

FONASBA
CHARTERING & DOCUMENTARY COMMITTEE

MINUTES OF THE ANNUAL MEETING HELD OCTOBER 20TH 2000 AT
THE HOTEL SOFITEL FORUM RIVE GAUCHE
PARIS

Present Mr. J.P. Besman - Chairman, Chartering & Documentary Committee
Mr. P.G.D. Smith – Vice-Chairman, Chartering & Documentary Committee
Mr. E. de Clebsattel – President

Mr. J. Hunter - Belgium	Mr. J. Dundon - Ireland
Mr. R. de Meyer – Belgium	Mr. M. Ronayne - Ireland
Mr. M. Froio – Brazil	Mr. F. Carlini – Italy
Mr. F. Pinto Almieda – Brazil	Mr. R. Corrias - Italy
Mr. W. Rocha Jnr – Brazil	Mr. V. Vaichekauskas - Lithuania
Mr. I. Pires Neto – Brazil	Mr. V. Banovic – Montenegro
Mr. V.M.S. Pinto – Brazil	Mr. A. Stove Lorentzen – Norway
Ms. G. Hundreva – Bulgaria	Mrs. G. Noer – Norway
Mr. M. Tudor – Croatia	Mr. B. D'Orey – Portugal
Mr. C.P. Papavassiliou – Cyprus	Mr. A. Belmar da Costa – Portugal
Mr. A. Houtved – Denmark	Mr. V. Andrianichev – Russian Fedn.
Mr. K. Kuusela - Finland	Mr. A. Evdokimov – Russian Fedn.
Mr. G.J. Heinonen – Finland	Mr. M. Thoumas - Senegal
Mr. A. Lobadowsky – France	Mr. R. Veselko – Slovenia
Mr. P.J. Wood – Great Britain	Mr. E. Bandelj – Slovenia
Mrs. B. Fletcher – Great Britain	Mr. A. Perez-Maura – Spain
Mr. R.J. Davies – Great Britain	Mr. L. Lindebäck – Sweden
Mr. J. Barclay – Great Britain	Mr. J. Chow – Taiwan
Mr. J. Good – Great Britain	Mr. L. Karacelik – Turkey
Mr. G. Georgopoulos – Greece	Mr. M. Dobravsky – Ukraine
Mr. P. Demeter – Hungary	Mr. G. Knudsen – INTERTANKO
Mr. B. Szalma - Hungary	Mr. G. Wramfelt – The Shipbroker's Register
Lt. Cdr. L. Smith – Ireland	
Mr. M. Hennebry – Ireland	
Mr. J. Lerbret – France (Observer)	Mrs. S. Starbuck – “Ship’s Agent”
Mr. J-B. Raust – France (Observer)	Mr. S. Larsen – BIMCO (Observer)
Mr. A. Ravisse – France (Observer)	Mr. T. W. L'Orange BIMCO (Observer)
Mr. J. Saignol – France (Observer)	
Mr. R. Overall – “Ship’s Agent”	

In Attendance Mr. J.C. Williams – General Manager

Item	Action
1. PRESIDENT’S WELCOME	

The **President** welcomed all delegates and observers to this meeting. He especially welcomed Soren Larsen and Truls L’Orange, respectively Secretary General and Chartering & Documentary Committee Vice Chairman of BIMCO but he also expressed his disappointment at the absence of Stelios Niotis, Chairman of the BIMCO C&D Committee.

He then handed the meeting over to **John Besman**, Chairman of the C&D Committee.

2. CHAIRMAN'S WELCOME

Mr. Besman echoed the **President's** welcoming remarks whilst the attendance list was being circulated.

3. MINUTES OF THE LAST MEETING HELD SINTRA OCTOBER 13th 1999

The minutes of the last meeting had been circulated previously and as no comments had been received before or during the meeting, the minutes were taken as **approved**. There were no matters arising that were not covered in the agenda for this meeting.

4. CHARTERING & DOCUMENTARY COMMITTEE ADVISORY PANEL

Mr. Besman said that the Advisory Panel had not met since the last meeting and no matters of concern had been raised.

For the UK Tanker Brokers, **Mr. Wood** had nothing to say at this juncture.

On behalf of the Norwegian Sale & Purchase Brokers, **Mrs. Noer** said she would report fully under item 8.

5. NORWEGIAN SALEFORM '93

Prior to presenting her report on the current usage of this document, **Mrs. Noer** reminded delegates that the correct title is the Memorandum of Agreement, Saleform '93. Whilst flattered that Norway was linked to this document, she recommended that the correct title be used in writing.

To date no arbitration proceedings have been commenced in relation to the main terms, thereby indicating the balanced nature of the document. The electronic version (available from BIMCO and others) is proving much more popular than the paper version. The document is used in almost all sale & purchase deals brokered in Oslo, 80 – 90% of those in Paris, 75% in Piraeus and 60% in London. Some shipowners prefer to use previous versions of the Saleform document with even the 1966 version still in limited use.

Mr. Besman asked if the Norwegian Shipbrokers Association intended to withdraw the earlier versions and **Mrs. Noer** confirmed that the 1987 version was still being produced in response to user demand.

6. GENTIME TIMECHARTER – PROGRESS REPORT

Mr. Besman called on **Mr. Smith** to comment on the new "Gentime" form.

Mr. Smith said the major hurdle for this, and any other new form, was to achieve good levels of user acceptance in a reasonable period of time and on this point called on Mr. Larsen of BIMCO to comment.

Mr. Larsen reported that whilst still in the very early stages of usage, more than 4,000 copies had been sold by BIMCO in the first six months of the year, a figure that significantly exceeds sale from Copenhagen of the "Balttime" and "NYPE" forms. Some feedback had been received from brokers in the UK and Germany who felt it to be a well-balanced document.

Mr. Smith then asked Mr. Larsen to explain the reasons why BIMCO had felt the need to issue a new document while the "Balttime" and "NYPE" had stood the test of time.

Mr. Larsen said BIMCO felt that the "Balttime" was certainly out of date and they

themselves discussed a number of options for its replacement. With regard to the "NYPE", BIMCO felt that as a principal developer of documents it was beholden to provide its members with an alternative to that form. Furthermore, a new form would give the opportunity to incorporate into the body of the form a number of rider clauses which are regularly added to the existing forms.

7. TANKER SUB-COMMITTEE REPORT – UK

Mr. Besman called on **Mr. Wood** to present a report.

Mr. Wood covered a number of topics in his report, including the real threat to tanker brokers from the reduction in the number of oil companies by merger and acquisition and also the perceived threat from on-line trading of cargoes.

He also mentioned the prevailing tanker inspection regimes, calling on INTERTANKO to provide further information on this topic. From the broker's point of view, he said major oil companies no longer inspect ships to approve them but to decide if they are acceptable for service in their trades. This, he felt was a lawyer-driven development based on liability issues. More importantly, however, he said that oil company inspection reports were now being entered into the SIRE system operated by OCIMF. In time, therefore, there would be fewer inspections by oil companies, as each company could look up the latest vessel reports on-line.

For INTERTANKO, Mr. Knudsen, said the organisation was probably doing the most important work on vetting, which was a major concern of its members. He said that INTERTANKO would be pleased join with FONASBA in order to find areas where both organisations could work closely together to the benefit of the joint membership. INTERTANKO have made efforts to overcome the new difficulties and have already spoken to the major oil companies about the change in emphasis of ship inspections and also with SIRE to rationalise the inspection regime.

Mr. Besman and **Mr. Wood** also mentioned the incidences of inspections being carried out by oil terminals, and not charterers, and the further complications this and inspection time bars brought to the situation.

8. SALE & PURCHASE SUB-COMMITTEE REPORT

Mrs. Noer presented her report covering various aspects of sale and purchase activity over the past twelve months.

For large tankers the market was described as lively with prices increasing over the period in line with demand and freight rate rises. An example was the sale in the summer of 5 Suezmax and 5 Aframax tankers en-bloc for US\$ 320 million. At present, prices have stabilised following corrections in charter market rates, particularly for VLCCs.

Substantial increases in freight rates for LR and MR Product tankers have resulted in owners holding on to tonnage so sale and purchase deals have been rare.

Operators of Cape and Panamax size dry bulk carriers have also seen freight rate increases and have benefited from increasing prices for modern vessels as new-building prices have risen steadily.

A tight supply situation has arisen in the LPG market and this has led to some speculative ordering of LNG carriers in the 135,000m³ range at prices ranging from US\$ 120 – 160 million.

Container vessel prices are generally strong due to increased buying interest. German buyers are still placing orders for post-Panamax units for onward charter. Greek operators are still interested in second-hand vessels and prices have risen by

up to 30% over the past year – due in part to the strength of the time-charter market.

9. “NORGRAIN SOUTH” CHARTER PARTY

Copies of the final version of the charter party, that had been developed by ASBA (USA) in association with FONASBA, had been distributed to delegates. **Mr. Besman** advised the meeting that the next step was to market the new form to potential users. A number of seminars had been arranged to market the original “NORGRAIN” charter and it was the intention of ASBA to do likewise for this form, albeit the seminars would on this occasion probably be restricted to New York and London. No firm decisions had been taken at that time, however, and a final plan of action would in due course be developed by the ASBA marketing sub-committee. **Mr. Besman** will be a member of that sub-committee and will keep FONASBA advised of progress on the marketing plan.

JPB

The new charter party was designed as a successor to the “CENTROCON”. Although that form is not in regular use by grain traders, it is hoped the new charter will secure market acceptance by being clearer and more relevant to the South American grain trades.

10. TIME CHARTER INTERPRETATION CODE 2000

With this document having been approved at Sintra and now being distributed in its published form, **Mr. Besman** just advised delegates that the marketing of same would also be part of the remit of the ASBA sub-committee and therefore was expected to be launched at the same seminars in New York and London as the “NORGRAIN SOUTH”. **Mr. Besman** advised delegates that one of the originators of the Code, Mr. Jean Lerbret, was an observer at this meeting.

11. “VOYLAYRULES” – MARKET ACCEPTANCE

Mr. Besman said that this item had been included on the agenda with a view to ascertaining to what extent the working market had accepted this revised document.

Mr. Jean Lerbret said that whilst he could not comment formally, he had heard that this form, in common with many other new documents, was meeting resistance from brokers who felt comfortable with older, tried and tested forms. He therefore felt that this document would face an uphill struggle to achieve acceptance. **Mr. Wood** echoed Mr. Lerbret’s comments on the difficulties facing any new document but advised that the “VOYLAYRULES” form was now being discussed in the Institute courses.

Mr. Besman added that whilst the original version had not achieved wide market acceptance it had proven useful both in court and for guidance purposes.

For BIMCO - as co-producers of the form, Mr. Larsen said that his information was that the form is only used to a very limited extent but confirmed that it was proving useful in the legal process.

12. INTERTANKO DOCUMENTARY MEETING

Mr. Besman asked Mr. Gunnar Knudsen for a report on the latest meeting of this FONASBA club member association. Mr. Knudsen reported that unfortunately this committee was outwith his responsibilities within INTERTANKO and he was unable to provide a first hand report. He would, however, endeavour to report back whilst this meeting was in session. **He did so following conclusion of Mr. Larsen’s comments on the BIMCO C&D Committee meeting**, advising delegates that the INTERTANKO C&D Committee is working on a standard shuttle tanker contract. The Committee is also working on a new document relating to comments on voyage and time charters. Three chartering seminars will be held in Australia and New Zealand

in April 2001. Revision of the INTERTANKO vetting clause has been completed. Finally, the next meeting of the Committee will take place in December.

13. **BIMCO DOCUMENTARY COMMITTEE**

Mr. Smith attended the last meeting of the committee in Athens and reported that four new charter parties had been discussed.

The "SYNACOMEX 90" grain charter had been approved, albeit on the grounds that there is no reference therein to the Hamburg Rules, due to strong ship-owner resistance to those rules.

The "COFCO" fertiliser voyage charter party was accepted.

The very important "BPTIME2" tanker time-charter document was also accepted but **Mr. Smith** understood that subsequently there have been further developments and it was thought that further work might be undertaken.

The final charter was "BARECON 89" which is in a preliminary stage of revision and it is hoped this will be adopted at the November Documentary Committee meeting in Copenhagen.

Standard document forms for ship repair and bunkering as well as a standard questionnaire were also discussed.

As mentioned at the Liner & Port Agency Committee meeting, BIMCO appreciated the initiative behind the FONASBA Standard Liner Agency Agreement but were not prepared to approve it.

Responding to **Mr. Smith's** comments, Mr. Larsen of BIMCO said that the problems relating to the "SYNACOMEX" document had been resolved with Synacomex agreeing to remove the reference to the Hamburg Rules from the charter text.

With regard to the "BPTIME2", the outstanding issues have not been resolved, and in particular the speed and performance and questionnaire clauses. Mr. Larsen suggested that a resolution of the speed and performance problems might be aided by use of the TCIC 2000 document. The revised document will be re-presented at the November meeting.

In Copenhagen a suggestion to revise the "BOXTIME" will be considered in the light of increased usage by container operators - in some cases in preference to the "NYPE" form. The "CONLINE" Bill of Lading form will be adopted.

Concluding, Mr. Larsen advised delegates that BIMCO is looking at developing a web-based charter party editor in response to broker interest. It is expected this will be in place in May 2001. It is expected the layout will be very user-friendly.

14. **IBCC – IF ENGLISH LAW APPLIES OUR FORM BECOMES REDUNDANT**

Mr. Smith reminded delegates that the International Brokers Commission Clause had been developed to counter the position under English Law whereby a broker, named in a charter party, could be prevented from suing a principal for commissions due. Under the doctrine of Privity of Contract, English Law only recognised the parties to a contract and therefore the broker could find himself disenfranchised. The IBCC had been specifically developed to provide a separate contract between the owner or charterer and the broker but the introduction of the Contract (Rights of Third Parties) Act 1999 has now removed the necessity, under certain circumstances, for the IBCC to be used. The broker now has the right to take action against the owner provided that the relevant clause clearly purports to confer a benefit on the particular broker. Commission clauses in most existing charter parties

do not, however. Furthermore, some tanker or sale purchase agreements do not make reference to a commission clause. The new legislation will, however, prove useful to brokers, especially as they may now have the right to arrest vessels for commissions due. In response to a question from the floor, **Mr. Smith** said the broker need not necessarily be named but should be readily identifiable.

15. CHARTERERS AGENTS CLAUSE

Mr. Besman reminded delegates that in spite of any reference to the charterers right to nominate agents, the agent still worked for and on behalf of the master and owners of the vessel. In order to clarify this point the FONASBA Charterers Agents Clause was developed.

Mr. Barclay reminded the meeting that the charterer only has the right to nominate the agent, not appoint the agent. Use of the term “appoint” gives charterers the impression that the agent works for them.

There then followed a discussion during which delegates raised the question of owners not being fixed following a refusal to accept charterers nominated agents and also the need to ensure that owners only pay “reasonable” agency fees as a result of the requirement to utilise charterers nominated agents. **Mr. Papavassiliou** also mentioned the inclusion in the “NORGAIN SOUTH” of the term “owner or charterers to appoint agents”.

It was agreed that the increasing use of charterers nominated agents was a problem for agents and owners, especially as in some cases the nominated agent does not have the close relationship with the owner necessary to provide a professional service.

16. THE BRAZILIAN PROBLEM

Mr. Besman advised that this related to the matter raised by the Brazilian contingent at Portoroz, that is the problem of NVOCC's whose activities are not regulated in Brazil and who also pose a serious problem to Brazilian Customs in not complying with various customs regulations. **Mr. Besman** read a fax received from Mr. Braun on FENAMAR by the London secretariat and then asked **Mr. Froio** to comment further.

Mr. Froio confirmed that the problem persisted and whilst legislation to regulate the issue by NVOCCs of bills of lading was going through the political process this would take time. Unfortunately he advised that this would take some significant time to achieve. He also advised that there was very little FONASBA could do as the matter needed to be worked on from within Brazil.

The President acknowledged the internal nature of this matter but suggested that a direct approach from FONASBA to the relevant government departments might assist. This was part of the Federation's responsibility and asked **Mr. Froio** to provide background information in order to make such an approach – if FENAMAR required it. **Mr. Froio** said he would report this back to FENAMAR and revert.

17. ANY OTHER BUSINESS

Mr. Barclay mentioned the investigation into existing cargo liability regimes by OECD, UNCTAD and CMI and expressed his concern that this had not been on the agenda for either the L&TA or C&D Committee meetings.

The President thanked **Mr. Barclay** for raising this point and advised that it had been discussed at the Executive Committee meeting. He suggested that FONASBA should work closely with the Institute and notwithstanding the time limit on responses FONASBA should in due course respond formally.

Mr. Larsen for BIMCO reported that they had also been approached on this matter as well as the International Chamber of Shipping and reported that a joint response had been sent back on behalf of both organisations, suggesting that the matter be dealt with by CMI. A significant amount of work had been done by these organisations and it has been suggested that the remit of CMI be expanded to cover any multi-modal applications where a sea-borne leg is involved. BIMCO does not see any value in duplicating work already done. He also mentioned that a number of other organisations, such as the UN Commission for Europe and the EU itself are now looking at multi-modal transport liability regimes.

The President thanked BIMCO for their input but asked that in such cases they keep FONASBA advised. Mr. Larsen reminded FONASBA that matters such as these are discussed at the Documentary Committee meetings where FONASBA are represented.

18. DATE & PLACE OF NEXT MEETING

Mr. Besman advised delegates the next meeting was provisionally scheduled for October 19th 2001 in Antwerp.

There being no further business, the Chairman brought the meeting to a close.