

# FONASBA

## MINUTES OF THE MEETING OF THE CHARTERING & DOCUMENTARY COMMITTEE HELD AT

### SOFITEL HOTEL RIO DE JANEIRO

AT 09.00 a.m. ON THURSDAY, OCTOBER 10<sup>th</sup> 2002

#### Present:

Mrs. G.C. Noer	Chairman Chartering & Documentary Committee
Mr. P.G.D. Smith	Vice Chairman
Mr. B. D'Orey	President FONASBA

Mr. G. Gordon Finlay	Brazil	Mr. F. Carlini	Italy
Mr. P. Alves	Brazil	Mr. V. Tottorizzo	Italy
Mr. M. Bonelli	Brazil	Mr. T. Iigaki	Japan
Mr. M. Froio	Brazil	Mr. E. Itoh	Japan
Mr. A. Zanin	Brazil	Mr. V. Vaichekauskas	Lithuania
Mr. L. A. Carvalho	Brazil	Mr. V. Banovic	Montenegro
Mr. P. Oliviera	Brazil	Mr. S. Karia	Morocco
Mr. V. Pinto	Brazil	Mr. M. Duin	Netherlands
Mr. L. da Silva	Brazil	Mr. P. Bohaugen	Norway
Mr. M. Tudor	Croatia	Mr. A. Belmar da Costa	Portugal
Mr. C.P. Papavassiliou	Cyprus	Mr. J. Luiz	Portugal
Mr. A. Houtved	Denmark	Mr. E. Bandelj	Slovenia
Mr. G.J. Heinonen	Finland	Mr. N. Warner	South Africa
Mr. K. Kuusela	Finland	Mr. A. Pérez – Maura	Spain
Mr. F. Le Bars	France	Mr. L. Lindebäck	Sweden
Mr. A. Lobadowski	France	Mr. K. Chen	Taiwan
Mr. K. Bültjer	Germany	Mr. S. Winger	USA
Mr. J.A. Good	Great Britain	Mrs. J. Cardona	USA
Mr. P.J. Wood	Great Britain	Mr. G. Knudsen	Intertanko
Mr. G. Georgopoulos	Greece	Mr. G. Wramfelt	The Shipbrokers Register
Mr. B. Szalma	Hungary	Mrs. A. Robinson	Argentina (Observer)
Mr. J. Dundon	Ireland	Mr. P. Campbell	Argentina (Observer)
Mr. U. Masucci	Italy	Mr. R. G. Piñero	Argentina (Observer)
Mr. R. Corrias	Italy	Mr. H. Ferreti	Chile (Observer)

#### In attendance:

Mr. J.C. Williams	General Manager
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#### Item

##### 1. PRESIDENT'S WELCOME

#### Action

The **President** welcomed those present, making particular mention of the representatives from Argentina and Chile who were attending as observers.

##### 2. CHAIRMAN'S OPENING REMARKS

The **Chairman** echoed the comments from the **President** and also thanked FENAMAR for hosting the meeting. She also advised that apologies for absence had been received from Søren Larsen and Truls L'Orange of BIMCO, who had wished the meeting well.

3. **MINUTES OF THE MEETING HELD ANTWERP OCTOBER 19<sup>th</sup> 2002 / MATTERS ARISING**

The minutes of the previous meeting having been circulated, and with no comments having been made previously or at the meeting, were taken **as approved**. Furthermore, there were no matters arising that were not otherwise covered in the agenda.

4. **CHARTERING & DOCUMENTARY COMMITTEE ADVISORY PANEL**

The **Chairman** detailed the members of her Advisory Panel and introduced George Georgopoulos, Søren Winger and Philip Wood, all of whom were present at the meeting.

5. **CHARTERING & DOCUMENTARY COMMITTEE ADVISORY PANEL REPORTS**

At the request of the **Chairman, Mr. Winger** gave a brief overview of the dry cargo chartering market in the past year. He advised that although rates fell immediately after September 11<sup>th</sup> 2001, and remained low for most of the current year, there were now signs of upward movement. Following the summer lull, rates for handymax, panamax and cape-size vessels had all shown welcome rises on the back of increased demand in a number of areas. Period rates had also moved in the same direction. Delivery of new vessels may prove to be detrimental to present rate levels but so far deliveries of cape-size vessels have been matched by demolitions, so the number of vessels remains static, whilst increases of only 7% in total panamax tonnage and 8% for handymax have had little noticeable effect to date. Of more concern are developments in Brazil, Turkey and China where changes in leadership may have an impact on freight rates, as could any conflict in the Middle East. The latter has already driven up bunker prices and costs for additional security measures will also influence rates.

**Mr. Wood** reported that in the gas and tanker markets, rates were still down on last year, VLCC rates having dropped significantly. He also confirmed **Mr. Winger's** comment that bunker prices had increased - by as much as US\$ 45/tonne for some grades. World oil consumption was relatively static at present and this, combined with an on-going reduction in the number of charterers – resulting from a number of large mergers between oil companies – would continue to exert downward pressure on rates. Whilst there was a significant number of new vessels on order, the need to phase out older vessels on environmental and safety grounds would reduce pressure on rates but by the same token the newer vessels will not benefit from significantly higher rates either.

**Mr. Wood** also made mention of the recent legal decision in the “Happy Day” case where the Court of Appeal had ruled that time would count from when the charterers started working cargo, even if no NOR had been presented by the vessel. He also draw the attention of the meeting to the recent decision by Exxon-Mobil to have disputes heard in the USA under US law, whereas traditionally such cases had been heard in London under English law.

Finally, as to market forces, he advised most commentators were predicting present levels would remain for another year, followed by a brief recovery. This did not, he said, take into account any military action in the Middle East.

For Greece, **Mr. Georgopoulos** reported that rates were significantly down in the Mediterranean market. Although there had been an increase of 8.7% in inter-island passenger numbers with the number of passenger voyages now exceeding 20 million per year, there had been a reduction in the number of small and medium sized operators. The most encouraging development was an increase in demand for small container vessels to service the inter-island trade, which now amounted in total to more than 3 million movements per year.

Covering the sale & purchase market, **Mr. Bohaugen** said that the expected increase in activity as a result of US activity to stimulate trade had not eventuated. Downward pressure on

newbuilding prices continues and as new vessels feed into the market there will be continued downward pressure on rates.

The **Chairman** thanked her colleagues for their reports.

## 6. GRAIN CHARTER PARTIES

### a) NORGRAIN SOUTH 2000

**Mr. Winger** reminded the meeting of the background to the development of this charterparty. Regrettably, however, market acceptance had not matched expectations. There had been little enthusiasm amongst the major grain houses for the new form and as far as he/ASBA were aware, it had been used once. The situation was unlikely to improve in the future due to the work presently being carried out by BIMCO to develop its own grain form.

### b) BIMCO GENERAL GRAIN

**Mr. Smith**, a member of the BIMCO team developing this new form, reported that attempts had been made to update the "CENTROCON" form but eventually the decision had been taken to start again. BIMCO was working with both Cargill and Toepfer on the new form and other grain houses had indicated their support. The new form is well-balanced and neutral and, with the high level of industry support, should achieve good market usage. It is hoped that the form will be adopted at the November Documentary Committee meeting.

## 7. MEDIATION – A POSSIBLE ALTERNATIVE TO ARBITRATION ?

At the request of the **Chairman**, **Mr. Smith** gave an overview of the efforts by BIMCO and the London Maritime Arbitrators Association, (LMAA), to increase market acceptance of their mediation format as an alternative to the established arbitration process. A copy of the BIMCO/LMAA Arbitration Clause, which included a clause on mediation, had been circulated.

He said that the aim was to reach an agreed settlement through assisted negotiation with the mediator acting in an independent and impartial manner. One aim of mediation is to avoid the ill-feeling that can result from an arbitration. The costs are significantly less than would be incurred in a court case and are also some way below those involved in arbitration as senior members of the parties concerned appear before the mediator rather than lawyers. Those appearing for each side must, however, have sufficient authority to make or agree terms on their, or their principal's, behalf. The process is somewhat less formal than other forms of dispute resolution with both parties making statements before the mediator, who then moves between the two parties in an effort to achieve the required settlement. Mediation can be used as an initial step even if both parties are set to go to court.

A number of those present had been involved in mediation and many found it useful, although in some cases it had not been possible to reach a satisfactory settlement by this means. On the question of including the option to go to mediation in current charterparties and other documents, **Mr. Smith** recommended that a short reference be made to draw the other party's attention to the clause. It was expected that as current forms are revised, the option to use the LMAA clause will be included in the pre-printed clauses.

## 8. COMMISSION CLAUSES

**Mr. Smith** led a discussion of the more commonly used commission clauses. He said this was a very wide subject so he would only cover the most common examples. He began by reading the relevant clauses from the NYPE and Gencon charterparties. Before agreeing to any commission clause, the broker should read the clause in its entirety and should ensure that it covers all forms of commission payable under the agreement including, where appropriate, commission payable

on early termination of the charterparty and other less common eventualities. Questions were raised as to whether brokers were entitled to commission on insurance fees, oil pollution cover and Panama canal dues. **Mr. Smith** said that if a commission was expected on these items, the broker should ensure that the commission clause does indeed cover same. Furthermore, it was necessary to ensure that the owner and charterer were aware of both the right of the broker to receive commission and which party is responsible for payment.

He also reminded those brokers operating under UK law that they had protection under the Contract Terms (Rights of Third Parties) Act.

## **9. THE BROKER'S OBLIGATION IN CONNECTION WITH RECYCLING OF SHIPS**

This matter having been raised in Denmark, the **Chairman** asked **Mr. Houtved** to brief the meeting.

He said that there had been a considerable amount of publicity in Denmark, particularly on television, regarding the conditions under which most ship breaking was undertaken. As a result, his association had been consulted by the Danish government with a view to ascertaining what influence the broking community could bring to bear on ship owners to encourage them to use better equipped and operated demolition facilities. He referred to the BIMCO ship demolition contract, issued earlier this year and the IMO guidelines, both of which encouraged the establishment and use of facilities which provided adequate levels of protection to both the environment and the labour force. The International Labour Organisation was also raising the issue and he felt that FONASBA should do likewise.

Delegates were asked to comment and it became clear that whilst there was support for the concept of improving working conditions, there was a limit as to what brokers, and indeed others outside the demolition sector could achieve. Any initiatives by ship owners or their brokers would be limited until such time as suitable alternative facilities were available, either through the establishment of new yards or improvements in existing yards. Even after that, the role of the broker would be limited to advising the principal of the existence of the various alternative facilities. The final decision on which yard to use would be completely at the discretion of the owner and market forces would play a large part in determining the outcome. For the broker to seek to force a principal to use a particular yard would be exceeding his authority and could damage his relationship with the principal.

**The President** advised that FONASBA was hoping to increase its profile with IMO and suggested that this may be an issue on which it could have a useful dialogue with the international body.

## **10. BIMCO DOCUMENTARY MEETING**

As BIMCO was not represented at the meeting, **Mr. Smith** gave a brief report on the meeting held in Limassol in May. As part of the review of progress on various documents, he said that the Standard Liner & General Agency Agreement had been well received by BIMCO and copies had been circulated to all members. He also reported that the relationship between FONASBA and BIMCO continued to be extremely good. As indicated at the start of the meeting, messrs Larsen and L'Orange had, through the Secretariat, expressed their disappointment at being unable to attend the meeting but had wished it every success.

**Mr. Smith** also gave a brief update on the IDEA application, advising that BIMCO was now considering opening it up to non-approved documents and that this task would be discussed on BIMCO's Documentary meeting in November this year.

**11. INTERTANKO DOCUMENTARY MEETING**

**Mr. Knudsen** reported on the meeting held in London in May. He said that one matter under discussion was a proposal to introduce an Intertanko Agency Clause. Specifically aimed at charters nominated agents, this clause would seek to ensure that the agency nomination was given simultaneously with, or before, the load port was notified to the owner and further that the agent should be of the highest quality, preferably being certified to ISO 9002 standard. He said that under this clause a failure to nominate the agent at the appropriate time would lead to the nomination being valid. He also referred to the new "Guide to Tanker Chartering" publication, the new Intertankbill document, which had been updated to include UCP 500 and the York – Antwerp rules, and the freight and demurrage database that was available to members only on the Intertanko website.

There was some concern amongst delegates that the agency clause had not been referred to FONASBA and also that ISO 9002 accreditation was not a universally accepted standard within the agency community. Other benchmarks of quality, such as membership of FONASBA or staff qualified to ICS professional membership standards were considered to be much more relevant than ISO 9002. **Mr. Knudsen** admitted that FONASBA had not been asked to comment on these proposals and also conceded that other quality benchmarks should be considered. He agreed, therefore, to take these comments back to Intertanko for further consideration.

**12. ANY OTHER BUSINESS**

There were no other issues raised by the meeting.

**13. DATE AND PLACE OF NEXT MEETING**

The **Chairman** advised that the next meeting of the Committee would take place in October 2003 during the Istanbul meeting.

She then asked **Mr. Knudsen** to give a presentation on Intertanko's activities in relation to increased maritime security.

**There being no further matters to discuss the Chairman brought the meeting to a close.**

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