

University Of Piraeus
Department of Maritime Studies

| CHARTER PARTIES |

An Outdated Form of Contract?

Elaborated by: Niki Antoniadou, M.Sc in Shipping
Supervised by: Dr. Dionisios Polemis

Piraeus
November 2016

This regards:

Thesis submitted to the Department Maritime Studies of the University of Piraeus as part of the requirements for obtaining the MSc in Shipping.

Cover Photo:

© Caine Delacy for *The New York Times*

The bow of "June Hong Chian Lee" with a flower wreath, a Chinese tradition to encourage good luck and safe voyage.

*“The pessimist complains about the wind;
The optimist expects it to change;
The realist adjusts the sails”*

William Arthur Ward

Declaration of Authenticity

The person preparing the thesis bears the responsibility of fair use of the material, which is defined on the basis of the following factors: the purpose and character of the use (commercial, non-profit or educational), the nature of the material used (part of the text, tables, figures, images or maps), the percentage and the importance of the text, which uses relatively to the entire text under copyright, and the possible consequences of such use on the market or the overall value of the copyright text.

Niki Antoniadou

UNIVERSITY OF PIRAEUS

Three Member Examining Board

This thesis was approved unanimously by the three-member Commission of Inquiry appointed by the “ΓΣΕΣ” of the University of Piraeus, Department of Maritime Studies, in accordance with the Management Regulations of the MSc in Shipping.

The Committee members were:

-Professor G. Vlachos

-Professor G. Samiotis

-Lecturer D. Polemis

The approval of the thesis by the Department of Maritime Studies, University of Piraeus does not imply acceptance of the author's opinions.

A c k n o w l e d g e m e n t s

This thesis is dedicated to my family for the unceasing encouragement and support all these difficult times of my postgraduate studies and to everyone who, directly or indirectly, have lent their helping hand in this venture.

It is a great pleasure to acknowledge my deepest thanks and gratitude to Mr. Nikolas Triantafyllakis, Managing Director at W Marine INC., for suggesting the topic of this thesis as long as his encouragements, endless help and advice and for all the ample time spent with me during the study.

I also want to express my deepest thanks to Capt. George Theodorakis, Operation Manager at W Marine INC., for his comprehensive advice and kind help until this work came to existence.

Lastly, I would like to express my extreme sincere gratitude and appreciation to Mr. Dionisios Polemis, Lecturer at the Department of Maritime Studies, University of Piraeus, whose expertise, consistent guidance and advice helped me to make this study possible. It is a great honour to work under his supervision.

Abstract

The current thesis analyses the structure and the use Charter Parties have in the shipping industry. Focusing in the dry bulk shipping market, GENCON94 (Voyage) and NYPE93, NYPE15 (Time Charter) are under investigation and scrutiny. After the analysis of the clauses in both forms of charter, weak points were located that leave exposed the counter-parties in cases of claims. By studying real cases of the market, as well as by various interviews with shipping professionals we came to the conclusion that Charter Parties need modernization, especially when based in the GENCON94 CP. However, through the analysis it was observed that the adhesion to older forms of Charter Parties is a consequence of the members of the shipping markets that usually do not accept easily the changes on these kinds of contracts.

Key words: Charter Party, Voyage Charter Party, Time Charter Party, GENCON94, NYPE93, NYPE15

Contents

Chapter 1: Introduction	9
1.1. Aims and Objectives	9
1.2. Thesis' Structure	10
Chapter 2: Historical Introduction	11
Chapter 3: Charter parties – Standard forms	15
3.1. Introduction	15
3.2. Bareboat or demise charter party	16
3.3. Voyage Charter Party	17
3.4. Time Charter Party	17
3.5. Conclusion	17
Chapter 4: Involved Parties	19
4.1. Introduction	19
4.2. Choice of Broker	19
4.3. Brokerage	21
4.4. The Freight	22
4.5. Obligations of the Parties	23
4.5.1. Obligations of the Ship Owner	26
4.5.1.1. Obligations in a Voyage Charter	26
4.5.1.2. Obligations in a Time Charter	28
4.5.2. Obligations of the Charterer	30
4.5.2.1. Obligations in a Voyage Charter	30
4.5.2.2. Obligations in a Time Charter	33
4.6. Conclusion	36
Chapter 5: Cargo Documents	38
5.1. Introduction	38
5.2. Bill of Lading	38
5.3. Mate's Receipt	41
5.4. Cargo Manifest	42
5.5. Shipper's Declaration	42
5.7. Conclusion	42
Chapter 6: Analysis of Voyage Charter Party	44
6.1. Introduction	44
6.2. Analysis	44
6.2.1. Clause 2 «Owners' Responsibility»	44
6.2.2. Clause 5 «Loading / Discharging»	47
6.2.3. Clause 10 «Bills of Lading»	50
6.2.4. Incorporation of the Hague-Visby Rules	51
6.2.4.1. Seaworthiness Under Hague-Visby Rules	52
6.2.4.2. Paramountcy of the Hague-Visby Rules	53
6.3. Conclusions	54
Chapter 7: Analysis of Time Charter Party	56
7.1. Introduction	56
7.2. Analysis	56
7.2.1. Involved Parties	56
7.2.2. Description of the Vessel	57
7.2.3. Speed and Consumption	57
7.2.3.1. Speed Warranty	58
7.2.4. Bunkers	58
7.2.5. Slow Steaming	59
7.2.6. Economic Sanctions	62
7.3. Conclusions	64
Chapter 8: Conclusions	65

8.1. Limitation of Research	67
8.2. Future Research	67
Bibliography	68
Appendix	74

List of Tables

Table 4.1: Ship owners & charterer's obligations/liabilities in the main types of charter.....	25
--	----

UNIVERSITY OF PIRAEUS

Chapter 1: Introduction

This thesis was written for the University of Piraeus as a part of the Postgraduate Programme “MSc in Shipping”, led by the Department of Maritime Studies.

The specific subject of research was selected by a personal quarry about the aging current contracts and to answer the question as to why these contracts are still in use nowadays and are preferred over newer versions of BIMCO. For a new entry level shipping professional it is extremely important to understand the way the Charter Party is used and by extension the way the shipping market operates as this document is the most important in shipping. Consequently, the research conducted in the following chapters of the thesis helps the better understanding of the CP as it concentrates all the information regarding about the chartering procedure, its historical evolution and its significance in shipping.

Through the analysis and the study of real legal cases can be easily acknowledge the economic risk that is involved for the parties as well as the ways of resolving legal differences. In that way a general view of the strong and weak points of the CP is established. In this thesis, an allocation is attempted to objectionable points and despite the fact that a proposal for a new CP was not formulated it was the groundwork for further study of the matter that may lead to new acceptable CP form.

“Time” nowadays has a great value, especially in shipping industry where the rhythms are very intense; for this reason a more effective, and just to the point Carter Party will be much needed for those who want to be one step forward.

1.1. Aims and Objectives

The scope of this thesis is to identify the weak points of a Charter Party (CP); in particular the research will focus on the forms of NYPE93 and NYPE15 Time Charter Party (TCP) versions as well as GENCON76 Voyage Charter Party.

Through the analysis and process of information, such as definitions, terms, certain clauses, main cargo documents, the interests between parties and taking into account the whole significance of a CP, the research will try to answers to the

question if the industry needs a new form of CP and why on the other hand it is more preferred to work on an old version of contract than an updated one.

1.2. Thesis' Structure

This study will attempt to identify the weak points of a charter party (TCP & Voyage). In Chapter 2, there will be presented historical evidences about the usage of the charter party from the very beginning of the merchandise shipping.

In Chapter 3, there will be a brief review on the use of the charter party and subsequently determine the current utility (i.e. when and how to use) voyage and/or time charter party. Then, in Chapter 4 the study will try to identify all the parties involved in the cargo's transfer process and also try determining the relations and obligations between the ship-owner and the charterer.

Moreover, in Chapter 5 an explanation of cargo documents with commercial value such as Bill of Lading, Mate's Receipt, Cargo Manifest and also Shipper's Declaration will be given. While in Chapter 6 and 7 the most important clauses on both TCP and Voy CP will be analysed.

Basis on the conclusions made, we will to answer to the fundamental question of the dissertation: Do these forms of contract need a change? And why it is more preferred to work on an old version of contract rather a new one.

Chapter 2: Historical Introduction

The contract of affreightment came into being from the moment the merchant did not personally accompany his goods anymore. Numerous agreements were concluded, between the ship owner and the owner of goods, which were eventually laid down in a contract, namely the “Charter Party”.

The name “Charter Party” has its origins to the latin word “Carta/Charta Partita”. The charta partita was a document written in duplicate on a single piece of paper, then torn or cut in half, a part being given to each signatory to the agreement. Later on, the Common Law also adopted the practice of cutting or indenting a deed, which became an “indenture”.¹

The end of the middle ages characterizes itself by a considerable development of the shipping industry. Each harbour has its own customs and uses and different maritime cities already have ordinances in which provisions appear concerning chartering. The customs of some cities and more specifically, the edicts of the Italian and Mediterranean cities have extended themselves very fast to other areas. The legislative provisions from that time, which left their largest marks on the maritime ocean carriage, were: the Consulat de la mer, the Roles d’Oléron, the Maritime Law of Wisby and the Guidon de la mer.

Numerous decrees were issued. The most important ones were: the Ordonnance de Philippe II of 1563 concerning the seaborne trade, the Ordonnance d’Anvers of 1570 that mainly dealt with marine insurances, the Ordonnance d’Amsterdam of 1598 and the Ordonnance of the Villes hanséatiques that were issued at Lubeck in 1591.

The different edicts contained different provisions which were related to the chartering agreement; however the Ordonnance de ma Marine of 1681, which was established on the initiative of Colbert, the first minister of Louis XIV, gave the true legality to the contract of affreightment and served as a model for many maritime law books.

¹ International Encyclopedia of Comparative Law, Instalment 12, chapter IV, par. 84, pg 33

In the edicts of the Mediterranean cities, mention was made of a crew member who, with regard to the loading of the goods on board and making the inventory of the goods, would play a very important role; that crew member was called the “scribanus” or writer. He had to record all goods, which were loaded on the ship in a register (log book) and keep it up to date. The extracts of this log book, which were delivered to the shippers, can be considered as the precursors of the bill of lading. For each lot of goods which were loaded on board an extract from the log book was delivered.

As trade grew over time, covering transportation of goods between an increasing number of ports and countries, it became absolutely necessary that the carrier of the goods, i.e. the shipowner or ship operator, entered into some sort of contractual agreement. The “various forms of proof” such as the testimony, were more and more replaced by a written proof. This written engagement was in fact nothing else than the Bill of Lading (BL) that in the Guiding de la Mer, was defined as follows²:

“Connaissance est la promesse particulière que fait la maistre du navire de la reception de telle et telle sorte de marchandises appartenant á tel marchand, et faut tant de connoissemens comme il y a diversité de personnes á qui ells appartiennent”

Which in free translation means that *“the Bill of Lading is the particular promise of the master of the ship, for the safe receipt of the cargo which belongs to a certain receiver, due to the fact that many receivers/parties may be involved”*.

The charter party as of now would retain its exclusive character of contract of affreightment, whereas the bill of lading would not only become the essential proof from the captain that he received the goods in his ship, but it would also become the document that represents the goods and in certain cases it would even serve as contract of affreightment and take the place of the charter party.³

The Ordonnance de la Marine writes about the charter party the following:

² Deseck, 2012

³ Deseck, 2012

“Toute conventions pour louage d'un vaisseau, appelée charte partie, affrètement ou nolisement sera rédigée par écrit et passée entre les marchands et le maitre ou les propriétaires du bâtiment.”

This in free translation means that “any agreement to lease a vessel is called charter party and is a legal document signed by the ship-owner and the charterer”.

Over the years the charter party has become more complicated and more clauses added resulting in protracted negotiations between the parties involved. However, the phenomenon of globalization and the rapid development of trade and shipping create a large variety of contracts of which the terms and clauses did not help the negotiations between the parties involved.

At the end of the nineteenth century the need was felt to make the formula of the charter party more uniform and updated. Thanks to the guidance of some groups of ship owners; such as the Baltic and International Maritime Conference (BIMCO)⁴ and the Chamber of Shipping of the United Kingdom; charter parties were issued and started to be used all over the world. These forms were adapted for the transport of a large variety of goods such as coal, iron ore, crude oil etc. Each charter party can contain additional or completing clauses, which prevail over the printed clauses.

BIMCO created a Documentary Council which is responsible for the elaboration of standard forms of contracts and clauses. These documents are used in the entire world in the shipping industry. It must be noted that the Council published about fifty charter parties and ten bills of lading. Also, other organizations, which issue standard documents, are the Documentary Committee of the Chamber of Shipping of the UK and the Documentary Committee of the Japan Shipping Exchange Inc.

Beside the uniform documents which were established by official agencies; such as ship owners associations; there can be found a number of private forms, which are published by a charterer or a group of charterers. Those charter-parties are generally unfavourable to the ship owner though, due to the fact of their partiality.

⁴ In 1985, the name of the Baltic and International Maritime Conference was change to Baltic and International Maritime Council

As it was mentioned above, charter parties in their very beginning were torn in two, from bottom to top, and half of it was entrusted to each party. To examine if the agreement was faithfully observed both halves were again united.

Nowadays, charter parties are pre-printed documents written always in English. The elaboration of the text in English language does not mean that the English legislation applies.

UNIVERSITY OF PIRAEUS

Chapter 3: Charter parties – Standard forms

3.1. Introduction

A Charter Party is a document of contract by which a ship-owner agrees to lease, and the charterer agrees to hire, a vessel or all the cargo space, or a part of it, on terms and conditions forth in the Charter Party. In other words, the Charter Party is the written agreement between the ship-owner and the charterer and is a formal statement that contains the agreed negotiation of both parties under specific terms and conditions. This form of contract is the most important chartering document in the shipping industry, due to the fact that offers a great utility to both parties concerned but also to the officers on board, to the port agents and to the lawyers. In order to declare valid the charter party, it should be signed by both parties and a witness. Usually the witness is the broker of one two parties.⁵

The charter party can adopt any form and can be drawn up by anybody, but it is preferable to use standard charter parties. Some charter parties are specific for a time charter or a bareboat charter, whereas others are restricted to the transport of dry cargoes or are adapted to the requirements of tanker transport. In more detail, charter parties can be divided in three basic categories:

1. Bareboat charter
2. Voyage charter
3. Time charter

Although each charter party has its own wording, terms and conditions, they all have nevertheless a number of elements in common. While, charter parties are invariably made in writing and in the majority of cases on the basis of standard forms in use, an oral charter party is permitted in most jurisdictions⁶. More than fifty charter

⁵ https://drive.google.com/file/d/0B0IRj2FwHO_oTnZPaDRLX0oxT1k/edit, day accessed 04/02/2016
http://www.unizd.hr/Portals/1/nastmat/Engleski_6sN/Unit12.PDF, day accessed 04/02/2016
<http://nordicshippingco.com/types-of-charter/>, day accessed 04/02/2016
<http://nordicshippingco.com/charter-party-forms-and-clauses/>, day accessed 04/02/2016
http://unctad.org/en/PublicationsLibrary/c4isl55_en.pdf, day accessed 04/02/2016
https://www.bimco.org/Education/Seascapes/Sea_View/2003_06_02_Charter_parties_explain_ed.aspx, day accessed 04/02/2016

⁶ UNCTAD, 1990

parties have been approved by the Baltic and International Maritime Council (BIMCO), most of which are voyage charter parties covering various trades. Moreover, there are also standard forms for tanker charter parties, partly because of the specific characteristics of this type of carriage, and partly reflecting the relatively stronger bargaining power of tanker charterers⁷.

It is important to state here, that some large shippers have their own forms of charter parties and similarly some large shipping companies only use their own standard form. These forms, in both occasions, are supplemented by a myriad of additional clauses, the so-called “rider-clauses”, some of which have attained standardized wording themselves and many which are drafted on an ad hoc basis.

Some of the standard forms have been in existence since the late 19th century without any real thought being given to their adaption to modern commercial life⁸. Consequently, there are still in use many old and outdated standard forms which contain ambiguous and obscure wording. The mere fact that a large number of “rider” clauses are required in each case is a testimony of the fact that the standard charter party form to which they are appended is in need of supplementing. This is particularly the case in relation to some old dry cargo standard forms is that they tend to favour ship-owners, while the more recently drafted forms tend to favour charterers.

3.2. Bareboat or demise charter party

Under a bareboat or demise charter party the possession and control of the vessel pass to the charterer who is considered for all practical purposes the owner of the vessel for the duration of the charter party. As a consequence, the master and the crew become the servants of the charterer, who bears all responsibility for the management, operation and navigation of the vessel.⁹

⁷ Todd, 1988

⁸ Deseck, 2012

⁹ UNCTAD, 1990/

https://www.bimco.org/Chartering/Clauses_and_Documents/Documents/Bareboat_Chartering/BARECON2001/Explanatory_Notes_BARECON2001.aspx , day accessed 16/02/2016

3.3. Voyage Charter Party

Perhaps the simplest being of a Charter is a Voyage Charter under which the ship provides transport for a specific cargo between a loading port and a discharge port at terms, which specify a rate per tonne. In this form of Charter Party will usually set out the dates for the ship's arrival at the loading port, the estimated time for loading and discharging as long as for the voyage itself. It also, contains a description of the vessel's design, speed, and consumptions, year and yard built and all the other characteristics that must be clearly specified. If there are variations because of heavy weather on the voyage, port congestion or berths not being available, or if the ship undertakes the operation faster than had been provided, then there are adjustments, which will be provided for the integration of the voyage.¹⁰

3.4. Time Charter Party

A time charter is another common form of agreement, with the owner of the ship operating his ship as instructed by the charterer between certain agreed dates for an agreed daily or monthly rate. During this period, it will be the charterer who will pay for the voyage costs of the ship such as bunkers, pilotages, port dues related to the cargo, canal dues etc. An analogy would be a contract to hire a car.¹¹

3.5. Conclusion

As it was said in the previous paragraphs there are many forms of charter parties, especially concerning the voyage charter. It must be noted that this thesis will focus on the NYPE93 and NYPE15 Time Charter Party and the GENCON Voyage Charter Party only, covering the dry cargo trade. The main difference between these two types of contracts is the way the owner is getting paid for the transport services he provides. In more details, with a Time Charter the vessel is charter to the charterer for a specific period of time, for example 4 months. While, on the other hand, under the validity of a Voyage Charter the vessel is commissioned to carry a specific quantity of

¹⁰

https://www.bimco.org/Education/Seascapes/Sea_View/2003_06_02_Charter_parties_explain_ed.aspx, day accessed 04/02/2016/ Vlachos, 2007/ Giziakis, 2010/ UNCTAD,1990

¹¹

https://www.bimco.org/Education/Seascapes/Sea_View/2003_06_02_Charter_parties_explain_ed.aspx, day accessed 16/02/2016/ Vlachos, 2007/ Giziakis, 2010/ UNCTAD,1990

cargo between two ports. These are the basics of each type of charter although the signed document is more than 40 pages due to the fact that includes many clauses and elements which in case of a claim may prove the party who takes the blame. However, several clauses and many elements of the wording can be characterised obsolete and outdated. These points are analysed on the following chapters while in Chapter 6 and 7 is making an effort to propose a more outdated wording for both Time Charter Party and Voyage Charter Party.

Chapter 4: Involved Parties¹²

4.1. Introduction

A Charter Party is a contract between a shipper / charterer of goods and the owner of a ship upon which the cargo is to be carried. The Charter Party is usually arranged by a shipbroker. It is a legal contract, internationally recognised and is perhaps the most important document in the shipping industry.

More specifically, the owner is the person whom the ship belongs; however as there are different types of charter parties there are different extents to which the owner is responsible for operating decisions. An individual may hire a ship to sublet it further to someone else. In that case, the individual is called Disponent Owner. This is very current in bareboat or demise chartering and in time chartering.

Furthermore, in some cases the Charterer or the Ship Owner wishes the fixture not to be published in the market, generally for commercial reasons, therefore the negotiations state that the fixture will be kept strictly confidential.

In conclusion, at the fixing of a charter party at least three:

1. The Ship Owner
2. The Shipbroker
3. The Charterer

4.2. Choice of Broker

The profession of broker is not protected as is the case for some other professions such as: doctors, lawyers, et al. There is neither a law of establishment, so that in principle anybody can establish himself as a broker except in the countries where, for that type of profession a Government monopoly or State monopoly exists.

In the United Kingdom that has a long maritime heritage, the profession of Charter Broker is protected by the state. To be recognized as a Chartering Broker, the

¹² It must be mentioned that in this Chapter was used a wide range of bibliography; which is mentioned below the text with references; as well as all the knowledge adopted from conversations – interviews with Mr. Nikolas Triantafyllakis and Capt. George Theodorakis, both from W Marine Inc; all the information that has been provided from them was the catalyst of this Chapter.

candidate must, take a number of theoretical and practical tests whereupon he will be assessed by the oldest members of the association and if successful he will be accepted as a full member.

This does not mean of course that other brokers cannot be active as well or that they are not worthy of the Owner's or Charterer's confidence. But the fact that being a member of an association has the advantage that the broker has to keep to strict ethical rules if he does not want risk losing its membership. As a consequence, the above is a serious guarantee of experience and integrity towards his principal.

Between the principal and the broker there must always be a perfect atmosphere of trust. In chartering there are sometimes important amounts involved and the negotiations must very often take place at a very fast tempo, where it is not always possible to cover oneself in writing, given the considerable distances at which the negotiators sometimes find themselves, the time differences, the communication difficulties, etc. It is therefore not unusual that the contract of affreightment is already carried out while only an oral agreement exists and that the contract must still be signed.¹³

As mentioned above oral agreements can be existent in the shipping industry. Therefore the motto of the Baltic Exchange "Our word, our bond" has indeed value to its members and to shipping professionals in general. Seaborne trade can be characterised as a "small" industry where all participants are known or easily identified. This means that even in a globalized market, as that of shipping, acting in way that does not correspond to the values of the market itself will cause counterparties to avoid business relations.

An owner and/or a charterer who wants to contact a broker can do this in two different ways. They can always keep to the same broker or they can contact several brokers¹⁴. Both systems have their advantages and disadvantages although experience has shown that when one contacts several brokers, they are competing to win the contract by providing the best service they can in favor of their principal.¹⁵

¹³ Vlachos, 2007; Plomaritou, 2014

¹⁴ Vlachos, 2007

¹⁵ Vlachos, 2007; Plomaritou, 2014

4.3. Brokerage

Brokerage is a commission, which is received by the shipbrokers for their negotiation skills and it represents a certain percentage of the gross freight or hire. Due to the fact that this commission is a percentage of the freight or hire it must be paid by the owner. Usually this percentage is 1.25% per broker, it is not strict though and all the parties concerned are free to agree in the amount to be changed.¹⁶

The number of brokers varies from one CP to the other and since it is the Ship-owner who must pay for the brokerage, it is in his interest to keep the number of intermediaries to a strict minimum. This is also in the Charterer's interest because, when setting the freight, the Ship-owner will in any way take into account the brokerages he has to pay.

During the negotiations or at the subjects of the chartering the commission can be indicated in several ways:

1. % total commission
2. % total commission for division with others
3. % commission past us

In the first case, the total commission is indicated, therefore it is clearly stated the percentage to be deducted from freight. The second one is about the total commission upon the freight including extra commissions of relative parties. In the third point, the phrase "past us" means that in the offer, the brokerage is not yet included and must, therefore, still be added. This is especially common when several brokers are involved in the chartering procedure and that the last in line broker who eventually makes the offer to the Ship-owner, has not yet included his own commission. For example, let's say that three brokers are involved in the chartering offer, then "2.5% commission past us" means that eventually, the Ship-owner will have to pay 3.75% brokerage.

It must be noted that the brokerage may not be mistaken with the so-called "addressed commission", which in fact, the freight or hire, which must be paid to the Charterer from the Ship-owner. If no address commission is due, and to avoid all

¹⁶ Vlachos, 2007

confusion with the brokerage, the term “free of address” is inserted in the contract, which means that absolutely no percentage is due to the Charterer. There are common cases where the address commission is very high and sometimes up to 5% of the freight or hire.

Each contract includes a clause, which regulates the brokerage and its payment. This clause also describes the obligations of the parties due to the commission in case the contract is broken.

4.4. The Freight

The freight is the fee that has to be paid by the Charterer to the Ship-owner for the service of transporting the cargo. It must be noted that under the voyage charter this is indicated by the term “freight” and under the time charter by the term “hire”. The amount of the freight or hire is an amount expressed usually in US Dollars.¹⁷

In more detail, the freight under a voyage charter is paid at the loading port or at the destination port. On the other hand, the hire under a time charter is usually a fixed amount per day and is usually paid in advance per calendar month or pro rata of a calendar month.¹⁸

Under the voyage charter the freight can be expressed by unit of weight, i.e. \$/metric tons or by unit volume, i.e. \$ / cubic feet or meters. Although the freight is fixed per transport unit, its settlement can be done in different ways which are the loaded quantity, the delivered quantity, against a lump sum i.e. a fixed price or other ways which will be mutual agreed¹⁹. Against a lump sum, the Charterer binds himself to pay a fixed sum independently of the loaded quantity. However, the charter party must state how much the Charter plans to load, usually with a margin of 10% more or less on Charterer’s or Owner’s option subject to contract agreed.

To make sure that the right cargo capacity has handled, the loading and discharging are often preceded by a draft survey. In more details, the draft survey is

¹⁷ Deseck, 2012; Giziakis 2010

¹⁸ Vlachos, 2007; Giziakis, 2010

¹⁹ Vlachos, 2007

the determination of the quantity of goods loaded or discharged in function of the draught of the ship and this according to the deadweight scale.²⁰

4.5. Obligations of the Parties

Under the validity of the charter party consequent is that both parties must comply with the conditions and warranties that appear in the contract. Regarding it should be a clear distinction between the conditions and warranties which both form the core of the contract.

If one of the parties breaks one of the agreed terms, then the counterparty is excused from performing his obligations under the contract and claim damages for any loss, or else he can maintain the validity of the contract entitling him the right to collect compensation²¹. In order to easily comprehend the term “condition” the following example is provided concerning the delivery / cancelling date: if the ship is tendered after the cancelling date, the charterer has the right to refuse the ship and consequently to break the contract. This is a typical example of a condition that needs to be fulfilled, in order to secure the validity of the contract. Other examples may be the position of the vessel, the ETS²² from the loading port, the class of the vessel, etc.

From the other hand “warranty” is a guarantee which has been incorporated in the contract and if breached it gives the right to the charterer to claim indemnity. In that case there is not a full breach of contract in general and contractual obligations of both parties are still intact²³. In this case a typical example which can be mentioned is about the Owner’s guarantee on fuel consumption. In more detail, if the consumption is more than the agreed quantity then the Owner must pay compensation to the Charterer. However, the charterer will not have the right to break the contract.²⁴

From the above the most important obligation is from the Charterer’s side to pay the freight / hire in order the cargo to be shipped by the Owner’s vessel. On the other hand the ship-owner should provide the proper vessel in order to guarantee a safe shipment of the cargo.

²⁰ Deseck, 2012

²¹ Vlachos, 2007

²² ETS: Estimated Time of Sail

²³ Vlachos, 2007/ Gencon Voyage Charter Party – Cancelling Clause

²⁴ Vlachos 2007/ On a Vessel’s description “Speed/ consumption at sea”

On the following chapters are analysed the obligations of the ship-owner and the charterer under the validity of a voyage charter party and a time charter party. However, before continuing to the next chapter, it is worthwhile mentioning examples of charter parties most widely used in the shipping industry. A type of a voyage charter party which is used for the carriage of dry bulk cargo is the GENCON 94 charter party while an example of a voyage charter party which is used for the carriage of liquid bulk cargo is the Tankervoy 87. Whilst, an example of a time charter party which is widely used in the dry bulk market is the NYPE 93 charter party while an example of a time charter party which is used in the tanker market is the Intertanktime 80.

Although the analysis of the bareboat charter party it is not a part of this study, an example of the bareboat charter party will be given due to the fact that this form of contract is not as common as the forms of charter parties mentioned above. So, an example of a bareboat charter party which is used in the dry bulk market is the BARECON 2001 charter party.

In Table 4.1. is presented the distribution of the obligations and liabilities of the ship owners and charterers in the main types of charter, i.e. the voyage charter, the time charter and the bareboat. As it was mentioned the presented obligations will be analysed in more detail in the following chapters.

Table 4.1: Ship owners & charterer's obligations/liabilities in the main types of charter²⁵

Liabilities	Voy	TC	Bareboat
Vessel's Description	S	S	S
Vessel's Dely	-	S	S
Vessel's Redel	-	C	C
Chartered & substituted vessel	-	S	-
Seaworthiness	S	S	S
Maintenance	S	S	C
Cargo worthiness	S	S	S
Preliminary voyage	S	S	S
Reasonable Despatch	S	-	-
Deviation	S	-	-
Arrived ship	S	-	-
NOR to load	S	-	-
Loading operation	S	S/C	C
Carrying voyage	S	C	C
NOR to unload	S (not compulsory)	-	-
Discharging operation	S	S/C	C
Dely of cargo	S	C	C
Right for lien	S	C	C
Warehousing unclaimed goods	S	C	C
Claims against third parties	S	S	C
Nomination pf ports	C	C	C
Description of the cargo	C	C	C
Provision of the cargo	C	-	-
Quantity & quality of the cargo	C	-	-
Bringing the cargo alongside	C	-	-
Load in laytime	C	-	-
Discharge in laytime	C	-	-
Payment of freight	C	-	-
Safe ports	C	C	C
Lawful merchandise	C	C	C
Not to ship dangerous goods	C	C	C
Trading limits	-	C	C
Employment and indemnity	S	C	C
Payment of hire	-	C	C
Commercial operation	S	S	C
Manning f vessel	S	S	C
Equipment and provision	S	S	C
Insurance	S	S	C
Administration duties	S	S	C
Navigation/ salvage/ towage	S	S	C
Operating costs	S	S	C
Capital costs	S	S	S
Voyage costs	S	C	C
Inspection & DD costs	S	S	C
Cargo handling costs	S/C	C	C

Source: Plomaritou, E., 2014, "A Review of Ship-owner's & Charterer's Obligations in Various Types of Charter", Journal of Shipping and Ocean Engineering 4 (2014), pg. 307-321

²⁵ S: ship owner / C: charterer

4.5.1. Obligations of the Ship Owner

4.5.1.1. Obligations in a Voyage Charter

As stated above, under the validity of a Voyage charter party the ship provides shipment of a specific cargo between a loading and a discharging port at terms which specify a rate per carrying. Therefore, the ship-owner undertakes the carriage of a specific quantity of a specific cargo between fixed ports of loading and discharging.

Description of the vessel

A very important obligation of the ship-owner in a voyage CP is to procure the suitable description of the vessel. In the case of the Voyage Charter the form of the CP is less detailed compared to the Time Charter. However, if the ship-owner makes a misrepresentation then they may be consequences. In other words, if the misrepresentation is guiltiness then the charterer may only sue for damages without being able to cancel the contract and the ship-owner will be liable to pay for any damages occurred unless he proves that he had reasonable ground to believe and did believe up to time when the contract was made that the facts represented were true.²⁶

Seaworthiness & Cargo worthiness

The ship-owner must provide to the charterer a seaworthy and a cargo worthy vessel for the particular voyage of the specific cargo. The carrier, i.e. the ship-owner, is liable for any damages or loss may occur to the cargo during the voyage and due to underperformance of the vessel. In the case the ship sails seaworthy and becomes unseaworthy during the trip and due to an unforeseen hazard then the ship-owner will be protected.²⁷

Delivery of the vessel / LayCan

Under the performance of a Voyage CP the Ship-owner has to have the vessel ready by all means to receive the cargo in the loading port between the dates of the laycan. A delay may occurred during the trip and while the vessel is in ballast. In general, the risk of a possible delay is transferred to the ship-owner, unless is covered by an exception clause in the CP. However, the charterer does not have the right to

²⁶ Cooke et.al., 2014

²⁷ Dorkray, 2004 / Vlachos, 2007

cancel the CP unless such a delay is so long to cancel the contract. In most of the times, there may be a cancelling clause / laycan clause in the CP in which case and under the terms of the contract the option of cancellation the CP is upon the charterer.²⁸

The ship-owner in order to transfer the risk of the delay to the charterer must satisfy three conditions:

1. Have the vessel arrived at the loading port
2. Have the vessel ready to load
3. Give a valid NOR (Notice of Readiness)

The laytime can start counting upon the acceptance of the NOR. If the ship-owner delays to do so, then no laytime can start. So, the most important in this case is the vessel to be in condition of an arrived ship²⁹. In more detail, it must be examined by the owner if the CP is in berth or port³⁰. In the first case of a berth CP the NOR must be given when the vessel is alongside the pier. On the other hand, in case of a port CP, the vessel can be considered arrived at a geographical area of the loading port commonly understood by both parties, or when the vessel can be at the disposal of the charterer and can reach immediately the berth when one is vacant, or when the vessel is on anchorage³¹.

Conclusively, in the case of a port CP once the vessel is inside the port any delay caused by bad weather or congestion undertaken by the charterer otherwise in the case of a berth CP the delay will be assumed by the ship-owner³². It must be noted that the laytime can begin to run only if the vessel is in the condition of the “arrived ship”, is ready to load and the master must have given to the charterer a valid NOR³³.

²⁸ Cooke et.al., 2014 / Plomaritou,2014

²⁹ Girvin, 2011

³⁰ «A Voyage C/P can be qualified as a Port C/P or as a Berth C/P. This will depend on the agreed specified destination. Is the destination a Port than we are dealing with a Port C/P. Likewise, is the specified destination a Berth within the Port it is likely that this will be a Berth C/P», Charterama, Claims Service Letter 2, 05/2010, http://www.charterama.nl/wp-content/uploads/2015/09/ClaimsServiceLetter_2_Port_CP_or_Berth_CP.pdf, assess day 03/10/2016

³¹ Vlachos, 2007 / Giziakis,2010

³² Plomaritou, 2014

³³ Plomaritou, 2013a

Deviation

The ship-owner should not deviate from the standard route, only in the cases of saving human life and avoiding danger to the ship or cargo³⁴. As “standard route” is considered to be the agreed route from both parties or the usual route which is followed by similar vessels on similar trades.³⁵

Delivery of the cargo

The ship-owner through the master must deliver the cargo at the dock of the agreed port and to the consignee named in the Bill of Lading (BL). In any case the ship-owner is liable for the situation of the delivered cargo. This means that for any hazard on the cargo, any delay of the delivery, any delivery without the original BL or in a port unnamed in the original BL, then the ship-owner will assume all the obligations. However, if the cargo named as “unclaimed” then the master has the right to land and warehouse the cargo due to the Common Law but the ship-owner is still liable for the cargo until their owner is ready to receive it.³⁶ In compliance with the Merchant Shipping Act (1984) in case the unclaimed cargo is warehoused from the ship-owner then the latter is no longer responsible for its safety.

Opening – Closing of hatches

The ship-owner has the obligation to make the first and the last opening of the hatches with his expenses in every port of loading / discharging. However, if the local port authorities do not allow this then all the work should be done from port workers with charterer’s expenses. In both cases, time should not compensate as lay time.³⁷

4.5.1.2. Obligations in a Time Charter

In the case of a Time Charter the vessel is hired for a specific period of time i.e. for a single trip or of a couple of months / years. As the Table 4.4.1 illustrates the obligations of the ship-owner in a Time Charter are less than in the first case of the Voyage Charter. This is due to the fact that in a Voyage Charter the ship-owner has more responsibilities during the transportation of the cargo and the shipper is not

³⁴ Vlachos, 2007

³⁵ Cooke et.al., 2014 / Dorkay, 2004 / Vlachos, 2007

³⁶ Vlachos, 2007 / Plomaritou, 2014

³⁷ Vlachos, 2007

involved in the daily operation of the vessel. This means that these extended obligations need to be incorporated in the Voyage Charter Party.

Description of the vessel

Initially, the ship-owner has the obligation to give a proper description of the vessel to the charterer. Taking into account that the charterer will use the vessel for merchandise and commercial reasons, he needs to be fully informed about the vessel description making sure that it complies with his needs for the transportation of the cargo and the quality standards he sets. So, unlike the case of a Voyage Charter in the Time Charter the description of the vessel should be more detailed. This is also necessary because in most of the times the charterer does not know the cargo which will be carried so it is important for him to know all the details of the vessel so as to can fix the proper cargo for her.³⁸

The ship-owner provides to the charterer all the vessel's plans, such as GA (General Arrangement), consumption and speed, number of hatches and hatch covers etc. if the ship-owner make an innocent misrepresentation of the vessel which prompted the charterer to sign the contract, then latter has the right to sue for damages without being able to cancel the CP; the ship-owner will be liable to pay for any damages occurred unless he proves that he had reasonable ground to believe and did believe up to time when the contract was made that the facts represented were true. On the contrary, if the misrepresentation is fraudulent the charterer has the right to break the contract.³⁹

Delivery of the vessel

In this case it is not obligated to specify the place or the port of the delivery. In most of the time is mentioned a geographical area, such as Spore-Japan range, or a certain port (at APS -at pilot station- of x port). If it is mentioned in the clauses of the CP that the vessel is to be delivered on APS of x port the vessel is actually delivered outside the port bounds. Usually, the choice of the delivery point is up to the charterer.

If the vessel arrives too early, i.e. earlier than the layday of the delivery in accordance with the laycan named in the CP, the charterer is not obligated to take

³⁸ Girvin, 2011

³⁹ Girvin, 2011

delivery before the layday. In the contrary, if the vessel arrives after the cancelling date in accordance with the laycan named in the CP then the charterer has the right to negotiate for a lower freight rate or even break the contract.⁴⁰

Delay

The ship-owner is liable that the vessel will proceed at all the voyages with utmost despatch. The ship-owner undertakes the risk of delays unless covered by an expectation clause. If the ship-owner fails to carry out his obligation due to unreasonable events then the charterer has the right to claim damages or even break the contract. In Common Law, the ship-owner's warranty of reasonable despatch is implied unless anything in the contrary is stated in the CP.

Seaworthiness – Cargo worthiness

As for the seaworthiness of the vessel the ship-owner must deliver the vessel in a seaworthy condition and conform to the requirement of the CP and furthermore has to use due diligence to deliver the vessel “in every way fitted for cargo service”. In case of possible deficiency the ship-owner must take all the necessary steps to rectify the defects. If the delivered vessel is not efficiency as it was declaimed, then the charterer may sue the owner for damaged but the former has no right to repudiate the CP.⁴¹

4.5.2. Obligations of the Charterer

4.5.2.1. Obligations in a Voyage Charter

In a voyage charter, the charter has the obligation to nominate safe ports and safe berths for the ship in which the cargo will be loaded and discharged.⁴²

Safe Berths / Safe Ports

A port/ berth can be characterized safe when the vessel can reach it, be alongside, and sail from it without being exposed to any danger which cannot be avoided by navigation and manoeuvring⁴³. Taking into account that there are vessels with special design and the needs of every type of the vessel, consequently it is very

⁴⁰ Plomaritou, 2014 / Vlachos, 2007

⁴¹ Giziakis, 2010 / Vlachos, 2007

⁴² Vlachos, 2007/ Giziakis, 2010

⁴³ Plomaritou, 2014 / Voy CP main body, line 15 & 16

important to pay attention at the type of vessel, the work to be done and the conditions in the port at the relevant time. Thus a port may be safe for one type of vessel and unsafe for another⁴⁴.

The ship-owner has the right to refuse charterer's nomination of an unsafe port in order to minimize the risk of a possible danger⁴⁵. If the potential danger is discovered by the Master of the vessel, then he (and consequently the owner) has the right to refuse entering. Damages from unsafe berths or anchorages caused to the vessel will generate liabilities for the charterers, which will have to be reimbursed to the owner.

The charterer must nominate safe port in due time since delay may cause damages to the ship-owner. If he fails to do so, the owner must wait for the instructions, since he cannot immediately withdraw the vessel from the service, unless charterer's delay justifies grounds to terminate the contract.⁴⁶

As the Bimco Voy CP form states in clauses at the Part II and according to Wilson (2004) the charterer must perform specific duties and has certain obligations towards the owner. From the time the ship-owner liaise the vessel to the charterer, the latter has the obligation to use the ship with caution and safety and redeliver it without any damage.⁴⁷

In accordance with that, the charterer will be liable to indemnify the owner for any property damage or personal injury arising from loading / discharging / carriage of dangerous cargo. Thus he must not carry dangerous goods without first notifying the ship-owner⁴⁸. Also, he must prepare the cargo, which should be according to its characteristics and description provided in the Voy CP, and also to the quantity margins agreed.

According to the Voy CP all the costs relating to the cargo are upon the charterer. This means that he is liable for bringing alongside the cargo so all expenses and risks of doing so are transferred to him. Additionally he must load full

⁴⁴ Wilson, 2004

⁴⁵ Vlachos, 2007

⁴⁶ Plomaritou, 2014/ Vlachos, 2007/ Giziakis, 2010

⁴⁷ Wilson, 2004

⁴⁸ Plomaritou, 2014

and complete cargo. Otherwise, the ship owner has the right to claim dead freight and obtain other cargo in order to minimize the loss⁴⁹.⁵⁰

Laytime

The loading of the cargo must be done in a specific time known as “*laytime*” otherwise the charterer will have to pay “*demurrage*”. That means that if the loading takes longer than the arranged time i.e. the laytime, then the charterer must compensate the owner for the time loss⁵¹. Demurrage shall not be subject to laytime exceptions and this is known as “*once on demurrage, always on demurrage*”. In other words, once charterers have used up their laytime and the vessel is on demurrage, all time used will fall for their account, whatever the apparent cause⁵².

On the other side, if the loading is completed faster than the laytime calculates then the vessel is considered to be released earlier to the owner’s control. In this case, the owner must pay an amount of money to the charterer called *despatch* and it is usually agreed as half of the demurrage rate.⁵³

Payment of the freight

Above all, as it was mentioned, the most important obligation of the charterer is the payment of the freight. Usually the freight is payable on the delivery of the cargo and is calculated on the amount of cargo actually delivered. The rules about when the freight is earned and payable are often modified in the Voy CP.⁵⁴

The freight rate is an amount of money which is fixed under negotiations between the two parties and due to the current state of the shipping market and the aspects of each party i.e. the charterer and the ship owner. Other conditions which can affect the freight rate maybe the position of the vessel, the availability of the tonnage of the right type and size of ship for use, the negotiating power of the parties etc.

Under the validity of the Voy CP the freight rate risk lies with the ship=owner to fulfil the obligation to deliver the cargo, risking otherwise his right to collect the freight. In case the vessel sinks and together the cargo is a total loss, then the owner

⁴⁹ Plomaritou, 2014

⁵⁰ Giziakis, 2010

⁵¹ Lopez, 1992

⁵² Plomaritou, 2013b

⁵³ Vlachos, 2007/ Giziakis, 2010

⁵⁴ Vlachos, 2007/ Plomaritou, 2014

has not the right to claim the freight. However, in case of an agreed freight prepaid, there is no refund to the charterer if the vessel and cargo become a total loss.⁵⁵

If the cargo reaches the discharging port in a damaged condition, the owner can collect the freight only if the cargo is in merchantable condition. Similarly, if a part of a cargo is delivered at the discharging port, the owner will collect the freight which corresponds to the quantity of the delivered cargo.⁵⁶

In cases where lumpsum freight is agreed, the ship-owner is entitled to fully freight if some part of the cargo breached the discharging port. But in case of total loss of the cargo the ship-owner has no right to collect freight⁵⁷. Last but not least, if FIO terms are fixed in the CP, then the all the cargo handling expenses are transferred to the charterer. Anyhow, a CP may include *liner* or *gross* terms under which the loading and discharging costs are transferred to the ship-owner, covered by the freight.⁵⁸

4.5.2.2. Obligations in a Time Charter

Redelivery of the vessel

The period in which the vessel is under a Time Charter is described as “flat period”⁵⁹. When the vessel is fixed, it is named a minimum and a maximum range of the redelivery such as 4 / 8 months. This means that the charterer can operate the vessel for at least 4 months; in a potential redelivery earlier than the 4th month of the TC the charterer should compensate the ship-owner. A couple days before the completion of the 4th month, usually the charterer should inform the owner even he will continue the chartering of the vessel or he will proceed to a redelivery. If the charterer chooses to redeliver the vessel he should tender 20/15/10 days approximate and 7/5/3/1 days definite notice of delivery to the owner.

In recession periods of the market, such as this one where the freight rates reached historical low levels, charterers usually are taking advance of the situation

⁵⁵ Vlachos, 2007/ Plomaritou, 2014

⁵⁶ Giziakis, 2010

⁵⁷ Vlachos, 2007/ Giziakis, 2010

⁵⁸ Lopez, 1992/ Wilson, 2004

⁵⁹ Coghlin et.al., 2008

and trying to charter the vessel as long as they can. But when the market is in high levels charterers are trying to charter the vessel in the shortest period possible.

In addition to the freight payment, the condition of the redelivery vessel is also very important. The charterer has the obligation to redeliver the vessel in the same good condition as she had been delivered to him, enabling the ship-owner to start the next commercial trading⁶⁰. It is obvious that if he fails to fulfil his obligations he will compensate the ship-owner for the occurred damages.

Safe berths / safe ports

As it was mentioned above, “a port/ berth can be characterized safe when the vessel can reach it, be alongside, and sail from it without being exposed to any danger which cannot be avoided by navigation and manoeuvring”⁶¹. The charterer is liable for the condition of the vessel under the validity of the TC, thus he should only call safe berth / port and in if he fails to fulfil this obligation he will be responsible for any damages may be occurred. However, in this case the master of the vessel has the right to refuse the call to an unsafe destination, otherwise, the charterer will no longer be liable and the responsibility is transferred to the Ship-owner.

In case the charterer names a safe port but during the stay unsafe conditions are created the charterer is not liable. However, if the charter nominates a safe destination and while the vessel is sailing towards that destination, new circumstances arise that make the port / berth unsafe, then the charter has the obligation to cancel the subject port / berth and provide an alternative safe destination.⁶²

Damages

Under the validity of a Time Charter the master is under the commands of the charterer as regards employment, agency and other arrangements⁶³. In contrast with the navigational orders, which are mentioned above, the risk of damage to the ship caused by the employment is transferred to the charterer.

Furthermore, under the “employment and indemnity” clause of the CP the charterer is liable for any damage to the vessel and should cover any cost which may

⁶⁰ Gorton et.al., 2009

⁶¹ Plomaritou, 2014 / Voy CP main body, line 15 & 16

⁶² Plomaritou, 2014 / Wilson, 2004

⁶³ Girvin, 2011

arise. This means, that the charterer should compensate the owner against all the consequences arising from the master who is signing bill of lading. Nevertheless, the ship-owner is authorised to compensation only if he can prove that there was a causal connection between the loss and the vessel's compliance with the charterer's instructions.⁶⁴

Bill of Lading (BL)

The BL is a legal document between the charterer / shipper of the cargo and the owner of the vessel which carries the particular cargo (carrier). This document refers in details to the quantity, type and destination of the cargo. Furthermore, the BL can act as a receipt of shipment when the cargo is delivered to the predetermined destination. It is very important the BL to accompany the cargo, and be signed by an authorised representative from the carrier, shipper and receiver.⁶⁵

On behalf of the ship-owner the charterer may sign the BLs in which case the signature binds the ship-owner as principal to the contract contained in or evidenced by the BLs⁶⁶.

It is obvious that the trade and the cargo should be legal not only in the countries where the operations of loading and discharging take place but also in the country where vessel is registered and by the law governing the CP – which is usually the Common Law. The charterer if it is stated at the CP may breach the trading limits if he pays the respective extra insurance premium.⁶⁷

The charterer is liable and should compensate the ship-owner for any damage to the vessel or injury to the crew which may arise during the carriage, loading, discharging of the cargo. There are cargoes such as salt or grains which under conditions may explode or are corrosive, and as a result cause damage to the vessel. In this case the charterer is liable for these damages and shall indemnify the ship-owner.

⁶⁴ Plomaritou, 2015

⁶⁵ Bill Of Lading Definition | Investopedia

<http://www.investopedia.com/terms/b/billoflading.asp#ixzz42IkGQA24>, accessed date 08/03/2016

⁶⁶ Plomaritou, 2014

⁶⁷ Coghlin, 2008

In most cases the operation of loading and discharging are under the responsibility and supervision of the master and all expenses are covered by the charterer / shipper. There is a certain clause in the CP in which the word “responsibility” transfer the risk of any damage may occur by the above operations to the ship-owner. The key point here is the stevedores’ damage and the mechanical process of handling the vessel’s gear and cargo. Usually, time charters, especially those concerning the trade of a bulk cargo, include a stevedore damage clause which makes the charterer liable, under certain circumstances.⁶⁸

Payment

As in all CPs, a primary and absolute obligation of the charterer is the payment of the hire. Usually, the payment is made in advance every 15 days, consequently is that the payment is required before performance.

A possible delay of the remittance will normally imply a breach of the CP from the part of the charterer. If indeed the payment was not made on the due date due to a charterer’s mistake the ship-owner has the right to claim compensates or even more break the CP and withdraw the vessel from her services⁶⁹. However, once the late payment has been made by the charterers, unreasonable delay on the part of the ship-owner in exercising the right to withdraw the vessel “may amount to a waiver of the right”.

The charterer has no obligation to pay the hire if the usage of the vessel is not available due to an accident of a deficiency which is in the responsibility of the ship-owner. In each CP form an “off-hire clause” is included, in which all the conditions are determined under which the vessel may be considered in “off-hire”. Most time, the “off-hire clause” includes events such as vessel’s dry-docking, breakdown machinery, deficiency of ship-owner’s stores, and damage to hull etc.⁷⁰

4.6. Conclusion

A charter party is a contract, arranged usually by a shipbroker, between a shipper of goods, and the owner of a ship upon which the goods are to be carried. The

⁶⁸ Coghlin, 2008

⁶⁹ Dockray, 2004

⁷⁰ Gorton et.al, 2009

ship-owner wants to charter the vessel in the most profitable for him way, minimizing risks that he does not intend to take, i.e. war zones, dangerous cargoes, delivery in no loading zones etc. On the other hand, the charterer wants to minimize his transportation costs, aiming at fixing a vessel which meets the standards of quality that he sets, in the minimum possible freight.

Under the validity of a charter party either it is a Time Charter or a Voyage Charter, each involved party has to follow some obligations. In general, the ship-owner must provide to the charterer a seaworthy and cargo worthy vessel, well manned, with all the necessary certificates, and delivered it at the agreed time and place or make the agreed voyage. While, on the other hand, the charterer has to pay the agreed freight / hire at the agreed day of the hire, as long as to treat the vessel with safety and nominate only safe port and safe berths.

This is the main scope under which both parties must serve the charter party. With regard to this, Chapters 6 and 7 are referring to some points of the charter party which are mentioned more the one time and confirm the scope of this thesis that the charter party is based on the mistrust between parties, when the obligations for both of them are clearly known on the market as long as on the English Law.

Chapter 5: Cargo Documents⁷¹

5.1. Introduction

The cargo documents are very important in the procedure of the shipping of goods due to the fact that they include details about the quantity and quality of the carrying cargo, the shipper, the receiver etc. The most important cargo document is the Bill of Lading which must be supplemented in accordance with the Mate's Receipt; the second important cargo document. Other documents which will be discussed in the following paragraphs along with the Bill of Lading and the Mate's Receipt are the cargo manifest, the tally sheets, the shipping note and the booking list. In addition, this chapter will refer to the usage of the Letter of Credit and Shipper's Declaration.

5.2. Bill of Lading

The Bill of Lading is a legal document concerning the carrying cargo and includes details and information about it. It is issued by the carrier and details the shipment of merchandise, gives title of that shipment to a specified party; and, includes all the terms and conditions under which this document was signed. The party which actually holds the bill of lading is the owner of the carrying cargo. The Bill of Lading may be signed by the master of the vessel on behalf of the ship-owner or else by an authorised person.

Moreover, the bill of lading contains details about the cargo such as the type of the cargo, the actual loaded quantity, the condition of the cargo during the loading operation, as well as, the date when the last loading operation took place. It is very important that the bill of lading includes in detail the condition of the cargo; this is the key point in order to be signed as "Clean" or "Dirty" bill of lading, these definitions will be explained in the following paragraphs.

⁷¹ This chapter was issued with the kind guidance of Capt George Theodorakis from W Marine Inc. and along with the information included in the book of Professor George Vlachos (2007) "Chartering" (in free translation from Greek) as well as in the unpublished presentations of Dr. Dionisios Polemis (2015) "Procedure – Letter of Credit – Bill of Lading".

Bills of lading are issued in three copies and should be in accordance with the **Mate's Receipt**; a document signed by the chief officer of the vessel acknowledging the receipt of a certain consignment on board of the vessel. On the Mate's Receipt remarks can be made regarding the order and condition of the consignment.

Due to Common Law, the master of the vessel has the right to sign the bill of lading on behalf of the ship-owner which is liable for the carrying cargo. When the vessel arrives at the discharging port the master has the obligation to deliver the cargo to the party who will present the original bill of lading. The ship-owner has the right to refuse any instructions from the charterer concerning discharging in a port different from the listed one in the bill of lading⁷². The master has no right to sign bill of lading for a port which is considered as "closed" or "unsafe".

Usually, the ship-owner in order to transfer the risk, authorises a third party, which in most cases is an agent, to sign the bills of lading on behalf of himself; in any case the bill of lading must be in accordance with the Mate's Receipt. It is important that proper attention is given to the bill of lading and all rights and jurisdictions are clearly defined in order to avoid misconceptions. This document is usually the source for disagreements, thus should be in accordance with the CP despite the fact that there are CPs which include the term "without prejudice"; this means that the bills of lading maybe signed without a substantial commitment to the terms of the CP.

There are cases where the master of the vessel refuses to sign the bill of lading in order to avoid the responsibility. A typical example is the signing of "Clean" bill of lading, where it is declared that the loaded cargo has no damages and the condition in which was loaded was excellent. The signing of a "Clean" bill of lading ensures that the charterer will be paid from the receiver and there will not be any disagreement about the quality of the delivered cargo. However, if the deck officers during the loading observe that there are some defects in the cargo such as flakes, rust etc. this must be mentioned in detail in the bill of lading. In this case the document is characterised as a "Dirty" bill of lading. If after negotiation, it is agreed between the ship-owner and the shipper to sign a clean bill of lading, regardless the actual condition of the cargo, then the ship-owner to avoid future claims from the receivers

⁷² In an unexpected event which may cause damages, and under the terms and conditions of the signed bill of lading the discharging port shall change

of the cargo may demand from the shipper a «Letter of Indemnity» (LOI). However, it is important to mention that the latter document is not a contract and it is in the discretion of the court to consider it as prove of innocence of the ship-owner.

Other issues may arise from the handling of the cargo from the ship-owner's side can be about freight payment or cargo stowage. It should be avoided to sign freight prepaid bills of lading as it is very likely to be in fact completely the opposite and the freight may never be paid. Furthermore, it should be avoided to sign "under deck" bills of lading, in case there is cargo on deck, due to the fact that many conflicts may arise.

In some cases, the bills of lading may be at the port after the discharge of the cargo, thus the charterer may ask ship-owner to deliver the cargo to an authorised third party. The master or the agent in order the vessel to proceed to the discharge of the cargo, should have the proper warranties from the receiver's bank which ensures that there is an actual receiver.

The document of the bill of lading along with all the above information includes also terms and conditions under which the bill of lading was signed. These are usually the "War Risks Clause", "Both-to-Blame Collision Clause", "New Jason Clause" and "Paramount Clause". However, if the abovementioned clauses are not included, but only the "British Carriage of Goods by Sea-Act" then subsequently the clauses "New Jason" and "Both-to-Blame" are applied.⁷³

International transport led to the creation of many different types of bills of lading governed by international rules and laws. The bills of lading used in the shipping industry are governed by the Hague Rules (1924), Hague-Visby Rules (1968), Hamburg Rules (1978). The determination of the governing rules is a choice of both parties. The following paragraphs are a brief explanation of these conventions.

Hague Rules (1924)

Hague Rules were agreed at the International Conference in Brussels. Hague Rules are an international convention to impose minimum standards upon commercial carriers of goods by sea. This convention actually favoured carriers and reduced some of their obligations to shippers. Under the validity of Hague Rules the cost of loss or

⁷³ VLachos, 2007

damaged cargo is transferred to the shipper if he cannot prove that the vessel was unseaworthy, improperly manned or unable to safely transport and preserve the cargo. These provisions have frequently been the subject of discussion between ship-owners and shippers on whether they provide an appropriate balance in liability.⁷⁴

The Hague Rules were later amended very slightly to become Hague-Visby Rules. Moreover, the United Nations have established a fairer and more modern set of rules, the Hamburg Rules. In addition, a much more radical and extensive set of rules is the Rotterdam Rules, but as of November 2015, only 3 states have ratified these rules, so they are not yet in force.

Hague - Visby Rules (1968)

The Hague - Visby Rules are a slightly updated version of the original Hague Rules. Their purpose is the limitation of liability and consequently the compensation to the cargo-owner in case of a possible damage. Furthermore, a maximum amount of compensation was established.⁷⁵

Hamburg Rules (1978)

Hamburg Rules were adopted in 1978 and differentiate the ship-owner's liability against the charterer. It is defined that the charterer will be liable for any damage or delay of the cargo but only up to the limits of his jurisdiction; he also has the right to prove that he had made every possible effort and proper due diligence in order to avoid the danger. However, deprives the exemption from his liability which was provided by the previous rules in cases of fire or any other error. These new rules require increased compensation by 25% and are often the reason of many conflicts between the parties.⁷⁶

5.3. Mate's Receipt

Mate's Receipt is a document signed by the chief officer of the vessel evidencing safe receipt of the shipment on board the vessel, as well as, that the cargo was loaded and stowed in a proper way. Any damage to the cargo is indicated as a remark on the Mate's Receipt and must be transferred and included on the bill of

⁷⁴ Admiralty and Maritime Law Guide | International Conventions

<http://www.admiraltylawguide.com/conven/haguerules1924.html>, accessed date 09/03/2016

⁷⁵ Vlachos, 2007

⁷⁶ Vlachos, 2007

lading. It is not a document of title and is issued as an interim measure until a proper bill of lading can be issued. The Mate's Receipt is issued after a crosscheck of the Tally Sheet and the Boat Note.

5.4. Cargo Manifest

The Cargo Manifest is a document – list indicating in detail the cargo loaded and discharged on the vessel. It summarizes all bills of lading that have been issued by the carrier or its representative for that particular shipment. It is obvious that the description of the cargo must be in accordance with the Mate's Receipt and that the Cargo Manifest is signed after the MR. In general, a Cargo Manifest will generally show the shipment's co-signer and consignee, as well as listing product details such as number, value, origin and destination.

5.5. Shipper's Declaration

Shipper's Declaration is a statement issued and signed by a shipper or an authorised representative (i.e. an agent) when the vessel is alongside the dock and before the loading operation. It is a form of cargo information that indicates in detail the quantity and specifications of the cargo that will be carried, such as the stowage factor, the angle of repose and trimming procedures.

Regarding the solid bulk cargoes, the most important information is the classification of the cargo to specific groups according to the IMSBC CODE-International Maritime Solid Bulk Cargoes Code. According to this document every cargo can be classified into 3 groups: Group A (liquefy), Group B (dangerous), Group C (non dangerous). The goods which can be carried are specific for every vessel, especially in the case of smaller ships, such as Handies or Supramaxes. A list of the acceptable cargoes that a vessel can load is issued and authorized by the Classification Society of each vessel.

5.7. Conclusion

All cargo documents are very important on the procedure of the shipping due to the fact that nominate the specific cargo and the receiver of it. Moreover, the importance of these documents arises from the fact that all payments are based

weather the cargo has been delivered to the right / authorised receiver and on a good and merchandise quality condition.

The Bill of Lading is a legal document, that is why there are references of some clauses which also can be found on the “rider clauses” of the charter party under which is performed the subject shipment of goods. The most common clauses in a BL are the *War Risks* clause, Both-To-Blame Collision clause, New Jason clause and Paramount clause. With regard to this, is considered necessary the reference to these clauses, both in the CP and in the BL.

All the other cargo documents are very important so as the BL come to existence and be signed by the authorised person. There is no mention made neither in the CP in the BL due to the fact that these cargo documents have no legal value and in case of a claim will be found not valid.

On the following Chapters 6 and 7 the main aim is to focus on these clauses, understand their importance from both parties, i.e. the charterer and the ship-owner, and try to identify the weak point and pitfalls of the examined contracts.

Chapter 6: Analysis of Voyage Charter Party

6.1. Introduction

This chapter reviews some of the principal clauses contained in voyage charter parties. The analysis is based on the most widely used dry cargo voyage charter party, the Uniform General Charter (GENCON), developed by BIMCO. This model CP is already the third version of its kind as it was first issued in 1922 and amended in 1976 and 1994.⁷⁷ These amendments followed the developments in maritime practice, which repeatedly had to include additional written clauses into the CPs. The «rider clauses» are trying to supplement the lacking provision of the main body but the disadvantage of this method is that the contracts became quite complex with too many additional clauses following the main body.

In 1990 the clauses of several CPs were studied by UNCTAD in a comparative analysis. This contributed to the revision of the GENCON in 1994. However, this version, which is the last, is already 22 years old and can no longer keep pace with all the challenges of in the shipping industry. Hence, in the following paragraphs are analyzed all the difficulties and pitfalls in the voyage CP.

6.2. Analysis

The voyage CP consists of two parts. In the first part are mentioned all the agreed details of the chartering, such as the port(s) of loading and discharging, the freight rate, the brokerage commission, the laytime, a brief description of the vessel, the quantity of the cargo and the details of each party i.e. Ship-owners, Charterers, Brokers. In the second part («PART II») the rider clauses are included, some of which are analyzed here under with the first one being the Clause 2.

6.2.1. Clause 2 «Owners' Responsibility»

Clause 2 «Owners' Responsibility Clause» describes the liability of the Ship-owner upon the cargo, in case some conditions are not fulfilled, such as damage, loss or delay of the goods. However, this clause is quite complex not only because has

⁷⁷

https://www.bimco.org/Chartering/Clauses_and_Documents/Documents/Voyage_Charter_Parties/GENCON_94.aspx, day accessed: 01/09/2016

deferent interpretations, but also because it is linked with the Clause 5 «Loading / Discharging» where the liabilities of the parties are illustrated during these procedures. In addition, the exclusion of liability⁷⁸ in Clause 2 could potentially be set aside if they are found to be incompatible with the obligations introduced by the «Paramount Clause».

At first glance, Clause 2 favors the Ship-owner as it significantly limits the scope of grounds on which he can be held liable. But, the appeal of this clause can be qualified by the scope of claims which it actually concerns. Liability is limited to “loss or damage to the goods” and “delay in redelivery of the goods”. It is to be understood that the first is based on physical damage and the latter relates to financial loss. For other types of claims, this clause does not provide any exclusion from liability, meaning they can still be recovered as damages if the cause is some other breach of the charter. For example, while the cargo may have arrived on time and in the proper condition, the charterer might have paid additional warehouse costs because the vessel arrived too late for loading. Such a claim cannot be defended by relying on the first paragraph of this clause.⁷⁹

Clause 2, in any case, has been added not to be an indemnity clause. This means that the rules of the causation and remoteness apply. Consequently, the Ship-owner may be considered as liable to pay damages for the loss that can be held “foreseeable”. It is very important that the contract can determine clearly what the parties could have assumed to fall within their responsibility in case of damage.

« Personal »

On the other hand, in the third line of the first paragraph the term “personal” can be observed. The main idea behind this term is that the ship-owner takes responsibility for the proper management of the vessel, but should not be “responsible for incidental faults occurring during operation”.⁸⁰ The “personal” term should not be bypassed in case a management company is in charge of operating or chartering out the vessel on behalf of the ship-owner. This misunderstanding might take place because Clause 2 mentions the ship-owner and the manager in one breath. In case the management company, or its servants which can bind that company through a similar

⁷⁸ These are mentioned in the second paragraph of Clause 2.

⁷⁹ Cooke and Young, et.al., 2014, pg 230

⁸⁰ Cooke and Young, 2014, pg 248-250

“personal” link, show a lack of due diligence, this will lead to the liability of the owner who relied on the management company. That is why, the ship-owner has the responsibility to develop a system control, supervision and reporting, that would allow faults by lower employees to be detected and prevented in the future. If there is no such a system, or if the system is not capable of mitigating such faults, the ship-owner might be held liable. He will not be able to escape liability by relying only on Clause 2. However, having such a system in place has the advantage of excluding liability of the Ship-owner for incidental negligence of his employees based on Clause 2.

It must be mentioned here that under a GENCON clause 2, the owner can delegate the responsibility of due diligence to another party. This is quite different if the HVR apply to the CP by means of a paramount clause. It is this «personal» element that is considered to be conflicting with the Article III, rule 8 of the HVR, and it is discussed in the upcoming chapter «Incorporation of the HVR».⁸¹

« Due Diligence »

Another term of this clause, which is worth analyzing here, is this of «due diligence». Due diligence is «the exercise of reasonable care and skill», which is considered to be the opposite of negligence. However, the GENCON CP does not define this term itself; therefore its explanation is to be found in the principles of common law. To determine whether a Ship-owner has been due diligent, depends on the facts of each case. However, in a given situation there can be more than one way to be due diligent if there are different reasonable opinions on the matter. Whether a Ship-owner was due diligent is not to be judged from a perspective of absolute hindsight. While, if mistakes were made, there are lessons to be learned and the margin for tolerance will be smaller for the next incident, based on the hindsight that one should have acquired afterwards.⁸²

« Seaworthiness »

The last term worthy to be mentioned is the one about the «seaworthiness» of the vessel. However, the GENCON CP does not add anything specific about this term. The standard required seaworthiness is the one described at common law. The main

⁸¹ Cooke and Young, 2014, pg. 247

⁸² Cooke and Young, 2014, pg. 1025

difference, is that under the CENCON CP, the obligation to provide a seaworthy vessel is not an absolute one considering that it depends on the elements of «due diligence» and «personal want» as described above. On the point of «seaworthiness» the GENCON term is close to that under the HVR.

Regarding the second paragraph of clause 2, it tries to exclude the liability of the Ship-Owner in any other case, which is not yet provided by the first paragraph. Although the paragraph might have a broad scope speaking of «loss, damage or delay», in practice its application is limited in the same way that was explained in the first paragraph.⁸³

The judge of the Dominator case mentioned that the paragraph might have stopped after the phrase «any other cause whatsoever»⁸⁴. The second paragraph was not given its wider meaning, which could have covered everything outside the ambit of the first paragraph. Everything that followed the phrase «any other cause whatsoever» was to be seen as examples of situations that would fall outside the scope of the clause⁸⁵. Moreover the liability for deliberate wrongdoing of the Master or crew, which are both excluded, might fall under the scope of the clause. Similarly, misdelivery and theft would fall outside the scope of the second paragraph, as it is not considered as a clear provision covering these events, which in other words means that a Ship-owner cannot rely on this clause in such cases.

6.2.2. Clause 5 «Loading / Discharging»

When it comes to loading and discharging operations, both ship-owner and charterer have responsibilities. In accordance with the common law the charterer should bring the cargo alongside the vessel in order to be loaded; at this point the responsibility upon the cargo is transferred from the charterer to the ship-owner as the cargo has been loaded over the ship's rail. However, modern shipping practices deviate from this rule and charterers end up taking care of the hole loading / unloading operation based on the terms of the CP. In other words, the charterer

⁸³ Cooke & Young, 2014, pg. 253

⁸⁴ Cooke & Young, 2014, pg. 253

⁸⁵ Cooke & Young, 2014, pg. 254

commits himself to perform under the term of «FIOST⁸⁶», which means that he has to perform within the range of loading, stowing, trimming and discharge and he is liable only for the cost of this procedure.⁸⁷

It is important to make clear that the cost of operations and the risk of underperformance are two deferent things. Transferring the responsibility of the cost of operations between the parties does not mean that the risk of malperformance will be transferred too. It is clear here, that there is a need of new provisions, which can exactly specify for which operations the cost and / or the risk is transferred. Nevertheless, the GENCON94 clause 5 mentions both the transfer of the cost and responsibility from ship-owners to charterers^{88, 89}

However, even under a clear provision of FIOST terms and a clear mention on the risk and / responsibility, the ship-owner might still be considered liable for improper stowage. The responsibility for damage caused by improper stowage is a common issue and remains complex. On the one hand, charterers have the duty to perform the stowage «properly» and with «due care». On the other hand, the same should be for the ship-owners, even though it can be somewhat compared to the carrier's duty under the HVR.⁹⁰

Under the FIOST terms, charterers might escape their responsibilities in two situations. The first one is that the charterers do not guarantee a perfect stowage, they only carry out the task with reasonable skill and care based on the information they have about the nature of the cargo. This means that if the cargo is stowed in a sufficient way, but ends up being in a bad condition based on other circumstances the charterer could not have known then he is not liable. Then, the responsibility is transferred to the ship-owner. The second one is about the intervention of the Master to the process of the stowage. In such a case, the liability of the charterers will be limited, depending on how impactful these instructions have been on the work of the stevedores.

⁸⁶ FIOST: Free in, out, stowed, trimmed. The ship-owner has no responsibility for the costs of loading, unloading, stowage, trimming.

⁸⁷ T. Nikaki, 2009, pg. 59-60

⁸⁸ GENCON94, Clause 5 (A:) «...free of any risk, liability and expense whatsoever to the Ownres... »

⁸⁹ The Jordan II, 2003, 2 Lloyd's Rep 87; T. Nikaki, 2009, pg. 62

⁹⁰ T. Nikaki, 2009, pg. 63-64

It must be mentioned here that there is a distinction between «stowage impacting only the cargo» and «stowage impacting the seaworthiness of the vessel». According to common law the Master has the right to supervise the loading / discharging operations. This means that he has the right to intervene the operations when he feels that the seaworthiness of the vessel might be at risk. Thus, the role of the Master could be extended by adding to the contract that the stowage is to happen under the «responsibility of the Master»⁹¹. Such a provision can potentially interfere with a FIOST clause, which intends to transfer that risk to the charterer. It will be up to the judge / arbitrator to make sense of both provisions and to see whether they can be read together. It is conceivable that the liability for the stowage shifts back to the Master, and thus to the Ship-owner, because the parties intended to rely on the expertise of the Master to assist in the stowage process by adding such a clause.⁹²

As it was mentioned above, in the case of an improper stowage, which affects the seaworthiness of the vessel, the situation is more complex as the seaworthiness is a responsibility of the Master. The outcome is different in case there is a paramount clause, which incorporates or not the HVR into the CP.

In the first case, where the CP indicates the HVR by virtue of a paramount clause, the situation is quite complicated. The HVR do not allow transferring the liability of the unseaworthiness resulting from improper stowage, as the seaworthiness is considered to be a non-delegable duty of the owner. Accepting this in every case would have the adverse effect that the charterer might be responsible for improper stowage, but no longer would be liable in case the stowage have a bad effect on the vessel's seaworthiness. In order to reconstruct this contradictory situation, the balance between the level of due diligence the two parties have must be revised. Then, depending on who has breached his duties, it can be agreed which party will be liable for unseaworthiness caused by improper stowage.

⁹¹ Sea Miror [2015] EWHC 1747; D. MARTIN-CLARK, “SDTM-CI and others vContinental Lines and another - the Sea Miror”, <http://www.onlinedmc.co.uk/index.php/SDTM> Accessed date 20/08/2016 ; J. REAY and O. FURMSTON, “Web alert: the Sea Miror – an owner/carrier can shift responsibility for the loading / discharge of cargo with the use of clear language”, <http://www.standard-club.com/news-and-knowledge/news/2015/09/web-alert-the-sea-mirror-%E2%80%93-anownercarrier-can-shift-responsibility-for-the-loading-discharge-of-cargo-with-the-use-of-clear-language/>, Accessed date 20/08/2016

⁹² T. Nikaki, 2009, pg. 65-66

On the other hand, in case there is no paramount clause in the CP, the situation is quite straightforward if the proper precautionary provisions are in place. Based on the FIOST clause, the responsibility can be transferred to the charterer. Due to common law it is considered lawful to transfer the liability if « expressed in clear words and without ambiguity». The basic GENCON Clause 5 uses the term «free of any risk, liability and expense whatsoever to the owners», thus might not be considered as an express provision, due to the fact that it does not mention in detail the consequences of unseaworthiness. That is why; Clause 5 must be amended or there must be an additional clause in the CP in order to specify the liability in such cases.⁹³

6.2.3. Clause 10 «Bills of Lading»

As it was mentioned in Chapter 5 the bill of lading (BoL) is the main point within the relationship of shippers and carriers. Without considering the effect of BoLs, the rights and obligations flowing from the CP will not be properly comprehended.

There exists an important link between the BoL and the CP, even though each of these contracts might be concluded between different parties. The CP is concluded between the ship-owner and the charterer, while the BoL is in principle important only to the charterer and the cargo owner. The cargo owner is a third party to the CP so he would normally not be impacted by the CP, since he did not sign it and technically didn't agree to it. However, the parties involved make it so that the terms of the CP would also apply to the BoL issued under it, even if the cargo owner has never even seen that CP. This relationship can be seen both in the CP, where reference is made to BoL in Clause 10, and on BoL themselves which often have a clause along the lines of “all the terms, conditions, clauses and expectations contained in the CP dated ... are hereby expressly included in this bill”.⁹⁴

All parties should try to identify in which CP the BoLs are to apply. If there are several CPs which can be considered to apply, the rule-of-thumb is that the head

⁹³ T. Nikaki, 2009, pg. 70-71

⁹⁴ UNCTAD, 1990, pg. 90

CP will apply, i.e. the one to which the carrier is a party⁹⁵.⁹⁶ Although an incorporation clause mentions that «all terms» are incorporated, interpreting this is not always as simple and straight forward as it seems. Sometimes certain important clauses which require the agreement of the parties are to be mentioned separately.

So it is possible that the BoL and the CP will be subject to different rules. The BoL might be subject to HVR, while the CP is not (unless it also includes a paramount clause). In order to understand which responsibility regime is to be considered upon the ship-owner, we must determine which set of terms prevails. Two situations can be distinguished: the charterer is also the shipper of the goods, or the shipper of the goods is a third party. In the situation where the charterer is also the cargo owner, it has been decided that the terms of the CP should prevail over the terms of the BoL, especially when it comes to liability.⁹⁷ However, the parties involved can also agree on the contrary and allow the BoL to prevail; by specifying so in the CP.⁹⁸ in case the cargo owner is not the carrier, we cannot simply state that in any case the CP should prevail. Consequently, the CP should prevail, from the moment the BoL has been indorsed to the charterer, since at that moment it loses the quality of the evidence of contract.

6.2.4. Incorporation of the Hague-Visby Rules

Considering the title of the Convention, as well as from the Article V, which states «the provisions of these Rules shall not be applicable to CPs», it is understandable that those who designed the HVR had the intention to draft provisions which would only apply to BoL.⁹⁹

However, the HVR can apply in two ways:

⁹⁵ Unless this would be a Time Charter in which case the Voyage «further down the line» will be the one to apply.

⁹⁶ E. BIRCH and O. FURMSTON, “Web Alert: Bills of lading as the contract of carriage - guiding principles as to the incorporation of charter party terms”, <http://www.standard-club.com/news-and-knowledge/news/2016/02/webalert-bills-of-lading-as-the-contract-of-carriage-%E2%80%93-guiding-principles-as-to-the-incorporation-of-charter-party-terms/>, access day: 10/09/2016.

⁹⁷ *Rodoconanchi Sons & Co v Milburn Bros* [1887] 18 QBD 67 see F. REYNOLDS, “Bills of lading and voyage charters”, in D. RHIDIAN THOMAS (ed.), *The Evolving Law and Practice of Voyage Charterparties*, London, Informa Law, 2009, 202.

⁹⁸ *The Jocelyne* [1977] 2 Lloyd’s Rep 121; F. REYNOLDS “Bills of Lading and voyage charters”, 202.

⁹⁹ *Adamastos Shipping* [1959] A.C. 133; Cooke and Young, 2014, pg. 997.

1. Compulsory by statute, this is only ever possible for BoLs
2. Incorporated contractually, where the HVR must be incorporated expressly by including a «paramount clause»

The main difference between these two points is that in the first case the parties cannot deviate from them, while in the second case, where the parties choose to incorporate the HVR, the extent of their intention must be clearly interpreted by reading it in the context of the CP. It is understandable that the construction of a paramount clause, does not incorporate the full set of the HVR. The involved parties have the right to choose which parts of the HVR they consider to be applicable to the contract.¹⁰⁰

6.2.4.1. Seaworthiness Under Hague-Visby Rules

The HVR's principles of «seaworthiness» are quite the same as at common law. However, it differentiates in three key points:

1. The absolute charterer
2. The doctrine of stages
3. The burden of proof

The absolute obligation at common law, to provide a seaworthy vessel, is replaced by the HVR with a commitment to be «due diligent». However, it is very important to understand the way the HVR are incorporated into the CP. In case the HVR apply by virtue of law or statute, the absolute obligation will be replaced. On the other hand, if the HVR apply contractually (like in a CP) other terms of the CP might however impose an absolute warranty of seaworthiness on the ship-owner.¹⁰¹

In the Article III, rule 1 it is mentioned that HVR require the carrier to provide a seaworthy ship «before and at the beginning of the voyage». This explains that seaworthiness must be guaranteed throughout the complete loading operation.¹⁰² However, as soon as the vessel departs, the carrier will no longer be liable for later defects during the whole voyage (unless it can be proved that existed before departing). This differs from the «doctrine of stages at common law», because it

¹⁰⁰ The Antares [1987] 1 Lloyd's Rep 424; Cooke and Young, 2014, pg. 1002-1003.

¹⁰¹ S. GIRVIN, 2011, pg.421.

¹⁰² S. GIRVIN, 2011, pg 422.

requires the ship-owner to make sure the vessel is seaworthy at every new stage. Such stages can start at the moment of intermediate port of calls or even bunkering operations.¹⁰³

The HVR seems to impose a positive obligation on the carrier to prove due diligence in a case of unseaworthiness. Article IV, rule 1 ends as follows: «Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article». The actual application of this rule in practice is closer to the system of proof at common law. For the claimant to have a case against the carrier he must show that the carrier is in fact the person from whom he seeks compensation and that he is the one who can be linked to the damage or loss of the goods.

Instead of having to prove that the ship was seaworthy, the carrier can first rely on an exception ground in the HVR. In case the carrier has the right to such an exception because it was the cause of the damage, the claimant will have to be the one to show that the damage was allowed to happen due to a lack of due diligence. That means that he has to prove unseaworthiness at the beginning of the voyage.¹⁰⁴

6.2.4.2. Paramountcy of the Hague-Visby Rules

The Article III, rule 8 of is that which gives the HVR its paramount effect. In more detail, Article III reads as follows: «*Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favor of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability*». It is worth examining which clauses commonly found in CPs and BoLs would be considered as «lessening liability» and what the «nullifying effect of the rule» would be.

If there are clauses which would lift the liability of the carrier for unseaworthiness or negligence, they will be given no effect by virtue of the HVR. If

¹⁰³ S. GIRVIN, 2011, pg. 427.

¹⁰⁴ S. GIRVIN, 2011, pg. 427-428.

the contracting carrier is not the actual carrier, then the Article III, rule 8 will misapply clauses concerning liability for negligence and fault.¹⁰⁵

Jurisdiction clauses might be a way to invoke other liability regimes by virtue of national law. However, if applying that national law would lead to a lower level of liability limitation than the HVR provides, Article III, rule 8 would render such a jurisdiction clause null and void. This is especially true in situations where the rules apply compulsorily.¹⁰⁶ Arbitration clauses will normally not be nullified, but if they provide for lower time bars than the expected under the HVR (one year), this lower time bar provision will be disregarded.¹⁰⁷

6.3. Conclusions¹⁰⁸

The GENCON 1994 is already 22 years old but is still widely used. It is difficult to explain whether is due to its construction or because BIMCO and the parties which use it have found ways to make it work.

Although UNCTAD criticized the GENCON 1976 model in the study of 1990, even that version of 1976 is still in use consequently, despite the criticism of UNCATD, the GENCON CP had incorporated core principles acceptable from the involved parties, something that is explained by its wide use. However, after its later revision in 1994 there are still some issues¹⁰⁹ not addressed.

In accordance with the BIMCO principles, its documents are revised every 10 years. However, it seems unavoidable that the shipping industry is heading towards a new GENCON model, and this come up with the question whether this new form of contract will be received with widespread use by the industry.

The addition of protective clauses with most significant the paramount clause is probably the most significant change among all developed or updated CPs by

¹⁰⁵ Cooke & Young, 2014, pg. 1065.

¹⁰⁶ The *Hollandia* [1983] 1 A.C. 565 and H. NOBLE, “Effects under Irish Law of a contractual limit in the bill of lading purporting to lessen liability below that stipulates in the Hague-Visby Rules”, http://www.forwarderlaw.com/library/view.php?article_id=884, day accessed 10/09/2016.

¹⁰⁷ Cooke & Young, 2014, pg. 1066

¹⁰⁸ This chapter was issued with the kind guidance of Mr Simon Ward from Ursa Shipbrokers & Capt. Andreas Georgiou from Grace Trading Corporation

¹⁰⁹ Those mentioned in this chapter.

BIMCO. The application of the HVR to CPs although non-existent, can be added with a provision that proper meaning is given to them. More specifically, BIMCO revised the «General Clause Paramount» in 1997 in order this clause to apply to BoLs, Seaway bills and Voy CPs.

The above mentioned incorporation of the paramount clause to GENCON is difficult in practice as some clauses for example «Clause 2 – Owners’ Responsibility» is not compatible with HVR. As a result a new GENCON CP would not have a place for this clause. Although attempts were made to «clean it up» since 1976; the terminology of Clause 2 remains vague and redundant.

On the other side, clause 5 «Loading / Discharge» seems like it came out with a better construction after the revise of the 1976 version. However, there are legal developments which have shown that some matters remained unanswered in this clause. In more detail, clause 2 do not mention clear what is to happen with the liability of the parties in case of unseaworthiness due to bad stowage. A clear provision might help, excluding the liability of the ship-owner to a full extend in case the charterer takes care of stowage. The current wording, which stands as follows: «*supervision of the Master*», is confusing in this context as it seems to imply a degree of liability, thus a more distinct explanation must be given to the terms or «supervision» and «responsibility», as long as a transshipment clause could also be provided.

Finally, the BoL clause is in general up-to-date enough to continue its existence in its current state. While BIMCO tries to endorse the newest CONGEBILL 2016 as a default, there might be observed a slight change. In case the parties involved choose not to use a BoL of the CONGEN type, it would be best to provide that this bill of lading should properly incorporate the terms of the CP. The express indemnity for BoL as presented in the Clause is very important, although, the rights of the Master can be set out more clearly when in case he has the right to sign clean bills or refuse to load the cargo. While it is implied that the charterer will be the one to whom the BoL are presented, which the Master has the right to sign on behalf of the ship-owner, it might be better for the sake of transparency to identify the ship-owner as carrier.

Chapter 7: Analysis of Time Charter Party

7.1. Introduction

The NYPE form is a commonly used TC form in the dry cargo market. On 15 October 2015 BIMCO release a new amended NYPE form, which is quite different from the 1993 and 1946 forms. With each revision, the NYPE adds new clauses; thus NYPE46 has gone from 28 clauses to 45 clauses in NYPE and now 57 clauses in 2015.¹¹⁰

This chapter will analyze several clauses which are of contemporary importance or have been revised since the NYPE93 form.

While the vessel is time chartered the ship-owner is still, as he remains involved with the ship's operations. This point may have a major impact on the earning ability of the vessel so it is very important to be clearly defined in advance through clauses such as performance and bunkering. Moreover, key points such as slow steaming and economic sanctions are discussed.

7.2. Analysis

7.2.1. Involved Parties

The TC is separated in two parts; Part I and Part II. Concerning the Part I, which is the main body, are mentioned there in detail all the parties involved and all the characteristics of the vessel. However there are several types of legal entities which can be considered as «ship-owner». The NYPE15 comes with a new addition in the preamble which allows to specify the ownership, for example «Registered Owner», «Disponent Owner» or «Time Charters Owner». This addition can provide a better transparency and understanding between the involved parties. However, there is no mention of the possibility that brokers could be those who actually conclude the contract on behalf of the owners. In that case, it must be mentioned in the preamble that brokers are acting «as agents to Owners / Charterers».

¹¹⁰ BIMCO, “NYPE 2015”,

https://www.bimco.org/Chartering/Clauses_and_Documents/Documents/Time_Charter_Parties/NYPE_2015.aspx, day accessed 2/10/2016.

7.2.2. Description of the Vessel

The description of the vessel includes all the specific characteristics of the vessel, which are important to be mentioned in the CP; some of these are the name of the vessel, flag, class, year build, port and number of registry, tonnage, carrying capacity, speed, consumption etc.¹¹¹ NYPE93 version contains a paragraph in the main body where all these elements are stated. However, the common practice became to mention only the name of the vessel and all the other characteristics are mentioned to a following «Vessel description» Clause in Part II. NYPE15 version comes to optimize this trend and provide space for the name, IMO number, flag, year built and DWT.

Whereas, NYPE93 version, comes with an «Appendix A», it was nothing more than a field with further details of the vessel.¹¹² On the other hand the reference to the «Appendix A» in the NYPE15 form leads to an extensive questionnaire about the vessel's specifications. All the included information is about the coordinates to contact the vessel through modern means of communication, details about the loading line and quantities, crew etc. The new addition, which is a quite important issue and did not exist in NYPE93, is about the validity and expiration dates of the certificates such as SMS as per ISM code or International Ship Security Certificate as per ISPS.¹¹³

7.2.3. Speed and Consumption

The consumption and the speed of the vessel are major elements in which the charterer is relay on for the profitability of his voyages. In case a vessel cannot reach the actual speed it was designed for, then the vessel will not be in place to perform the voyage under the agreed time frame. Furthermore, this may affect the charterer's interests because it may be considered unreliable for his commitments to his clients.

In NYPE93 version the speed and consumption can be found in the main body as well as in the additional clauses of in an additional appendix. The major key point found in clauses is the word «about» which describes the margin for speed's variation.

¹¹¹ S. GIRVIN, 2011, pg. 602

¹¹² NYPE 1993, line 530

¹¹³ NYPE 1993, line 530

This must be interpreted as an actual value of speed which may be higher or lower of the designed speed. There have been some attempts to designate the term «about» as an exact 0.5 knots or 5% consumption difference. On the contrary, there is an opinion, which declares that this margin should «be tailored to the ship's configuration, size, draft, trim, etc.»¹¹⁴

However, the involved parties have the right to specify these margins but it is very possible that ship-owners may be opposed to commit themselves in that way. On the other hand, the existence of such an unlimited margin might cause problems in case of underperformance of the vessel and may lead to serious claims.

7.2.3.1. Speed Warranty

NYPE93 version does not describe when the speed warranty applies. It has been held that this must be upon the delivery of the vessel.¹¹⁵ However, the term «good weather conditions» which is mentioned in the CP, imply the warranty does not apply or it may be lifted temporarily in favor of the owner for reason he cannot control, such as the weather. In contrast, the new NYPE15 form has a new clause about the «speed and consumption» and it is clearly a continuing warranty as per clause 12 (a) «the vessel is capable upon delivery and throughout the duration of this CP»

7.2.4. Bunkers

The disputes concerning «bunkers» may arise in periods where the oil prices are high as the bunkering cost is one of the most important expenses. But this issue still remains very important economically and ecologically when the prices are low. Bunkering is no longer a matter between just the ship-owner and the charterer. There are strict regulations such as those of IMO and the European Union which are pushing for green energy and cleaner ship propulsion. As a consequence it is very important to clear the responsibilities of the involved parties when it comes to the consequences of

¹¹⁴ The Al Bida [1987] 1 Lloyd's Rep. 124; S. GIRVIN, 2011, pg. 606; R. MAYNES, "Speed and consumption disputes under English law", <http://www.ukpandi.com/knowledge/article/speed-and-consumptiondisputes-under-english-law-1917/>, day accessed 02/10/2016.

¹¹⁵ S. GIRVIN, 2011, pg. 608.

the bunkering. The NYPE15 version takes into account these regulations and has expanded accordingly the «Bunkers» clause.

The NYPE93 version «Bunkers» clause consists of three elements:

1. fuels' quantity and price upon delivery and redelivery of the vessel,
2. fuels' quality,
3. acknowledged the owner's right to claim damages either to the ME or auxiliary engine caused by unsuitable fuel

In case such fuels are used, the charterer cannot claim the vessel for underperformance. However, it is unclear which the consequences are even if there is no damage to the machinery.¹¹⁶ On the other hand, NYPE15 version expresses a more clear approach upon the bunkering. This new extension was made in order to be better adopting within the modern practice where vessels have to carry more than one type of fuel. As a result clause 9 «Bunkers» contains seven key points¹¹⁷:

1. quantity and price
2. bunkering prior to (re)delivery
3. bunkering operations and sampling
4. quality and liability
5. fuel testing
6. sulphur content
7. grades and quantities on redelivery

7.2.5. Slow Steaming

Slow steaming is a practice where the vessel operates in lower speed and RPM than the actual designed speed, in order to consume less fuel. This practice started between 2007 and 2008 when oil prices were three times higher than in 2016.¹¹⁸ Other factors which lead to this trend are the oversupply of tonnage and consequently low freight rates. Moreover, this trend is in accordance with the environmental

¹¹⁶ NYPE 1993, cl. 9, line 109-124

¹¹⁷ BIMCO, "NYPE 2015 Explanatory Notes", 8, https://www.bimco.org/~media/Chartering/Document_Samples/Time_Charter_Parties/Explanatory_Notes_NYPE_2015.ashx, day accessed 02/10/2016.

¹¹⁸ <http://www.nasdaq.com/markets/crude-oil-brent.aspx?timeframe=10y>, day accessed 02/10/2016.

regulations, due to the fact that lower fuel consumption means fewer emissions. Taking under account that this trend may have an effect on vessel's machinery and may be need some technical adjustments, new buildings have been designed with these adjustments. Considering the current market and the trend of the latest fixtures it can be sail that slow steaming will remain as a common practice in the near future.¹¹⁹

« Disadvantages of NYPE93 »

The version of NYPE15 is the first CP which tries to construct the liabilities in case of «slow steaming», while NYPE93 form may have some pitfalls, as there are no provisions in order to perform slow steaming and thus the trip must proceed with utmost dispatch. In 26 June 2012 it was heard by the English high court the «Pearl C» case. Pearl C is an old Panamax bulk carrier built on 1987 and it was chartered from the owners (Bulk Ship Union SA) to Clipper Bulk Shipping Ltd (charterers) on an amended NYPE form for a period of about 9 to 12 months. The charterers withheld hire for alleged underperformance, claiming:

- a) that the vessel had failed to proceed with utmost dispatch in break of clause 8, and
- b) that charterers were entitled to deduct the time lost due to slow steaming under the first part of the off-hire clause, clause 15, which was amended from the standard NYPE off-hire clause.

On the other hand, owners claimed that there was no continuous performance warranty based on clause 8, and the obligation ended on delivery. However, there was already a case law which states to the contrary. Then, charterers claimed that it could be allowed a «slow steaming» practice only if clause 15 constructed accordingly. However, the judge was opposite to this opinion and uphold a default of the master in intentionally perform «slow steaming». It is important to mention here that, HVR were incorporated to the CP which leads to the fact that the owners could try to escape responsibility for the default of the Master basis on Article IV rule (a). Interestingly, as the court stated Article IV rule (a) could only apply to a «negligent error in the navigation or management of the vessel concerning a matter of seamanship».

¹¹⁹ L. H. LIANG, “The economics of slow steaming”, <http://www.seatrade-maritime.com/news/americas/theeconomics-of-slow-steaming.html> , day accessed 02/10/2016.

Consequently, this case might have been solved in a better way if there was a «slow steaming clause» into the contract.¹²⁰

« Differences between 2011& 2015 clauses »¹²¹

In 2011 BIMCO released a clause for slow steaming in TC122, as well as for voyage charter in 2012¹²³. These clause factions in a more proper way in NYPE15, as this version provides a better framework with cross-references in other clauses such clause 12 «speed and consumption».

Clause 38 « slow steaming» of NYPE15 consists of 6 sub-clauses; this clause acknowledges 2 types of slow steaming: (a) the «regular» type of slow steaming and (b) ultra-slow steaming. The first one involves speed and RPM between design speed and the cut-out of the vessel's engine auxiliary blower¹²⁴. This technique does not need changes to the engine or machinery, that's why it is the default alternative that the owner can allow to the charterer. While, the second one type applies when the engine is brought to operate under the cut –out point of the auxiliary blower; Which usually cannot be achieved without alternations to the engine additionally, as sub-clause (b) states in case slow steaming is agreed does not mean that the performance warranty should be set aside completely. In more detail, if the vessel choose to operate in a slower speed than this in the performance warranty, then the period of this operation will not be relevant in performance calculations.¹²⁵

Finally, sub-clause (f), based on the underperformance or lack of due dispatch, protects the ship-owner from claims by third-party holders of «Bills of lading,

¹²⁰ The Pearl C [2012] 2 Lloyd's Rep. 533; D. MARTIN-CLARK, "Bulk Ship Union v Clipper Bulk Shipping - The Pearl C", http://www.onlinedmc.co.uk/index.php/Bulk_Ship_Union_v_Clipper_Bulk_Shipping_-_The_Pearl_C , day accessed 02/10/2016.

¹²¹ This chapter was issued with the kind guidance of Mr Simon Ward from Ursa Shipbrokers & Capt. Andreas Georgiou from Grace Trading Corporation

¹²² BIMCO, "BIMCO Slow Steaming clause for time charter parties", https://www.bimco.org/Chartering/Clauses_and_Documents/Clauses/Slow_Steaming_Clause.aspx , day accessed 02/10/2016.

¹²³ BIMCO, "BIMCO Slow Steaming clause for voyage charter parties", https://www.bimco.org/Chartering/Clauses_and_Documents/Clauses/Slow_Steaming_Clause_for_Voyage_CP.aspx, day accessed 02/10/2016

¹²⁴ An auxiliary blower is a compressor powered by an electric motor to provide the main engine with air when starting or operating at low speeds. From http://www.marinediesels.info/2_stroke_engine_parts/turbo_charger.htm, day accessed 02/10/2016

¹²⁵ BIMCO, "NYPE 2015 Explanatory Notes", pg. 23

waybills or other docs evidencing contracts of carriage». So the charterer is obliged to incorporate the slow steaming clause into the BoLs issued by him; If he does not do so then he will have to compensate the owner «against all consequences and liabilities that may arise».

So, the basic difference between BIMCO 2011 and 2015 clauses is that the 2011 clause urges charterers to issue Bols in a way that they make sure that a compliance with a slow steaming clause cannot make a breach of the contract. On the contrary, NYOE15 makes compulsory the integration of the slow steaming clause into the contracts of carriage.

With the revised clause in 2015 BIMCO tries to make clear the matter of slow steaming and provide more guidance and better solutions than leaving the point undecided like under NYPE93. Nevertheless, it is worth to mention that BIMCO – which is an association of ship-owners – provides protection in case of a claim to owners if slow steaming is ordered by charterers, but not the other way around.¹²⁶ However, it is very difficult to conclude whether the revised clause could prevent situation where slow steaming is on the owners' option, like in the above mentioned case of Pearl C.

Nonetheless, it is quite important to see if this revision will be accepted throughout various jurisdictions around the world, due to the fact that most of them have been set by English Courts, and the question is whether claims from third party cargo owners would still be possible if it is held by other courts that slow steaming does not fall under due dispatch or due speed.¹²⁷

7.2.6. Economic Sanctions

Economic sanctions are defined as the exercise of pressure by one state to bring about a change in political behavior of another state. Traditional, economic

¹²⁶ CHARTERERS P&I CLUB, “Circular 004 2015. New NYPE 2015. A Charterer’s Perspective”,

<http://exclusivelyforcharterers.com/circular-004-2015-new-nype-2015-a-charterers-perspective/>, day accessed 02/10/2016

¹²⁷ O. ANDERSEN, “Gorrissen: Slow steaming opens up for a variety of legal disputes” <http://shippingwatch.com/articles/article5123554.ece>, day accessed 02/10/2016

sanctions are directed at the entire population of the sanctions country while targeted sanctions are directed at the state's government and / or individuals.¹²⁸

More specifically, international sanctions are an important element to consider when time chartered a vessel. Under the validity of a TC the charterer might choose a banded area or port and this could lead to liability of the vessel. Nevertheless, it is possible that sanctions can be lifted or imposed while the TC continues to run, based on unaltered provisions. Thus, it may be beneficial for the involved parties to structure mechanisms that are flexible to allow changes in sanctions regimes. In NYPE93 there are no provisions about sanctions, and thus involved parties have to deal under the clause 5 «trading limits»¹²⁹. The clause about «trading limits» can be also found in NYOE15 form under clause «duration / trip description»¹³⁰.

The NYPE 15 contains a separate clause about sanctions (clause 46) which is quite the same with the one released by BIMCO in 2011¹³¹. There is one worth mention difference between these two clauses, that the 2011 version requires the charterers to incorporate the sanctions clause «into all sub-charters and BoLs issued pursuant to this CP». On the contrary, NYPE15 version does not include BoLs, which seems to be an impropriety, due to the fact that in the sub-clause (c) clearly references indemnity by the charterer for claims under BoLs by cargo owners against the ship-owner.

However, the main issue of sanctions is contained into the first sub-clauses of the relative clause, which are trying to deal whether the ship is about to embark on a sanctioned trade (sub-clause a) or if the ship is being used when the new sanctions enter into the force (sub-clause b). In more detail, sub-clause (a) protects the ship-owner by giving them the right to refuse to employ the vessel in a way which could expose her to sanctions. While, sub-clause (b), gives the right to owners to refuse to embark or continue a sanctioned voyage and will promptly give notice to the

¹²⁸ Matthew Moran & Daniel Salisbury, «Sanctions & the Insurance Industry: Challenges & Opportunities», CSSS Occasional Paper Series, (London: King's College London, 2013), <https://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/csss/pubs/insurancereport.pdf>, day accessed 02/10/2016

¹²⁹ NYPE 1993, line 70-76

¹³⁰ NYPE 2015, line 21-22

¹³¹ BIMCO, «Sanctions clause for time charter parties», https://www.bimco.org/Chartering/Clauses_and_Documents/Clauses/Sanctions_Clause_for_Time_Charter_Parties.aspx, day accessed 02/10/2016

charterers of such a decision. Then the charterer has 48 hours to propose an alternative itinerary or else the cargo might be discharged from the vessel at charterers' cost.

Consequently it is very important to examine in detail how the particular sanctions apply on each CP, especially those traders that cannot afford to completely blacklist a sanctioned region from their contract.

7.3. Conclusions¹³²

The NYPE CP generally is a good example of why a revised form is not always an improvement which will be accepted by the industry; considering that NYPE46 is still more preferred than the NYPE93 version.

The new NYPE15 form, draft by BIMCO, is a better and more complete version, which deals with great balance the needs of the involved parties. This version is quite extensive, however it can operate as a standalone contract, requiring less rider clauses. The disadvantage of this version is that the model must change in case one of the clauses became outdated.

Since 1993, and especially since 1946, many changes have emerged concerning practices and regulations of the shipping industry. BIMCO drafted and released many separated clauses, but with NYPE15 BIMCO combine all the needs of today's industry in an overarching framework which contains cross-referencing to read these clauses together.

Nevertheless, the new version of NYPE is undoubtedly an improvement compared to the NYPE93 form. However, there are points which remain unclear and make ship-owners privileged towards charterers in some clauses; For example there are no reciprocal obligations for slow steaming and bunkers.¹³³

¹³² This chapter was issued with the kind guidance of Mr Simon Ward from Ursa Shipbrokers & Capt. Andreas Georgiou from Grace Trading Corporation

¹³³ CHARTERERS P&I CLUB, "Circular 004 2015. New NYPE 2015. A Charterer's Perspective",

<http://exclusivelyforcharterers.com/circular-004-2015-new-nype-2015-a-charterers-perspective/>, day accessed 02/10/2016

Chapter 8: Conclusions¹³⁴

Charter Parties are the base of every carriage of goods between charterers and ship-owners. There are various types of contracts, specifying on the type of the carrying cargo. This dissertation focuses on the NYPE TC and GENCON VOY Charter.

The fundamental question of this thesis is why is it more preferable in the industry to use an older version of CP while there are new updated forms of contract. In order to find an answer this thesis was constructed to analyze all the relative definitions and terms of each type of CP, the liabilities of the involved parties, as well as selected clauses of the examined CPs.

Through the analysis and the study of real legal cases can be easily acknowledge the economic risk that is involved for the parties as well as the ways of resolving legal differences. In that way a general view of the strong and weak points of the CP is established. In this thesis, an allocation is attempted to objectionable points and despite the fact that a proposal for a new CP was not formulated it was the groundwork for further study of the matter that may lead to new acceptable CP form.

For the above reason, the GENCON VOY Charter was analyzed, which is already the third version of its kind. These amendments followed the developments of the real maritime practices, which repeatedly had to include additional written clauses into the CPs. Contract parties supplement the lacking model provisions in so called “rider clauses”, many of which have themselves become boilerplates in CPs. The disadvantage of this method is that the wording of the contracts becomes more complex and it is difficult to comprehend when reading together rider clauses and model contract.

In 1990, UNCTAD released a study about the comparative analysis of several CPs, and this contributed to the version of the GENCON94. From then until now, 22 years later, there is no new version; and it is difficult to understand whether this old form of CP can deal with the today’s challenges of maritime industry. It can be

¹³⁴ This chapter was issued with the kind guidance of Mr. Triantafylakis and Capt. Theodorakis both from W Marine Inc, Mr Simon Ward from Ursa Shipbrokers and Capt. Andreas Georgiou from Grace Trading Corporation.

considered to some extent that GENCON94 uses the same practices with GENCON76 and it is worth mentioning that since today BIMCO did not announce yet a new version. However, BIMCO releases amendments of certain clauses which can be substituted within the GENCON94 model in an attempt for CPs to stay relevant.

The major disadvantage and difficulties of the VOY arise from the liabilities of the related parties. The relevant provisions are related and can only gain meaning from their simultaneous application. Therefore, it is difficult to study the impact of a certain term without reference to the other terms, or terms containing in the BoLs or HVR.

Moreover, the TCP was analyzed throughout a comparative analysis between several clauses of NYPE93 and NYPE15. The last version of 2015 may be considered as a good improvement due to the fact that it puts great care in balancing the needs of ship-owners and charterers; however there are some points such as slow steaming or bunkering, where the relevant clauses favor owners against charterers.

It is worth mentioning the fact that even though there are new amendments and versions in both types of CPs; Ship-owners and charterers prefer to use the old versions. It can be considered that NYPE46, for example, is more preferred than NYPE93, not to say NYPE15. This trend does not mean that the updated versions are not better than the older ones. This comes with the temperament of each party, which in this industry prefers to work and make deals on the safe side, which in this case is the beaten track of an older and complex NYPE version.

As it was mentioned above, every new amendment or version deals in a better way with today's challenges so it is upon charterers and ship-owners choice to accept and use these new contracts.

«Time» and «money» have a great value nowadays, especially in shipping industry where the rhythms are very intense. For this reason a more effective, and just to the point CP, like NYPE15, is much needed for those who choose to be one step forward. Thus, in order to protect their precious time and the value of their own property (vessel or cargo) it would be a clever choice to work on the newest versions and amendments.

8.1. Limitation of Research

The research in general did not face any difficulties in terms of bibliography researching and selection. However, when regarding the analysis of this subject and because we cannot find similar research studies, this thesis was limited to analyzing the specific clauses based on older cases developed in the dry bulk shipping market. Furthermore, it was not possible to suggest a new version of a Charter Party contract as not only limited research but market professionals and mainly brokers as well suggested the shipping industry in general and especially chartering professionals are reluctant to use a new form of contract. This fact is justified to an extent by the high value of the contract itself, the importance of time needed and the difficulty in the transition from a well-known and proven form to a new CP.

8.2. Future Research

The current thesis can be the priming to future research regarding the conformation of the Charter Party as a contract. The shipping market is in need of an up to date contract in voyage charter as well as in time charter that will distinct responsibilities of the counterparties without favoring neither party. However, in order the market to be convinced about the necessity of a change; future research must cover all aspects of each involved party to make a meaningful impact.

Bibliography

Conventions

The Hague-Visby Rules, Protocol (SDR Protocol) amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading of 25 August 1924 (The Hague Rules), as amended by the protocol of 23 February 1968 (Visby Rules), 1979

The Hamburg Rules, United Nations Convention on the Carriage of Goods by Sea (The Hamburg Rules) Hamburg, 30 March 1978

The Rotterdam Rules, The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, the “Rotterdam Rules”

International Legal Contracts

NYPE 1993, New York Produce Exchange Time Charter, Code Name: NYPE 93, marked “Revised September 14th, 1993”

NYPE 2015, New York Produce Exchange Time Charter, Code Name: NYPE 15, marked “Revised June 3th, 2015”

CENCON 1976, The Baltic and International Maritime Council Uniform General Charter (as revised 1922 and 1976) Code Name: GENCON

CENCON 1994, The Baltic and International Maritime Council Uniform General Charter (as revised 1922, 1976 and 1994) Code Name: GENCON

VOYLAYRULES 93, Voyage charter party laytime interpretation rules 1993, issued jointly by BIMCO, CMI, FONASBA and INTERCARGO

Law Cases

Adamastos Shipping Co Ltd v Anglo Saxon Petroleum Co Ltd [1959] A.C. 133, available at: <http://www.trans-lex.org/306200/>, access date: 10/10/2016

Sea Mirror [2015] EWHC 1747; D. MARTIN-CLARK, “SDTM-CI and others v Continental Lines and another - the Sea Mirror”, <http://www.onlinedmc.co.uk/index.php/SDTM> Accessed date 20/08/2016

Skuld, “Case study: The Jordan II”, <http://www.skuld.com/topics/cargo/solid-bulk/agricultural-cargoes/transportation-of-rice-cargo/case-studythe-jordan-ii/>, access date: 10/09/2016

The Al Bida [1987] 1 Lloyd's Rep. 124

The Antares [1987] 1 Lloyd's Rep 424

The Hollandia [1983] 1 A.C. 565

The Jocelyne [1977] 2 Lloyd's Rep 121; available at: <https://www.ilaw.com/ilaw/doc/view.htm?id=148507>, access date: 02/10/2016

The Pearl C [2012] 2 Lloyd's Rep. 533, also available at:

D. MARTIN-CLARK, "Bulk Ship Union v Clipper Bulk Shipping - The Pearl C", [http://www.onlinedmc.co.uk/index.php/Bulk_Ship_Union_v_Clipper_Bulk_Shipping - The Pearl C](http://www.onlinedmc.co.uk/index.php/Bulk_Ship_Union_v_Clipper_Bulk_Shipping_-_The_Pearl_C), access date: 02/10/2016.

Books

Carr, I., and Store, P. 2013, International Trade Law. 5th edition. London: Routledge Publishing

Coghlin, T., Baker, A., and Kenny, J. 2008. Time Charters. 6th edition. London: Informa Law from Routledge, Lloyd's Shipping Law Library

Cooke, J., Young, T., Ashcroft, M., Taylor, A., Kimball, J., Martowski, D., Lambert, L., and Sturley, M. 2014. Voyage Charters. 4th edition. Lloyd's Shipping Law Library, London: Informa Law from Routledge.

Dockray, Martin, 2004, "Cases & Materials on the Carriage of Goods by Sea", 3rd Edition, Gavendish Publishing Limited, London

Girvin, S. 2011. Carriage of Goods by Sea. 2nd Edition. New York: Oxford University Press

Giziakis K., Papadopoulos A., Plomaritou E., 2010, Chartering, 3rd Edition, Stamoulis Publications, Athens

(Available only in Greek Language: Γκιζιάκης, Κ, Παπαδόπουλος, Α., Πλωμαρίτου, Ε., 2010, Ναυλώσεις, Εκδόσεις Σταμούλη, Αθήνα)

Gorton, L., Ihre, R., Hillenius, P., and Sandevan, A. 2009. Shipbroking and Chartering Practice. 7th Edition. London: Informa Law from Routledge.

Vlachos, Georgios, 2007, Chartering, Stamoulis Publications, Athens

(Available only in Greek Language: Βλάχος, Γεώργιος, 2007, Ναυλώσεις, Εκδόσεις Σταμούλη, Αθήνα)

Lopez, N. J. 1992. Bes' Chartering and Shipping Terms. 11th edition. London: Barker & Howard Ltd.

Schofield, J. 2011. Laytime and Demurrage. 6th edition. London: Informa Law from Routledge, Lloyd's Shipping Law Library.

Todd, Paul, 1988, Contracts for the Carriage of Goods by Sea, BSP Professional Books, p.19

Wilson, J. F. 2004. Carriage of Goods by Sea. 5th edition. London: Pearson Longman.

Papers

Ernest Fayle, C., 1933, "A Short History of the World's Shipping Industry", Routledge, New York

He Wang, Simin Huang, Zhen Liu, Li Zheng, 2013, "Optimal Tanker Chartering Decisions with Spot Freight Rate Dynamics Considerations", Transportation Research Part E 51, pp. 109-116

Lopuski, Jan, 2008, “Maritime Law in the Second Half of the 20th Century – Selected Articles”, Wydawnictwo Naukowe, Uniwersytetu Mikolaja Kopernika, Torun

Plomaritou, E., Giziakis, K., and Plomaritou, V. 2011. “Shipping Marketing & Customer Orientation: The Psychology & Behaviour of Charterer & Shipper in Tramp & Liner Market”. *Journal of Management* 16(1): 15-111.

Plomaritou, E., 2013a. *Calculating Laytime*. London: Lloyds Maritime Academy (module 3 of distance learning course titled as “Certificate in Laytime and Demurrage”)

Plomaritou, E., 2013b. *Demurrage, Damages for Detention, Despatch*. London: Lloyds Maritime Academy (module 4 of distance learning course titled as “Certificate in Laytime and Demurrage”)

Plomaritou, E., 2014, “*A Review of Ship-owner’s & Charterer’s Obligations in Various Types of Charter*”, *Journal of Shipping and Ocean Engineering* 4 (2014), 307-321

Plomaritou, E., 2014. *Commercial Risks Arising from Charterparties, Operations and Claim Issues*. London: Lloyds Maritime Academy (Module 2 of distance learning course title as “Certificate in Commercial Risks in Shipping”)

Plomaritou, E. 2015. *Charterparty Contracts*. London: Lloyds Maritime Academy, pg 28-30

Plomaritou, E., 2016, «*Commercial Risks Arising from Chartering Vessels*», *Journal of Shipping and Ocean Engineering* 6, pg. 261-268

Rodoconanchi Sons & Co v Milburn Bros [1887] 18 QBD 67 see F. REYNOLDS, “Bills of lading and voyage charters”, in D. RHIDIAN THOMAS (ed.), *The Evolving Law and Practice of Voyage Charterparties*, London, Informa Law, 2009, 202.

Shengnan, Jia, 2013, “*Incorporation of Arbitration Clauses under a Charterparty and a Bill of Lading: English and Chinese Law Perspectives*”, Master Thesis, Lund University, Faculty of Law

Taylor, AJ, 1975, “*The Modelling of Supply in the Shipping Industry*”, *The International Journal of Management Science*, UK, Vol 4, No 2, pp. 175-180

Taylor, AJ, 1981, “*Chartering Strategies for Shipping Companies*”, *The International Journal of Management Science*, UK, Vol 10, No 1, pp. 25-33

T. Nikaki, *The Evolving Law and Practice of Voyage Charterparties*, London, Informa Law, 2009

Zarate, J. A. F. 2009. “*Risk of Delay in Charterparties: Like a Ping-Pong Game?*” *Revista E-Mercatoria* 8(1): 57-58

Presentations

Polemis, Dionisios, 2015, “*Procedure – Letter of Credit – Bill of Lading*”, Module “*Chartering*”, unpublished presentation, University of Piraeus – Department of Maritime Studies

Reports

UNCTAD, 1990, "Charter Parties – A Comparative Analysis", UNCTAD, Geneva

UNCTAD, 2015, Annual Review of Maritime Transport, UNCTAD

BIMCO, 2015, "Charter Party Workshop", Istanbul 23-25 February 2015

CHARTERERS P&I CLUB, 2015, "Circular 004 2015. New NYPE 2015. A Charterer's Perspective", also available at:

<http://exclusivelyforcharterers.com/circular-004-2015-new-nype-2015-a-charterers-perspective/>, day accessed 02/10/2016

Interviews

Triantafylakis, Nikolaos; 20/01/2016 & 15/05/2016; Managing Director at W Marine Inc.; Athens

Captain Theodorakis, George; 20/01/2016 & 15/05/2016; Operation Manager at W Marine Inc.; Athens

Ward, Simon; 10/05/2016; Director at Ursa Shipbrokers; Piraeus

Captain Georgiou, Andreas; 20/05/2016; Managing Director at Grace Trading Corporation; Piraeus

Links

Admiralty and Maritime Law Guide | International Conventions
<http://www.admiraltylawguide.com/conven/haguerules1924.html>, accessed date 09/03/2016

Bill Of Lading Definition | Investopedia
<http://www.investopedia.com/terms/b/billoflading.asp#ixzz42IkGQA24>, accessed date 08/03/2016

BIMCO, "NYPE 2015 Explanatory Notes", 8,
https://www.bimco.org/~media/Chartering/Document_Samples/Time_Charter_Parties/Explanatory_Notes_NYPE_2015.ashx, day accessed 02/10/2016.

BIMCO, "Sanctions clause for time charter parties",
https://www.bimco.org/Chartering/Clauses_and_Documents/Clauses/Sanctions_Clause_for_Time_Charter_Parties.aspx, day accessed 02/10/2016

BIMCO, "BIMCO Slow Steaming clause for time charter parties",
https://www.bimco.org/Chartering/Clauses_and_Documents/Clauses/Slow_Steaming_Clause.aspx, day accessed 02/10/2016.

BIMCO, "BIMCO Slow Steaming clause for voyage charter parties",
https://www.bimco.org/Chartering/Clauses_and_Documents/Clauses/Slow_Steaming_Clause_for_Voyage_CP.aspx, day accessed 02/10/2016

Charter party | contract | Britannica.com: <http://www.britannica.com/topic/charter-party>, access date: 15/12/2015

Charterama, Claims Service Letter 2, 05/2010, http://www.charterama.nl/wp-content/uploads/2015/09/ClaimsServiceLetter_2_Port_CP_or_Berth_CP.pdf, assess date 03/10/2016

Deseck, P., (2012), *Chartering and Charterparty online*, <http://www.maritimeknowhow.com/home/chartering-and-charterparties/chartering-and-charterparty-online>, access date: 10/02/2016

E. Birch and O. Furmston, “Web Alert: Bills of lading as the contract of carriage - guiding principles as to the incorporation of charter party terms”, <http://www.standard-club.com/news-and-knowledge/news/2016/02/webalert-bills-of-lading-as-the-contract-of-carriage-%E2%80%93-guiding-principles-as-to-the-incorporation-ofcharterparty-terms/>, access date: 10/09/2016.

H. Noble, “Effects under Irish Law of a contractual limit in the bill of lading purporting to lessen liability below that stipulates in the Hague-Visby Rules”, [https://www.bimco.org/Chartering/Clauses_and_Documents/Documents/Time Charter Parties/NYPE_2015.aspx](https://www.bimco.org/Chartering/Clauses_and_Documents/Documents/Time_Charter_Parties/NYPE_2015.aspx), day accessed 2/10/2016.

J. Reay and O. Furmston, “Web alert: the Sea Mirror – an owner/carrier can shift responsibility for the loading / discharge of cargo with the use of clear language”, <http://www.standard-club.com/news-and-knowledge/news/2015/09/web-alert-the-sea-mirror-%E2%80%93-anownercarrier-can-shift-responsibility-for-the-loading-discharge-of-cargo-with-the-use-of-clear-language/>, Accessed date 20/08/2016

Law & Sea | Voyage Charters - Historical Background: http://www.lawandsea.net/CP_Voy/Charterparty_Voyage_1HistoricalBackground.html, access date: 15/12/2015

L. H. Liang, “The economics of slow steaming”, <http://www.seatrade-maritime.com/news/americas/theeconomics-of-slow-steaming.html> , day accessed 02/10/2016

Matthew Moran & Daniel Salisbury, «Sanctions & the Insurance Industry: Challenges & Opportunities», CSSS Occasional Paper Series, (London: King’s College London, 2013), <https://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/csss/pubs/insurance-report.pdf>, day accessed 02/10/2016

O. Andersen, “Gorrissen: Slow steaming opens up for a variety of legal disputes” <http://shippingwatch.com/articles/article5123554.ece>, day accessed 02/10/2016

R. Maynes, “Speed and consumption disputes under English law”, <http://www.ukpandi.com/knowledge/article/speed-and-consumptiondisputes-under-english-law-1917/> /, day accessed 02/10/2016.

Voyage Charters | Case Law Quotes: <http://caselawquotes.net/V/VoyageCharterparties.html> , access date 15/12/2015

Weir, Complex Liabilities: International Encyclopedia of Comparative Law, XI Torts, (1983), ch. 12, s. 5, https://books.google.gr/books?hl=el&lr=&id=uR8C-vcwOEIC&oi=fnd&pg=PR2&dq=International+Encyclopedia+of+Comparative+Law,+Instalment+12,+chapter+IV,+part.+84,+pg+33&ots=gojVP5as9B&sig=7FnjpoIHZ3y6X0axg4L4qgC67oI&redir_esc=y#v=onepage&q&f=false , access day: 02/02/2016

https://drive.google.com/file/d/0B0IRj2FwHO_oTnZPaDRLX0oxT1k/edit, accessed day: 04/02/2016

http://www.unizd.hr/Portals/1/nastmat/Engleski_6sN/Unit12.PDF, day accessed 04/02/2016

<http://nordicshippingco.com/types-of-charter/>, day accessed 04/02/2016

<http://nordicshippingco.com/charter-party-forms-and-clauses/>, day accessed 04/02/2016

http://unctad.org/en/PublicationsLibrary/c4isl55_en.pdf, day accessed 04/02/2016

https://www.bimco.org/Education/Seascapes/Sea_View/2003_06_02_Charter_parties_explained.aspx, day accessed 04/02/2016

https://www.bimco.org/Chartering/Clauses_and_Documents/Documents/Bareboat_Chartering/BARECON2001/Explanatory_Notes_BARECON2001.aspx, day accessed 16/02/2016

https://www.bimco.org/Chartering/Clauses_and_Documents/Documents/Voyage_Charter_Parties/GENCON_94.aspx, day accessed: 01/09/2016

https://www.bimco.org/Education/Seascapes/Sea_View/2003_06_02_Charter_parties_explained.aspx, day accessed 04/02/2016

https://www.bimco.org/Education/Seascapes/Sea_View/2003_06_02_Charter_parties_explained.aspx, day accessed 16/02/2016

http://www.forwarderlaw.com/library/view.php?article_id=884, day accessed 10/09/2016

<http://www.nasdaq.com/markets/crude-oil-brent.aspx?timeframe=10y>, day accessed 02/10/2016

http://www.marinediesels.info/2_stroke_engine_parts/turbo_charger.htm, day accessed 02/10/2016

Appendix

ABBREVIATIONS

APS	At Pilot Station
BARECON 2001	Bimco Standard Bareboat Charter
BL / BoL	Bill of Lading
BIMCO	Baltic and International Maritime Council
CP	Charter Party
DD	Dry Docking
DELY	Delivery
FONASB	Federation of National Associations of Ship Brokers and Agents
GA	General Arrangement
GENCON	Bimco Uniform General Charter
GMT	Greenwich Mean Time
HVR	Hague and Visby Rules
IMSBC CODE	International Maritime Solid Bulk Cargoes Code
LAYCAN	Laytime Cancellation
LOI	Letter of Indemnity
MR	Mate's Receipt
NOR	Notice of Readiness
NYPE	New York Produce Exchange Form
REDEL	Redelivery
SPORE	Singapore
TC	Time Charter
TCP	Time Charter Party
UK	United Kingdom
USD	United States Dollar
VOY	Voyage