

**BIMCO  
Documentary Committee Meeting  
Copenhagen**

**11 October 2023**

In the chair: Mr Nick Fell, Singapore

**Attendance List**

**Executive Committee**

**Immediate Past President**

Ms Sabrina Chao, Hong Kong (online)

**Chairperson of the Documentary Committee**

Mr Nick Fell, Singapore

**Vice-Chairpersons of the Documentary Committee**

Mr Ajay Hazari, Hong Kong

Mr Daniel Carr, Houston

Ms Nicola Ioannou, Marousi

**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 Lisa-Marie Perrella, Montreal

**CHINA**

**Owner Members**

Mr Huoping Lin, Guangzhou

**DENMARK**

**Owner Members**

Mr Glenn Bennigsen, Copenhagen

Ms Debi Laurent, Copenhagen

**Club Members**

Ms Henriette Ingvarlsen, Danish Shipping

Mr Jesper Sebbelin, Danish Shipbrokers and Port Operators

**FINLAND****Owner Members**

Mr Antti Partanen, Turku

**FRANCE****Owner Members**

Ms Cecile Bellord, Paris (online)

Ms Charlotte Grandjean, Marseille (online)

**Club Member**

Ms Laurene Niamba, Armateurs de France

**GERMANY****Owner Members**

Mr John Freytag, Hamburg (online)

Mr Peter Eckhardt, Hamburg

**Club Members**

Mr Michael Wester, Schutzverein Deutscher Rheder

**GREECE****Owner Members**

Ms Nicola Ioannou, Marousi

**HONG KONG****Owner Members**

Mr Ajay Hazari, Hong Kong

Ms Bianca Knight, Hong Kong (online)

**INDIA****Owners Members**

Mr Kuppan Rajasekaran, Chennai (online)

**ITALY****Owner Members**

Mr Federico Viti, Rome (online)

Mr Filippo Gavarone, Genoa (online)

**JAPAN****Owner Members**

Mr Tadanori Okada, Tokyo

**Club Members**

Mr Shotaro Aoto, Tokyo (online)

## **MONACO**

### **Owner Members**

Mr Francesco Bellusci, Monaco

## **THE NETHERLANDS**

### **Owner Members**

Mr Michiel Starmans, Rotterdam

Mr Ralf van der Zalm, Rotterdam (online)

### **Club Members**

Mr Lodewijk Wisse, Royal Association of Netherlands Shipowners

Mr Johan de Haan, Noord Nederlandsche P&I Club (online)

## **NORWAY**

### **Owner Members**

Ms Elsebeth Guttormsen, Bergen

Ms Joanna Evje, Oslo

### **Club Members**

Mr Viggo Bondi, Norwegian Shipowners' Association

Mr Hans Nicolai Edbo, Norwegian Shipbrokers' Association

Mr Magne Andersen, Nordisk Skibsrederforening

Mr Kristian Valevatn, Skuld

Mr Tim Howse, GARD (online)

## **POLAND**

### **Owner Members**

Mr Marcin Dziewa, Szczecin (online)

## **SINGAPORE**

### **Owner Members**

Mr Vibhas Garg, Octant Maritime

## **SOUTH KOREA**

### **Owner Members**

Mr Myeong-Su Ha, Seoul

## **SPAIN**

### **Owner Members**

Mr Juan Jose Fernández-Ricoy, Madrid (online)

Mr Ricardo Sainz, Madrid (online)

## **SWEDEN**

### **Owner Members**

Mr Mattias Kjellberg, Gothenburg

Mr Lars Hallsberg, Gothenburg (online)

### **Club Members**

Mr Martyn Hughes, Swedish Club (online)

## **SWITZERLAND**

### **Owner Members**

Mr Frank Sanford, Geneva (online)

## **TURKEY**

### **Owner Members**

Mr Fehmi Ülgener, Istanbul

Mr Nazli Selek, Istanbul (online)

### **Club Members**

Mr Bahadir Tonguc, Turkish Shipbrokers Association (online)

## **UNITED KINGDOM**

### **Owner Members**

Mr Roderick White, Sunbury on Thames (online)

### **Club Members**

Mr Philip Stephenson, NorthStandard

Mr Sacha Patel, Steamship Insurance Management Services Limited

Mr Michael Boje-Larsen, Britannia P&I

Mr Konrad Keene, The London P&I Club (online)

Ms Hannah Gilbert, UK Chamber of Shipping

Mr Tim Springett, UK Chamber of Shipping (online)

Ms Suzanne Byrne, West of England

## **UNITED STATES**

### **Owner Members**

Mr Daniel Carr, Houston

### **Club Members**

Mr Richard Reisert, Association of Ship Brokers & Agents (USA) INC.

## **CO-OPTED**

Mr Ian R. Perrott, Independent OSV Consultancy

Mr Don Murnane, Maritime Law Association of the US (MLA) (Online)

## **OBSERVERS**

Ms Leyla Pearson, ICS - International Chamber of Shipping

Mr Dimitris Dimopoulos, INTERTANKO

Ms Selena Challacombe, INTERTANKO

Mr Nick Shaw, International Group of P&I Clubs

Ms Camilla Slater, International Group of P&I Clubs

## **Ship Sales Further Trading Clause (formerly On-Trading Clause for MOAs) Subcommittee**

Mr Francis Sarre, Compagnie Maritime Belge (Chairperson)

## **Quiet Enjoyment Letter Subcommittee**

Ms Catherine Smith, Oldendorff Carriers (Chairperson) (online)

**SYNACOMEX Review Committee**

Ms Claire Weustenraed, Pacific Basin

Ms Christelle Tailhardat, SYNACOMEX (Online)

**WRECKSTAGE Subcommittee**

Mr Richard Janssen, Smit Salvage (Chairperson) (online)

**BIMCO SECRETARIAT**

Mr David Loosley, Secretary General & CEO

Mr Søren Larsen, Deputy Secretary General

Mr Lars Robert Pedersen, Deputy Secretary General

Mr Michael Lund, Deputy Secretary General (online)

Ms Stinne Taiger Ivø, Director of Contracts & Support

Ms Charlotte Lord, Chief Communications Officer (online)

Ms Mai Vedel, Chief Finance Officer / HR (Online)

Mr Christian Hoppe, General Counsel

Mr Carl W Lindahl, Project Manager, Contracts & Clauses

Ms Natalie Wong, Project Manager, Contracts & Clauses

Ms Zehra Göknaz Engin, Project Manager, Contracts & Clauses

Ms Merete L. Greisen, Head of Support & Advice (online)

Mr Peter Storm, Manager, Support & Advice (online)

Mr Asger Mariegaard, Manager, Support & Advice (online)

Ms Nancy Bishop, Team Coordinator

## **Minutes of Documentary Committee Meeting**

**11 October 2023 – 09:00 – 13:30**

The Chairperson, Mr Nicholas Fell, welcomed the Documentary Committee members thanking those who attended the previous evening's dinner. This meeting marked the third time it was held at the BIMCO House and the first time it was conducted in a hybrid format, with both in-person and online participants. The Chairperson assured that all participants would feel fully engaged, irrespective of their mode of participation.

He went on to welcome the new members of the Documentary Committee, who were attending their first meeting. These included Ms Debi Laurent, substitute member for Denmark; Captain Antti Partanen, substitute member for Finland; Mr MyeongSu Ha, member for South Korea; Mr Francesco Bellusci, substitute member for Monaco; Captain Mattias Kjellberg, member for Sweden; and Ms Joanna Evje, the substitute member for Norway. The Chairperson was particularly pleased to welcome South Korea amongst the membership of the Documentary Committee.

In addition, he warmly welcomed Mr Michael Boje-Larsen from Britannia who attended the meeting in place of Ms Judy Binnendijk. He also welcomed Mr Richard Reisert of the Association of Ship Brokers and Agents in the US, who would be alternating with Mr Søren Wolmar on behalf of ASBA.

The Chairperson welcomed his predecessor, Mr Francis Sarre, who was present in his role as Chairperson of what is now known as the Ship Sales Further Trading Clause Subcommittee. Ms Claire Weustenraed of Pacific Basin was acknowledged as a member of the SYNACOMEX Review Committee. Ms Catherine Smith of Oldendorff Carriers, Chairperson of the Quiet Enjoyment Letter Subcommittee, was also recognised. Lastly, Ms Christelle Tailhardat, the Secretary General of SYNACOMEX, was welcomed. Both Ms Smith and Ms Tailhardat participated in the meeting remotely.

Finally, he welcomed the Observers, Mr Dimitris Dimopoulos from INTERTANKO and his colleague Ms Selena Challacombe, who was joining the Documentary Committee for the first time. He welcomed Ms Leyla Pearsons representing the International Chamber of Shipping (ICS) and Mr Nick Shaw and Ms Camilla Slater, representing the International Group of P&I Clubs.

The Chairperson announced that the President, Mr Niko Schües of Reederei F. Laeisz, unfortunately could not attend the meeting. However, the Immediate Past President, Ms Sabrina Chao, was participating online.

The Chairperson outlined the full agenda and encouraged active engagement. He informed the DC that a BIMCO photographer would be capturing the meeting, asking those uncomfortable to notify Nancy. Regarding Item 13 (Any other business), he advised that anyone wishing to raise a matter under this Item should discuss it with either himself or Ms Stinne Ivø during the coffee break.

Furthermore, the Chairperson drew the DC's attention to BIMCO's competition law policy, which had been included in the meeting papers. He reminded everyone that the meeting would be conducted in accordance with this policy.

### **1. Approval of Minutes of the Documentary Committee meeting held on 20 April 2023**

From the previous DC meeting held in Copenhagen on 20 April, with minutes circulated on 24 May, the Secretariat received comments from Mr Francis Sarre regarding his statement on what is now

known as the Ship Sales Further Trading Clause and those comments were considered and reflected. The Chairperson subsequently requested the DC's approval to sign the minutes as a true record of that meeting.

## **2. BIMCO update by the Secretary General**

Mr David Loosley, BIMCO, welcomed everyone to the hybrid meeting, thanking the DC for its input on the strategy and policy discussions. He reported on discussions held with other committees which led to a focus on efficiency at the last Board of Directors meeting. BIMCO will focus its regulatory efforts on this theme, with an emphasis on seafarers' security, safety, and training, especially in Asia.

Mr Loosley provided an update on membership recruitment, with 132 new members so far this year and said that other income streams, such as training, SmartCon, and publications, were performing well, and BIMCO was expected to achieve its highest income ever this year – EUR 12.5 million. The business plan and budget for the next year were progressing well and would be up for discussion at the next Board meeting.

He also spoke about the 25 by 25 e-bill campaign, launched in March to encourage 25% of bulk trade volume to be carried on e-bills by 2025. Four of the world's largest mining companies signed the pledge on day one, making significant progress towards the 25% goal.

He touched on the Fourth Way Project for shipping industry efficiency and recommended the 'Blue Visby for Beginners' webinar. He discussed the Hong Kong Convention, ratified by Bangladesh and Liberia, and the need for BIMCO to align it with the EU Ship Recycling Regulation and seek equivalence with the Basel Convention. He mentioned the upcoming review of RECYCLECON for consistency with the Hong Kong Convention.

Finally, he spoke about BIMCO's work on AI, including its version of Chat GPT 4.0, and its readiness to provide training on it.

The Chairperson thanked Mr Loosley for the interesting and encouraging update and called on Mr Lars Robert Pedersen to update the DC on the Marine Environment Committee and the Marine Safety & Security Committee.

- **Update from Deputy Secretary General, Mr Lars Robert Pedersen**

Mr Lars Robert Pedersen, BIMCO, updated the DC on the Marine Safety and Security Committee's meeting held at the BIMCO House two weeks ago, where they discussed a range of relevant issues. One of the key topics was the Board's instructions on decarbonisation and efficiency strategies. Underwater noise radiation, a critical issue on the IMO's agenda, was also discussed. New voluntary guidelines on this matter have been released, and the industry is encouraged to adopt them.

The committee also discussed digitalisation, port efficiency, and 'just in time' areas, where BIMCO's safety division is working together with the SIR (Standards, Innovation & Research) department. The Marine Safety and Security Committee's focus was mainly on piracy, particularly in the Gulf of Guinea, and the possible resurgence of this issue. They also discussed the tensions in the Persian Gulf and the impact of the Russia-Ukraine war on shipping in the Black Sea.

A significant issue discussed was drug smuggling using merchant ships, a concern high on the container sector's agenda. BIMCO recently participated in a seminar at the European Shipping Summit in Brussels, organised by the World Shipping Council, addressing this topic.

The Marine Environment Committee also met last week, focussing primarily on decarbonisation and initiatives to combat climate change. They discussed the newly agreed IMO strategy and the measures set to be adopted by IMO in 2025.

The discussion included the impact of the upcoming EU ETS and the effect on the shipping industry. A hot topic for the near future will be the FuelEU Maritime, adopted by the EU and set to be implemented from 2025. The committee will play a significant role in understanding how it can be applied in commercial shipping. Mr Pedersen said other marine environment issues were also discussed, but only these key points were covered, however, he said he was prepared to answer any questions regarding these updates.

The Chairperson thanked Mr Pedersen and proceeded to the third Item on the agenda, which pertained to the DC's work, particularly the discussion held in April on strategy, summarising various issues that were discussed and how they would be addressed moving forward. He also highlighted how the Secretariat planned to assemble subcommittees, sounding boards, establish regional workshops, and its future work programme. He called on Ms Stinne Ivø to provide her comments.

### **3. Summary of documentary work – strategy discussion**

Ms Stinne Ivø, BIMCO, thanked the Chairperson and welcomed everyone to the meeting. She acknowledged that there were still a few points raised by the DC that required follow-up and noted that these points had been partially discussed. She recalled some of the suggestions made at the last meeting regarding how these DC meetings should be conducted. Some had proposed that they could be combined with workshops or extended in duration. The Secretariat was still considering these options. Another point raised pertained to the need for specific expertise or experience for some future work projects. Ms Ivø assured that this matter would also be discussed, with plans to explore whether such expertise or experience could be sourced from within the DC.

The Chairperson thanked Ms Ivø and acknowledged that the Secretariat is eager to continue its work on implementing the various new initiatives that have been discussed. He expressed his confidence that these initiatives would improve the processes within the DC and ultimately enhance the quality of its work.

### **4. Update from CII Post Implementation Review Group**

Ms Stinne Ivø, BIMCO, said the plan is to conduct another market survey. Several suggestions regarding the content of this second survey were received. The aim this time is to draft it in such a way that responses can be clearly identified as originating from a bulk operator, a tanker owner, or within the container segment or other areas. Suggestions were also made to help determine regions in which the replies are coming from. This would provide a better understanding of the global responses and the fleet size of the respondents. The new survey is being drafted and the plan is to distribute it in November. The results of this survey will then be discussed at the next DC meeting.



## 5. Items for adoption

### 5.1. CII Clause for Voyage Charter Parties

The Chairperson then moved on to Agenda Item 5.1., referring to a marked-up version of this clause. He mentioned that a preliminary draft of the clause was presented to the DC at the meeting in April. A revised draft has since been shared on the Discussion Forum and with a sounding board on 29 June. He invited Mr Peter Eckhardt, chairperson of the subcommittee, to present the clause to the DC.

Mr Peter Eckhardt, Chairperson of the CII Clause for Voyage Charter Parties, said at the previous meeting in April, the DC provided several comments on the clause, which were considered for amendment by the subcommittee in May. The first amendment was made to subclause (a), where the phrase "proceed by the most fuel efficient route" was replaced with "adjust course" following an extensive debate. This change was made to account for situations where the most fuel efficient route may not necessarily be the best in relation to CII. The clause was also expanded to give both the owner and the master the authority to adjust the course or speed.

The second major amendment was made to the term "good weather" in subclause (a). After careful consideration, it was decided to allow parties the flexibility to define "good weather" according to their respective charter parties, in recognition of potential conflicting definitions. In subclause (e), the reference and definition of "Parties" was removed, as it was not used throughout the clause. The sharing and exchanging of data is now confined to voyage-specific information under a particular charter party. The amendment also allows the parties to set a specific timeframe for data availability, defaulting to seven days if unspecified.

Mr Eckhardt mentioned receiving additional feedback from the Norwegian and German delegations, which has been addressed via the Discussion Forum.

In response to the UK delegation's points, Mr Eckhardt said the subcommittee believes that the phrase, "notwithstanding any other provision in the Charter Party, the owners and the charterers agree as follows", should be preserved for consistency. The challenges of defining "good weather" in a standard clause were discussed extensively, leading to the decision to offer parties the flexibility to negotiate an agreed-upon definition that aligns with their specific trade and charter party.

The suggestion to emphasise the importance of specifying a minimum speed in the clause will be considered in the Explanatory Notes.

The subcommittee also discussed the potential inclusion of a phrase detailing various liabilities and consequences. However, consistent with the UK delegation's conclusion, the subcommittee felt this could make the clause too owner-friendly, posing a challenge for the charterers to accept it.

Concluding his points, Mr Eckhardt said the subcommittee believes that the clause is ready for adoption and welcomed any further questions or comments from the DC.

The Chairperson thanked Mr Eckhardt for that summary, and for addressing some of the comments. He opened the floor for further comments.

Capt. Kuppan Rajasekaran, India, suggested one amendment to the clause. In subclause (b), "the Laycan as agreed under the Charter Party shall remain unaffected by this Clause." However, if

subclause (c) allows for a reduction in speed or an adjustment in course, it may sometimes be challenging for the ship to maintain its laydays. Therefore, he recommended a provision for time lost and potential extension of the laycan.

Mr Michael Wester, Germany, raised concerns about subclause (a) which states that a certain speed should be maintained under good weather conditions. He compared this to time charter parties where claims are based on good weather periods and extrapolated if speed falls below the specified limit. He questioned the implications if something goes wrong, including the potential consequences, such as who would be held responsible, and how delays would be calculated. He expressed concerns that this could cause practical problems.

Mr Glenn Bennigsen, Denmark, stated that the Danish delegation would not object to the clause being adopted, but highlighted an overlooked issue: lengthy port stays. He noted that the clause does not address this concern, which impacts the CII ratings more than the ship's sailing efficiency. The delegation believes this issue, particularly when a ship is used as a storage facility during long port stays, should be negotiated independently, as incorporating it in the clause could unfairly burden the charterer.

Mr Magne Andersen, Norway, asked if the subcommittee had considered inserting a fallback position with respect to the definition of "good weather condition". He voiced concerns that if the parties forget to fill in this information, the clause might become partly unenforceable.

Observing no further questions from either the physical or online attendees, the Chairperson then handed back the discussion to Mr Eckhardt to address these points.

Mr Peter Eckhardt, in response to the Norwegian delegation's question on fallback position, stated that the subcommittee extensively discussed how to handle the "good weather" provision. They concluded that it was crucial to have a specification, which will be referenced in the Explanatory Notes, but it is up to the parties to define it. The challenge of creating a fallback definition led them to decide against it.

Regarding the issue of long port stays, Mr Eckhardt agreed but did not provide further comment. He emphasised the importance of defining "good weather" conditions and maintaining a minimum speed for the ship's timely arrival. He noted that the clause provides certainty to the charterer that the ship would not reduce its speed too much initially and then be unable to speed up to arrive on time.

In subclause (d), it is clearly stated that "with or without prejudice to any other express or implied rights under the Charter Party", the vessel can proceed at speeds below the minimum speed under certain external circumstances like following a convoy or bad weather. He added that the concept revolves around the provision that due diligence must be applied, with the minimum speed setting the bar for due diligence, and the other provisions still apply.

Mr John Freydag, Germany, asked if the intent of this clause is to prevent an owner from starting too slow and then, for whatever reason, being unable to arrive at the intended time, then it would make sense to establish an average speed as a minimum speed, rather than leaving it undefined. Agreeing with Mr Wester, he found it unclear how claims are calculated when a ship maintains the minimum speed as required by the charter party. He recommended further deliberation on this matter for additional clarity.

Ms Lisa-Marie Perrella, Canada, expressed that she shares the concerns voiced by the delegates from Germany and Denmark. She believes that the clause could be quite effective even without the provision relating to the vessel's speed and good weather conditions. This is especially true in circumstances where subclause (b) refers to the laycan being unamended and leaves the shipowner to handle any navigation on the approach voyage.

Mr Peter Eckhardt, responded to the points raised, suggesting that using average speed instead of minimum speed could risk the ship not meeting the required laycan. He agreed to bring these questions back to the subcommittee for further discussion. Mr Eckhardt, when asked by the Chairperson if he wished to propose the clause for adoption, clarified that his previous comment was a mistake. He believes the clause is functioning as it is and emphasised the importance of parties agreeing on the definition of "good weather", especially for specific trades.

Mr John Freytag, Germany, asked, if the parties do not insert the definition, does it then default to the charter party, or is it Beaufort 3?

Mr Lars Robert Pedersen, BIMCO, expressed gratitude for everyone's input. He emphasised the significance of long port stays to the CII framework, as noted by the Danish delegation. He also informed the DC about the ongoing review of the CII framework by the IMO, expected to conclude by 1 January 2026. A majority of industry stakeholders are advocating for a change in the framework to omit time and emissions when a ship is stationary from the attained CII calculation. Mr Pedersen supported this potential change as it would allow for a more deliberate management of a ship's CII rating and expressed optimism for its reduced importance in the future.

Mr Glenn Bennigsen, Denmark, expressed his curiosity, asking, if everything goes well within the IMO, when should some changes be expected?

Mr Lars Robert Pedersen, BIMCO, responded and said, the review will be completed by 1 January 2026, which is the target date.

Mr Peter Eckhardt, having considered the information presented, maintained his belief that the CII Clause for Voyage Charter Parties, essentially a slow steaming clause, is appropriate and could be implemented. He also suggested that it could offer an additional beneficial mechanism for voyage charters in the market.

The Chairperson thanked Mr Eckhardt and suggested that the "good weather" point could be addressed in the Explanatory Notes. He believed this might be a suitable place for it. Based on the information gathered so far, he proposed that the DC adopt the CII Clause for Voyage Charter Parties. He thanked Mr Eckhardt and all members of the subcommittee for their excellent work with (despite a defective piece of legislation), in producing this clause, and for the DC commenting during this process.

## 5.2. Ship Sales Further Trading Clause (formerly On-Trading Clause for MoAs).

The Chairperson moved on to the next Agenda Item, 5.2. and its related enclosure. This Item, formerly referred to as the 'On-trading Clause for MoAs', was first brought up for adoption in the April meeting. However, due to several comments and suggestions, it was decided that the subcommittee should review and revise the draft. The updated version was to be presented at the current meeting. To do so, Mr Francis Sarre, the Chairperson of the subcommittee, was asked to present the clause.

Mr Francis Sarre, Chairperson of the Ship Sales Further Trading Clause Subcommittee, thanked the Secretariat for the invitation to the meeting and recollected the events from April's meeting where the draft was revised following some last-minute feedback. However, the late timing of these revisions caused concerns, especially among the Spanish delegation, leading to the postponement of adoption until now.

He conveyed that most changes to the document were made at the previous meeting and included in the April draft. Since then, there have been two adjustments: the renaming of the clause to 'Ship Sales Further Trading Clause' for better reflection of its purpose and ease of finding in the BIMCO Library, and the addition of a confidentiality stipulation regarding the disclosure of the clause is only permitted after a breach. This new provision was added to harmonise it with existing confidentiality clauses in MoAs and the SHIPSALE 22 form.

After a lot of work and numerous discussions, Mr Sarre believed that the clause was primed for adoption and would be extremely useful to those who need it. He welcomed any questions but noted that most of the clause's content had already been thoroughly discussed. He expressed hope for its adoption at this meeting.

Mr Michiel Starmans, Netherlands, commented that the clause appears to be well-crafted. However, he identified two minor issues that he wanted to address. Firstly, in subclause (b), it is stated that the buyers, upon purchase, are expected to continue trading the vessel. However, if the vessel is subsequently sold to a new buyer, subclause (c)(ii) stipulates that the original buyer must be confident that the transferee intends to trade the vessel. Mr Starmans suggested that it might be more appropriate to say that the transferees shall also continue to trade the vessel, aligning it with the wording in subclause (b).

He pointed out an inconsistency in subclause (e). This subclause refers to the financial compensation outlined in subclause (d)(i), while also mentioning the indemnity provided in subclause (d)(ii). Mr Starmans proposed that it could be revised to include a reference to the indemnity in subclause(d)(ii).

Mr Francis Sarre, stated that he had no issues with implementing those minor clarification changes.

The Chairperson thanked Mr Starmans for his constructive suggestions. He suggested the adoption of the Ships Sale Further Trading Clause with the two proposed amendments. He expressed his gratitude to Mr Sarre and all subcommittee members for their outstanding work in drafting this clause. He also thanked everyone for their feedback received both at this meeting and throughout the entire process.

### 5.3. ETS Allowances (ETSA) Clause for SHIPMAN

The Chairperson, introduced the next agenda item for adoption, the ETS Allowances Clause for SHIPMAN, and referred the DC to Agenda Notes, Item 5.3., along with the accompanying enclosures at Items 5.3.A and 5.3.B. These were separately distributed on 29 September and included the clause and its accompanying Explanatory Notes. He noted that this is a time-sensitive clause for the industry. The first draft was presented in April and since then, the subcommittee has been working diligently on its preparation, despite the complex nature of the issue and uncertainties about the EU ETS's final outcome. He was pleased that Mr Hazari, the Subcommittee Chairperson, was present to introduce the clause.

Mr Ajay Hazari, Chairperson of the ETS Allowances Clause for SHIPMAN Subcommittee, provided context to the ETS Allowances Clause for SHIPMAN, part of the SHIPMAN subcommittee's mandate. The clause was initially reviewed in April and discussed extensively in 11 meetings due to its complexity. The clause was set aside temporarily between May and June for expected interpretational developments from the EU.

In the past month, there have been five dedicated meetings for the ETS Clause, and it has been circulated to the Carbon Clauses Committee and the Shipmanagers Advisory Panel for consultation. Feedback from these discussions was crucial in crafting the clause, designed to be suitable for EU ETS and other future emissions schemes despite flaws in European Commission legislation. Mr Hazari expressed gratitude to the subcommittee members for their patience, to Mr Pedersen for his consultation, and to the Secretariat for their assistance.

Mr Hazari stated that the clause, while significantly evolved since its first version, is now fit for use. Recently, several questions were raised in the Discussion Forum, especially by the Norwegian and German delegations, and these have been addressed. Subclauses (a) and (b) of the clause stipulate that shipmanagers will provide emissions data to shipowners at regular intervals agreed upon by both parties, allowing flexibility for compliance with charter parties or commercial obligations. Despite concerns about this being open-ended, Mr Hazari reassured that a similar approach has worked well in the SHIPMAN 2009's financial accounting requirements, specifically under subclause 13(d).

Questions were raised about data verification as the MRV and EU ETS require independent verification. Initially, the clause included wording to this effect. However, the subcommittee decided that the clause's provision for data to be supplied in accordance with the applicable emission scheme was sufficient. Mr Hazari suggested expanding the Explanatory Notes to clarify this and the timing of the data provision.

Another recurring question was related to the transfer of allowances from owners to shipmanagers under subclause (d)(iii). Originally, this had set time limits, but resistance from shipmanagers led to this being left open for parties to agree.

Mr Hazari explained that while shipmanagers will provide estimates to owners in advance, it does not mean that allowances need to be deposited or given to the shipmanagers at once. This is open-ended and depends on the financial arrangements and trust between the parties. Shipmanagers need assurance that they would have credits in time to surrender them to the administering authority. Similarly, owners need reassurance that their deposited credits will not be misused. A default provision is set at 10 days if parties fail to agree.

Mr Hazari concluded that the Explanatory Notes need more detail on various points, which the subcommittee is prepared to do. Regarding the fee, various arrangements were considered with a broad call deemed the most uniform solution. However, he acknowledged that in some circumstances, like for vessels trading within Europe under EU ETS, payments might need a different formula. This point will be elaborated on in the Explanatory Notes. He also mentioned that the clause, currently circulated for industry consultation, is already in high demand. To prevent chaos from premature or varied use, the subcommittee is trying to ensure that it is officially adopted by the DC and by BIMCO before usage. Any considerations the DC might have will be addressed in the Explanatory Notes. He urged that this clause be adopted.

The Chairperson, thanked Mr Hazari for his explanation, particularly highlighting the flexibility within the clause and the pivotal role of the Explanatory Notes.

Mr John Freydag, Germany, mentioned that the DC would have seen the comments he posted on the Discussion Forum. He, along with others in the DC meeting, recognised the complexity of the task at hand. He sympathised with the ship management community, who wish for a swift adoption of a manager-oriented clause. However, he believed that this should be INTERMANAGER'S objective, not BIMCO's. He also expressed concern about the power balance between shipmanagers and owners, urging BIMCO to correctly address the owners' position in the clause.

Addressing the issue of emissions estimation, Mr Freydag noted that it can be straightforward for certain trades and ships, but unpredictable for others operating in different markets. He also mentioned that he has not encountered any charterers willing to provide emissions in advance, particularly those in the liner trade reluctant to comply with a BIMCO clause.

Mr Freydag critiqued the structure and phrasing of the clause, which appears to demand the provision of allowances in advance based on the previous estimation. He suggested that small shipowners may struggle to secure the allowances especially when they have not been receiving them from charterers. He disagreed with drafting a simple clause that permits later agreement on allowances.

On the topic of financial security, he agreed with the clause's statement that financial security may be agreed upon but insisted it should be specified to clarify the shipmanager's right to ask for this security if they do not receive allowances on time. He saw no justification for a port call fee structure, asserting that it cannot be transparently applied. He suggested that a more logical approach would be more transparent and acceptable.

Lastly, he argued that the normal accounting under ship management contracts is not comparable to these allowances due to the substantial time gap between the provision and surrendering of allowances. He warned of potential problems if there is not a provision to protect the shipowner, such as a trust arrangement, considering the significant value of these allowances. However, he did not foresee this as an issue for larger managers due to their financial stability.

Mr Juan José Fernández-Ricoy, Spain, commended the revised clause draft, finding it greatly improved and more in line with market needs. However, he raised concerns about subclause (d), noting the weight of responsibilities shipmanagers bear under the regulations. The Spanish delegation suggested that subclause (d) should only apply when managers are not assuming responsibility by contract. They also proposed limiting subclauses (iii) and (iv) to cases where managers are directly responsible for surrendering emission allowances. The Spanish delegation further suggested a subclause stating that either party should indemnify and keep the other party harmless for any failure to comply with obligations under the emission scheme. This would apply if managers fail to comply with their legal obligations or if owners fail to transfer allowances to managers when required.

Mr Glenn Bennigsen, Denmark, stated that the Danish delegation finds the clause satisfactory. However, they agreed with Mr Freydag's comments regarding the need for a separate account, preferably a trustee account depending on the jurisdiction, for the owner's safety. The Danish delegation also believed that verified data should be stipulated in this clause, even though it has been mentioned elsewhere. The Danish delegation concurred with other comments that the details can be negotiated between the parties.

Mr Francesco Bellusci, Monaco, expressed that the Monaco delegation views the clause as a well-crafted one that addresses significant challenges, primarily due to the penalty clause in the EU Regulation. The clause disrupts the contractual framework between shipping companies, placing enormous damages responsibility on shipmanagers, which inevitably complicates the clause. He mentioned that various organisations have attempted to tackle this issue digitally, which would undoubtedly simplify discussions about this clause. He inquired if BIMCO has any updates on these efforts to re-establish responsibility and liability within shipping, in line with previous practices.

Mr Lars Robert Pedersen, BIMCO, said the Secretariat is dealing with the complex task of creating a general clause that caters to both current and unknown future systems while also considering the specific EU ETS scheme. The clause is highly specific, and until relevant legislation is fully enacted, merely signing the clause might not be sufficient for a manager to assume the responsibility of surrendering allowances from the owner. This is because there are additional explicit requirements that need to be met.

Mr Pedersen highlighted the active engagement of Directorate-General for Climate Action in discussions concerning the new implementing regulation that seeks to redefine the shipping company's meaning in the EU ETS Directive. The language of this new regulation is ambiguous, particularly regarding how a bareboat charterer is dealt with in the shipping company's definition when the registered owner is too far up the chain to be the default responsible entity.

He also noted the ongoing work to enlighten the European Commission about the operation of national shipping registers within the EU. The final language of the law is still not available, complicating its incorporation into a ship management agreement. However, while shipowners are expected to start collecting allowances from their commercial counterparts from 1 January, the actual surrendering will not occur until around 2025. This leaves time to fulfil that part of the obligation.

The Chairperson thanked Mr Pedersen and questioned if the final legal text from the EU was available, indicating that finalising the clause without it could prove challenging. He then invited Mr Hazari to address the comments received so far.

Mr Ajay Hazari, responded and said the legal text for EU ETS for shipping has been enacted and would not change. The EU is now working on regulations for the practical interpretation and application of the legal text while addressing its flaws. The focus is not on the legal text, which is already in place, but on the regulations for its application.

Mr Hazari mentioned that the draft regulation was circulated in late August or early September, with industry feedback accepted until 29 September. He confirmed that they had several receptive meetings with DG CLIMA, separate from BIMCO.

He noted, as Mr Pedersen pointed out, the identified gaps that affect cases involving bareboat charterers, but not the shipmanager, shipowner relationship. He updated the DC on his last conversation with DG CLIMA, in which they indicated they had issued the final regulation for the application of the directives in October, which is still awaited.

In response to Mr Freytag, Mr Hazari highlighted the subcommittee's balanced approach, including strong-willed shipowner representatives. The estimation of emissions was thoroughly debated with

shipmanagers and owners, who usually have a fair idea about the ship's upcoming monthly operations. He emphasised that provisions for reconciling differences are well-covered.

The subcommittee discussed financial security extensively due to its uncertain availability in the market. Mr Hazari is in talks with market underwriters to develop financial products. Despite the challenges in establishing trustee accounts, there have been productive discussions with Standard Chartered. The financial security wording was left slightly open-ended due to current uncertainties. Both insurers and banks show interest due to potential profit opportunities.

Mr Hazari revealed that an insurance product is being proposed by a London underwriter to cover the potential liabilities of shipmanagers if a deal is affected by a defaulting shipowner. He agreed with Mr Freytag's point regarding the ability of shipmanagers to provide emissions data, particularly for small shipowners with infrequent voyages to the EU. If no specific fee is listed, it is assumed that the emissions management, reporting and estimation are included in the annual shipmanagement fee. This caters to small or infrequent shipowners trading to Europe or emissions-impacted areas, with fees adjustable per port call or voyage. However, for regular emissions reporting, the data compilation and reporting are expected to be part of the annual management fee.

Mr Hazari thanked the Spanish delegation for recognising the subcommittee's work and understanding the need for managers to secure themselves against major financial liabilities. He explained that managers face risks beyond financial liabilities, such as the suspension of their Document of Compliance (DOC) if a shipowner defaults, impacting all clients under that DOC. Thus, the risk extends beyond allowances due for specific vessels to potentially their entire business.

Mr Hazari also clarified the inclusion of a manager's nominee in ship management contracts. This provision exists because often the contracting manager differs from The International Safety Management (ISM) Code company and DOC holder. Hence, the nominee of the contracting manager, along with the ISM company, assumes the responsibility of serving as a regulated entity on behalf of the owner.

Mr Hazari discussed the indemnity provision outlined in the Explanatory Notes. Following a comprehensive review by the subcommittee, it was decided that the indemnity provisions in SHIPMAN were enough and there was no requirement for an explicit indemnity provision in the clause, considering the existing overarching indemnity provision in SHIPMAN 2009.

Mr Hazari thanked Mr Bennigsen for his positive comments and confirmed that he had previously addressed the trustee issue in response to comments from Mr Fernández-Ricoy and Mr Freytag. He also stated that the suggestion of including verified data in subclause (b) will be considered by the subcommittee, acknowledging it as a valid point that had been raised before and will be re-evaluated. He thanked Mr Bellusci for his comments, which were addressed by Mr Pedersen. He invited anyone with additional questions to approach him later, expressing his willingness to explain how the clause is supposed to function. He also requested that the clause be considered for adoption.

Ms Nicola Ioannou, Greece, on behalf of the Greek delegation, highlighted the need for the clause and appreciated Mr Hazari's handling of the complex scheme. She expressed concerns about subclause (e) and the situation if an owner defaults but acknowledged Mr Pedersen's explanation that it is a regulatory matter. She praised the clause's drafting and suggested that the Explanatory Notes could help answer many questions and provide clarity.



Ms Stinne Ivø, BIMCO, added to the ongoing discussion, stressing its importance and encouraging participation. She valued the delegates' views on the clause, as it would help the subcommittee's Chairperson to summarise the current status. Points for consideration included the inclusion of verified data. She considered the fee and port fee issue, raised by Mr Freytag, as valid but not a stumbling block for the clause. She also suggested considering Mr Fernández-Ricoy's thoughts on the indemnity issue mentioned in the Explanatory Notes. Ms Ivø emphasised the need for financial security to protect the account, stating that the clause's specifics depend on market standards and account setup. She mentioned the ETSA Clause for Time Charter Parties being frequently used but sometimes amended to reflect a different frequency than monthly transfer for allowances.

Mr Peter Eckhardt, Germany, made two comments regarding subclauses (b) and (d)(iii). He suggested referencing the vessel's employment contract in subclause (b) to strengthen the clause and considered off-hire to be beneficial. For subclause (d)(iii), he proposed changing the default position from 10 days to 44 days, believing this to be a better benchmark. He felt the clause was otherwise satisfactory. The German delegation pointed out that under subclause (g), if an owner fails to surrender allowances within the agreed timeframe, the manager could stop providing services, reinforcing the agreement.

Mr Juan José Fernández-Ricoy, Spain, stated that the Spanish delegation seeks clarity on two main points from the subcommittee. The first point is their uncertainty about the reciprocity of indemnity in SHIPMAN.

The second is about the transfer of allowances in two scenarios, one, if a nominee rather than managers is involved, to prevent financial risk to owners if the nominee goes bankrupt; and two, if managers assume responsibility through an agreement but legal responsibility remains with the owners. In the latter scenario, Mr Fernández-Ricoy questioned the process of owners transferring allowances to managers, noting that owners would remain liable if issues arose with the managers. Additionally, he highlighted the responsibility and risks that managers face under regulations, including financial obligations and the potential loss of certificates needed for European entry, emphasising that owners must comply.

Mr John Freytag, Germany, questioned the practical implications for a shipmanager who has to surrender allowances not received due to an owner's default. He asked if the manager would need to buy these allowances to comply with authorities and subsequently seek reimbursement from the defaulting owner.

Mr Lars Robert Pedersen, BIMCO, emphasised that the focus should remain on the EU ETS, as it is the only known scheme. He explained that, under the latest implementing regulation, the registered shipowner is the default responsible entity and holds responsibility for their entire fleet. However, the new regulation allows for the delegation of legal responsibility from the registered owner to the DOC holder through a special contract for each ship.

From a DOC holder's perspective, who could manage up to a hundred ships, they might sign a contract to take legal responsibility for just one ship. This implies that, in the context of the EU ETS, the manager's fleet is considered to be only this one ship, leaving the DOC for the remaining ships unaffected by EU ETS law.

Mr Pedersen acknowledged that predicting how this will work in practice is challenging due to the various possible scenarios. He clarified that it is not a full transfer of responsibility, meaning the DOC holder would not suddenly be accountable for all its ships.

Lastly, he explained that the shipmanager's legal obligation only exists as long as there is a contract, signed by both the registered owner and the DOC holder, which needs to be presented to the administering authority when surrendering allowances.

Mr Ajay Hazari, agreed with Mr Pedersen and referenced a recent discussion with DG CLIMA where this specific question was raised. Their response was that a shipmanager acting as a regulated entity by mandate, remains responsible for surrendering allowances even if the ship management contract is terminated during the year. He noted that clarification on everyone's position would only be possible once the final legislation is released.

Responding to Mr Fernández-Ricoy, Mr Hazari agreed that the clause on the provision of allowances by owners to shipmanagers needs to be revised to align with earlier paragraphs and include all managers' nominees. This ensures allowances are deposited with the nominee company, if one exists, rather than the manager. He stated that the clause would be corrected, and the indemnity provision would be revisited.

In response to Mr Eckhardt's point on counterparty risk, Mr Hazari explained that the shipmanagement community would likely not accept a default position of receiving allowances 44 days after the fact, as it would mean receiving allowances in arrears. While many shipmanagers might accept this, some clients would not, making it an ongoing issue.

Mr Francesco Bellusci, Monaco, raised a question about the IMO identification number, noting that regulations typically assign responsibility to the holders of these numbers, usually the shipowner and the DOC holder. He pointed out an issue with bareboat charters, as the bareboat charter contracts are not properly registered, resulting in the absence of a bareboat charter registry certificate and an IMO identification number. This situation might lead to the registered owner, potentially a financial institution like a Chinese bank, being considered the sole entity because the bareboat charter lacks an IMO identification number. He suggested that this issue requires further consideration and possible addressing.

Mr Lars Robert Pedersen, BIMCO, commented on the bareboat issue, stating that it was the focus of a recent meeting he attended, noting that the Commission seems to have misunderstood how the system works and often view the bareboat charter and the DOC holder as being on the same side, while they can be on opposite sides. This concern is being discussed with lawyers from the Danish Ship Registry, who were taken aback by this issue. Mr Pedersen expressed hope that a solution could be found for bareboat charters bearing ship registration, but he was less optimistic about those existing solely as private contracts. He mentioned they are awaiting clarification from the Commission in the coming days.

The Chairperson, acknowledged and sensed a significant support for this clause. Despite this, he noted it was not ready for adoption due to various issues, including those brought up by the Spanish delegation. He expected requested Mr Hazari, to revisit these matters, specifically the verification, two-way indemnification, and nominee points. A proposal has been made to conduct a 30 minute DC meeting sometime in November, following amendments to the clause by Mr Hazari and the subcommittee, aiming for its adoption. The Chairperson then prompted Mr Hazari to share his thoughts on this proposal.

Mr Ajay Hazari, stated that the subcommittee plans to review three main points. Firstly, amending subclause (b) to ensure data is verified; secondly, addressing the indemnity point raised by the

Spanish delegation, which requires more than a simple tweak. The third point pertains to the nominee issue, a drafting matter. The aim is to align it with subclause (d) to include all managers' nominees. The same provision will be added to the subsequent subclause concerning the surrender of allowances, ensuring it applies to all managers' nominees. He suggested that a meeting with the DC could potentially take place within the next 30 days.

The Chairperson, expressed his appreciation for everyone who contributed to this robust discussion. He expressed hope that the DC could revisit this topic in November with a hope to finally adopt the clause.

#### 5.4. Quiet Enjoyment Letters

The Chairperson, introduced Agenda Item 5.4. and its enclosures 5.4.A. and 5.4.B.. These drafts had been presented for comment on the Discussion Forum and reviewed by a sounding board of about 75 people, leading to various comments. The subcommittee considered these comments and made amendments to the drafts, now reflected in the standard QEL and Short Form QEL in markup. He emphasised that having standard Quiet Enjoyment Letters are crucial, especially given the limited number of committee members involved in ship financing. The introduction of a standard could benefit a large segment of the industry, possibly reducing legal fees, and would complement the existing suite of ship financing and leasing term sheets adopted years prior.

He called on Ms Catherine Smith, Chairperson of the QEL Subcommittee, who was in Singapore and online to present the QELs to the DC.

Ms Catherine Smith, Chairperson of the QEL Subcommittee, expressed her pleasure at attending the DC meeting for the first time online and presenting the Quiet Enjoyment Letters for approval, despite not being able to attend in person due to an injury. She explained that the two draft documents enclosed in the Agenda Notes under consideration are the result of a detailed process by a subcommittee consisting of various stakeholders comprising an owner, two charterers, ship financing and leasing institutions, and ship finance lawyers from the UK and the US. She thanked them for their hard work. The subcommittee created two forms for approval, a standard QEL and a Short Form QEL. These forms allow a mortgagee to enforce its rights without disrupting the charterer's quiet enjoyment of a vessel, which is crucial for compliance with EU capital requirements regulations and similar laws in other jurisdictions. This principle was a key focus of the drafting work the subcommittee started over a year ago.

The main goal of the forms is to detail the mortgagee's commitments to grant quiet enjoyment and its consequences. Both forms, the standard and the Short Form, include provisions on the charterers' quiet enjoyment, reservation of mortgagees' rights, validity, law, and arbitration. Although they use the traditional BIMCO box layout for clarity and to avoid omissions, they are drafted as letters rather than contracts.

While the Short Form is brief, the subcommittee believes the two forms complement each other, offering users a choice between a more detailed form and a unilateral short form. These forms would likely be included in financing documents at the time of financing. The subcommittee opted not to develop a multilateral version for more complex finance structures, as these are often customised to the unique complexities of such structures.

Ms Smith acknowledged the feedback received, particularly from the Danish and UK delegations. The subcommittee has already considered many of these points and is ready to respond to them now. The UK delegation requested the inclusion of "and this letter" in paragraph 2, an amendment

made in response to a sounding board comment suggesting that paragraph 2 should be subject to the other provisions of the letter. This led to an amendment in paragraph 4, stipulating that its termination would end the entire QEL or commitment in case of a breach. The subcommittee chose "and this letter" over "subject to" to avoid confusion about the QEL's authenticity.

Additionally, the UK and Danish delegations had concerns about the "cure period" in subparagraph 4(a). Ms Smith clarified that the term had been replaced with "cure rights" to eliminate ambiguity. These rights are generally found in financing documents with a typical example being an instance where a borrower has failed to procure proper insurance. In such cases, the lender has the right to intervene and put in place the necessary insurance.

Ms Smith addressed concerns from the UK Delegation regarding the language in subparagraph 4(d), where a charterer agrees not to create or allow any liens or encumbrances against the vessel. The delegation queried a scenario where a bunker supply contract might result in a lien over the vessel, potentially causing a charterer to breach this provision. The subcommittee discussed this extensively and noted that it is typically a bareboat charter issue, not a time charter issue. It was agreed that the standard QEL should not try to address all possible arrangements. To resolve potential issues where a lien is created by an owner, not a charterer, the phrase "arising by or through the charterer" was added to the paragraph. Ms Smith also clarified that the specific phrase "enforceable against the vessel" means that in many jurisdictions, liens under a contract between a bunker supplier and a time charterer are often not enforceable against the vessel.

The UK delegation raised concerns about cure rights under paragraph 5, suggesting that these rights might be misinterpreted as arising under the facility agreement. Ms Smith agreed, re-emphasising that cure rights stem from the borrower and exist under financing documents.

Regarding paragraph 6, the UK delegation suggested that the mortgagee's rights should be subject to the charterer's consent. The subcommittee decided to address this in the Explanatory Notes, emphasising that the document needs to maintain a balance and reasonability.

Ms Smith added that the document also provides for charterers who may wish to conduct their own vetting of another owner, as proposed by the mortgagee.

Under subparagraphs 7(c) and (e), the UK delegation suggested amendments to ensure the charterer's rights of quiet enjoyment cease only if the charter has been lawfully cancelled, rescinded, or terminated. The subcommittee concluded that if there's no charter party, there is no quiet enjoyment.

In response to the Danish delegation's query on the need for the mortgagee's written consent for amendments and transfers under subparagraphs 4(b) and (e), the subcommittee deemed this requirement reasonable, adding that such consent should not be unreasonably withheld.

Ms Smith addressed the Danish delegation's comments on subparagraph 5(c). They questioned the need for subparagraph 5(c) as other finance parties could enforce other rights. They suggested that the clause should include a representation that the owners have not extended any other rights that could potentially conflict with subparagraph (2). This point was also raised by other stakeholders during the industry consultation phase. They argued that it was unhelpful from a charterer's perspective, as the charterers would not know what those rights are, and whether they are likely to impact quiet enjoyment.

The subcommittee discussed these issues and concluded that it was there to create more certainty, clarity, and balance. The mortgagee would simply have to be able to enforce such rights in order to

comply with the EU Capital Requirements Regulation (CRR). The subcommittee also discussed whether there should be a right of disclosure for the charterers but deemed it impractical. Other wording options, such as charterers acknowledging that they understood the contents of the finance, were also discussed but ultimately not included.

The Danish delegation's next point questioned the inclusion of the words "in each case, notwithstanding any restrictions or consent rights that would otherwise apply in the Charter Party" in paragraph 6. This was a key point, discussed at length by the subcommittee. In the context of transferring to a new owner, it was decided that this obligation to cooperate in good faith should supersede any regular consent regime built into a charter party.

The Danish delegation raised concerns about changes to the language in subparagraph 7(c), including the removal of the phrase "in accordance with its terms" and the reference to repudiation. The subcommittee intentionally made these changes, stipulating that the QEL ceases if the charter is terminated, cancelled, or rescinded by the charterer, regardless of whether it aligns with the terms. Ms Smith hoped that these explanations addressed the concerns of the UK and Danish delegations.

The drafting committee, including two charter representatives and both UK and US lawyers, took a systematic approach to create the standard and Short Form QELs, with the starting point to ensure compliance with CRR regulations. They concluded that a standard QEL might not be CRR-compliant as it does not prevent the lender from enforcing the mortgage. The committee considered feedback from an industry consultation process involving 75 stakeholders and made drafting decisions accordingly.

Despite recognising that the balance might still favour lenders, the subcommittee aimed to provide a reasonably fair and balanced document. They understood the reality of financiers imposing one-sided terms and the difficulty of achieving a perfect 50-50 balance in a QEL.

Ms Smith concluded by stating the subcommittee's belief that the drafts are ready for adoption and expressed her willingness to respond to any questions from the members of the committee.

The Chairperson thanked Ms Smith for her comprehensive explanation of a complex topic and for including Danish and UK points in the regulations for banks. He then invited questions from the floor.

Mr Roderick White, United Kingdom, thanked Ms Smith for addressing their concerns in such detail. He identified two key issues that he felt would continue to be problematic for charterers negotiating a QEL based on these drafts. The first issue, which is a common concern, involves the cure rights that a mortgagee may possess, and these might contradict the termination rights that a charterer has arranged under their charter, and the insertion of a new owner by the mortgagee not meeting the charterer's counterparty due diligence requirements. He suggested a need for clarity in the QEL provision regarding cure rights and believed charterers should have the right to reject a new owner if they do not meet their requirements. He proposed these issues to be reconsidered by the drafting committee.

Ms Debi Laurent, Denmark, commended Ms Smith and the subcommittee for their work on the contract, which she believes will be very useful. She mentioned the Danish delegation's concern about the QELs being lender-friendly and suggested a more balanced approach. Key concerns include the cure rights, the potential for creative interpretation of subparagraph 5(a) to undermine cure rights, and the involvement of other parties as per subparagraph 5(c). She agrees with Mr

White's suggestion and calls for greater consideration of these issues. On a personal note, she tries to limit the involvement of other parties in QELs, referring also to the importance of KYC in relation to financing.

Mr Franics Sarre, Chairperson for the Ship Sales Further Trading Subcommittee, congratulated the subcommittee for their well-drafted documents and acknowledged the valid points raised by Mr White and the Danish delegation. He believed these points can be addressed by the subcommittee and that the issue of consent will be discussed in the Explanatory Notes. He however pointed out two issues that warranted clarification: the first regarding the meaning of "mechanical changes" in subparagraph 6(b)(ii) and the second – whether out-of-pocket costs in subparagraph 6(b)(iii) included off-hire costs during delays. Overall, he praised the initiative and the subcommittee's work.

Ms Catherine Smith thanked the UK and Danish delegations and suggested that the issue of cure rights could be addressed with amendments or additional Explanatory Notes. She noted the subcommittee's detailed discussions on owner changes, citing financiers' desires for restructuring and charterers' adherence to strict vetting requirements. She believed these could be balanced and suggested potential changes in the drafting or Explanatory Notes. She also referred to the potential impact of the CRR. Additionally, she clarified to Mr Sarre that costs in subparagraph 6(b) were meant to refer to disbursements, not off-hire.

Ms Debi Laurent, Denmark, expressed caution about using Explanatory Notes to address key issues, such as the one in subparagraph 5(a). She suggested that these issues should be incorporated into the document's drafting, as it holds more weight than Explanatory Notes in legal proceedings.

Mr Roderick White, United Kingdom, stated he agreed with the point made by the Danish delegation and said he would be more comfortable with a review of the drafting as opposed to dealing with this through Explanatory Notes.

Mr Francis Sarre, Chairperson of the Ship Sales Further Trading Subcommittee, noted that Ms Smith had not addressed the question about "mechanical changes" and suggested it was a fine-tuning detail that should not prevent adoption. He expressed anticipation about receiving the completed document.

Ms Catherine Smith, acknowledged the points made by the Danish and UK delegations about the preference for drafting over Explanatory Notes. She proposed that these issues be addressed by the drafting committee. She also apologised to the DC for a previous omission related to the "mechanical changes" point. She mentioned the possibility of a mere language or word choice issue, specifically regarding the terms "consequential" or "logical" changes. To prevent any confusion, she suggested the subcommittee could consider using a different term, although the original intent was to denote consequential, logical amendments.

Ms Stinne Ivø, BIMCO, posed a question to Ms Smith, asking her preference. Would she be comfortable taking this matter back to the subcommittee for discussion, or would she prefer to possibly address the comments via the Discussion Forum? Alternatively, was she considering handling this as a more a fine-tuning element?

Ms Catherine Smith, responded, highlighting the points raised by the UK and Denmark, particularly on cure rights and change of ownership. Given the discussions that had occurred within the drafting committee, she expressed her desire to refer these matters back to them. She believed these matters are more significant than simply adjusting language and feels that addressing them through the subcommittee is the most effective and comprehensive approach.

The Chairperson, expressed his gratitude to Ms Smith, stating his belief that the DC would likely concur with her ideas. He suggested that it might be best to return the matter to the subcommittee before presenting it on the Discussion Forum for expedited adoption, assuming this approach would be agreeable to both the UK and Danish delegations, who appeared to endorse this proposal.

#### 5.5. SYNACOMEX

The Chairperson, introduced the next Item on the Agenda, 5.5. SYNACOMEX Charter Party, which BIMCO has been asked to approve by the two copyright holders, SYNACOMEX and Armateurs de France. Before turning the floor over to the copyright holders, he invited Mr Christian Hoppe from the Secretariat to introduce this Item and its accompanying documents.

Mr Christian Hoppe, BIMCO, thanked the Chairperson and began by providing detailed background information on the project, as outlined in the Agenda Notes. He reminded the DC of the numerous comments made during the April meeting, leading to further discussions with the copyright holders and the review committee. Rather than fast-tracking the project, the review committee ensured all comments were carefully considered and discussed. A comprehensive overview of these comments is available in enclosure item 5.A. The document was sent to the copyright holders for feedback, and their responses, along with the DC's comments, were forwarded to the review committee. The committee discussed these comments in a June meeting and then sent the complete package back to the copyright holders. A meeting was held in August to resolve outstanding issues, resulting in a revised draft for potential DC approval. This draft can be seen in enclosure items 5.5.B. and 5.5.C., posted on the Discussion Forum in late August.

Despite some disagreements, the clauses in the draft remained as originally written by the copyright holders, as reflected in the two enclosures. Mr Hoppe reminded the DC that BIMCO typically takes a different approach with third-party forms, not involving themselves in the drafting process as they would with their own standard forms. He also noted that the review committee has addressed a significant number of comments received since the project's start, with about two-thirds of all comments being accepted by the copyright holders. Lastly, Mr Hoppe noted that there are two changes to the draft compared to what is included in the Agenda Notes, in addition to what is seen in the two enclosures.

Mr Hoppe shared that the Norwegian delegation had contacted the Secretariat a few weeks ago regarding clause 11, the fumigation clause. They reiterated their concerns from the April meeting. A meeting was subsequently held involving the copyright holders, Ms Claire Weustenraed from the review committee, and the Norwegian delegation. In this meeting, a key amendment was made to clause 11—specifically removing the word "and necessary" from the fourth sentence so it now reads: "charterers undertake to pay owners all expenses incurred because of the fumigation and the time lost thereby shall count as laytime or time on demurrage". This was done to align with the first sentence of the clause, which states that fumigation is at the charterer's risk and expense. This amendment was agreed upon by the copyright holders. Additionally, the last sentence of clause 11, about bills of lading, was discussed, especially concerning the risk of jeopardising P&I Club coverage due to clean bills.

Mr Hoppe confirmed that during the break, further discussions were held with the Norwegian delegation, the copyright holders, and Ms Claire Westeunraed from the review committee. They suggested a minor amendment to the last sentence of the fumigation clause, adding the word "solely" to clarify that bills of lading should not be closed by the master solely due to the detection

of insects before fumigation. Mr Hoppe noted that because this change was discussed recently, he was unsure if the copyright holders fully accepted it.

Mr Hoppe shared that they had reached out to the copyright holders a second time regarding the cancelling clause. This point was initially raised by the Danish delegation and was seen as a missed opportunity to not include their suggested language in the revised form. While the copyright holders agreed in principle, the review committee had to balance all comments and chose not to include those without consensus. However, the Danish delegation reiterated their point and it was deemed appropriate to include their proposed part of the cancelling clause, along with an amendment suggested by the copyright holders. Consequently, the review committee also proposed including this second part of the cancelling clause in clause 6 of SYNACOMEX, with the amendment that the new cancelling date would be the third day, not the seventh, after the new readiness date.

Mr Hoppe apologised for introducing these points late but felt it necessary given their recurrence. Considering the patience of the copyright holders, he hoped these issues could be resolved at the DC meeting. He expected the Norwegian and Danish delegations and the copyright holders to address these points and confirm their positions. He also mentioned comments from the UK delegation on the draft, which were promptly sent to the copyright holders. He believed these points, discussed the day before, could also be resolved, with some possibly addressed in the Explanatory Notes, though he deferred to the copyright holders for a response.

The Chairperson, thanked Mr Hoppe and handed over the floor to the Secretary General of SYNACOMEX, Ms Christelle Tailhardat. He noted that she was unfortunately unable to attend the DC meeting in April but was pleased to announce that she could join the meeting today, albeit online.

Ms Christelle Tailhardat, Secretary General of SYNACOMEX, the French Union of Cereals and Oilseed Foreign Trade, thanked the Chairperson and expressed pleasure to participate in the DC meeting. She introduced herself and the Union she represents, which includes major international and French grain trading houses, French ports, and member companies that provide survey and fumigation services. Despite being a grain trader for 16 years and not a shipping specialist, she believed she could provide practical insights.

The UK delegation had a question about the term "in force" in clause 8 regarding laytime and its relation to weather. She explained that "in force" refers to official documents from port authorities or governments stipulating loading or discharge times during extreme weather conditions. These documents apply to all parties involved, including charterers, receivers, and shippers, to ensure a common understanding of the measures during extreme weather. SYNACOMEX agreed to add a sentence at the end of the clause to clarify what "in force" means and to ensure everyone understands the term in the same way, providing a neutral explanation of the weather.

During extensive discussions about clause 11 on fumigation, the UK delegation queried the meaning of "proper survey". Ms Tailhardat clarified that it refers to a Certified Fumigation Company responsible for conducting fumigation and providing certificates.

However, the term "solely", as explained by Mr Hoppe during a meeting with the Norwegian delegation, led to differing opinions among her members. As a result, she is unsure if this term can be settled upon today without approval from all trading house departments. She suggested that she could later share SYNACOMEX's viewpoint, given that they have never experienced any fumigation



disputes with a vessel's captain or master, leaving them uncertain whether to accept this term today.

She brought up a point from the UK delegation about clause 12 'Lights and Gear'. SYNACOMEX fully agrees with the proposal by the UK delegation in the Discussion Forum. Consequently, they decided to add the clause with the phrase, 'unless caused by shore hands in which case laytime or time on demurrage shall count', expressing their full support for it. They extended their gratitude to the UK delegation for this contribution.

Ms Tailhardat discussed another point raised by the UK delegation about clause 21. After several discussions, they concluded that they did not aim to amend or rewrite the entire charter party, but just its critical terms. They decided against changing elements already covered in other parts of the charter party due to the interconnections between different clauses.

On clause 24 'General Ice Clause', Ms Tailhardat stated that they fully understood what the UK delegation explained and required. Therefore, they can amend this clause by adding a sentence stating that "It is understood that any waiting time beyond 48 hours will count as laytime". She thanked the UK delegation for raising these points.

Ms Tailhardat also mentioned that she was available to answer any questions that the DC might have, and that Ms Laurene Niamba, from Armateurs de France, who attended the meeting in person, could also answer questions.

The Chairperson expressed gratitude to Ms Tailhardat for her comprehensive and sensible explanation and appreciated her taking into account most of the UK delegation's comments. He was confident that this would lead to more streamlined discussions. He then proposed to pass the discussion to Ms Claire Weustenraed from Pacific Basin, a member of the review committee.

Ms Claire Weustenraed, SYNACOMEX Review Committee, as a member of the committee reviewing the revised SYNACOMEX charter party form, introduced herself and thanked the Chairperson. She shared her 12-year experience at Pacific Basin and her role as the chartering manager on the Mediterranean desk for the last five years, which involves regular engagement with the SYNACOMEX charter party.

She mentioned that the review committee, which includes members experienced with the form, was established to evaluate the draft. They have had numerous meetings with the copyright holders to exchange views and understand each other's positions. The outcome of these meetings is included in the Agenda Notes. Despite some disagreements, they had reached a consensus on many suggested changes. The review committee's primary focus is ensuring that any agreed changes work within the current form's context.

SYNACOMEX is a widely used form in the grainhouse sector, popular among French grainhouse and companies like Bunge, Dreyfus and Cargill, in the Mediterranean and on America's East Coast. The review committee has been cautious to only support justified changes to avoid disrupting market acceptance. After thorough consideration, the review committee strongly believes that the proposed changes to clause 8 concerning force majeure should not be included in a new version of the charter party. Instead, it was recommended to retain the existing clause without such references. While the copyright holders are keen to modify the form, the review committee advises against implementing this change.

Concerning the comments made by various delegations, particularly the Norwegian and Danish delegations, on the cancelling and fumigation clauses, the review committee reached a compromise, as mentioned by Mr Hoppe. While they would prefer not to make changes, especially where the word 'solely' is used, they might consider accepting it, noting that they have never faced any issues in their daily operations.

In conclusion, the review committee embarked on this project aware of the SYNACOMEX form's wide recognition in the grain market. Their feedback, grounded in their extensive experience with the form, supports the presented draft as the right way forward. However, they cautioned that significant proposed amendments might lead users to stick to the 1990 or 2000 form. Ms Weustenraed concluded and said she was available for any questions.

Mr Lodewijk Wisse, Netherlands, expressed appreciation for the review committee and the copyright holders. He also conveyed the Dutch delegation's gratitude for the detailed feedback from SYNACOMEX and the review committee. They noted the review committee's decision to exclude technical standard clauses and decided to limit their further response accordingly.

The Dutch delegation expressed concerns about clause 2, which was previously discussed. Their worry was the clause's implication that charterers provide the quantity of bagged cargo, binding the vessel and owner to the number of bags unless an error or fraud is proven. They believed this contrasts with the existing practice where shippers or charterers provide draft bills for agents to sign, irrespective of whether the master has confirmed the number. The delegation felt it unnecessary to impose an evidentiary burden on the owner or vessel, recommending such matters be left to a competent tribunal.

Mr Kristian Valevatn, Norway, expressed gratitude to SYNACOMEX for making amendments to the first part of clause 11, particularly the inclusion of a specific reference to IMO recommendations on fumigation and the removal of the word "necessary". This, he believed, reduces disputes over costs and ensures IMO recommended measures are taken. He stated his preference for the revised SYNACOMEX form over the GENCON 2022 form due to its improved fumigation clause.

Mr Valevatn also discussed his concerns about the second part of the clause, particularly how it undermines the Master's authority. He referenced the Hague Visby Rules article 3 rule(3)(c), which obligate the Master to state the apparent order and condition of the goods. He expressed concern about any clause that restricts the Master's authority and prevents him from fulfilling his duties. However, he suggested that including the word "solely" could provide some assistance by clearly limiting the reference to insects, which fumigation is expected to eliminate. This inclusion would also give the Master some leeway to object to something abnormal or additional observed.

He acknowledged the argument that there have been no issues with this clause, hence no need for corrections. However, he pointed out that no one has a complete overview of whether this clause has caused any issues. Speaking on his 14-year experience as a P&I claims handler, he noted that the requirement for clean bills of lading still raises concerns. Thus, he would be surprised if no issues ever arose with SYNACOMEX's clean bill clause.

In conclusion, he emphasised that this process is a revision, presenting an opportunity to correct any inaccuracies. Even if a particular issue was not significant in the past, it does not rule out the appropriateness of making a small correction.

Mr Glenn Bennigsen, Denmark, complimented the many agreed changes to the SYNACOMEX charter party and endorsed what the Norwegian delegation said regarding it being a balanced charter party. The Danish delegation echoed the Norwegian delegation's comments about including the word "solely" in the fumigation clause. They had previously discussed the cancelling clause and expressed hope that the suggested amendments would be incorporated. They had no further comments and believed it would be appropriate to adopt SYNACOMEX at this meeting.

Ms Claire Weustenraed, addressed the comments made by the Norwegian and Danish delegations, stating that, based on their experience, the fumigation clause has never posed a problem. However, if it would assist the Danish and Norwegian delegations, the review committee is open to incorporating the word "solely" into the second paragraph of the clause.

Ms Christelle Tailhardat, SYNACOMEX, addressed the Dutch delegation's comments about clause 2, particularly the number of bags on the bill of lading. She reiterated their stance against deleting the sentence, emphasising that if the number of bags is recorded on the bills of lading, they should be counted.

Regarding the fumigation clause, she expressed gratitude for the proposal to add the word "solely," as suggested by the Danish and Norwegian delegations, to assist in approving their charter party. She also thanked the delegation for their meeting the previous week and confirmed their readiness to add the word "solely" after "masters" in reference to the detection of insects in the cargo.

Mr Christian Hoppe, BIMCO, suggested that for some issues where the copyright holders maintain their stance, the review committee might be able to provide some comfort in the Explanatory Notes, which is being drafted. He mentioned that BIMCO, despite not being the form's originator, is willing to assist with this process. Mr Hoppe confirmed BIMCO's readiness to help and discuss these points with the copyright holders. He noted that, as far as he could tell, there were no outstanding issues. The word "necessary" has been removed from clause 11 and agreed to add "solely". The copyright holders have clarified their stance on clauses 2 and 21, marking what he believes is the conclusion of the discussion.

The Chairperson, agreed with Mr Hoppe, noting that this should conclude their discussion. He acknowledged the significant compromise and progress made over the last 24 hours. He clarified that the DC is not actually adopting this but is proposing the approval of the revised SYNACOMEX Charter Party with the agreed amendments and compromises. He expressed his gratitude to the copyright holders, SYNACOMEX and Armateurs de France for approaching BIMCO, to the DC members for their continuous efforts to improve the quality of standards used, and to the review committee for providing its expertise throughout the process. He confirmed that, with the Explanatory Notes and those compromises, it was approved.

## 5.6. WRECKSTAGE

The Chairperson, introduced this as the final item for adoption, welcoming Mr Richard Janssen, the Chairperson of the WRECKSTAGE subcommittee who joined the meeting online from Miami. He noted that this is BIMCO's standard international wreck removal and marine services agreement, last revised in 2010, which is now nearing completion. He then passed the floor to Mr Janssen to present the draft for adoption.

Mr Richard Janssen, Chairperson WRECKSTAGE Subcommittee, highlighted that there are three BIMCO contracts for wreck removal and marine services: WRECKHIRE, WRECKSTAGE, and

WRECKFIX. He noted that updates since 2010 should mirror the market and focus on cost certainty for both the International Group of P&I Clubs reinsurance and the contract.

He shared that the subcommittee, comprising of senior industry experts, has made significant progress in resolving contentious issues, including the proportion of risk to each party, since they began during COVID. The subcommittee has also worked on and cleaned up the document, leaving only two minor points to be addressed. Mr Janssen believed the document can now be proposed for adoption. He mentioned Mr Nick Shaw of the International Group of P&I Clubs was present to endorse the current version. If adopted, this could form the basis for further amendments to the other two forms, WRECKHIRE and WRECKFIX.

Mr Nick Shaw, International Group of P&I Clubs, expressed gratitude to the Chairperson, Mr Janssen, and BIMCO, especially Mr Grant Hunter, for their roles in the process. He acknowledged the robust discussions and good exchange of views throughout the process. He stated the International Group's agreement, in principle, to adopt the contract as drafted, noting its significant improvements over the previous form. However, some fine details still need addressing. They have sent comments on these details to a legal drafting group, including Mr Andrew Chamberlain, Mr Richard Gunn, and Mr Tony Goldsmith. But due to their busy schedules, they have been unable to finalise it. As a result, the form in the packs does not reflect these comments. Mr Shaw expressed hope that these details will be addressed shortly after this meeting, with possibly one more short subcommittee meeting to ratify the final version. He said probably fine-tuning, but this would be up to the Secretariat.

The Chairperson asked if there were any objections to proceeding with the fine-tuning route, but there were none. The Chairperson then confirmed that this was adopted, subject to the fine-tuning.

## **6. Items for review and discussion**

### **6.1. SHIPMAN**

The Chairperson introduced SHIPMAN, a subcommittee led by Mr Ajay Hazari. A progress report was presented at the last DC meeting and the subcommittee have been working on a consultation draft since their meeting in May. This draft was shared with a 50-person sounding board and has undergone several amendments. Much of the subcommittee's focus has been on the ETSA clause for SHIPMAN. The subcommittee met again on 20 September and a revised draft will be shared on the Discussion Forum soon. The target adoption date is March 2024.

Mr Ajay Hazari, Chairperson of the SHIPMAN Subcommittee, announced that the next subcommittee meeting is scheduled for 14 December, during which they plan to incorporate the ETSA Clause. An in-person meeting is also planned for 16 and 17 January to address any remaining drafting issues. The goal is to have the draft ready between December and January and post it on the Discussion Forum with assistance from the Secretariat. The aim is to gather feedback in time for the January meeting and present the draft for adoption at the March meeting. All comments received have been addressed in the draft included in the documents.

### **6.2. ASBATANKVOY**

The Chairperson introduced the ASBATANKVOY, a form unchanged since 1977, along with a modern draft version. Despite the project taking longer than planned, the subcommittee has held about 15 meetings so far and remains committed to the project. Feedback on suggested amendments has

been provided by INTERTANKO's committees, and further considerations have been made by the subcommittee. Mr Richard Reisert, representative of ASBA and a member of the BIMCO ASBATANKVOY subcommittee, was present to provide a project update.

Mr Richard Reisert, Association of Ship Brokers & Agents (ASBA), a member of the BIMCOASBA subcommittee, acknowledged the challenges of updating the ASBATANKVOY form, a project involving numerous online meetings and consultations with industry stakeholders. Despite the goal of preserving the original form's simplicity, the new draft includes significant changes and modern features but lacks brevity. The subcommittee plans to review the draft thoroughly in an upcoming meeting to better reconcile these objectives. Changes since November 2022 are documented in the DC's packs, and clauses 6 and 9 have been revised for clarity despite initial plans to leave them unchanged.

The UK delegation's comments on clause 6 and the Ice Clause will be discussed at a meeting in New York. The subcommittee is nearing the finalisation of an initial draft for industry consultation, with a series of online feedback meetings planned. The goal is for potential adoption by BIMCO's DC in March 2024 and ASBA's Documentary Committee in early 2024.

In addition to the ASBATANKVOY update, a freestanding bill of lading form based on ASBAGASBILL has been developed, and work continues on a document containing additional rider clauses. After completing the ASBATANKVOY update, the intention is to update the ASBACHEMVOY form, an adaptation of the ASBATANKVOY 1977 for chemical trades, in collaboration with BIMCO. Mr Reisert concluded his report and offered to answer any questions.

The Chairperson thanked Mr Reisert and acknowledged the chance to work on another joint form, ASBACHEMVOY, after the current project. He urged delegations with comments on the draft to submit them to the Secretariat by 20 October.

### 6.3. War Risks and War Cancellation Clauses

The Chairperson introduced the War Risks and War Cancellation Clauses, Agenda Item 6.3. Since the last meeting in April, Mr Michiel Starmans, from the Dutch delegation accepted to chair the subcommittee. The Chairperson invited him to give the DC a progress report on its current status.

Mr Michiel Starmans, Chairperson of the War Risks and War Cancellation Clauses Subcommittee, highlighted the importance of BIMCO War Clauses and the subcommittee's which he said are typically accepted between parties without amendments. And as such the subcommittee is reluctant to significantly alter them but acknowledge the need for modernisation. The subcommittee includes two charterers, who stressed the necessity for additional information on extra insurance premiums. This was addressed in subclause (d), which obliges owners to provide documentary evidence of additional insurance premiums. This requirement may increase workload for brokers. A distinction was drawn between additional war risk premiums and additional insurances, and a debate ensued over the reasonability of additional war risk premiums.

In subclause (d), owners are now required to demonstrate efforts to secure suitable insurance coverage. If successful, charterers are responsible for reimbursing these costs. Additionally, subclause (e) was introduced in response to the "Ocean Victory" [2017] UKSC 35 case. This safe port warranty protects charterers from insurance costs, separate from usual recourse actions. If charterers object, they are advised to insist on co-insurance under the owner's policy.

The period for alternative orders was extended to 72 hours, benefiting charterers if they needed more time over weekends. The subcommittee plans to adopt this clause with CONWARTIME 2024 and follow it up with VOYWAR, and the War Cancellation Clause. Feedback is welcomed via the Discussion Forum.

The Chairperson thanked Mr Starmans for the update and asked if there were any questions at this point.

Mr Peter Eckhardt, Germany, raised concerns related to subclause (f), specifically about how evidence of payment to the crew is verified in practice. He questioned whether the owner would need to approach each crew member individually to confirm whether they received payment in their account, and how this could be proven.

Mr Michiel Starmans, in response to Mr Eckhardt's question, confirmed that charterers want proof of the fact that crew members are paid the claimed amounts by owners for entering war risk areas. He suggested a simple system where crew members sign a document confirming receipt of payment. This system is designed to prevent a scenario where owners could potentially keep extra money not meant for them. The practicalities of this system, however, still need to be worked out.

The Chairperson thanked Mr Starmans and said the DC is looking forward to having all three drafts ready for possible adoption in March 2024.

#### 6.4. SUPPLYTIME 2017 – Dynamic Positioning Annex

The Chairperson announced the next Item on the Agenda, the development of an Annex to SUPPLYTIME, specifically dealing with dynamic positioning as outlined in Agenda Notes, Item 6.4. He invited Mr Ian Perrott, the Chairperson of the subcommittee, to provide an update.

Mr Ian Perrott, Chairperson SUPPLYTIME 2017 – Dynamic Positioning Annex, reported the completion of this seventh Annex in the library of Annexes to SUPPLYTIME, a process that began last October. The Annex, while niche, fills a noticeable gap in SUPPLYTIME, WINDTIME, and ASVTIME, considering the growing importance of dynamic positioning in the offshore industry. The Annex was developed largely in collaboration with the International Marine Contractors Association (IMCA), in response to a rise in dynamic positioning-related incidents and accidents over recent years. The Annex is intended to help resolve potential disputes arising from these issues. Despite the challenges of the subcommittee working predominantly online, they managed to finalise the Annex during a two-day in-person meeting in Aberdeen. Mr Perrott stated that this Annex is long overdue and invited questions.

Mr Lodewijk Wisse, Netherlands, thanked the subcommittee for their work to date. He asked a question regarding subclause (e), where it is stated that charterers have the right to require additional dynamic positioning trials. He sought clarity on what these supplementary trials involve and their scope. He highlighted that the Dutch delegation views this aspect as crucial in ensuring a balanced Annex.

Mr Perrott explained that the standard dynamic positioning trials, outlined by the IMCA guidelines and reinforced by class, are usually reviewed by charterers. However, charterers often have their own set of guidelines and trials they want confirmed, given the proximity of the vessel to their offshore installations.

Charterers frequently have their own independent, stricter trials and verification processes. During charter party negotiations, they often stipulate the trials that owners must undertake. However, the charter party does not specify who should bear the time and cost of these trials, making it a crucial point for negotiation.

Mr Perrott highlighted that while each Annex can function independently, they are designed as starting points for negotiations. He underlined the importance of the dynamic positioning trials aspect, which the subcommittee included in the Annex to remind parties to address it during negotiations.

#### 6.5. Emission Scheme Surcharge Clause for Voyage Charter Parties

The Chairperson introduced the next Item on the Agenda, 6.5., which is the Emission Scheme Surcharge Clause for Voyage Charter Parties. He mentioned that the subcommittee has produced an initial draft and invited Mr Peter Eckhardt to provide an update on the subcommittee's progress.

Mr Peter Eckhardt, Chairperson of the Emission Scheme Surcharge Clause for Voyage Charter Parties Subcommittee, updated that, following the adoption of the ETS – Emission Trading Scheme Allowances Clause for Time Charter Parties 2022, the subcommittee started working on an equivalent clause(s) for voyage charter parties. They aim to fairly distribute rights and responsibilities between owners and charterers. The subcommittee has, at this stage, decided to create two separate ETS allowance clauses for stakeholders' different needs. The first clause, the Emission Scheme Surcharge Clause, deals with ETS on a cash basis. It allows the payment of an agreed emission surcharge supplementary to the freight, which covers ETS-related costs for voyages. The clause also includes an optional adjustment provision to manage potential discrepancies between the agreed surcharge and actual cost of ETS allowances. The subcommittee is now working on a second clause that addresses the transfer of ETS allowances. The goal is to share the initial draft when it is ready via the Discussion Forum and to present both clauses for adoption before the end of 2023. He invited questions or comments from the DC.

Ms Lisa-Marie Perella, Canada, suggested that, in addition to the suite of clauses already available, including the two being drafted, it might be beneficial to introduce a clause where the cost of ETS allowances are incorporated into the freight rate. She noted that, based on experience, many customers prefer this method over a separate surcharge.

Mr Peter Eckhardt responded by acknowledging that this point had been discussed within the subcommittee. So far, they had deemed it unnecessary as it is part of the normal course of business. However, he agreed to bring this back to the subcommittee to consider whether a simple clause could be developed to cater for this need.

The Chairperson thanked Mr Eckhardt and acknowledged Ms Perella's suggestion as a good point, affirming that it was worth discussing with the subcommittee.

Mr Dimitris Dimopoulos, INTERTANKO, outlined INTERTANKO's stance on this issue, indicating that its members prefer the actual surrendering of allowances by charterers over accepting a surcharge as a supplementary amount. He mentioned a recent Worldscale consultation where a proposal was made to accept a payment amount in lieu of allowances. INTERTANKO, however, did not support this proposal, and are yet to receive a concrete response from the Worldscale Association. Mr Dimopoulos also acknowledged that INTERTANKO has not considered the adjustment mechanism conceptually and plans to bring this up with its membership, including the Commercial Market

Committee. Despite his comments being primarily tanker-focused, he recognised the value of having an inclusive clause given BIMCO's diverse membership.

The Chairperson thanked Mr Dimopoulos and requested that if he had any additional feedback, he could kindly pass it on to the Secretariat who would then relay it to Mr Eckhardt.

Mr Daniel Carr, United States, suggested that the subcommittee might consider making this surcharge a non-commissionable item. He explained that if it were included in freight, then brokers and others would add commission on it. However, as this is more comparable to a pass-through cost based on emission taxes, he questioned whether it should qualify as a commissionable item, like freight, dead freight, or demurrage.

Mr Peter Eckhardt, said the subcommittee has not discussed that point, but said this would be taken back to the subcommittee.

Mr Philip Stephenson, United Kingdom, raised a query regarding whether the clause should account for unexpected delays due to securing the ship's safety, saving lives at sea, quarantine, or bad weather. These are situations that charterers could not foresee and include within the surcharge calculations. He questioned whether there is a need to divide the additional costs between owners and charterers in such situations.

Mr Peter Eckhardt, expressed his view that the surcharge is a derivative of the ship's fuel consumption. He pointed out that in contracts, the risk of deviating to save lives at sea typically falls on the owners, with no additional payment from the charterers. He believed the same applies to this scheme. Therefore, it is a commercial risk for the owner to conduct the trade, and he did not think there should be an additional payment for that.

The Chairperson agreed with the proposal to apply the fast-track mechanism to the Emissions Scheme Surcharge Clause, given the impending deadline. He stated that unless there were any objections, the DC would proceed with this approach. However, he clarified that this does not guarantee adoption, but it will be put for adoption via the Discussion Forum.

## **7. Written report of ongoing projects for consideration at the next meeting**

The Chairperson stated that the written report items are intended for detailed discussion in the next DC meeting in March. He invited any comments to be sent to the Secretariat and, seeing no objections, he proceeded to Item 8.

7.1. AUTOSHIPMAN "BETA" Standard Ship Management Agreement for Autonomous Vessels

7.2. ETS and/or CII Clause for Contracts of Affreightment (COAs)

7.3. CII Clause for Trip Time Charter Parties

## **8. Published contracts and clauses/promotion**

The Chairperson noted that there have been significant promotions and expressed hope that this would positively impact the market uptake of the contracts in question. Unless there were any comments, he suggested moving on to the next Agenda Item.



## 9. Future work programme

- FuelEU Maritime and Biofuels Clause(s)
- Methanol Bunker Annex, Dual Fuel Clause and Ammonia Bunker Annex
- WINDSEACON
- Retrofitting Cost/Benefit Clause, Energy Efficiency Performance Clause and Data Exchange Clause
- CO2 Charter Party

The Chairperson revisited the main priorities presented and supported at the April DC meeting, which were decarbonisation, offshore energy and alternative fuels. An additional category was also included for other projects and emphasis was placed on completing ongoing projects which did not necessarily fall under one of these main topics. The Secretariat has already initiated several of these projects. The table in Agenda Item 9 serves to update members on the status of other projects where formal subcommittee work has not yet begun.

Mr Peter Laurijssen, Belgium, indicated that there is strong interest in WINDSEACON from the Belgian delegation. He mentioned that one of the members of the Royal Belgian Ship Owners Association, Dredging, Environmental and Marine Engineering NV International Group DEME, has volunteered Mr Lodewijk Beeckaert to assist if a working group or subcommittee is to be formed. He emphasised that Mr Beeckaert is keen to contribute where he can.

Ms Stinne Ivø, BIMCO, thanked Mr Laurijssen and confirmed that the Secretariat is already in contact with DEME to involve them in this particular project.

## 10. Sample copies and the Law and Arbitration Clause 2020

The Chairperson confirmed the sample copies of the Law and Arbitration Clause 2020 and mentioned that an introduction to both issues is included in the pack for informational purposes.

## 11. General Average/New Jason Clauses in WINDTIME, SUPPLYTIME 2017 and ASVTIME

The Chairperson introduced this item and noted that this issue was raised by Mr Michiel Starmans of the Dutch delegation and invited him to share a few words on this topic.

Mr Michiel Starmans, Netherlands, shared an incident involving one of their vessels that ran aground while transporting goods from Australia to Antarctica, leading to a deviation under a general average situation. Upon failing to trace the General Average Clause in the contracts, they consulted their P&I Club and BIMCO, believing that general average still existed as it is part of international maritime law.

A group of specialists on general average contractual matters was assembled, including the Chairperson who also presided over SUPPLYTIME 2017. It was noted that the knock-for-knock regime includes general average and that parties contracting on SUPPLYTIME 2017, ASVTIME, and WINDTIME need to specifically include or exclude general average.

If left unmentioned, general average still applies. The challenge then is that there is no reference to which rules the adjustment should adhere to. This could lead to situations where the law of an unfamiliar country applies, or it could be subject to English law if it aligns with the agreed law of the

charter party. However, typically, it should be according to the law of the destination. Following their discussions, a note has been prepared and will be published on the BIMCO website.

Mr Ian Perrott supported Mr Starmans' observation that the general average, excluded from WINDTIME, SUPPLYTIME, and ASVTIME, was thought to be replaced by the knock-for-knock regime. However, unless explicitly excluded, it still applies. An advisory note to be made by Mr Christian Hoppe will highlight this issue. Mr Perrott suggested two solutions, include the general average specifying the York Antwerp regime, or rely on the knock-for-knock regime, explicitly excluding the general average in writing.

Mr Michiel Starmans added that if parties decide to exclude general average on this topic, it could cause a lot of problems for the shipowner. However, if general average is excluded, it is unclear who would cover cargo's contribution. He expressed hope that this would be handled by P&I Clubs.

The Chairperson thanked Mr Starmans and expressed appreciation that this issue has been identified. He said he looks forward to its resolution and the addition of appropriate guidance to the three contract pages.

## **12. Other organisations**

Mr Dimitris Dimopoulos, INTERTANKO, provided an update that INTERTANKO will continue to work with BIMCO on the ASBATANKVOY. For the next meeting, they plan to submit a consolidated feedback document for the subcommittee and the DC's consideration. He extended his thanks to the BIMCO staff and the members of the DC, as this will likely be his last DC meeting as the INTERTANKO representative. He introduced Ms Selena Challacombe, the new legal counsel who joined INTERTANKO at the beginning of the year, as his successor.

The Chairperson thanked Mr Dimopoulos and welcomed Ms Challacombe.

Ms Leyla Pearson, International Chamber of Shipping (ICS), noted that the International Chamber of Shipping (ICS) recently launched its Carbon Intensity Indicator (CII) data collection system. This was in response to an IMO invitation for data collection and proposal submissions from member states and international organisations. The system allows shipowners and managers to submit data on fuel consumption and trial metrics, among other things. The data collected, alongside the ongoing work of BIMCO and other industry organisations, is expected to improve understanding of the CII system's functionality and contribute to its review and enhancement by the IMO.

Mr Nick Shaw, International Group of P&I Clubs, reported that they have been holding regular meetings over the past year with the BIMCO Secretariat to coordinate the appropriate people to join the subcommittees. He described this as a positive development with BIMCO. For matters related to the DC, Mr Shaw handed over to Ms Camilla Slater, who assists with the Bills of Lading Committee, to report on developments regarding both the Letters of Indemnity (LOIs) and Electronic Bills (e-Bills).

Ms Camilla Slater, International Group of P&I Clubs, reported that the International Group Bills of Lading Committee recently reviewed the standard Letter of Indemnity wordings, with new versions published last month. The changes, explained in the accompanying Explanatory Notes, were

informed by various commentaries and input from traders and charterers, including BIMCO's early contribution.

While the committee was open to a full redraft, a recent English High Court decision confirmed the adequacy of the existing LOI wording, discouraging a radical change. The new drafts, therefore, are an evolution of the old. Ms Slater recommended reading the Explanatory Notes for more detail on the amendments.

She also highlighted the positive impact of electronic bills of lading, which have reduced the need for LOIs. Clubs support the use of e-Bills, ensuring coverage as if they were a paper bill. While it is hoped that new laws recognising e-Bills as equivalent to paper will boost electronic trading, the revised LOIs are expected to be useful in reducing the scope for disputes.

The Chairperson thanked Ms Slater and said the DC is looking forward to greater adoption of e-Bills and the reduction in the use of LOIs.

### **13. Any other business**

The Chairperson announced that this was the final meeting for Ms Laurene Niamba from Armateurs de France and thanked her for her contributions. He also noted that it was Mr Philip Stephenson's last meeting. Mr Stephenson has been a DC member since 2013, making significant contributions over the past decade. The Chairperson commended him for his active participation and valuable input and congratulated him on his new role at NorthStandard in Greece.

Mr Philip Stephenson, United Kingdom, expressed his gratitude to the Chairperson and shared his pleasure in serving on the DC for a decade. He appreciated working with talented individuals and participating in various events worldwide. He acknowledged the DC's dedication to the shipping industry and thanked the UK Chamber of Shipping for hosting pre-meetings, which facilitated the addressing of the UK delegation's comments in advance.

Mr John Freytag, Germany, said he would be interested to see the Explanatory Notes on the LOI just mentioned. He asked if the Secretariat could circulate them to the DC.

The Chairperson informed the DC that 16 nations, including China, Singapore and Liberia, signed the International Convention on Judicial Sales of Ships (Beijing Convention) on 5 September. Mr Peter Laurijssen, representing ICS, and Mr Søren Larsen, representing BIMCO, both spoke at the signing ceremony. The Convention will come into force 180 days after the deposit of the third ratification.

### **14. Date and place of next meeting**

The Chairperson announced that the next DC meeting is scheduled for 22 March 2024 in Hamburg, Germany. BIMCO's President, Mr Niko Schües, has invited the DC to a meeting and a dinner the following day. The meeting will be a hybrid event, but in-person attendance is encouraged as it coincides with the 200th anniversary of Reederei F. Laeisz.