CMI IWG on Maritime Decarbonisation

Paper for CMI Conference in Rio de Janeiro 13 May 2026

Green Contracts

Charles Debattista, Chair of Greener Contracts workstream group

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1. This is the third paper which the Greener Contracts workstream group of the IWG on Decarbonisation in Shipping brings to the CMI's international Maritime Law Conference, this year held in Rio de Janeiro. I am grateful as ever to the other members of the workstream group, namely Alexandra Couvadelli, Helen Barden, Grant Hunter, and Daniel-Luc Farrugia, to the last of whom a special word of thanks is due for his having provided sterling assistance in putting together the data which underlies this paper.

Progress to date

2. To place this paper into context, it would be helpful to recall the stages of the journey traversed so far from Gothenburg in 2024, through Tokyo last year and now this year in Rio.

3. In Gothenburg, we presented a concept paper which identified four classes of contract in the shipping world which we thought would merit attention in the context of a greener shipping market. These were Time and Voyage Charters; Bills of Lading; Bunker Contracts and Sale of Goods Contract involving sea transit. In respect of each of these four classes of contract, what accommodations would likely be needed to acclimatise these types of contract to a greener reality? Gothenburg gave the green-light to the workstream to continue its work towards answers to that central question.

4. After Gothenburg, each member of the workstream group led on each of the four contracts identified at Gothenburg. The central question as to how each of the subject

contracts might acclimatise to a greener climate was split into more detailed and more specific questions. Thus, for example, if global or regional regulations make greener demands of commercial shipping, would or could such demands be regarded as coming within contractual or similar requirements as to seaworthiness? Again, if a seller owed its buyer a duty to conclude a reasonable contract of carriage, would that implicitly require the engagement of a green-worthy vessel?

5. These and similar questions were sent to a wide number of correspondents informally assembled by the workstream group from a number of legal traditions and industry sectors, the purpose being to take a helpful first straw-poll to ascertain whether we were on the right track towards identifying the right questions formally to ask Maritime Law Associations at a later stage.

6. We were delighted to be able to report in Tokyo that the straw-poll exercise undertaken after Gothenburg was successful in that it confirmed that the workstream group was indeed focusing on the right questions in its search for what shipping contracts might look like in a greener shipping space.

7. Moreover, Tokyo gave us the green light to approach the Executive Committee of the CMI (ExCo) with a draft Questionnaire to be sent out formally asking Maritime Law Associations for answers to the three questions in respect of each of the four subject contracts, charters, bills of lading, bunker contracts and sale of goods contracts. The questions asked of MLAs were the following:

   [a] whether the existing law in your jurisdiction is already in a position to answer a number of identified questions and if so what the answer would be and how would that answer be reached, i.e. through statute or case-law.

   [b] if your jurisdiction is *not* in a position to answer any of the identified questions set, then what vehicle would be most appropriate for the resolution of that question: international convention, national legislation, a model law, amendments to existing standard term contracts, bespoke contractual terms agreed by the parties, or some other vehicle?

[c] are there any other questions not included in the questionnaire which you would like to see included in any eventual report drawn up by the IWG on Maritime Decarbonisation?

8. Questionnaires, a copy of which is attached to this paper as Appendix 1 for ease of reference, were sent out to all MLAs in January and March, 2026. We received nine responses, from the MLAs for Belgium, China, Denmark, Greece, Guatemala, Italy, Japan, Mexico, and Nigeria.

9. Before drawing conclusions from the responses received, it would be helpful to re-emphasise a point made in Tokyo. It is not intended that the finished product(s) from this workstream will take any one particular form across the four subject contracts. It is perfectly conceivable, indeed in our view quite likely, that the instruments needed to bring the four subject contracts safely and effectively into a greener environment will take quite different forms.

10. Thus, there may be aspects of charterparties which might be "greenified" either by amending existing standard term charterparty forms or through suggesting possible rider clauses. Alternatively, concepts of seaworthiness or cargoworthiness under existing carriage of goods conventions may need updating through amendments of those conventions or through the adoption of a standalone instrument in a form similar perhaps to the Laytime Definitions of 2013. Again, with sale contracts, green issues might more appropriately be resolved through domestic legislation applicable to the international sale of goods or, indeed, through other bodies entirely, like the International Chamber of Commerce and its widely used Incoterms 2020, particularly with work now just commenced towards Incoterms 2030. Finally, with Bunker Supply Contracts, answers to demonstrated *lacunae* may well be best provided through an additional annex to MARPOL or through an apposite Model Law. The selection of appropriate vehicles - and appropriate institutions to drive such vehicles - will, we believe, be one of the tasks before the Green Contracts workstream group for the period post Rio, under the overall guidance of ExCo.

11. Appendix 2 to this Paper contains the Questionnaire but this time with summaries drawn from the nine responses to the Questionnaires distilling the current position(s) reported and suggested by the MLAs who sent in answers. Participants at the Rio conference are

encouraged to share their views with the IWG either at the session at which this paper is being presented, or at the events and in the corridors of the Rio conference more generally, or indeed by email addressed to Daniel-Luc Farrugia at danielfarrugia@fenechlaw.com, if at all possible Monday 15 June 2026.

12. Views taken from MLAs and other interested stakeholders in the immediate aftermath of Rio will be carefully considered in the next stage of the work of the Green Contracts workstream group. This next stage will take the form of a set of practical recommendations to ExCo as to how best - and in what institutional *fora* - to advance the cause of greener commercial shipping: what tools are best geared towards that purpose in each of the subject contracts, and who best to design and draft those tools. With a fair wind behind us, and with any residual views received from stakeholders within the next month, the Green Contracts workstream group would hope to be able to report to ExCo by the end of this calendar year, well in time for the next CMI Annual Conference.

13. My personal thanks are again due to my colleagues on the Green Contracts workstream group, Alexandra Couvadelli, Helen Barden, Grant Hunter and Daniel-Luc Farrugia. Many thanks also to those MLAs who responded to the CMI's Questionnaire.

Charles Debattista
Chair, Greener Contracts Workstream Group
CMI IWG on Maritime Decarbonisation
Rio de Janeiro
May 2026

Appendix 1 CMI Questionnaire as sent to MLAs
Appendix 2 Questionnaire to MLAs with responses collected for Rio

CMI IWG on Maritime Decarbonisation

Greener Contracts Workstream

Appendix 1: Questionnaire to MLAs

Maritime Law Associations (MLAs) will recall that the CMI International Working Group on Decarbonisation has been working on the impact of growing demands for decarbonisation in the shipping sector. The WG has been working under the direction of a Steering Group chaired by Haris Zogrofakis over the last two years, with its work being presented at both the Gothenburg and the Tokyo Colloquia. The IWG has divided its work along four workstreams, one of which has been particularly charged with looking at "Greener Contracts" under the chairmanship of Charles Debattista.

The members of the Greener Contracts Workstream have looked at Time Charterparties, Bills of Lading, International Sales Contracts and Bunker Supply Contracts and they have now put together a short questionnaire for responses from MLAs. The purpose of the questionnaire is to collect views internationally as to whether the maritime laws of different jurisdictions already contain the tools necessary to accommodate concepts and remedies which might become more relevant in a greener shipping environment. With that data collected, the Greener Contracts Workstream hope to come to the Rio Colloquium with an indication as to whether and where maritime law may need updating in the regulation of contracts in a greener shipping environment.

It would assist the Greener Contracts Workstream if answers were on the brief side, with specific references to relevant legislation in your jurisdictions, most of which legislation will these days be available online.

To allow for the necessary work by the Greener Contracts Workstream in the lead-up to Rio, it would be helpful if MLAs would respond to Daniel-Luc Farrugia, a member of the Workstream, at daniel.farrugia@fenechlaw.com by 1st March 2026.

The Greener Contracts Workstream has asked that its thanks are conveyed to MLAs in anticipation of their respective responses to the Questionnaire.

1. Time Charterparties

a. In a time charterparty there is usually an obligation stipulating for delivery of the vessel in a "good" or "efficient" condition, with an ongoing obligation to maintain the ship in "a thoroughly efficient state". Over time, as ships' efficiency improves, could charterers oblige owners to bring a ship up to current, greener, market standards? Would any such obligations need to be express, and if so, would your current law on charterparties recognise and enforce such terms?

b. Would the well-known "seaworthiness" obligation comprise in your jurisdiction a duty to ensure that the vessel is "greenworthy"? "Greenworthy" in this sense could include a failure to meet plans set out in the vessel's SEEMP or a failure to have the ability to connect to shore power where the ship will be calling at ports capable of using shore power. Would you envisage that there are any obstacles in your jurisdiction preventing the concept of "seaworthiness" from encompassing such "green" concepts?

c. What tools are available to owners and charterers in your jurisdiction to obtain disclosure of data regarding the efficiency of a vessel, whether from the counterparty to a charterparty or from elsewhere?

d. In the absence of express clauses in the charterparty, where any carbon/GHG tax or levy is imposed on the ship/owner, but where the charterer is responsible for providing and paying for fuel, are there any tools that owners could use in your jurisdiction to pass the cost on to charterers?

2. Bills of Lading

a. ***Environmental Clauses:*** Does your jurisdiction permit the inclusion of clauses in Bills of Lading that impose environmental responsibilities on carriers or shippers, and are such clauses commonly used in practice in your jurisdiction?

b. ***Emissions Reporting:*** What legal mechanisms exist in your jurisdiction to ensure transparency and accuracy in maritime emissions reporting by carriers or ship operators?

c. ***Legal Recognition and Enforceability***: Are there any restrictions under your domestic law of carriage that could prevent environmental clauses in Bills of Lading from being recognized or enforced?

3. Bunker Supply Contracts

The requirements for fuel compliance put forward by the most recent EU Regulations dictate certain consideration/revision of the position and allocation of parties' underlying responsibilities under bunker supply contracts. We set out here below certain areas/questions for consideration by different jurisdictions:

a. ***Due Diligence*** with respect to both sellers/buyers: What is the standard of due diligence required under your jurisdiction that a Buyer needs to demonstrate for considering the following aspects:

- What is the standard of KYC/Vetting for sanctions purposes?
- With respect to the origin of the fuel?
- With respect to the certification of the fuel?

b. ***Fuel specification***: If the contract provides for a specification with which the fuel ought to comply, but the fuel is not compliant with MARPOL's latest regulations, or Fuel EU Maritime requirements, will an implied term be considered to exist making such fuel "not fit for purpose"? Absent an express term to that effect, could a buyer/shipowner advance a claim for penalties and losses suffered against its counterparty? Are there any limitations on the types of loss which would be recoverable in the event of such non-compliance? Would any recovery of any such damages be subject to any limitation in your jurisdiction?

c. ***The defence of Force majeure:*** Where a supplier is responsible for providing "green" fuel, whether under an express or an implied term, and yet is unable to procure such fuel, would your jurisdiction provide the supplier with a force majeure defence? Would unavailability of fuel be classified as a force majeure event?

4. Sale Contracts

a. Timely Arrival Obligations

How might greener shipping practices affect the sellers' obligations under a sale contract to ensure that goods arrive by a certain date? For example, what would happen if the owner of a ship nominated under a sale contract takes the view that the voyage proposed by the charterers would result in a lower CII rating and so refuses to perform? What would the impact of such a decision be on the seller's arrival duties under a sale contract providing for arrival by a certain date?

b. Reasonable Contract of Carriage

Where applicable under the relevant law, what criteria might define a greener "reasonable" contract of carriage (for example, by reference to legislation such as section 32(2) of the UK Sale of Goods Act 1979, or any equivalent provision in other jurisdictions requiring contracts of carriage to be "reasonable") typically provided by sellers under an arrival sale contract?

In this context, could environmental considerations form part of the assessment of "reasonableness", including in relation to the performing vessel, and might this give rise to legal challenges similar to existing restrictions based on factors such as a vessel's age or flag?

c. Laytime and Demurrage Clauses

How might greener charterparties, which would prioritise carbon intensity and energy efficiency (seeking to convert port waiting time into sailing time), impact demurrage as between the seller/charterer and buyer? Who, in the future, should bear the (environmental/Scope 3) cost of ballast voyages?

Members of the Green Contracts Workstream in the IWG on Decarbonisation are:

Charles Debattista (Chair), Helen Barden, Alexandra Couvadelli, Daniel-Luc Farrugia, and Grant Hunter

6 January 2026

CMI IWG on Maritime Decarbonisation

Greener Contracts Workstream

Appendix 2: Questionnaire to MLAs with responses collected for Rio

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1. Time Charterparties

a. In a time charterparty there is usually an obligation stipulating for delivery of the vessel in a "good" or "efficient" condition, with an ongoing obligation to maintain the ship in "a thoroughly efficient state". Over time, as ships' efficiency improves, could charterers oblige owners to bring a ship up to current, greener, market standards? Would any such obligations need to be express, and if so, would your current law on charterparties recognise and enforce such terms? ***The majority view here was that such obligations could not, if they were to be uniformly effective, be left to the unpredictable vagaries of implied terms: such duties could only be safely created through express terms. Some MLAs took the view that the market would only be persuaded to draft such express terms through the upward pressure of regulation, whether state or international. In other words, commercial players, Owners, Charterers, Classification Societies and their respective associations, would likely only move to drafting such express terms if it became mandatory for ships to satisfy clear green benchmark criteria.***

b. Would the well-known "seaworthiness" obligation comprise in your jurisdiction a duty to ensure that the vessel is "greenworthy"? "Ungreenworthy" in this sense could include a failure to meet plans set out in the vessel's SEEMP or a failure to have the ability to connect to shore power where the ship will be calling at ports capable of using shore power. Would you envisage that there are any obstacles in your jurisdiction preventing the concept of "seaworthiness" from encompassing such "green" concepts? ***The current position here is patchy. The only clear proposition common to all the responding MLAs was that for any specific green-compliant duty to be imported into the duty of seaworthiness, that duty needs to be expressed. There were, however, some nuances on the edges: thus if a vessel did not comply with regulations known to both parties to a charterparty, that failure possibly leading to the barring of the vessel from a port, or to its detention once in the port, it was suggested by some that that consequence might in and of itself constitute a breach of the seaworthiness duty.***

c. What tools are available to owners and charterers in your jurisdiction to obtain disclosure of data regarding the efficiency of a vessel, whether from the counterparty to a charterparty or from elsewhere? ***The answer to this question appears to depend on whether data is requested within or outside the context of litigation. It is unsurprising that where a party to a charterparty requests such disclosure within the context of ongoing litigation (or arbitration?), the normal rules regulating disclosure within such***

procedures will apply. The sharing of such information is, however, more likely to be of greater commercial use at an earlier stage, i.e. before the charterparty is concluded. In this context, most responding jurisdictions drew a blank: there appears to be no common mandatory duty to disclose efficiency data to intending counterparties. That effect can only be achieved, it would appear, where the charterparty (or even its prior recap) contains an express clause imposing a duty to disclose. Only one jurisdiction went further than that: if a party requesting disclosure could prove to a court a strong legitimate interest in obtaining such data, a court order ordering such disclosure could be issued – but that would, of course, involve a legal procedure within or outside an ongoing dispute. The bottom line at the moment, therefore, is that a party wanting timely disclosure of such data (in order, for example, to ensure that an intended vessel complies with environmental requirements within the trading range of a vessel) needs to enshrine such a right in an express clause.

d. In the absence of express clauses in the charterparty, where any carbon/GHG tax or levy is imposed on the ship/owner, but where the charterer is responsible for providing and paying for fuel, are there any tools that owners could use in your jurisdiction to pass the cost on to charterers? ***The situation here is patchy. There does not appear to be a uniform method whereby environmental charges levied on the owner can be passed on to the charterer by the owner. While one jurisdiction reported that judges might consider using the local law on general implied indemnities to allow such recovery, the response made it clear that this was entirely subject to judicial discretion and could not therefore be guaranteed. Moreover, although regional arrangements, such as those applying with the European Union, allow owners to pass on such levies to charterers, the relevant parts of those regulations have not been implemented across all jurisdictions in the EU. Again here, therefore, the bottom line is that standard or bespoke clauses providing for such levies to passed on to charterers by owners would need to be expressed or incorporated in charterparties.***

2. Bills of Lading

a. ***Environmental Clauses:*** Does your jurisdiction permit the inclusion of clauses in Bills of Lading that impose environmental responsibilities on carriers or shippers, and are such clauses commonly used in practice in your jurisdiction? ***None of the respondent jurisdictions reported the common use of bill of lading clauses allocating the responsibility for or costs of environmental duties as between carrier and cargo interests. Equally, however, none of the jurisdictions reported any blanket prohibition of such clauses. This is subject, however, to the caveat that such clauses must be subject to any mandatory law applicable to particular bills of lading. Thus, for example, where the Hague-Visby Rules apply to a bill of lading, the carrier would not be able to use such a clause to lessen its liability in breach of article III.r8 of those Rules.***

b. ***Emissions Reporting:*** What legal mechanisms exist in your jurisdiction to ensure transparency and accuracy in maritime emissions reporting by carriers or ship operators? ***Insofar as such a duty to report exists, it is typically owed upwards towards State or international regulators rather as between the parties to the charterparty(ies). Consequently, should parties wish to procure such information from counterparties to the charterparty(ies) in order to comply with their own reporting duties, they would need to stipulate for such information sharing within the charterparty(ies).***

c. ***Legal Recognition and Enforceability***: Are there any restrictions under your domestic law of carriage that could prevent environmental clauses in Bills of Lading from being recognized or enforced? ***Although there was no indication here that the respondent jurisdictions prohibited the inclusion or enforcement of environmental clauses in bills of lading, responses were hedged around with caveats referring to public policy, public order, fair contract, privity of contract and mandatory law considerations. It would be difficult to suggest that there is a one-size-fits-all position to report here - and should the market seek a uniform allocation of environmental responsibilities as between carrier and cargo interests, careful consideration would need to be given as to whether such a goal is more likely to be achieved through standard contractual clauses or through international agreement.***

3. Bunker Supply Contracts

The requirements for fuel compliance put forward by the most recent EU Regulations dictate certain consideration/revision of the position and allocation of parties' underlying responsibilities under bunker supply contracts. We set out here below certain areas/questions for consideration by different jurisdictions:

a. ***Due Diligence*** with respect to both sellers/buyers: What is the standard of due diligence required under your jurisdiction that a Buyer needs to demonstrate for considering the following aspects:

- What is the standard of KYC/Vetting for sanctions purposes?
- With respect to the origin of the fuel?
- With respect to the certification of the fuel? ***All nine respondents were able to report that a duty of due diligence applied to all three aspects of the procurement of bunker fuel. Respondents within the EU were able to be more specific as to the applicable standard thanks to directly applicable EU legislation adopted in recent years.***

b. ***Fuel specification***: If the contract provides for a specification with which the fuel ought to comply, but the fuel is not compliant with MARPOL's latest regulations, or Fuel EU Maritime requirements, will an implied term be considered to exist making such fuel "not fit for purpose"? Absent an express term to that effect, could a buyer/shipowner advance a claim for penalties and losses suffered against its counterparty? Are there any limitations on the types of loss which would be recoverable in the event of such non-compliance? Would any recovery of any such damages be subject to any limitation in your jurisdiction? ***There was a surprising divergence here between the clearly mandatory***

public law duties regarding the environmental safety of bunker fuels and the impact of any breach of such duties on the private contractual relations between providers and consumers of such fuels. Moreover, respondent jurisdictions varied widely between a complete caveat emptor position, effectively leaving the consumer to bear its own losses, and a rather more nuanced (but no more predictable) allocation based on implied terms as to fitness for purpose. The general view was that predictable outcomes would here depend in large part on express terms in the bunker supply contract.

c. ***The defence of Force majeure:*** Where a supplier is responsible for providing "green" fuel, whether under an express or an implied term, and yet is unable to procure such fuel, would your jurisdiction provide the supplier with a force majeure defence? Would unavailability of fuel be classified as a force majeure event? ***There was a universal view among respondent jurisdictions that a supplier contractually obliged to provide green bunkers would not, or would practically never, be able to escape liability for non-procurement on the basis of a general doctrine of force majeure. Any change to that quite strict position would therefore need to be engineered through express clauses in the bunker supply contract.***

4. Sale Contracts

a. Timely Arrival Obligations

How might greener shipping practices affect the sellers' obligations under a sale contract to ensure that goods arrive by a certain date? For example, what would happen if the owner of a ship nominated under a sale contract takes the view that the voyage proposed by the charterers would result in a lower CII rating and so refuses to perform? What would the impact of such a decision be on the seller's arrival duties under a sale contract providing for arrival by a certain date? ***The respondent jurisdictions were uniformly of the view that greener carriage obligations imposed upon a seller of goods carried by sea would not automatically discharge the seller's obligations as to timely delivery under its sale contract. The two contracts are typically treated as completely separate - which likely means that if a seller wants to guard itself against unexpected sale contract liabilities caused by compliance with its environmental obligations under its shipping arrangements, appropriate protections would need to be drafted into its sale contract, whether through bespoke or standard clauses.***

b. Reasonable Contract of Carriage

Where applicable under the relevant law, what criteria might define a greener "reasonable" contract of carriage (for example, by reference to legislation such as section 32(2) of the UK Sale of Goods Act 1979, or any equivalent provision in other jurisdictions requiring contracts of carriage to be "reasonable") typically provided by sellers under an arrival sale contract?

In this context, could environmental considerations form part of the assessment of "reasonableness", including in relation to the performing vessel, and might this give rise to legal challenges similar to existing restrictions based on factors such as a vessel's age or flag? ***The general view among respondent jurisdictions was [a] that their current legislations***

do not include compliance with environmental requirements within any applicable concept of a reasonable contract of carriage; and [b] that it was premature to seek to engineer a regulatory linkage between these two contracts so far as concerns the concept of a reasonable contract of carriage.

c. **Laytime and Demurrage Clauses**

How might greener charterparties, which would prioritise carbon intensity and energy efficiency (seeking to convert port waiting time into sailing time), impact demurrage as between the seller/charterer and buyer? Who, in the future, should bear the (environmental/Scope 3) cost of ballast voyages? ***The uniform view expressed by respondents was that, while a greener fuel environment might reduce the lapse of laytime and the value of demurrage due, it would be unwise to alter the incidence of demurrage as between sellers and buyers, which incidence currently is - and should continue to remain - completely the creature of express laytime and demurrage clauses in the relevant sale contract.***

Charles Debattista

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CMI IWG on Maritime Decarbonisation

Rio de Janeiro

May 2026