BIMCO
Documentary Committee Meeting

16 November 2022, Copenhagen

In the chair: Mr Nick Fell, Singapore

Attendance List

Executive Committee

President
Ms Sabrina Chao, Hong Kong

President Designate
Mr Nikolaus H. Schües, Hamburg

Immediate Past President
Ms Sadan Kaptanoglu, Istanbul

Members of the Executive Committee
Mr Masahiro Max Takahashi, Japan

Chairperson of the Documentary Committee
Mr Nick Fell, Singapore

Vice-Chairpersons of the Documentary Committee
Ms Inga Frøysa, Oslo
Mr Daniel Carr, Houston

BELGIUM
Owner Members
Mr Peter Laurijssen, Antwerp

BRAZIL
Owner Members
Mr Luís Resano Fernando, Rio de Janeiro
Ms Lilian Schaefer, Rio de Janeiro

CANADA
Owner Members
Ms Annie Choquette, Montreal

CYPRUS
Owner Members
Mr Kyriakos Kourieas, Limassol

DENMARK
Owner Members
Mr Glenn Bennigsen, Copenhagen

Club Members
Ms Henriette Ingvardsen, Danish Shipping
Mr Jesper Sebbelin, Danish Shipbrokers and Port Operators
Mr Krester Krøger Kjær, Skuld

GERMANY
Owner Members
Mr Peter Eckhardt, Hamburg

Club Members
Mr Michael Wester, Schutzverein Deutscher Rheder

GREECE
Owner Members
Ms Nicola Ioannou, Marousi
Mr Panos Zachariadis, Piraeus

HONG KONG
Owner Members
Ms Bianca Knight, Hong Kong

INDIA
Owner Members
Mr Kuppan Rajasekaran, Chennai

ITALY
Owner Members
Mr Federico Viti, Rome
Mr Filippo Gavarone, Genoa

JAPAN
Owner Members
Mr Atsushi Takeuchi, Tokyo

MONACO
Owner Members
Mr Luca Forgione, Monaco

THE NETHERLANDS
Owner Members
Mr Ralf van der Zalm, Rotterdam
Mr Michiel Starmans, Rotterdam

Club Members
Mr Lodewijk Wisse, Royal Association of Netherlands Shipowners
Mr Johan de Haan, Noord Nederlandsche P&I Club

NORWAY
Owner Members
Ms Inga Frøysa, Oslo
Ms Elsebeth Guttormsen, Bergen

Club Members
Mr Viggo Bondi, Norwegian Shipowners' Association
Mr Magne Andersen, Nordisk Defence Club
Mr Hans Nicolai Edbo, Norwegian Shipbrokers' Association
Mr Kristian Valevatn, Skuld P&I
Mr Tim Howse, Gard P&I

POLAND
Owner Members
Mr Marcin Dziewa, Szczecin

SINGAPORE
Owner Members
Mr Vibhas Garg, Singapore

SPAIN
Owner Members
Mr Juan Jose Fernández-Ricoy, Madrid

SWEDEN
Owner Members
Mr Robert Almström, Gothenburg

SWITZERLAND
Owner Members
Mr Patrick Gentizon, Renens
Mr Frank Sanford, Geneva

TURKEY
Owner Members
Dr Fehmi Ülgener, Istanbul

UNITED KINGDOM
Owner Members
Mr Roderick White, Sunbury on Thames

Club Members
Mr Tim Springett, UK Chamber of Shipping
Ms Hannah Gilbert, UK Chamber of Shipping
Mr Alan Mackinnon, Thomas Miller P&I Limited
Ms Judy Binnendijk, Britannia P&I Club
Ms Andrea Skeoch, North P&I Club
Mr Paul Kaye, West P&I Club
Mr Philip Stephenson, The Standard Club Europe
Mr Sacha Patel, Steamship Insurance Management Services Limited

UNITED STATES
Owner Members
Mr Daniel Carr, Houston

CO-OPTED
Mr Ian R. Perrott, Independent OSV Consultancy

OBSERVERS
Mr Nick Shaw, International Group of P&I Clubs
Ms Camilla Slater, International Group of P&I Clubs
Mr Dimitris Dimopoulos, INTERTANKO
Mr Fulvio Carlini, FONASBA
Ms Leyla Pearson, International Chamber of Shipping

OTHER OBSERVERS
Mr Scott Bergeron, Lübeck, Member of the Board of Directors

BIMCO SECRETARIAT
Mr David Loosley, Secretary General & CEO
Mr Søren Larsen, Deputy Secretary General
Mr Lars Robert Pedersen, Deputy Secretary General
Ms Stinne Taiger Ivø, Director Contracts & Support
Mr Christian Hoppe, General Counsel
Mr Carl Wilhelm Lindahl, Project Manager, Contracts & Clauses
Ms Zehra Göknaz Engin, Project Manager, Contracts & Clauses
Ms Nancy Bishop, Team Coordinator

Minutes of Documentary Committee (DC) Meeting
16 November 2022 – 09:00-13:00

The Chairperson gave a warm welcome to the Documentary Committee members as well as members present from the Executive Committee and the Board. He thanked all who participated at the dinner the night before and for a great evening and welcomed everyone to the first ever BIMCO Documentary Committee meeting held in the BIMCO House. He confirmed that this was a record high attendance and acknowledged the fact that the space may be a little tight but thanked everyone for their support in making it work.

The Chairperson also welcomed owner members and club members who were attending the Documentary Committee meeting for the first time and also welcomed the Observers. He went on to welcome the President, Ms Sabrina Chao, and invited Ms Chao to say a few words of welcome.

Ms Sabrina Chao, President, welcomed everyone and said it was good to see them in Copenhagen and most especially in the BIMCO House. She confirmed this was the first time such a big delegation was at the BIMCO House, and she very much looked forward to the discussions of the day.

The Chairperson reminded everyone that they had an important agenda to go through and the plan was to have an open and lively discussion about the various items on the agenda, and in particular the Agenda Item on CII Operations Clause, which was important to all in the room and the industry. The Chairperson hoped that they would be able to deliver on this at the meeting.

The Chairperson outlined the meeting protocol and confirmed that the meeting would, as always, be held in accordance with the BIMCO Competition Law Policy.

1. Approval of minutes of the Documentary Committee meeting held on 18 May 2022

In the absence of any comments, the draft minutes of the DC meeting held on 18 May 2022 were accepted as a true record and signed by the Chairperson.

2. BIMCO Update by the Secretary General

Mr David Loosley, Secretary General, BIMCO, welcomed everyone and said it was good to see delegates at the dinner, the night before, and again at the meeting. Mr Loosley mentioned that there were 23 nations represented at the meeting. He confirmed that this was the first time the DC meeting was held in the BIMCO House and the third committee meeting back in the House since COVID-19. The MEC and the MSSC met in the BIMCO House the previous month. A lot has been learnt about meetings over the course of the last two years, for example what can be done online, what cannot be done online, and the importance of connecting face to face. The last two years also highlighted the importance of using the BIMCO House more effectively, as a global meeting point and as the main venue for the important work of the Board and its Committees.

Mr Loosley also added that BIMCO was also going to be complementing that with some hybrid working solutions. It had successfully been trialled for the MEC and the MSSC in the last couple of months.

Mr Loosley made the DC aware of a newly mapped organisational chart in the reception area. The purpose of this chart was to create more awareness about the fact that BIMCO has more than 400 volunteers working for the organisation on a regular basis.

In terms of Secretariat update, Mr Loosley reported that BIMCO has had a record year in member recruitment. Around 163 new companies joined BIMCO, which made it the second highest year in a decade, thereby exceeding BIMCO's target of total members by the end of the year which equated to over one billion in deadweight tonnage. To support this growth, BIMCO produced a film over the summer which described the work of BIMCO. Mr Loosley recommended everyone to see this film.

Since the last meeting, BIMCO has been delivering the first year of its five-year roadmap. Part of that was internationalisation. The London office, which was established first, is going from strength to strength as BIMCO continues to build ever deeper relationships with the IMO.

The Houston office is now fully up and running since June with the new Regional Manager of the Americas, Mr Thomas Damsgaard, and Assistant Manager Ms Madie Sanchez-Nielsen. There was an opening reception during the Break Bulk America events in September. This was then followed by similar events held in Rio.

Mr Loosley said that an outreach to members, potential members and other industry stakeholders was underway and now delivering services for the first time in Spanish, as BIMCO starts developing its visibility and brand in the Americas. The Singapore office reopened on 1 May and Mr Søren Larsen, Deputy Secretary General, Mr Ashok Srinivasan, Maritime Safety & Security Manager, and Mr Christian Hoppe, General Counsel, who was currently on part time secondment to BW Group, have all been busy visiting potential members and members in the region as well as participating in conferences, seminars etc. To help cement the presence of BIMCO in Singapore and the wider Asia area, the President will also be hosting an industry reception later this month in Singapore.

BIMCO has now established a presence in Brussels with Ms Gudrun Janssens who joined at the beginning of November as Manager Inter-Governmental Engagement, who will also work closely with Dr. Bev Mackenzie, Head of Inter-Governmental Engagement, based in London. From an EU perspective, BIMCO is currently doing a thorough mapping of the legislative agenda relevant to shipping, with focus on members' interests, as it works on practical implementation rather than political ambition. One area of continued focus is the EU ETS, which is still under negotiation in the "Trilogue". It is uncertain whether a compromise will be struck this year, hence the ETS may potentially only enter into force 2024 with subsequent surrendering of allowances in 2025. BIMCO has however already developed and published the BIMCO ETSA Clause.

The Standards, Innovation and Research Team headed up by Mr Grant Hunter, in July,

helped to develop and publish a BIMCO open standard for bulk shipping e-bills of lading. This team is now engaging in a number of further initiatives in support of digitalisation for example contributing to the Blue Visby Consortium, which is a research project looking to improve efficiency through smarter arrival time planning at the pilot station.

The Chairperson thanked the Secretary General for the update and said going forward it would be good to have this item as a standing item on the agenda.

3. Items for Adoption

3.1 Charter Party Guarantee

The Chairperson continued by introducing the first item put forward for adoption on the agenda, the Charter Party Guarantee, and referred the DC to the Agenda Notes Item 3.1.

The Chairperson informed the DC that this project had been a long time underway but has now reached its final stage. Work to develop the Charter Party Guarantee began in early 2021, but partly due to COVID-19 and a tight agenda for online meetings, discussions continued on the Discussion Forum during the course of the year and into 2022. The Chairperson believed the Charter Party Guarantee was now in its final version acceptable to the DC. He said he would have very much liked Mr Ian Gaunt, the Chairperson of the Charter Party Guarantee subcommittee, to be there to introduce the final draft but unfortunately Mr Gaunt was unable to attend the meeting. The Chairperson therefore gave the floor to Ms Stinne Ivø from the Secretariat to do the introduction.

Ms Stinne Ivø, BIMCO, confirmed that the Charter Party Guarantee was developed to assist owners in a situation where it would be preferable to obtain more security than just relying on charterers' financial status and ability to honour their obligation under the charter party. This kind of guarantee was often thought of as a guarantee that would be provided by the parent company, but it could also be another third-party company. The Charter Party Guarantee has the advantage of being wide in nature, meaning that the guarantor does not only guarantee the obligations stipulated directly under the charter party, but also default in payments to third parties where such payment is the responsibility of the time charterers. Payment of bunkers could be an example of this.

When it comes to LOIs, this has been discussed on the Discussion Forum. It is not automatically included but it will be mentioned in the Explanatory Notes that LOIs could be included in the scope of the guarantee, if preferable to the parties. Ms Ivø further explained that the guarantee provides the advantage to the owners, that they do not need to commence proceedings or exhaust other venues in order to be able to turn to the guarantor. When the time charterers are not fulfilling their payment obligations, then the owners can turn to the guarantor for payment.

Part II of the Charter Party Guarantee includes a clause which assists to get the Charter Party Guarantee issued, by agreeing to this already when entering into or novating the charter party. Ms Ivø drew the DC's attention to the "health warning" included on the front page of the Charter Party Guarantee, which recommends the owners to obtain a legal

opinion to ensure that the Charter Party Guarantee, once issued, is legally binding in the relevant jurisdiction.

Ms Ivø went on to mention that a comment was received from one of the delegates on the Discussion Forum the evening before, concerning a court case pending in the English Supreme Court, which could influence how one would view the difference between an "on-demand" guarantee and a "see-to-it guarantee".

On this basis, the DC was asked to consider the following two options:

1. To adopt the Charter Party Guarantee and keep a close eye on what the outcome of the court case would be and if it might have any implications on the Charter Party Guarantee; or

2. Await the judgement and leave it with the subcommittee to consider any amendments and then proceed to a fast-track procedure

The Chairperson opened the floor for discussion and reiterated Ms Ivø's comments that the DC had a choice to either adopt the Charter Party Guarantee now or defer it pending the Supreme Court decision.

Mr Atsushi Takeuchi, Japan, thanked the Chairperson for his comments and said that the Japanese delegation had two comments. Mr Takeuchi spoke from the perspective of a guarantor and said it would be a problem for the guarantor if an owner would assign the rights under the Charter Party Guarantee to another, for example, sanctioned party. Therefore, the Japanese delegation suggested to discuss whether this point should be further explained in the Explanatory Notes.

The second comment was related to Clause 11 and the governing law and jurisdiction provision. Mr Takeuchi suggested whether the Clause could be made simpler and questioned why the law and jurisdiction part had been split in a part (a) and part (b).

The Chairperson welcomed Mr Takeuchi to his first meeting and passed the floor to Ms Ivø to respond.

Ms Stinne Ivø, BIMCO, thanked Mr Takeuchi for his comments and questions and confirmed that the first question concerning assigning of the rights under the Charter Party Guarantee will be addressed in the Explanatory Notes. To answer Mr Takeuchi's second point, Ms Ivø explained that it has been discussed in the subcommittee thoroughly how to phrase the governing law and jurisdiction clause, and decision was made to split it into two.

Mr Kuppan Rajasekaran, India, referred to the Charter Party Guarantee, Clause 3 and suggested that there should be a time limit because the charter party obligations could continue for long. For this reason, Mr Rajasekaran suggested a three years' time limit be inserted.

Ms Stinne Ivø, BIMCO, thanked the Indian delegation for the comment. Ms Ivø explained that the way Clause 3 is phrased now, the time limit applicable will be dependent on the underlying charter party obligation. The Charter Party Guarantee does not include a firm expiration date in the same manner as ordinary bank guarantees. The Charter Party Guarantee will expire when the relevant time limits for charterers' liability under the underlying charter party expire.

Mr Magne Andersen, Norway, pointed out a minor typo, on the front page of the Charter Party Guarantee.

The Chairperson concluded that, as there were no objections, the DC should proceed to adopt the Charter Party Guarantee. When the Supreme Court decision becomes available, the subcommittee will review and consider if there is any need to revise the Charter Party Guarantee.

Mr Glenn Bennigsen, Denmark, raised concerns on behalf of the Danish delegation about this just being a guarantee, which did not include an indemnity obligation and, whether it might be difficult to have this kind of guarantee enforced. He asked whether the subcommittee had taken this into consideration.

Ms Stinne Ivø, BIMCO, thanked the Danish delegation for this important question. The nature of the Charter Party Guarantee does not make it natural to include an indemnity provision. It will have to be an assessment by the owners whether they will rely on the particular guarantor. The charterer would be first in line to honour the payment obligations, the guarantor second, but there will not be a separate indemnity. Different to this scenario, there could, of course, be an underlying obligation under the Charter Party Guarantee where it was for the charterers to indemnify the owners. That kind of indemnity would naturally also be one that the guarantor should respond to.

Mr Michiel Starmans, Netherlands, pointed out a typo in Box 9 which referred to governing law, whereas subclause 11(a) referred to the country stated in Box 9 and asked perhaps that should be in "the law stated in Box 9", in subclause 11(a). Ms Ivø confirmed this would be amended accordingly.

The Chairperson proposed that the Charter Party Guarantee was adopted in the absence of any further comments.

On behalf of the DC and everyone present, the Chairperson thanked Mr Gaunt and all members of the subcommittee for the hard work producing the Charter Party Guarantee.

3.2. CII Operations Clause for Time Charter Parties

The Chairperson referred the DC to Agenda Notes Item 3.2, which was sent out separately and the very first draft of the Explanatory Notes which were distributed on 11 November.

He reminded the DC that the Clause was also put forward to the DC for adoption at the previous meeting in May. After thorough discussions, the subcommittee was asked to revisit

certain aspects of the draft to ensure that it reflected the right balance between the interests of charterers and owners. The plan was to present a revised draft for adoption at an online meeting in July, and whilst the subcommittee met on a weekly basis and put a huge amount of effort into this work, unfortunately this turned out not to be possible. As a result, the subcommittee continued the drafting, and also conducted wide consultations with charterer interests with a view to being able to present a clause which will now hopefully be acceptable to all parties. The Chairperson invited Mr Peter Eckhardt, Chairperson of the Carbon Clauses subcommittee, to present the draft CII Operations Clause.

Mr Peter Eckhardt, Chairperson of the Carbon Clauses subcommittee, thanked the Chairperson and introduced the Clause by saying that everyone would realise that BIMCO has been left with the impossible task of dealing at a contractual level with an IMO regulation on CII out of tune with present commercial and operational business practice when it comes to time chartering. To develop a time charter party clause addressing the CII regulation in a meaningful, understandable and balanced fashion is without a doubt one of the biggest challenges BIMCO has ever been confronted with when it comes to a single clause. Mr Eckhardt mentioned that the subcommittee had been working for more than eight months, meeting on a weekly basis with a lot of email exchanges and emphasised the huge task BIMCO has been landed with when it comes to CII.

Mr Eckhardt used this opportunity to thank all members of the subcommittee and the Secretariat for their tremendous contribution and commitment and especially thanked Helen Barden from North P&I, Alessio Sbraga from HFW, Lasse Brautaset from Nordisk Defence Club and Panos Zachariadis from Atlantic Bulk Carriers Management for their great contributions and always going the extra mile.

Mr Eckhardt also thanked the DC members for all their comments made on this issue. DC members may recall that an online meeting had been planned for mid-July but nevertheless adoption had to be postponed. One of the reasons being that a number of major charterers had contacted BIMCO expressing their great concern about certain aspects of the Clause. The subcommittee met with the charterers to learn more about the concerns raised. To highlight a few, it was suggested that the owners should warrant the vessel's Attained CII on delivery. A subclause has been incorporated into the Clause to address that. Furthermore, speed and consumption warranties were suggested to be a continuing warranty. The subcommittee, however, found that whatever the parties have agreed in terms of speed and performance shall prevail. If the vessel does not perform, the charterers can bring a claim against the owners in accordance with the relevant contractual provisions. In the meantime, charterers remain responsible for their obligations pursuant to the Clause.

Mr Eckhardt confirmed that the subcommittee carefully considered whether it would be possible to introduce a ceiling for excess consumption in breach of speed and performance warranties. However, they decided against this, due to the complexity in factoring it in, and also there are so many variations in determining overconsumption. Also, due diligence obligations versus strict obligations were raised by the group of charterers. It was acknowledged that, at first sight, it may seem unfair that the owners' obligation to maintain the vessel under the time charter party is a due diligence obligation only. However, the due

diligence obligation follows many years of practice when it comes to maintenance of a vessel. The charterers shall, on the other hand, ensure that the vessel is operated and employed in a manner so that the Agreed CII is not exceeded. The subcommittee discussed this proposal over and over again but the conclusion remains that the obligations are different in nature and therefore alignment is inappropriate. Furthermore, the interference with charterers' voyage orders was raised. Mr Eckhardt confirmed that the subcommittee understood why this might raise concerns. Nevertheless, prevention is better than cure and the way subclause (g) is constructed should provide charterers with sufficient comfort that only in very rare circumstances are the owners entitled not to follow the charterers' voyage orders. Finally, liquidated damages were raised. The subcommittee had revisited the proposal to include a liquidated damages provision. However, the subcommittee found that this would be very arbitrary and unhelpful for commercial parties who will have no yardstick to assess the amount of liquidated damages to be agreed upon. Therefore, the current draft includes a claims for damages provision.

Mr Eckhardt emphasised that the BIMCO CII Operation Clause is not a compliance clause. He said the DC would recall that the subcommittee had started with a compliance clause, but quickly realised that an operational clause was what was needed. Pursuant to the CII Operations Clause the parties are free to negotiate and agree the individual targets when it comes to emissions and expect these targets to be part of the main terms negotiations between the owners and the charterers. The Agreed CII will be negotiated in a similar way as the daily hire.

Mr Eckhardt said the subcommittee is aware that the Clause is not perfect, but that it represents a solid starting point for negotiations, and this is precisely what the industry needs now. He said the Clause was long overdue and he assured the DC that every stone had been turned in the drafting process. He suggested that the CII Operations Clause should be subject to a review sometime into 2024, when experience had been gained about how the Clause works in practice. The CII Operations Clause provides the commercial parties with the tool that they desperately need and Mr Eckhardt appealed to the DC to support the adoption of the Clause.

The Chairperson thanked Mr Eckhardt for the logical and impassioned explanation and opened the floor for questions and comments on the CII Operations Clause.

Ms Nicola Ioannou, Greece, confirmed that the Greek delegation was in support of the adoption of the Clause and thought it was a great starting point for both parties. The Greek delegation found that the Clause encompassed everything the parties need to deal with the IMO regulation. Ms Ioannou expressed her confidence and respect for the subcommittee, for deliberating, considering, and discussing every single comment. She acknowledged that it was a very hard task and thought the Clause is a great, workable clause to begin with to assist with this transition. Also, Ms Ioannou reiterated the point raised by Mr Eckhardt, that the industry was waiting for the Clause to be issued by BIMCO. The parties would then be free to negotiate as they see fit, but the framework would be in place, and this is why the Clause should be adopted now.

Mr Fehmi Ulgener, Turkey, said that there is not much time left, it needs to be quickly made

available for the market and therefore the Turkish delegation supported the adoption of the Clause. It was emphasised that the adoption should happen without further delay.

Mr Peter Laurijssen, Belgium, confirmed that the Belgian delegation was content to support the adoption of the Clause as well and that it was a good starting point for the parties and that there was a need for it within the industry.

Mr Roderick White, United Kingdom, thought the points made by Mr Eckhardt were compelling for the adoption of the Clause, and therefore the UK delegation supported the adoption.

Mr Frank Sanford, Switzerland, thanked the committee for listening to everything that the charterers had to say about this, but said there has been a large block of charterers who were dissatisfied with the Clause and did not see it as a starting point for negotiation. This was also the view of MSC's chartering department and in Mr Sanford's understanding this view was shared by other charterers.

The Chairperson thanked Mr Sanford for his comment and said he believed that there was charterer representation on the subcommittee and called upon Mr Eckhardt to address the point raised by Mr Sanford, in that context.

Mr Peter Eckhardt confirmed that the subcommittee indeed had charterer representation. The subcommittee had discussed all comments relevant to specific trades, parts of which might need to be reviewed or amended. However, as the Clause is not a compliance clause, it clearly targets that the parties should agree to the emissions they are comfortable with and which fits into their trading pattern.

Mr Vibhas Garg, Singapore, thanked the Chairperson and introduced himself as the substitute attending in place of Mr Andrew Hoare. Mr Garg confirmed that he was in agreement with what Mr Sanford had said earlier and also thanked Mr Eckhardt for his comments. He went on to say that he understands that this is a very complex clause and that a lot of hard work has been put into it and that the Clause is urgently needed. As Mr Sanford said earlier, the Singaporean delegation also had participants from the chartering side who also had reservations. Mr Garg said he understands that it is an operations clause and up for negotiations but thinks that the negotiation process will be hard and expressed uncertainty as to how the Clause is going to be accepted in the commercial world. Having said that, the Singaporean delegation was prepared to support the adoption of the Clause.

Mr Juan Jose Fernandez-Ricoy, Spain, thanked the Chairperson and confirmed that the Spanish delegation supported the approval of the Clause and believed that the particular points raised by the DC in May have been addressed in this new draft. Mr Fernandez-Ricoy recalled that there had been two main items pending which were off-hire and the wording on the indemnity, but these have now also been addressed.

The Chairperson thanked Mr Fernandez-Ricoy for his comment and confirmed that with hindsight the decision not to adopt the Clause in May was the right one, as further consultations with charterers and others have resulted in meaningful changes to the Clause.

Mr Kuppan Rajasekaran, India, expressed the view that the Clause was well written and that the Indian delegation was in favour of the adoption of the Clause. Mr Rajasekaran said that the Clause at a later stage may require amendment because the CII values are getting reset each calendar year. So, if any charterer is taking a charter party at the end of the year, that means in August or September, there is a likely possibility that they may have to breach the Agreed CII value because the ship may have to wait at anchorage or would otherwise not be able to comply. Initially, this may be fine because there is no CII value to be complied with right now, so people may initially agree and go for the Clause, but the CII values are getting reset at the end of the calendar year. To give flexibility to charterers, the parties may have to agree that the value will go up or down or require an amendment for the end period of the calendar year.

The Chairperson thanked Mr Rajasekaran for highlighting the moving target nature of the Clause.

Mr Glenn Bennigsen, Denmark, mentioned that the Danish delegation had discussed the Clause at a pre-DC meeting and appreciated the fact that the subcommittee had a very difficult task because of the IMO not providing good regulations on this issue. Mr Bennigsen said that amongst the Danish delegation, generally, the owners were in favour of the Clause while the charterers were against it. At the latest DC meeting, the majority was against the Clause but the Danish delegation also realised that something would need to happen, so in this particular case the Danish delegation will act neutral and will not go against the Clause.

However, concerns were raised as to whether the Clause would be used because some major charterers would simply not accept the Clause. Mr Bennigsen further mentioned that many London law firms were asked by charterers to draft a separate clause, but perhaps the CII Operations Clause could be used as a working clause for some. The main concerns were subclauses (i) and (j). It seemed as there would be no incentive for an owner to upgrade their vessels, in order to improve the CII and instead charterers would be blamed.

Mr Bennigsen furthermore asked whether it had been discussed in the subcommittee if the charterers would have P&I cover in a situation where the owners may interfere with the effect that the ship will not be proceeding with utmost dispatch, thereby violating the Hague-Visby rules.

The Chairperson responded and said he understood the dilemma that many national associations had faced with this clause, but before asking Mr Eckhardt to respond to Mr Bennigsen's points and question, Executive Committee member Mr Masahiro Max Takahashi, Japan, had asked for the floor.

Mr Masahiro Max Takahashi, Japan, introduced himself to the DC and said that he became a member of the Executive Committee this year. Mr Takahashi mentioned that he had witnessed all the IMO negotiations on CII as he is member of the official delegation of Japan to IMO. He shared background information about how the CII was a result of a compromise and how difficult the regulation had become. Japan had submitted the idea for the EEXI, which the delegation believed to be sufficient to achieve the 2030 goal at the time, but

other European countries were against this and instead the CII was introduced. At the suggestion of France, the regulation now includes a 2% improvement requirement every year, which will not be possible even with slow steaming or installing additional devices such a bulbous bow. At the moment there is however not enforcement mechanisms in place and if the ship gets a D or E rating, only papers will need to be submitted. Furthermore, one would need to discuss with the flag state and find an amicable solution. There are so many different business models in the shipping industry already. Now it will become more and more difficult to use a single document to cover everything.

Nobody knows what the reality of the CII will be yet. Although the regulation comes into force on 1 January 2023, reporting only starts after one year. So, in the beginning of January no ships are rated. The reporting covers one year and the total miles travelled will have to be submitted, including fuel consumption also taking into account the exemptions available, for example for container vessels where the power used for the refrigerated containers can be excluded. Also, the electricity used to discharge the cargo or, for tankers to load oil cargoes, can be excluded. Mr Takahashi thanked the subcommittee for all the hard work balancing the Clause between owners and charterers. After the MEPC meeting in December and also after January, the reporting requirements will become clearer. Details are likely required to be reported on a daily basis. Mr Takahashi suggested that after the implementation of the IMO regulation, it would be a good idea to consult with both owners and charterers to obtain their views.

The Chairperson thanked Mr Takahashi particularly for the history on the international aspect of the development of the Clause and also for highlighting, again, the uncertainty on what is going to happen in the future vis-à-vis these rules.

Mr Lodewijk Wisse, Netherlands, mentioned that the Dutch delegation was aware that CII was a very complex and difficult topic, but the Dutch delegation appreciated that a clause was now made available for negotiation purposes. Mr Wisse went on to say that the Dutch delegation supported the adoption of the CII Operations Clause. Furthermore, the Dutch delegation raised three questions:

1. In the definition part of the Clause, it was stated that “level”C is used in the definition of the required CII. Why is level C used there? Should it not be consistently used, in other part of the document the word used is “rating” and not "level."
2. When can a similar clause for voyage charters be expected?
3. As no one has had any practical experiences yet, would the Secretariat consider including an Agenda Item for the next DC meeting to have a short evaluation on the first experiences everyone would have had with the Clause at the time?

The Chairperson thanked Mr Wisse for the useful comments and handed to Mr Eckhardt to respond.

Mr Peter Eckhardt elaborated on the items he had noted down. He explained that regarding the dispatch or deviation point, the subcommittee had looked into that and basically mirrored the concept under the BIMCO Slow Steaming Clause. Mr Eckhardt further mentioned that there had been no comments or questions regarding this from the

insurance side. As for the applicable exemptions, the Clause stipulates in the definition of the Attained CII that these can be applied. It may not be easy to calculate, but the parties will have to do so, for example the energy related to cooling cargo. Mr Eckhardt then went on to comment on the point about the "C" rating. The reference is only to the Required CII. Without specifying this as a "C" or midpoint of "C", the Required "C" is the default position if the parties do not agree and populate the table, or the charter party goes beyond 2026.

The Chairperson thanked Mr Eckhardt and said that one of the points raised by the Dutch delegation was to re-evaluate the Clause at the aftermath of the adoption, assuming it would be adopted at today's meeting. The Clause will be evaluated and be an Agenda Item for the next DC meeting. The Chairperson asked Mr Eckhardt to shed light on the other points regarding the development of a voyage charter clause or other non-time charter clauses.

Mr Peter Eckhardt thanked the Chairperson and said that until now, the subcommittee had concentrated on the development of the CII Operations Clause, and that the next clause to be developed has not been determined yet. Mr Eckhardt confirmed that the Explanatory Notes will first have to be finalised.

Mr Glenn Bennigsen, Denmark, said that, as far as he remembered, the BIMCO Slow Steaming Clause is an option for the owners being allowed to reduce the vessel's speed whereby the owners can go to their P&I club and normally take out cover. In subclause (i) of the CII Operations Clause, it is stated that the charterer should indemnify the owners against all consequences and liability that may arise from the bill of lading, waybills or documents evidencing contract of the carriage issued as presented to the extent that the terms of the bill of lading imposed or resolved in breach of owners' obligation to proceed with utmost dispatch are held to be a deviation. Mr Bennigsen asked whether the subcommittee had considered if charterers have P&I cover in the event that they shall indemnify the owners.

Mr Peter Eckhardt mentioned that BIMCO had published two Slow Steaming Clauses, one for voyage charter parties and the other for time charter parties. Mr Eckhardt said that as far as he recalled the Slow Steaming Clause, gave the charterers the right to amend the speed and assumed P&I cover would be in place. The charterers are to get the terms in the bill of lading and explained the reason why the liner trade was exempted from this part of the Clause.

Mr Alan Mackinnon, United Kingdom, thanked the Chairperson and confirmed that he agreed with what Mr Eckhardt had said. He thought the important thing was to make sure that this term was properly incorporated into the bill of lading. Charterers P&I is slightly different to mutual P&I but it is generally a question of assessing the risk based on the charter party clauses. Certainly, the UK Club looks towards BIMCO as a starting point, so if a liability is incurred under a BIMCO clause, unless it is highlighted from the outset when a clause is published that it prejudices P&I cover, then there should not be a problem in terms of cover.

Mr Mackinnon further added his personal comment on the Clause, stating that the shipping

community is looking towards BIMCO and awaiting this clause. Owners were calling to ask when the Clause would be published and whether there would be a further delay. The damage not to adopt the Clause now would be significant. Mr Mackinnon urged the DC to look at the bigger picture as a committee and adopt the Clause.

Mr Fulvio Carlini, FONASBA, thanked the Chairperson and said that from the standpoint of a broker, the shipping world needs the Clause now. Although the Clause will be subject to discussion, Mr Carlini shared the view that the Clause is needed now, and that the Clause appeared well balanced and ready for adoption.

The Chairperson thanked Mr Carlini for the support.

Mr Frank Sanford, Switzerland, thanked the Chairperson and answered Mr Alan Mackinnon's point from earlier, and said that every owner needs a charterer to pay for a ship and there is a massive block of very large charterers in every sector, from container to bulk to tanker, objecting to the Clause. Mr Sanford stressed that one has to be careful before rushing ahead, when major charterers, in particular in the bulk sector had expressed concerns about the Clause. Mr Sanford appreciates that the charterers' comments were taken into account, but still most of those comments have been rejected except for the rating on the delivery of the ship.

The Chairperson thanked Mr Sanford and said that the underlying issue is not being happy with the regulation itself and how it translates to a clause and handed over to Mr Eckhardt and asked him to elaborate on the support they have had from charterers.

Mr Peter Eckhardt confirmed that the subcommittee had received support from charterers and the drafting group involved Rio Tinto, Cargill, BP as well as NYK who were present at the DC meeting. When it comes to the balance of the subcommittee, chartering interests have been present, but it was difficult to see the CII regulation benefitting charterers, as it cuts across the basic concept of a time charter. The owners have to meet certain targets. The charterers are directing the ship and uncertainties out of the charterers' control, such as long stays in port, traditionally lies with the charterers. The subcommittee had considered and developed the Clause in line with general time charter provisions and came to the conclusion that the way the Clause is drafted is fairly balanced considering the general terms of a time charter party.

Every owner will have to monitor the emissions per nautical mile. Depending on the reporting, corrective measures may be required. On the other hand, also exemptions may apply. Several things have to be taken into consideration and for the parties to work together on that basis. The entire Clause is about cooperation between the parties. The exchange of information will be much more important than it has been in the past. The owner will definitely have to provide all the relevant information to the charterer. The charterer will have to make decisions on how to trade the ship. The type of fuels probably will have to be discussed at some stage. This was also taken into consideration by the subcommittee. The subcommittee concluded that the clause cannot address fuel types at this stage. There may be new synthetic fuels or biofuels supplied or other steps to reduce the emissions. This will have to be discussed between the owners and the charterers. The

description of the ship and the other terms of the charter party remains but will have to be considered together with the Clause. The subcommittee appreciates that the charterers do not applaud the Clause, but it provides for the IMO requirements on CII and is a good starting point for discussion and reaching an agreement between the parties. Having no agreement will not help going forward, a clause is needed. The Clause is not a compliance clause, it addresses the period from delivery and does not look at ratings, but rather emissions the parties will have to agree upon.

The Chairperson highlighted that the Clause contains a regime for serious cooperation between the owner and the charterer. He thinks, far from being divisive, the Clause is set up to be cooperative. The divisiveness at international regulatory level was explained by Mr Takahashi and this demonstrated how difficult it was to come up with the regulation and the opposition against it.

Mr Panos Zachariadis, Greece, who was also part of the subcommittee was given the floor. He thanked the Chairperson and made a couple of comments based on the discussions held at meetings with the group of charterers. Mr Zachariadis said it was obvious that they did not like the Clause but even more so not the CII regulation. This was the start of the problem, and not so much the Clause.

Mr Zachariadis referred to the comment made by Mr Fernandez-Ricoy earlier, and said the subcommittee, at the last meeting, was given two tasks to look at, off-hire and the indemnity. The subcommittee had not only dealt with those two, but four more aspects as mentioned by Mr Eckhardt were addressed in the revised clause, including the CII on delivery, speed and consumption, strengthening the owners' maintenance requirements. Also, very importantly, a subclause (g) was included. Pursuant to subclause (g), if the owner does not follow the charterers' orders, and as the last step is forced to cooperate, the owner will have to apply an objective standard not to follow the charterers' orders. The owners now have to provide calculations based on the projected CII and present those to the charterers. In the previous draft clause, it was in the reasonable discretion of the owners to do so. Mr Zachariadis concluded by saying the subcommittee has gone a long way and it is not fair to say that the charterers comments have been ignored.

Mr Søren Larsen, BIMCO, made additional comments to those of Mr Eckhardt and Mr Zachariadis. At the last subcommittee meeting, held a couple of weeks ago, members had gone around the table and asked every subcommittee member if they were now happy with the Clause, including of course, the charterers. The charterers' view was not that they did not like the Clause but rather that they needed the Clause now, although it is not perfect, and that they fully stand behind it. Mr Larsen went on to say that he knows some charterers will not disassociate themselves from the Clause, but rather they will make the tweaks necessary, when they are on the chartering side.

Mr Juan Jose Fernandez-Ricoy, Spain, following comments made by Mr Eckhardt and Mr Zachariadis, Mr Fernandez-Ricoy said that BIMCO has a huge task of promoting the Clause, if the Clause is approved, not because it is a BIMCO clause, but because there is a lack of knowledge in the market of what CII is and how it works.

Obviously, now in November more people know how this works, but in principle, when asking charterers, one ought to be careful with their instructions. BIMCO has the task to explain to the community how the regulations work and why the Clause is drafted as it is.

The Chairperson stated that he knows that the BIMCO Secretariat is utterly committed to, if the Clause is adopted, educate on the Clause and its complexity. There will be a programme to support this, should the Clause be adopted.

Mr Dan Carr, United States, said the United States delegation has been ambivalent. From an owner's perspective, there are no concerns, from a charterer's perspective concerns have been raised about the Clause and sympathise with the views made by the group of major charterers during the consultations. Concerns that were raised there also resonated with the US delegation. At the end of the day, despite there being some imperfections with the regulations and some reservation to the Clause, the US delegation is prepared to proceed with this clause as it stands. Mr Carr confirmed that he agreed with comments made by others about the need to support charterers down the charter party chain. It is stated in the draft Explanatory Notes that it is not necessarily a realistic proposition to expect the Clause being incorporated into every bill of lading but nonetheless, the charterers require to indemnify owners against any consequences. This leaves charterers exposed unless they have the charterers down the charter party chain supporting this. This will require a proper clause to protect charterers when there is deviation or slow steaming, due to owners having intervened in a way that impacts the voyage orders.

Hopefully with the changes that have been made to tweak subclause (g), the prospects of owners intervening, is going to be more reduced and more objectively based. This is appreciated but at the same time, the Clause does go far to support owners and it also states the charterers are to indemnify owners if there is a breach. Mr Carr suggested further protection for charterers down the charter party chain, understanding that although the regulation takes effect in 2023, 2024 will be more of a reporting year. Therefore, as it is not until 2025, when it will become known how the vessels perform, there is sufficient time to develop greater protection for charterers.

Mr Frank Sanford, Switzerland, confirmed that he was not commenting any further on the Clause, but just wanted to say that MSC was one of the few companies to go publicly on the record to say that they think the CII regulation itself is a poor effort and they have not seen much support in relation to that from other owners. Mr Sanford said that MSC would like to see that others follow behind to create some sort of impetus on that.

Mr Masahiro Max Takahashi, Japan, said the fundamental issue is the trust issue between owners and charterers. Owners think that if there are no clear clauses then charterers may use the ship unlimitedly. This will never happen. Many major charterers who are also operators and listed companies report GHG emission to their shareholders or investors. NYK started slow steaming more than 15 years ago and the average engine load is below 45%. It is possible to slow steam without damaging the engine or the ship, but there needs to be a debate for the owners to accept that. A gap of the mindset between the charterers and the owners exists also on fuel saving. And on CII, NYK has asked all owners to install an auxiliary blower, to enable the engine to run below 44% - 40%. Owners prefer to maintain a

safety net. Mr Takahashi went on to say NYK was not aware how the Greek shipowners and European operators approached this but the Japanese owners and operators had worked together already for ten years on this.

Mr David Loosley, BIMCO, mentioned that although the Clause itself will not be on the Board agenda tomorrow, it has been helpful to get a wider picture as described by Mr Takahashi about the complication in relation to the regulation and the need for education on this topic mentioned by the Spanish delegation.

The Chairperson thanked Mr Loosley and everybody for the interesting debate and went on to say that, now is the point when the committee must decide whether to adopt the Clause or not and opened the floor for any final comments.

Mr Marcin Dziewa, Poland, confirmed that he was fully aware that this Clause may not be ideal, but that it was difficult to create an ideal clause for an imperfect regulation. He also confirmed that the Polish delegation supported the Clause at this stage. Also, the Polish delegation enquired about a clause for voyage charters as already mentioned by the Dutch delegation. Regarding the model of doing chartering business, Mr Dziewa recalled 20 years ago, when he used to fix a lot of vessels with big charterers, where they fixed mainly on the voyage basis, not time charter. This could maybe be a solution for charterers if they do not want to operate the vessel. He was aware that for some shipowners, it may be difficult because their model is to buy the vessel as an asset, but from a pure shipping point of view, in dry bulk, as it was 20 years ago, the major charterers were not operating the vessels.

Mr Kyriakos Kourieas, Cyprus, said from the several meetings he participated in and from speaking with a lot of people, the impression he had was that the regulation is here to stay, although some also thought it is not going to be there next year, and that it is somehow going to disappear and evaporate. But with this Clause, Mr Kourieas thinks the two parties will be forced to engage in some sort of a dialogue and working process which will definitely help the owners, who at the end of the day will be the ones left exposed to a CII “E” rating end of next year. He concluded by saying that the Cypriot delegation supported the Clause and would like to see it adopted.

Mr Atsushi Takeuchi, Japan, referred to the comment made by Mr Takahashi earlier and mentioned that NYK is still sceptical whether fairness is provided to the owner and the charterer by this Clause. The understanding is, however, that it is important to provide the market with a corresponding clause for a new regulation. The Japanese delegation does not intend to oppose the adoption here, but however respect Mr Takahashi’s comments.

The Chairperson stated that it had been an impassioned debate and suggested that the DC moved to adopt the Clause unless there were any objections, in which case the next step would probably have to be a vote. If the DC adopted the Clause now, then Mr Eckhardt would like to have a mandate to work on what a number of members had mentioned, particularly the Voyage Charter Clause.

As there were no further objections, the Chairperson concluded the CII Operations Clause adopted.

The Chairperson welcomed everyone back from the coffee break and moved on to the next group of items, Item 4 (Items for Review). But before they did so, Mr Larsen explained that there had been some questions regarding timeline of when BIMCO would publish the Clause. Mr Larsen said that would be tomorrow together with a press release. The Explanatory Notes would be made available soon, perhaps in a week's time.

The Chairperson expressed gratitude and heartfelt thanks to Mr Eckhardt and the rest of the subcommittee.

4. Items for Review and discussion

4.1. ASBATANKVOY

The Chairperson referred the DC to Agenda Item 4.1 and Enclosures A and B and the ongoing revision of the ASBATANKVOY charter party. He asked Mr Christian Hoppe, General Counsel from the Secretariat, to provide the DC with a progress report.

Mr Christian Hoppe, BIMCO, thanked the Dutch and UK delegations for their comments on the Discussion Forum earlier in the week. Some of the comments dealt with issues currently being discussed in the subcommittee, whereas others were a good opportunity to reconsider what had so far been agreed and whether there are any additional changes to be made. Mr Hoppe went on to say that the comments have all been very useful and would be taken back to the subcommittee for further discussions.

In terms of the current status of the draft, Mr Hoppe highlighted that quite some time had been spent discussing Clauses 6 and 9, in relation to the issue that was raised in New York earlier this year. The issue is about the "reachable on arrival" concept in Clause 9 and the apparent difference between the UK and US legal positions on this concept, in that it is broadly considered an accessibility issue in New York, whereas in London it does not matter whether there is a physical restriction or an availability issue. The ship has to be able to proceed directly to the berth.

It was further explained that this also has a bearing on Clause 6 and, in particular, the last sentence in that clause, which sets out that laytime should not count in case of delay caused to the ship for reasons over which the charterer has no control. The reason for that is, the charterer will only be able to rely on this sentence if Clause 9 has been complied with, so the interpretation of the "reachable on arrival" concept therefore becomes very important and decisive.

Mr Hoppe mentioned that the subcommittee was therefore left with the decision to take when they met in August. On the one hand, the subcommittee has so far considered that the Clauses should be left intact, mindful that they are key elements of the form and also given the vast amount of case law dealing with them. On the other hand, consultations have shown that a significant number of users appear to add rider clauses, (notably a Conoco Weather Clause type provision) aiming at amending the position, sometimes in combination with the deletion of Clause 9 in whole or in part. At the meeting held in August in Copenhagen, the various options available were considered, including leaving the wording

unamended, making small amendments or rewriting Clauses 6 and 9.

The subcommittee ended up with the wording set out in the Enclosure 4.1A, introducing terms which would share the risk of weather delays in berthing, and considered that this was a good place to land, because, on the one hand, the US issue raised earlier this year is being dealt with and, at the same time, getting rid of the uncertainty about when the last sentence of Clause 6 will apply.

It was noted that the changes to Clauses 6 and 9 would be a key issue when the project gets to the consultation stage. The plan is to have some consultations in Houston in the spring of next year and some written consultations would be done, and this would be one of the issues that would be highlighted. It will be stressed that users or consultees who do not agree with this solution, should come up with something else, because in the subcommittee a good compromise has been found to a difficult situation.

Another point raised by Mr Hoppe was the Pollution Clause, Clause 26. He referred to the notes where it has been explained that the subcommittee is in dialogue with the International Group to ensure that the wording, does not jeopardise cover. It was explained that the IG has suggested the inclusion of the IG Financial Security in Respect of Pollution Clause. For now, the subcommittee has agreed to include the warranty set out in subclause 1 of the Clause but believes that subclauses 2 and 3 on other financial security and the indemnity for such security, are not commercially acceptable and would be stricken out and therefore, to keep the form short, the suggestion made was not to include it.

Mr Hoppe did not consider that the subcommittee has reached the final stage on this yet, so had therefore suggested that the IG join the next subcommittee meeting so that this matter can be discussed and a way forward found.

The subcommittee will know more at the next DC meeting and will be guided by what the DC and also the DC of ASBA say on this. Mr Hoppe concluded by saying that, generally, good progress had been done on the form, the standard bill of lading form and the document containing optional additional clauses, similar to what had been done with ASBAGASVOY back in 2020. The subcommittee hopes to have a package ready for presentation for adoption next year.

The Chairperson thanked Mr Hoppe and asked if there were any comments, observations, questions on where the subcommittee was with ASBATANKVOY.

Mr Kuppan Rajasekaran, India, acknowledged that the ASBATANKVOY charter party is the most used charter party worldwide by many owners and charterers. A “slight ambiguity” as between Clauses 6 and 9 was highlighted, namely one that would appear in a situation where a ship arrives at a port where the berth is occupied by another ship. The NOR is valid but it may not be possible to berth at night for one or the other reason and the NOR will therefore only be accepted the next morning. Charterers will ask for the six hours to count from the time when the NOR is accepted but laytime should count already from the time when the original NOR was tendered. Maybe it can be redrafted in such a way that these ambiguities are removed.

Mr Michael Wester, Germany, had a general comment. He referred to Clause 20 of the ASBATANKVOY which has a lot of subclauses dealing with the bill of lading. This is to some extent addressing the point made by Mr Carr on the CII Operations Clause, as it would make sense to include a provision in the bills of lading which deals with the CII issues here. He also highlighted the fact that the draft of the bill of lading is also attached hereto. This would be something one could consider in this context. This would not apply only to the ASBATANKVOY, but effectively to all forms. In view of the SYNACOMEX item, it would also be something to at least think about.

Mr Atsushi Takeuchi, Japan, highlighted one point which they thought should be amended, namely that following the move of the sentence relating to laytime from Clause 11 to Clause 7, there was a bit of inconsistency between subclauses 7(b) and (c) in so far as subclause (b) states that laytime shall end when the last cargo receiving or delivering vessel is disconnected and all equipment has been removed, whereas subclause (c) generally states that laytime (or time on demurrage) shall continue until the hoses have been disconnected. It was suggested to add wording in subclause (c) to exclude the case in subclause (b).

Mr Christian Hoppe, BIMCO, responded to the comments made by the Indian delegation pertaining to Clause 6 and asked to hear a bit more in detail about the ambiguity with a view to considering that in the subcommittee.

On the question raised by the German delegation concerning Clause 20, Mr Hoppe confirmed that this was definitely an issue that had been brought up a number of times, specifically in relation to CII and that the group is waiting to see what BIMCO will come up with in terms of the Clause. Mr Hoppe referred again to Clause 20 and explained that there was also one of the points on the Discussion Forum that related to the subclauses in Clause 20, namely the slightly awkward situation in relation to the Himalaya Clause where the clause is now in the bill of lading, but not in the clauses that are included in Clause 20. That was a compromise that was reached when ASBAGASVOY was developed and they will of course have to see if they can come up with a better solution in ASBATANKVOY.

Mr Hoppe referenced the point raised by the Japanese delegation, and said he was not sure he understood the point entirely and asked if the Japanese delegation could restate the point or if it could be dealt with bilaterally because quite a few changes had been done to Clause 7. He was also sure that if there was anything that needed to be fixed for consistency, then it was a point that the subcommittee would be very happy to hear about.

The Chairperson asked the Japanese delegation if they were happy to liaise bilaterally with Mr Hoppe. The Japanese delegation responded by saying it is their understanding that subclause 7(c) states generally laytime or time on demurrage shall continue until the hoses have been disconnected. On the other hand, subclause 7(b) states that laytime shall end when the last cargo receiving or delivering vessel is disconnected and all equipment has been removed. There is therefore a discrepancy between the two subclauses.

Mr Hoppe confirmed that he agreed with the Japanese delegation that this was something that the subcommittee should indeed look at.

The Chairperson thanked the Japanese delegation for raising that point and in the absence of any further questions on the ASBATANKVOY, the Chairperson said the DC look forward to the revision of the form and a progress report at the next DC meeting.

4.2. BIMCO MOA On-trading Clause

The Chairperson stated that this project has its origin in the new S&P agreement SHIPSALE 22, where it was decided that it would be better to develop a free-standing so-called non recycling clause, as it was then named, rather than including it in the MOA SHIPSALE 22. The Chairperson of the subcommittee, Mr. Francis Sarre, was not attending the meeting so Mr Carl Lindahl from the Secretariat was invited to provide the DC with a progress report.

Mr Carl Lindahl, BIMCO, confirmed that the subcommittee started the drafting of the MOA On-trading Clause in June and had moved well ahead with seven online meetings in total and completed the drafting. The subcommittee's objective has been to draft a clause giving the seller protection against the vessel sold being sent for recycling within an agreed period defined as the "Applicable Period". There is no default period as the appropriate period depends on the parameters of the specific transaction and it is therefore for the parties to consider. The aim with the "Applicable Period" being to break the chain of causation with regards to future act of the buyer.

If the buyer does breach any of the provisions in subclause (c), an Agreed Sum is immediately payable as per subclause (e)(i). This gives the seller the comfort of being compensated without the need to prove the actual losses incurred. The Agreed Sum does not limit the seller from seeking further indemnity, to the extent permitted by law, if additional losses are suffered as stipulated in subclause (e)(ii).

Subclause (e)(iii) also gives the seller the option to seek injunctive or other remedial relief if the buyer is in breach of the Clause. Further, the seller is also given the possibility to disclose the existence and content of the Clause including the nature of the breach under subclause (e)(iv). The objective with this subclause being to give the seller defence against reputational damage.

The Clause further allows the buyer to on-sell the vessel under subclause (d) if such agreement includes substantially the same terms of the remaining period of the Applicable Period and the necessary due diligence has been performed by the buyer as stipulated in subclause (d)(i) and (ii). The aim here being to avoid a situation where the vessel is on-sold for the purpose of circumventing this Clause while giving the buyer some flexibility with regards to future sale and purchase activities.

Mr Lindahl further said, as advised in the Agenda Notes, the Clause has been sent for review by lawyers in New York, Hong Kong and Singapore and, so far, the Hong Kong based lawyer has confirmed enforceability. The Secretariat is still waiting for New York and Singapore to come back.

Mr Juan Jose Fernandez-Ricoy, Spain, raised a question regarding the Agreed Sum, namely

that the Clause was drafted in such a way that the Agreed Sum will be automatically paid in case of a future recycling of the ship. The Spanish delegation is not sure if this is balanced since the intention of the Clause should be to cover the losses of an owner for having the ship recycled against its will and against the regulations. Having an Agreed Sum, however, seems that maybe the owners are trying to protect a market loss that the ship has been resold and the other party has got a commercial profit. Mr Fernandez-Ricoy questioned, if subclause (e)(i) would be widely accepted in the industry.

The Chairperson confirmed that he is aware that this had been brought up previously in the subcommittee but asked Mr Lindahl to respond.

Mr Carl Lindahl, BIMCO, thanked the Spanish delegation for the question and comments made. He went on to say that it is a very complex legal landscape and the damages that will be incurred are difficult to determine and as previously mentioned, the reputational damage is one that is difficult to determine and that is the reason behind going for the Agreed Sum being immediately payable in order for the seller to be comfortable that there will be some recovery on their part.

Mr Robert Almström, Sweden, asked what time period is being considered to be the correct one or a period that can be accepted. Secondly, if the new owner, for some reason has to recycle the vessel in a correct way, according to EU recycling, at least for shipyards, is there anything wrong with that and how is this intended to be dealt with.

Mr Alan MacKinnon, United Kingdom, had a question about enforcement. He asked if the buyer on-sells the ship for recycling, then his principal asset is gone and it might be a little bit of time before the owner finds out. He wondered whether the committee had thought about how this Clause might be enforced against an assetless company, or whether there is some sort of mechanism that could be built in to protect the seller in such circumstance.

Mr Kuppan Rajasekaran, India, pointed out that many countries do not easily accept ships being sold for recycling. If the buyer actually buys it for trading purposes, and then immediately goes for recycling, this could very well affect the seller of the ship. Reason being that if he has declared the ship for continued trading and the ship is sold for recycling within three months' time, it definitely affects the seller because there is declaration within his own country that the ship is sold for further trading. Therefore, the Indian delegation suggests that a minimum period of three months is kept before it goes for actual recycling. If that is happening, it should not be in the same country where the ship has been bought, it should be in another country.

Mr Atsushi Takeuchi, Japan, asked a question on behalf of the Japanese delegation regarding the definition "Total Loss". Mr Takeuchi pointed out that in the definition of "Total Loss" the word inserted in brackets should be the buyer. This is because, in the case of a total loss, the buyer can exceptionally recycle or on-sell in accordance with subclause (c) but what should be excluded from "Total Loss" is a case where total loss occurred due to the buyer's act or omission. So, the Japanese delegation thought the wording "sellers" should be "buyers", if their understanding is accurate. If so, the Japanese delegation would like to propose that "buyers" should include the crew or master also because of act or omission of

crew or master, as it is very difficult to prove if it is buyers' act or omission.

Mr Michiel Starmans, Netherlands, reminded the DC that Dutch delegation had proposed a similar clause when the SHIPSALE 22 was developed a couple of years ago, and the purpose of this clause was, to make sure that any recycling will be done according to the Hong Kong Convention. Mr Starmans reiterated what the Swedish delegation mentioned earlier i.e. that the buyer is not allowed to recycle the vessel. They believe the intention of the Clause was to make sure that the vessel is recycled in accordance with the Hong Kong Convention. However, they now understand that some countries have not ratified the Hong Kong Convention yet.

Mr Starmans further pointed out that apparently there are some statements of compliance with the Hong Kong Convention issued by class societies and several yards in India, for example. They comply with the regulation of the Hong Kong Convention which is, of course, good for the labour there and for the environmental issue. This was the purpose of proposing the Clause. On the other hand, this is only dealing with financial issues. In the Netherlands, according to Mr Starmans, criminal charges could be raised against a shipowner if he sells the vessel to somebody who does not scrap in accordance with the Hong Kong Convention or the EU green list. The Dutch delegation advised that the Clause is fine but should also give the option that the buyer can indeed recycle the day after as long as he does it in accordance with this Hong Kong Convention protection.

Mr Kristian Valevatn, Norway, raised concerns that the Norwegian delegation had with this Clause, which was the Agreed Sum in particular. He asked whether this Agreed Sum could be perceived by courts as a sort of bonus or penalty that the buyer has to pay if he is going to scrap the vessel. And if so, is that going to be upheld by courts as there could be a potential public policy issue there.

The Chairperson thanked Mr Valevatn and said this was a key issue, and that was why legal advice had been sought in those principal jurisdictions that Mr Lindahl mentioned and handed over to Mr Lindahl to wrap up.

Mr Carl Lindahl, BIMCO, thanked the delegations for the comments and questions which he confirmed would be brought back to the subcommittee. Referencing the comment made by the Swedish delegation, about what time period is considered the right time period, Mr Lindahl advised that this had deliberately been something that the subcommittee had kept away from deciding. BIMCO is not to take the position of putting forward a defined period, as it is very difficult to determine that period due to the complex legal landscape in relevant jurisdictions.

Regarding the correct recycling that was mentioned by the Dutch and Swedish delegations, this would definitely be brought back to the subcommittee. Mr Lindahl advised that the reasoning behind this has been to try and stay away from determining what is the correct recycling, and Hong Kong is mentioned as the one regulation that is to be complied with. But there are also other regulations for example the European Ship Recycling Regulation and the European Waste Shipment Regulation. The subcommittee tried to stay away from getting involved in what is the correct ship recycling and that was also why it was left out of

the Clause. It is a Clause where the parties are to agree that the intention is continued trading. If recycling indeed is the intention, the RECYCLECON is to be used. For the other comments, those would be brought back for the subcommittee to review.

The Chairperson confirmed that the DC looked forward to seeing a revised draft to be presented for possible adoption at the next DC meeting in April.

4.3. LNG Bunker Terms 2022 Annex for BIMCO Bunker Terms 2018

The Chairperson invited Ms Stinne Ivø from the Secretariat to provide the DC with a progress report.

Ms Stinne Ivø, BIMCO, confirmed that the subcommittee has not had the opportunity to meet since the DC meeting in London, however this did not mean that nothing had happened in between. The talks around alternative fuels and also the infrastructure for LNG supplies as bunkers had matured, and the demand for the Annex to be published had also increased. Ms Ivø said the subcommittee was going to meet later that month or early December, with an aim to finalise the Annex. On behalf of the subcommittee, Ms Ivø thanked all the delegations, who had submitted comments via the Discussion Forum earlier that week and said that all comments would be taken to the subcommittee for discussion at the next meeting. The subcommittee has the technical input and expertise needed to finalise the Annex. This was also the reason why it was put up again for review, i.e. to invite the DC to share further comments before moving to the final stages. Ms Ivø added that it would be good to hear if there were any further comments different to the ones already put forward on the Discussion Forum.

Mr Atsushi Takeuchi, Japan, said that the Japanese delegation had three comments on this Clause. The first proposal was in relation to subclause 7(b) “Price”. In the Japanese delegation’s view, due to the potential malfunction of energy supply vessels, this may lead to a situation whereby alternative suppliers would have to be found. In such a situation, the supply price cost might increase dramatically. The Japanese delegation therefore suggested that the subcommittee should revisit the wording of the subclause including how to address the risk of cost increase.

The second question raised was in relation to subclause 3, “Quantities/Measurements”. The calculation method of the quantity of oil replenished and stated in this subclause (a) and (c). Mr Takeuchi said that, according to subclause (a), the quantity is measured and calculated based on Annex B whilst subclause (c) states that the quantity shall be based on the GIIGNL LNG Custody Transfer Handbook. There seems to be an apparent contradiction which the subcommittee could possibly have a look at.

Finally, as regards “Claims” in Clause 9, this clause stipulates how to determine bunker quality at the time of a bunker claim in more detail than the Bunker Terms 2018. The Japanese delegation wanted to know why the subcommittee added this wording as the Japanese delegation was not sure it was acceptable to the LNG bunker industry.

Ms Stinne Ivø, BIMCO, thanked the Japanese delegation for the helpful comments and said

that it is certainly something that would be brought back to the subcommittee. She said she did not have an answer to all the comments and questions that were raised, and would come back with something in writing, after it has been discussed at the next subcommittee meeting.

The Chairperson said he looked forward to that being done and to get an update at the next meeting.

4.4. Wreck Removal Agreements

The Chairperson invited Ms Stinne Ivø from the Secretariat to provide the DC with a progress report.

Ms Stinne Ivø, BIMCO, provided a progress report. She said that wreck removals in large scale are rare. As explained in the Agenda Notes, a need for striking another balance around a risk assessment and allocation of risk were raised by the Salvage Committee of the International Group of P&I Clubs back in 2017. Due to various circumstances, there have been periods since then, where work has not progressed, but since the summer it has been possible to find consensus in the subcommittee, including the IG and the International Salvage Union (ISU). The WRECKSTAGE contract was now moving into the finalisation stage. It would be noted that there are comments, numbering and various items that the subcommittee is still looking into. She mentioned that a wreck removal is a very specialised operation and legal field of expertise, but invited the DC to comment on the current stage of the draft. Feedback would be brought back to the subcommittee for them to take into account when they meet later this this month. Ms Ivø welcomed any questions or comments.

There were no comments or questions raised and so the Chairperson concluded on this Agenda Item.

4.5. SYNACOMEX

The Chairperson referred to the ongoing revision of the French Union of Grains and Seeds Trade Charter Party SYNACOMEX and invited Mr Christian Hoppe from the Secretariat to provide the DC with a progress report on this.

Mr Christian Hoppe, BIMCO, introduced the SYNACOMEX project and confirmed that there has been a very good dialogue with SYNACOMEX and Armateurs de France about this project. Armateurs de France were not present at the meeting but had planned to join this meeting so that they could introduce the draft and say a few words about it. Mr Hoppe explained that this project commenced a couple of weeks ago, when a small group of two owners, a broker and a P&I club representative, who were all big users of the form and with up to date knowledge about how it is used, had met online.

The review committee has had a first look through the draft received from SYNACOMEX and will continue when they meet again at the end of November.

From the discussions held so far, there is agreement in the group that it is correct to go back to the content of the 1990 version of the form which SYNACOMEX has used as the basis for their draft, including not to have the box layout which is basically not being used. That said, a number of the suggestions in the draft have been identified, which the group does not consider balanced. These are all new as compared with the 1990 form, SYNACOMEX will be informed accordingly. Mr Hoppe said it would of course be up to the DC if the form should be approved by BIMCO, and the review committee was only going through the form to provide guidance in terms of what feedback should be given to the copyright holders, with a view to them presenting a revised draft which the DC will hopefully be in a position to approve.

Mr Hoppe confirmed that the review committee would also highlight some of the new clauses suggested, including the so-called OFAC Clause, and suggested that the form should rather include the BIMCO Sanctions Clause for Voyage Charter Parties 2020.

Finally, as pointed out by the UK delegation on the Discussion Forum a couple of days ago, the replacement of the War Risks Clause is problematic since it is labelled as the VOYWAR 2013 Clause, but it is in fact not the BIMCO Clause which has been included. The committee will go back and say that this is one of the points where BIMCO will simply not be able to approve a document unless it is the BIMCO Clause that is being included in its original and unamended form.

The subcommittee is meeting again on 30 November, and it would be very useful if delegations could forward any comments they have before that date so that the review committee can consolidate its comments and reach out to SYNACOMEX and Armateurs de France for the next steps.

Mr Magne Andersen, Norway, noted from the meeting papers, as also mentioned by Mr Hoppe, that the idea is to revert to the 1990 version of the form because it is more heavily used than the 2000 version. He went on to say that it is quite extraordinary to revert to an over 30 years old and very crude form when there is a newer form available and that BIMCO has just published its own dry bulk form, the GENCON, which in their opinion would fit the purpose of the SYNACOMEX charter party brilliantly.

Mr Andersen added that some comments have been posted on the Discussion Forum and the Norwegian delegation is in support of all of them. He said a number of the comments could be made in respect of several clauses, but he was going to make only one comment for the record, which related to fumigation. He mentioned that the SYNACOMEX form does not make reference to the IMO recommendations which are very detailed and further the clause does not make it clear that the crew should be put ashore if required, neither does the clause make it clear that the fumigant shall be removed by certified personnel at the discharge port. The responsibility put on charterers in the SYNACOMEX form is vague and very easy to get around and does not offer at all a sufficient protection to seafarers. It should be borne in mind that fumigants are extremely poisonous and that many seafarers have tragically died over the years as a result of ignorance or negligent handling of the fumigant. The GENCON 2022 provides for a fumigation process, which is, in their view, very good and gives to seafarers the protection they deserve. They should therefore insist on the

same standard in the SYNACOMEX form if they are to approve it.

Mr Johan de Haan, Netherlands, raised a couple of points that the Dutch delegation had identified and already been raised by other delegations and also shared their comments on the Discussion Forum. They suggested that, given the fact that BIMCO is being asked to approve the contract, maybe BIMCO ought to have a French lawyer assist in reviewing some of the substantive amendments, given the application of French law, to ensure that those are appropriate.

Mr Michael Wester, Germany, had two brief points. He mentioned that the first has already been mentioned by Mr Hoppe which relates to Clause 29, OFAC Clause, which is very much in charterers' favour and gives them very far-reaching rights. It was not considered acceptable in this way.

The second point was in relation to Clause 17, Bills of Lading, and notably the second paragraph dealing with freight prepaid. This states that the bills of lading shall be released by the owners immediately and on receipt of a swift but the word irrevocably had been deleted. He was wondering whether it made sense and suggested that the deletion was not acceptable.

Mr Christian Hoppe, BIMCO in response to the question regarding the OFAC clause, confirmed that the review committee agreed with the views expressed. In terms of Clause 17, the committee has made the exact same comments as the German delegation. So that will definitely be conveyed to SYNACOMEX and Armateurs de France. He confirmed the suggestion made by the Dutch delegation to involve a French lawyer to make sure that they are covered in that respect.

In terms of the Norwegian comments, Mr Hoppe agreed with everything Mr Andersen had said in terms of the fumigation clause, and thought it was a good idea to basically come forward with that proposal. The new GENCON 2022 is already being promoted but this is a somewhat different issue because BIMCO has been asked whether it would like to approve the standard document of another organisation. Of course, at the end of the day, that is a decision for the DC to make. For now, the review committee has focussed its attention on the draft.

He went on to say that they could of course suggest all the amendments that they would like to see. But his understanding from the review committee was that the 2000 version was simply not being used, but it is definitely something that could be brought back to the committee. They would be meeting at the end of the month. He thought it would be useful if delegations had other comments to make, they should forward them to the Secretariat in time for them to be raised. Mr Hoppe confirmed that SYNACOMEX was actually a significantly used charter party in that trade and thought at least also the review committee was fully behind a revised version of the form.

The Chairperson reminded the DC that, as Mr Hoppe had mentioned, they should either approach him directly or post further comments on the Discussion Forum.

5. Written report of ongoing projects for discussion at the DC spring meeting

The Chairperson referred to the email sent to the DC from the Secretariat which accompanied the Agenda Notes that were circulated, explaining that it was decided to split the review items into two. The items for review and items where it was considered that these could be discussed in greater detail at the DC Spring Meeting. This was to allow more time to discuss fewer projects, and for members to focus on those when preparing for the meeting.

The Chairperson said that unless there were any objections to those items, he would like to move to the next item on the agenda, which was the report items.

6. Report Items

6.1. Promotion and published Contracts and Clauses

The Chairperson referred the DC to Agenda Items 6.1 and 6. 2., 6.1 being the promotion and published contracts and clauses, and invited the DC to take note of the contents in the Agenda Notes. He asked if there were any comments or questions on item 6.1. In the absence of comments and questions, the Chairperson proceeded to the next Agenda Item.

6.2. UNCITRAL Judicial Sale of Ships

The Chairperson introduced this item by recalling that Mr Peter Laurijssen, for a number of years, had taken part in the UNCITRAL negotiations to develop an international instrument addressing the Judicial Sale of Ships, where he professionally represented both the ICS and BIMCO in this important process. Unfortunately, he was unable to join the meeting in May, but had provided a detailed report to keep the DC informed about developments. The Chairperson welcomed Mr Laurijssen to the meeting, thanked him on behalf of the DC and BIMCO, for the hard work he had done and passed the floor to him.

Mr Peter Laurijssen, Belgium, thanked the Chairperson for giving him the floor and for the opportunity to provide a summary on this topic. Mr Laurijssen confirmed he was indeed so fortunate to have had the opportunity to represent the ICS in the United Nations Commission on International Trade Law (UNCITRAL) Working Group VI (Judicial Sale of Ships) and to have taken the floor in that forum speaking on behalf of the International Chamber of Shipping in coordination with BIMCO. Mr Laurijssen confirmed that the Working Group gathered six times in three years with the first session in May 2019. COVID-19 intervened, then there were two online sessions and one hybrid session. Despite these challenges, the UNCITRAL Working Group VI reached its goal in a relatively short period of time with great success. The final text of a draft Convention on the international effects of Judicial Sale of Ships was approved by the UNCITRAL Commission on 3 June 2022. The draft Convention was approved by the UN General Assembly in October.

The aim of the Convention, which is also known as the Beijing Convention due to the preparatory work done by the Comité Maritime International (CMI), is mainly to create legal certainty, and that is inspired by a number of concerns such as:

Failure in some jurisdictions to recognise the effects of foreign judgments ordering the sale of a ship and that failure to recognise the effects may hamper, and in fact does hamper the ship's operation after the Judicial Sale, such as the impossibility to de-register the vessel from its original registry, to re-register the vessel in the registry of choice or the purchaser of the vessel, and also hamper the commercial trading of the vessel because of maritime liens, claims and eventually possibly arrests relating to claims pre-dating a Judicial Sale of the ship.

This is why the draft Convention focuses on a number of issues. The aim is to remedy the lack of legal certainty as to the acquisition of clean title, acquisition of the vessel, free of all encumbrances and the legal uncertainty as to the ability of the purchaser to de-register and re-register the vessel in the registry of his choice. This legal uncertainty has an impact not only on the shipowners but also on the ship financiers, on the banks and also the purchasers' options to finance the vessel and on all kinds of maritime service providers. The crew of the vessel were also quite often creditors in a Judicial Sale. Therefore, the focus was on the issues of clean title, registration, de-registration and trying to avoid what could be termed as destruction of value, because in Judicial Sales of ships, which are usually or quite often technically perfectly in order, they are being sold at a discount and which is a loss for the shipping industry in general and which leads to a limited payout only of dividends to creditors.

Mr Laurijssen said the DC would remember, especially those who were present at the DC meeting four years ago, that there was quite some scepticism on the shipowners' part. In his view, this had mainly to do with the preamble of the original Beijing draft issued by CMI, where in the preamble terms used, such as enforcing maritime claims, enforcing judgements against shipowners, limitation of remedies for challenging the validity of a Judicial Sale and such further terminology, had negative implication or negative connotation for shipowners and hence the scepticism in the beginning. Nevertheless, as was discussed in the previous sessions of this committee, there are more angles to it than just the angle of the shipowner whose vessel is being sold because the party buying the ship is or becomes a shipowner as well.

A third angle into this issue is that, more often than not, shipowners are also creditors in or against the auction revenue of the sale of a ship belonging to another shipowner. So, from that point of view, shipowners also would like to see a maximum revenue in the Judicial Sale where all legal uncertainties have to be eliminated to a maximum extent. These are the considerations that highlighted the necessity for BIMCO and ICS to be present in that forum in the UNCITRAL Working Group VI. The draft Convention should be a truly balanced and an unbiased document, respecting the rights of due process of the defaulting shipowner, ensuring that the acquiring shipowner requires a clean title. He is able to register and de-register the vessel and at the same time trying to maximise the auction revenue for the creditors including the shipowner creditors.

Mr Laurijssen gave a very brief overview referring to the definition of clean title in Article 2. He said this is of crucial importance, because the clean title, which is represented by the issued Certificate of Judicial Sale, is in fact the clean passport of the ship after a Judicial Sale

which allows the new shipowner to trade the vessel freely and without impediments relating to the prejudicial claims.

Article 4 relates to the due process and has to do with the notice of Judicial Sale. All the parties involved are not least the shipowners whose ship is being sold and which is referred to as the owner of the ship for the time being. But also the holders of all the registered charges, hypothecations, mortgages and registered liens, and other charges have to be properly notified. Because of this, the Convention refers mainly to the law of the state of the Judicial Sale but at the same time there are a number of minimum requirements to be contained in the notice of Judicial Sale which are laid down in an appendix to the Convention so as to ensure that the rights of defence are properly respected. It is also very important to understand that the notice of Judicial Sale has an element of publicity, so the Convention provides for a repository to be in place. The role of repository will be taken up within the IMO's GISIS system (Global Integrated Shipping Information System) which can be publicly consulted by anyone. So, there is full transparency and full publicity of what is happening in the light of this Convention.

Once a Judicial Sale has taken place in accordance with all the requirements, formal and material as laid down in the Convention, a certificate of Judicial Sale will be issued. The purchasers of the vessel will have a copy of the certificate in hand and with that they can do whatever they need to in order to de-register/re-register the ship. If there is a threat or an application for arrest, they can fend off that arrest in as much as it relates to claims pre-dating the Judicial Sale.

Article 6 deals with the international effects of the Judicial Sale. It is important here to mention that the scope of the Convention as such is limited only to those Judicial Sales, which, under the domestic law, provide a clean title. So, there might be variations on Judicial Sale in certain jurisdictions. Mr Laurijssen mentioned that he understands that this might be the case in Japan, in Germany or some other jurisdictions where there is a sort of Judicial Sale or a private auction under the auspices of the court, but which does not lead to a clean title. So those Judicial Sales are excluded from the scope of application of the Convention.

Article 7 is titled Action by the Registry and is crucial. It deals with the actions to be taken by the registry where the ship is registered at the time of the Judicial Sale, possibly also a bareboat registry if the vessel was at the same time registered in a bareboat register and the actions to be taken by the registry of choice of the purchaser of the vessel. Quite often there is a nomination or an assignment after a Judicial Sale, and it will be necessary to produce the certificate of Judicial Sale and then register it with the state party which then has to act in accordance with the provisions of Article 7 of the Convention.

Article 8 is titled No Arrest of the Ship which is also crucial and important. As mentioned earlier, any application for the arrest of a ship in a state party to the Convention has to be dismissed upon presentation of the certificate of Judicial Sale. The same goes for a ship which is arrested in a state party. It has to be released on the face of a certificate of Judicial Sale.

Article 9 deals with the possibilities to get out of the mandatory regime of the recognition of the international effects of a Judicial Sale. It also deals with the jurisdiction to avoid and suspend a Judicial Sale. These are submitted to the exclusive jurisdiction of the state of the Judicial Sale, so domestic law applies here, in order to prevent conflicts under private international law.

Article 10 deals with the circumstances in which the Judicial Sale has no effect and the main trigger here to avoid the effects of a Judicial Sale is where the Judicial Sale was manifestly contrary to the public policy of a particular state party.

Article 11 deals with the repository. The repository plays a crucial role in terms of transparency and publicity. As previously mentioned, IMO has volunteered to take a big role via GISIS.

Mr Laurijssen reiterated that the final wording was approved by UNCITRAL Working Group VI in June this year. Subsequently, a recommendation was made by the UNCITRAL Commission to the General Assembly of the UN. The General Assembly gathered in September this year, and in October the text of the draft Convention was approved. UNCITRAL is now working on the official translations. They already have an English version, because that was the working language of the working group and also a French translation. The other UN languages are Spanish, Russian and Chinese, so they are working on those languages. A signing ceremony is earmarked to take place in the summer of next year 2023, in Beijing, COVID-19 permitting. If that is not the case, then it will probably be signed at the headquarters of the UN in New York. Mr Laurijssen stressed that as per Article 21 of the Convention, which shall enter into force 180 days after deposit of the third instrument of ratification, acceptance, approval or accession. This means there have to be only three states ratifying the Convention, and it will enter into force between initially those three states, because one of the main principles of the Convention is reciprocity. So state parties only recognise Judicial Sales which have taken place in other state parties in order to avoid so-called rogue states imposing the effects of their Judicial Sales on non-state parties. It is very likely that next year or in 2024, the Convention will enter into force. It is also an important and delicate issue for the delegates representing EU member states because, to the extent that the Convention will deal with the recognition of judgements, it is a matter of EU competence rather than member state competence. But the Convention has been designed so that in principle this is not the case and instead remains within the domestic law of the party in question. That said, the EU Commission has indicated that it would be assessing the feasibility of the EU becoming a party to the Convention or whether perhaps it would in fact be regarded as a matter of member state competence. They will also arrange a workshop in a second or third semester of next year and then, after the Convention has been signed in Beijing or New York, the EU Commission will decide whether to allow the Member States to accede or to maintain on the other hand that it depends on the EU Council's decision to accede as a bloc to the Convention.

Mr Laurijssen quoted what Mr Larsen, had said three weeks ago at the CMI conference in Antwerp, where the draft Convention was also an important topic. *"We are now reaching the finishing line of what we consider a well drafted and a broadly acceptable and legally sound international instrument. For the same reason, we hope that the UNCITRAL General*

Assembly will approve the draft Convention, and that it will quickly gain wide acceptance and you can count on BIMCO support in promoting it".

At the same forum three weeks ago, Ms Leyla Pearson present here today, also presented there on behalf of the ICS, and said, amongst other things, that the ICS Maritime Law Committee has considered the final text and concluded that an appropriate balance has been achieved and that the Convention should be supported by the ICS and promoted in due course when it is open for ratification. Once the new Convention has been officially adopted and open for ratification, the ICS will be asking its members, which are the National Shipowners Associations, to urge governments to ratify it.

To conclude, Mr Laurijssen expressed the hope that BIMCO and ICS will continue their joint efforts and the teamwork in making this Convention a success to the benefit of the entire shipping community.

The Chairperson thanked Mr Laurijssen for the excellent summary and congratulated him on a job well done.

7. Documentary Committee meetings in the future

The Chairperson referred to the Agenda Notes and, notably, that there was a plan to have a strategy session on the DC infrastructure and processes at the next meeting in April 2023. The reason for this is to ensure that BIMCO is able to provide the contracts and clauses needed by the industry going forward and in an increasingly complex and fast moving regulatory and geopolitical environment. He said his intention was not to embark on the discussion already at this stage but merely to let the DC know that this was an issue that a lot of importance was attached to, and which would be followed up ahead of the next meeting with some questions for the DC's considerations to guide that discussion. He said he looked forward to this in April unless there were any questions or comments at this stage.

Mr Jesper Sebbelin, Denmark, mentioned that the Danish delegation, in light of the complexity of contracts and clauses being developed, suggested going forward that a project description be developed at an early stage in the process of the documentary work. This would have a dual function. It would work as a project description which would provide the subcommittees with a direction of what is to be achieved as a result of the work and simultaneously with the development of the Explanatory Notes, it would create a better structure of the work.

Secondly, the Danish delegation considered this way forward would be beneficial to get more input from the DC during the development of a contract or a clause.

The Chairperson responded and said he would definitely take that into account.

8. Future Work Programme and Proposed New Projects

The Chairperson mentioned that the Secretariat will commence the revision of HEAVYLIFTVOY and, also, look into the feasibility of developing an In-water Hull Cleaning Contract and an Offshore Installation Contract. In addition, the work on developing more carbon clauses to the industry would of course continue. The subcommittee established to develop a SUPPLYTIME Annex for Dynamic Positioning is also looking into whether an additional Annex regarding Ocean Towage and Salvage Support should be developed simultaneously. If so, the DC would be kept updated via the Discussion Forum.

The Chairperson drew the attention of the DC to the list of proposed new projects posted on the Discussion Forum on 28 October. As explained in the Agenda Notes, the list was cleaned up and some new suggestions made to the DC had been added. He encouraged all members to review the list and any other projects they might wish the DC to embark on, so that when it is considered which projects should be given the green light, the DC has a full picture of these proposals. Some comments have already been received on the Discussion Forum in this respect and he thanked members for these.

The Chairperson asked for any comments or observations on Agenda Item 8.

Mr Philip Stephenson, United Kingdom, had one suggestion which was in relation to carbon clauses. He said there was quite a lot of interest in the suggestion for a reporting CO_2 Emissions Clause, which he also thought to be quite a topical and high priority for the Carbon Clauses subcommittee.

Mr Sacha Patel, United Kingdom, mentioned the Russian Oil Cap scheme which would present novel issues for shipowners and charterers. It is a service restriction, so technically it only applies to insurers, flags, banks, etc. but obviously there will be a knock-on effect. He wondered whether it was worth for BIMCO to look into whether the existing clauses remain fit for purpose in light of this price cap and whether it was worth starting some work to address that issue.

The Chairperson thanked members for their comments and said that the Secretariat would take these into account. He then went on to the next Agenda Item.

9. Other Organisations

Next item on the agenda is a report from other organisations. The Chairperson introduced the item and handed the floor to Mr. Dimitris Dimopoulos from INTERTANKO.

Mr Dimitris Dimopoulous, INTERTANKO, stated that there was no particular INTERTANKO work that he wanted to mention. That said, INTERTANKO was pleased to be part of the ASBATANKVOY review and also in support of the adoption of the CII Operations Clause. He stated that their DC and their Commercial Markets Committee were meeting the following week in Singapore, so they would be reviewing the Clause as well for any Explanatory Notes. Other than that, INTERTANKO is continuing its work with the BIMCO Secretariat and willing to assist with any common challenges.

Ms Leyla Pearson, International Chamber of Shipping, expressed gratitude on behalf of ICS for all the excellent work that Mr Laurijssen had undertaken on behalf of BIMCO and ICS when representing shipowners' interests in the matter of Judicial Sale of Ships. Ms Pearson reported that the General Average Guidelines for the 2016 York Antwerp Rules were duly approved by the CMI plenary session and Assembly in Antwerp on 21 October. In addition to that, the Assembly had also confirmed a change to the interest provisions for Rule 21 B of the 2004 and 2016 Rules, in respect of interest on losses allowed in general average, and the wordings being amended to provide that the rate for calculating interest accruing during each calendar year shall be 2% per annum added to the US prime rate as published in the Wall Street Journal for the first banking day of the calendar year. The reasons for altering the existing rule were twofold. The current version of the 2004 rules required the interest rate to be set a new each year by the Assembly, after preparation of a respective proposal by a CMI standing committee. This was deemed to be inconvenient, even more so, perhaps because the 2004 Rules are not used very much.

For the 2016 Rules, a new rule was necessary because the old wording based the mechanism for determining the interest rate on LIBOR, which since the end of 2021 is no longer officially set for many currencies and will completely cease to be set from next year. So CMI adoption of the new rule on interest is effective as of 21 October 2022, and it will now be considered how the rule will be publicised to parties that incorporate both the 2004 or the 2016 Rules, and also in the context of the 2016 Rules, how the rule change will affect adjustments that are already under way, but where interest is likely to be decided after LIBOR ceases to be operative.

Mr Fulvio Carlini, FONASBA, reported that FONASBA was working a lot in promoting the new GENCON 2022. FONASBA would be holding a webinar together with the Institute of Chartered Shipbrokers to promote the new GENCON 2022 with the ship broking community.

10. Any other business

Ms Stinne Ivø, BIMCO, confirmed that the Secretariat was planning more seminars on GENCON 2022 and would hopefully, soon, be able to provide more information on when these seminars would be scheduled. There was also a suggestion to have a booklet which Ms Ivø thought was a good idea and a good to follow up on.

Mr Søren Larsen, BIMCO, updated the DC on GENCON 2022 and said there was a webinar held a few weeks ago which had a massive sign up with close to 1000 people, with about 650 people attending. He further mentioned that there was a request from Japan to have roadshows on GENCON 2022 and the same with China and Singapore

Mr Wisse confirmed that the Netherlands would be more than happy to host one of the GENCON 2022 seminars, so they would like to join forces with the BIMCO on this.

11. Date and Place of Next Meeting

The Chairperson announced that the next DC meeting would take place on 20 April 2023 and would likely be held in Copenhagen again. The DC would be kept informed and sent

more details shortly. The Chairperson made a personal vote of thanks to the Secretariat for the amazing support he has been given and for organising the event in the BIMCO House. He also thanked everyone for their valuable contribution and robust debate, noting that a large number of people participated at the meeting with a variety of insightful comments. He concluded by saying it was a great pleasure to meet everyone in person again and looked forward to seeing everyone in April 2023.