the detentions and banning of ships carrying oil in bulk. They further suggested that, subsequently, flag States, the insurer and the State issuing the CLC Certificate (if different from the flag State) would be aware of the potential risk posed by the ship in question and allow the State to review and, where appropriate, to not issue and/or withdraw the CLC Certificate until the ship was brought up to the required standard.

7.2.25 The Working Group noted the concerns expressed by Greece, as set out in document 92FUND/WGR.4/7/6, regarding the proposals made by Canada and France. The Working Group noted that Greece had understood that the purpose of a CLC Certificate was to confirm that the issuing State had examined and approved only the existence of financial security of the registered owner to cover potential claims against its vessels arising from the provisions of the 1992 Civil

Liability Convention. It was recalled that, according to the discussions in the previous meetings of the Working Group, if the relevant Blue Card had been issued by a P&I Club which was a member of the International Group, the State would issue the CLC Certificate almost automatically and that otherwise, the State was obliged to check thoroughly the credibility of any other insurance body and to decide accordingly about whether or not to issue the certificate.

- 7.2.26 The Working Group noted the view of Greece that the recently announced new measures of the International Group of P&I Clubs regarding the inspection of the vessels insured by its members provided assurance that the tankers with a Blue Card provided by them would be 'quality' vessels and that, therefore, these measures addressed the main concerns of the French/Canadian proposal.
- 7.2.27 It further noted that, in the view of Greece, the mandate of the Working Group was to propose measures to eliminate substandard transportation of oil and did not entail proposing measures which would create more bureaucracy and, in any case, have no added value for the victims of oil pollution incidents.
- 7.2.28 The observer delegation of the International Group of P&I Clubs stated that whilst it had implemented new measures, it relied heavily on the information provided to it by other bodies such as classification societies and Flag States, did not inspect every ship and could not therefore guarantee the quality of every single ship issued with a Blue Card.
- 7.2.29 A number of delegations expressed their appreciation to the Canadian and French delegations for submitting their proposal and for encouraging the Working Group to consider new ideas and fully explore their potential to improve quality shipping.
- 7.2.30 The French delegation pointed out that the aim of the proposal was not to improve the situation for victims of spills but to prevent the occurrence of as many spills as possible. That delegation stated that, whilst it fully welcomed the positive initiatives taken by the International Group of P&I Clubs to improve quality shipping, the International Group could not fully guarantee the quality of each ship, and it was therefore the responsibility of the Working Group and each Member State to do everything in its power to eliminate substandard shipping.
- 7.2.31 Some delegations expressed support for the proposals by the Canadian and French delegations.
- 7.2.32 Other delegations expressed concerns that the proposal by the Canadian and French delegations fell outside the remit of the Working Group. Some delegations disagreed with the interpretation of Article VII, paragraph 6 of the 1992 Civil Liability Convention, as set out in paragraph 7.2.19 above, that other conditions or criteria for the issuance of a CLC Certificate could be added. Those delegations expressed concerns that involving States in this way could lead to State liability.
- 7.2.33 Some delegations also expressed concerns that the proposals of the Canadian and French delegations fell outside the scope of the 1992 Civil Liability and Fund Conventions and duplicated the work of MARPOL, SOLAS and the ISM code.
- 7.2.34 A number of delegations requested that the debate should not end at that meeting but should remain on the Working Group's agenda for further consideration.
- 7.2.35 The Chairperson concluded that, whilst the Working Group had held a full debate on the subject, since there had been no clear majority in favour of the proposals, it was not yet in a position to make any recommendations to the Assembly. The Chairperson invited States who wished the Working Group to consider the matter further to consult with other States ahead of the Working Group's next

meeting with a view to gaining wider support and to return to the Working Group's fourth meeting with a revised proposal.

7.3 Future work

The Chairperson concluded the meeting by expressing the Working Group's gratitude for all documents submitted to the meeting. She reminded delegates that the Working Group had now held three meetings and that its work was due to be completed by the end of 2008. She pointed out that, in accordance with its mandate, the Working Group should at that time come forward with guidelines, proposals and established practices and present them to the Assembly for consideration. The Chairperson therefore encouraged States to study the mandate, consider whether there were any items which had either not yet been considered or which should be further explored and to submit documents for discussion at the Working Group's next meeting, to be held in Monaco in March 2008.
