BIMCO
Documentary Committee Meeting

18 May 2022

In the chair: Mr Nick Fell, Singapore

Attendance List

Executive Committee

President
Ms Sabrina Chao, Hong Kong

Immediate Past President
Ms Sadan Kaptanoglu, Istanbul

Vice-President
Mr Georgios Makrymichalos, Maroussi

Member
Mr Masahiro Max Takahashi, Tokyo

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 Gregory Fossion, Antwerp

BRAZIL
Owner Members
Mr Luís Resano, Rio de Janeiro

CANADA
Owner Members
Ms Lisa-Marie Perrella, Montreal

CYPRUS
Owner Members
Mr Michael Kazantjis, Limassol

DENMARK
Owner Members
Mr Glenn Bennigsen, Copenhagen

Club Members
Ms Henriette Ingvardsen, Danish Shipping

FINLAND
Owner Members
Ms Kirsi Ylärinne, Helsinki

GERMANY
Owner Members
Mr Peter Eckhardt, Hamburg
Mr John Freydag, Hamburg

Club Members
Mr Michael Wester, Schutzverein Deutscher Rheder

GREECE
Owner Members
Mr Panos Zachariadis, Piraeus

INDIA
Owners Members
Mr K. Rajasekaran, Chennai

JAPAN
Owner Members
Mr Hiromasa Suzuki, Tokyo

THE NETHERLANDS
Owner Members
Mr Ralf van der Zalm, Rotterdam

Club Members
Mr Johan de Haan, Noord Nederlandsche P&I Club

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

Club Members
Mr Hans Nicolai Edbo, the Norwegian Shipbrokers' Association
Mr Kristian Valevatn, Skuld
Mr Magne Andersen, Nordisk Skibsrederforening

Mr Tim Howse, GARD AS
Mr Viggo Bondi, Norwegian Shipowners' Association

POLAND
Owner Members
Mr Marcin Dziewa, Szczecin

SINGAPORE
Owner Members
Mr Andrew Hoare, Singapore

SPAIN
Owner Members
Mr Juan J. Fernández-Ricoy, Madrid

SWEDEN
Owner Members
Mr Robert Almström, Gothenburg

Club Members
Mr Martyn Hughes, The Swedish Club

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

TURKEY
Owner Members
Dr Fehmi Ülgener, Istanbul

Club Members
Mr Bahadir Tonguc, Turkish Shipbrokers Association

UNITED ARAB EMIRATES
Owner Members
Mr Shailesh Bildikar, Dubai

UNITED KINGDOM
Owner Members
Mr Roderick White, Sunbury on Thames

Club Members
Mr Alan Mackinnon, Thomas Miller P&I Limited
Mr Hannah Gilbert, UK Chamber of Shipping
Mr Judy Binnendijk, The Britannia Steam Ship Insurance Association
Mr Konrad Heene, London P&I Club

Mr Philip Stephenson, The Standard Club Europe
Mr Sacha Patel, Steamship Insurance Management Services Limited
Ms Suzanne Byrne, West of England
Mr Tim Springett, UK Chamber of Shipping

UNITED STATES
Owner Members
Mr Daniel Carr, Houston

CO-OPTED
Mr Don Murnane, Maritime Law Association of the United States, New York
Mr Ian Perrott, Independent OSV Consultancy
Mr Richard Williams, Professor School of Law, Swansea University

OBSERVERS
Mr Dimitris Dimopoulos, INTERTANKO
Mr Jonathan Williams, FONASBA
Ms Kiran Khosla, ICS
Ms Camilla Slater, International Group of P&I Clubs
Mr Nick Shaw, International Group of P&I Clubs

Carbon Clauses Subcommittee
Mr Alessio Sbraga, HFW

GENCON 2022 Subcommittee
Mr John Weale (Chairperson)

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 Grant Hunter, Director Standards, Innovation & Research
Mr Christian Hoppe, General Counsel
Ms Nina Stuhrmann, Manager, Project Manager, Contracts & Clauses
Mr Mads Wacher Kjærgaard, Project Manager, Standards, Innovation & Research
Ms Charlotte Lord, Chief Communications Officer
Ms Karin Petersen, PA to Secretary General and CEO
Ms Elizabeth Ahlefeldt-Laurvig-Lehn, PA to Deputy Secretary General

Minutes of Documentary Committee (DC) Meeting
18 May 2022 – 13:00-16:10

The Chairperson welcomed everyone present to the first physical DC meeting since the start of the pandemic and expressed his thanks for the excellent dinner the night before. A special welcome was extended to Mr Panos Zachariadis, attending his first DC meeting as the representative for Greece, who also serves on the Carbon Clauses subcommittee. The following observers were also welcomed:

Mr Dimitris Dimopoulos, INTERTANKO
Mr Jonathan Williams, FONASBA
Ms Kiran Khosla, ICS
Mr Nick Shaw and Ms Camilla Slater, International Group of P&I Clubs

as were Mr John Weale in his capacity as Chairperson of the GENCON 2022 subcommittee and Mr Alessio Sbraga from the Carbon Clauses subcommittee.

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

1. Approval of minutes of the Documentary Committee meeting held on 23 February 2022

In the absence of any comments, the draft minutes of the DC meeting held on 23 February 2022 were accepted as a true record and signed by the Chairperson.

2. Items for Adoption

The Chairperson advised that the DC's adoption process is still under consideration and will be brought up for discussion at the next scheduled meeting. With regard to the future meeting structure of the DC, the committee was informed that a review is being conducted to ascertain how to attain the best product by assimilating all the positive aspects from online meetings during the pandemic whilst ensuring alignment with the schedule of the other BIMCO meetings. The Chairperson undertook to revert with a clear recommendation to the DC in November 2022.

2.1 IOCD Clause for Time Charter Parties

The Chairperson reminded the DC that the original intention was to produce a time charter and voyage charter party IOCD Clause but at the last DC meeting, the committee had supported the subcommittee's conclusion to only work on a time charter party clause. In the absence of the Chairperson of the subcommittee, Ms Natalya Skjelmose, the secretariat was asked to give an update. Ms Nina Stuhrmann, BIMCO reported on behalf of the subcommittee that the time charter party clause consists of two sections, the first of which addressed the delays caused by the disease. To reflect the nature of a time charter party,

where the charterers have control over the ship and designate ports of call, it is the charterers who are liable for delays. However, if the delays are caused by the owners or an earlier employment of the ship, the owners will be responsible.

The second section of the clause addresses the situation where the owners have the right to refuse a port call. To prevent any misuse of this right, which should only be a last resort, the threshold has been set high and is based on a risk assessment. Any disputes regarding the validity of the assessment will be based on the information the owners had available when making the decision. There was no obligation on the owners to do everything possible regarding supply of available Preventative Measures.

With regard to some of the comments received on the Discussion Forum, it was reported that the subcommittee had reviewed the definition of "disease" from various perspectives including its use by other organisations. The main difficulty was that the clause should cover both epidemics and pandemics, which are fundamentally different in their nature as well as their potential consequences to society and individuals.

It was stressed that the interpretation of "highly infectious" or "serious illness" should be done on a case-by-case basis based on the plain meaning and common understanding of the terms. Also, the importance of the clause not being triggered for minor diseases was highlighted.

Mr K. Rajasekaran, India was of the opinion that a voyage charter party required a similar clause. He also raised the issue that if the amount in section (b) was left blank, the owners would be liable and suggested that the owners should be protected on a 50% basis.

Mr Glenn Bennigsen, Denmark asked if the fact that the risk exposure was measured according to the level of risk at the time of entering the time charter party, could be highlighted more clearly in the clause.

Mr Magne Andersen, Norway advised that the Norwegian delegation supported adoption. However, whilst appreciating the difficulty in establishing appropriate triggers for the clause, the proposal was made to clarify those definitions by using WHO recommendations or those with similar authority. The subcommittee was also asked to consider adding a comma in the first line of the second paragraph of subclause (c):"…caused by the Owners, or ….".

Andrew Hoare, Singapore, said that the Singapore delegation had two small comments. The first was to align the definition of "disease" with the title of the Clause by removing "highly" infectious. It was predicted that the inclusion of "highly" would add an unnecessary degree of complexity and would require a further definition. The next point was a request to add "acts or omissions" in the second paragraph of subclause (c), so as to broaden the definition of what the owners or owners' agents do not or may not perform.

Ms Nina Stuhrmann, BIMCO highlighted the importance of the Clause being robust and applicable at the beginning of any future pandemics, hence the subcommittee's choice of general definitions. The DC was assured that the terms in question will be explained in

greater detail in the explanatory notes to ensure a common understanding. The use of WHO definitions could make the Clause impractical as the terms may be too restrictive and may not be applicable to a new pandemic. In addition, there could be a delay by international organisations in the identification of the necessary definitions to cover a new pandemic. The inclusion of "highly infectious" was considered by the subcommittee to be necessary to prevent the clause being triggered for common ailments such as influenza.

In response to the comment by Mr K. Rajasekaran, Ms Stuhrmann replied, that in accordance with feedback from charterers and the experience obtained during the recent pandemic, there was no need for a voyage charter party clause as the Force Majeure Clause should suffice.

On the subject of Preventative Measures, the decision had been taken by the subcommittee to limit the owners' obligation as not every available measure should be expected to be supplied onboard but access to supplies would have to be available for example at ports. This would be explained further in the explanatory notes. The subcommittee would also look into fine-tuning the Clause to include the editorial comment by Norway and the point raised by Singapore on the "acts or omissions." Further, on the subject of Preventative Measures, the parties were expected to enter an amount based on the individual trade.

Mr Glenn Bennigsen, Denmark reiterated the Danish delegation's request to highlight more clearly in the Clause that the risk exposure is measured according to the level of risk at the time of entering into the charter party. It was agreed that the subcommittee would review the request and change the Clause accordingly.

Mr Michael Wester, Germany queried the definition of "highly infectious" and "serious illness" and stressed that some authorities may quarantine the ship even if these terms are not applicable. However, in these circumstances the Clause would not be triggered, and the owners would not have the right to refuse entry into port owing to risk of exposure.

In response, Ms Nina Stuhrmann, BIMCO acknowledged how some jurisdictions could be strict and quarantine ships but emphasised the subcommittee's decision to retain the terminology to avoid setting the threshold too low, which could lead to a misuse of the Clause. The explanatory notes would explain in more detail how a jurisdiction's decision to quarantine a ship would implicitly acknowledge the presence of a "highly infectious" disease according to their judgement.

Mr Michael Wester, Germany highlighted how the potential disparity between the objective standard and the decision of an authority would not be solved by wording in the explanatory notes. As a result, the owners could lose the discussion against unreasonable jurisdictions and authorities.

Mr Alan Mackinnon, United Kingdom advised that the UK Club is not of the opinion that the IOCD Clause would prejudice the indemnity cover. However, if the threshold was placed too low thereby resulting in a more frequent trigger of the Clause, the indemnity could become an issue as P&I Clubs may then not cover.

The Chairperson concluded that the IOCD Clause achieves the fine balance required and, subject to some fine-tuning, proposed the adoption of the Clause. On behalf of the DC, he thanked Natalya Skjelmose and the subcommittee for the excellent work. As there were no objections to such an adoption, the IOCD Clause was therefore considered adopted subject to fine-tuning.

2.2. Emissions Trading System Allowances (ETSA) Clause for Time Charter Parties

The Chairperson introduced the topic by reminding the DC of the urgent need of the Clause and that at their last meeting, the decision had been taken to delay the adoption of the ETSA Clause owing to the uncertainty of the EU's position. Mr Peter Eckhardt's hard work and commitment as Chairperson of the Carbon Clauses subcommittee was acknowledged.

Mr Peter Eckhardt, Chairperson of Carbon Clauses subcommittee advised that the subcommittee had reviewed all the comments and prepared a revised draft. The decision had been taken by the subcommittee to keep the Clause generic and to adopt Spain's proposal to replace CO_2 with GHG to help ensure its applicability to any potential trading systems in the future. Mr Eckhardt mentioned that the ETSA Clause was required by 2024 and that in the view of the subcommittee, the Clause was now ready for adoption.

Mr Magne Andersen, Norway advised that the Norwegian delegation was in favour of adoption but would like to recommend consideration of the inclusion of an indemnity provision in respect of liabilities arising under bills of lading as in the CII Compliance Clause subclause h (ii).

Mr Panos Zachariadis, Greece confirmed that after the recent EU developments, the Greek delegation no longer had any objections to the adoption of the ETSA Clause especially as the regulation would now come into force in 2024. However, he emphasised that the CII Compliance Clause was an even higher priority.

Mr Glenn Bennigsen, Denmark informed the DC that the Danish delegation was in favour of adoption and emphasised the necessity of speed owing to the proliferation of homemade clauses. In connection with Norway's request for an indemnity, it was felt that there was sufficient coverage for owners under subclause (d).

Andrew Hoare, Singapore said that in view of Singapore's strong stance to defer the Clause at the last meeting, he would like to confirm that the Singapore delegation now supported adoption of the Clause. Although the efforts of the subcommittee to future proof the Clause by making it as generic as possible were recognised, there was still no guarantee that it would cover the different reconciliation mechanisms of other regimes.

Mr Juan J. Fernández-Ricoy, Spain confirmed that Spain supported the swift adoption of the Clause subject to the text including GHG instead of only CO_2.

Mr Peter Eckhardt, Chairperson of Carbon Clauses subcommittee acknowledged Singapore's comment in connection with uncertainty of new regimes but reiterated that the subcommittee had geared the Clause to be as generic as possible to provide the necessary

guidance.

There was a bit of discussion regarding Norway's request to broaden the indemnity, and the Chairperson's conclusion was that subclause (d) covered the point and that a wider indemnity would be difficult to introduce.

Mr Panos Zachariadis, Greece highlighted that the main difference between the ETSA Clause and the CII Compliance Clause was that if the charterer failed to deliver the required allowance, the amount of damage to the owner was very specific.

The Chairperson thanked everyone for their comments and in view of the general endorsement, he proposed the adoption of the ETSA Clause subject to the fine-tuning as suggested by the Spanish delegation. Mr Peter Eckhardt and the members of the subcommittee were thanked for their hard work on this time critical clause. As there were no objections to such an adoption, the ETSA Clause was therefore considered adopted subject to fine-tuning.

2.3. CII Compliance Clause for Time Charter Parties

The Chairperson emphasised that the CII Compliance Clause for Time Charter Parties was one of the most complex items that the DC had ever had to contemplate. Since the last DC meeting, a draft Clause had been posted on the Discussion Forum and a number of comments had already been received. Prior to handing over to Mr Peter Eckhardt, Chairperson of Carbon Clauses subcommittee, the following comments were made by the Chairperson to highlight the seriousness of the situation:

a. The introduction of this legislation fundamentally would change the nature of the relationship between charterers and owners. So, it was inevitable that the Clause would cause a degree of concern to all concerned.
b. As the underlying legislation was imperfect and flawed, the Clause could never be perfect and satisfy everyone.
c. The inevitability of the combination of a complex topic and complex legislation resulting in a complex Clause was stressed.
d. The urgent demand for the Clause prior to the legislation entering into force at the beginning of 2023 was highlighted as was the need to combat the alternative clauses already on the market.
e. If the BIMCO CII Compliance Clause was not adopted now or shortly, then when would it be adopted, and if not by BIMCO, then by whom?
f. The concept of the Clause being subjected to an automatic review every two years was raised. A precedent of this practice was set by the War Clauses, which were reviewed every decade.

Mr Peter Eckhardt, Chairperson of Carbon Clauses subcommittee introduced the topic by acknowledging the level of complexity in the Clause and the mechanisms. The obligation of owners under the time charter regime would now be placed on charterers. A warm thank you was extended to all members of the subcommittee including the secretariat for all the hard work put into the development of this Clause. The DC was advised that to date, the

subcommittee had met once a week for the past three months, during which time their approach had changed several times.

In order to reduce shipping's CO_2 emissions, the IMO had introduced the CII regulation, the framework of which was extremely complicated especially under time charter parties owing to the clash with the current traditional practices in the industry. As from 2023, owners would have to relay to charterers the obligation to include emissions into their commercial decisions. The CII regulation has changed how charterers are going to trade the vessel as the charterers are the ones giving the orders to the vessel regarding the distance to sail and the speed of the vessel, both of which affect the CO_2 emissions.

The draft Clause developed by the subcommittee should not be considered as a compliance clause as such because both parties were allowed full flexibility to agree to their individual target on CO_2 emissions. The Clause does not prescribe how much CO_2 could be emitted nor what rating should be retained as this is left open to the parties to agree upon. The subcommittee expected the CO_2 emissions would become part of the main terms when the parties negotiate the amount of CO_2 per nautical mile under the time charter and this might influence the charter hire.

With this flexibility in place, the default position of the Clause enables compliance under the time charter period by achieving a C rating. In the opinion of the subcommittee, the default position of the Clause should be one that reflect the target emission required by the IMO. For the subcommittee, it is important to keep as much flexibility as possible under the Clause and to establish a regime that would allow the parties through cooperation to meet the agreed targets without being too restrictive. The Clause gives full flexibility to charterers to order the vessel at any speed, but nevertheless the overall target will have to be achieved by ensuring that the average level of emissions reaches the agreed level at the end of the calendar year or end of the charter, whichever comes first. In other words, a voyage with high emissions would have to eventually be compensated by a voyage with lower emissions.

At the same time, the subcommittee has tried to mirror in the Clause, the responsibilities and risks which are already existing in the time charter party. For example, the speed and consumption warranties will remain the same as the vessel has not changed, and the charterer and the owner have negotiated these terms as part of the agreement.

With regard to the comments on the Discussion Forum, the Clause has so far provided all the necessary answers. The Clause is designed as a plug-in clause which fits with the other provisions of the time charter party.

The Chairperson of the subcommittee concluded that the Clause was ready for adoption but recognised there may be some aspects that could require fine-tuning such as the indemnity provision, which was closely linked to subclause (g). However, the DC chairperson advised that if the indemnity was deleted, then owners could become stricter with charterers and could begin to monitor how the charterers plan to meet the agreed emissions target, and might refuse to follow charterers' orders more readily.

The importance of getting the Clause into the market was reiterated and the DC was advised

that if fine-tuning was required, the subcommittee had the necessary toolbox. The DC was reassured that the explanatory notes would be very extensive and include not only operational guidance and useful comments on the Clause but also the basic version of a CII calculator developed by the subcommittee. Owing to the complexity of the issue, the Clause would only be published once the explanatory notes have been finalised to ensure that all parties understood the fundamental change in the role of the charterer and the owner.

Mr Ralf van der Zalm, The Netherlands congratulated the subcommittee on the good work on such a complicated topic with so many variables and confirmed that the Dutch delegation was ready for adoption. With regard to fine-tuning, the subcommittee was asked to consider clarifying or deleting "owners undertake planning voyages" in subclause f(i)(1) as that could both cover scheduling or the Master's planning of the voyage.

Mr Glenn Bennigsen, Denmark thanked the subcommittee for their hard work on this very complex subject. The committee was advised that the composition of the Danish pre-DC group consisted of owners, charterers, and owner/charterers as well as different sectors ranging from small coaster owners to the largest container group. He reported that the owners were in favour of adoption, whilst the charterers were of the opinion that the Clause was unbalanced in some sections. The Danish chartering sector was concerned with the issue of off-hire as well as the indemnity, which appeared to be unlimited with regard to the claims that could come forward to the charterers. The Danish delegation was of the opinion that the Clause should be commercially acceptable to all parties, which is currently not the case. Mention was made of a few more small issues, but they were not specified.

The Chairperson asked what alternative solution the Danish charterers had to the off-hire issue.

Mr Glenn Bennigsen, Denmark advised that the charterers did not think that they should be responsible for emissions during off-hire as that could extend for any length of time ranging from for example two days to four months.

Mr Philip Stephenson, United Kingdom, had a couple of fine-tuning suggestions, the first of which was to include in subclause (c) after "as from the Effective Date" the wording "or date of commencement of charter party, whichever the later". This would ensure that the charterer, who was expected to operate the vessel in a certain way would not be bound to do so before the commencement of the charter party if the charter party was commencing after the 1 January 2023. The second fine-tuning point for consideration was under subclause (h) on deviation as to whether or not a clause similar to the IOCD Clause should be added stipulating that the charterers shall ensure provisions of subclauses (g) and (h) are incorporated into all sub-charters, bills of lading, waybills and other documents entering into contracts of carriage that may be issued in relation to the charter party. If such a clause was included, it would avoid P&I Club cover being prejudiced for deviating under a contract of carriage.

Mr Andrew Hoare, Singapore advised that the Singaporean delegation recommended deferring adoption owing to insufficient knowledge on this complex topic. It was predicted that many charterers would find it difficult to support adoption though container operators

on long term charters and LNG charterers may find it acceptable. However, dry cargo operators or tanker operators taking ships on three to five months' optionality and normal trading houses would find this very complex with the danger of creating an antagonistic relationship through the charter. The proposal of allowing more time and education was put forward by Mr. Andrew Hoare, so as to avoid the majority of charterers just deleting the unacceptable sections thereby diminishing the true value of the Clause. An interest in the BIMCO calculator was expressed but in conclusion the Singaporean delegation whilst understanding the urgency was of the opinion that it was premature to consider adoption of the Clause.

The Chairperson reiterated that it was impossible to avoid complexity in the Clause owing to the level of complexity of the legislation. The DC was advised that as soon as the Clause was published with explanatory notes, an extensive education campaign would be undertaken by BIMCO.

Mr Glenn Bennigsen, Denmark expressed an understanding of the Singaporean delegation's view on insufficient knowledge and proposed that the explanatory notes should be sent out prior to adoption to avoid voting in ignorance. It was also mentioned that the charterers in Denmark noted an imbalance in the Clause in that owners had due diligence obligations whereas the charterers had a strict obligation.

Mr Panos Zachariadis, Greece pointed out that the IMO had introduced three types of regulations to reduce CO_2 emissions from ships: the EEDI which was the design regulation, the EEXI which were technical measures aimed at owners and the operational measures, CII, that were targeted at the operator of the ship, which in time charter parties was the charterer. Hence the new requirements on charterers when dealing with this complex regulation.

Mr Zachariadis, recalled how the subcommittee tried to shorten and simplify the Clause but without success as simplicity could not address the complexity of the regulation. It was anticipated that after the regulation had entered into force, the fact that the Clause addressed everything would be appreciated by all parties. He appreciated that Singapore may be correct in that the charterers might delete sections of the Clause, but he predicted that once compliance to the regulation was required, the deleted sections would have to be restored.

On the subject of off-hire, which had been discussed extensively by the subcommittee, it was recognised that off-hire has consequential damages for charterers which were not compensated and was a commercial risk, which also applied to the CII. Mr Zachariadis, highlighted that if fuel consumption during off-hire was excluded, the Clause would become impossible because then there would be two different CIIs: one for the fuel not included in off-hire and one for the fuel consumed during off-hire. This would result in the CII Compliance Clause not being synchronised with the IMO regulation, which was not to be recommended.

The Chairperson re-emphasised that the Clause is a complete regime for the CII legislation.

Mr Hiromasa Suzuki, Japan highlighted how external factors such as weather conditions and certain navigation factors could affect the CO_2 emissions and proposed consideration of owners providing a warranty of the vessel's CO_2 emissions under certain operating conditions. The second point raised by the Japanese delegation was a request to review the indemnification scheme under which owners currently have rights.

Mr Frank Sanford, Switzerland endorsed the comments already raised from the charterers' point of view as the clause was legally unbalanced in the obligations, which could cause major problems. The Swiss delegation suggested finding a solution based on historical data of the vessel's actual fuel consumption instead of relying on good faith to exchange information on the practical side of operating the vessel. The lack of provisions regarding the changeover point on the redelivery of a ship from charter plus when a ship moved from charter to charter were raised.

Mr Juan J. Fernández-Ricoy, Spain strongly supported the Greek position in favour of adoption especially in view of the abundance of poorly drafted clauses currently on the market. The Spanish delegation advocated for an urgent adoption of the Clause in the hope that some compromise could be reached on off-hire and indemnity.

Mr K. Rajasekaran, India highlighted the conundrum arising from the complexity of the CII regulations that would soon enter into force without the full understanding of all stakeholders. The situation after January 2023 regarding current time charter parties that have already been signed was also raised. The Indian delegation advocated for the adoption of the Clause to ensure its availability for owners and charterers to negotiate its inclusion in time charter parties.

Mr Peter Eckhardt, Chairperson of Carbon Clauses subcommittee explained that once the Clause had been adopted, drafting work would commence on the explanatory notes, which could end up being a small booklet. With regard to speed and consumption, there should be sufficient provisions in the charter party but if additional data on the vessel was required, it would have to be agreed during the negotiations. The due diligence obligation for the owners for the performance of the ship had not changed and was underlined by SEEMP.

Mr Peter Eckhardt reiterated the Greek delegation's view of the danger of creating two different regimes running in parallel to deal with off-hire. The DC was advised that after extensive discussions on the topic of off-hire, the subcommittee had concluded that the problems would outweigh the advantage. It was highlighted that a plug-in clause could not be expected to deal with all the different charter periods and circumstances, all of which would have to form part of the negotiation process. This would be outlined in the explanatory notes.

The example was given of how the owners and the charterers could agree that the owners should use shore power to reduce emissions during dry docking. On the subject of consequential damages, it was stressed that the unbalanced Clause was the result of the very unbalanced requirements. The purpose and commercial value of the Clause was to encourage cooperation between the owner and charterer to share information and work together.

Mr Alessio Sbraga, Member of the Carbon Clauses subcommittee explained that removing the indemnity would mean that there would still be actionable rights on the basis of the existing subclauses. As the Clause currently stands, there are obligations and undertakings by the charterers against which the owners could seek to claim damages for breach of those undertakings. The benefit of subclause (i) is that it sets out the types of damages that are likely to be recoverable. So, to some extent it goes a little bit further than normal damages. The current wording is not a traditional indemnity which bypasses the normal contractual principles. Whether it is a true indemnity will depend on the construction of the Clause, the construction of the charter party and the foreseeability of the risk.

The addition of the words "any negative impact on the CII Rating which adversely affects the future employment" does not impact the type of loss. So, the subclause states what kind of loss can be claimed. This is included in response to a request by some DC members for it to be clear as to what could be covered. As matters currently stand, there are no enforcement sanctions for CII. So, the reality is the likely loss that is going to be suffered will be a consequential loss to the vessel to future losses under employment charter rates, for example. There is a likely loss, but it does not necessarily mean that on the basis of the wording, there will be a loss. If we take two examples, if a vessel is actually redelivered with a D rating, it depends on the market whether there has actually been a loss suffered, so it would not have been caught by “adversely affects the future employment”.

By the same token, an owner may already have negotiated the charter party whereby under the first charter party he requires a B rating at re-delivery. But then under the subsequent charter party, he requires a C rating. So again, there is not an actual loss there. It will depend on specific facts, the structure of the Clause and the circumstances.

Mr Panos Zachariadis, Greece predicted that the removal of the indemnity could result in an owner being more willing to invoke his right not to follow charterer’s orders. Therefore, the Clause as it stands would give charterers a greater degree of flexibility and prevent owners from invoking their privilege a lot sooner than otherwise.

The Chairperson queried the possibility of the indemnity being optional with a detailed description of the potential consequences in the extensive explanatory notes.

Mr Michael Wester, Germany supported the point raised by Philip Stephenson on the importance of including a provision in the bill of lading which included the right to the deviation, which if invoked would not constitute a deviation. The second request to the subcommittee was to consider including in subclause (g)(iv) the right for an owner not to follow an initial order if in the owner's view that was not in compliance with the CII requirements or the requirements under the Clause. Such an amendment would then cover circumstances should the charterer not provide a written plan.

In response to the bills of lading and the due despatch obligation, Mr Peter Eckhardt confirmed that it was sufficiently covered in the Clause with the cross reference to BIMCO’s Slow Steaming Clause.

The Chairperson reiterated the urgent need of the Clause whilst being cognisant of the

objections raised by certain delegations.

Mr Tim Howse, Norway reminded the committee that from an operational perspective, the CII regulations remained unwelcome for all the stakeholders and the Clause allocates the unpopular obligations in a fair way whilst respecting the existing structure. After praising the excellent work of the subcommittee, Mr Tim Howse advocated for an adoption as further talk on the topic would not achieve much.

Mr John Freydag, Germany expressed that in his opinion it would be possible to exclude periods of off-hire by running two parallel regimes. It would require owners agreeing to a clause with the charterers to address the excluded periods of off-hire. Class and the flag state would have to be convinced of the vessel's good level of operational performance both before and after the off-hire period. He emphasised with examples that an off-hire period could either have been an unforeseeable or an exceptional event. This method of separate calculation could also cover the circumstances of a charter starting in the middle of the year as the charterer could not be held responsible for CO_2 emissions during the first half of the year.

Mr Freydag's recommendation was to try to run two such calculations in parallel and highlighted that the ultimate aim was to address the regulations, not to completely change the charter party. He highlighted the point with a couple of examples demonstrating how the Clause was basically a template allowing owners and charterers to negotiate thresholds.

Mr John Weale, Chairperson of GENCON 2022 subcommittee strongly recommended publishing the Clause with the option to review the necessity of making amendments at a later date. The committee was reminded how the BIMCO Piracy Clause that was adopted in 2013 had been radically changed six months later. This modus operandum had been respected by the market, which had accepted the new Piracy Clause.

Mr Glenn Bennigsen, Denmark explained that the Danish delegation did not strongly oppose the Clause as the owners were in favour of adoption, but the charterers had felt the Clause was unbalanced. He also clarified that if the explanatory notes had been available, they could have helped to create a better understanding of the Clause. The importance of the charterers being heard was stressed.

Fearing the unlikelihood of the clause being universally adopted, Mr Andrew Hoare, Singapore proposed deferring the decision for a month, during which time charterers should be encouraged to submit comments and /or questions. This could create more consensus and would result in a more favourable adoption.

Mr Juan J. Fernández-Ricoy, Spain proposed that the subclause c(ii) should be amended to say that the charterers undertake not to exceed the agreed CII if the charter period or the period remaining under the charter party is less than a full calendar year excluding any off-hire periods. This would result in two calculations of CII, i.e. the CII for complying with the regulations and the CII for compliance with the charter party. He pointed out that this would mirror the same method currently used by operators for calculating consumption and demurrage.

The second suggestion was to ease the wording in the indemnity by removing all the terminology that may seem aggressive to charterers such as damages liabilities, claims etc. It would remain an indemnity but potentially less offensive to the charterers.

In response to the Chairperson, Mr Peter Eckhardt estimated the subcommittee would take approximately three weeks to review all the comments and amend the draft clause accordingly. It was estimated that the first rough draft of the explanatory notes would take three to four weeks to write.

On this basis, the Chairperson concluded that the draft CII clause would be reconsidered for adoption at an online meeting scheduled to last an hour on a date in June 2022 to be identified by the secretariat.

2.4. GENCON 2022

The Chairperson went on to the next item for adoption, GENCON 2022, which after a long process was now finalised and ready for adoption. He referred to the Agenda Notes Item 2.4 and Enclosure Item 2.4.A and B.

He invited Mr John Weale, Chairperson of the GENCON 2022 subcommittee, to present the contract.

Mr John Weale, Chairperson of the GENCON 2022 subcommittee thanked all members of the subcommittee and the secretariat for their hard work during the past four years on this important contract, which was now ready for adoption. The DC were thanked for comments though the timing was not considered ideal owing to the lateness.

Mr Søren Larsen, BIMCO advised that the GENCON 2022 subcommittee was the longest serving in the history of BIMCO and recommended the contract should be put forward for adoption subject to fine-tuning. He appealed to members of the DC to make their comments in due time prior to the DC meeting so that the relevant subcommittee had a chance to respond. As regards GENCON, he proposed that the fine-tuning concept be extended beyond editorial matters to include responses to the substantial comments recently received.

Mr Richard Williams, Professor School of Law, Swansea University outlined the problem raised in connection with Clause 2, the wording of which could prejudice P&I Club cover as the wording brought all of those defences into one bracket. As a result, time bars in limitation would also be subject to and conditional upon the owners having exercised due diligence. This error could be rectified with a small change to make the distinction.

Dr Fehmi Ülgener, Turkey said in principle adoption was supported by the Turkish delegation but there were two comments. The first was the suggestion to produce a simplified document because GENCON 2022 was a very technical, detailed and complicated legal document, which could prove unpalatable to small owners or groups such as those involved in coast-to-coast voyages. The second point was to reduce the size of the document by putting in links to BIMCO's standard clauses instead of writing them out in full in GENCON 2022.

Mr John Williams, FONASBA extended the apologies of Mr. Fulvio Carlini and on behalf of FONASBA thanked the subcommittee for the high quality of the document. The only comment was in connection with subclause 26(c) if UN/CEFACT was meant as a reference to Recommendation Number 45 (Minimum Standards for Ship Agents and Ship Brokers). If so, the subcommittee might wish to remove this reference as the Recommendation was to serve as guidance only and there is no process in place to verify these commitments.

Mr Ralf van der Zalm, The Netherlands confirmed that the Dutch delegation had followed the project closely as GENCON was widely used in the Dutch market. After praising the subcommittee, he specified one of the Dutch comments on the practical changes to the existing GENCON such as the giving of notice of the commencement of laytime. The recommendation was to maintain the existing wording, which would facilitate and encourage the market to use GENCON 2022 owing to the wide acceptance by the market of those mechanisms. The Dutch delegation offered their services, if so required, during the fine-tuning process.

Mr John Weale, Chairperson of the GENCON 2022 subcommittee thought that Dr Fehmi Ülgener's recommendation to consider a simplified charter in the form of a booking note was worthy of consideration but said the decision rested with BIMCO. The validity of replacing the full version of BIMCO's standard clauses with a link had been discussed at length by the subcommittee, who had concluded it would be best in the case of a dispute to have everything stipulated in the contract. Furthermore, the difficulties of downloading clauses in places with poor internet had been taken into consideration. However, Mr Weale recognised that the inclusion of links would reduce the length of the document and ensure the use of the most updated version of BIMCO's clauses.

The Chairperson concluded that subject to all the fine-tuning, GENCON 2022 was adopted and a special thanks was extended to all members of the subcommittee for their hard work during the past four years.

3. Items for Review

3.1. ASBATANKVOY

Before inviting Mr Christian Hoppe, BIMCO to provide a progress report, The Chairperson remarked on the popularity of ASBAGASVOY.

Mr Christian Hoppe, BIMCO provided a report on the ASBATANKVOY project. The revision was very much a work in progress. The subcommittee had held five online meetings and one in-person meeting in New York. After a pre-meeting consultation, the subcommittee had agreed that the scope of the revision should be to maintain the simplicity and brevity of the form whilst developing it to meet the requirements of the modern tanker trade. The work was progressing, and the project had been presented at an event hosted by the Society of Maritime Arbitrators in New York.

There were a number of clauses in the draft that had not been discussed in substance, including Clause 18 (Cleanliness), the following clause on cargo operations, Clause 20(c) on In-Transit Loss and Clause 26 (Oil pollution). The group would begin discussing these at its online meeting the following week as well as any comments from the DC. In this regard, Mr Hoppe thanked Mr Stephenson for the comments provided a few days ago on the Discussion Forum. While these were for the subcommittee to discuss, it was clarified in response to the comment relating to Clause 24 (Arbitration) that New York was the default arbitration venue because this was part of the arrangements made with ASBA about the joint revision of ASBATANKVOY. The subcommittee would also be discussing Clauses 6 (Notice of Readiness) and 9 (Safe berthing). From the outset, the group had been very reluctant to touch those clauses in view of the significant amount of case law but had been made aware that there might be an issue in relation to the "reachable on arrival" concept in Clause 9 and how it was interpreted differently in the US and UK. So, the matter would have to be considered.

The subcommittee had also had a general discussion about the bill of lading and agreed that the new ASBATANKVOY should have a standard bill of lading form similar to ASBAGASBILL. A document containing optional additional clauses for possible use with ASBATANKVOY would also be developed further down the line. And finally, consultations would be planned in due course, possibly before the end of the year, hopefully both a round of written consultations and also an in-person event with stakeholders from the tanker market.

In conclusion, work was progressing well, but it was a significant task the subcommittee had embarked on which would take some time to finalise.

Mr K. Rajasekaran, India expressed appreciation of the review process of the ASBATANKVOY, which has been widely used by industry for quite some time. A couple of comments were raised on the last few points such as in Clause 26 (Oil pollution), where it was stated that the vessel should have entry with an IG P&I Club, which in the opinion of the Indian delegation should be optional as there are many clubs, and the form should allow entry with whichever club the ship was covered by. The other point was in connection with Clause 26(c) and the following clause (Certificates of Financial Standing) which stated that vessels should have all the US trading certificates and certificates of financial responsibility, but that requirement should only apply if the vessel was going to USA trading areas. Therefore, the Indian delegation recommended making these points optional.

The Chairperson confirmed that the points raised by the Indian delegation would be taken into consideration by the subcommittee and the DC would look forward to the next progress report.

3.2. Wreck Removal Agreements

Mr Grant Hunter, BIMCO reported on lack of progress owing to difficulty in finding suitable meeting dates. The subcommittee's focus was on an optional cost and risk management scheme clause including the introduction of an optional clause for quantitative risk assessment. The next meeting was scheduled to be held on 21 June and the aim was to present the Wreck Removal Agreements for adoption in November 2022.

The Chairperson highlighted the importance of the document for the P&I Clubs and how the DC would look forward to next progress report.

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

When invited by the Chairperson to present a progress report, Mr Grant Hunter, BIMCO advised that the subcommittee's original aim to produce a complete set of bunker terms for loading LNG on board ships as fuel had changed. Owing to the lack of significant difference between BIMCO's conventional fuel bunker terms contract and the one for LNG or indeed any other alternative fuel, the decision had been taken to produce an annex for the LNG bunker terms. This would avoid causing confusion in the marketplace by having two very similarly worded but not identically worded sets of bunker terms. It would also allow the subsequent development of a portfolio of bunker purchase terms for alternative fuels such as ammonia and methanol as the market developed.

The Chairperson concluded, in the absence of any comments, that the subcommittee's proposed approach had been accepted by the DC.

3.4. SHIPMAN, CREWMAN, LAYUPMAN, SUPERMAN

The Chairperson advised that a new subcommittee had been constituted to deal with the revision of these third-party ship management contracts and called on Mr Grant Hunter, BIMCO to give an update.

Mr Grant Hunter, BIMCO stressed the importance of this project, which had been kept on hold owing to a lack of secretariat resources. However, an excellent subcommittee consisting of a good balance of owners, legal experts and representatives from the major shipmanagers were scheduled to meet on 24 May 2022. The subcommittee's first priority would be the development of a freestanding ETS clause and then a sanctions clause for ship management agreements. Thereafter, the subcommittee would start to look at the revision of SHIPMAN as a whole. Once finalised, the amendments would be copied over into CREWMAN, LAYUPMAN and SUPERMAN.

The enormity of the project to revise all the documents simultaneously was stressed but prior to doing so the important task of creating a freestanding ETS clause as well as a sanctions clause had to be completed.

3.5. AUTOSHIPMAN

The Chairperson introduced the topic as a very future oriented document but emphasised that the future was not so far away. This was confirmed by Mr Grant Hunter, BIMCO, who had attended a conference in Copenhagen, where there had been several presentations highlighting the increasing number of remotely controlled ships operating in inland waterways in many parts of Europe. Remote control centres were operating small fleets of barges going in and out of inland waters partly because of the shortage of crew willing to adopt the lifestyle of operating barges. The concept of fully autonomous ships had yet to come but there was a realistic prospect of ship managers using certain members of a ship's

crew to operate a remote-control centre for one or more ships. Although AUTOSHIPMAN may not become a bestseller, it was considered an important project to demonstrate how BIMCO was a frontrunner in the development of contractual solutions for cutting edge technology.

4. Report Items

4.1. Published Contracts & Clauses

The Chairperson brought the attention of the DC to the report in the papers whilst highlighting the seminar on SHIPSALE 22 that was held that morning. In the absence of any comments or questions, the Chairperson moved on to the next agenda item.

4.2. Judicial Sale of Ships

In his absence, Peter Laurijssen, Belgium was thanked by the Chairperson for the report on the two negotiating sessions on judicial sale of ships, the draft convention of which may be approved by the UN General Assembly in October 2022. The DC was advised that a verbal report on the status of the work would be given at the November meeting.

5. Marketing, Future Work Programme and Proposed New Projects

5.1. Marketing

There were no comments to the marketing activities already held to promote BIMCO's work on SHIPSALE, ASBATANKVOY and the Sanctions and War Risk Clauses. The Chairperson highlighted the different ways in which the secretariat would continue to actively market BIMCO's contracts and clauses.

5.2. Future Work Programme and Proposed New Projects

The Chairperson brought the DC's attention to the fact that the secretariat was in the process of re-establishing the SHIPSALE22 subcommittee to draft a recycling clause for SHIPSALE 22 and other S&P contracts. Two further subcommittees were being established to develop a standard Quiet Enjoyment Letter as well as revise and update the BIMCO War Risk Clauses and the War Cancellation Clause. In addition to the other projects listed, the Chairperson recommended consideration of Dr Fehmi Ülgener, Turkey's proposal to produce a simplified charter or a booking note as suggested by Mr John Weale.

In the absence of any suggestions on further projects, the Chairperson moved to the next topic.

6. Other Organisations

Mr Dimitris Dimopoulos, INTERTANKO expressed his appreciation of INTERTANKO being allowed to participate as an observer. The DC was advised that at the recent meeting of INTERTANKO's Commercial and Markets Committee, several topics of mutual interest and

potential synergies were discussed. In view of the adoption of the EU ETS Clause, Mr Dimopoulos proposed to obtain the approval of the Commercial and Markets Committee to promote the clause with any additional comments deemed fit by INTERTANKO's membership. The same procedure was proposed with the CII Compliance Clause once adopted.

INTERTANKO was also considering revisiting their Sanctions Clause as well as their Vetting Inspections Clause. With regard to the issue of freight and demurrage payment delays and the development of a tanker model clause, Mr Dimopoulos, expressed INTERTANKO's thanks for the invitation to the consultation period and reiterated INTERTANKO's willingness to co-operate. Finally, Mr Dimopoulous expressed his appreciation for INTERTANKO's involvement in the ASBATANKVOY project.

Ms Kiran Khosla, ICS extended ICS' thanks to Peter Laurijssen for all the work he had undertaken on behalf of BIMCO and ICS when representing shipowners' interests on the matter of the judicial sale of ships. If adopted at the UN General Assembly in October 2022, ICS would advise their members to agree to the document, which would provide for a certificate to be issued that would serve as evidence of a clean bill of title thus improving commercial interests. ICS expressed the hope that BIMCO members would adopt the same approach.

Mr Jonathan Williams, FONASBA expressed the association's gratitude to Mr Søren Larsen for his support over the years and at the same time mentioned how FONASBA was looking forward to welcoming Ms Stinne Taiger Ivø, BIMCO's new Director of Contracts & Support, to the FONASBA annual meeting in Antwerp.

7. Any other business

No topics were presented under Any Other Business.

8. Date and Place of Next Meeting

The Chairperson confirmed that an online meeting will be held in June, on a date to be advised by the secretariat, to consider the adoption of the CII Compliance Clause.

As outlined in the papers, the next physical DC meeting would take place in person on 16 November at BIMCO House in Bagsvaerd, Denmark.

The Chairperson expressed his pleasure of having had the opportunity to meet members of the committee in person and thanked everyone for their invaluable contribution to the work of the DC.