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CHARTER PARTIES

A comparative analysis

Report by the UNCTAD secretariat

GE.90-51692

C O N T E N T S

Annexes

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INTRODUCTION

1. The Committee on Shipping at its third session established, under resolution 7(III), the Working Group on International Shipping Legislation (WGISL) and recommended that the Working Group should include, inter alia, the subject of charter parties in its work programme. 1/

2. At its first session, held in 1969, the WGISL adopted a work programme that included charter parties as a priority subject. 2/ Resolution 49(X) of the Committee on Shipping which amended the work programme of the WGISL also included charter parties. 3/ At its fourth session in 1975, the WGISL considered the subject, 4/ and requested the UNCTAD secretariat to prepare the following studies in order to enable the Working Group to decide what further action it deemed necessary:

> "(i) On time charter parties: A comparative analysis of the three main forms of time charter parties, the Baltime, the New York Produce Exchange, and Linertime, concentrating on the following clauses including generally used additions and amendements thereto: clauses relating to liability for loss of and damage to cargo, general average clause, cancelling clause, arbitration clause, indemnity clause, notice clause.
>
> (ii) On voyage charter parties: A comparative analysis of the principal clauses, including those mentioned in (i) above, the deviation clause and the paramount clause, in regard to shipments of main interest to developing countries, e.g. grain, soya, rice, fertilizers and phosphates, ores, timber, cement, sugar, copra, livestosk and oil.
>
> (iii) A review in the context of the studies set out above, of those clauses in order to determine their relative impact on the different parties."

3. In conjunction with the above studies, the secretariat was requested to submit additional data to the Working Group at its seventh session to enable it to decide whether there were:

> (i) clauses susceptible to standardization, harmonization or improvement with a view to bringing about an equitable balance of rights and obligations of the different parties;
> (ii) aspects of charter parties suitable for international legislative action;
> (iii) possibility of arriving at agreed definitions of basic terms used in charter parties." 5/

1/ Official Records of the Trade and Development Board, Ninth Session, (TD/B/240 - TD/B/C.4/55), annex 1, p.26.
2/ Report of the Working Group on International Shipping Legislation on its first session, (TD/B/189 - TD/B/C.4/64), p.6.
3/ Official Records of the Trade and Development Board, Twenty-fifth Session (TD/B/921 - TD/B/C.4/254), annex 1, p.51.
4/ Report of the Working Group on International Shipping Legislation on its fourth session, (TD/B/126 - TD/B/C.4/ISL/17).
5/ Ibid. pp.17-18.

4. The consideration of the subject, however, was postponed while the subjects of marine insurance and maritime liens and mortgages were being examined by the WGISL and the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects (JIGE). As the work on marine insurance had been finalized and the deliberations of the JIGE on maritime liens and mortgages was to be completed in 1989, 6/ the Committee on Shipping at its thirteenth session adopted resolution 61(XIII) 7/ which approved the convening of the twelfth session of the WGISL, in the latter part of 1989, to take up the subject of charter parties. The twelfth session of the WGISL, however, had to be postponed to October 1990 in order to allow the secretariat to prepare the necessary documentation.

Summary and conclusions

5. The report has been prepared on the basis of the mandate received by the fourth session of the WGISL. It attempts to make a comparative analysis of the clauses in various charter party forms and to illustrate some of the problems which exist in relation to the operation of certain standard charter party forms and clauses and to demonstrate the current lack of international uniformity in their interpretation with a view to establishing the need for further work in relation to the subject.

6. To obtain the necessary data for the preparation of the report, questionnaires were sent to Governments and relevant organizations after the fourth session of the WGISL in 1975 and subsequently to those involved in chartering practices, including shipowners, charterers and shipbrokers in 1988. The information provided by the respondents to the secretariat's questionnaires have been taken into account in the preparation of the report.

7. The report is divided into six chapters. Chapter I, having described briefly the main types of charter parties, looks at some of the old and out-dated charter party forms currently in use, including some of the comments and criticisms made concerning these forms. Chapters II and III are confined to the comparative analysis of certain clauses of time and voyage charter party forms respectively. An attempt has been made, in these chapters, to identify the problems, inconsistencies and uncertainties which exist in relation to the interpretation and operation of charter party clauses. Chapter IV is included to illustrate that charter party terms can have an impact upon third party bill of lading holders in several important respects and that third parties who are strangers to a charter party may be bound by its terms, even though they have not seen the charter party. Chapter V discusses, inter alia, the difficulties and uncertainties arising from the application of different liability regimes to charter parties and bills of lading, and from the contractual incorporation of the Hague/Hague-Visby Rules into charter parties and the exclusion of the Rules from charter parties. It is proposed that such difficulties could be overcome by the mandatory application to charter parties of a regime of responsibility for cargo similar to the Hague/Hague-Visby Rules but drafted specifically for application to charter parties. Chapter VI contains conclusions and recommendations which may be summarized as follows:

6/ The final session of the JIGE was held in September 1989 in London.
7/ Report of the Committee on Shipping on its thirteenth session, Annex 1, paragraph 14.

(a) The report identifies (in paragraph 406) a number of clauses, both in time and voyage charter parties, as being capable of harmonization and/or improvement. It further suggests that the secretariat may be requested to determine, in consultation with the relevant commercial and international organizations, which of the clauses identified are suitable core charter party clauses; and thereafter to prepare draft core clauses, with the assistance and collaboration of these organizations, for consideration of the WGISL.

(b) The report further concludes that in order, effectively, to carry through into charter parties a similar scheme of responsibility for cargo to that in the Hague or Hague-Visby Rules, a set of "tailor-made" rules mandatorily applicable to charter parties is required, to cover the main areas of responsibility. It is, however, proposed that further studies may be desirable in order to determine: (i) the impact of such mandatory rules if applied to voyage parties alone, or if applied to both voyage and time charter parties; (ii) the impact of such mandatory rules if applied only to operations referred to in article II of the Hague Rules, or if applied to all voyages and all operations under a charter party.

(c) The report also suggests that the drafting of agreed definitions of charter party terms should be considered in conjunction with the drafting of charter party clauses. It identifies charter party terms most suitable for agreed definitions, and suggests that, in consultation with the relevant commercial organizations, draft definitions may be prepared, with the assistance of those organizations, for consideration of the WGISL.

8. The Working Group on International Shipping Legislation may wish to take action as proposed in the above paragraph.

Chapter I

CHARTER PARTIES - STANDARD FORMS

9. Charter parties are contracts for the use or hire of a vessel. They are used for various purposes. The charterer may intend to carry cargo on his own behalf, or alternatively he may sub-charter the vessel or employ the vessel as a general ship. In each case, a bill of lading is generally issued when the goods are shipped. The bill of lading usually contains provisions regarding terms and conditions of the carriage under it which often contradict the terms of the charter party and gives rise to a number of problems. 8/

10. There are three main types of charter parties : voyage charter parties, time charter parties, bareboat or demise charter parties.

11. Under a voyage charter party, a shipowner undertakes to carry specified goods in a named vessel on one or several voyages. The charterer is obliged to furnish the agreed cargo and pay the freight, which is usually calculated according to the quantity of cargo loaded or carried, or sometimes a lump sum freight. 9/

12. Under a time charter party, a shipowner undertakes to render services for a specific period of time or for the period of a defined "trip" by his master and crew to carry goods put on board his ship by or on behalf of the time charterer. 10/ The remuneration payable by the charterer is usually called "hire" and is calculated in proportion to the time during which the charterer is entitled to the use of the vessel.

13. While under both voyage and time charter parties the shipwoner remains in possession of the vessel and renders services through his master and crew, 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 crew become the servants of the charterer, who bears all responsibility for the management, operation and navigation of the vessel. 11/

14. Although 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 jurisdictions. 12/ There is a large number of standard charter party forms, especially with respect to voyage charter parties. More than fifty charter parties have been approved by the Baltic and International Maritime Council (BIMCO), most of which are voyage charter parties covering various trades. 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 charterers. 13/

8/ See Scrutton, Charter Parties and Bills of Lading, 19th ed., (London, Sweet and Maxwell, 1984), p.3.

9/ Ibid. p 51.

10/ Ibid.

11/ Ibid. p.49; see also Carver, Carriage By Sea, 13th ed. (London, Stevens & Sons, 1982), paras 582-588.

12/ See Scrutton, op.cit., p.3. Under the Merchant Shipping Act of the German Democratic Republic (SHSG) of 5 February 1976, articles 4(3) and 5(4), the charterer may demand the issue of a charter party. Similar situation exists under the law of the Federal Republic of Germany, see the German Commercial Code of 1897 (as amended) (HGB), Book five, article 557.

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

15. In addition to the large number of standard form charter parties in use, there is a vast number of private charter parties ("in-house" charter parties). Some very large charterers have their own forms of charter parties, 14/ and similarly some large shipping companies only use their own standard form. Both standard forms and private charter parties are supplemented by a myriad of additional clauses (so-called "rider-clauses"), some of which have attained standardized wording themselves and many which are drafted on an ad hoc basis.

16. Some of the standard forms have been in existence since the late 19th or early 20th century without any real thought being given to their adaptation to modern commercial life. 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 charter parties. One particular feature of the older forms of dry cargo standard forms is that they tend to favour shipowners, while the more recently drafted forms tend to favour charterers.

17. Before examining various charter party forms in detail, it may be useful to review briefly some of the oldest and most criticized charter party forms and comments made by some leading judicial authorities concerning these forms and the clauses contained therein.

A. Voyage charter parties

18. Recent enquiries made by the UNCTAD secretariat indicate that of the older and most criticized forms of voyage charter party, the Baltic and International Maritime Conference Uniform General Charter (the Gencon), the Baltimore Berth Grain Charter Party (the Baltimore Form C), the Chamber of Shipping River Plate Charter Party (the Centrocon), and the Americanized Welsh Coal Charter (the Amwelsh) are still in general use.

19. The Americanized Welsh Coal Charter is, in its origin, the oldest of these charter parties. It was adopted in 1953 from the Chamber of Shipping Welsh Coal Charter of 1896. Over 60 years ago in the English case of Miquel de Larrinaga Steamship Co. v. D.L. Flack & Son, 15/ Lord Justice Atkin had the following to say about clauses which were substantially reproduced in the Amwelsh form in 1953 and again in the 1979 amended form :

> "This case arises out of the Chamber of Shipping Welsh Coal Charter of 1896, the demurrage clauses of which have proved a gold mine to the legal profession in the past and seem likely to be a source of profit to the legal profession in the future. The clauses in this or similar form have certainly been to the House of Lords once, many times before the Commercial Court, and a good many times before the Court of Appeal; and it may be that the eminent persons engaged in the industry and in shipping relating to it may still think fit to take steps to make the clauses clearer than at present they are."

20. In 1985 in the case of The Mozart, 16/ the English Commercial Court, having to construe one of these clauses in the Amwelsh Charter, had occasion to comment:

14/ The major oil companies, for example, have their own forms, such as Shellvoy 5 and Beepeevoy 2.

15/ (1925) 21 Ll.L.Rep.284, at p.288.

16/ (1985) 1 Lloyd's Rep. 239, at pp.241-243.

"The language of this clause is imprecise; it has given rise to problems in the past, and it is not surprising that on the present occasion there are different opinions amongst those who have tried to construe it... In truth, the clause is so disorganized and imprecise that a traditional verbal analysis leads nowhere."

21. The Centrocon Charter Party was adopted in 1914 and amended in 1950 and 1974. In 1924, Lord Justice Scrutton, in the English Court of Appeal in H.A. Brightman & Co v. Bunge y Born, 17/ remarked:

"This charter is on the form known as the Chamber of Shipping River Plate Charter, 1914, which was agreed between the Chamber of Shipping and the representative body of the Argentine Shippers. It contains phrases not easy to construe, as is often the case when parties with conflicting interests adopt an ambiguous form which each side dare not make precise for fear the other party should disagree with their meaning if stated precisely."

22. In the above case, the Court was considering the strike clause of the Centrocon Charter Party. Thirty-five years later the English Courts were asked to consider the meaning of the same clause (which was left unrevised by the 1950 amendment to the charter party) in a different context in the case of Union of India v. Compania Naviera Aeolus S.A. (The "Spalmatori").18/ The judge of the Commercial Court decided that the strike clause did not bar the owner's claim for demurrage in the circumstances of the case. Three judges of the Court of Appeal disagreed with that conclusion, although all were agreed, including the parties, that "it was impossible to construe the words used in their literal sense". The House of Lords, by a majority of three to two, in turn disagreed with the Court of Appeal, one of the majority commenting:

"There is no wholly satisfactory interpretation or explanation of the third part of this clause and one must choose between two almost equally unsatisfactory conclusions."

23. The same strike clause was subject to an appeal to the English Court of Appeal in 1961 in the case of N.V. Reedrij Amserdam v. President of India (The "Amstelmolen") 19/ and, again ten years later, in Ionian Navigation Co.Inc. v. Atlantic Shipping Co. S.A. (The "Loucas N").20/ The strike clause in the Centrocon form of Charter Party still remains unamended although there is now a "recommended" amendment to the clause for use in other charter parties. The English Commercial Court judge in Navico A.G. v. Vrontadas Naftiki Etairia P.E. (The "Costis"), 21/ remarked that the Centrocon Charter Party and the Centrocon strike clause in particular had "kept lawyers in congenial employment for years".

24. The Gencon Charter Party form is the most commonly used general purpose voyage charter form. It dates back prior to 1922 when it was first revised. It was revised again in 1976. Its clauses have given rise to numerous disputes. In the case of Louis Dreyfus & Cie v. Parnaso Cia. Naviera S.A. (The "Dominator"), 22/ the English Commercial Court judge remarked that the

17/ (1924) 19 Ll.L.Rep. 384, at p.385.
18/ (1960) 1.W.L.R. 297; (1962) 1 Q.B. 1; (1964) A.C. 868.
19/ (1961) 2 Lloyd's Rep.1.
20/ (1971) 1 Lloyd's Rep.215.
21/ (1968) 1 Lloyd's Rep. 379 at p.382.
22/ (1959) 1 Lloyd's Rep.125.

Gencon exceptions clause had not formerly come before the Courts and that: "it is now my misfortune, apparently, to have to try and make sense of it". He considered the clause ambiguous and had recourse to the contra preferentem rule in construing it.

25. In Salamis Shipping (Panama) S.A. v. Edm. van Neerbeeck & Co. S.A. (The "Onisilos"), 23/ the "half demurrage" provisions of the Gencon Strike clause were described in the English Court of Appeal as "ambiguous" and capable, in themselves, of having either the meaning that the owners or charterers attributed to them. Again, in Superfos Chartering A/S v. N.B.R.(London) Limited (The "Saturnia"), 24/ the Court was asked to consider the Gencon Strike clause on a point on which arbitrators had disagreed and the Court in turn disagreed with the umpire. The judge observed: "I do not find in (the relevant part of the clause), or the clause as a whole, or in the charter as a whole, any single decisive indication of the correct answer to this problem."

26. A major criticism of the Gencon Charter Party is that it is insufficiently comprehensive and requires the addition of an undue number of additional clauses in almost every case. Thus, in Overseas Transportation Co. v. Mineralimportexport (The "Sinoe"), 25/ the English Commercial Court judge commented:

> "The charter itself was founded on the Gencon form, but was subject to extensive amendments and additions. Indeed all the problems in this case arise out of those additions which are most unhappily drafted".

27. Again in a recent New York arbitration, Trans-pacific Shipping Co. v. Mitsui & Co. (USA) Inc., 26/ the arbitrator noted that the charter party which was on the Gencon form was "hardly a model of clarity, not untypical of older forms adapted for modern use."

28. The Baltimore form C Grain Charter Party was adopted in 1913 and has also given rise to numerous arbitrations and much litigation before the Courts. In the case of J.C. Carras & Sons (Shipbrokers) Limited v. President of India ("The Argobeam"), 27/ the English Commercial Court judge remarked on the "somewhat archaic and often most baffling Baltime form C Grain Charter". He went on to state:

> "It is surprising that competent lawyers in the United States, Canada or this country have not by now been instructed to draft a modern and more intelligible substitute. It would not be a difficult task, and if the result were accepted and the present form given its quietus, would quickly justify the minimal expense involved by the subsequent savings in legal costs to shippers, charterers, shipowners and grain exporters and importers." 28/

23/ (1971) 2 Lloyd's Rep.29.
24/ (1984) 2 Lloyd's Rep.366, affirmed (1987) 2 Lloyd's Rep.43.
25/ (1971) 1 Lloyd's Rep.514.
26/ S.M.A. No.2505 (Arb. at N.Y. 1988).
27/ (1970) 1 Lloyd's Rep.282, at p.287.
28/ The North American Grain Charter Party 1973 (Norgrain) was subsequently agreed by the North American Export Grain Association, BIMCO, the Chamber of Shipping of the United Kingdom and the Federation of National Associations of Ship Brokers and Agents (FONASBA). It was further amended in 1989. But the Baltime C form is used more widely than the Norgrain form.

29. So far as tanker voyage charter parties are concerned, the oldest standard form still in common use is the Asbatankvoy Charter Party (formerly Exxonvoy 69), which was adapted from the Warshipoilvoy form of charter adopted in 1942 and revised in 1950. The following comment has been made concerning this charter party:

> "Asbatankvoy (also Texacovoy) is closely based on the old Warshipoilvoy form of charter and as a consequence is badly out of date. Some of the clauses address past trading patterns and practices and many current requirements are not included. Asbatankvoy is still very widely used but the parties use it at their peril. The numerous additional clauses required with this charter do not remedy all the deficiencies in the printed form and in their totality widen the scope for conflict. The further addition of stopgap clauses is unlikely to eliminate all the disputes and litigation which can stem from the use of this outmoded form". 29/

B. Time charter parties

30. Among the standard forms of time charter party, only two are of any antiquity and these are the most commonly used dry cargo time charters: The Baltic and International Maritime Conference Uniform Time Charter (the Baltime), and the New York Produce Exchange Time Charter (the NYPE).

31. The Baltime form was originally issued in 1909 and was amended in 1911, 1912, 1920, 1939 and 1950. A further small amendment to incorporate a reference to the York Antwerp Rules 1974 was also made in that year. Many of the clauses of the Baltime form have been subject to arbitrations and litigation, but the clause for which the Baltime form is notorious (as described by respondents to the UNCTAD secretariat's enquiries) is the Reponsibility and Exemption clause (clause 13 of the current form). In 1984, the English House of Lords decided that the understanding of the clause which had been accepted for at least the previous twenty-four years was incorrect. The case in question was Tor Line A.B. v. Alltrans Group of Canada Limited (The "TFL Prosperity"), 30/ in which the House of Lords disagreed with a decision of the Supreme Court of New South Wales, Australia, in Westfal-Larsen & Co. A/S v. Colonial Sugar Refining Co. Limited 31/ and criticized a previous English Commercial Court decision in Gesellschaft Bürgerlichen Rechts v. Stockholms Rederiaktiebolag Svea (The "Brabant") 32/ and a decision of the Court of Appeal in Nippon Yusen Kaisha v. Acme Shipping Corporation (The "Charalambos N. Pateras").33/

32. The House of Lords in the "TFL Prosperity" case undertook a detailed analysis of the four sentences of the Baltime Clause 13, and in introducing that analysis stated:

> "The printed form of this time charter first saw the light of day as long ago as February 1909. It is thus almost three-quarters of a century old... To say that the grammar of these four sentences and indeed the drafting is in many places sadly defective and that on any view there is a surplusage at various points in the clause does not solve the problem of construction, but merely adds seriously to their complication. Unhappily bad grammar, bad drafting and verbal surplusage are common features in the drafting of clauses in charters." 34/

29/ Williams & Bonnick, Commentaries on Tanker Voyage Charter Parties, (Intertanko 1989) p.2.
30/ (1984) 1 Lloyd's Rep.123.
31/ (1960) 2 Lloyd's Rep.206.
32/ (1965) 2 Lloyd's Rep.546.
33/ (1972) 1 W.L.R. 74.
34/ (1984) 1 Lloyd's Rep.123 at p.126.

33. The New York Produce Exchange (NYPE) form of dry cargo time charter which is by far the most commonly used dry cargo form was issued in 1913 and amended in 1921, 1931, 1946. A new version of the NYPE form was introduced in 1981 under the Code name "Asbatime", but it is very little used in comparison to the use of the NYPE 1946.

34. Parts of the NYPE are obscure and parts are antiquated. In the case of the Summit Investment Inc. v. British Steel Corporation (The "Sounion"), 35/ the English Court of Appeal was asked to construe clause 20 of that charter which provides:

> "Fuel used by the vessel while off-hire, also for cooking, condensing water, or for grates and stoves to be agreed as to quantity, and the cost of replacing same to be allowed by owners."

35. The interpretation of the clause had been the subject of differing views for a number of years. In the case in question a panel of three arbitrators had disagreed, a majority preferring a liberal construction. The Court of first instance, on appeal, had preferred the stricter interpretation of the minority arbitrator. The Court of Appeal restored the majority view and in the leading judgment the following comment appeared:

> "In 1913, which saw the birth of the widely used New York Produce Exchange form of time charter, the main engines of ships were steam driven and the boilers were coal fired. Consistently with this situation, the crew's quarters were equipped with "grates" for the burning of coal in open fires and "stoves" for doing so in closed fires. Today very many ships are motor driven and even when they are not, steam is raised using oil fuel instead of coal. Accordingly a ship equipped with either a "grate" or a "stove" must be a great rarity. Nevertheless, despite revision in 1921, 1931 and 1946, the New York Produce Exchange form obstinately continued to refer to "grates and stoves" and we have been called upon to construe the phrase."

36. In relation to the older types of time charter party forms, it is said that these charter parties "having been worked out mostly by shipowning interests, they are, to some extent, biased in favour of shipowners, this being especially true of the Baltime form, also that their wording is too often loose, even as in the case of the NYPE form to the point of obscurity... many uncertainties, contradictions and inequities are not inherent to the peculiarities of international ocean transport (conflicting laws, perils of the sea), but too often consequences of loose wording, vagueness of concept, obsolete heritage of the age of sail, in the basic contracts in use. When they came to existence more than three-score years ago they accomplished a useful purpose; but it is evident, now, that they do not state with sufficient precision the rights and duties the parties intended to recognize to each other when contracting. This leaves the door wide open to litigation when something goes wrong, and because most cases are referred to arbitration or Courts in Anglo-Saxon countries where law is based on precedent, but where precedent is not always binding on the arbitrators, confusion is unavoidable. The practical shipping man does not always have the law training and experience to avoid the many pitfalls awaiting his chartering steps, nor the time to weigh them when his decision requires promptness." The conclusion reached was that "much good would be achieved by the appearance of an improved, equitable, clearer contract form, better adapted to modern trading methods, and purged of ambiguities where unscrupulous parties can take refuge, and by the general use of such a form by a large majority of shipping people".36/

35/ (1987) 1 Lloyd's Rep.230.

36/ J.E. Cassegrain, Reponsibilities and Liabilities of the Time Charterer, a paper delivered at a seminar sponsored by the FONASBA on "Time Charters - Why the Confusion ?", London, 24-25 March 1977, pp. 2 and 9-10.

Chapter II

ANALYSIS OF CERTAIN CLAUSES OF TIME CHARTER PARTIES

37. This chapter concentrates on reviewing some of the clauses contained in time charter parties with a view to identifying some of the problems that arise in relation to their construction and operation. It deals firstly with clauses specified in the request from the fourth session of the WGISL. 37/ It deals additionally with the clauses in respect of which concerns were expressed by the respondents to the UNCTAD secretariat's enquiries, as well as with a number of clauses which are considered ambiguous, outdated or subject to varying interpretations in different jurisdictions.

38. The analysis is based mainly on the clauses contained in the two most widely used standard dry cargo time charter forms, i.e. the Baltime 1974 and the New York Produce Exchange (NYPE) 1946, as well as the 1981 revision of the NYPE, Code name Asbatime, the BIMCO Deep Sea Time Charter 1974, Code name Linertime. References are also made to the draft time charter, Code name "Fontime" prepared by the Federation of National Associations of Ship Brokers and Agents (FONASBA) and to some tanker time charter forms.

39. Most time charter party disputes are decided in London or New York. The case references in this study are therefore mainly English Court decisions (normally on appeal from arbitration awards), U.S. Court decisions and New York Arbitration awards (which are not normally subject to appeal). 38/

A. Speed and consumption clauses

40. The description of the vessel in time charter parties includes, inter alia, the vessel's name, flag, ownership, class, deadweight capacity, registered tonnage, and speed and fuel consumption. The description of the vessel, especially with regard to statements of speed and fuel consumption, is of particular significance for the time charterer, since the charterer assumes the commercial operation of the vessel and bears certain costs with regard to her employment, 39/ The time charterer is responsible for the provision of bunker fuel and as a result the vessel's consumption has a major impact on charterers' financial outlay. Furthermore, as the charterer pays hire in proportion to the time during which the vessel is chartered irrespective of the number of voyages the vessel may perform, the speed of the vessel becomes an important part of the agreement.

41. The Baltime, NYPE, Asbatime and Linertime each contain a similar preamble allowing for the description of the vessel to be inserted. Typically, the Baltime provides that the ship shall be "capable of steaming about ... knots in good weather and smooth water on a consumption of about .. tons best Welsh coal, or about ... tons oil-fuel". The NYPE, Asbatime and Linertime contain similar provisions, although the NYPE and Asbatime are less restrictive in referring only to "good weather conditions".

42. These provisions are much criticized by respondents to the enquiries made by the secretariat. They are considered as a real problem area. The source of the problem is said to lie in the fact that the evidence of weather

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37/ See para.2 of this report.

38/ See Wilford, Coghlin and Kimball, Time Charters, 3rd ed., (Lloyd's of London Press, London, 1989), Introduction, page vii.

39/ Under time charter parties, the costs arising out of the operation of the chartered ship are usually shared between shipowners and charterers: while the shipowners normally bear the fixed costs (e.g. for wages, insurance, etc), the charterers pay for the variable costs (e.g. for fuel and various dues and charges. See Linertime clauses 4 and 5; the NYPE clauses 1 and 2; Baltime clauses 3 and 4.

encountered is only in the master's possession although it is acknowledged that, to some extent, weather routing companies and meteorological data supplied from official sources attenuate the problem. The terms "about", "in good weather and smooth water" and "under good weather conditions" are considered as ambiguous, giving rise to disputes as to their meaning. "Opinions of arbitrators and the market vary as to whether the term "good weather" means in conditions up to Beaufort Wind Scale Force 4, 5 or 6 ? "Smooth water" to all intents and purposes is never or rarely encountered. It virtually calls for dead calm conditions and, if literally interpreted, renders meaningless the speed and consumption warranty". 40/

43. The following comment has been made in relation to the clause in the Baltime charter:

> "Almost all time charterparties provide an owners' guarantee for speed and consumption although it is sometimes dispensed with if the charter period is very short or if, for example, it is for short coastal voyages. Speed and consumption are as important as the loading capacity and more heavily litigated.
>
> If you are careful and look at the preamble of Baltime, you will find that the promise is based on very favourable conditions - not any average, rather a trial trip speed. "Good weather and smooth water" is generally understood to mean Beaufort Force 3 or less, irrespective of the state of the sea. Unless there is a heavy swell, the sea does not make much difference. Nothing is said about the speed actually made by the vessel during the whole period. It is sufficient for the owner to show that for a day or so the ship made the promised speed.
>
> What if the vessel does not use her power to the full? It is true that clause 9 says that the Master shall prosecute the voyages "with the utmost despatch", but what is utmost? And what happens if the Master does not? Clause 13 expressly excludes liability for delay even if caused by default or neglect by the owners' servants.
>
> With a Baltime type of clause ... it is very difficult for the charterers to prove that the ship is an underperformer. The main source of information as to capability is the deck log. The observed distances from point to point may be used for control, likewise the entries in the engine log as to revolutions per minute (r.p.m.)." 41/

44. But as has been pointed out by a New York Arbitrator 42/ in what may perhaps be thought an understatement "...it has been known for the log extract figures to be somewhat questionable...".

45. It has further been said that "Baltime Box 12 gives only approximate figures ... and ...[from] part II it is clear that any representation is limited to 'good weather and smooth water'. Thus the owner gives no assurance about the actual performance over the time of the agreement, and it is difficult for a charterer to show a breach of this warranty (but not impossible: See The Apollonius). This is not surprising given that Baltime is drafted primarily with shipowners' interest in mind. NYPE is similar to Baltime.. The same is true of Linertime". 43/

40/ Submission by FONASBA.

41/ Bonnick, Gram on Chartering Documents, 2nd ed., Lloyd's of London Press, 1988, p.59.

42/ Michael A. van Gelder, in a paper given at the IVth International Congress of Maritime Arbitrators in London in May 1979.

43/ P. Todd, op.cit., p.133.

46. The statement relating to the vessel's speed, unlike other descriptive details, has been construed to apply at the time of delivery of the vessel. In the case of The "Apollonius", 44/ the English Commercial Court Judge,disagreeing with the view expressed in an earlier case, 45/ decided that from the business point of view it was clear that commercial considerations required the description as to the vessel's speed to be applicable at the date of her delivery, whether or not it was applicable at the date of the charter. Therefore, the charterer was held to be entitled to recover damages (under the Baltime form) since the vessel was described as capable of about 14 1/2 knots, but was in fact capable of only 10.61 knots on delivery because her bottom was dirty.

47. The situation appears to be the same under American law. 46/

48. The difficulties caused by the use of the word "about" in describing the speed and fuel consumption of the vessel in these charter-parties have been described by a London Arbitrator 47/ in the following terms:

> "The Baltime and NYPE forms in present use contain wording derived from an age before the First World War, then applied in the main to 8000 tons, 9-10 knots, coal-burning, steam-reciprocating vessels. After sailing, nothing was heard by and from the master which could affect the operation of the ship unless he reached a port where he could be reached by a telegram. He had no radio, no radar, no weather information; coals varied; the difference between maintenance before the commencement of the voyage and thereafter was meaningful; there was no telephoning owners, no flying out of superintendents or spares. In those days, it was truly said that ships were not clocks; hence the contract of hire - save only name, flag, class and draft - was hedged around in almost every particular, either expressly or implied, with ABOUT.
>
> Apart from the oil companies who have broken with the past... , recasting the contract to bring performance as far as possible into line with the voyage estimate, the time-charterer today negotiating terms of hire on a Baltime or NYPE form, or doing his voyage estimate, is still faced with the problem as to what figure to feed into his computer as to cargo, speed, bunkers, etc.
>
> The construction by the Courts of ABOUT made in those far-off days are still quoted and applied to far-differing circumstances. It is submitted that in 1979 what is "nearly" or "all but" differs markedly from pre-1914. What was necessarily a wide margin of tolerance should now, unless expressly stated to the contrary or implied, be construed narrowly."

49. This arbitrator concluded however that even if the range of tolerance in charters such as Baltime and NYPE is construed narrowly, "the form, as printed, still puts the risks of the voyage on the charterers" instead of "on to the owners, where it truly lies, as they alone know and operate the ship."

50. The word "about" was the subject of interpretation in a recent London arbitration, where the question was what, if anything, was to be allowed in relation to the word "about". It was stated that since the owner knew (or should have known) the detailed particulars of his vessel's performance, there

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44/ (1978) 1 Lloyd's Rep. 53.
45/ Lorentzen v. White Shipping (1943) 74 Ll.L.Rep. 161.
46/ See Wilford...,Time Charters, op.cit., pp.82-83.
47/ Selwyn, J., in a paper presented at the IVth International Congress of Maritime Arbitrators, London, May 1979.

was a temptation to make no allowance for the word "about". However, the Tribunal felt that it could not ignore the words which had been expressly agreed between the parties and inserted into the charter party, so that effect had to be given to the word "about". In the circumstances of the case, a quarter of a knot, rather than the usual half a knot formely often given by London Maritime Arbitrators, was held to be a fair allowance for the word "about".48/ The idea that the allowance for "about" should always be half a knot or five per cent was also rejected by the English Court of Appeal in Arab Maritime Petroleum Transport Co. v. Luxor Trading Corp. (The Al Bida) 49/ who held that the allowance must be tailored to the ship's configuration, size, draft and trim, etc. It is therefore difficult for shipowners and charterers to predict in advance what allowance will be given.

51. To avoid these difficulties, most tanker time charter forms contain a performance clause, requiring the owner to warrant a minimum average speed in weather conditions defined by reference to a maximum specific Beaufort Wind Scale Force. The STB Tanker Charter Party, clause 8, warrants that the vessel shall maintain throughout the period of the charter a guaranteed average speed and fuel consumption under all weather conditions. Some tanker charter parties provide for adjustment of hire in the event of underperformance 50/ while a few, such as Intertanktime 80, provide for a review of the vessel's speed and fuel consumption every 12 months and for adjustment of hire (downwards or upwards) accordingly. 51/

B. Safe port clauses

52. Most charter parties, whether time or voyage, include express undertakings that the vessel shall be employed by the charterers between safe ports. The Linertime, for instance, provides by clause 3, that "The vessel to be employed in lawful trades for the carriage of lawful merchandise only between good and safe ports or places...". Clause 2 of the Baltime contains a similar wording. Construed literally these words would seem to impose an absolute liability on the charterers if a port to which the vessel is ordered by them turns out not to be safe.

53. A safe port has been defined in the English case of Leeds Shipping v. Société française Bunge (The "Eastern City") 52/ by Lord Justice Sellers in the following terms:

> "... a port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurence, being exposed to danger which cannot be avoided by good navigation and seamanship...".

54. This definition has been widely accepted as a correct description of what may constitute a "safe port". 53/ The definition has been held to cover both

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48/ See BIMCO Bulletin 6/88, December 9381.
49/ (1987) 1 Lloyds' Rep 124.
50/ See clause 9 of the STB form.
51/ See clause 23.
52/ (1958) 2 Lloyd's Rep. 127, at p.131.
53/ See Charterparty Laytime Definitions 1980, issued by the BIMCO, Comité Maritime International (CMI), FONASBA and the General Council of British Shipping (GCBS). The definition of "safe port" in the Laytime Definition is closely based on the statement in The Eastern City.

geographical and political safety. 54/ The English House of Lords in Kodros Shipping Corporation v. Empresa Cubana de Fletes (The "EVIA No.2)", 55/ construed the obligation as requiring only that the port should be prospectively safe at the time of nomination. But the decision leaves unanswered the questions whether it is sufficient for the charterers to exercise reasonable care in nominating a port and whether they are responsible for any lack of care on the part of agents or independent contractors whom they ask for advice regarding the safety of the port.

55. In the case of The "Evia No.2", the vessel,chartered on the Baltime form, was ordered to Basrah but she was unable to leave the port because of outbreak of war between Iran and Iraq. The shipowner claimed that the charterers were in breach of their safe port obligation under clause 2 of the charter party. The House of Lords held that there was no breach of clause 2 by the charterers since Basrah was prospectively safe at the time of the nomination and the unsafety arose after her arrival and was due to an unexpected and abnormal event. Lord Roskill stated that the charterer's contractual promise related to the characteristics of the port or place in question and meant that when the order is given that port or place was prospectively safe for the ship to get to, stay at, so far as necessary, and in due course, leave. But if some unexpected and abnormal event thereafter suddenly occurred which created conditions of unsafety where conditions of safety had previously existed and as a result the ship was delayed, damaged or destroyed, that contractual promise did not extend to make the charterer liable for any resulting loss or damage, physical or financial. Otherwise the charterer would be made the insurer of such unexpected and abnormal risks which should properly fall upon the ship's insurers. 56/

56. It is not clear whether American law would follow The ("Evia No.2)" case in holding that prospective safety at the time of nomination was sufficient. What is clear is that there is a substantial divergence between American and English law in the damages recoverable in unsafe port cases. It often happens that the vessel suffers damage as a result both of the unsafety of the port to which the vessel has been ordered by the charterers and the negligence of the Master (or others for whom the shipowners are responsible) in deciding to enter the port, in the handling of the vessel while in the port or in failing to leave when the danger should have become apparent. It appears now to be well settled under American law that the damages suffered by the vessel in such circumstances may be apportioned between the shipowners and the charterers by reference to the respective degree of their "fault", in accordance with the principles laid down by the Supreme Court in United States v. Reliable Transfer Co. Inc. 57/ This approach has been adopted in a number

54/ See Ogden v. Graham (1961) 1B. & S. 773; The Teutonia (1972) L.R.4 P.C. 171. As to whether charterers are liable for the unsafety of a port which is named in the charter, see The Houston City (1954) 2 Lloyd's Rep. 148; The Stork (1954) 2 Lloyd's Rep. 397; The Helen Miller (1980) 2 Lloyd's Rep. 95-101; The Mary Lou (1981) 2 Lloyd's Rep. 272-280; Wilford..., Time Charters, op.cit., p.152.

55/ (1982) 2 Lloyds Rep. 307.

56/ Ibid., p.315. It was further decided that clause 2 of Baltime imposed a secondary obligation on the charterer to nominate another port, itself prospectively safe at the time, if the nominated port became unsafe before arrival, and to leave the port if it became unsafe while the vessel was already in port. Whether this obligation also applies in voyage charter parties is not clear.

57/ 421 U.S. 397 (1975).

of safe port, safe berth and similar contract cases including The "Oceanic First", 58/ The "American Challenger", 59/ Board of Commissioners v. M/V "Space King", 60/ and The "Maplebank". 61/

57. The same division of damages in accordance with the degree of fault will not however be made by the English Courts in similar circumstance where there is an express safe port warranty of the kind in the Baltime, NYPE and Linertime charters. It was held by the Court of Appeal in a recent case, Fosikringsaktieselskapet Vesta v. Butcher, 62/ that apportionment of damages in accordance with the degree of fault under the Law Reform (Contributory Negligence) Act, 1945, was not applicable to an action in contract, unless the defendants's liability in contract was identical to his liability in tort for negligence. And this is plainly not the case where charterers expressly warrant in the charterparty the safety of the ports they may nominate. Under English law the test is whether the charterers' breach of contract in ordering the ship to an unsafe port is the effective cause of the damage, in which case their liability will not be reduced on account of the negligence of master and crew, or whether that negligence has broken the chain of causation, in which case the charterers will not be liable at all. 63/ It results from these differences that, even though the Master of a ship may be substantially to blame for the damage suffered by his ship but less than 50 per cent to blame, in England the shipowners would probably succeed in recovering 100 per cent of the damage, whereas in New York, in the same circumstances, the shipowners' recovery would be reduced to the extent that their Master's fault contributed to the damage. 64/ By contrast, the shipowners would recover nothing in England if their master was mainly to blame, even though the charterers were substantially to blame also, whereas in New York the damage would again be apportioned.

58. It is unlikely that the American law approach of apportionment of damages would be accepted in some civil law countries which treat the obligation of the charterer, with regard to nomination of safe port, as one of due diligence. It seems that under Scandinavian Law 65/ and the Law of the Federal Republic of Germany 66/ as well as the Law of the German Democratic Republic, 67/ if the nominated port turns out to be unsafe, the charterer (himself or through his servants and agents) will only be liable for the resulting damage if he was negligent or failed to exercise due diligence in nominating a safe port.

58/ S.M.A. No. 1054 (Arb. at N.Y. 1976).
59/ 1977 AMC 318.
60/ 1978 AMC 856 (E.D.La.1978).
61/ 1982 AMC 2564 (E.D.La.1981).
62/ (1988) 1 Lloyd's Rep.19.
63/ See Wilford..., Time Charters, op.cit., pp.149-150.
64/ See Nichols & Kuffler on "Breach of Charter and Apportionment of Damages in Safe Berth/Safe Port Disputes" in a paper presented to the VIIIth International Congress of Maritime Arbitrators, Madrid, 1987.
65/ See H. Tiberg, The Law of Demurrage, 3rd ed. (London, Stevens & Sons, 1979) pp.289-290.
66/ See H. Prüssmann, Seehandelsrecht, (München, C.H. Beck'sche Verlagsbuchhandlung 1968) pp.401-404.
67/ See Merchant Shipping Act of the German Democratic Depublic, (SHSG) 1976, articles 12(1), 12(2) and 57(3).

C. Delivery clauses

59. Clause 1 of the Baltime and Linertime reads: "The owners let, and charterers hire the vessel for a period of ... from the time the vessel is delivered...". The NYPE similarly provides that "the said owners agree to let, and the said charterers agree to hire the said vessel, from the time of delivery.. ". 68/ These clauses determine the period from which the owner agrees to place the services of his vessel through his master and crew at the disposal of the charterers so that they can give orders as to her employment. 69/

60. All three charter parties, however, misleadingly use the terms "delivery" and "let" (and also such terms as "redelivery", and "sublet") which are appropriate to a lease or demise of a vessel, but not to a time charter which, in almost all jurisdictions, is only a contract of affreightment and involves no leasing of the vessel. In general charterers acquire no possessory rights in the vessel under these forms of charterparty. In the case of Sea & Land Securities Ltd. v. Williams Deckinson, 70/ Lord Justice Mackinnon described the time charter party as a document which began life as an actual demise, and considered it to be a:

> "...misleading document, because of the real nature of what is undertaken by the shipowner is disguised by the use of language dating from a century or more ago, which was appropriate to a contract of a different character then in use... The modern form of time charter party is, in essence, one by which the shipowner agrees with the time charterer that during a certain named period he will render services by his servants and crew to carry the goods which are put on board his ship by the time charterer. But certain phrases which survive in the printed form now used are only pertinent to the older form of demise charter party. Such phrases... are 'the owner agrees to let', and 'the charterer agrees to hire', the steamer. There was no 'letting' or 'hiring' of this steamer".

Condition of vessel on delivery - Seaworthiness

61. Standard time charter parties invariably contain provisions regarding the shipowner's undertaking to deliver the vessel in a seaworthy condition. 71/ The Baltime, by clause 1, requires the vessel "on delivery" to be "in every way fitted for cargo service". The NYPE requires the vessel to be "ready to receive cargo with clean swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and donkey boilers with sufficient steampower... sufficient to run all the winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage)". 72/ The Linertime wording, in clause 1, is that the vessel shall be "in every way fitted for ordinary dry cargo service with cargo holds well swept, cleaned and ready to receive cargo". Under English law, and so far as concerns the NYPE wording at least, under American law, these requirements constitute an absolute warranty of the seaworthiness of the vessel on delivery - a warranty which would in any event be implied in

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68/ Preamble, line 13.

69/ See The "Madeleine" (1967) 2 Lloyd's Rep. 224 at p.238; Wilford..., Time Charters, op.cit., p.88.

70/ (1942) 2 K.B.65 at p.69.

71/ For the vessel to be considered seaworthy, she must be fit in design, structure, conditions, and equipment to encounter the ordinary perils of navigation. She must also have a competent master, a competent and sufficient crew, and be fit to carry the cargo. See Carver, op.cit., paras. 147-151.

72/ Preamble, lines 21-24.

the absence of express terms. 73/ So the expressions "fitted" and "ready" have been interpreted broadly in this context. But, confusingly, the absolute warranty of seaworthiness on delivery may be reduced by other clauses in the charter to a warranty that only due diligence has to be exercised by the shipowner to make the ship seaworthy on or before delivery.

62. Under the NYPE form, the ambiguous wording of clause 24 (Paramount Clause) has, on the authority of the English House of Lords in Adamastos Shipping v. Anglo-Saxon Petroleum Co. (The "Saxon Star"), 74/ as applied by the Court of Appeal to NYPE charters in a number of later cases, the effect of incorporating the United States Carriage of Goods by Sea Act into the charter party. Consequently, the obligation of the shipowner is reduced from an absolute undertaking to an undertaking to exercize due diligence to make the ship seaworthy, before and at the beginning of each voyage under the charter party. This, however, means that not only the shipowners themselves but also all their servants, agents and independent contractors must have exercised due diligence. The Asbatime has a provision similar to that in the preamble of the NYPE, but its Paramount clause only incorporates the Carriage of Goods by Sea Act of the United States, or Hague/Hague-Visby Rules as applicable, into bills of lading issued under the charter party and not into charter party itself. Since it contains no further clause limiting the owners' strict obligation to deliver a seaworthy ship the liability imposed on shipowners under Asbatime as regards initial seaworthiness is therefore higher than under the Hague/Hague-Visby Rules. A similar approach is adopted by the draft Fontime, although the obligation imposed on the owners is even stricter since it makes the requirement a continuous warranty.

63. Under the Baltime form, clause 13 reduces the shipowners' strict obligation to deliver a seaworthy vessel to what is called "personal due diligence". In other words, shipowners are only liable for any physical loss or damage to goods or for delay caused by "want of due diligence on the part of the owners or their managers in making the vessel seaworthy and fitted for the voyage". 75/ As a result, unseaworthiness caused by the negligence of crew or independent contractors is generally exempted by the clause. 76/

64. Linertime, clause 12(c), in dealing with shipowner's responsibility adopts the Hague/Hague-Visby Rules concept, requiring exercise of "due diligence on their (owners) part before and at the beginning of each voyage to make the ship seaworthy".

65. Thus, although the NYPE, Baltime and Linertime give an initial impression of the owners' absolute undertaking to deliver a seaworthy ship, it becomes clear from subsequent clauses that the owners' responsibility as regards seaworthiness is limited to the exercise of due diligence to make the ship seaworthy. 77/

66. The obligation to provide a seaworthy vessel under most time charter parties relates to the commencement of the charter period and thereafter the owners undertake to maintain the vessel in an efficient state throughout the

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73/ Giertsen v. Turnbull (1908) S.C. 1101.
74/ (1959) A.C. 133.
75/ Tor Line A.B. v. Alltrans Group of Canada (The"TFL Prosperity") (1984) 1 Lloyd's Rep. 123.
76/ See The "Brabant" (1967) 1 Q.B. 588.
77/ See Diamond A., "Owners' responsibilities and the exception clauses relating to them", a paper delivered at a Seminar organized by FONASBA on "Time Charters: Why the Confusion", 24-25 March 1977, London.

service.78/ There is considerable variation in national approaches in this respect. While under English common law the implied warranty of seaworthiness is satisfied if at the commencement of the charter period the vessel is in a seaworthy condition, 79/ under American law the owners are required to make the vessel seaworthy at the beginning of every voyage performed during the charter period. 80/ The laws of the Federal Republic of Germany 81/ and the German Democratic Republic 82/ oblige the owners to exercise due diligence to make the vessel seaworthy at the begining of every voyage.

D. Cancelling clauses

67. Charter parties usually contain a cancelling clause under which the charterer is given the right to cancel the charter party, should he so wish, if the vessel is not delivered by a particular date.

68. The Linertime, clause 2, and the Baltime, clause 22, provide that: "Should the vessel not be delivered by the.. day of.. 19.. the charterers to have the option of cancelling. If the vessel cannot be delivered by the cancelling date, the charterers, if required, to declare within 48 hours (Sundays and Holidays excluded) after receiving notice thereof whether they will cancel or will take delivery of the vessel". The NYPE has a similar clause to the first sentence of the Baltime and Linertime clause, but has no equivalent of the second sentence. It provides that "... should vessel not have given written notice of readiness". 83/

69. The effect of a cancelling clause is that although its operation is not dependent on any breach of charter party by the owners,nevertheless the charterers are entitled to cancel if the vessel is not delivered in a condition described by the charter party, 84/ that is to say in a seaworthy condition and in every way fit for the service. 85/

70. The problem regarding cancelling clauses, particularly in relation to the clause in the NYPE form, has been described in the following terms:

> "Where there is a cancelling clause and the ship cannot get to the port of loading by her cancelling date, she is yet bound to proceed, unless the delay by excepted perils is such as to put an end to the charter. The shipowner cannot, when the cancelling date is past, call upon the charterer to declare whether he will load the vessel or not. In practice the charterer usually refuses to answer, when freights have fallen, in the

78/ See Maintenance Clauses, paras... of this report. The draft Fontime, however, impose on the owner a continuous obligation by requiring the vessel "to be tight, staunch, strong and in every way fit for trading - and shall so remain for the currency of this charter". This obligation is much higher than that under the Hague/Hague-Visy Rules which is to exercise due diligence to make the ship seaworthy before and at the beginning of the voyage.

79/ See Giertsen v. Turnbull (1908) S.C.1101: Carver, op.cit., para.155.

80/ Clark, M., "Seaworthiness in Time charters", Lloyd's Maritime and Commercial Law Quarterly, 1977, pp 493-494.

81/ See Section 559 of the H.G.B.

82/ See Sections 79 and 80(1) of the SHSG.

83/ Clause 14 of the Asbatime contains a similar wording.

84/ See clause 1 of the Baltime and lines 22-24 of the preamble of the NYPE. The exercise of the right to cancel does not however deprive the charterers of their remedies for any other breaches of contract; see Nelson & Son v. Dundee East Coast Shipping (1907) S.C. 927.

85/ See The "Madeleine" (1967) 2 Lloyd's Rep. 224; The "Democritos" (1976) 1 Lloyd's Rep. 149; Wilford..., Time Charters, op.cit., pp.287-294.

hope of making a new bargain with the shipowner under pressure. The shipowner may defeat this manoeuvre by refusing to proceed, whereupon the charterer will in all likelihood be unable to prove any damage ... A charterer is not entitled to cancel (semble under the clause as distinct from any right he may have to rescind at common law) before the cancelling date, even though it is clear that the owner will be unable to tender the ship in time." 86/

71. This passage points up criticisms of cancelling provisions in charter parties, both time and voyage, which have been made by respondents to enquiries by the secretariat. The charterers' absolute obligation to accept delivery if the ship is in the condition required, or to load a cargo under a voyage charter, can be contrasted with the absence of any absolute obligation on the ship under such cancelling clauses to arrive by the cancelling date. The only obligation on the ship, which is implied under English law, is that of reasonable despatch. 87/ The position is the same in the United States.88/

72. There is an attempt in the second sentence of the Baltime and Linertime cancelling clause to alleviate the problem by requiring the charterers to declare whether they will cancel within 48 hours of the shipowners giving notice that the vessel cannot be delivered by the cancelling date. But this can work unfairly to the disadvantage of both charterers and shipowners. If, following such a notice, the charterers declare that they will take delivery, they will usually be bound to their declaration even if the vessel is yet further delayed later. Also, the meaning of "If the vessel cannot be delivered" is ambiguous. It is not clear whether it is sufficient for the shipowner to estimate, on reasonable grounds, that the vessel will not reach the delivery port by the cancelling date or whether the charterers can require the ship- owners to prove that, given the actual position of the vessel at the date of the notice, the vessel could not have been delivered by the cancelling date. 89/

E. Maintenance clauses

73. Each form of charter party contains a so-called "maintenance clause" which provides, in the case of the NYPE, that the shipowners shall pay for certain of the running expenses of the vessel and "maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service". 90/ This provision appears to be construed differently under American and English law. Under American law, the maintenance clause is regarded as supplementing the express warranty of

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86/ Scrutton on Charter parties, op.cit., at page 123.

87/ Nelson & Sons v. The Dundee East Coast Shipping Co. Limited (1907) 44 S.L.R. 661 and Marbienes Compania Naviera S.A. v. Ferrostaal A.G. (The "Democritos") (1976) 2 Lloyd's Rep. 149.

88/ United States Gypsum Transport Co. v. Dampskibs Aktieselskabet Karmoy (1930) 48 Fed. Rep. (2d) 376.

89/ See clause 4 of the Multiform 1982 (1986 revision) which provides the charterer with an option to cancel the charter party if, prior to rendering notice 'the vessel's cancelling date has already passed or,... the vessel has begun her approach voyage and in the ordinary course of events would be unable to tender notice before the cancelling date, the owners, having given a revised expected readiness to load date, may require the charterers to declare whether they elect to cancel the charter party and charterers shall be given up to 48 running hours to make this declaration. Should the charterers not elect to cancel, the cancelling date shall be extended by three running days, Sundays and holidays excluded, from the vessel's revised expected readiness to load date".

90/ Clause 1, lines 37-38; for a similar clause, see Baltime, clause 3; Lintertime, clause 4 and Asbatime, clause 1, lines 68-69.

seaworthiness at the beginning of the charter and as imposing upon the shipowner an obligation to make the vessel seaworthy at the beginning of each voyage performed during the charter period; and in so far as the NYPE form is concerned, imposing the duty of exercising due diligence to make the vessel seaworthy at the commencement of each voyage carried out during the currency of the time charter. 91/ In the case of Luckenbach v. McCahan Sugar Co., it was argued that the original warranty of seaworthiness was exhausted upon delivery of the ship to the charterers and that the maintenance clause relied upon did not import a warranty of seaworthiness at the commencement of each voyage under a time charter, but merely an obligation to pay the expense of keeping her hull and machinery in repair throughout the service. But the Supreme Court rejected the argument stating that "neither the language of the clause nor the character of time charters afford support for this contention."

74. On the other hand, the English Courts have construed maintenance clauses as imposing on the shipowners only the more limited obligations of making good deficiences in the seaworthiness of the vessel after they manifest themselves, but not (in the absence of the incorporation of the Hague/Hague-Visby Rules into the charterparty) imposing any voyage by voyage warranty of seaworthiness on the shipowners. In Giertsen v. George V. Turnbull & Co., 92/ it was held by the Inner House in Scotland that a maintenance clause placed the expense of maintaining the vessel in an efficient state on the shipowners, but did not bind them to keep the vessel in that state. Further it was said in Snia Societa di Navigazione v. Suzuki & Co. 93/ that the shipowners' obligation to maintain the vessel in an efficient state "does not mean that she will be in such a state during every minute of the service, it does mean that when she gets into a condition where she is not thoroughly efficient in hull and machinery they will take within a reasonable time reasonable steps to put her into that condition." 94/

F. Responsibility for loading, stowing and discharging cargo

75. In the absence of express terms, the operation of loading and stowing cargo are the responsibility of the shipowners. Under the Baltime, NYPE, Asbatime and Linertime charters, these responsibilities are transferred to the time charterers. The Baltime, in Clause 4, provides that the charterers are to arrange and pay for loading, trimming, stowing and unloading the cargo. According to Clause 9, the owners are not responsible "for damage to or claims on cargo caused by bad stowage or otherwise". And Clause 13 exempts the owners from liability for any loss unless caused by a "personal act or omission or default of the owners or their managers".

76. While the wording in the Baltime charter is quite clear in transferring all responsibilities with regard to loading, stowing and unloading operations to the charterers, the NYPE contains a somewhat ambiguous provision.

77. In the case of the NYPE, Clause 8 of that form provides that "charterers are to load, stow, and trim the cargo at their expense under the supervision of the captain". "This provision is by no means clearly drafted. It is not clear at first sight whether the responsibility for stowage lies upon the

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91/ See Luckenbach v. McCahan Sugar Co., 248 U.S. 139 (1918): The "Fort Gaines" 21 F.2d 865, 1927 A.M.C. 1778 (D.Md.1927); Strong v. United States, 154 U.S. 632 (1878); Mondella v. S.S. "Elie V.", 223 F. Supp.390 (S.D.N.Y. 1963); The "Captain John", 1973 A.M.C. 2005, (Arb. at N.Y. 1973).

92/ (1908) S.C. 1101.

93/ (1924) 17 Ll.L. Rep. 78, at p.88.

94/ See also Tynedale Steam Shipping Co. v. Anglo-Soviet Shipping Co. (1936) 41 Com.Cas. 106.

charterers or, because of the words 'supervision of the captain', upon the owners. Because of this inherent ambiguity Courts on both sides of the Atlantic have had to consider the matter. Fortunately, they have both come to the same result, namely that the responsibility for stowage is assumed by the charterers", 95/ but the extent of the responsibility of the Master, and thus of his owners, remains a familiar subject of dispute.

78. In the American case of Nichimen Company v. The "Farland", 96/ it was held that clause 8 of the NYPE shifted from the owner to the charterer the primary responsibility for stowage. 97/

79. The English House of Lords decided similarly in Court Line v. Canadian Transport Co. 98/ Lord Wright said:

> "...under clause 8 of this charterparty the charterers are to load, stow, and trim the cargo at their expense. I think these words necessarily import that the charterers take into their hands the business of loading and stowing the cargo. It must follow that they not only relieve the ship of the duty of loading and stowing, but as between themselves and the shipowners relieve them (the shipowners) of liability for bad stowage, except as qualified by the words 'under the supervision of the captain'..."

80. The effect of the provision in the NYPE (and Asbatime) that loading, trimming and stowing is to be 'under the supervision of the captain' is different under English and American law. The position under English law is that to the extent that the master intervenes in the operations covered by Clause 8 - and this has particular relevance to the operation of stowage - and to the extent that damage is suffered as a result of the intervention of the master and his officers, the owners are liable. In the Court Line v. Canadian Transport case, Lord Wright went on to deal with the construction of the words and said:

> "these words expressly give the master a right, which I think he must in any case have, to supervise the operations of the charterers in loading and stowing. The master is responsible for the seaworthiness of the ship and also for ensuring that the cargo will not be so loaded as to be subject to damage, by absence of dunnage, and separation, by being placed near to other goods or to parts of the ship which are liable to cause damage, or in other ways... But I think this right is expressly stipulated not only for the sake of accuracy, but specifically as a limitation of the charterers' control of the stowage. It follows that to the extent that the master exercises supervision and limits the charterers' control of the stowage, the charterers' liability will be limited in a corresponding degree."

81. American law on the other hand places a different interpretation upon the words 'under the supervision of the captain' which stems from the concept that the master of a vessel under time charter is, depending upon the function he is performing, the servant of the shipowner or the servant of the charterer.

95/ A.Diamond, Q.C., Owners' Responsibilities and the Exemption Clauses Relating to them, op.cit., p.6. These comments also seem to be relevant in the case of Asbatime, as its wording is similar to that of the NYPE. It provides, in clause 8, that: "charterers are to perform all cargo handling at their expense under the supervision of the captain".

96/ 462 F 2d 319 (2d Cir.1972).

97/ See also Nissho-Iwai Co. v. M/T "Stolt Lion", 1980 617 F.2d 907, 1980 A.M.C. 868 (2d Cir.) and Seguros Banvenez S.A. v. S/S "Oliver Drescher", 1985 761 F.2d 855, 1985 A.M.C. 1168 (2d Cir.).

98/ (1940) A.C. 934.

As it was expressed in The "Santona" 99/:

> "The ship is the owners' ship and the master and crew his servants for all details of navigation and care of the vessel; but for all matters relating to the receipt and delivery of the cargo, and those earnings of the vessel which flow into the pockets of the charterers, the master and crew are the servants of the charterers".

82. In the case of Nichimen Company v. The "Farland", the Court expressed the concept of the divided responsibility for the master's actions in the following words:

> "...We think the owners' liability for cargo damage due to improper stowage is limited to instances in which the captain intervenes in the stowage process to protect the vessel's safety and ability to withstand the perils of the sea; to the extent that he acts merely to protect the cargo, the charterer is responsible." 100/

83. Complications are also caused by the fact that the words 'and responsibility' are often added after 'supervision', so that the clause reads: "Charterers to load ... under the supervision and responsibility of the captain". In The Shinjitsu Maru No.5, 101/ the words 'and responsibility' were construed as effecting a prima facie transfer of liability for bad stowage from the charterers to the owners but it was considered that if it could be shown in any particular case that the charterers by, for example, giving some instructions in the course of stowage, had caused the relevant loss or damage, the owners would be able to escape liability to that extent. The decision in this case was followed in the subsequent cases of The Argonaut 102/ and The Alexandros P. 103/ In the latter case Steyn, J. emphasized that the words "and responsibility" in clause 8 and the transfer of risk comprehended by it related to the entire operation of loading, stowing, trimming and discharging of the cargo. It also covered not only the mechanical process of handling the ship's gear and cargo but also matters of stevedore's negligence in strategic planning of loading and discharging of the cargo.

84. The three cases have transformed the respective obligations of owners and charterers to an extent which the chartering market has not yet fully appreciated and which does not reflect practical reality. Time charterers may often own or at least operate the loading berth and stevedoring company and have knowledge and experience of the particular requirements of a cargo, especially if it is an unusual one. Even if they control and manage the entire loading operation, the recent decisions of the English Courts make the master responsible for, for instance, the negligence of the stevedores, even though in practice he may have no real control over them.

85. Further uncertainty as to the meaning of clause 8 of the NYPE is caused by the omission of any reference in the clause to 'discharge' of the cargo. It is suggested 104/ that even if the parties do not add the words 'and discharge' (as is frequently the case) the provision under English law would probably be the same as if they had been added. But again the position under American law appears to be different. 105/

99/ 152 Fed. 516 (S.D.N.Y. 1907).
100/ See also The "Robertina" S.M.A. No. 1151 (Arb. at N.Y. 1977).
101/ (1985) 1 Lloyd's Rep. 568.
102/ (1985) 2 Lloyd's Rep. 216.
103/ (1986) 1 Lloyd's Rep. 421.
104/ Wilford..., Time Charters, op.cit., p.245.
105/ See Nissho-Iwai & Co Ltd. v. M/V "Stolt Lion", (1980 617 F. 2d 907, 1980 A.M.C. (2d Cir.) rev'g 1979 A.M.C. 2415 (S.D.N.Y. 1979).

G. Inter-club agreement

86. The overall difficulty of determining the ultimate liability for cargo claims under the NYPE charter led the major Mutual Protection and Indemnity Insurance Associations (P & I Clubs) in 1970 to introduce between themselves the New York Produce Form Interclub Agreement, amended 1984 to incorporate a two year time limit, under which certain types of cargo claims are shared 50/50 and others are allocated 100% to charterers or 100% to shipowners, depending on the cause of loss or damage.

87. The Inter-Club Agreement is not binding as between the owners and the charterers unless it is incorporated into the charter party. 106/ The effect of incorporation of the 1970 version of the Inter-Club Agreement into a charter party subject to the Hague Rules was considered by the English Court of Appeal in the case of The Strathnewton. 107/ This case established that the agreement provided a mechanical apportionment of financial liability between owners and charterers and it cut across any allocation of functions and responsibilities based on the Hague Rules. Indeed, the avoidance of such allocation was considered to be the very objective of the Agreement. 108/ Thus the one year time limit for claims provided by the United States Carriage of Goods by Sea Act incorporated into the charter party by clause 24 did not apply and claims falling within the scope of the agreement could be brought within six year limitation period under English law. The agreement was amended in 1984 to provide that all claims must be notified in writing within two years of discharge.

88. The Inter Club Agreement will not apply in every case. "For the Agreement to apply, the cargo responsibility clauses in the NYPE charter must not be materially amended. A material amendment is one which make the liability for cargo claims, as between owners and charterers, clear... The addition of the words "and responsibility" with reference to the words "under the supervision" in clause 8 together with the addition of the words "cargo claims" in the second sentence of Clause 26 shall render the Agreement inoperative". 109/

89. The Agreement itself has given rise to disputes. "The fact that the intention behind the Agreement was to promote amicable and equitable settlements for routine cargo claims, it is disappointing to note that the Agreement is not without its ambiguities". 110/ It is, therefore, suggested that the Agreement contains a lacuna. This is illustrated by the facts of a case brought to arbitration in London, in which the cargo, being carried under the NYPE charter, was found damaged during the voyage due to improper ventilation. "...although the arbitrator found that the damage was caused by improper ventilation, charterers were not able to rely on the Inter-Club Agreement because the damage was not caused by 'condensation'. It seems clear that ... the true intention behind the Agreement must have been to cover the sort of damage suffered in this instance but, it would appear that the Agreement will only operate where there is 'condensation' damage caused by 'improper ventilation'. It will not cover cases where there is

106/ The Ion (1980) 2 Lloyd's Rep. 245.
107/ (1983) 1 Lloyd's Rep. 219.
108/ See Per Lord Justice Kerr at pp.223 and 225; see also The "Benlawers" (1989) 2 Lloyd's Rep. p.51.
109/ Clause 1 (ii)(b) of the Interclub Agreement; see also clause 1 (ii)(c) which contains an agreed apportionment of liability where the only material amendment is the addition of the words "and responsibility" with reference to the words "under supervision".
110/ D.Mead, The Inter-Club Agreement - a Lacuna ?, P.& I. International, August 1989, p.7.

'condensation-like' damage caused by improper ventilation nor those cases where there is other damage caused by improper ventilation". 111/

90. Thus the clause which was aimed at solving problems arising from unsatisfactory state of the clauses dealing with liability for cargo claims in the NYPE form, has itself proved to be a source of disputes. 112/

H. Cargo responsibility clauses

91. The apportionment of liability for cargo claims in general turns in each case upon the wording of the respective Responsibility Clauses in the charter. The basis of owner's liability for loss of or damage to cargo under the four charter party forms varies from almost strict liability (Asbatime) to very limited liability (Baltime) and the regime of the Hague Rules (NYPE and Linertime). The NYPE, in clause 24 (Paramount Clause), incorporates the U.S. enactment of the Hague Rules into the charter party. Therefore, the carrier is required to exercise due diligence, before and at the beginning of each voyage, to make the ship seaworthy, and to take proper care of the cargo, subject to rather wide exceptions. 113/ The problems arising from the construction of clause 24 of the NYPE and from incorporation of the Hague Rules into the charter party is dealt with in the later section of this report. 114/

92. The Asbatime (the 1981 revision of the NYPE), on the other hand only incorporates the Hague/Hague-Visby Rules, by a paramount clause (clause 23), into bills of lading issued under the charter party, but not into the charter party itself. Therefore, the Asbatime does not contain any provision specifically dealing with liability for cargo claims, except for a very general exception clause (second sentence of clause 16), which provides:

> "The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation, and errors of navigation throughout this charter, always mutually excepted".

93. An identical wording is also found in the NYPE. 115/ The clause provides a very limited protection to both the owners and the charterers, and it does not include an exception of negligence. The exceptions listed by the clause have been construed by English Courts to protect the owners or the charterers provided that the loss or damage is not caused by their, or their servants or agents', negligence. For example, in the case of Re Polemis and Furness, Withy & Co. 116/ the Court decided that the exception of "fire" did not include fire negligently caused. And in the recent cases of The Emmanuel C. 117/ and The "Satya Kailash", 118/ the exception "errors of navigation" in clause 16 of the NYPE was held only to cover non-negligent errors, as the term was considered to be not wide enough to embrace negligent errors.

111/ Ibid. at p.8.
112/ It is understood that the Agreement is currently under review by the P & I Clubs.
113/ For discussions on the Hague/Hague Visby Rules requirement, see para.307 of this report.
114/ See discussions on the Paramount clause, paras 102-112.
115/ See the second sentence of clause 16; a similar clause is also contained in draft Fontime, clause 26.
116/ (1921) 8 Ll.L.Rep.351; (1921) 3 K.B. 560.
117/ (1983) 1 Lloyds Rep.310.
118/ (1984) 1 Lloyd's Rep. 588.

94. If follows, therefore that the liability imposed upon the owners under the Asbatime and the NYPE where, as is often the case, clause 24 (the Paramount clause) and thus the U.S. Carriage of Goods by Sea Act are deleted is much higher than that imposed by the Hague or the Hague-Visby Rules. The position under the draft Fontime is similar. The exceptions listed in article 4, rule 2 of the Rules are, for example, more extensive than those in clause 16 of theAsbatime and the NYPE and clause 26 of the draft Fontime. In particular, article 4, rule 2(a) of the Rules provides an exception in respect of "Act,neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship", while clause 16 only cover error of navigation which is not caused by negligence. And in respect of the exception of "fire" the protection afforded to the carrier under the Rules is extended to "Fire, unless caused by the actual fault or privity of the carrier," 119/ whereas clause 16 again covers fire negligently caused.

95. Thus under the Asbatime and the NYPE, where clause 24 is deleted, and the draft Fontime, the owners will be liable for any loss or damage unless it is caused by one of the limited exceptions listed in clause 16. It should also be noted that such a high liability of the owners is not generally covered by the owners' Protection and Indemnity Clubs, as the Club Rules limit their liability in respect of cargo to the level provided by the Hague or Hague-Visby Rules, unless a notice is given to the Club and an insurance of such liability is obtained at an additional expense to the shipowner. 120/

96. Under the Baltime charter, clause 13, the owners are only liable for delay in delivery of the vessel or for delay during the currency of the charter and for loss or damage to goods provided they are caused by personal want of due diligence on the part of the owners or their manager in making the vessel seaworthy or any other personal act or omission on their part. Clause 13 reads as follows:

> " The owners only to be responsible for delay in delivery of the vessel or for delay during the currency of the charter and for loss or damage to goods on board, if such delay or loss has been caused by want of due diligence on the part of the owners or their manager in making the vessel seaworthy and fitted for the voyage or any other personal act or omission or default of the owners or their manager. The owners not to be responsible in any other case nor for damage or delay whatsoever and howsoever caused even if caused by the neglect or default of their servants. The owners not to be liable for loss or damage arising or resulting from strikes, lockouts or stoppage or restraint of labour (includind the master, officers or crew) whether partial or general.
>
> The charterers to be responsible for loss or damage caused to the vessel or to the owners by goods being loaded contrary to the terms of the charter or by improper or careless bunkering or loading, stowing or discharging of goods or any other improper or negligent act on their part or that of their servants".

97. The English House of Lords in the case of Tor Line A.B. v. Alltrans Group of Canada Limited (The "TFL Prosperity"), 121/ having to construe clause 13, described it "sadly defective" having surplusage which "merely adds seriously to their complication". 122/

119/ See article 4, rule 2(b).
120/ See Rule 25, paragraph xxiii(a) of the United Kingdom Steamship Mutual Assurance Association.
121/ (1984) 1 Lloyd's Rep. 123.
122/ See further paras 31-32 of this report.

98. In that case the vessel having been chartererd on the Baltime form was described in an additional clause as having a main deck height of 6.10 meters, when the height was in fact 6.05 meters. As a result, the charterers were prevented from loading trailers with double stacked containers. In a claim for financial loss suffered by the charterers because of the owners' breach of the description clause, the House of Lords held that clause 13 did not exempt shipowners from liability for breach of the description clause nor for financial loss in relation to cargo (in contrast to physical loss or damage) unless it could be categorized as a loss by delay. This decision, however, leaves unresolved difficult questions as to which types of financial loss in relation to cargo may be the liability of the shipowners and which may be the liability of the charterers. The House of Lords further decided that the first sentence of clause 13 only covered delay in delivery of the vessel, delay during the currency of the charter and physical loss or damage to goods on board if caused by want of due diligence on the part of either the owners or their manager in making the vessel seaworthy, or by any other personal act or omission or default of either of them. The second sentence was construed as being linked with the first sentence and thus related to the same subject matter of delay and physical loss or damage brought about by one of the causes mentioned in the two sentences.

99. The House of Lords, thus, considered incorrect the decision of the Supreme Court of New South Wales in Westfal-Larsen v. Colonial Sugar Refining Co. 123/ in which the owners claimed general average contribution from the charterers who put forward the defence of unseaworthiness. The owners, relying upon clause 13, were held entitled to succeed in their claim although "the claim was not one for loss of or damage to cargo but arose because of inability of the vessel to maintain proper steam by reason of bunker trouble which it seems was the fault of the chief engineer". 124/ The decision in the Westfal-Larsen case had been considered as correct in the cases of The Brabant 125/ and The Apollonius. 126/ The reasoning in these decisions were criticized by the House of Lords in The "TFL Prosperity" case. The case of Nippon Yusen Kaisha v. Acme Shipping Corp. (Charalambos N. Pateros), 127/ in which the Court of Appeal held that clause 13 did protect the owners against claims for financial loss, was considered to have been wrongly decided.

100. The decision of the House of Lords in The "TFL Prosperity", however, leaves other questions on the interpretation of the Baltime clauses very uncertain. Further uncertainty is built into the assessment of responsibility under clause 13 by the restriction of liability to "personal" want of due diligence on the part of the owners or their manager to make the vessel seaworthy. It is this restriction on the owners' liability which gives rise to the criticisms expressed by a number of respondents to the secretariat's enquiries, that the clause is heavily biased in favour of owners. That apart, the restriction to "personal" want of due diligence necessarily involves a complex investigation into the particular individuals in the shipowners' organisations who may have been responsible for any deficiency and the precise capacities in which such individuals acted, whether they acted as members of the Board of Directors of the owning company or on the Board's behalf or in other capacities - information which inevitably is exclusively within the shipowners' own possession.

123/ (1960) 2 Lloyd's Rep. 206.
124/ The "TFL Prosperity" (1984) 1 Lloyd's Rep. 123, Per Lord Roskill at page 129.
125/ (1965) 2 Lloyd's Rep. 546; (1967) 1 Q.B. 588.
126/ (1978) 1 Lloyd's Rep. 53.
127/ (1972) 1 W.L.R.74.

101. Linertime, Clause 12, is also not free from difficulties or ambiguity. It does not incorporate the Hague Rules. It imposes a Hague Rules liability upon the shipowners for cargo claims caused by unseaworthiness and by lack of care of cargo while on board - but with reservations. Charterers are to "keep and care for the cargo at loading and discharging ports" and are to "load, stow and discharge the cargo at their expense under the supervision of the captain". They are also expressly made liable for claims resulting from "faulty preparation of the holds and/or tanks of the vessel or from bad stowage of the cargo not affecting the trim or stability of the vessel on sailing". But apportionment of liability under these clauses is unclear where the master or ships' officers actively intervene in stowage or preparation of holds or tanks or in the shore side of the loading and discharging operations.

I. Paramount clauses

102. The International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 (Hague Rules) or the Hague Rules as amended by the Protocol of 1968 (Hague-Visby Rules) do not apply to charter parties. 128/ They are, however, quite often incorporated into both time and voyage charter parties by a so-called 'Paramount Clause'. The clause takes various forms. Some forms purport to incorporate the entire Hague or Hague-Visby Rules, or the relevant provisions of a particular national legislation which enacts the Rules. 129/ Other forms incorporate only parts of the Hague or Hague-Visby Rules or their equivalent in a particular national enactment. 130/ Some forms, however, only incorporate the Rules into bills of lading issued under the charter party, and others make them applicable to both the charter party and bills of lading issued under it. It is also quite common practice for a paramount clause to be inserted as an additional 'rider' clause, in a standard charter party.

103. The paramount clause is primarily intended to apply to bills of lading and in this context "it means a clause by which the Hague Rules are incorporated into the contract evidenced by the bill of lading and which overrides any express exemption or condition that is inconsistent with it". 131/ Its application to charter parties has caused certain problems. 132/ Questions arise as to the extent to which the provisions of the Hague/Hague-Visby Rules are incorporated into a charter party by a paramount clause, and as to whether provisions thus incorporated prevail over the remaining terms of the charter party.

104. Further complications may be caused by the wording of the paramount clause itself. "The incorporating clause is sometimes clumsily drawn: see, in particular the U.S. Clause Paramount beginning "This bill of lading shall have effect... ", which is frequently attached to charter parties for which it was clearly not originally intended". 133/ Unlike the Baltime and Linertime, the NYPE, in clause 24, contains provisions stating that the charter is to be

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128/ See Article V of the Rules.

129/ See the NYPE, clause 24; Multiform 1982 (revised 1986), clause 33; Universal Voyage Charter Party 1984 (revised voyage charter party 1984), Code Name: Nuvoy-84, clause 43.

130/ See "Boepeevoy 2 '83'", clause 40.

131/ See Per Lord Denning, M.R. in the "Agios Lazaros" (1976) 2 Lloyd's Rep. 47 at p. 50.

132/ See Carver, 13th ed., op.cit, para.474: "Particular difficulties arise when the Hague Rules are incorporated into a charter party, since they are designed to apply only to bills of lading and the carrying voyages thereunder".

133/ Scrutton, 18th ed., p.405, note 12.

subject to the Harter Act of 1893 and the following sentence provides that the charter is subject to the "USA Clause Paramount". 134/

105. Clause 24 of the NYPE form is, however, not very happily drafted since it is not clearly expressed whether the clause paramount is just to apply to bills of lading or whether it is also to be incorporated into the charter. Nor is it made clear whether the clause paramount is to apply if voyages do not begin or end in the United States. Finally, it is not made clear whether the clause paramount is to apply to non-cargo carrying voyages. 135/ Some of these questions have been settled in England by the decision of the House of Lords in the case of Adamastos Shipping v. Anglo-Saxon Petroleum (The Saxon Star), 136/ as applied by the Court of Appeal to charter parties on the NYPE form in Aliakmon Maritime Corp. v. Transocean Shipping (The "Aliakmon Progress"), 137/ Actis Co. v. The Sanko Steamship Co. (The "Aquacharm") 138/ and in Seven Seas Transportation v. Pacific Union Marine Corp. (The "Satya Kailash"). 139/ In The Adamastos case the vessel was chartered for as many consecutive voyages as she could perform within a period of 18 months. The charter party contained an expressed absolute warranty of seaworthiness and by a typewritten clause it was agreed that the paramount clause, as attached, to be incorporated into the charter party. The attached paramount clause was identical with the U.S.A. Clause Paramount in clause 24 of the NYPE. In arbitration proceedings, the umpire treated the clause as meaningless, since he could not construe the terms "This bill of lading" as meaning "This charter party". The Commercial Court judge, reversing him, decided that the clauseincorporated the Hague Rules into the charter party in so far as they were sensible of incorporation therein. The Court of Appeal took the same view as the umpire. But the House of Lords, unanimously affirming the decision of the Commercial Court on the point, decided that: (i) the parties intended to incorporate the Hague Rules into the charter party, so the words "This bill of lading" in the paramount clause should be read as "This charter party"; (ii) the words in Section 5 of the United States Act which state "The provisions of the Act shall not be applicable to charter parties" must be rejected as meaningless; and by a majority that (iii) Section 13 of the Act, which limited its effect to voyages to and from the United States, should be disregarded and voyages should be subject to the Act regardless of where they begin or end; (iv) the provisions of the Act were applicable to all voyages whether the vessel is in ballast or laden.

134/ Clause 24 of the NYPE reads:

"It is also mutually agreed that this charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1983, and entitled "An Act relating to Navigation of Vessels; etc, "in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both of which are to be included in all bills of lading issued hereunder:

U.S.A. Clause Paramount

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further".

135/ Diamond, A., "Owner's Responsibilities and the Exemption Clauses Relating to them", op.cit., p.3.

136/ (1958) 1 Lloyd's Rep. 73.

137/ (1978) 2 Lloyd's Rep.449.

138/ (1982) 1 Lloyd's Rep. 7.

139/ (1984 1 Lloyd's Rep. 588.

106. In incorporating the provisions of the United States Act/Hague Rules into the charter party, the House of Lords adopted the rule laid down in relation to the incorporation of charter party terms into a bill of lading in an earlier case, 140/ that: "The conditions of the charter party must be read verbatim into the bill of lading as though they were there printed in extenso. Then if it was found that any of the conditions of the charter party on being so read were inconsistent with the bill of lading they were insensible, and must be disregarded". Applying this rule the House of Lords found that a large part of the Act, in relation to the charter party was inapplicable and therefore was to be disregarded. 141/ What was therefore left relevant was Sections 4(1) and (2) of the Act (Article IV. rr.1 and 2 of the Hague Rules. 142/

107. The principles applied in the Adamastos case to a consecutive voyage charter are also applicable to time charters under English law and to charter parties on the NYPE form. 143/ The recent English cases have, following the reasoning in The Adamastos case, considered clause 24 of the NYPE as incorporating the Hague Rules into the charter party.144/ But having regard to some important differences between time and voyage charter party, for example as regards the seaworthiness requirement, it remains in doubt whether the principles laid down in The Adamastos case can be applied in all respects to time charter parties. As the English Commercial judge in Chilean Nitrate Sales v. Marine Transportation Co. Ltd. (The "Hermosa") 145/ said:

> "... The difficulties created by the inclusion of the Hague Rules into a time charter have not yet been worked out by the Courts. The analogy with a consecutive voyage charter is not exact. For example, the charterer pays directly for the whole of the time while the ship is on hire, including ballast voyages; and there are in most time charters express terms as regards initial seawortiness and subsequent maintenance which are not easily reconciled with the scheme of the Hague Rules, which create an obligation as to due diligence attaching voyage by voyage. It cannot be taken for granted that the interpretation adopted in Adamastos Shipping v. Anglo-Saxon Petroleum in relation to voyage charters applies in all respects to time charters incorporating the Hague Rules"".

108. Further difficulties still arise in relation to the manner in which the Hague/Hague-Visby Rules are incorporated into charter parties; as to their meaning in the context of a charter party, and in the relation between the incorporated Rules and the terms of the charter party. The case of Nea Agrex v. Baltic Shipping Co. (The "Agios Lazaros") 146/ provides an example. The vessel was chartererd on the Gencon form which included among 'rider' clauses,

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140/ Hamilton v. Mackie (1889) 5 T.L.R.677.

141/ Viscount Simonds said "It is obvious that there is much in the Act which in relation to this charter party is unsensible, or, as I would rather say, inapplicable, and must be disregarded".

142/ See Carver, op.cit., paras 476-477; Wilford..., Time Charters, op.cit., pp.425-426.

143/ Wilford..., Time Charters, op.cit., p.426.

144/ See Aliakmon Maritime Corp. v. Transocean Shipping (The "Aliakmon Progress") (1978) 2 Lloyd's Rep. 499-501 where Lord Denning M.R. said "It is plain on the decision of the House of Lords in The Adamastos case that, although there is a clause saying "This bill of lading shall have effect", &c., nevertheless it really meant "This charter party shall have effect", &c. so the provisions of the Hague Rules apply to this time charter". See further Actis Co. v. The Sanko Steamship Co. (The "Aquacharm")(1982) 1 Lloyd's Rep.7; Seven Seas Transportation v. Pacifico Union Marina Corp. (The Satya Kailash) (1984) 1 Lloyd's Rep. 588.

145/ (1980) 1 Lloyd's Rep. 638 at p.647.

146/ (1976) 2 Lloyd's Rep.47.

clause 31 which stated: "... and also Paramount Clause are deemed to be incorporated in this charter party". In a claim by the charterers against the owners for damage to cargo, the owners argued that the claim had become time-barred, since the charter incorporated the paramount clause and thus the provisions of the Hague Rules, article III r.6 of which relieved the carrier from all liability in respect of loss or damage unless suit was brought within one year after delivery of the goods. The English Commercial judge decided that the phrase "and also Paramount Clause" in clause 31 was ineffective because there were many different paramount clauses and he could not say which Paramount Clause was to be incorporated and, therefore, none of the Hague Rules applied and consequently there was no time bar. The Court of Appeal, reversing his judgment, felt that since the parties had expressly stated that 'Paramount Clause' was deemed to be incorporated into the charter party, it should strive to give effect to the incorporation rather than render it meaningless. It, therefore, held that when the "Paramount Clause" was incorporated without any qualifications, it meant that all the Hague Rules were incorporated including the time bar of one year (article III, r.6). 147/

109. In this case, Lord Denning M.R. in considering the meaning of the 'Paramount Clause' in the context of the particular charter party said that "it brings the Hague Rules into the charter party so as to render the voyage, or voyages, subject to the Hague Rules, so far as applicable thereto; and it makes those rules prevail over any of the exceptions in the charter party". 148/ This seems to indicate that in case of inconsistency between the incorporated Hague Rules and the other terms (at least other printed terms) of the charter party, the provisions of the Hague Rules will prevail. 149/ But if there is no conflict, the terms of the specific contract and the Hague Rules are fused together. The combined terms interact between themselves. There is no line of demarcation or difference in quality or effect, save that if the incorporated clause is also a paramount one the Hague Rules will not merely supplement the specific contract but will operate also to modify any incompatible clause in it". 150/

110. It is not however always clear whether the effect on other charter provisions will be the same where the paramount clause is introduced by a printed clause in a standard form, as in the NYPE, or by an additional 'rider' clause, as in the case of The Agios Lazaros. If the Paramount clause is in print and the other conflicting provision is in typescript, the latter may possibly prevail. 151/

111. Further uncertainties are caused by the fact that the provisions of the Hague/Hague-Visby Rules may not be given the same interpretation when they are incorporated into charter parties as they have been given in bills of lading. In the Australian case of Australian Oil Refining v. Miller (E.W.) & Co. 152/ the charter party contained a clause (clause 15) which relieved the owners from responsibility for "loss or damage arising or resulting from an act, neglect or default of the master, mariner, pilot or the servants of the owners in the navigation or in the management of the vessel...". Another clause provided that "the owners shall have the benefit of the 'Rights and Immunities' in favour of the carrier or ship contained in the Enactment in the country of shipment giving effect to the Hague Rules...". The effect of this

147/ See further Furness withy (Australia) PTY. Ltd. v. Metal Distributors (U.K.) Ltd. (The "Amazonia") (1990) 1 Lloyds' Rep. 236.
148/ See Ibid., p.50.
149/ See also Per Lord Justice Goff, p.53.
150/ Per Lord Justice Shaw, ibid., p.59.
151/ See The Satya Kailash.
152/ (1968) 1 Lloyd's Rep. 448.

clause was to incorporate article IV, rule 2 (a) of the Hague Rules (identical wording to clause 15) into the charter party. The vessel collided with the charterers' wharf and the question was who was liable for the resulting damage. The Court had to decided whether the words used in clause 15 should have the same meaning as the words used in the Hague Rules, in which case it would only apply to loss or damage in relation to cargo and would not include damage to a wharf. The Supreme Court of New South Wales decided that the clause should have the same interpretation as the words used in the Hague Rules and, therefore, the owners were liable for collision damage. This decision was reversed by the High Court of Australia which held that the inclusion of the Hague Rules in the charter party did not mean that the relevant words in clause 15 should be construed in the same way that the same words would be construed in a bill of lading. The clause therefore covered damage to a wharf and the owners were entitled to the protection afforded by it. 153/ The words "loss or damage" were given an even wider meaning in the context of the time charter on the NYPE form in The Satya Kailash.

112. Furthermore, in the context of varying national laws with regard to charter parties, the incorporation of the Hague/ Hague-Visby Rules into charter parties may also produce different results. For example where the Hague Rules are incorporated into a time charter, as in the NYPE by the incorporation of the United States Carriage of Goods by Sea Act, the law in the USA and England seems to differ as to the effect on the express absolute warranty of seaworthiness at the commencement of the charter. In the United States, it was held in Iligan International Corporation v. John Weyerhaeuser 154/ that while the incorporation of the United States Carriage of Goods by Sea Act 1936 into a NYPE form charter reduced the implied absolute warranty of seaworthiness to an undertaking to exercise due diligence to make the vessel seaworthy, it did not affect the express absolute warranty that the vessel to be delivered should be "tight, staunch, strong and in every way fitted for service". By contrast, the position under English law appears to be that the incorporation of the Hague Rules into a time charter will replace both the express absolute warranty of seaworthiness and the implied absolute warranty of seaworthiness. This was so held in Adamastos Shipping Co. v. Anglo-Saxon Petroleum Co. (The "Saxon Star") 155/ in the case of a consecutive voyage charter. It appears that the principles applied in The Adamastos Shipping case to a consecutive voyage charter are in this respect applicable also to time charters under English law. 156/

J. Indemnity clause

113. Time charter parties usually contain an indemnity clause entitling the shipowner to claim against the charterers for any loss caused as a result of the master complying with the charterers' orders. Clause 9 of the Baltime reads: "The master to be under the orders of the charterers as regards employment, agency, or other arrangements. The charterers to indemnify the owners against all consequences or liabilities arising from the master, officers or agents signing bills of lading or other document or otherwise

153/ See Carver, op.cit., para. 478.
154/ 1974 372 F.Supp.859, 1974 A.M.C. 1719 (S.D.N.Y.), aff'd 507 F.2d 68 (2d Cir. 1974), cert. denied 421 U.S. 956.
155/ (1959) A.C. 133, restoring (1957) 1 Lloyd's Rep. 79.
156/ See Aliakmon Maritime Corp. v. Transocean Shipping (The "Aliakmon Progress") (1978) 2 Lloyd's Rep. 499; Actis Co. v. The Sanko Steamship Co (The "Aquacharm") (1982) 1 W.L.R. 119 and Seven Seas Transportation v. Pacifico Union Marina Corp. (The "Satya Kailash") (1984) 1 Lloyd's Rep. 588.

complying with such orders..." Linertime, in clause 12, takes a different approach and provides that "if for any reason the owners or the charterers are obliged to pay any claim, customs or other fines or penalties, for which the other party has assumed liability..., that other party hereby agrees to indemnify the owners or charterers as the case may be against all loss, damageor expenses arising or resulting from such claims..." NYPE, however, does not include an express indemnity clause. 157/ This has been considered by some respondents to the secretariat's enquiries as being the cause of uncertainties. In the absence of express provisions in the charter party, the matter is dealt with according to national laws which often adopt varying approaches regarding the matter.

114. In some jurisdictions where no express indemnity is provided for by the charter party, an indemnity may be allowed by law in favour of owners against the liability incurred to third parties as a consequence of the master complying with the charterers' orders. Under English law, for example, an indemnity may be implied provided that the act of the master in complying with the charterers' orders is not manifestly unlawful. 158/

115. In Telfair Shipping Corporation v. Inersea Carriers (The "Caroline P"), 159/ the vessel was chartererd under the NYPE form and the owners were held liable to the receivers of the cargo under bills of lading for loss and damage to cargo due to bad stowage for which the owners were not liable under the charter party. In an action against the charterers for indemnity, the English Commercial Court held that the bills of lading imposed obligations on the owners which were more onerous than those stipulated in the charter party, and although the charter party contained no express idemnity, the owners were entitled to the benefit of an implied indemnity, which indemnified them against the consequences of the master signing the bills of lading and such an indemnity did not become enforceable by action until at the earliest the liability of the owners to the receivers had been ascertained by the Court.

116. Thus, under English law, the implied indemnity, as with the express indemnity, will entitle the owners to claim indemnification from the charterers, who present to the master for signature bills of lading which impose greater liability on the owners than that they undertake under the charter party, if they are held liable under the bills of lading to the holders of the same. 160/ But such an indemnity does not seem to be permitted in some jurisdictions, if the increased liability arises from the law itself. Thus "...if the carrier is held responsible by the receiver under mandatory rules applying to bills of lading, the carrier has no right of indemnity

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157/ Clause 8 of Asbatime provides for an express indemnity which reads: "The captain (although appointed by the owners) shall be under the orders and directions of the charterers as regards employment and agency:... and the charterers shall indemnify the owners against all consequences or liabilities which may arise from any inconsistency between this charter and any bill of lading or waybills signed by the charterers or their agents or by the captain at their request."

158/ Strathlorne Steamship v. Andrew Weir (1934) 50 Ll. L. Rep. 185; See also A/S Hansen-Tangens Rederi III v. Total Transport Corp. (The "Sagona") (1984) 1 Lloyd's Rep. 194.

159/ (1984) 2 Lloyd's Rep. 466.

160/ Kruger v. Moel Tryvan, (1907) A.C. 272.

against the charterer even if carrier's liability has been validly excluded under the terms of the charter party". 161/

117. An English Court in the case of Ben Shipping Co. v. An-Board Bainne (The "C.Joyce") 162/ also denied the right to indemnity where the charter party in the Gencon form provided expressly by an additional clause in typescript that all bills of lading issued under the charter were to include a clause paramount and as a result the owners became subject to increased liability under the bill of lading. The English Commercial Court Judge said: "Is it necessarily to be implied from these terms that, if the owners should become liable to a bill of lading holder on grounds which would not make them liable to the charterers under clause 2 [owners' responsibility clause], they should be entitled to be identified by the charterers against that liability? I do not think so. It was clearly stipulated that all bills of lading signed under the charter party should include the clause paramount. This stipulation necessarily exposed the owners to Hague Rules liability to an indorsee of the bills. That must, or should, have been obvious. If the owners wanted an indemnity from the charterers in that eventuality, the obvious course was to ask for one". 163/

118. In spite of the apparently wide ambit of express indemnity clauses such as the clause contained in Baltime, the protection provided by the clause is restricted by the requirement that the orders of the charterer must be the proximate cause of the loss suffered by the owner. Therefore, indemnity clauses are constructed by the English Courts as covering only losses arising directly from the charterer's instruction, because "if some act of negligence intervenes or some marine casualty intervenes then the chain of causation is broken and the indemnity does not operate". 164/ Thus the clause will not protect the owners in respect of every incident that occurs following the giving of an order by the charterer which will involve them in liability. 165/

119. The range of the protection afforded by such clauses to the owners has not yet been fully been worked out by the decisions of the Courts. 166/ Thus uncertainty exists both in regard to express and implied indemnities under time charter parties.

161/ The "Vestkyst 1" 1961, Northern Maritime Cases, 325, quoted by P. Gram, commenting on the last paragraph of the Section 95 of the Norwegian Maritime Code of July 1893, as amended, which reads: The charterer shall indemnity the carrier if a bill of lading which is issued pursuant to a contract, resulting in an increase of the carrier's liability". This paragraph has been held in the aforementioned case, not to protect the carrier when the increase of liability results from the law itself. See the Norwegian Maritime Code, as translated with Commentary by Gram, P., (Oslo, 1975) p.22.

162/ (1986) 2 Lloyds' Rep. 285.

163/ Ibid., Per Bingham, J., p.289.

164/ Larinaga S.S. Co. v. The King (1945) A.C. 246, Per Lord Porter, p.263.

165/ The White Rose (1969) 2 Lloyd's Rep. 52; Royal Greek Government v. Minister of Transport (The Ann Stathatos) (1950) 83 Ll.L.R. 228; See also Carver, op.cit., paras 680-681; Scrutton, op.cit., p.370; Wilford..., Charter Parties, op.cit., p.199.

166/ See Per Mr. Justice McNair in Bosma v. Larsen (1966) 1 Lloyd's Rep. 22, at p.27.

K. Bills of lading issued under time charter parties

120. All four charter parties provide that the master is to be "under the orders of the charterers as regards employment, agency and other arrangements" or words to similar effect. 167/ The NYPE, Asbatime and Linertime additionally expressly require the captain "to sign Bills of Lading as presented", but whether or not these additional words are included, it seems that the charterers may require the master to sign bills of lading for cargo booked by them or to sign the bills themselves. 168/

121. As long as the bills of lading remain in the hands of the charterers they are only considered as receipts for the goods and the charter party remains the instrument which governs the contractual relationship between the owners and the charterers, 169/ even though the charterer becomes indorsee of a bill of lading originally issued to a shipper other than the charterer himself. 170/ But where the charterer transfers the bills of lading to third parties who are strangers to the charter party, or where the charterer does not himself ship the cargo and therefore bills of lading are issued to shippers other than the charterers, then the bills of lading regulate the relationship with the holders of such bills of lading. But the question which arises is whether the contract contained in the bill of lading is with the shipowner or the charterer. The question remains to be determined according to the circumstance of each case. But in general, if the charter party is not a bareboat or demise, bills of lading signed by the master are normally considered as contracts between the bill of lading holders and the owners, 170/ even if the charter party contains a clause that the master shall sign bills of lading as agent for the charterers, provided that the holder of the bill of lading is not aware of the clause. 172/ On the other hand, the master's signature could bind the charterers, if it is clear from the surrounding circumstances that the master is acting as agent for the charterer and not the owners; and if the bill of lading holder is led to believe that he is contracting with the charterers, for example, where the charterers operate a well-known liner company and use their own bills of lading form. 173/

122. Where the bills of lading are signed by the charterers or their agents the position is even less clear. The clause in the NYPE, Asbatime and Linertime to the effect that the master is to be under the charterers' orders as regards employment and agency and "to sign bills of lading as presented" has been interpreted under English law as entitling the charterers or their agents to sign bills of lading on behalf of the master. Thus, "the charterers may, instead of presenting such bills of lading to the master for signature by him on behalf of the shipowners, sign them themselves on the same behalf. In either case, whether the master signs on the directions of the charterers, or the charterers short-circuit the master and sign themselves, the signature bind the shipowners as principals to the contract contained in or evidenced by the bill of lading". 174/

167/ See Baltime, clause 9; NYPE, clause 8; Asbatime, clause 8; and Linertime, clause 10.
168/ Tillmans v. SS. Knutsford (1908) A.C. 406.
169/ See Carver, op.cit., paras 699-701; Scrutton, op.cit., pp.58-62.
170/ President of India v. Metcalfe Shipping Co.(1970) 1 Q.B.289.
171/ Wehner v. Dene S.S. Co. (1905) 2 K.B. 92-98; The Venezuela (1980) 1 Lloyd's Rep. 393.
172/ Manchester Trust v. Furness Whithy & Co. (1895) 2 Q.B. 539.
173/ Elder, Dempster v. Paterson, Zochonis (1924) A.C. 522; Samuel v. West Hartlepool Steam Navigation (1906) 11 Com.Cas. 115.
174/ The Berkshire (1974) 1 Lloyd's Rep. 185-188.

123. In Tillmanns & Co. v. S.S. "Knutsford" 175/ where the charter party did not contain specific words requiring the master to sign bills of lading as presented and the charterers signed a bill of lading "for the captain and owners", Kennedy L.J. said in the Court of Appeal:

> "It does not lie in the mouth of the (owners) to deny the authority of the signature as one made on behalf of the owners and captain, because they have themselves by the contract agreed that the captain shall act as the charterers shall direct, and therefore a signature which the charterers have made as on behalf of the owners and captain must, I think, be treated, when they are sued by the shipper who put their goods on board, as a signature which they cannot repudiate, because they gave the charterers, in the express terms of their contract, the right of directing the signature to the document to be made, and must be taken impliedly to have given, both as against the captain and against themselves, and authority to the charterers to sign on behalf of either or both of them."

The decision that the bills of lading bound the shipowners was affirmed by the House of Lords. 176/

124. Under American law on the other hand, a bill of lading signed by the charterer "for the master" does not personally bind the owner, as a contracting party, but is considered as a contract with the charterer, unless the master or owner actually authorized the signature by the charterer. 177/

125. In Yeramex International v. S.S. "Tendo", 178/ the Court explained the principle of duality of the master's authority under American law in the following words:

> ".. the terms of the vessels' time charters grant the master dual authority to act separately as agents for the owner and as agents for the charterer in matters involving the separate responsibilities for ship, as assumed by the owner, and for cargo, as assumed by the charterer."

126. In that case the charterers' bill of lading was signed "for the master", but it was held nevertheless that the shipowners were not personally liable as a contracting party under the bill of lading. 179/

127. Furthermore the wording of the NYPE, Asbatime and Linertime requiring the master "to sign bills of lading as presented" does not authorize the charterer to sign the bills of lading in order to bind the owners as a contracting party. Thus "under American law, in signing bills presented by the charterer the master may do so strictly as agent for the charterer, rather than as agent of the owner as was traditionally the case under the general maritime law". 180/

175/ (1908) 2 K.B., p.385.
176/ (1908) A.C. 406.
177/ See Wilford..., Time Charters, op.cit., p.276.
178/ 1979 595 F., 2d 943; 1979 A.M.C. 1282 (4th Cir.).
179/ See also Demsey & Associates v. S.S. "Sea Star", 1972 461 F. 2d 1009 (2d Cir.) and Ross Industries Inc. v "Gretke Oldendorff", 1980 483 F. Supp. 195; 1980 A.M.C. 1397.
180/ Wilford..., Time Charters, op.cit., p.276. Asbatime and some tanker time charter parties contain specific wording with regard to the charterers signing bills of lading. Asbatime reads: "... the captain,... is to sign bills of lading for cargo as presented... However, at charterers' option the charterers or their agents may sign bills of lading on behalf of the captain...": clause 8, lines 147-150.

L. Payment of hire and withdrawal clauses

128. The standard forms of time charter parties invariably contain provisions concerning payment of hire for the time during which the vessel is placed at the disposal of the charterers. The payment of hire is usually required to be made in advance, per calendar month (or other appropriate period), in cash without discount, failing which the owners are permitted to terminate the charter party altogether. Clause 6 of the Baltime form requires: "the charterers to pay as hire the rate ... per 30 days, commencing in accordance with clause 1 [from the time "the vessel is delivered and placed at the disposal of the charterers between 9 a.m. and 6 p.m., or between 9 a.m. and 2 p.m. if on Saturday..."] until her redelivery to the owners. Payment of hire to be made in cash,... without discount, every 30 days, on advance... In default of payment, the owners have the right of withdrawing the vessel from the service of the charterers without noting any protest and without interference by any Court or any other formality whatsoever and without prejudice to any claim the owners may otherwise have on the charterers under the charter". Linertime also contains, in clause 7, an identical wording and a further provision for the payment of the last installment of hire. The NYPE wording (clause 5) is somewhat different. It provides for payment of hire to be made "in cash... semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by owners, unless bank guarantee or deposit is made by the charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or on any breach of this charter party, the owners shall be at liberty to withdraw the vessel from the service of the charterers, without prejudice to any claim they (the owners) may otherwise have on the charterers. Time to count from 7 a.m. on the working day following that on which written notice of readiness has been given to charterers or their agents before 4 p.m...".

129. The construction of these clauses have given rise to a number of disputes in recent years. They have been subject to varying interpretations by English and American Courts and arbitration tribunals; and they were criticized by a number of respondents to enquiries by the secretariat.

1. Payment in cash

130. The Baltime, NYPE and Linertime provide for payment of hire to be made in "cash". The words "payment in cash" are interpreted against the background of modern commercial practice. So interpreted, they have been given "a wider meaning, comprehending any commercially recognized method of transferring funds the result of which is to give the transferee the unconditional right to the immediate use of the funds transferred". 181/ Thus, "banker's payment slips", 182/ "banker's draft", 183/ "Interbank transfers", 184/ and "payment orders" made under the London currency settlement scheme, 185/ in this context are treated as equivalent of cash.

181/ Per Brandon, J., in The Brimnes (1971) 2 Lloyd's Rep. 465-476. This statement was approved by the Court of Appeal in the same case, 1974) 2 Lloyd's Rep. 241-248; and was adopted in subsequent cases: See The "Laconia" (1976) 1 Lloyd's Rep. 395, pp.402-404; The "Chikuma" (1979) 1 Lloyd's Rep. 367-372; (1980) 2 Lloyd's Rep. 409-412 (C.A.), and (1981) 1 Lloyd's Rep. 371, pp.375-376 (H.L.).

182/ The Georgios C. (1971) L Lloyd's Rep. 7-14.

183/ The Brimnes (1974) 2 Lloyd's Rep. 241.

184/ Ibid.

185/ The "Laconia" (1977) 1 Lloyd's Rep. 315.

131. The requirement for payment in "cash" can be a trap for unwary charterers, as indeed it was in the case of The "Chikuma", 186/ in which the English House of Lords held that the owners were entitled to receive cash or equivalent of cash and nothing less than unconditional use of the funds will do. 187/ In The "Chikuma" the vessel was chartererd under the NYPE and the hire was paid to the owners'bank in Genoa on the due date, but the paying bank, also in Genoa, included in the telex transfer a 'value date' four days later. The effect of this under Italian banking practice was that the owners could not withdraw the money without having to pay interest until the value date. The owners, trying to get out of the charter on a rising market, withdrew the vessel.

132. The arbitrator found that the owners had the immediate use of the money even though the interest on the sum would not begin to run in favour of the owners until four days later and if they had withdrawn the sum, they would have had to pay four days interest to their bank. The Commercial Court Judge, on the other hand, decided that there was no payment in cash or equivalent of cash since the telex transfer was conditional upon the interest not accruing on the money for the benefit of the transferee until a date later than the due date specified, and therefore did not give the transferee the unconditional right to the immediate use of the funds transferred. The Court of Appeal, reversing the decision, held that on the date the hire was due the owners had the full use of the money. It was not conditional and the mere debiting of a trifling bank charge would not make it conditional.

133. The House of Lords, in turn reversing the decision of the Court of Appeal and restoring the judgment of the Commercial Court Judge, held that there was no payment in cash by the charterers of the hire due, and accordingly the owners were entitled to withdraw the vessel under clause 5 of the charter party. Lord Bridge stated that "when payment is made to a bank otherwise than literally in cash, i.e. in dollar bill or other legal tender (which no one expects), there is no 'payment in cash' within the meaning of clause 5 unless what the creditor receives is the equivalent of cash, or as good as cash. The book entry made by the owners'bank on [the date the hire was due] in the owners' account was clearly not the equivalent of cash... It could not be used to earn interest, e.g. immediate transfer to a deposit account. It could only be drawn subject to a (probable) liability to pay interest". 188/

134. In the United States, there seems to exist a widespread commercial practice of accepting ordinary checks, payment orders or telex transfers as the equivalent of "cash", even though the owners' bank may require a day or more for the check or transfer to clear and give the owners unrestricted use of the funds. This practice was, however, questioned in the case of The Penta, 189/ where payment of hire by ordinary check which was cleared after the due date was held to be breach of obligation by the charterers to make payment in "cash": ".. if [charterers] chose to pay by check, a check could have been tendered either in federal funds or sufficiently in advance as to allow time for the check to clear". 190/

186/ (1981) 1 Lloyd's Rep. 371.
187/ P.Todd, op.cit., p.141.
188/ (1981) 1 Lloyd's Rep. 371, at pp.375-376.
189/ S.M.A. No.1603 (Arb. at N.Y. 1981).
190/ See Wilford..., Time Charters, op.cit., p.220.

135. Thus, some modern dry cargo time charters and tanker time charters, 191/ do not specifically require payment of hire in "cash". The American STB Tanker Time Charter provides for payment to be made by check.

136. Further complications arise in determining the precise time at which payment is effected. Ascertaining the exact moment of payment is of great importance in deciding between a punctual and late payment. Where payment by check is a permissible method of payment, the receipt of the check by the payee is treated as sufficient performance of the contract, even though payment by check is ordinarily considered conditional payment until the check has been cleared and the credit transferred. 192/

137. Where payment is made by a "banker's draft" or equivalent document, the delivery of such document by the owners' bank constitute the time of payment, even though it involves a certain period of processing before it is credited to the owners' account. 193/ The situation, however, is not clear as regards payment by a "payment order" under the London currency settlement scheme. The question arose in the case of The "Laconia", 194/ in which the English Commercial Court Judge expressed a view that payment was not complete until after it had been processed and credited to the owners' account. The Court of Appeal took a different view. Payment of hire was held to have been effected when the payment order was handed over to the owners' bank. In the House of Lords, though the case was decided on other grounds, three members of the House expressed opinions on the subject. Lord Salmon stated that "there is no real difference between a payment in dollar bills and a payment by payment orders which in the banking world are generally regarded and accepted as cash". 195/ Lord Russell expressed a similar view. 196/ Lord Fraser, however, was of a different opinion. He thought that "the charterer must pay in a sufficient time to allow for the period of processing normally required for the method of payment they had chosen". 197/

138. When payment is made by telexed instructions by the charterer's bank to the owner's bank with whom it has itself an account to transfer the hire to the owner's account, the question arises as to when payment is effected ? Does the receipt of the telex message by the bank constitute a payment, or it is merely a part of process which leads towards the making of payment ? In The Brimnes, 198/ the English Court of Appeal held that mere receipt of the document containing the instructions did not constitute 'payment', and until the decision was made to transfer the funds from the charterer's account to the owner's account there was no payment. 199/

191/ For example Asbatime, see clause 5; Intertanktime 80, clause 3; Draft Fontime, clause 16; and the American STB Tankertime, clause 3(a).
192/ Tankexpress v. Compagnie Financière Belge des Pétroles (1948) 82 Ll.L.R.43, pp.54-59; The Brimnes (1974) 2 Lloyd's Rep. 241-257.
193/ The Brimnes (1974) 2 Lloyd's Rep. 241-248.
194/ (1975) 1 Lloyd's Rep. 640.
195/ (1977) 1 Lloyd's Rep. 315 at p.327)
196/ Ibid., p.333.
197/ Ibid., p.330.
198/ (1974) 2 Lloyd's Rep. 241.
199/ See also The "Zographia M" (1976) 2 Lloyd's Rep. 382; The "Effy" (1972) 1 Lloyd's Rep. 18.

2. Payment in advance

139. Payment of hire is invariably required to be made "in advance". The provision requiring payment "in advance" must be strictly complied with, since its breach will give the owners right to immediate withdrawal of the vessel. The clause relating to payment in advance applies throughout the period of the charter, even to the payment of the first instalment. In Kawasaki Kisen v. Bentham S.S. Co., 200/ the charterers argued that the provision as to payment in advance did not apply to the first instalment because of the difficulty in paying in advance, as it was not clear when the vessel would arrive. It was nevertheless held that the contract provided for payment in advance, even of the first instalment. The charter party contained a provision similar to that in clause 5 of the NYPE and provided for "delivery to count from 7 a.m. on the working day following that on which written notice has been given before 4 p.m.". The judge stated that where notice is given according to the clause, there is from 4 p.m. on the one day until 7 a.m. on the next working day in which payment in advance can be made. Problems may arise because of the fact that payment of hire is required to be made at a place different from the place of delivery of the vessel; and that in some countries banks close before 4 p.m. and reopen after 7 a.m. the following day, the charterers practically have no banking hours so as to make payment in advance. 201/

140. As regards payment of the last instalment of hire, both NYPE and Linertime contain express provisions allowing the charterer to pay a proportionate amount of hire according to reasonable estimate of the redelivery date. Where a charter party does not contain such express provision, as in case of Baltime, the charterers have been held liable to pay the full amount of hire for the last instalment, even if the vessel is reasonably expected to be delivered before the end of the month, subject to owners' liability to return any sum which might prove to have been overpaid. 202/ In such a case, the repayment of unearned hire is considered as having been secured to the charterers by the clause giving "a lien on the vessel for all moneys paid in advance and not earned". 203/ The question which arises is the effectivenes of such a lien, since the charter party not being a bareboat/demise, the charterers do not have the possession of the vessel so as to exercise a lien on the vessel.

141. In relation to the requirement for payment "in advance", when a payment falls due on a non-banking day, there is one notorious difference between American and English law. Under the New York General Construction Law, a payment becoming due on a Saturday, Sunday or holiday, may lawfully be made on the next following business day. This principle has been applied to the payment of hire under a time charter in The "Maria G. Culucundis". 204/ But English law, confusingly, adopts the position that if the due date is a Saturday, Sunday or holiday, then the payment must be made on the preceding business day. 205/ This may cause difficulty if hire is to be paid to a London bank through an American bank which may have no knowledge of the English law. 206/

200/ (1938) 1 K.B. 805.

201/ To meet these difficulties, draft Fontime provides for the first hire payment to be made "not later than one banking day after delivery", see clause 16.

202/ Tonnelier v. Smith (1897) 2 Com. Cas.258; Stewart v. van Ommeren (1918) 2 K.B. 560.

203/ Ibid. See also clause 18 of the Baltime form.

204/ 1954 A.M.C. 325 (Arb. at N.Y. 1952).

205/ See Astro Amo Cia. Nav. v. Elf Union S.A. (The "Zographia M" (1976) 2 Lloyd's Rep. 382 and Mardorf Peach & Co. v. Attica Sea Carriers Corp. (The "Laconia") (1977) A.C. 850.

206/ See The "Effy" (1972) 1 Lloyd's Rep. 18.

3. Deductions from hire

142. As regards deductions which may be made from hire, all four charter parties contain express provisions giving the charterers a right to make certain deductions from hire. All four charter parties provide for advances for vessel's ordinary disbursements to "be deducted from hire". 207/ NYPE and Asbatime further, in clause 15, provide for deduction from hire in respect of time lost, any extra fuel consumed and all extra expenses incurred as a result of a reduction in speed caused by a defect in or breakdown of the vessel's hull, machinery or equipment. The costs of fuel used for domestic consumption may also be deducted under clause 20 of the NYPE. In respect of off-hire claims, while NYPE and Asbatime do not have any express provisions, Baltime, clause 11(A), provides for "any hire paid in advance to be adjusted accordingly", and Linertime, clause 14, limits this provision to the cases of breakdown of winches. The wording in the Baltime has been construed by the English Court of Appeal as entitling the charterers to make a deduction in respect of off-hire claim from a subsequent hire payment. 208/

143. It is not, however, clear from these clauses whether the amount of the deductions the charterers intend to make needs to be agreed or established before they can make the deductions. The problem which arises in this context is that if disputed claims cannot be deducted from the hire and the charterer makes a deduction under the clause, the amount of which is not agreed, then he will risk a withdrawal of the vessel. The question arose in the case of The "Nanfri". 209/ The Court held that the charterers were entitled to deduct, under clause 11 of the Baltime, valid claims, that is bona fide claims assessed on a reasonable basis, without the consent of the owners. In the Court of Appeal, Lord Denning M.R. said that the charterers were entitled to quantify their loss by a reasonable assessment in good faith, and deduct the sum so quantified from the hire. Then the actual figures could be ascertained later: either by agreement between the parties; or, failing agreement, by arbitration. The right to deduct, he said, would be useless to the charterer if he had to wait until a figure was agreed or established, for then it might be postponed indefinitely. 210/

144. To avoid such difficulties, some tanker charter parties contain express provisions regarding the issue. The American STB Tanker Time Charter Party, for example, in clause 3(b), allows the charterers to deduct "any overpayment of hire concerning which a bona fide dispute may exist but [in such a case] the charterer shall furnish an adequate bank guarantee or other good and sufficient security on request of the owner". Some tanker charters do not even require a bank guarantee or other security. 211/

145. A further question which arises is whether in the absence of clear provisions to the contrary the charterers are entitled to deduct claims for damages for breach of contract by way of equitable set-off. There are conflicting decisions by English Courts on the subject, but the weight of authority is in favour of allowing the right to set off only in cases where the owner wrongfully and in breach of contract deprives the charterers of the use of the vessel, whether in full or in part. 212/ The charterers,

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207/ See NYPE, clause 5; Baltime, clause 14; Linertime, clause 16.
208/ The "Nanfri" (1978) 2 Lloyd's Rep. 132.
209/ (1978) 2 Lloyd's Rep. 132.
210/ See Ibid., at pp.141-142.
211/ See Beepeetime, clause 13.
212/ The "Teno" (1977) 2 Lloyd's Rep. 289; The "Nanfri" (1978) 2 Lloyd's Rep. 132; See also Sea and Land Securities v. Williams Dickinson (1942) 1 K.B. 187-298; Halayon S.S. Co. v. Continental Grain Co. (1943) 75 Ll.L.R.80-84; Tankexpress v. Compagnie Financière des Pétroles (1946) 79 Ll.L. R. 451-457; The Charalambos N. Pateras (1971) 2 Lloyd's Rep. 42.

therefore, have been held entitled to deduct from unpaid hire claims for damages in respect of the owners' failure to load full cargo. 213/ and in respect of breach of speed warranty. 214/ The right of deduction, however, has not been extended to other breaches or default of the owners, such as damage to cargo arising from the negligence of the crew. 215/

146. Thus, clear provisions would be required in order to exclude the right of set off, and mere insertion of a clause allowing certain deductions is not considered sufficient. 216/ The draft Fontime seems to exclude any right of deduction except those specifically permitted by the charter party. It further provides, in clause 16, that any unauthorized deduction will be considered as a failure to make a punctual payment of hire, and consequently giving rise to a right to withdraw the vessel.

4. Withdrawal

147. Withdrawal clauses are intended to give the owners a prompt and timely payment of hire and to protect them if the charterers get into financial difficulties, by giving them a power to take the vessel back without having to go through a legal proceeding. These clauses have been very often put into operation on a rising market, where the owners would watch out for the slightest delay in making the payment so as to exercise their right under the clause and determine the charter party in the hope of obtaining the market rate; knowing that according to the authorities, payment should be made precisely on the due date and a payment made hours and even minutes late, even due to delay on the part of the charterers' bankers in transmitting the hire to the owners' bank, will entitled them to exercise their power under the withdrawal clause. 217/ Lord Denning, M.R., described this in The "Nanfri" 218/ as "the sport of the shipping market", and in Mardorf Peach & Co. Ltd. v. Atticasea Carrier Corporation of Liberia, The "Laconia" 219/ as"a game of wits which is played out between the shipowners and charterers, backed up by lawyers and bankers...[which] may have its fascinations for the players, but it is very expensive and very time consuming, and the outcome is as uncertain as the spin of a coin". 220/ He added: "You take a time charter with hire to be paid through a bank; and the usual clause which enables the shipowner to withdraw the vessel 'in default of payment' or 'failing punctual and regular payment of hire'. During the charter period the freight market rises. The shipowner is on the lookout for a default. He knows, on the

213/ The "Teno" (1977) 2 Lloyd's Rep. 289.
214/ The Chrysovalandou Dyo (1981) 1 Lloyd's Rep. 159.
215/ See The "Nanfri" (1978) 2 Lloyd's Report, 132-141; The "Aliakmon Progress" (1978) 2 Lloyd's Rep. 499; The "Leon" (1985) 2 Lloyd's Rep. 470.
216/ See The "Teno" (1977) 2 Lloyd's Rep. 289, at p.293; The "Nanfri" (1978) 2 Lloyd's Rep. 132, p.148
217/ In The "Zeographia M" (1976), 2 Lloyd's Rep. 382, the rates of hire having risen dramatically after the date of the charter party, the owners instructed their agents carefully to watch the position in relation to payment of hire by the charterer in the hope that a default in payment would give them the opportunity to determine the charter party and then to negotiate a fresh contract with the charterers at the greatly enhanced current rates, or, if the charterers were not prepared to agree, then to fix the vessel elsewhere at the market rate.
218/ (1978) 2 Lloyds Rep. 132-134.
219/ (1976) 1 Lloyd's Rep. 395.
220/ Ibid., p.401.

authority of the House of Lords, that the charterer must, at his peril, make payment of hire on the due date. Payment a day or two late - or a minute or two late - will not do. So the shipowner says to himself: "If only the charterer slips up and is the least little bit late, I shall be able to withdraw the vessel." Then by some mischance the charterer does slip up. It may be that the hire falls due on the Saturday or Sunday when the Banks areclosed. The charterer thinks that it will be sufficient if he pays on the Monday. But the shipowner says: "That won't do. You should have paid last Friday." He gives notice of withdrawal. Or the charterers' accountants or bankers in London may have got an hour too late in transmitting the hire to the bank in New York; or vice versa. All owing to the six hours' time difference. The shipowner, who has not suffered in the least bit, at once whips in a notice of withdrawal. The charterer is staggered. He has committed himself, right and left, on the basis that he will have the use of the vessel: but here he is, deprived of the use of it. He seeks to find a way of escape. Sometimes he challenges the time of payment. He says he remedied the breach in sufficient time. He relies upon a waiver or an estoppel. Only to find himself lost in a maze of technicalities, not only of law but also of banking practice. If he cannot escape from the grip of the shipowner, he may turn round on his bankers and say it was their fault. So the game goes on and on."

148. Thus, the clause being designed for completely different purposes "operates one way only, and then only on rising market. On a falling market, the charterers have nothing to fear. It is very seldom that one finds owners withdrawing when the market has fallen as a result of accident or mistake. The owners will usually only withdraw on a falling market where the charterers are unable or unwilling to pay". 221/ In The "Nanfri", the market having dropped dramatically, the owners made no attempt to determine the charter party in spite of the alleged unauthorized deductions made by the charterers from hire.

149. The wording of the withdrawal clauses in the Baltime and Linertime differ from that in the NYPE and Asbatime. The former charter parties contain an identical clause which reads: "In default of payment the owners to have the right of withdrawing...". The latter charter parties provide: ".. failing the punctual and regular payment of the hire, or bank guarantee or on any breach of this charter party, the owners shall be at liberty to withdraw the vessel...". The interpretation of these clauses has been subject to some controversy and confusion under English law. In the case of Empresa Cubana De Fletes v. Lagonisi Shipping Co. (The "Georgios C"), 222/ the question to be decided was whether the words "in default of payment", in the Baltime form, meant "if there has been default in payment", or "whilst there is default in payment", because the payment, although late, was made before the vessel was withdrawn. The Court of Appeal, affirming the decision of the first instance Court, held that the words meant "in default of payment and so long as default continues". Therefore, as the charterers had remedied their default by paying the instalment, the owners had no right to withdraw the vessel. In the Commercial Court, the Judge commented that if the owners wanted the right which they now contend, some such words as "in default of punctual payment" would have been more appropriate.

221/ Per Lloyd, J. in The "Afovos" (1980) 2 Llods's Rep. 469-479; (1982) 1 Lloyd's Rep. 262-263; See also The "Tropwind" (1982) 1 Lloyd's Rep. 232-234; further The "Rio Sun" (1981) 2 Lloyd's Rep. 489-495.

222/ (1971) 1 Lloyd's Rep. 7.

150. The decision in The "Georgios C" was followed in the case of The "Zographia M" 223/ in construing the words "in default of such payment" used in Shelltime form. It was decided that the charterer having paid the hire late, but before withdrawal the owners' right to terminate the charter party under the clause no longer subsisted, as the absence of payment had been cured by late payment. The words "in default of such payment" had been subject to interpretations previously in Tankexpress v. Compagnie Financière Belge des Pétroles 224/ in which the House of Lords held that the clause gave the owners a right to withdraw the vessel if payment was made late. It was stated that "default in payment, that is, on the due date, is not excused by accident or inadvertence. The duty to pay is unqualified so far as express terms of the charter party go". The adjectives "regular and punctual" was considered to add nothing to the stringency of simple and unqualified language in the charter party before the Court. 225/

151. The "Georgios C" was also followed by the Court of Appeal in The "Laconia", 226/ in construing the wording in the NYPE form (i.e. "failing the punctual and regular payment").

152. But when the interpretation of the clause in the NYPE form came before the Court in the case of The "Brimnes" 227/ the charterers contended, upon the authority of The "Georgios C" (as it was then a binding authority on the subject) that they had made payment before the withdrawal and that, according to the view expressed in the Tankexpress case, the words "regular and punctual payment" added nothing to the obligation to pay on the date specified. The Court of Appeal decided that the owners' right to withdraw under the clausesubsisted despite any late payment made after the due date but before withdrawal. The Court considered that while it could be said that a person who has paid late has remedied his failure to pay, it could not be said that he has remedied his failure to pay punctually. The adjectives "punctual" and "regular" added stringency so as to make distinction between the words used in The "Georgios C" (i.e. "default of payment" in the Baltime form).

153. The House of Lords, however, in The "Laconia" 228/ expressly overruled The "Georgios C" on the ground that the words "in default of payment" must relate to the obligation to pay monthly hire in advance which the withdrawal clause imposes. It is the failure to pay in advance which constitutes the default, and this cannot be cured by late payment, because the right to withdraw accrues to the owners by reason of the default, unless the owners waive their right by accepting the late payment or by having previously tolerated late payments.

154. In the case of The "Laconia" the vessel was chartered under the NYPE form. The relevant instalment of hire became due on Sunday, it was not paid until the following Monday, where about 3.15 p.m. the charterers' bank delivered "payment order" to the owners' bank. The owners withdrew the vessel at 6.55 p.m. on the same day. The House of Lords, reversing the decision of

223/ (1976) 2 Lloyd's Rep. 382.
224/ (1949) 82 Ll.L.R. 43.
225/ See ibid., at p.53.
226/ (1976) 1 Lloyd's Rep. 395.
227/ (1974) 2 Lloyd's Rep. 241; (1972) 2 Lloyd's Rep. 465.
228/ (1977) 1 Lloyd's Rep. 315.

the Court of Appeal, held that the withdrawal was effective. The provisions requiring "punctual payment" and payment "in advance" were interpreted very strictly. A payment one day late not being a payment in advance, there could be no difference in effect between the wording of the Baltime and that of the NYPE. Once the charterers failed to pay in advance, there was nothing they could do to remedy the breach.

155. In this context again there are differences between American and English law relating to the right to withdraw the vessel for late payment of hire, stemming mainly from the stricter interpretation of the withdrawal clause which appears to be adopted by the English Courts. In New York arbitrations it has been held in a number of cases that a late payment attributable to error on the part of a bank did not, if the charterers were not personally at fault, justify the shipowners in exercizing the right of withdrawal. 229/ The view has also been expressed in New York arbitration that the shipowners should not be entitled to exercise their right to withdraw unless they have previously given notice that it is their intention to do so. 230/ On the other hand, there have been arbitrations in which a withdrawal has been upheld in the absence of any prior notice. Generally, however, it seems that New York arbitrators take a more liberal approach to late payment of hire than do the English Courts. The fact that late payment of hire may have been due to negligence on the part of the bank is irrelevant under English law if the bank in question was the charterers' own bank or otherwise was to be regarded as the charterers' agent. 231/ In Scandinavian Trader Tanker Co. v. Flota Petrolera Ecuatoriana (The "Scaptrade"), 232/ it was confirmed by the House of Lords that under English law there was no scope for the exercise of equitable relief in cases of withdrawal under time charter parties. So in the sphere of payment of hire and withdrawal there are significant differences both of law and of emphasis between American and English law.

156. The NYPE and Asbatime forms have an additional ground upon which the vessel may be withdrawn. Clause 5 of these charters provide that the owners have liberty to withdraw not only on a failure of the punctual and regular payment of the hire but also "on any breach of this charter party". Differing views have been expressed upon whether the words are to be interpreted literally -so that the owners would be entitled to withdraw for even a minor breach of the charter party - or whether they are to be interpreted as being restricted to serious breaches of the charterparty only. 233/ And even though the House of Lords have indicated in a more recent case 234/ that only serious breaches justify withdrawal, undertainty still remains as to the circumstances in which the shipowner may withdraw the vessel under this provision.

157. A number of respondents to enquiries by the secretariat were critical of withdrawal clauses. It has been submitted by FONASBA that "none of the four

229/ See The "Pandora" (No.2)", S.M.A. No. 755-A (1973); The "Essi Gina", S.M.A. No.534 (Arb. at N.Y. 1970); and The "Meltemi", S.M.A. No.491 (Arb. at N.Y. 1970).

230/ See The "Noto", 1979 A.M.C. 116 (Arb. at N.Y. 1976).

231/ Afovos Shipping Co. v. R. Pagnan & F.Lli (The "Afovos") (1980) 2 Lloyd's Rep. 469; (1982) 1 Lloyd's Rep. 562; (1983) 1 Lloyd's Rep. 335.

232/ (1983) 2 Lloyd's Rep. 253.

233/ See Telfair Shipping Corporation v. Athos Shipping Co. S.A. (The "Athos") (1981) 2 Lloyd's Rep. 74; (1983) 1 Llod's Rep. 127.

234/ Antaios Compania Naviera S.A. v. Salen Rederierna A.B. (The "Antaios" No.2) (1984) 2 Lloyd's Rep. 235.

(charter parties) makes allowances for banking errors, nor do they require the owners to give notice of failure to receive hire prior to withdrawal. In the past, this has proved to have been an invitation for owners to "play games" on a technical default in an effort to undo a charter that subsequently has proven to be unfavourable due to market circumsrances. Any clause that can bring about the cancellation of the contract must be all embracing and scrupulously fair. After all it is designed to give protection to owners victimized by financially unsound or unscrupulous charterers but not scoop up as well unfortunate but bona fide solvent charterers, victims themselves of circumstances over which they exercise no control. As a result many of the above form charters have "ad hoc" anti-technicality clauses added in riders designed to put that matter right. Thus, the rigour of the withdrawal clause is sometimes ameliorated by additional "anti-technicality" clauses which require the shipowner to give notice before withdrawal, but these also have given rise to much dispute.

158. The wording of these clauses vary but for the most part they require the owners to give a notice to the charterers followed by a number of days of grace before they can withdraw the vessel. The language of the clause which came before the Court in the case of The "Libyaville" 235/ was not considered by the Judge as being elegantly drafted, who further commented that "apart from some possible difficulties arising therefrom, one can as a lawyer imagine circumstances occurring in which it might be difficult for the shipowners to know whether a failure to make punctual and regular payment fell within its provisions". 236/

159. Disputes have also arisen as to the timing and the wording of the notice to the charterers under an anti-technicality clause. In The "Afovos", 237/ the clause provided that "when hire is due and not received the owners before exercizing the option of withdrawing the vessel from the charter party, will give charterers forty-eight hours notice, Saturdays, Sundays and holidays excluded, and will not withdraw the vessel if the hire is paid within these 48 hours". The hire being due on June 14, was not paid and the owners at 16.40 hours on the same day sent a notice to the charterers, and not receiving the hire by 19.00 hours on June 18, they withdrew the vessel. The English Commercial Court Judge decided that under the clause notice may be given on the day hire is due. Therefore, the notice given on the 14th was a valid notice. The Court of Appeal, reversing the decision, held that the notice can only be given after the default under the withdrawal clause had occurred and the charterers were in breach of their obligation to pay hire under the charter party. The charterers had until theend of the due date, i.e. midnight on June 14, to make the payment and the notice could not be given in advance of midnight; therefore the owners were not entitled to withdraw the vessel. 238/

160. Furthermore, the notice under the anti-technicality clause, to be valid must make it clear the owners are giving a warning that if the correct hire is not paid within 48 hours' grace, they will withdraw the vessel. 239/

161. Thus, it is obvious from the above that payment of hire and withdrawal clauses have been in the past a source of a considerable number of disputes and in some areas resulted in conflicting decisions even within a single jurisdiction. Strict interpretation of these clauses has caused undue hardship on charterers in circumstances beyond their control. As a

235/ (1975) 1 Lloyd's Rep. 537.
236/ See ibid., Per Mr. Justice Mocatta, at p.554.
237/ (1980) 2 Lloyd's Rep. 469.
238/ See also The "Lutetian" (1982) 2 Lloyd's Rep. 140.
239/ See The "Rio Sun" (1981) 1 Lloyd's Rep. 404.

commentator put it "the current clauses, taken literally, may lead to a US$20 mistake or a 20 minutes delay on the part of the charterers giving the owners a windfall of millions". 240/

M. Off-hire clauses

162. The charterers' liability to pay hire under a time charter party is, in most legal systems, a continuous one and unless there is an express provision to the contrary hire is payable throughout the charter period even if the vessel is not in proper state to perform the services contracted for. 241/ The obligation to pay hire does not cease merely because the vessel, during the currency of the charter period, requires repairs, even if the owners expressly undertake to keep her in repair. 242/

163. Time charter parties, therefore, invariably contain off-hire clauses which provide for cessation of hire in certain specified events. The clause exempts the charterer from his continuous liability to pay hire provided that the incident causing delay comes clearly within the clause. The burden is on the charterer to prove that the clause operates and the event comes within one of the exceptions specified by the clause. 243/

164. Off-hire clauses vary in their terms. Clause 11(A) of Baltime provides:

> "In the event of dry-docking or other necessary measures to maintain the efficiency of the vessel, deficiency of men or owners' stores, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the vessel and continuing for more than twenty-four consecutive hours, no hire to be paid in respect of any time lost thereby during which the vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly. 244/

165. The Linertime contains, in clause 14, similar wording but also includes "strike of master, officers and crew" and that the 24 hour franchise provided by the Baltime is left blank for negotiation.

166. The NYPE covers "... deficiency of men or stores, fire, breakdown or damage to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, dry-docking... or any other cause preventing the full working of the vessel,... and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment..". 245/

167. While Baltime, which is considered as a pro-shipowner charter, provides for a very limited number of incidents as off-hire, the more modern types of the clause are very broad and cover a very wide range of events. 246/

240/ Per Gram, op.cit., p.67.

241/ Havelock v. Geddes (1809) 10 East 555; Ripley v. Scarife (1826) 5 B. & C. 167; Moorsom v. Greaves (1911) 2 Canap. 626.

242/ Ripley v. Scarife (1826) 5 B. & C. 167; Giertsen v. Turnbull (1908) S.C. 1101.

243/ The Royal Greek Government v. The Minister of Transport (1949) 1 K.B. 525-529; The Mareva A.S. (1977) 1 Lloyd's Rep. 368-381.

244/ Part (B) of the clause sets out circumstances in which the vessel is to be on hire notwithstanding that they may have been caused by the owners' negligence.

245/ Clause 15; see also clause 15 of Asbatime in which similar events are listed as off-hire.

246/ See clause 20 of Tankertime 80; clause 11 of STB Form of Tanker Time Charter; clause 23 of draft Fontime.

168. Off-hire clauses have given rise to a number of disputes and they have been subject to varying interpretations in various jurisdictions. "There is no question that off-hire clauses in time charters are a source of much confusion in the minds of commercial men as well as arbitrators, bench and bar". 247/ An English Commercial Court Judge commenting on the off-hire clause in the NYPE said: "This clause undoubtedly presents difficulties of construction and may well contain some tautology, e.g. in the reference to damage to hull, machinery or equipment followed by 'average accidents to a ship'". 248/

169. Some of the reasons for the difficulties caused in the application of off-hire clauses have been explained in the following terms:

> "While [the principle of the off-hire clause] is seemingly straightforward, in practice it has proved astonishingly difficult to apply. There are a number of reasons why this is so. To begin with the off-hire clause is triggered by events or conditions without regard to whether the causes arose from owners' negligence or other culpability. It is a "no-fault" provision. 249/ The clause stands alone in the charter party, unaffected by other provisions which cast liability on one party or the other; unaffected too, by exceptions or force majeure which relieve the parties from their obligations.
> "In practice, the application of particular off-hire clauses has led to such disturbing incidents as the vessel going off-hire but charterers' other obligations, such as payments for fuel and port services, continuing throughout the off-hire period. 250/

247/ Cohen, M.M., "Confusion in the drafting and application of off-hire clauses" a paper delivered at the FONASBA Seminar on "Time Charter: Why the confusion ?" op.cit., p.1.

248/ Per Kerr J. in The Mareva A.S. (1977) 1 Lloyd's Rep. 368.

249/ There are, however, some English authorities which support the view that the charterers may not be entitled to put the vessel off-hire if the event giving rise to the lose of time has been caused by their breach of contract: see Fraser v. Bee (1900) 17 T.L.R. 101; Board of Trade v. Temperly SS. Co. (1927) 17 Ll.L.R.230; Nourse v. Elder, Dempster (1922) 13 Ll. L.R. 197. Some tanker time charter forms provide that the off-hire incident must be "not caused by the fault of the charterer". See STB form clause 11(a); see also Linertime, clause 14(A) which provide breakdown of winches "not caused by carelessness of shore labourers".

250/ In the absence of an express stipulation to the contrary, under English Law (see Giertsen v. Turnbull (1908) S.C.1101-1111; Vogemann v. Zanzibar (1902) 6 Com.Cas. 253-255; Arild v. Societe de Navigation (1923) 2 K.B. 141) and under American Law (see Northern S.S. Co. v. Earn Line, 175 F. 529 (2d Cir. 1910); Norwegian Shipping & Trade Mission v. Nitrate Corp. of Chile Ltd., 1942 A.M.C. 1523 (Arb. at N.Y. 1942), the charterer's other obligation under the charter party will continue even during the period in which their liability to pay hire has ceased by the operation of off-hire clause. As it was commented (P. Gram, op.cit., p.7): "it seems strange that the shipowner can burn the time charterer's bunkers to bring the ship to a repair yard - but that seems to be the law". Then clause 5 of the Linertime expressly states that "whilst on hire the charterers to provide and pay for all fuel...". (See also clause 20 of the NYPE.)

"...Where there are multiple causes for the delay, the typical off-hire clause is troublesome because it is a black and white affair - either the vessel is off-hire, or it is not. While some recent time charters make occasional provisions for pro rata off-hire, none makes any provisions for proportional off-hire to be determined by attributing some of the delay for owner's account and the balance for charterer's account.

"A major source of unhappiness with the off-hire clause occurs when charterers seek to recoup off-hire as deductions against future advance hire payment...". 251/

170. The author concluded that "the off-hire clauses in both of the most commonly used time charter forms, namely Baltime and NYPE, which have not been revised for more than a quarter century, are inadequate". He, therefore, suggested: "The best we can do is to learn from history and try to draft new terms so as to prevent a recurrence of unpleasantness which a particular off-hire incident may have caused".

171. Further difficulties arise from unclear wording and varying interpretations of off-hire events. The expression "deficiency of men", used in the Baltime, NYPE and Linertime, has been construed by English Courts to cover only numerical deficiency and not unwillingness or physical inability of the crew to work. Thus, during the second world war, where the crew refused to sail, except in a convoy, the Court of Appeal held that there was no "deficiency of men" within the meaning of the clause, as the phrase dealt with a deficiency in the full complement and not with the unwillingness of a full complement to work. 252/ This has been considered as "one of the more shockingly literal constructions presented by an English Judge". 253/ The American cases, on the other hand, have decided that the incapacity of a full complement of crew to work to fall within the meaning of the phrase "deficiency of men". 254/ To avoid the difficulty the Asbatime provides for "deficiency and/or default of officers and crew".

172. Baltime and Linertime list "deficiency of men or owners' stores" as off-hire events, and NYPE provides for "deficiency of men or stores". The wording in Asbatime is "deficiency of store". It is not, however, clear as to what comes within the meaning of the term "stores", but it has been decided that it did not include ammunition. 255/

173. Regarding "breakdown of machinery" which is enumerated by all four charter parties as an off-hire event, it has been decided that 'breakdown' occurs when it becomes reasonably necessary for the vessel to go to a port of refuge for repair; and mere existence of a defect in "machinery" does not amount to breakdown of machinery so as to entitle the charterer to put the vessel off-hire. 256/ It is not, however, necessary that the vessel must be detained for the purpose of repair. It is sufficient if breakdown interrupts the working of the vessel. 257/

251/ Cohen, M.M., Confusion in the drafting and application of off-hire clauses, op.cit., pp. 1-3.
252/ See The Royal Greek Government v. The Minister of Transport (1949) K.B. 525.
253/ P. Gram, op.cit. p.70.
254/ See The Robertina, S.M.A. No.1151 (Arb. at N.Y. 1977); Clyde Commercial S.S. Co. v. West India S.S. Co., 169 F. 275 (2d Cir. 1909).
255 See Radcliffe v. Compagnie Generale (1918), 24 Com.Cas. 40.
256/ See Giertsen v. Turnbull (1908) S.C.1101.
257/ The "Teno" (1977) 2 Lloyd's Rep. 289.

174. "Collision" in the context of off-hire clause has been construed to mean collision with another vessel or boat or other navigable object, 258/ even though it occurred before the date of the charter party, provided that the damage is discovered after the vessel comes on hire. 259/

175. NYPE and Asbatime specify "detention by average accidents to ship or cargo" as an off-hire event. According to the decision in the English case of The "Mareva A.S." 260/ the term 'detention' does not merely mean delay, but "is intended to refer to some physical or geographical constraint upon the vessel's movements in relation to her services". And an "average accident" does not mean general average accident, it merely means an accident which causes damage. But according to the American case of Barker v. Moore & McCormack Co. 261/ an "average accident" occurs when there is an unexpected functional impairment of the vessel which prevents her full use. 262/

176. Baltime and Linertime use the general words "or other accident either hindering or preventing the working of the vessel". The words "other accident" are not, under English law, construed with reference to the preceding words upon the ejusdem generis doctrine. 263/ In the case of Magnhild v. McIntyre, 264/ it was decided the words "or other accident "were not subject to the ejusdem generis rule,as no common genus of the specific words could be established. 265/ The words "other accident", however, are limited by the phrase "hindering or preventing the working of the vessel". Thus, if upon an 'accident' such as grounding, the vessel is able to perform services required after being refloated, the claim to put the vessel off-hire will fail. 266/

177. The general words in NYPE are somewhat different from those in Baltime. They read: "... or any other cause preventing the full working of the vessel". It is not, however, clear whether the words "or any other cause" should be construed in the same way as "or other accident", or whether they should be subject to the ejusdem generis rule. There are some cases which presume that the rule would apply to the words "or any other cause". 267/ It has been suggested that "it is not appropriate to seek to restrict the words "any other cause" by invoking the ejusdem generis rule. And even if, contrary to the suggestion, an attempt were to be made to apply the rule... such attempt might fail for want of a genus covering the causes previously enumerated". 268/ The American cases, on the other hand, follow the ejusdem generis rule of construction in interpreting this provision. 269/ The Asbatime, however, clarifies the issue by using the words " ... or any other similar cause preventing the full working of the vessel."

258/ Hough v. Head (1885) 54 L.J.Q.B. 294, 55 L.J.Q.B. 43.
259/ The Essen Envoy (1929) 35 Com. Cas. 61.
260/ (1977) Lloyd's Rep. 368-382.
261/ 1930 40 F.2d 410, 1930 A.M.C. 779 (2d Cir.).
262/ Wilford..., Time Charters, op.cit., p.314.
263/ The ejusdem generis rule is a rule of construction to restrict the wide meaning of general words to the same genus as the specific words that precede them.
264/ (1920) 3 K.B. 321, (1921) 2 K.B. 97-107.
265/ See also The "Apollonius" (1978) 1 Lloyd's Rep. 53-65.
266/ Court Line v. Finchnet (The Jevington Court) (1966) 1 Lloyd's Rep. 683.
267/ See Adelaid S.S. Co. v. The King (1923) 20 Com.Cas.165; The "Apollo" (1978) 1 Lloyd's Rep. 200; for the opposite view, see Court Line v. Dant & Russell (1939) 44 Com.Cas. 345.
268/ Wilford..., Time Charters, op.cit., p.306.
269/ Ibid., p.262; Edison S.S. Corp. v. Eastern Minerals 167 F. Supp.601-605 (D.Mass.1958).

178. The words "any other cause", like "or other accident" will only have effect if the full working of the vessel is prevented. 270/ And according to the English case of The "Rijn" 271/ an unexpected and accidental element is required if the words are to apply. In this case, the vessel having been chartered under the NYPE form, was employed by the charterers in tropical waters which caused considerable fouling of her hull, by marine growth, and as this affected her speed, the charterers claimed to put the vessel off-hire during the time lost in consequence. Mr. Justice Mustill rejected the claim stating that: "the draftsman cannot possibly have intended that hire should cease in every circumstance where the full working of the vessel is prevented. This reading would be commercial nonsense, and would make the second half of the clause redundant. In my judgment only those causes qualify for consideration which are fortuitous, and not the natural result of the ship complying with the charterer's orders". 272/

179. Mere occurrence of an incident within the off-hire clause will not entitle the charterers to a ceaser of hire if the vessel was capable of performing the service immediately required of her and no time is lost in consequence. 273/ The manner in which the loss of time is calculated depends upon the wording of the clause and whether the clause falls within the category of what is called "period" clauses, or "net loss of time" clauses. 274/ The "period" clauses are those which provide for cessor of hire upon the occurrence of an event, and the off-hire period having so started continues until it ends on occurrence of another event. 275/ Off-hire clauses contained in the NYPE, Asbatime, Baltime and Linertime fall within the category of "net loss of time" clauses. 276/ The clause in the NYPE provides that "the payment of hire shall cease for the time thereby lost;... the time so lost... shall be deducted from the hire". Asbatime contains a similar wording. Baltime and Linertime contain identical provisions in this respect and they provide: "... no hire to be paid in respect of any time lost thereby during the period in which the vessel is unable to perform the services immediately required".

180. Thus, under "net loss of time" clauses, in case of partial inefficiency, the hire is only reduced if time is actually lost in consequence of such inefficiency; 277/ but under a "period" clause the vessel is put off hire, in case of partial inefficiency until she is again in an efficient state to resume the service. 278/

181. When a vessel becomes inefficient from one of the stipulated causes while she is at sea the question arises whether the calculation of the net loss of time ceases when the vessel once again becomes efficient or only when she regains the position at sea where she became inefficient (or some equivalent position). While Linertime expressly provides for the off-hire period to

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270/ See the "Mareva A.S." (1967) 1 Lloyd's Rep. 368-382.
271/ (1981) 2 Lloyd's Rep. 267.
272/ Ibid. p.272.
273/ Hogarth v. Miller (1981) A.C. 48.
274/ See The Pythia" (1982) 2 Lloyd's Rep. 160-168.
275/ H.R. Macmillan (1973) 1 Lloyd's Rep. 27-32; examples of such clauses can be found in Tynedale S.S. Co. v. Anglo-Soviet Shipping Co. (1936) 41 Com. Cas. 206; and Hogarth v. Miller (1891) A.C. 48. In the former case the clause provided for "... hire to cease from commencement of such loss of time until steamer is again in efficient state to resume services".
276/ As to the clause in the NYPE, see The "Pythia" (1982) 2 Lloyd's Rep.160; H.R. Macmillan (1974) 1 Lloyd's Rep. 311-314.
277/ See The "Pythia" (1982) 2 Lloyd's Rep. 160-168; H.R. Macmillan (1974) 1 Lloyd's Rep. 311-314.
278/ Hogarth v. Miller (1891) A.C. 48; Tynedale v. Anglo-Soviet Shipping Co. (1936) 41 Com.Cas. 206.

continue "until she is again in the same or equidistant position from the destination and the voyage is resumed therefrom", 279/ NYPE and Baltime are silent on this matter.

182. According to the panel of arbitrators in The "Chris", 280/ the construction of clause 15 of the NYPE which is universally followed in New York is that the off-hire period continues beyond the time when the vessel is again restored to physical efficiency to the time when she reaches the position at which hire was originally suspended. 281/ The English Courts however have construed clause 15 differently. In construing a similar clause to clause 15 of the NYPE in Vogemann v. Zanzibar S.S. Co. 282/ the Court of Appeal said:

> "When the accident ceased to prevent the full working of the vessel, the hire became again payable. This is the natural construction of the clause, and any other construction would involve intricate calculations as to the time which had been lost."

183. In Eastern Mediterranean Maritime v. Unimarine S.A. (The "Marika M"), 283/ it was held that the construction adopted in Vogemann v. Zanzibar S.S. Co. was applicable also to the off-hire clause in the NYPE and a similar conclusion was reached in Western Sealanes Corporation v. Unimarine S.A. 284/

184. Thus, where the vessel departs from her normal course of the voyage in order to go to a port of refuge for repairs, according to the construction of the off-hire clause of the NYPE by the English Courts, the hire becomes payable again as soon as the vessel is repaired and ready for the service; while according to American cases the off-hire period continues until the vessel returns to the position at which hire was suspended.

N. Domestic fuel clauses

185. The NYPE is the only one of the four charters to provide that fuel used for crew purposes is to be paid for by the shipowners. The Baltime contains no qualification to the charterers' obligation to pay for "all fuel". The only reservation in the Linertime (which is often inserted by additional wording in the Baltime) is that the charterers shall pay for fuel only "whilst on hire". However, clause 20 of the NYPE calls for "Fuel used by the vessel whilst off-hire, also for cooking, condensing water, or for grates and stoves to be agreed as to quantity, and the costs of replacing same to be allowed by owners." New York arbitrators have interpreted this provision as restricting the shipowners' responsibility for fuel costs to the cost of fuel for cookingand domestic heating. 285/ The English Court of Appeal on the other handhas decided that this outdated wording should be interpreted liberally in the light of today's conditions and should be construed as meaning that all domestic fuel costs, whether for cooking, heating or otherwise - and air-conditioning was a particular point in issue - should be for the shipowners' account. The interpretation of the clause had been the subject of

279/ Clause 14(A); see also clause 15 of the Asbatime and clause 24 of draft Fontime which contain similar provision.
280/ S.M.A. No. 199 (Arb. at N.Y. 1958).
281/ See also The "Grace V", S.M.A. No. 1760 and The "Chrysanthi G.L.", S.M.A. No. 1417 (Arb. at N.Y. 1980).
282/ (1902) 2 Com.Cas. 254.
283/ (1981) 2 Lloyd's Rep. 622.
284/ (1982) 2 Lloyd's Rep. 160.
285/ The "Ming Autumn" S.M.A. No. 2189 (Arb. at N.Y. 1986).

differing views in England for a number of years. In the case in question (Summit Investment Inc. v. British Steel Corporation (The "Sounion", 286/ a panel a three arbitrators had disagreed, a majority preferring a liberal constructiion. The Court of first instance, on appeal, had preferred the stricter interpretation of the minority arbitrator. The Court of Appeal restored the majority view, emphazing the problems which result from failure to discard or revise outdated wording. 287/

186. The Asbatime 1981 revision of the NYPE does not refer to "grates and stoves", but merely states, in clause 2, that "the charterers, while the vessel is on hire, shall provide and pay for all the fuel axcept as otherwise agreed". As it has been pointed out, "the new drafting is hardly more satisfactory, however, the charterers agreeing to provide all fuel "except as otherwise agreed": one would have thought that the whole point of a standard form was to make one-off agreements over details unnecessary". 288/

O. Re-delivery clauses

187. Time charter parties usually contain provisions setting out conditions for re-delivery of the vessel at the end of the charter period. The NYPE and Asbatime, in clause 4, provide for the "... hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the owners..." The Baltime, in clause 7, and Linertime, in clause 8, require that "the vessel to be re-delivered on the expiration of the charter in the same good order as when delivered to the charterers (fair wear and tear accepted)... should the vessel be ordered on a voyage by which the charter period may be exceeded the charterers to have the use of the vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow re-delivery about the time fixed for the termination of the charter, but for any time exceeding the termination date the charterers to pay the market rate if higher than the rate stipulated herein".

188. Under all four charter parties, the charterers are obliged to re-deliver the vessel in the same good order and condition, except for ordinary wear and tear. A question which arises in relation to this obligation of the charterers is the type of damages for which the charterers are liable if the vessel is re-delivered in a damaged condition. The wording of the re-delivery clauses may be interpreted as placing an obligation upon the charterer to pay for all damages, whether or not the damage is caused by a breach of an obligation under the charter party, unless the damage is considered as an "ordinary wear and tear". The clause, therefore, seems inconsistent with the owners' undertaking to maintain the vessel in a thoroughly efficient state, 289/ unless it is so construed as to apply only to damages caused by matters for which the charterers are responsible. 290/ Under maintenance clauses the owners are obliged to repair damages which occur during the charter period, charterers being liable to pay for the cost of repair of damages caused by a breach of an obligation under the charter party. "It seems illogical that the charterers should only have to bear the cost of repairs effected during the currency of the charter if the damage was caused

286/ (1987) 1 Lloyd's Rep. 230.
287/ For the comments which appeared in the leading judgement concerning clause 20, see para.... of this report.
288/ P. Todd, op.cit. p.129.
289/ See Clause 1 of the NYPE and Asbatime; Clause 3 of Baltime and Clause 4 of Linertime.
290/ See Per Scrutton, L.J. in Limerick v. Stott (1921) 2 K.B.613-621; Carver, op.cit., para.697; Wilford..., Time Charters, op.cit., pp.188-189.

by them, but should have to bear the cost of all residual damage at the end of the charter, whether caused by them or not. Yet this would be the position if the charterer's re-delivery obligation were to be construed strictly". 291/

189. The re-delivery clauses have been interpreted under English law as entitling the charterer to make a valid re-delivery of the vessel in a damaged state at the end of the charter period, even if the damage has been caused due to the charterer's breach of an obligation under the charter party. The hire ceases to be payable subject to the charterer's liability to pay for damages. 292/ Under American law, on the other hand, the clause seems to have been construed as entitling the owners to hire during the time the vessel was being cleaned, 293/ or fumigated 294/ in order to be re-delivered in like good order and condition as upon delivery.

190. A further question which arises in relation to re-delivery clauses is whether, if the vessel is re-delivered after the expiration of the charter period, the hire is payable at the stipulated rate until the date of actual re-delivery or, the market rates having gone up, at the charter rate until the end of the charter period and thereafter at the market rate until the date of re-delivery? While the NYPE and Asbatime only provide for payment of hire at the charter rate, until the hour of the day of re-delivery, the Baltime and Linertime contain an additional provision allowing the charterer to complete a last voyage provided that the voyage permits re-delivery about the time fixed for the termination of the charter, but for any time exceeding the termination date the market rate is payable if higher than the stipulated rate.

191. The question as to when the charter period terminates depends upon the terms of the charter party. When a charter party is for a stated period, such as "six months" without any express margin or allowance, the Courts in England 295/ and America 296/ and most other jurisdictions will imply a reasonable margin, since it is not possible to calculate exactly the date on which the last voyage will end. It is therefore legitimate for the charterer to send the vessel on a last voyage which may exceed the stated period by a short time. If on the other hand, the charter party provides, by express words or by implication, that there is to be no margin or allowance, the charterer must ensure that the vessel is re-delivered within the stated period. 297/ The charter party may expressly provide what the margin or allowance shall be, such as "six months 20 days more or less". In such a case also the charterer must ensure that the vessel is re-delivered within the permitted margin. 298/

192. Thus, if the vessel is sent on a legitimate last voyage, that is a voyage which could reasonably be expected to be completed by the end of the charter period, and if "the vessel is afterwards delayed by matters for which neither party is responsible, the charter is presumed to continue in operation until the end of that voyage, even though it extends beyond the charter period. The hire is payable at the charter until redelivery, even though the market rate

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291/ Wilford..., Time Charters, op.cit., pp.188-189.
292/ Wye Shipping v. Compagnie du Chemin de Fer Paris-Orleans (1922) 1 K.B. 617.
293/ The Jaramar, (1969) A.M.C. 354 (Arb. at N.Y. 1969).
294/ The Ellen Lautschke, S.M.A. No.362 (Arb. at N.Y., 1965).
295/ See Gray v. Christie (1889) ST.L.R. 577.
296/ Straits of Dover SS.Co. v. Munson, 95 F. 690 (S.D. N.Y. 1899), 100 F.1055 (2nd Cir. 1900).
297/ Watson v. Merryweather (1913) 18 Com.Cas. 294.
298/ The "Dione" (1975) 1 Lloyd's Rep.115.

may have gone up or down". 299/ If, on the other hand, the charterer sends the vessel on an illegitimate last voyage, that is a voyage which cannot be expected to be completed within the charter period, then the owner may refuse the order and require a new order for a legitimate last voyage. If the charterer refuses to give it, the owner can accept his conduct as a breach going to the root of the contract, fix a fresh charter for the vessel, and sue for damages. If the owner accepts the direction and goes on the illegitimate last voyage, he is entitled to be paid at the charter rate up to the end of the charter period, and the market rate for the excess period if the market rate has risen above the charter rate. 300/

193. While NYPE and Asbatime contain no specific provision dealing with the last voyage, the Baltime and Linertime allow the charterers to complete the voyage, but to pay the market rate, if higher than the charter rates, for anytime exceeding the termination date of the charter party. 301/ The interpretation and application of the provision in the Baltime and Linertime does not appear to have been settled. In the case of The "Johnny", 302/ Mr. Justice Donaldson stated that the clause was introduced in order to avoid the disputes as to whether the last voyage is legitimate or as to the tolerance involved. But in the Court of Appeal, Lord Denning, M.R., in his dissenting judgment, considered the clause only to apply to the last legitimate voyage. The clause, he said, "only applies to a short extension. The charterer is allowed to order the vessel on a last voyage if it can be reasonably calculated that it will allow re-delivery 'about' the end of the (charter period). I should think 'about' would be only two or three days. But he is not allowed to order the vessel on a last voyage if it is likely to be late by more than two or three days". 303/

194. In the case of Hector SS.Co v. Sovfracht 304/ on the other hand, the provision in Baltime and Linertime was held not to have any application to a legitimate last voyage. In this case, the proviso to the last paragraph of the clause in the Baltime form was deleted so that it read:

> "Should steamer be ordered on a voyage by which the charter period will be exceeded charterers to have the use of the steamer to complete the voyage but for any time exceeding termination date charterers to pay market rate if higher than rate stipulated therein".

195. Atkinson, J. held that the clause was "dealing only with something which is ex necessitate a breach, namely an ordering of a voyage which the charterers have no right to order". Therefore, as the vessel was found to have been sent on a voyage which it was reasonably expected to be completed within the charter period, but owing to circumstances for which the charterers were found not to be responsible, the vessel was re-delivered long after the expiration of the charter period, it was held that the charterers were not in breach of the charter party in ordering the vessel on such a voyage. Thus, the clause did not apply and the charterers were only liable to pay the contractual rate of hire until the re-delivery of the vessel and not the higher market rate for the excess period.

299/ Per Lord Denning, M.R., in The "Dione" (1975) 1 Lloyd's Rep. 115-117.
300/ See ibid., at p.118.
301/ See para.187 of this report.
302/ (1977) 1 Lloyd's Rep. 257-260.
303/ (1977) 2 Lloyd's Rep. 1-2.
304/ (1945) 1 K.B. 343.

P. Lien clauses

196. The time charter parties usually contain a lien clause giving the shipowner the right to detain the cargo and sub-freight for any amount due under the charter which has remained unpaid. Clause 18 of the Baltime and clause 20 of the Linertime provide that "the owners to have a lien upon all cargoes and sub-freights belonging to the time charterers and any bill of lading freight for all claims under this charter...". Clause 18 of the NYPE and Asbatime state "that the owners shall have a lien upon all cargoes, and all sub-freights for any amounts ude under this charter, including general average contributions,...".

197. The lien clauses in the charter parties have been the subject of both criticism and dispute. Clause 18 of the NYPE is said to be "an awkward clause: it does not actually express a lien upon hire at all, though hire, it may be assumed, is covered by the words 'any amounts due under the charter'". 305/ It is further considered that such a "lien does not give very good security for freight and much less for hire. This is so because bills of lading are regularly issued and negotiated, and the time charter hire is never annotated on the bills of lading. The holder of the bill is to have the goods against paying no more than shown on the bills, if he was in good faith when he acquired the bills. The promise to deliver the goods is never subject to hire payment being up to date. Therefore, the lien for hire is not effective unless the time charterer owns the goods". 306/

198. While the clause in the Baltime and Linertime clearly confines the owners' right of lien only on those cargoes belonging to the charterers, the NYPE and Asbatime give the owners a lien upon "all cargoes" without any limitation. The owners' lien being of contractual nature, the question is whether, in the absence of a provision in the bill of lading incorporating the lien clause of the charter party into the bill of lading, it can be exercized against the holders of the bill of lading who are not parties to the charter parties, and whether the owners can, as against the charterers, exercize a lien over the cargo which does not belong to the charterers. In other words, whether the words "all cargoes" in Clause 18 of the NYPE and Asbatime mean all cargoes belonging to the charterer or all cargoes put on board the vessel whether by the charterers or other persons not parties to the charter party. There are conflicting decisions on the subject under English law.

199. In the case of The "Agios Giorgis" 307/ the vessel having been chartererd under the NYPE form, the charterer in making monthly payment of hire deducted a sum in respect of breach of speed warranty. The cargo, upon the instructions of the owners, was detained against the cargo owners who were not parties to the charter party. Mr. Justice Mocatta held that the owners could not rely upon Clause 18 because the cargo was not that of the charterer; he stated:

> "The difficulty as I see it in the way of the owners is that they are relying upon a contractual lien, not given at common law, as against the cargo owners, who were not parties to the time charter. I was reminded that in the Baltime form of time charter, there is a qualification in relation to the lien to the effect that the shipowner is only vested with it over cargo belonging to the time charterer. Notwithstanding the omission of the qualification here, I am unable to see how clause 18 can give the owners the right to detain the cargo not belonging to the

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305/ Carver, op.cit., para.2017.
306/ P. Gram, op.cit., p.68.
307/(1976) 2 Lloyd's Rep.192.

charterers and on which no freight was owing to the owners. There is no finding that the bills of lading contained any clause rendering the cargo shipped under them subject to this charter party lien". 308/

200. But, in The "Aegnoussiotis" 309/ Mr. Justice Donaldson came to a different conclusion. He said:

"Clause 18 is to be construed as meaning that it says, namely, that the time charterers agree that the owners shall have a lien upon all cargoes. In so far as such cargoes are owned by third parties, the time charterers accept an obligation to procure the creation of a contractual lien in favour of the owners. If they do not do so and the owners assert a lien over such cargo, the third parties have a cause of action against the owners. But the time charterers themselves are in a different position; they can not assert and take advantage of their own breach of contract. As against them, the purported exercize of lien is valid".

201. Under American law on the other hand, the owners have been held to have a lien on the cargo for hire due under the charter party provided that cargo belongs to the charterer and not to a third party. 310/

202. The clause in all four charter parties also gives the owners a "lien" over "sub-freights". Such a lien is required in order to give the owners a lien in those cases where the sub-freight is due to the charterers and not to the owners. A lien on a "sub-freight" is not strictly speaking a lien but it is considered "a right to receive it as freight, and to stop that freight at any time before it has been paid to the charterers or his agent; but such a lien does not confer the right to follow the money paid for freight into the pockets of the person receiving it simply because that money has been received in respect of a debt which was due for freight". 311/

203. A further question which arises is whether the term "sub-freight" include sub-time charter hire. It was held in Care Shipping Corp. v. Latin American Shipping Corp. (The Cebu) 312/ that sub-freights included any remuneration earned by the charterers from employment of the vessel whether by way of voyage freight or sub-time charter hire, but in The Cebu No.2, 313/ another judge declined to follow the holding in The Cebu No.1 that "sub-freight" included sub-time charter hire.

204. The clause in Baltime and Linertime also expressly grants owners a lien upon "any bill of lading freight". The need for such a provision may be questioned since the term "sub-freight" would also cover "bills of lading freight". Furthermore, where the owners are parties to the contract contained in bills of lading, they are entitled to receive the bill of lading freight without having to rely on a right of lien. "It seems a misuse of words to say that a shipowner has a lien on the debt due to him under the contract made with him by a bill of lading. The lien clause in the charter party is needed to give the owner a lien in those cases where the sub-freight is due to the

308/ Ibid., at p.204; see further The "Chrysovalandou Dyo" (1981) 1 Lloyd's Rep.159, in which the bills of lading incorporated the terms and conditions of the charter party. and it was held that the owners were entitled to exercize the lien.

309/ (1977) 1 Lloyd's Rep.268-276.

310/ Goodpasture Inc. v. M.V.Pollux, 602 F. 2d 84, 1979, A.M.C. 2515; 606 F.2d 321 (5th Cir.1979); see also Wilford..., Time Charters, op.cit, pp. 407-408.

311/ Taqart, Beaton v. Fisher (1903) 1 K.B. 391-395.

312/ (1983) 1 Lloyds' Rep.302.

313/ Lloyd's Maritime Newsletter, 21 April 1990.

charterer and not to the owner". 314/ Thus, in such cases the owner being a party to the bill of lading contract is entitled to claim the freight from the consignees and to retain the cargo until the bill of lading freight is paid. Where the bill of lading freight is already paid to the ship's agent, he may claim the freight in the hands of the agent. 315/ If the bill of ladingfreight is to be collected by the charterers' agent, then he may intervene, at any time before receipt of the freight by the agent, and by giving notice to the agent require that the bill of lading freight is to be collected on his behalf. 316/ In such cases the owners would be bound to account to the charterer for the surplus remaining in his hands after deducting the amount due under the charter party. 317/

205. The clause, however, entitles the owners to a lien for the amount of hire already accrued due at the time the lien is exercized. Therefore, there will be no right of lien for sums accruing due at the time the lien has been exercized, although at the time they become due the freight collected is still in the hand of the owner or his agent. 318/

206. All four charter parties give the charterer "a lien on the vessel for all monies paid in advance and not earned". The meaning and effect of this so-called lien is not very clear. As has been commented "this may seem pleasant reading for charterer, but it is without any real importance. The ship is not in the charterers' possession so they cannot stop her, except by arrest for their claims. But this they can always do". 319/ These words were interpreted in an English case 320/ as entitling the charterer "to postpone delivery of the ship until the unearned payments were repaid". The difficulty arising from this interpretation was pointed out in a subsequent case that, if the charterers postponed redelivery of the vessel for the purpose of exercizing their lien, they would be under a continuing liability for further hire. 321/ And in the more recent case, it was stated that the charterers could redeliver the ship and then restrain the owners from resuming control over the use of the vessel presumably by injunction. 322/

314/ Per Greer, J. in Molthes Rederi v. Ellerman's Wilson Line (1926) 26 Ll.L.Rep. 259-262; Wilford..., Time Charters, op.cit., p.399.
315/ Wehner v. Dene (1905) 2 K.B. 92.
316/ Molthes Rederi v. Ellerman's Wilson Line (1927) 1 K.B.710.
317/ Wehner v. Dene (1905) 2 K.B.92.
318/ Wehner v. Dene (1905) 2 K.B.92; Samuel v. West Hartlepool (1906) 11 Com.Cas.115, (1907) 12 Com.Cas.203; Carver, op.cit., para.2013.
319/ P. Gram, op.cit., p.69.
320/ Tonnelier & Bolckow, Vaughan v. Smith (1897) 2 Com.Cas.258, Per Rigby, L.J.
321/ See per Lord Summer in French Marine v. Compagnie Napolitaine (1921) 2 A.C. 494-516.
322/ See Per Robert Goff, J. in The Lancaster (1980) 2 Lloyd's Rep. 497; Wilford..., Time Charters, op.cit., p.404.

Chapter III

ANALYSIS OF CERTAIN CLAUSES OF VOYAGE CHARTER PARTIES

207. This chapter reviews some of the principal clauses contained in voyage charter parties, including those specified in the request made at the fourth session of the Working Group on International Shipping Legislation (WGISL). 323/ As in the case of time charter parties, answers to the questionnaire circulated by the secretariat disclosed concern about clauses not specifically referred to in the WGISL's request and it seemed desirable that the study should also include comments on these clauses.

208. However, in a field in which there are probably in current use more than 50 standard voyage charter party forms approved by various organizations and where some of those charter forms extend to over 45 printed clauses (apart from added clauses which are often also very numerous) any preliminary analysis must of necessity be extremely selective.

209. The analysis is based on the most widely used general purpose dry cargo voyage charter, the Uniform General Charter (GENCON), and the more modern multi-putpose charter party form produced by FONASBA, i.e. the Multi-purpose Charter Party 1982, revised 1986, code name: "Multiform 1982" (revised 1986). References will be made to various commodity charter parties, including those standard forms used in tanker trade.

A. Laytime and demurrage clauses

210. Fundamental to the economic consequences of entering into a voyage charter party is the manner in which the charter party allocates risks of delay. Among the most prevalent of such risks is congestion at a loading or discharging port causing the vessel to wait until a berth falls vacant at which her cargo can be loaded or discharged.

211. Some modern Standard Form Charter Parties, e.g. the North-American Grain Charter party 1973 (revised 1989) code name: Norgrain 89, 324/ spell out with great particularity how such risks are allocated. The older forms, especially for dry cargoes include outdated and imprecise drafting give rise to frequent dispute.

212.There is a "wilderness of law upon the subject of demurrage". 325/ "Since the demurrage case almost invariably involves the question whether the stipulations of the charter have been transgressed, and since the bewildering variety of phraseology in the many charter forms now or formerly in use brings it about that no two cases are rarely exactly alike, it is quite impossible to systematize the holdings". 326/

213.The specialist works on the subject 327/ and the extensive commentaries in the more general works, 328/ all bear witness to the multiplicity of laytime and demurrage clauses and the frequency with which such clauses have been the

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323/ See para.2 of this report.
324/ See clauses 18, 19 and 20.
325/ Steamship Rutherglen Co. v. Howard Houlder & Partners, 203 F. 848-851 (2nd Cir. 1913).
326/ Gilmore & Black, The Law of Admiralty, 2nd edition, The Fondation Press, New York, 1975, p.213.
327/ Such as Davies on The Commencement of Laytime, Schofield on Laytime and Demurrage (1986), Summerskill on Laytime (1989), Tiberg on The Law of Demurrage (1979).
328/ Such as Scrutton on Charter parties, Carver on Carriage by Sea, Gilmore and Black on The Law of Admiralty and Benedict on Admiralty.

subject of dispute. As Lord Denning said in the case of Mosvolds Rederi A/S v. Food Corporation of India (The "King Theras"): 329/ "Life would be much easier if shipowners and charterers would (a) refrain from making sophisticated bargains about demurrage and (b) express their bargains more clearly".

214. The respondents to the secretariat's enquiry identified the laytime and demurrage clauses as giving rise to most disputes under voyage charter parties. Indeed, the complexities of laytime and demurrage led to the drafting of a set of definitions of the words and phrases most commonly used in charter parties in relation to laytime. They were entitled "Charter party Laytime Definitions 1980", and the work on them was initiated by the Comité Maritime International (CMI). These definitions were eventually issued jointly by the BIMCO, CMI, FONASBA and the General Council of British Shipping for voluntary incorporation into charter parties with a view to avoiding and conflicting interpretations of laytime clauses. But according to information obtained by the secretariat, these definitions are in practice little used.

215. Laytime is the time allocated to the charterer for the purpose of loading and discharging the cargo without additional payment. Where the charterer takes longer than the laytime allowed for loading or discharging, he may be liable, under the charter party, to pay demurrage which is, on the English Law approach, liquidated (i.e. agreed) damages for delay beyond laytime. If, on the other hand, the charterer completes loading or discharging in less than the permitted laytime, he will usually be entitled, if the charter party so provides, to receive dispatch money. 330/

1. Commencement of laytime

216. The conditions required for the commencement of laytime will depend upon the provisions of each charter party, but in general the following conditions must be fulfilled:
- the vessel must have arrived at a place agreed in the charter party, when she is considered as an "arrived ship"; and
- the shipowner must have given notice of the ship's arrival and of her readiness to load or to discharge. 331/

"Arrived Ship"

217. The question as to whether or not a ship is an "arrived ship" depends on whether a charter party is a berth charter (that is a charter which specifies a berth as 'destination', or a berth is to be specified later by the charterer) or a port charter (that is a charter which requires the vessel, to proceed to a named port, or a port is to be named by the charterer at a later stage). In a berth charter party, a ship does not become an "arrived ship" unless she is at the particular berth, and therefore laytime begins to run once she is ready to load and a valid notice of readiness is given to the charterer according to the provisions of the charter party. 332/ Thus, under a berth charter party any time lost before the vessel can get to the berth where loading or discharging can be done falls upon the owners unless there is express provision to the contrary. On the other hand, once a ship arrives at the port under a port charter party, any subsequent delay in berthing would normally be for the account of the charterers.

329/ (1984) 1 Lloyd's Rep. 1.
330/ See Scrutton, op.cit., p.305.
331/ Notice of readiness to discharge is not required in certain legal systems, including English Law.
332/ North River Freighters Ltd. v. President of India (1956) 1 Q.B. 333-348.

218.The question whether the vessel has "arrived" so that she can give a valid notice of readiness is of vital importance. Yet the Court and arbitration tribunals of different countries appear to have reached different conclusions on the question whether a vessel has "arrived" in circumstances which are a matter of everyday occurrence. While determining whether a ship has become an "arrived ship" under a "berth" charter party is relatively straightforward, the question is more complex with regard to "port" charter party. The question to what constitutes a port for the purpose of laytime clauses has given rise to considerable difficulties. The earliest English cases on the question go back over one hundred years. It was thought that a decision of the Court of Appeal in 1908, Leonis Steamship Co.Limited v. Rank Limited 333/ had provided an authoritative answer, but changes in commercial practice, not matched by changes in the standard form charter parties, produced a spate of decisions on the subject in the years between 1957 and 1977, including three cases which reached the House of Lord: Sociedad Financiera de Bienes Raices S.A. v. Agrimpex Hungarian Trading Co. (The "Aello"), 334/ E.L. Oldendorff v. Tradax Export S.A. (The "Johanna Oldendorff"), 335/and Federal Commerce & Navigation Co. Limited v. Tradax Export S.A. (The "Maratha Envoy"). 336/

219.The case of Leonis S.S. Co. v. Rank Ltd established that where the agreed destination was a port only, without further limitation, the ship is an "arrived ship" when she is within the commercial area of the port, and at the disposition of the charterers, even though she may not be in a position to load or discharge cargo at the place she has reached. In the case of The Aello, on the other hand, the House of Lords construed the "commercial area" of a port as "the area in which the actual loading spot is to be found and to which vessels seeking to load cargo of the relevant description usually go, and in which the business of loading such cargo is usually carried out".

220.The Aello was overruled by the House of Lords in The Johanna Oldendorff which held that for a ship to have arrived she must, if she can not proceed immediately to a berth, have reached a position within the port where she is at the immediate and effective disposition of the charterer. If she is at a place where waiting ships usually lie, she will be in such a position unless in some extraordinary circumstances proof of which would lie on the charterer. If the ship is waiting at some other place in the port, then it will be for the owner to prove that she is as fully at the disposition of the charterer as she would have been if in the vicinity of the berth for loading or discharging. 337/

221.However difficulties arise when, as is frequently the case, the vessel has to wait at the customary anchorage which is not within the legal, fiscal and administrative area of the port. This question arose in the case of The "Maratha Envoy". The Court of Appeal in holding that it was not necessary for the vessel to have arrived within the legal fiscal or administrative limits of the port relied upon the decision of New York arbitrators in Maritime Bulk Carriers v. Garnac Grain Co. 338/ In the New York case a ship with cargo for discharge at Rotterdam had anchored and given notice of readiness when she was within an area designated as "Recommended anchorage" for vessels awaiting entry to the port of Rotterdam. It was held by a majority of the arbitrators that the notice of readiness was valid.

333/ (1908) 1 K.B. 499.
334/ (1961) A.C. 135.
335/ (1974) A.C. 479.
336/ (1978) A.C.1.
337/ See per Lord Reid at p.291.
338/ 1975 A.M.C. 1826.

222.Lord Denning in the English Court of Appeal, in following the New York decision, said: "The merchants and shipping men on both sides of the Atlantic used the same standard forms of contract, and the same words and phrases. These should be interpreted in the same way in whichever place they come up for decision. No matter whether in London or New York, the result should be the same". However, the House of Lords in the "Maratha Envoy" reversed the decision of the Court of Appeal relying on the previous decision of the House of Lords in the "Johanna Oldendorff" which had included a finding that a vessel to be an "arrived ship" had to have reached a place "within the port". So the attempt to bring consistency to English and American law on this point failed. As stated by Benedict on Admiralty: 339/

> "American authorities have generally adopted a test of commercial good sense regarding the vessel's anchorage location; geographical considerations are only of minimal importance, and a vessel can be considered an "arrived" ship while sitting at a customary anchorage site outside the geographical and physical limits of the port, especially if the vessel's movements are still subject to some control by the local authorities as, e.g., through the assignment of berth rotation. Recent English authority, however, more deferential to precedent than practicality, insists that a vessel is not "arrived" if it drops anchor outside the designated port's legal fiscal and administrative limits."

223.So far as the civil law countries are concerned, it seems that the law of the Federal Republic of Germany is to the same effect as U.S. law on this point. 340/ Tiberg on The Law of the Demurrage 341/ cites early Swedish Supreme Court decisions to the effect that the vessel is to be regarded as "arrived" even if the port or dock authorities order her to wait outside the port or dock. He then continues: "Owing to the suppleness of the Scandinavian rule, it seldom becomes necessary to define the port area for the purpose of determining whether the ship has reached her destination. A separate problem of more importance concerns the place that the ship must have reached before effective notice can be given. In this respect, a divergency is found in the texts of the Maritime Codes. While the Swedish text provides that notice may be given when the ship has arrived within the 'place' ('port') to which she is destined, the Danish, Finnish and Norwegian texts require her to have reached the port itself. The 'port', according to the Norwegian Committee Reports, is to be taken in its commercial sense and not in an administrative sense."

224.Some modern charter party forms contain provisions to avoid the effects of The "Maratha Envoy" in English law by providing that a notice of readiness can be given once the vessel has arrived at the customary anchorage if she cannot berth immediately. Tanker charter parties usually contain such a provision 342/ with the result that expensive disputes as to whether or not the vessel was an arrived ship seldom arrives in the tanker industry. With regard to dry cargo charter parties, the older charter parties such as the Baltimore Form C and the Centrocon generally specify only that the vessel is to "proceed to" a port (a "port charter") or a berth (a "berth charter") before a notice of readiness can be given and laytime can start to run in favour of the shipowner. Some modern forms, however, set out in great detail circumstances in which notice of readiness may be given if the vessel is still waiting for berth outside port limits. The Norgrain 89, for example, in clause 18(b), provides:

339/ (6th edition), volume 28 at pp.2-14.
340/ See the Hamburg Arbitration Awards of 18.9.1974 and 8.6.1977, referred to by Trappe (1988) LMCLQ 251 at page 258.
341/ (3rd edition) at page 231.
342/ See for example Tankervoy 87, clause 8.

"If the vessel is prevented from entering the limits of the loading/discharging port(s) because the first or sole loading/discharging berth or a lay berth or anchorage is not available within the port limits, or on the order of the Charterers/Receivers or any competent official body or authority, and the Master warrants that the vessel is physically ready in all respects to load or discharge, the Master may tender vessel's notice of readiness by radio if desired from the usual anchorage outside the limits of the port, whether in free pratique or not, whether customs cleared or not. If after entering the limits of the loading port, vessel fails to pass inspections as per Clause 18(e) any time so lost shall not count as laytime or time on demurrage from the time vessel fails inspections until she is passed, but if this delay in obtaining said passes exceeds 24 running hours shex all time spent waiting outside the limits of the port shall not count."

Notice of readiness

225. The laytime for loading will not start to run until the shipowner has given notice, at the time and in the manner required by the charter party, that the vessel is ready to load. Such a notice can be given orally, unless the charter party requires (as is usually the case) that the notice of readiness be given in writing. By contrast to the position at the loading port, under English Law there is no requirement (in the absence of express provision) for a notice of readiness to be given at the port of discharge. 343/ Other national laws on the other hand, seem to require notice of readiness both at the port of loading as well as the port of discharge. 344/

226. In modern charter parties the circumstances in which notice of readiness has to be given, and the mode of giving such notice, is often spelt out in detail. Thus in the "Multiform 82" (1986 revision) the Notice of Readiness clause (clause 7) provides as follows: "Notification of the vessel's readiness to load/discharge at the first or sole loading/discharging port shall be delivered in writing at the office of the shippers/receivers or their agents between 0900 hours and 1700 hours on any day except Sunday (or its local equivalent) and holidays, and between 0900 hours and 1200 hours on Saturday (or its local equivalent). Such notice of readiness shall be delivered when the vessel is in the loading/discharging berth and is in all respects ready to load/discharge. However, if the loading/discharging berth is unavailable, the Master may give notice of readiness on the vessel's arrival within the port or at a customary waiting place outside the port limits, whether or not in free pratique and whether or not cleared by Customs ...". The clause then goes on to provide when laytime commences following the giving of the notice of readiness.

227. Older forms of charter party are, however, much less specific about the requirements for the giving of notice of readiness and are therefore much more subject to dispute in this respect. For example, the C Ore 7 charter provides: "Time for loading to count from 6 a.m. after the ship is reported and ready, and in free pratique (whether in berth or not), and for discharging from 6 a.m. after ship is reported and in every respect ready, and in free pratique, whether in berth or not. Steamer to be reported during official hours only." And the clause 6(c) of the Gencon charter provides that "Laytime for loading and discharging shall commence at 1 p.m. if notice of readiness is given before noon, and at 6 a.m. next working day if notice given during office hours after noon ...".

343/ Nelson v. Dahl (1879) 12 Ch.D.583.
344/ See H. Tiberg, The Law of Demurrage, op.cit., pp.208-213.

228.Provision is also sometimes made for the circumstances in which the charterers start to load the vessel before a notice of readiness is given. If the charter party expressly requires written notice of readiness to be given and for laytime to commence a stipulated number of hours after the giving of notice of readiness, the fact that the charterers start to load or discharge the ship will not, of itself, constitute a waiver of the notice requirement. So in Pteroti Compania Naviera S.A v. National Coal Board. 345/ the charter party provided that laytime was "to commence twenty-four hours ... after vessel is ready to unload and written notice given." The vessel berthed and the charterers started to discharge her before the master gave notice of readiness and the question arose whether laytime commenced at the time discharging commenced, or whether only in accordance with the notice of readiness clause. It was held that the mere commencement of discharging by the charterers did not constitute a waiver of the express provisions of the charter party in regard to notice and the commencement of laytime.

229. The extent of the readiness required is seldom spelt out in the printed forms of charter party, although the Amwelsh charter expressly stipulates that the notice is to be given "of the vessels being completely discharged of inward cargo and ballast in all her holds and ready to load ...". It has, however, been held by English Courts that: "A ship to be ready to load must be completely ready in all her holds ... so as to afford the merchant complete control of every portion of the ship available for cargo". 346/ And the holds must be in a fit state to receive the cargo. It is not sufficient that they can be made fit within a very short time. So in Compania de Naviera Nedelka v. Tradax International (The "Tres Flores") 347/ a vessel's holds were infested at the time notice of readiness was given and fumigation would only have taken a few hours to carry out, but it was held by the English Commercial Court and Court of Appeal that the vessel was not ready at the time the notice of readiness had been given. Some national laws, however, seem to permit advance notice of readiness. Section 82 of the Scandinavian Code, for example, seems to grant a right to give advance notice after the arrival of the vessel at the loading port. 348/

230. English law, however, appears to draw some distinction between the necessity for immediate readiness of a vessel's holds to take in cargo and the state of readiness of the equipment which is not immediately required in the loading operation. So in Noemijulia Steamship v. Minister of Food 349/ a vessel was chartered under the Centrocon form under which the charterers had the option of cancelling the charter party if the vessel was not ready to load by a certain date. The Master gave notice of readiness on that date but at that time the vessel was lacking certain loading gear which would not, however, have been required (if at all) until a late stage in the loading operation. It was held that this deficiency did not prevent the vessel being "ready" so as to be able to give a valid notice of readiness.

231. Addendum clauses in voyage charter parties often describe in detail what equipment the vessel has to have available for the loading or discharging operation. Whether such equipment has to be in place at the time notice of readiness is given will depend upon the precise wording of the clause. 350/

345/ (1958) 1 Lloyd's Rep. 245.
346/ Groves, Maclean v. Volkart (1884) C.& E.309.
347/ (1973) 2 Lloyd's Rep. 247.
348/ See H. Tiberg, The Law of Demurrage, op.cit., pp.211-214.
349/ (1950) 83 Ll.L.Rep.500.
350/ See Gerani Compania Naviera v. General Organisation for Supply Goods (1982) 1 Lloyd's Rep. 275.

232. However, even if no notice or no valid notice had been tendered, laytime will commence running if the charterers or their agents have waived the requirement of a valid notice of readiness. In many cases, the commencement of cargo work by the charterers or the agents will be considered as having waived the requirement of a valid notice of readiness. Whether or not waiver is established is a question of fact that will have to be determined in every individual case.

2. Calculation of laytime

233. Both dry cargo and tanker voyage charter parties usually contain provisions concerning the calculation of laytime. Laytime may be fixed by reference to certain "hours", "days", "running day", "working days", "weather working days", "days of 24 hours" or 24 consecutive hours. Sometimes laytime is not specified in the charter party, but needs to be calculated by reference to a daily rate of loading or discharging, for example, ".. tons of cargo per weather working day". Sometimes further qualifications are used, such as "at the average rate of .. tons per hatch per day" or ".. tons per available workable hatch per weather working day". Sometimes laytime is agreed by reference to some general ambiguous terms, such as "as fast as steamer can receive and deliver", "with all dispatch as customary" or "with customary steamship dispatch".

234. Clause 6 of the Gencon provides for the cargo to be loaded and/or discharged "within the number of running hours as indicated in ....., weather permitting, Sundays holidays excepted, unless used, in which event time actually used shall count." Multiform contains alternative wordings allowing the parties to fix the laytime by reference to either "working day of 24 consecutive hours, weather permitting, Sundays (or their local equivalents) and holidays excepted, unless used ..", or "at the average rate of .. tons of 1000 kilos per working day of 24 consecutive hours, weather permitting, Sundays (or their local equivalent) and holidays excepted, unless used ..". 351/ The Chamber of Shipping Cement charter party, 1922 (as amended in 1974): "Cemenco", clause 5, provides for the cargo to be loaded or discharged within certain number of "running hours", excluding from laytime legal holidays and from noon on Saturday until 7 a.m on the following Monday. The North American Fertilizer charter party: "Fertivoy 88", clause 14(b) requires "all laytime to be based on weather working day of 24 consecutive hours". And the Baltimore Form C provides that "Steamer to be loaded according to berth terms, with customary berth dispatch ...".

235. The terms and phrases used in relation to the calculation of laytime have given rise to numerous disputes. This is particularly true in relation to those clauses which do not expressely fix the laytime but merely use general references such as "as fast as steamer can receive/deliver", "with all dispatch as customary", etc. "Although indefinite laytime is apparently becoming more popular, it is not easy to see any advantage in it, and any lack of definition (on any aspect of charter parties) is likely to lead the disputes", 352/ and to conflicting interpretations under various legal systems. 353/

236. Furthermore, the terms and phrases used in these clauses have been subject to varying interpretation. For example, phrases such as "weather permitting" and "weather working day", under most legal systems have been

351/ Clause 8; see also Norgrain 89' clause 19.
352/ P. Todd, "Contracts for Carriage of Goods by Sea", op.cit., p.93.
353/ See Tiberg, "The law of Demurrage" op.cit., pp.343-382.

given an identical meaning, 354/ English Law makes a distinction in the operation of the two phrases. The term "weather permitting" has been treated as words of exception, only interrupting laytime if weather actually prevents work. 355/ On the other hand, the words "weather working day", are considered as qualifying the length of the laytime, and prevent laytime from running if the weather would not have permitted work even if no work was intended or planned. "The status of a day as being a weather working day, wholly or in part or not at all, is determined by its own weather, and not by extraneous factors, such as the actions, intentions and plans of any person." 356/ It is, therefore, commented that "Phrases such as "weather permitting" are ambiguous in this regard and should be used with caution." 357/

237. Further complications arise where charter parties fix the laytime period by reference to the number of working or workable hatches. The formula "per workable hatch" or "per working hatch" has given rise to difficulties. 358/ The expression has been described by Scrutton L.J in the case of The Sandgate 359/ as an "ambiguous and mysterious clause". These phrases, however, have been construed by English Courts as having a similar effect that is a hatch ceases to be a working or workable hatch, once it becomes full on loading or empty on discharge. Therefore, the expected rate of loading or discharge reduces as cargo handling continues, because hatches cease to be working or workable hatches. 360/ In the past ten years there have been no less than five cases before the English Courts on the meaning of "workable" or "available" hatches in laytime clauses, the latest of which 361/ dealing with four further disputes under different charter parties has been appealed to the Court of Appeal and House of Lords.

238. Laytime provisions apply both on loading and discharging. While some charter parties contain separate provisions for this, others such Gencon, Multiform and Norgrain provide alternatives allowing the parties to choose a total laytime for both loading and discharging if they so wish.

"Time lost waiting for berth to count as laytime/loading time"

239. Some charter parties contain express provisions requiring certain waiting time to be counted as laytime against the charterers even though the ship has not reached her contractual destination and the master has not given notice of readiness. Clause 6(c) of the Gencon charter party provides that "Time lost in waiting for berth to count as loading or discharging time, as the case may be". The application of the clause has given rise to problems. It has been

354/ Ibid., pp 411-412.
355/ See Stephens V. Harris & Co (1887) 57 L.J. Q.B. 203 (C.A); Reardon Smith Line V. Ministry of Agriculture (1963) A. C. 691 (H.L); but see The Glendevon (1893) P. 269; see also Summerskill on Laytime, op. cit. pp.175-179.
356/ Compania Naviera Aquero S.A V. British Oil and cake Nills (1957) 2 QB. 293, at p.303; see also Summerskill, on Laytime, op.cit., pp.44-46.
357/ Carver, op.cit., para.1857.
358/ J. Tiberg, The Law of Demurrage, op.cit., p.428.
359/ (1930) P.30, at p.32.
360/ See P. Todd, The Contracts for the Carriage of Goods by Sea, op.cit., p.92; Summerskill on Laytime, op.cit., pp 37-44; The Sandgate (1930)p.30; Compania de Naviacion Zita v. Louis Dreyfus & Cie (The Zita) (1953) 2 Lloyd's Rep. 472.
361/ President of India v. Jebsens (U.K.) Ltd and Others (The General Capinpin) (1989) 1 Lloyd's Rep. 232.

said that "the clause was originally intended to be used in "berth" charters. Many of the problems to which it has given rise stem from its use in "port" charters. 362/

240. It appears, however, that there are differences in interpretation of this common clause in older charter party forms between English and American law, on the one hand, and the law of certain European civil law countries, on the other. The waiting time provision in the Gencon charter was for many years the subject of litigation before the English Courts, until in Aldebaran Compania Maritime S.A. v. Aussenhandel A.G. (The "Darrah" 363/ the House of Lords overturned the previously accepted construction of this term. The question was whether waiting time, under this provision, was subject to the ordinary laytime exceptions or not. It had been stated by the Court of Appeal in North River Freighters v. President of India (The "Radnor") 364/ that the "time lost" provision was wholly independent of the laytime clause. This led the Commercial Court, ten years later, in Metals & Ropes Co. Limited v. Filia Compania Limitada (The "Vastric") 365/ to conclude that all time lost waiting counted towards laytime, irrespective of the laytime exceptions. A similar conclusion was reached in Ionian Navigation Co.Inc. v. Atlantic Shipping Co (The "Loucas N"). 366/ Then the House of Lords in The "Darrah" case rejected the interpretation of the "time lost" provision which had stood for over twenty years and decided that the laytime provisions applied to waiting time, whether the vessel was an "arrived ship" or not. That also appears to be the position under American law. 367/

241. The position under French law and the law of the Federal Republic of Germany appears, however, to be different. 368/ Trappe comments that the "time lost clause" "..does not provide that time lost in so waiting 'is counted' or 'is to be counted' as loading time, i.e. in the same way as loading time is counted. This period of time spent idely in waiting for berth, 'time lost', rather definitely 'counts', contrary for instance to Sundays and holidays which do not count. Thus the clause precisely provides that the lost time, i.e. the time while waiting, clocks up as laytime, inother words counts fully as laytime, regardless whether the vessel waits over a weekend or on a holiday."

242.So again, there is the contrast between the literal construction of a provision and a broader, perhaps more commercial construction of words which are too imprecise to bear only one meaning.

3. Laytime clauses in tanker charter parties

243.Until recently it has been the laytime and demurrage clauses in dry cargo charters which have mainly occupied the Courts and arbitration tribunals, but over the last twenty years there has been a large number of disputes on laytime and demurrage clauses in tanker charters - particularly those in the Asbatankvoy form of charter and its forerunner, the Exxonvoy 1969.

244.A major area of contention has been the apparent conflict between the provision in clause 9 of the Asbatankvoy that "The vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters

362/ Scrutton, op.cit., p.150, note 72.
363/ (1976) 2 Lloyd's Rep. 359.
364/ (1955) 2 Lloyd's Rep.668.
365/ (1966) 2 Lloyd's Rep.219.
366/ (1971) 1 Lloyd's Rep. 215.
367/ See Benedict on Admiralty (6th edition) volume 28, at pp. 2-29.
368/ See the French arbitration No.357, 6.5.1980, DMF 1980, 695, and the Hamburg arbitration award in The "Ilse", 18.9.1974, referred to by Trappe (1986) L.M.C.L.Q. 251.

reachable on her arrival, which shall be designated and procured by the charterer.." and the last sentence of clause 6 which provides "... where delay is caused to vessel getting into berth after giving notice of readiness for any reason over which the charterer has no control, such delay should not count as used laytime". The interpretation of the words "reachable on arrival" in earlier versions of the charter in three English cases 369/ did not resolve the ambiguity. The seeming conflict between the provisions of clauses 6 and 9 of the Exxonvoy 1969 charter eventually reached the House of Lords in Nereide S.P.A. DI Navigazione v. Bulk Oil International (The "Laura Prima"). 370/ It was held that the clauses had to be construed as a whole and "reachable on arrival" meant precisely what it said: if a berth could not be reached on arrival the warranty was broken unless there was some relevant protecting exception and the berth was required to be both safe and reachable on arrival. The last sentence in clause 6 only applied and prevented laytime from running if the charterers had designated and procured a safe place reachable on vessel's arrival, and if an intervening event after the arrival of the vessel occured causing delay over which the charterers had no control. As a result the exception in clause 6 will in practice rarely apply. The confusing drafting of the Asbatankvoy has, it seems, produced a decision which does not reflect the intentions of charterers and shipowners generally. This is apparent from arbitration awards in subsequent cases in which, on appeal to the Courts, the decision in The "Laura Prima" has been applied to different circumstances. So in K/S Arnt J. Moerland v. Kuwait Petroleum Corporation (The "Fjordaas"), 371/ the majority arbitrators considered that the "Laura Prima" decision (that the charterers were bound to nominate a berth which was immediately reachable, irrespective of whether the delay in reaching it was beyond their control) should be confined to cases of congestion. The arbitrators said: "It is a fundamental and basic fact that the voyage charter party responsibility for navigational matters rests squarely on the shoulders of owners and not charterers. We know of no charter party term in voyage chartering which has attempted to shift this responsibility for navigational matters on to charterers' shoulders". But the Court in The "Fjordaas" case considered itself bound by the House of Lords in The "Laura Prima" to hold that the latter's decision applied to all delays, including navigational delays. A similar conclusion, again against the view of commercial arbitrators as to the traditional division of risk under a voyage charter was reached in Palm Shipping Inc. v. Kuwait Petroleum Corporation (The " Sea Queen"). 372/ In another arbitration, 373/ it was said that: The "Laura Prima" was a hard decision, and undoubtedly led (according to the majority) to consequences which were uncommercial and which would never have been intended either by the draftsman of the printed form of the charter or by parties who adopted that form...". It was further commented that: "If the "Laura Prima" decision has the effect of denying charterers the benefit of the last sentence of the clause 6 (of the Asbatankvoy C/P) in bad weather circumstances, the result appears very unreasonable. Instead of getting widespread protection from an exception where bad weather prevents a vessel getting into a berth, prior to the commencement of laytime, the charterers are left with an exception that is practically worthless". 374/

369/ Sociedad Carga Oceanica S.A. v. Idolinoele Vertriebsgesellschaft (The "Angelos Lusis") (1964) 2 Lloyd's Rep. 28; Inca Cia Naviera S.A. and Others v. Mofinol Inc. (The "President Brand") (1967) 2 Lloyd's Rep. 338 and Shipping Development Corp. v. V/O Sojuzneftexport (The "Delian Spirit") (1972) 1 Q.B. 103.

370/ (1982) 1 Lloyd's Rep. 1.

371/ (1988) 1 Lloyd's Rep. 336.

372/ 215 LMLN 30 January 1988.

373 151 LMLN of 15 August 1985.

374/ D. Davies, "Commencement of Laytime, Lloyd's of London Press, 1987, p.35.

245.These provisions of clauses 6 and 9 of the Asbatankvoy are not the only laytime provisions in the charter which have given rise to dispute. The six hours' notice provision in clause 6 has been the subject of conflicting arbitration awards in the United States, as has the shifting time provision inclause 7 and the half demurrage provisions in clause 8. 375/ Although the more recent Asba II form of tanker charter corrected some of the deficiencies in the Asbatankvoy, its drafting is still such as to make it dispute-prone. These two forms of charter are extensively used despite the more modern and better drafted forms of tanker voyage charter such as the Exxonvoy 1984, the Shelvoy 5 or the Tankervoy 87.

4. Interruptions to laytime

246.In the interpretation of laytime provisions, Continental European laws sometimes differ from English and American law. Where as is often the case in the older charter forms such as for instance the Synacomex Grain Charter 1957, or the Africanphos Phosphate charter 1950, the circumstances in which laytime may be interrupted is not specified clearly or in sufficient detail, the laytime calculation can be different in different jurisdictions. The position in English law on the interruption of laytime is stated by Scrutton on Charter parties 376/ as follows: "If by the terms of the charter the charterer has agreed to load or unload within a fixed period of time, that is an absolute and unconditional engagement, for the non-performance of which he is answerable, whatever be the nature of the impediments which prevent him from performing it, unless such impediments are covered by exceptions in the charter, or arise from the loading or unloading being illegal by the law of the place where they have to be performed or arise from the fault of the shipowner or those for whom he is responsible".

247.The question what amounted to "fault" of the shipowner was considered in Total Transport Corporation of Panama v. Amoco Trading Co. (The "Altus"), 377/ where it was said that "laytime can be suspended or interrupted by an act of a shipowner, which has the effect of preventing the completion of loading or the commencement of the voyage, even without a breach of contract on his part, if that act constitutes a fault falling short of a breach of contract, or if it lacks lawful excuse".

248.Although there is considerable inconsistency in the American cases, the recent authorities appear broadly to be in line with the position under English law. 378/ However, under the laws of most of the Scandinavian countries, the Federal Republic of Germany and probably also under Duch law and French law, the causes of delay are divided into "risk spheres" of the charterers and risk spheres of the shipowners. So Tiberg on the Law of Demurrage 379/ states: "The Scandinavian and German division into risk spheres, found also in Dutch law where the laytime is fixed by contract, goes beyond the owners' actual fault and excuses the charterer for any delay lying within the shipowners' "sphere" - the share of work allotted to him. The German Code, based on the idea of alongside delivery, charges the ship with receiving the goods on board and with delivering them out of the ship at the port of discharge. The Dutch Code, enacted at the time when f.i.o clauses had become more common, suspends the time when the shipowner is negligent or prevented from performing his duty. The Scandinavian Codes, more

375/ See generally on these clauses McCune on The "Asbatankvoy" Charter (1984) pp.26 to 54.
376/ Op.cit., at page 317.
377/ (1985) 1 Lloyd's Rep. 423-430.
378/ See The "Malmohus" 1960 A.M.C. 1191; Compania Naviera Puerto Madrin v. Esso Standard Oil Co. (S.D.M.Y. 1961) 1962 A.M.C. 147; Pennsylvania R.R. Co. v. Moore McCormack Lines 1967 A.M.C. 5.
379/ 3rd edition at page 496.

comprehensively, speak of "hindrances on the ship's side" as suspending the laytime. The Scandinavian formula makes it possible to take into account other elements of intervention than who is actually performing the work".

249. It follows that under Scandinavian, German and Dutch law laytime may be interrupted, where it might not in the absence of express provision be interrupted under American and English law, where hindrances:

"I. ... interfere with the work that the shipowner is to perform, unless they can be ascribed to the charterer's fault or to causes within his control.

II. ... arise from the ship's structural incapacity to receive or deliver the goods as fast as agreed, or from breakdown of the ship's gear or insufficiency of the ship's crew or from prohibitions or restraints directed against the ship or the carrier.

III. ... occur on board the ship owing to the nature of the contractual cargo, provided the stoppage is not effected merely in the cargo owner's own interests.

IV. ... are caused by the cargo having sustained damage whilst on board the ship, unless such damage is due to properties inherent in the goods themselves...". 380/

5. Demurrage

250. If the laytime has expired but loading or discharging is not yet completed, then the charterer will be liable to pay demurrage to compensate the owners for any additional delay incurred. As one English judge said:

> "All overhead and a large proportion of the running of a ship are incurred even if the ship is in port. Accordingly the shipowner faces serious losses if the processes take longer than he had bargained for and the carrying of freight on the ship's next engagement is postponed. By way of agreed compensation for those losses, the charterer usually contracts to make further payments, called demurrage, at a daily rate in respect of detention beyond the laytime." 381/

251. As regards the nature of demurrage national laws adopt different approaches. While under some legal systems, such as English law,, demurrage is considered as liquidated damages for breach of contract in delaying the vessel beyond the laytime, some other systems characterize demurrage as supplementary freight. "The supplementary freight theory is classic in France and appears to be generally accepted by the courts, whereas some of the legal writers tend towards the view of demurrage as damages and others, specially in late years, are abandoning any doctrinaire attachment to such preconceived notions. The theory of demurrage as damages is generally held in Belgium. In Italy, the idea of demurrage as compensation sui generis has been gaining

380/ J. Tiberg, op.cit. pp.497-501; and see Vreede "Unexpected Extra Costs of Discharge and Demurrage", a paper presented to VIIIth International Congress of Maritime Arbitrators, Madrid 1987, and Trappe (1986) L.M.C.L.Q. 251. It would appear from the last mentioned article that French law is similar to German law on this point.

381/ Per Donaldson, J. in Navico A.G. v. Vrontados Naftiki Etairia P.E (1968) 1 Lloyds' Rep. 379-383.

ground, largely, as it seems, as a result of the Code's characterization of affreightment as a transportation contract, but the additional freight reasoning has recurred recently. The later writers on Dutch law characterise demurrage not as damages but as compensation for a prolongation of the waiting period ... In American law there has been little discussion on the subject of the nature of demurrage, although inconsistent flat statements are often found that it is either supplementary freight or damages; sometimes it is simply described as a penalty clause ... Scandinavian and German authors have 30nerally preferred a more neutral approach and characterised demurrage as a compensation sui generis payable for delay beyond the laytime. 382/

252.These variations in national approaches can lead to conflicting decisions by courts and arbitration tribunals. As Tiberg comments: "In this confused discussion of the basic character of demurrage the underlying theories are sometimes used to justify a particular result, while in other cases the results reached by courts or the solutions chosen by the legislation are to justify the theory adopted." 383/ In the English case of The Lips, 384/ the shipowner was unable to recover damages for late payment of demurrage, having suffered loss by variations in the exchange rate between pound and dollar. In the House of Lords, Lord Mackay expressed a view that this loss would have been recoverable if the charter party had provided a date for payment of demurrage. But Lord Brandon thought that since demurrage was liquidated damages for breach of contract, the concepts of contractual date for payment of such damages, and payment of damages for late payment of damages, had no basis in law.

253.Most charter parties contain provisions dealing with demurrage. The Gencon is one of the few charter parties which limit the demurrage period. It provides that "Ten running days on demurrage at the rate stated ... per day or pro rata for any part of a day, payable day by day, to be allowed merchants altogether at ports of loading and discharging". 385/ Most charter parties, on the other hand, do not limit the demurrage period. The clause in the Multiform charter, for example, reads: "If the vessel is longer detained in loading/discharging, demurrage is to be paid by charterers to owners at the rate of .... per day or pro rata." 386/

254.If the charter party does not contain demurrage provisions and the laytime is exhausted or if the demurrage period, having been fixed by the charter party is expired before loading or discharging is completed, then the shipowners will be entitled to claim damages for detention of the vessel. Such damages are unliquidated damages and are determined under national laws which again adopt different approaches to the problem. 387/

255.Demurrage runs continuously and the exceptions (e.g. Sundays and holidays, bad weather, strikes, etc.) which apply to laytime, do not normally apply to demurrage unless there is an express provision to the contrary. The expression "once on demurrage, always on demurrage" is a generally accepted formula in the shipping world. The reason is that if the charterer had completed loading or discharging within the allowed laytime the vessel would not have been detained during otherwise excepted period.

382/ H. Tiberg, The Law of Demurrage, op.cit., pp. 531-535.
383/ Ibid., p.533.
384/ (1987) 3 All ER 110.
385/ Clause 7, it appears that in practice clause 7 is frequently deleted. See also clause 10 of the SCANCON charter party which contains a similar provision.
386/ Clause 9; see also clause 20 of the Norgrain 89.
387/ H. Tiberg, The Law of Demurrage, op.cit., pp.556-566.

256.The question which has arisen is whether the rule also applies in cases where the vessel, at the port of loading having used all laytime allowed for loading and discharging, is on demurrage when she arrives at the port of discharge. And whether in such a case the charterer is entitled to the benefit of the charter party notice period before demurrage recommences? The situation arose in Nippon Yusen Kaisha v. Société Anonyme Marocaine de l'industrie du Raffinage (The Tsukuba Maru) 388/ and the Court applied the rule as there was nothing in the charter party (The Exxonvoy 69) to indicate that the laytime exceptions applied once the vessel was on demurrage. While dry cargo standard forms do not contain express provisions on the issue, some tanker voyage charters expressely state that demurrage shall not run during the notice period. The Exxonvoy 84, for example, in clause 13(a), provides that : "Laytime or time on demurrage, as herein provided, shall commence or resume upon the expiration of six hours after receipt by charterer or its representative of notice of readiness ...".

257.Some charter parties, however, expressely provide for laytime exceptions to apply to time on demurrage or that on the happening of certain events demurrage rate be reduced by half. Tankervoy 87, for example, provides that: "Time lost owing to any of the following causes shall not count as laytime or for demurrage if the vessel is on demurrage ..." The events listed include such causes as waiting next high tide or daylight to proceed on the inward passage from a waiting place, stoppage on the vessel's order, breakdown or insufficiency of the vessel, negligence or breach of duty on the part of the owners or their agents, strike, lockout or other restraint of labour of the vessel's crew and of pilot or tug personnel. 389/ It further provides for demurrage rate to be reduced by half if demurrage is incurred due to any of the following events: " (a) bad weather sea conditions; (b) the effects of fire or explosion, or breakdown of machinery at shore installation not caused by negligence on the part of charterers, shippers or the receivers or their servants or agent; (c) act of God; act of war; act of public enemies, guarantine restrictions; strike; lockouts, restraint of labour; risks; civil commotions or arrest or restraint of rulers or people (save that demurrage shall be paid in full for time lost due to strikes, lockouts or restraints already in force when the port in question is nominated ...". 390/ Under the clause in The Exxonvoy 84 any delay due to "fire, explosion or strike, lockout or stoppage of labor or breakdown of machinery or equipment in or about the installation" is to count as laytime or, if vessel is on demurrage, as time on demurrage and any demurrage incurred to be paid at the full rate. In most Tanker charters these events would give rise to half rate demurrage. The clause further provides for half rate demurrage for any delay "beyond the reasonable control of the owner or charterer", for which the laytime/demurrage consequences are not specified elsewhere in the charter. 391/ "Only experience will show what difficulties there may be in interpreting 'beyond the reasonable control' of a party". 392/

258.As far as the dry cargo voyage charter exceptions are concerned, the Gencon and Centrocon strike clauses have been markedly dispute prone, because of their outdated and ambiguous wording. The Strike clause of the Gencon charter, clause 15, allows the owners to cancel the charter if there is a strike or lock-out affecting the loading of the cargo unless the charterers agree "to reckon the laydays as if there were no strike or lock-out". If part

388/ (1979) 1 Lloyds' Rep. 459.
389/ See clause 9 (b).
390/ Clause 10; See also Asbatankvoy, clause 8; Asba II, clause 8; Beepeevoy 2 '83', clauses 19 and 20; Shellvoy 5, clauses 14 and 15 (2).
391/ See clause 14 (a) and (d).
392/ H. Williams, Commentaries on Tanker Voyage Charterparties, op.cit., p.42.

of the cargo has been loaded before the strike or lock-out begins, owners must proceed with the cargo loaded, charging freight only on such cargo, but having liberty to complete with other cargo on the way for their own account. At discharging, however:

> " ... If there is a strike or lock-out affecting the discharge of the cargo on or after vessel's arrival at or off port of discharge and same has not been settled within 48 hours, receivers shall have the option of keeping vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharing, or of ordering the vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out ..."

259. The Gencon Strike Clause is often incorporated into other charters, sometimes as part of the printed form - as for example in the Riodoceore Iron Ore Charter Party 1967. The English Courts, having to interpret the Gencon Strike clause in Salamis Shipping (Panama) S.A. v. Edm. van Meerbeeck & Co. S.A. (The "Onisilos") 393/ and again in Superfos Chartering A/S v. N.B.R. (London) Limited (The "Saturnia") 394/ described it as unclear and ambiguous. 395/

260. The strike Clause in the Centrocon charter party has also given rise to many disputes. The text of it reads (with the "recommended" amendment in brackets):

> " If the cargo cannot be loaded by reason of riots, civil commotions or of a strike or lock-out of any class of workmen, essential to the loading of the cargo, or by reason of obstruction or stoppages beyond the control of the charterers [caused by riots, civil commotions or a strike or lock-out on the railways or in the dock or other loading places] of it the cargo cannot be discharged by reason or riots, civil commotions, or of a strike or lock-out of any class of workmen essential to the discharge, the time for loading or discharging, as the case may be, shall not count during the continuance of such causes, provided that a strike or lock-out of the shippers and/or receivers men shall not prevent demurrage accruing
> if by the use of reasonable diligence they could have obtained other suitable labour at rates current before the strike or lock-out. In case of any delay by reason of the before mentioned causes, no claim for damages or demurrage, shall be made by the charterers/receivers of the cargo or owners of the steamer. For the purpose, however, of settling despatch rebate accounts any time lost by the steamer through any of the above cases shall be counted as time used in loading, or discharging, as the case may be."

261. In the case of Union of India v. Compania Naviera Aeolus S.A. (The "Spalmatori"), 396/ the English Courts considered the Centrocon Strike clause as obscure. One of the judges on the House of Lords remarked: "It is fairly obvious that the third part is not an original part of the clause, but it is a later addition: I cannot imagine ever the least legally minded draftsman drafting the clause as a whole in its present form." He further added: "There is no wholly satisfactory interpretation or explanation of the third part of this clause and one must choose between two almost equally unsatisfactory conclusions". 397/

393/ (1971) 2 Lloyd's Rep. 29.
394/ (1984) 2 Lloyd's Rep. 366, affirmed (1987) 2 Lloyd's Rep. 43.
395/ See further para.25 of this report.
396/ (1960) 1 W.L.R. 297; (1962) 1 Q.B.1; (1964) A.C. 868.
397/ N.V. Reederij Amsterdam v. President of India (The "Amstelmolen") (1961) 2 Lloyd's Rep. 215. For further comment on the Centrocon strike clause, see paras 22-23 of this report.

6. Dispatch money

262.Dispatch money is money payable by the owners to the charterers if the charterers complete loading or discharging before the laytime has expired so that the vessel is available to the owners earlier than if the charterers' full laytime entitlement had been used. A saving of laytime does not entitle the charterer to claim dispatch money unless there is a special clause in the charter party to this effect. A clause providing for payment of dispatch money is often found in dry cargo voyage charters. Gencon charter, however, does not contain such a provision.

263.Multiform, clause 9, provides that: "For laytime saved in loading/ discharging, owners are to pay charterers dispatch money at the rate of half the demurrage rate per day or pro rata." And the clause in the Norgrain 89 reads: "Dispatch money to be paid by owners at half the demurrage rate for all laytime saved at loading and/or discharging ports". 398/ Other expressions used include "all time saved", "any time saved", "all working time saved" and "time saved".

264.The interpretation of dispatch clauses have given rise to disputes. As Carver put it: "Great difficulty has been encountered in construing provisions for the payment of dispatch money on time "saved" in loading or discharging. Does this mean time saved to the shipowner or laytime not used? If laytime does not include Sundays, are Sundays to be taken into account in calculating time "saved"? 399/ In the English case of Re Royal Mail Co. and River plate SS. Co. 400/ the clause in the charter party provided that "20 running days ... shall be allowed charterers for the cargo (holidays and time between 1 p.m. Saturdays and 7 a.m. Mondays excepted), ... The owners of the ship to pay £10 per day dispatch money for each running day saved." The Court held that the word "saved" must be construed as meaning time saved to the shipowners, and therefore dispatch money was payable for the whole time saved without any deductions for holidays and weekends during that period. A similar conclusion was reached in Laing v. Hollway 401/ where the words of the clause were: "dispatch money 10s per hour on any time saved in loading and/or discharging". But the case of The Glendevon 402/ was differently decided where the charter party provided that the vessel was "to be discharged at the rate of 200 tons per day, weather permitting (Sundays and fête days excepted)", and "if sooner discharged, to pay at the rate of 8s. 4d. per hour for every hour saved". The dispute arose as to whether a Sunday and a fête day, occuring between the end of discharging and the end of laytime, should be counted in the dispatch calculation of "every hour saved". The Court held that" every hour saved" meant every hour saved from the permitted laytime and not every hour by which the discharge was completed earlier. Therefore, the two days had to be excluded from the dispatch calculation.

265.The decision in The Glendevon was followed in Nelson v. Nelson Line 403/ where the words were "each clear days saved in loading". The clause in the charter party read: "Seven weather working days (Sundays and holidays excepted) to be allowed by owners to charterers for loading ... For any time beyond the periods above provided, the charterers shall pay to the owners demurrage ... For each day saved in loading the charterers shall be paid or allowed by the owners the sum of £20".

398/ Clause 20; see also Synacomex charter, clause 7; Fertivoy 88, clause 16.
399/ Carver, op.cit., para.1948.
400/ (1910) 1 K.B.600.
401/ (1878) 3 Q.B.P. 437.
402/ (1893) P. 269.
403/ (1907) 2 K.B.705.

266. In the case of Mawson SS. Co. v. Beyer, 404/ Bailhache J. summarized the conclusions which he drew from these decisions as follows:

> "1. Prima facie, the presumption is that the object and intention of these dispatch clauses is that shipowners shall pay to the charterers for all time saved to the ship, calculated in the way in which, in the converse case, demurrage would be calculated: this is, taking no account of the lay day exception ...
>
> 2. This prima facie presumption may be displaced, and is displaced, where either (i) lay days and time saved by dispatch are dealt with in the same clause and demurrage in another clause; (ii) lay days, time saved by dispatch, and demurrage are dealt with in the same clause, but upon the construction of that clause the Court is of opinion, from the collection of the words or other reason, that the days saved are referable to and used in the same sense as the lay days are described on the clause, and are not used in the same sense as days lost by demurrage".

267. The dispatch rate is usually stipulated at half of the demurrage rate: "Since the shipowners may have difficulty in obtaining another engagement at short notice or in advancing the date of the ship's next voyage, he stands to gain less by unexpected expedition in loading and discharging than he stands to lose by delay. Accordingly dispatch is usually payable at half the demurrage rate". 405/

B. Freight clauses

268. The general rule of the common law, in the absence of express provision, is that freight is payable on delivery. 406/ Older forms of voyage charter party give effect to this rule, as in the case of the Gencon clause 4 or the Chamber of Shipping's Fertilizers Charter, 1942 (The "Ferticon") clause 1.

269. The Gencon, for example, requires the freight to be paid "without discount on delivery of the cargo at mean rate of exchange ruling on day or days of payment...". 407/ Thus, if freight is payable on delivery, the freight risk is usually on the owners, and if the vessel arrives with a short cargo or no cargo at all to deliver, no freight is payable in respect of the cargo which is not delivered. On the other hand, if the cargo is delivered freight is payable in full, even if the cargo is in a damaged state. According to English law, the charterer may bring a separate action for damages, but he is not, in the absence of an express provision, entitled to deduct from freight any claim for damages for breach of charter party. In the case of Dakin v. Oxley 408/ the charterer abandoned for freight the cargo of coal which was so damaged by the negligence of the master and crew as to be worth less than the freight. The Court held that the full freight was payable since the cargo had been carried and delivered, although in a damaged state, and the charterer's remedy was by a cross-action.

404/ (1914) 1 K.B. 304-312.

405/ Per Donaldson J. in Navico A.G. v. Vrontados Nafiki Etairia P.E (1968) 1 Lloyds' Rep. 379 at p. 383.

406/ See The "Harriman", 76 U.S. (9 Wall.) 161 (1870); London Transport Co. v. Trechmann (1904) 1 k.B. 635.

407/ Clause 1; see also the BIMCO Scandinavian Voyage Charter 1956, amended 1962, Code name Scancon, clause 2 which requires freight to be paid "without discount on account concurrently with discharge of the cargo at mean rate of exchange on the day or days of payment". See further Continental Grain Charter party, Code name "Synacomex", adopted 1957, amended 1960 and 1974, clause 4, which provides that "the freight is earned and is to be paid on right and true delivery of cargo".

408/ (1864) 15 C.B. (N.S. 646).

270.In the case of The "Brede" 409/ and The Aries Tanker Corporation v. Total Transport Ltd. (The "Aries"), 410/ the justness of the rule was challenged by the charterers who, by the reason of the time limitation bar, as a result of incorporation of the Art.III r.6 of the Hague Rules into the charter party, were prevented from making a counter-claim to an action by the shipowners for the balance of freight which the charterers had deducted for the value of the cargo short delivered and damaged.

271.In The "Brede", therefore, the charterers invited the judge "to take the somewhat 'bold step' of regarding the early 19th century exception as obsolete and as a somewhat fossilized remnant of the past for which there could be no justification in the developed contemporary law". 411/ But Mr. Justice Mocatta felt that it would be wrong for a judge at a first instance to break away from the strong line of authority, and therefore, left the 'bold step' to be taken, if at all, by a higher Court. 412/ The Court of Appeal, however, did not take the 'bold step' suggested by the charterer as it was considered unnecessary to justify the rule under modern conditions. 413/ and considered that since the rule had been there for at least a century and half that of itself was good enough reason not to change it. 414/ Similarly, the House of Lords, in The "Aries" did not feel that the rule should be altered.

272.Thus in the recent case of Colonial Bank v. European Grain & Shipping Limited (The "Dominique"), 415/ it was held by the English House of Lords that even in a case where the shipowners became insolvent and repudiated the charter shortly after shipment, the charterers were nevertheless not entitled to deduct from the freight the losses they suffered through abandonment of the voyage. In that case, freight was actually payable five days after signing bills of lading, but "deemed earned on shipment".

273.Some modern charters (particularly tanker charters) do provide for deductions. One dry cargo charter negotiated between the Baltic and International Maritime Council (BIMCO) and the World Food Programme - the "Worldfood" voyage charter form - provides under the freight clause for deduction of claims for loss of or damage to cargo from the balance of freight and demurrage payable after delivery, in the absence of a P and I Club guarantee.

274.Modern dry cargo charter forms and addendum freight clauses, however, normally provide for the full freight to be earned on shipment and to be payable upon or shortly after shipment, as for example in the case of the Fertivoy 88 fertilizer charter which provides by clause 20 that freight is payable seventy-two hours after completion of loading and release of bills of lading and that "The full freight shall be deemed earned on shipment, ship and/or cargo lost or not lost". The clause in 'Multiform 82' (86 revision) provides, in clause 5, that "the freight is to be paid at the rate of .... per ton ... on gross bill of lading weight... The freight shall be deemed earned as cargo is loaded on board and shall be discountless and non-returnable, vessel and/or cargo lost or not lost". The Norgrain 89 also contains a similar wording, in clause 9(a), although it clearly specifies that "freight shall be fully prepaid on surrender of signed bills of lading...". These clauses place the freight risk upon the charterer by making the freight earned and payable irrespective of carriage and delivery of the cargo.

409/ (1972) 2 Lloyd's Rep. 511 - (1973) 2 Lloyds Rep. 333.
410/ (1977) 1 Lloyd's Rep.334.
411/ (1972) 2 Lloyd's Rep. 511-523.
412/ Ibid., at p.525
413/ See Per Cairns, L.J., (1973) 2 Lloyd's Rep. 333-341.
414/ Ibid., Per Roskill, L.J. at p.337.
415/ (1989) 1 Lloyd's Rep. 431.

275.Some respondents to enquiries made by the secretariat have criticized as unsatisfactory and unfair freight clauses which have the effect of entitling the shipowner to full freight, even though the cargo may be lost or the voyage abandoned. But even in the absence of a provision such as those quoted, if freight is payable in advance, English law will not permit freight which is paid in advance to be recovered back, even if the vessel and cargo are totally lost on the voyage and nothing is delivered. 416/ This rule is considered as "the peculiar rule of English law", 417/ and has been subject to criticism including by some English judges. In Byrne v. Schiller, the decision was reached in accordance with the rule, as the judges felt bound by the authorities, yet they expressed their desire that the law would be otherwise and in conformity with the rest of the world. Cockburn, C.J. thought the rule was "founded on an erroneous principle and anything but satisfactory", at the same time he felt that the "authorities founded on the ill-digested case.. , too strong to be overcome, and if the law is to be altered, it must be done by the legislature and not by contrary decisions". 418/

276.In the case of The "Dominique", 419/ the charter was on the Gencon form with typed alterations, and a series of additional typed clauses which included provisions for payment of advance freight which read: "Freight shall be prepaid within five days of signing and surrender of final bills of lading, full freight deemed to be earned on signing bills of lading, discoutnless and non-returnable, vessel and/or cargo lost or not lost...". The shipowners became insolvent and the voyage was abandoned after bills of lading were signed and before the freight was paid. The charterers, therefore, had to arrange for the cargo to be carried in another ship to its destination and this incurred considerable expenses. The House of Lords held that the charterers were still liable to pay the full freight as the clause meant that the owners' right to freight accrued on completion of the signing of all the bills of lading but payment was postponed until five days after the bills of lading, having been signed, were delivered to the shippers. Thus, the owners' right to freight accrued before the termination of the charter party. It was nevertheless recognized that the clause was confusingly drawn and because of that difficult to interpret. 420/

277.Tanker voyage charter party forms, however, do not generally provide for payment of freight in advance. Most Tanker charter parties require freight to be calculated on intake quantity and be paid on delivery of cargo or after completion of discharge. The clause 2 of Asbatankvoy reads: "Freight shall be at the rate stipulated... and shall be computed on intake quantity (except deadfreight as per clause 3) as shown on the inspector's certificate of inspection. Payment of freight shall be made by charterer without discount upon delivery of cargo at destination, less any disbursements or advances made to the master or owner's agents..." To overcome problems and disputes arising from the absence of a charterer's inspector's certificate, some tanker forms provide for the freight to be paid on the gross bill of lading quantity. 421/ The effect of making freight payable upon completion of discharge is that the owner will lose his right of lien on cargo to secure payment of freight, but this does not seem to be of considerable importance as a right of lien in tanker trade seems to be of less value than on the dry cargo trade because of the difficulties arising from its exercise. 422/

416/ See De Silvale v. Kendall (1815) 4 M. & Ad. 445; Byrne v. Schiller (1871) L.R. 6 Ex.319.
417/ See Allison v. Bristol Mar.Ins. (1876) 1 A.C. 209-253.
418/ (1871) 6 L.R. Ex.319, at p.325; see also p.327.
419/ (1989) 1 Lloyd's Rep. 431.
420/ Ibid., at p.435.
421/ See Exxonvoy 84, clause 6(a); and Shellvoy 5, clause 5.
422/ P. Todd, op.cit., pp.70-71.

278.The question of the interpretation of the clause in the Exxonvoy 1969 (which was identical to the above quoted clause of the Asbatankvoy) came before the English Court of Appeal in the case of Shell International Petroleum v. Seabridge Shipping Ltd (The "Metula". 423/ In this case, part of the cargo having been lost on the voyage, the charterers paid the freight on the delivered quantity. The Court held that full freight calculated on intake quantity was payable on delivery of any intaken quantity of cargo. The Court considered that the purpose of having the computation being made on the intake quantity was that freight should be ascertained then, although payable later when the ship reached its destination. Although it was not a lump sum freight properly so-called, it had the characteristics of a lump sum freight in that it was computed on intake quantity and was to be paid on that quantity, even though there was a shortage.

279.The freight clauses in Tanker voyage charter parties are often qualified by inclusion of so-called out-turn loss and cargo retention clauses allowing the charterer deduct from the freight the value of the cargo short delivered, including freight due with respect thereto. "These clauses are coming into use in tanker charter parties, and unless they are very carefully drafted, allow considerable potential for legal disputes." 424/

C. Cesser clauses

280.Cesser clauses seek to cut off the liability of the charterers at the time of shipment and transfer responsibility for fulfilment of the charter to the receivers of the cargo. They appear to have been introduced in England about the middle of the last century in cases where the charterers acted merely as agents. 425/ "Originally introduced for the protection of brokers acting for other persons, it has become a standard feature in most charter party forms, accepted as a matter of course with the document used in the trade, whether in casu there is a need for it or not". 426/

281.The wording of cesser clauses vary considerably. In the Baltimore Form C Grain Charter, the clause reads: "Charterers' liability under this charter to cease on cargo being shipped". 427/ In the C (Ore) 7 Iron Ore Charter clause 21 reads: "All liability of charterers shall cease on completion of loading and payment of advance, if any, owners having a lien on cargo for freight, deadfreight and demurrage". The clauses in the Africanphos Phosphate Charter and the Cemenco Cement Charter are similar. Clause 8 of the Gencon charter retains the charterers' liability for payment of dead freight, demurrage and damages for detention incurred at port of loading and for freight, demurrage including damages for detention incurred at port of discharge but "only to such extent as the owners have been unable to obtain payment thereof by exercizing the lien on the cargo". Under the clause 35 of the Norgrain 89, the charterers remain liable for payment of freight, dead freight, and demurrage at loading and for all other matters provided for in the charter

423/ (1978) 2 Lloyd's Rep. 5.

424/ P. Todd, op. cit., pp.78-80; for an example of a cargo retention clause, See B.P. Shipping Revised and Additional Clauses, Cl.12; as to the interpretation of an out-turn loss clause, see The "Olmpic Brilliance" (1981) 2 Lloyd's Rep. 176 in which it was held that the clause entitled the charterers make a final deduction from freight of the value of the cargo short delivered and not merely to withhold it by way of security against a possible future claim.

425/ Francesco v. Massey (1873) L.R.8 EX. 101; for the early form of the clause, see Milvain v. Perez (1861) 3 E.& E. 495; Oglesby v. Yglesias (1858) E.B. & E. 390.

426/ H. Tiberg, The Law of Demurrage, op. cit., p.610.

427/ Clause 6; clause 5 gives a lien on the cargo for all freight, dead freight, demurrage or average.

party where the charterers' reponsibility is fixed. The Multiform 82 (86 revision) under the heading "lien and cesser", in clause 24, gives the owners a lien on the cargo for freight, deadfreight, demurrage and average contribution due to them under the charter party, but still retains the charterers liable for payment of freight, deadfreight and demurrage and for all other matters provided for in the charter party where the charterers' liability is specified.

282.Cesser clauses have given rise to numerous disputes. And as it has been commented:

> "It would be an exaggeration if it were said that a logical and simple set of rules could be extracted from the many cases which the Courts have decided on the subject of cesser clauses and liens. The changing demand of the mercantile community, as evidenced for example by its gradual abandonment of a fixed number of days on demurrage; the gradual alteration in the views of the judges, who have in turn been affected by the wishes of the merchants; and the sheer variety and often bad drafting of laytime, cesser, lien and demurrage clauses: all these have contributed over a period of 100 years to the uncertainty which still exists in this branch of the law". 428/

283.Problems which arose regarding their construction included questions such as the extent to which charterers' liability was to cease and whether the cesser covered all claims or only future liabilities. Early forms of the clause often expressly provided for charterers' liability to cease as to all matters whether "before and during as after the shipping the cargo". 429/ But where the clause did not expressly exonerate the charterers from liability incurred before shipment, there have been conflicting opinions as to whether such a clause would have the effect of relieving the charterer from liabilities arising before loading. The authorities have now established that the charterers' liability is extinguished provided that an alternative remedy, by way of a lien, is given to the owners for the accrued liabilities, 430/ such as deadfreight or demurrage at the port of loading, and that such lien is incorporated in the bill of lading, so as to enable the owners to enforce it as against the holders of the bill of lading. 431/

284.It has been further established that the clause only relieves the charterer from so much of his liability under the charter party as is co-extensive with, or equivalent to, the lien given to the owners. In the case of The "Sinoe", 432/ Donaldson J. described the cesser clauses as "curious animals" because "they do not mean what they appear to say, namely that the charterer's liability shall cease if and to the extent that the owners have an alternative remedy by way of lien on the cargo". 433/

285.A similar approach has been adopted by the American Courts. In Crossman v. Burril, 434/ it was said that the principle which should be adopted in interpreting a cesser provision is that the clause "is to be construed, if possible, as inapplicable to a liability with which the lien is not commensurate".

428/ Summerskill on Laytime, op. cit., pp.311-312.
429/ Milvain v. Perez (1861) 3 E.& E. 495; Oglesby v. Yglesias (1858) E.B. & E. 390.
430/ See Fidelitas Shipping Co. v. V/o Emportchleb (1963) 2 Lloyd's Rep. 113; Francesco v. Massey (1873) L.R. 8 Ex. 101.
431/ See Kish v. Taylor (1912) A.C. 604.
432/ (1971) 1 Lloyd's Rep. at p.516.
433/ See further Hansen v. Harold (1894) 1 Q.B.D. 612-619; Clark v. Radford (1891) 1 Q.B. 625.
434/ (179 U.S. 1), 21 S.Ct.38 (1900).

286. Thus a lien is created by the charter party and is incorporated into the bills of lading which comes into the hands of the receivers of the cargo and regulates the contractual relations between the owners and the receivers of the cargo. However, the cesser clause will not operate unless the lien is operative at the time of discharge of the cargo. 435/

287. Incorporation clauses are used in order to import the terms of the charter parties into the bills of lading. The wording of incorporation clauses such as "paying freight and all other conditions as per charter party" have beenheld to introduce into the bill of lading the owners' lien for loading port demurrage and for dead freight 436/ and therefore binding upon the bona fide indorsee of the bill of lading. 437/

D. Deviation clauses

288. In the common law countries, a term is implied in voyage charter parties that the vessel will proceed on the voyage by the contractually agreed route without unjustifiable deviation and without unreasonable delay. Any unjustifiable departure from the agreed voyage constitutes a deviation and will normally entitle the charterer to treat the charter as having been repudiated by the shipowner. Some departures from the direct route are treated as justifiable and do not constitute deviations, such as departures for the saving of life (although not of property) and for such purposes of necessity as avoidance of danger and essential repairs.

289. The common law right to deviate to save life is extended by the Hague/Hague-Visby Rules to property and the concept of reasonableness is introduced as the general test. Thus, Article IV, Rule 4 provides:

> "Any deviation in saving or attemtping to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom."

290. In the United States Carriage of Goods by Sea Act 1936, there is an additional proviso which reads: "Provided, however, that if the deviation is for the purpose of loading or unloading cargo or passengers, it shall, prima facie, be regarded as unreasonable".

291. Charter parties even where they expressly incoporate the Hague/Hague-Visby Rules commonly contain so-called "Deviation clauses" or "Liberty clauses". Some charter parties such as, for example, "the Worldfood" charter party and the "Nuvoy 84" contain somewhat similar provisions to Article IV, Rule 4.

292. Yet other charter parties seek to give wider liberties to the shipowners in their deviation clauses than those in the Hague Rules. Some of the respondents to the enquiries made by the secretariat have criticized the

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435/ The "Sinoe" (1972) 2 Lloyd,s Rep. 201, The "Cunard Carrier" (1977) 2 Lloyd's Rep. 261.

436/ Dead freight is not freight in its proper sense, but is a compensation payable to the owners for the charterer's failure to put a full and complete cargo on board the vessel according to his charter party. Thus it is a personal debt of the charterer and is incurred before bills of lading are issued or before the indorsee acquires any right in respect of the goods included in the bill of lading.

437/ See Kish v. Taylor (1912) A.C. 604; Fidelitas Shipping Co v. V/O Exportchleb (1963) 2 Lloyd's Rep. 113; for further discussion on incorporation clauses, see chapter IV of this report.

clauses in standard charter party forms, such as those in the Gencon and the C (Ore) 7 charters, and in the Nubaltwood charter which give the owners very wide liberties to deviate from the normal route. The clause in the Gencon provides:

> "The vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and or assist vessels in all situations, and also to deviate for the purpose of saving life and/or property". 438/

293. The Chamber of Shipping Baltic Wood Charter Party 1973 ("Nubaltwood") seeks to give the owners almost unlimited options as to the route to be followed and the ports to be called at. Clause 13 provides:

> "The vessel shall have liberty to sail without pilots, to proceed via any route, to proceed to and stay at any port or ports whatsoever in any order in or out of the route or in a contrary direction to or beyond the port of destination once or oftener for bunkering or loading or discharging cargo or embarking or disembarking passengers or any other purposes whatsoever...".

294. On the face of it, the wording of these clauses would seem to be wide enough to protect the owners against the consequences of any deviation. But the scope of the liberty granted to the owners by deviation clauses has given rise to numerous disputes. The English Courts have interpreted deviation clauses very restrictively, even when they have been very widely drafted. The practice has been to permit those deviation clauses which fall within the commercial ambit of the contract, but to refuse to enforce a clause which, given effect, would destroy the commercial purpose of the contract. In Leduc v. Ward, 439/ Lord Esher said: "It was argued that the clause [the words "liberty to call at any ports in any order" also used in the clause in Gencon and C (Ore) 7 charters] gives liberty to call at any port of the world. Here, again it is a question of the construction of a mercantile expression used in a mercantile document, and I think that as such the term can have but one meaning, namely, that the ports, liberty to call at which is intended to be given, must be ports which are substantially ports which will be passed on the named voyage". And in the case of Stag Line v. Foscolo Mango, 440/ Lord Atkins stated that: "Even if limited to port or ports on the geographical course of the voyage, as I think they clearly must be, the purpose of the call must receive some limitation. The liberty could not reasonably be intended to give the rights to call or take on board friends of the shipowner for the purposes of a pleasure trip... I think myself that the purposes intended are business purposes which would be contemplated by the parties as arising out of the contemplated voyage of the ship". 441/ But if the clause is sufficiently strongly worded, Courts or arbitrators may not be able to limit the scope of the shipowner's liberties as to the route, nor as to the ports to be called at, by reference to what is reasonable: for instance it has been suggested that where expressions such as "any ports whatsoever" are used, as in the "Nubaltwood" clause quoted above, they might be difficult to construe restrictively. 442/

438/ Clause 3; for a somewhat similar clause, see C (Ore) 7 charter, clause 20.
439/ (1888) 20 Q.B.D. 475-482.
440/ (1932) A.C. 328; these cases are bill of lading cases, but the same principles are also relevant to deviation clauses in charter parties. See further Glynn v. Margetson (1893) A.C. 35.
441/ A similar approach is taken by the American Courts. See Gilmore and Black, The Law of Admiralty, op. cit., pp.178 and 209-210.
442/ Frenkel v. MacAndrews (1929) A.C. 545, 564.

295.Problems can arise where a charter party contains both a deviation clause and a paramount clause incorporating the Hague or Hague-Visby Rules into the charter party. The question arises as to whether and to what extent the two provisions conflict and in the event of conflict which provisions should prevail. The position becomes more complicated where the charter party also includes a bunker deviation clause. The Multiform 82 (86 revision), for example, having included a paramount clause (clause 33) incorporating the Hague-Visby Rules into the charter, also contains a deviation clause (clause 25) which is more restrictive than article IV, Rule 4 of the Rules, as it only permits deviation for the purpose of saving life or property and not any other reasonable deviation as allowed by the Hague-Visby Rules. It further includes a P & I bunkering clause (clause 32) which gives the vessel a liberty as part of the contract voyage to proceed to any ports whether such ports are on or off the direct and/or customary route or routes between any of the ports of loading or discharge named in the charter party for the purpose of bunkering and take bunkers in any quantity "whether such amount is or is not required for the chartered voyage".

296.It is, however, doubtful whether a deviation permitted under the clause for the purpose of taking bunkers for a voyage other than the chartered voyage would be considered as reasonable deviation and as such a justifiable deviation under the Hague-Visby Rules which are incorporated into the Multiform charter.

297.Norgrain 89 on the other hand does not incorporate the Hague or the Hague-Visby Rules into the charter, but includes a P. & I. bunker clause and a deviation clause containing a similar provision to that of the United States enactment of the Hague Rules specifying that a deviation for the purpose of loading or unloading is prima facie to be regarded as unreasonable.

298.The effect of the Hague or the Hague-Visby Rules on the express liberty or deviation clause, contained in a bill of lading to which the Rules have mandatory application, seems to vary in different jurisdictions. Under English law the validity of a deviation clause may be determined by common law principles only and therefore may remain unaffected by the Rules. It has been said that the Rules are to be construed merely as giving an additional protection to shipowners. 443/ In the United States, on the other hand, it seems that the test of reasonableness laid down by the Hague Rules are applied, as the Courts seem to have indicated that a wide liberty or "voyage clause" must be construed or limited so as only to authorize reasonable departure from the normal route. 444/ A similar view seems to have been adopted in the Federal Republic of Germany. 445/

299.It is not, however, clear whether the same rules apply to the case of a charter party which incorporates by a paramount clause the provisions of the Hague/Hague-Visby Rules (Article IV, Rule 4) and also contains an express deviation clause where accordingly the Rules have contractual application, and not mandatory application as in the case of bills of lading. The position does not appear to have been specificially considered by the Courts. In the case of The "Aqios Lazaros", 446/ in considering the meaning of the paramount clause in the context of a charter party, Lord Denning said that the clause imports the Hague Rules into the charter party and makes it subject to the Rules, so far as applicable, and that in case of conflict between the

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443/ See Scrutton, op. cit., p.439; Stag Line v. Foscolo Mango (1932) A.C. 328; Renton v. Palmyra 1 Q.B. 462.

444/ Gilmore & Black, op. cit., p. 178.

445/ See Abraham, H.J., Das Seerecht in der Bundesrepublik Deutschland, Berlin (W) de Gryuter, 1978, p. 734.

446/ (1976) 2 Lloyd's Rep. 47-50.

incorporated Hague Rules and the other terms of the charter party, the provisions of the Hague Rules would prevail. The position may be different where the express deviation clause is included in a typescript additional clause, and the paramount clause incorporating the Hague Rules form part of the printed clauses of the Standard Charter Party. In the English case of Seven Seas Transportation Ltd. V. Pacifico Union Marina Corp. (The Satya Kailash), 447/ where the charter party on the NYPE form included typed additional clauses imposing an absolute warranty of seaworthiness, the Court of Appeal judge commented that "as typed clauses, they might be given precedence over the printed clause paramount in clause 24 so as to override pro tanto the provisions of S.4(1) of the United States Act as incorporated into the charter".

300.Deviation clauses do not specify the consequences of unjustifiable deviations. The national laws seem to take different approaches on the point. Under English and American common law, the party affected by deviation is entitled to treat the deviation as a repudiation putting an end to the contract of carriage whether expressed in a charter party or bill of lading. 448/ The result, therefore, is to take away any rights and defences the shipowner/carrier may have had under his contract and to place him in a position of a common carrier with the only defences open to him being Act of God, Act of the Queen's enemies and inherent vice. Civil law countries, however, seem to take a different approach. For example, under the laws of the German Democratic Republic and the Federal Republic of Germany an unjustifiable deviation is considered as a breach of contract entitling the charterers/cargo owners only to claim damages. 449/

301.Although in England, it may be considered that the Hague/Hague-Visby Rules have not altered the common law principles applicable to unjustifiable deviation, 450/ the position in the United States seems to be different in that it is considered that the Hague Rules have abolished the harsh common law principles which put the carrier in an insurer's position after deviation and have substituted a liability for damages caused by deviation. 451/

E. Cargo responsibility clauses

302.Voyage charter parties, similarly to time charters, usually contain provisions dealing with owner's responsibility for loss of or damage to cargo. In most tanker voyage charters and more modern dry cargo voyage charters such responsability is based on Hague or Hague-Visby Rules. This is done either by incorporation of the Rules through a paramount clause into the charter party, or of national enactments of the Rules in the country of shipment or destination, or by inclusion of an express clause modelled on certain provisions of the Rules.

447/ (1984) 1 Lloyd's Rep. 588.

448/ For English Law, see Scrutton, op. cit., pp.258-260; Carver, op. cit., paras.1187-1200. For the position under American Law, see Gilmore and Black, op. cit., pp. 180-182 and pp. 209-210.

449/ For the Law of the GDR, see Richter-Hannes, D.; Richter, R.; Trotz, N.; op. cit. p.200. For the law of the FRG, see Abraham, H.J., op. cit., p.419.

450/ Scrutton, op. cit., p.440; Carver, op. cit., para.550.

451/ See Gilmore & Black, op. cit., pp.180-182.

303.The Multiform charter includes a paramount clause (clause 33) which incorporates Hague-Visby Rules into the charter and bills of lading issued under it. It further includes a general exceptions clause (clause 28) relieving "the vessel, her master, the owners and the charterers" from responsability for "loss of or damage or delay to or failure to supply, load, discharge or deliver the cargo" resulting from certain events, including "fires", unless otherwise expressely provided in the charter party. This general exception clause is presumably intended to deal mainly with events falling outside the scope of the Hague-Visby Rules.

304.The "Nuvoy 84", clause 43, also provides for the provisions of the Hague Rules to apply to the charter party and to any bill of lading issued under it. And in respect of shipments to which national enactement of the Hague Rules are compulsorily applicable, the provisions of such enactments are to prevail. It further provides for the application of the Hague-Visby Rules to the charter party in trades where the latter rules are compulsorily applicable. The clause then attempts to clarify certain issues in relation to the application of the Hague or Hague-Visby Rules to the charter party, such as the meaning of the terms "carrier" and "period of responsibility" in the context of the charter party. The clause also provides for general exceptions, somewhat similar to those in the Multiform; it does not, however, include fire exception. 452/

305.Some charter parties, on the other hand, only incorporate certain provisions of the Hague or Hague-Visby Rules or their national enactment. Clause 40 of the Beepeevoy 2"83" states that "The provisions of articles III (other than Rule 8), IV, IV bis and VIII of the Schedule to the Carriage of Goods by Sea Act, 1971, of the United Kingdom and shall be deemed to be inserted in extenso herein. This charter shall be deemed to be a contract for carriage of goods by sea to which the said articles apply, and the owners shall be entitled to the protection of the said articles in respect of any claim made hereunder". The second part of the clause deals only with the protection of the charterers from liability in certain specified events. Thus the owner's responsibility is governed only by the provisions of the Hague-Visby Rules as enacted in the United Kingdom and unlike most other voyage charters, there are no additional exceptions in favour of the owners over and above the Hague-Visby exceptions. 453/

306.Clause 36 of the North American fertilizer charter party, "Fertivoy 88", as far as the seaworthiness of the vessel is concerned, is based on the Hague-Visby Rules, gears the liability for loss or damage to goods to the Canadian or American national enactments of the Rules. The clause also

452/ Clause 43 (c); for a similar clause, see clause 15 of the Coal Charter party, Code Name: "Nipponcoal" issued by the Documentary Committee of the Japan Shipping Exchange in 1983; and clause 21 of the BIMCO Standard Ore Charter party, Code Name: Orevoy (1980); see also the BIMCO Standard Voyage Charter Party for the Transportation of Chemicals in Tank Vessels, Code Name: "Bimchemvoy", clauses 26 and 37; the tanker voyage charter party - ASBA II, clauses 20(b) and 23; Exxonvoy 84, clauses 27(b) and 29; see further clause 4 of the SCANCON (1962 amendment) charter which provides that the Hague Rules as enacted in the country of destination shall apply to the charter, and if there is no such enactment in force in the country of destination the corresponding legislation in the country of shipment is to apply and if no such legislation is in force in either country then the British Carriage Goods by Sea Act 1924 is to apply.

453/ For a similar clause, see also Intertankvoy 76, clause 25.

provides for some general exceptions, but emphasises that "nothing in the charter party shall exempt the owners from liability for failure to perform any of the duties imposed on carriers by the Canadian Carriage of Goods by Water Act, 1970 or the US Carriage of Goods by Sea Act, 1936. 454/

307.Provisions of the Hague and Hague-Visby Rules relating to cargo responsibility (which are identical in this respect) are mainly contained in article III rules 1 and 2 and article IV. Article III rule 1 places a duty upon the carrier to exercise due diligence to make the ship seaworthy. It provides that "the carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to (a) make the ship seaworthy (b) properly man, equip and supply the ship (c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation." The due diligence requirement in this article is construed, under English law, to apply not only to the carrier himself but to all persons employed by him including his servants and agents and independent contractors. 455/ As regards care of cargo, rule 2 of article III provides that "the carrier, shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried". This requirement is, however, made subject to the provisions of article IV which provides a list of excepted perils. It should also be noted that the obligation, in article III rule 1, as to the exercise of due diligence to make the ship seaworthy is an absolute obligation, and therefore a carrier who has not exercised due diligence to make the ship seaworthy does not enjoy the protection of any of the exceptions in article IV, (other than those in rule 5 which uses the term "in any event") if the loss of or damage to cargo is caused as a result of the unseaworthiness of the vessel. 456/

308.The effect of and the difficulties arising from the incorporation of the Hague or Hague-Visby Rules into charter parties, by way of a Paramount clause or otherwise is dealt with in other sections of this report. 457/

309.A number of standard form charter parties in current use do not however incorporate the Rules in the printed form, but contain a variety of clauses restricting the shipowners' liability for loss of or damage to cargo.

310.Most criticized amongst these clauses is the Owners' Responsibility Clause in the Gencon charter. Clause 2 of the Gencon charter provides:

> "Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by the improper or negligent stowage of the goods (unless stowage performed by shippers/charterers or their stevedores or servants) or by personal want of due diligence on the part of the owners or their manager to make the vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied or by the personal act or default of the owners or their manager.
> And the owners are responsible for no loss or damage, or delay arising from any other cause whatsoever, even from the neglect or default of the captain or crew or some other person employed by the owners on board or

454/ See also Norgrain 89, clause 36; see further clause 12 of the "Nubaltwood" charter party 1973 which is based on the provisions of article III rule 1 and article IV rule 2 of the Hague and Hague-Visby Rules.

455/ See Riverstone Meat Co. V. Lancashire Shipping Co. (1961) A. C. 807; Union of India V. N. V. Reederij Amsterdam (1962) I Lloyd's Rep. 539, (1963) 2 Lloyd's Rep. 223.

456/ See Scrutton, op.cit., at p.448.

457/ See paras 102-112.

ashore for whose acts they would, but for this clause, be responsible, or from unseaworthiness of the vessel on loading or commencement of the voyage or at any time whatsoever. Damage caused by contact with or leakage, smell or evaporation from other goods or by the inflammable or explosive nature or insufficient package of other goods not to be considered as caused by improper or negligent stowage, even if in fact so caused."

310a. The wording of this clause is particularly confusing because the phraseology used in the different parts of the clause is inconsistent. The first sentence, comprising the first paragraph, refers to "loss of or damage to the goods, or delay in delivery of the goods". The second sentence beginning the second paragraph refers, apparently more generally, to "no loss or damage or delay arising from any other cause whatsoever". And the third sentence merely refers to "damage" in a context which seems to relate only to physical damage to goods. 458/

311. The clause was generally understood to exempt the shipowner from all liability in respect of cargo claims unless caused by bad stowage or by the personal negligence of a director of the shipowning company or its manager. But a detailed analysis of the inconsistencies in the wording by the English Commercial Court in Louis Dreyfus & Cie. v. Parnaso Cia. Naviera S.A. (The "Dominator") 459/ resulted in a finding that the shipowners were exempted under the clause for physical loss of or damage to goods but not for financial loss (unless, presumably, the financial loss resulted from delay, but this was a point not covered in the case). However, the Commercial Court's decision was reversed by the Court of Appeal on other grounds and so remains a doubtful authority. Subsequently, the Court of Appeal in Nippon Yusen Kaisha v. Acme Shipping Corporation (The Charalambos N. Pateras) 460/ held that the somewhat similar clause 13 of the Baltime form did cover financial loss in regard to goods as well as physical loss, but that decision was in turn overruled by the House of Lords, in Tor Line A.B. v. Alltrans Group of Canada Limited (The "TFL Prosperity") 461/ in which the Court analyzed the Baltime clause 13 sentence by sentence and word by word in reaching its conclusion and in doing so criticized the drafting as "sadly defective". That comment applies equally to the Gencon clause 2.

312. However, a clause such as Gencon clause 2 may not in practice significantly benefit the shipowner, because he will usually be unable to limit his liability to cargo owners under bills of lading in terms anything like so favourable to him and he may have difficulty in obtaining an indemnity from the charterer. 462/ It may be partly for this reason that more modern standard forms, and all the tanker forms, incorporate either the Hague or Hague-Visby Rules directly, because the shipowner will be liable to the cargo owner (unless the charterer himself owns the cargo) to that extent anyway. 463/

313. In the case of Ben Shipping Co. v. An-Broad Bainne (The "C. Joyce") 464/ the charter was on an amended Gencon form providing that "all bills of lading signed under the charter to include paramount clause". The shipowners were held liable to the cargo owners, who were the indorsees of the bill of lading

458/ See Tor Line A.B. v. Alltrans Group of Canada Ltd. (The T.F.L. Prosperity) (1984) 1 Lloyds' Ref. 123, and the comments made on the similar provisions of the Baltime charter clause 13.
459/ (1959) 1 Q.B. 498.
460/ (1972) 1 W.L.R. 74.
461/ (1984) 1 Lloyd's Rep. 123.
462/ See paras 325-328 and 387-391 of this report.
463/ P. Todd, op.cit., p.53.
464/ (1986) 2 Lloyds' Rep. 285.

subject to Hague Rules, although they would not have been liable under clause 2 of the Gencon. The shipowners'claim against the charterers for an indemnity (on an implied term) was rejected by the English Commercial Court. Bingham, J. commenting: "The owners' central argument against this conclusion was this. Clause 2 defines the owners' area of responsibility under the charter party. For damage falling outside that clause the owners are not to be responsible. If, therefore, the owners become liable to a third party to whom the charterers have negotiated the bills, it is clearly understood that the charterers are to make good the loss. But in my judgement the argument has a defective foundation. Clause 2 defines the owners' area of responsibility vis-à-vis the charterers. The bill of lading clause provides for the issue of bills in a form which will expose the owners to wider responsibilities to indorsees. The charter party has to be construed as a whole. In the absence of appropriate language preponderant weight may not be given to one provision at the expense of another. The bill of lading clause is as much a part of the charter party as clause 2". 465/

314.Other cargo responsibility clauses are outdated in their wording and so phrased as to leave it uncertain what causes of loss or damage to cargo are the responsibility of the shipowners. Clause 20 of the Mediterranean Iron Ore Charter (The C (Ore) 7) and clause 19 of the Synacomex Grain charter - both of which are still in general use - are examples of such antiquated clauses. The C (Ore) 7 charter reads:

> " The Act of God, the Queen's enemies, Arrest and/or Restraints of Rulers, Princes and People, Quarantine, Fire on Board, in Hulk or Craft or on Shore, Ice, Barratry of the Master and Crew, Enemies, Pirates, Robbers by land or sea, accidents to and damage and detention from Boilers, and of Machinery, Collisions, Stranding, Jettison, or from any act, neglect, default or error in judgment whatsoever of the Pilot, Master Crew or other servants of the Shipowners in the management and/or the navigation of the Steamer, and all and every other Dangers and Accidents of the Seas, Rivers and Canals of whatever nature and kind whatsoever, before and during the said voyage always excepted ... Ship not answerable for losses through explosion, bursting of boilers, breakage of shafts, or any latent defect in the machinery or Hull not resulting from want of due diligence by the Owners of the Ship or any of them or by the Ship's Husband or Manager".

315.Such wording may have been appropriate in charters at the beginning of this century when the C (Ore) 7 was first introduced, but today serves only to confuse.

F. General average clauses

316.Where both ship and cargo are exposed to a common danger and part of the cargo or the ship is intentionally sacrificed, or extraordinary expenditure is incurred, to avert the danger, such loss or expenditure will be the subject of general average contribution and will be apportioned between ship, cargo and freight in proportion to their saved value. The doctrine of general average is of very ancient origin. It is derived from Rhodian Law and has been adopted in all countries engaged in maritime trade. In its application, however, different countries adopted different rules so that by the middle of the 19th century, there existed substantial differences in the law and practice of general average throughout the world. Various attempts were made to bring about an international uniformity in this subject which resulted in the adoption of a set of rules relating to general average in 1877 entitled "York-Antwerp Rules". The Rules have been revised, and amended on several

465/ Ibid., p.289.

occasions and the latest amendment was made at a conference of the Comité Maritime International (CMI) in 1974. 466/

317.The York-Antwerp Rules are now generally incorporated in charter parties, bills of lading and policies of marine insurance, as they have not in themselves any legal force except by contract. Thus, the Gencon form, clause 11, provides for "General Average to be settled according to York-Antwerp Rules, 1974. Proprietors of cargo to pay the cargo's share in the general expenses even if same have been necessitated through neglect or default of the owner's servants". The Scancon charter, clause 12, simply states that "General Average shall be settled according to York-Antwerp Rules 1974". The more modern charter parties such as Norgrain 1989, clause 40, and Multiform 82 (86 revision) clause 26, further require the place of adjustment of general average to be specified in the charter party.

318.The major criticisms in responses to enquiries made by the Secretariat are that General Average clauses in standard form charters sometimes do not specify where the adjustment is to be drawn up and that sometimes there is no coordination between the place of adjustment of General Average, the place of arbitration and the applicable law. Any analysis of the arguments for and against the retention of the concept of general average in maritime trade is beyond the scope of this report.

G. Arbitration clauses

319.Most charter parties contain an arbitration clause providing for any disputes arising under the charter party to be referred to arbitration. There are, however, charter party forms which do not include such a clause. Thus, criticism has been directed to those standard charter forms, such as for example the Gencon and the C (Ore) 7 charters which do not contain an arbitration clause at all. This may result in the inclusion of an arbitration clause in the addendum to the charter which is inappropriate. "...when negotiating a contract, usually the last thing a broker or a principal is thinking about is a dispute, and scant consideration is given to the wording of the arbitration clause itself, other than perhaps sometimes to consider the venue. This leads even today, in cases where a printed arbitration clause is not included in the contract, to the importation of woolly and unsatisfactory clauses such as "Arbitration London" or "Arbitration London in the customary manner", which can lead to unimagined complications". 467/

320.Not all printed arbitration clauses in standard form charters are sufficiently clear in their meaning. The Centrocon arbitration clause has given rise to numerous disputes. In its original form it provides for a 3-months' time limit from "final discharge" for the making of a claim and the appointment of an arbitrator. In amended forms, it provides, variously, for time limits of six months, nine months and twelve months for notice of claim and appointment of arbitrator. The original form of the clause which is frequently incorporated as an additional clause into other charter-parties reads as follows:

> "All disputes from time to time arising out of this contract shall, unless the parties agree forthwith on a single Arbitrator, be referred to the final arbitrament of two Arbitrators carrying on business in London who shall be members of the Baltic and engaged in the Shipping and/or Grain Trades, one to be appointed by each of the parties with power to such Arbitrators to appoint an Umpire. Any claim must be made in writing

466/ For detailed information on the subject, see Lowndes & Rudolf, General Average and York-Antwerp Rules, British Shipping Laws, Vol. 7, Ninth ed. 1975, Stevens & Sons, London.

467/ The Shipbrokers' Manual, compiled by the Institute of Chartererd Shipbrokers, Vol.1, Lloyd's of London Press, Ltd., London, 1983, p.114.

and Claimant's Arbitrator appointed within three months of final discharge and where this provision is not complied with the claim shall be deemed to be waived and absolutely barred. No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his acting be taken before the award is made."

321. The shortness of the time limits and the variety of the periods in "amended" Centrocon arbitration clauses are a trap for the unwary. Furthermore where the Centrocon arbitration clause is incorporated into charter parties other than a single voyage charter party, for which the clause was designed, difficulties arise in determining the date of "final discharge" from which to calculate the time limit. Agro Company of Canada limited v. Richmond Shipping Limited (The "Simonburn") 468/ was just such a case in which a Centrocon arbitration clause was incorporated in a consecutive voyage charter. The judge remarked: "The wholesale lifting of common form clauses without adaptation from contracts for which they were designed into other contracts to which they can only be made to apply with difficulty is constantly occurring in the field of charters and bills of lading and does not credit to the art of the chartering broker". In another case, Tradax Export S.A. v. Italcarbo Societa di Navigazione S.p.A. (The "Sandalion") 469/ the Court had to determine what was the effect of the Centrocon arbitration clause when incorporated into a time charter on the NYPE form. Again the words "final discharge" were the cause of the confusion.

322. Respondents to enquiries made by the secretariat have also commented on difficulties caused by arbitration clauses in standard form charters and addendum clauses which do not specify the substantive law to be applied by the arbitrators. Arbitration clauses in the older forms of charter, and added arbitration clauses, often merely specify the place of arbitration which may not be determinative of the law to be applied. So, for example, the Chamber of Shipping Fertilizers Charter 1942 (Ferticon), clause 17, provides that :

"Any dispute arising under this charter shall be settled in accordance with the provisions of the Arbitration Act 1950 in London..."

323. And the Soviet Wood Charter-Party 1961 (Sovietwood), clause 24(a), requires that:

"Any dispute arising under this charter shall be referred to arbitration in the country of the respondent in accordance with the arbitration law and procedure prevailing in such country".

324. In neither case is there any stipulation as to the law which is to govern the dispute as opposed to the procedure in the arbitration. This can result in the unsatisfactory situation of arbitrators having to apply a law which is foreign to them. 470/ This can occur where the place of arbitration is in one country, but the parties and the subject matter of the contract are more closely connected with the law of another country; and it is accordingly determined that the intention of the parties was that the law of the latter country should govern their contract, irrespective of the place of arbitration.

H. Indemnity clauses

325. It is unusual to find express indemnity clauses in modern dry cargo voyage charter party forms, although express indemnity provisions are sometimes inserted by the parties in addenda to the charter party. Such indemnities are usually against liabilities that may be incurred by the

468/ (1972) 2 Lloyd's Rep. 355.
469/ (1983) 1 Lloyd's Rep. 514.
470/ See the English House of Lords case of Compagnie d'Armement Maritime S.A. v. Compagnie Tunisienne de Navigation S.A. (1971) A.C. 572.

shipowners from the signature by their Master of bills of lading in the form required by the charterers. In one case, Milburn v. Jamaica Co., 471/ the charter party provided that the charterers were to "indemnify the owners from any consequences that may arise from the Captain following the charterers' instructions and signing bills of lading." Under the terms of the charter party, the shipowners were exempted from liability for the negligence of the Master, but the bills of lading signed by the Master at the charterers' request contained no such exception of negligence. It was held by the English Court that the shipowners were entitled to be indemnified by the charterers against the liability they incurred as a result of a collision caused by the Master's negligence.

326. While it is unusual to see express indemnity clauses in modern dry cargo voyage charter party forms, it is not unusual to find them in tanker voyage charters. Thus the STB Voy form provides: "Bills of lading shall be signed by the Master as presented ... All bills of lading shall be without prejudice to this charter and the charterer shall indemnify the owner against all consequences or liabilities which may arise from any inconsistency between this charter and any bills of lading or other documents signed by the charterer or its agents or by the Master at their request or which may arise from an irregularity in the papers supplied by the charterer or its agents."

327. In Boukadoura Maritime Corporation v. Société Anonyme Marocaine de l'Industrie et du Raffinage 472/ a shipowner recovered an indemnity from a charterer under this clause in circumstances in which the statement as to quantity shipped in the bill of lading presented by the charterers to the Master for signature was inaccurate and this was held to be an "irregularity" within the meaning of the indemnity clause.

328. Even though there may be no express indemnity clause in the charter party, an indemnity may be implied from the clause in the charter that is commonly termed the "Bills of Lading Clause". Clause 22 of the Multiform charter reads: "The Master shall sign bills of lading as presented (but in accordance with Mate's receipts) without prejudice to the terms, conditions and exceptions of this charter party. Should it be impractical for the Master to sign bills of lading, he may authorise in writing port agents to sign them on his behalf in accordance with Mate's receipts." Commonly, as for example in the Baltimore Berth Grain charter party, Form C, the clause provides that the Master is to sign bills of lading "as presented, without prejudice to this charter party". The Gencon charter and many other voyage charter parties contain similar provisions. Where the charter party does contain such a provision and the liability to which the shipowners are exposed under the bills of lading are wider than their responsabilities under the charter party, the shipowners may be entitled to recover to that extent from the charterers if they (the shipowners) incur a liability under the bills of lading. 473/ Whether the nature of the claim by the shipowner against the charterer in such circumstances arises by virtue of an indemnity to be implied from the bill of lading clause or whether it is in the nature of a claim for damages for breach of the charter party is a question which is still not clearly determined under English law. It is unsatisfactory that the circumstances in which a right to indemnity arises is not clearly provided for in most standard dry cargo charter party forms.

471/ (1900) 2 Q.B. 540.

472/ (1989) 1 Lloyd's Rep. 393.

473/ Jones v. Hough (1879) 5 Ex.D.115, Hansen v. Harrold (1894) 1 Q.B. 612, Gulf Steel Co. v. Al Khalifa Shipping Co. (1980) 2 Lloyd's Rep. 261 and Garbis maritime Corporation v. Philippine National Co. (1982) 2 Lloyd's Rep. 283.

Chapter IV

EFFECT OF CHARTER PARTY TERMS ON THIRD PARTY BILL OF LADING HOLDERS

329. Many standard voyage charter party forms are recommended for use with standard bill of lading forms. Thus, for example the "Congenbill" bill of lading form is recommended for use with the "Gencon" charter party and the North American Grain Bill of Lading is recommended for use with the "Norgrain" charter. The reason for the coupling of bill of lading forms and charter party forms is that the bills of lading incorporate terms of the charter party. So in the case of the Congenbill, the bill of lading states on its face "Freight payable as per charter party dated ... " and clause 1 on the reverse side of the bill provides: " All terms and conditions, liberties and exceptions of the charter party, dated as overleaf, are herewith incorporated."

330. The intention of this clause is to make the terms of the charter party applicable, insofar as possible, to parties interested in the cargo who are not the charterers - namely shippers of cargo, who are not the charterers and endorsees of the bill of lading, whether receivers of cargo, bankers or others. Since copies of the charter party do not usually accompany so-called charter party bills of lading when the shipping documents are negotiated or transferred, bankers sometimes may not accept charter party bills of lading. But the endorsee of a charter party bill of lading is bound by the terms of a charter party incorporated by reference into the bill of lading, even though he has not seen the charter party. 474/ Charter party bills of lading are nevertheless in common use, particularly in the trades for which standard form charter party bills of lading are recommended, such as the grain, ore, wood, nitrates, oil and chemical trades. Standard form charter party bills of lading are also recommended for use with the general charter parties Nuvoy, Britcont and Scancon, as well as with the Gencon.

331. Even if the charter party is available to the endorsee of the bill of lading for reference, it will not be easy for such a third party to determine which of the various terms are incorporated in the bill of lading, without legal advice. It is now established in English law that clauses in bills of lading incorporating "all conditions" or "all terms" of a charter party will never be effective to incorporate an arbitration clause in the charter party into the bill of lading. 475/ Hence a number of standard form charter party bills of lading in addition to incorporating all "terms, conditions, liberties and exceptions" specifically include a reference to the charter party arbitration clause. The Grainvoybill, Biscoilbill, Bimchemvoy and Orevoybill are examples of such bills of lading. If the bill of lading refers in general terms to the arbitration clause of the charter party, without reference to the number of the clause, the English Courts will usually regard it as sufficient. 476/ But it seems that in some civil law countries the Courts will not recognize a reference to an arbitration clause in a bill of lading unless the bill is signed by both parties.

332. It might be thought therefore that if an incorporating clause did not make any reference to the charter arbitration clause, it would necessarily be inapplicable to the bill of lading. But this is not always the case. In The Merak, 477/ it was held by the Court of Appeal that a clause in a bill of lading providing that "all terms, conditions, clauses..."

474/ Finska Cellulosa v. Westfield Paper (1941) 46 Com. Cas. 87.

475/ See Thomas v Portsea Steaming Co (1912) A.C.1; and Skips A/S Nordheim v. Syrian Petroleum (The Varenna) (1983) 2 Lloyd's Rep.1 592 and Federal Bulk Carriers v. C. Itoh and Co (The Federal Bulker) (1989) 1 Lloyd's Rep. 103.

476/ See The Renak (1978) Q.B. 377.

477/ (1965) P.223.

of a charter party were to be incorporated into the bill of lading was effective to incorporate a charter arbitration clause which, in turn, referred to bill of lading disputes. The charter clause read:" Any dispute arising out of this charter or any bill of lading issued hereunder shall be referred to arbitration."

333. In The Annefield 478/ on the other hand, the Courts refused to incorporate a Centrocon arbitration clause which referred to " All disputes from time to time arising out of this contract ..." and where the Centrocon form bill of lading incorporated "all the terms" of the charter party "including the negligence clause." Mr. Justice Brandon, whose judgment was affirmed by the Court of Appeal said:

> "In this case, it seems to me that one has to ask oneself what an ordinary businessman, having both documents before him, would think with regard to the applicability of the arbitration clause in the charter party to bill of lading disputes ... It seems to me that the hypothetical businessman would, or might, be left in doubt on the matter, and it seems to me that the reason why he would or might be left in doubt on this matter is that no specific words to show the intention clearly are used."

334. The Court in The Federal Bulker, (supra) reached a similar conclusion on the interpretation of the Baltimore Form C bill of lading and charter party.

335. In reaching that conclusion in The Federal Bulker, the Court of Appeal, considering themselves bound by previous authority, affirmed principles that surely no "ordinary businessman" looking at a bill of lading and charter party together, and the relevant clauses in them, could possibly regard as sensible. The Baltimore form C Berth Grain bill of lading contained the clause: "All terms, conditions and exemptions as per charter party dated .... to be considered as fully incorporated herein as if fully written." The arbitration clause of the Baltimore Form C charter provided that: "All disputes from time to time arising out of this contract ..." should be referred to arbitration. The Court of Appeal held that on a true reading of the decision of the House of Lords in the case of Thomas v. Portsea Steamship Co. 479/ the incorporating words in the bill of lading "All terms, conditions and exeptions..." were not sufficient to incorporate an arbitration clause from a charter party, however the arbitration clause in the charter might be worded. But the Court acknowledged that the effect of the earlier decision of the Court of Appeal in The Merak, supra, was that if the word "clauses" was included in the incorporating words in the bill of lading instead of or in addition to "terms" or "conditions", the incorporating clause would prima facie be wide enough to incorporate an aptly worded arbitration clause from the charter party. Lord Justice Bingham said:

> "The Merak was perhaps an unusual case as Lord Justice Phillimore in The Annefield described it ... But it is authority for the proposition that reference to "clauses" is enough at this first stage to permit incorporation of an aptly drafted arbitration clause. [Counsel for the cargo receivers], understandably and strongly relies on this decision and contends that it is offensive to commonsense if a reference to "clauses" is sufficient to incorporate an arbitration clause, but a reference to "terms" is not.
> I have some sympathy with that submission but, as it seems to me, that is where, reading Thomas v. Portsea and The Merak together, the line has been drawn. I do not think it is open to us, nor do I think,it in all the circumstances desirable, that we should give to the expression "terms" a meaning which Thomas v. Portsea denied."

478/ (1971) P.168, 177.
479/ (1912) A.C.1.

336. So it seems that as English law now stands, a third party bill of lading holder looking at a charter party bill of lading referring to the incorporation of all "terms and conditions" of a charter party, might be able to assume that - if the bill were governed by English law (which he may not, in any event, be able to determine without seeing the charter party) - he will not be bound by an arbitration clause in the charter party. But if the incorporation clause also refers to "clauses" of the charter, he might be bound by an arbitration clause, although not necessarily so.

337. As has been indicated, the position is further complicated by considerations of the applicable law. It will probably not be possible for the third party bill of lading holder to determine the law which governs the bill of lading without seeing the charter party and taking legal advice. (The question of what is the applicable law is dealt with below). If the applicable law is that of the United States, it seems that different principles to the English law principles will apply. In Son Shipping v. De Fosse and Tanghe, 480/ the 2nd Circuit) Court of Appeals had to consider the effect of a bill of lading clause reading as follows:

> "This shipment is carried under and pursuant to the terms of the charter dated ... and all the terms whatsoever of the said charter except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment".

338. It was held that this clause effectively incorporated a charter arbitration clause so as to bind the bill of lading holders.

339. Apart from arbitration clauses it is not a straightforward matter to determine what other provisions of the charter party are incorporated into a bill of lading by the incorporating words used. The incorporation of only "other conditions" of a charter party apart from payment of freight is not effective to bring charter party exceptions clauses into the bill of lading. 481/ Such an incorporation clause will only introduce conditions which would apply directly to the party taking delivery of the cargo. 482/ It would not incorporate a cesser clause. 483/ Nor would such words incorporate a conclusive evidence clause in a charter party. 484/ But they would be effective to incorporate lien clauses (see below) and provisions for demurrage at the discharging port. 485/

340. On the other hand, references to "terms" of the charter party may have a wider effect, particularly if combined with the form of words common in many modern charter parties "all terms, conditions, liberties and exceptions". Mr. Justice Goff in Garbis Maritime Corporation v. Philippine National Oil Co ("The Garbis") 486/ stated that it was well established that general words of incorporation may be effective to incorporate charter terms "which are relevant to the shipment, carriage and discharge of the cargo and payment of freight, provided of course that the terms of the charter party are consistent with the terms of bill of lading." In The Garbis case however, the bill of lading provided that "all terms whatsoever" (emphasis added) of the charter

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480/ 199 F.2d 687, 1952 AMC 1931 (2d Cir. 1952).
481/ Russell v. Niemann (1864) 34 L.J.C.P.10.
482/ The Northumbria (1906) p.292.
483/ Gullischen v. Stewart (1884) 13 Q.B.D. 317.
484/ Hogarth Shipping v. Blythe (1917) 2 K.B 534.
485/ Gullischen v. Stewart, supra.
486/ (1982) Lloyd's Ref. 284.

party, except rate and payment of freight, were to be incorporated and these words were held to be sufficiently wide to incorporate a clause relating to the loading of the cargo, and not merely to the carriage and delivery of the cargo.

341. It follows that charter party terms relating to the loading, stowing and discharge of cargo may have a profound effect upon third party holders of charter party bills of lading (even if the bill of lading is subject to the Hague and Hague-Visby Rules) where the words in the bill of lading incorporating the charter are widely framed. If the incorporating words in the bill of lading are sufficiently widely framed the third party bill of lading holder may find for example that he is unable to claim against the shipowner under the bill of lading for damage to cargo caused in the course of loading or stowing the cargo. This would be so if the charter party contained terms removing from the shipowner the responsibility for loading and stowing. These terms, if there was a wide incorporating clause, would be read as part of the bill of lading contract. They would not be nullified by the requirements of Article II, Rule 2 of the Hague Rules that "the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the good carried" because according to English law those words do not define the scope of the contract service but the terms upon which the agreed service is to be performed. 487/

342. In regard to loading, stowage or discharging, the Hague Rules, on these authorities, only impose obligations if the shipowner has contractually undertaken to perform those obligations. If under the terms of a charter party the shipowner is relieved to that extent of the obligations of performance, the shipowner will also be relieved of responsibility for loading, stowing or discharging as against a third party bill of lading holder, always providing that the bill of lading and charter contain sufficiently widely drawn clauses. This will be so even if the bill is subject to the Hague or Hague-Visby Rules; and even if the third party bill of lading holder has neither seen the charter party referred to, nor has any advance notice of the relevant charter party clauses.

343. Other charter party clauses which may affect a third party bill of lading holder particularly are law clauses, laytime and demurrage clauses and lien clauses.

344. So far as Law clauses are concerned - by which is meant clauses determining the law which is to govern the contract - some standard form charter party bills of lading expressly incorporate into the bill of lading the Law clause in the "matching" charter party. Thus, the Bimchemvoybill liquid chemical bill of lading, provides that "All terms and conditions, liberties and exceptions of the charter party dated as overleaf, including the War Risks clause (clause 36) and the Law and Arbitration Clause (clause 39) are hereby expressly incorporated". Clause 39 of the Bimchemvoybill charter party provides for the application of English Law, US Law or any other law according to the option exercised by the parties to the charter as indicated in the appropriate "Box" on the first page of the charter. Law clauses are also expressly incorporated into the Biscoilvoy bill of lading (vegitable oil) and the Orevoybill.

487/ Per Devlin J. in Pyrene v. Scindia Navigation Co. (1954) 2 Q.B. 402 at pp. 417 and 418, affirmed by the House of Lords in G.H. Renton & Co. v. Palmyra Trading Corp.of Panama (1957) A.C. 149.

345. The law which is to govern a bill of lading may, however, be dictated by the charter party even in the absence of a specific reference in the bill of lading to a Law clause in the charter party. "Where a bill of lading incorporates various clauses of a charter party, the law of the latter will generally govern the former both on the grounds of the presumed intention of the parties and of business convenience". 488/ In The Njegos case, goods were shipped in the Argentina under a charter party made in England containing a London Arbitration clause. The goods were shipped on a Yugoslavian ship for carriage to Norway and Denmark. In an action in England by holders of the bills of lading which incorporated conditions of the charter, it was held that although the London arbitration clause was not incorporated into the bill, the bill of lading was to be treated as governed by the same law as governed charter from which the clause were incorporated.

346. Laytime and demurrage clauses relating to the port of discharge will be incorporated into bills of lading by even a narrow incorporation clause. Laytime and demurrage clauses relating to the loading port as well as the discharging port may also be incorporated so far as to make the bill of lading holder personally liable for demurrage accrued at the loading port if sufficiently wide words of incorporation are used in the bill of lading and if the charter party clause can be construed as clearly imposing a liability on the consignee, as well as on the charterer, to pay the demurrage due. 489/ But a charter party clause requiring "the charterer" to pay loading port demurrage will not be construed as referring to "the consignee", so as to make the consignee personally liable for loading port demurrage, even if the bill of lading incorporates "all the terms whatever" of the charter. 490/

347. The effect of a lien clause in a charter party may be even more burdensome to third party bill of lading holders, because it may in effect force the bill of lading holder to pay amounts incurred in respect of the goods for which he has no personal liability and before he acquired any interest in them. A bill of lading holder may not, for example, be contractually liable under his purchase contract to pay demurrage incurred at the loading port, but a lien upon cargo for loading port as well as discharging port demurrage will be effectively incorporated into a bill of lading referring merely to "other conditions as per charter", 491/ so that the consignee may have to pay such amounts in order to obtain release of his goods from lien, even though he may have no personal liability for the demurrage. 492/ For the same reasons a third party bill of lading holder may have to discharge a lien for deadfreight which will also be incorporated into a bill of lading from a charter party by a general reference to "other conditions as per charter". 493/

348. A linked problem to the problem of the effect on third party bill of lading holders of charter party clauses is the difficulty not infrequently encountered of identifying which charter party is to be incorporated into the bill of lading.

488/ Scrutton on Charter Parties, op.cit., p.12, citing The Njegos (1936) P.90.
489/ Gray v. Carr (1871) L.R 6 Q.B. 522, Porteus v. Watney (1878) 3 Q.B.D 534 and Miramar Maritime Corporation v. Holborn Oil Trading (The Miramar) (1984) 2 Lloyd's Rep. 129).
490/ The Miramar, supra.
491/ Fidelitas Shipping v. Exportchleb (1963) 2 Lloyd's Rep. 113-125.
492/ Miramar Maritime Corporation v. Holborn Oil Trading (The Miramar) (1983) 2 Lloyd's Rep. 319, (1984) 1 Lloyd's Rep. 142, (1984) 2 Lloyd's Rep. 129.
493/ Kish v. Taylor (1912) K.B. 604, 614.

349. Some incorporating clauses in bills of lading merely refer to the incorporation of terms or conditions "as per charter party" (or words to similar effect) without actually identifying to which charter party reference is being made. In such circumstances, the English Courts "will assume that the reference is to any charter under which the goods are being carried". 494/ This approach was approved in K/S A/S Seateam v. Iraq National Oil Co (The Sevonia Team) 495/ on the footing that this was the assumption to be made if the goods were being carried under a voyage charter. Such an assumption might not be made if the only charter under which the goods were carried was a time charter. But that apart, the effect may be that a third party bill of lading holder will be bound by the terms of a charter party not even identified by date in the bill of lading.

350. The position becomes more complicated when there is more than one charter under which the cargo is being carried. This was the case in Pacific Molasses v. Entre Rios Compania Naviera (The San Nicholas). 496/ There the vessel had been voyage chartered and the voyage charterers had then sub-chartered, so that there were two voyage charters in existence. The head voyage charter was subject to English law, but the sub-charter was not, and in this case it was the bill of lading holder who contended that the bill of lading incorporated the head charter and thus that the bill was also subject to English law. It was held that where, as in that case, a bill of lading referred to a charter party, but omitted any reference to its date, it was in general to be assumed that where there was more than one voyage charter, the reference was to the head charter. The ground for the decision was that the head charter party was the charter to which the shipowner was a party and since the bill of lading was in this case issued by or on behalf of the shipowner, it was to be assumed that it was intended to refer to that charter party. 497/

351. The difficulty of such an approach for a third party bill of lading holder who is buyer of cargo is that he is more likely to be aware of any sub-charter under which the cargo was shipped and it may not be apparent from merely looking at the bill of lading and the charter party that the charter party is in fact a sub-charter and that there is also a head voyage charter in existence.

352. The position might be different if it was the charterer by whom or on whose behalf the bill of lading was issued. In such a case, it might be held on this analysis, that it was the sub-charter to which the reference was intended. But from the point of view of the third party bill of lading holder, this only adds another element of uncertainty in determining what charter party terms are properly incorporated into the bill of lading he holds.

353. Furthermore, the position may also be different where the head charter is a time charter party. Since many of the terms and clauses of a time charter party are not appropriate for incorporation into a bill of lading, the sub-charter will be incorporated provided it is in voyage form. 498/

Conclusion

354. It can be seen from the foregoing that charter party terms can have an impact upon third party bill of lading holders in several important respects and it is suggested that in considering in any standardization, harmonization or improvement of charter party terms and the necessity for international legislative action, due account should be taken of the interests of third party bill of lading holders as well as those of charterers and shipowners.

494/ Scrutton on Charter parties, op.cit., p.65.
495/ (1983) 2 Lloyd's Rep. 640, 644.
496/ ((1976) 1 Lloyd's Rep. 8.
497/ See also The S.L.S Everest (1981) 2 Lloyd's Rep. 389.
498/ See The SLS Everest (1981) 2 Lloyds' Rep. 389.

Chapter V

CHARTER PARTIES AND MANDATORY LEGISLATION

355. A number of respondents to the secretariat's enquiries strongly supported the application of mandatory legislation to charter parties with a view to avoiding difficulties and uncertainties arising, inter alia, from the application of different liability regimes to bills of lading and charter parties.

356. Indeed in some countries mandatory legislation is applied to charter parties. In the USSR, the provisions of chapter VIII of the Merchant Shipping Act of 1968, governing the contract of Carriage of Goods by Sea, apply mandatorily to both bills of lading and voyage charter parties. According to article 119 "In mutual relations between Soviet organizations, and in the cases expressely mentioned in this chapter, any agreement between the parties inconsistent with the rules of this chapter shall be invalid". It seems, however, that where one of the parties to the charter party is a foreign national certain provisions of the chapter VIII have mandatory application. These include the following articles:

357. Article 129, concerning seaworthiness of the ship, which provides:

> "The carrier shall in good time before the begining of the voyage make the ship seaworthy: ensure the technical fitness of the ship for the voyage, properly equip, man and supply the ship with everything necessary, and make the holds and all other compartments of the ship in which the goods are carried fit for the proper reception, carriage and preservation of the goods.
>
> No liability shall lie with the carrier if he proves that the unseaworthiness of the ship was caused by defects which could not have been discovered in the exercise by him of due diligence (latent defects). Any agreement of the parties inconsistent with the provisions of the first paragraph of this article shall be invalid."

358. Article 160 dealing with liability for loss or damage to goods provides:

> "The carrier shall be liable for any loss of, shortage in, or damage to the goods received for carriage, unless he proves that such loss, shortage or damage occurred through no fault of his, in particular due to:
> (1) force majeure;
> (2) perils and accidents of the sea and other navigable matters;
> (3) saving human life, ship and goods;
> (4) fire not resulting from any fault of the carrier;
> (5) acts or orders of authorities (detention, arrest, guarantine, etc.);
> (6) acts of war or popular conditions;
> (7) acts or omissions of the consignor or the consignee;
> (8) latent defects of the goods, their properties, or natural wastage;
> (9) defects, not discoverable from outside, in the receptacle or packing of the goods or in timber rafting;
> (10) insufficiency or indistinctness of markings;
> (11) strikes or other circumstances causing stoppage or restraint of labour, whether general or partial.
>
> Liability under this article shall arise the moment the goods are received for carriage and shall continue until the moment of their delivery.

> Stipulations which differ from the provisions of this article shall be invalid, with the exception of stipulations concerning liability in the periods between the receipt of the goods and their loading and between their unloading and delivery".

359. Under the Maritime Codes of the Scandinavian countries, charter parties for voyages in or between Scandinavian countries are subject to mandatory legislation as regards cargo liability. According to Section 168 of the Norwegian Maritime Code "The provisions contained in Sections 118-123 [which deal with the carrier's responsability for the goods]... may not, when Norwegian law is applicable in accordance with Section 169, be contracted out of to the detriment of the shipper, charterer or receiver..." And by the first paragraph of section 169, transport is subject to the mandatory rules even if no bill of lading is issued and the goods are carried under a charter party. It provides: "Carriage in domestic trade in Norway, Denmark, Finland and Sweden and in trade between those states shall be subject to the legislation of the state from where the carriage is performed. This shall apply even if no bill of lading is issued."

360. Writers in other countries have recognised the problems inherent in having a mandatory regime applicable to cargo carried under bills of lading, but no universal regime applicable to cargo carried under charter parties. The late Per Gram, formerly Managing Director of the Northern Shipowners' Defence Club, Oslo, and Chairman of the Documentary Committee of Intertanko having discussed the issues, said:

> "With regard to carriage by sea, unification by interregional convention and mandatory legislation as to responsibility for cargo is limited to carriage under bills of lading. The Hague Rules, however, are often expressly incorporated into charter parties by the "clause paramount". Thus, the fields of loss, damage and delay of goods are covered by such incorporation; in other words liability with regard to seaworthiness, care of the goods, and timely performance without unreasonable deviation is provided for ... The only field where mandatory international legislation for charter parties has been suggested is the field hitherto covered by such legislation for bills of lading, i.e., responsability for cargo. This should not raise difficult problems except as to documentary scope: what types of charter parties should be covered? Voyage? Consecutive? Surely not time or bareboat charters? Such rules should apply only to contracts which evidence a direct carrier/cargo relationship, like that a bill of lading." 499/

361. The possible scope of mandatory legislation was addressed further in the following note: "At least, a tramp bill of lading might well be covered from its issue, and not only from the time it has been negotiated. The present system whereby a carrier's responsability may change from Gencon 2 to the Hague Rules when the shipper/charterer decides to negotiate the bill, is strange and leads to difficult questions of recourse... If it is felt necessary to enforce by mandatory regulation what is universally done by clause paramount - whatever the geographical applicability - a simple solution could be to apply the mandatory rules to any carrier who issues any type of cargo receipt, whether a bill of lading, a consignment note, or accompanying freight letter." 500/

499/ Per Gram, a paper given to the Tulane Maritime Institute (1975) 49 Tulane Law Review 1076.

500/ Ibid.

362. The Hague or the Hague-Visby Rules may perhaps be said to be incorporated into charter parties "universally", but it is by no means the case that they are incorporated into charter parties invariably. The Gencon charter party, for example, is frequently used without incorporating any clause paramount and in many charter parties the Hague or Hague-Visby Rules are only partially incorporated. Hence other writers have a greater conviction of the necessity for mandatory legislation covering responsibility for cargo under charter parties. In the United States, for instance, Gilmore and Black on the Law of Admiralty, 501/ state:

> "There are no statutes in this country (or, generally, elsewhere) regulating the terms of charter parties, as the terms of bills of lading are regulated by the Carriage of Goods by Sea Act. It has traditionally been felt, apparently, that the bargaining power of charterers and owners is near enough equal that they may be left to contract freely, a situation in sharp contrast to the great disparity between ship lines and the shippers of package cargo ... Of late, this freedom of contract may be changing. In Bisso v. Inland Waterways, Corp. ... the Supreme Court used language which might extend to charter parties, wherever disparity in bargaining power actually appeared. So far, the Court has not spoken on this issue; Lower Federal Court decisions are not free from ambiguity. Obviouly, only the Supreme Court can decide authoritatively whether and to what extent the Bisso rule is to prevail in charter party cases. It seems that any really practical solution will have to come from an international convention, comparable to the one underlying COGSA; the strong assertion of national "public policy" in this most international of fields is highly problematic..". (Emphasis added)

363. Again, other writers have pointed to the legal difficulties that currently exist in the relationship between charter parties and bills of lading in connection with responsibility for cargo. Thus, in Scrutton on Charter parties 502/ it is stated that: "One of the most serious difficulties which arises under the Rules in their current, as well as their original form is to determine the position of a bill of lading issued under a charter party." Problems arise in four main areas: firstly, the scope of the application of the Hague Rules or Hague-Visby Rules to bills of lading issued under charter parties; secondly, the effect of attempts to incorporate the Rules into charter parties contractually by means of a clause paramount; and thirdly in the construction of charter parties into which the Rules have been incorporated or from which the Rules have been deleted; and fourthly in connection with indemnity claims between charterers and shipowners under charter parties.

A. Application of the Rules to bills of lading under charter parties

364. It is assumed for the purposes of the present discussion that the charter party under which bills of lading are issued is not, by the terms of the charter, made subject to the Rules or is not fully made subject to the Rules. Bills of lading issued under the charter party may, depending upon the nature of the charterers' trade, be either liner bills or charter party bills. Both forms of bill will normally be regulated mandatorily by either the Hague Rules or the hague-Visby Rules if they constitute a contract of carriage. But depending upon the identity and status of the party to whom the bill of lading is issued, or by whom it is held or presented, the bill of lading may or may not constitute a contract of carriage, and thus may or may not be subject to the Rules.

501/ Op.cit., p.198.
502/ Op.cit. p.417.

365. It is well established under both English and American law that where the charterer is the shipper, a bill of lading issued to the charterer prima facie takes effect only as a receipt for the goods. 503/ The fact that the bill of lading may, by an express term, incorporate the Rules, or that the bill had been issued in a contracting State or is for the carriage of goods between two contracting States is irrelevant, because it is said that the Master by signing the bill of lading has no power to modify or vary the terms of the charter party. So even though the liability of the shipowners under the charter party is more restrictive than the liability for cargo under the Hague Rules, the charterer will not be entitled to rely upon the Rules.

366. If however, as has been seen in the previous chapter, the charterer holding the bill of lading as a receipt only, endorses the bill to a third party, the bill of lading thereupon becomes the contract between the third party and the shipowner. 504/ As is observed in Scrutton on Charter parties: "This view is, however, not easy to explain. The indorsee has by statute [Bills of lading Act 1855] transferred to him by the endorsement all such rights and liabilities, 'as if the contract contained in the bill of lading had been made with him'. But in the case of the indorsement from the charterer-shipper of a bill of lading differing from the charter, there is, on the doctrine of Lord Esher in Rodocanachqui v. Milburn, no 'contract contained in the bill of lading', but only a 'mere receipt'. How, then, can the indorsement pass what does not exist? Does a contract spring into existence on the indorsement, which has no existence before?" 505/

367. It is indeed anomalous that on a given voyage, goods should be carried for a certain time subject to one regime of cargo responsability and that then, upon the endorsement of the bill of lading, should become subject to the regime of the Hague Rules or the Hague-Visby Rules as the case may be, without notice to, and without the knowledge of, the shipowner. In fact circumstances might occur, under English law, in which a voyage was completed and goods were discharged, apparently under a regime of responsibility governed by the charter party, and then was transformed to a regime governed by the Rules upon the presentation of a Hague Rules bill of lading and the delivery of the goods against it. In Brandt v. Liverpool S.N Co., 506/ it was held that a contract might be inferred between a shipowner and the holder of a bill who presents it, and who offers to pay the freight and accept delivery, where that offer is accepted by the shipowner.

368. Again, as has already been seen, a similarly anomalous situation arises where a bill of lading is issued by a shipowner to a third party shipper and that shipper subsequently endorses the bill of lading to the charterer. The bill of lading when issued will take effect as a contract of carriage which in normal circumstances will be subject to the Hague Rules or the Hague-Visby Rules. However, on endorsement by the shipper to the charterer the Hague Rules contract will lapse and the bill of lading revert to the status of a receipt in the hands of the charterer and consequently the goods will thereupon be carried subject to the terms of the charter party. 507/ The same result would follow if the bill of lading was endorsed by a third party to a party who was regarded in law as an agent of the charterer. 508/

503/ Rodocanachi v. Milburn (1986) 18 Q.B.D. 67,75; "Northern No. 29", 85F. 2d 39, 41, 1936 AMC 1296, 1298; "Sonya II", 151F. 2d 727, 730, 1946 AMC 90, 94; President of India v. Metcalfe Shipping (1979) 2 Lloyd's Rep. 476.

504/ Leduc v. Ward (1888) 20 Q.B.D. 475, 479.

505/ Scrutton, op.cit., p.62.

506/ (1924) 1 K.B. 575.

507/ President of India v. Metcalfe Shipping, supra.

508/ Kern v. Deslands (1861) 10 C.B.(N.S.) 205 and President of India v. Metcalfe Shipping, supra.

369. It can be seen from what has been said above that not only does the current disparity between the treatment of bills of lading and charter parties result in changes in the regime of responsability for cargo in the course of a voyage, but that identical cargo being carried on the same ship to identical destinations can be subject to different regimes of responsability at the same time. This will occur for instance where bills of lading are issued by a ship under charter party to a third party shipper who subsequently endorses some bills of lading to other third parties and some bills of lading to the charterers themselves or to parties who are categorised as agents of the charterers.

370. Further potential difficulties arise where bills of lading issued by a ship under charter are originally issued to the charterer who then endorses the bills to a third party. As is pointed out in Scrutton on Charter Parties : 509/

> "Article V of the Rules (second paragraph) provides that "the provisions of these Rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party, they shall comply with the terms of those Rules." The reference appears to be the form prescribed by Article III, Rule 3, by which the "carrier" must on demand issue a bill of lading showing marks, number of packages or pieces or quality or weight, and the apparent order and condition of the goods, and to Article III, Rule 7, which deals with "shipped" bills of lading. Where the shipper is not the charterer, it may be that no difficulty will arise; but where the charterer wishes to use the ship for his own goods, it is more than doubtful whether he will be entitled to demand the issue of a bill of lading in accordance with the provisions of these Rules."

371. As has been explained above, the operative document between the charterer and the shipowner remains the charter party itself, the bill of lading being regarded as a mere receipt. There is therefore, no "contract of carriage" between the charterer and the shipowner within the meaning of Artcle I(b) and therefore the shipowner is not within the meaning of Article I(a) a "carrier". Article III, Rule 3, only requires a "carrier" to comply with the requirements of Article III, Rule 3. If in such a case the bill of lading issued by the ship conforms with the terms of the charter party, there seems to be nothing in the Rules to compel the shipowner to issue a bill of lading in the form required by the Article III, Rule 3. There therefore appears to be no sanction in such a case against the shipowner qualifying the statements in the bill of lading as to marks, quantity, weight or condition in such a way as to nullify the evidential value of the bill, even in the hands of a subsequent endorsee who would otherwise have the benefit of the Rules.

B. Attempts to incorporate the Rules into charter parties contractually

372. Many standard forms of charter party seek to incorporate the Hague or Hague-Visby Rules, or particular provisions of the Rules, into the printed form. In other cases it is common to seek to incorporate the Rules by the inclusion of a so-called "Clause Paramount". Paramount Clauses take various forms; sometimes the intention is spelt out in detail, although with varying clarity, but in other cases reference is merely made to "clause paramount" without specifying what clause paramount is intended.

509/ Op.cit., at p.417.

373. The difficulties arising from incorporation of Hague, Hague-Visby Rules into charter parties by a Paramount clause are discussed at an earlier section of this report. 510/ As has been explained, problems which arise include the question as to what rules are incorporated into the charter party by a paramount clause and which provisions should prevail in case of conflict between the terms of the charter party and the provisions of the Rules as incorporated into the charter party. These questions arose in a number of cases including again in the very recent case of Furness Withy (Australia) PTY. v. Metal Distributors (U.K) Ltd. (The "Amazonia"). 511/ The question in this case was whether the wording of the paramount clause in the charter party (clause 33) 512/ had the effect of incorporating into the charter all the provisions and terms of the Australian Sea-Carriage of Goods Act 1924 including its S.9 (which provided for the law in force at the place of shipment, i.e. the law of South Australia and of the Commonwealth of Australia to apply) or whether it only incorporated the Hague Rules as set out in the schedule to the Australian Act. The English Court of Appeal decided that the whole Australian Act, including S.9, was incorporated into the charter by the paramount clause and therefore clause 34 of the charter party, which required any dispute arising under the charter to be settled by arbitration under English Law, was null and void. The result, as Lord Justice Dillon described was that clause 34 of the charter party was illegal, null, void and of no effect. Instead the charter party was governed by the law of South Australia, as the place of shipment, and any disputes between the parties fell to be decided by the Courts of South Australia, and not by arbitration in London or anywhere else. 513/

374. Even where it is clear that the Paramount Clause was intended to incorporate the Rules into the charter, it is not always clear that there was an intention that in all respects the Rules should indeed be "paramount". In one such case, Marifortuna Naviera v. Governement of Ceylon 514/ where a Paramount Clause was added to a Gencon charter as one of the additional clauses in typescript, the question arose whether the Paramount Clause should indeed be regarded as overriding one of the other typescript clauses. The Judge observed:

> In my judgement, it would be wrong to place too much weight on the words "paramount" in the rubric to clause 29 in relation to the issue before me. In the first place, this word is used in relation to the Hague Rules in two rather different senses. It is sometimes used as form of shorthand to describe a clause in a bill of lading or in a charter party making the whole or part of the Hague Rules applicable to those documents, but without any addition. On other occasions it has a wider meaning, in that it refers not only to a clause incorporating the Hague Rules in a bill of lading or charter party, but to one going further and expressly providing that the provisions of the Hague Rules, where there is any conflict with the provisions of the bill of lading or charter party, are to prevail, or in other words be paramount."

510/ See paras 102-112 of this report.
511/ (1990) 1 Lloyds' Rep.236.
512/ The clause 33 read: "This charter is subject to the terms and provisions of the Australian Sea-Carriage of Goods Act 1924 ... Any clause herein which is inconsistent with the rules and provisions of the said Act shall be void and of no effect to the extent of such inconsisting but no further."
513/ Ibid. p.248.
514/ (1970) 1 Lloyd's Rep. 247-255.

375. Likewise, in the case of Seven Seas Transportation Limited v. Pacifico Union Marina Corporation (The "Satya Kailash") 515/ the Court of Appeal indicated that certain additional clauses in typescript might well override provisions of the United States Carriage of Goods by Sea Act incorporated into the charter by a paramount clause.

376. Attempts to incorporate the Rules into charter parties by express contractual provision give rise to uncertainty about which Rules - the Hague or the Hague-Visby Rules - are intended to be incorporated, where the incorporating provision refers only to "paramount clause". In Nea Agrex S.A v. Baltic Shipping Co. Limited, 516/ the question was resolved without too much difficulty by an English Court on the grounds that at the date of the charter party the Hague-Visby Rules had not yet been adopted by any country and it was therefore logical to assume that the parties intended to incorporate the Hague Rules in their original form.

377. The question today would no doubt be resolved differently by an English Court considering a contract governed by English law, because of the subsequent enactment of the Hague-Visby Rules in the carriage of Goods by Sea Act 1971. But as long as there are different regimes applicable to bills of lading in force, the uncertainty inherent in the contractual incorporation of the Rules into charter parties will be doubly compounded. 517/

C. The construction of charter parties into which the Rules have been incorporated or from which the Rules have been deleted

378. Prima facie, the contractual incorporation of the Rules into a charter party overrides conflicting provisions. 518/ But this is not necessarily accurate as a generalization. There may be instances where the Rules do not prevail over other terms of the charter party, because if Rules are contractually incorporated, rather than being mandatorily incorporated, ordinary principles of construction have to be applied. 519/

379. In the Satya Kailash case, the Hague Rules in the form of the US Carriage of goods by Sea Act 1936 were incorporated into a NYPE time charter by the printed clause 24, but the typed addendum to the charter contained clauses in the nature of absolute warranties of seaworthiness. In the judgement of the Court of Appeal, it was suggested (although the question did not have to be decided) that as typed additional clauses, these provisions for an absolute warranty of seaworthiness might override section 4(1) of the United States Act (Article 4, Rule 1 of the Hague Rules). And in another case, 520/ it was held that the exception of "Act, neglect, or default of the master... in the management of the ship" in Article 4, Rule 2 of the Hague Rules, which were contractually incorporated into the charter party by a "Paramount Clause", did not override a particular clause in the charter party regarding notice of readiness and did not therefore protect the shipowner from liability for breach of that clause. In construing a charter party into which the Hague Rules have been contractually incorporated, the manner in which the Rules have been incorporated - the particular words used in incorporating them and the

515/ (1984) 1 Lloyd's Rep. 588.
516/ (1976) 2 Lloyd's Rep. 47.
517/ For further discussion of the subject see "Paramount clause", paras ..... of this report.
518/ Nea Agrex S.A v. Baltic Shipping Co. Ltd., (The Agios Lazaros) (1976) 2 Lloyd's Rep. 47; J.B. Effenson Co. v. Three Bays Corp. Ltd., 238 F.2d. 611, 1957 A.M.C. 16 (5th Cir. 1956).
519/ Scrutton on Charter Parties, op.cit., p.420 and Seven Seas Transportation v. Pacifico Union Marina Corp. (The Satya Kailash) (1984) 1 Llod's Rep. 588.
520/ Marifortuna Naviera S.A. v. Government of Ceylon (1970) 1 Lloyd's Rep. 247.

words used to describe their intended effect - is also an important element. Thus, in Adamastos Shipping v. Anglo Saxon Petroleum (The Saxon Star) 521/ the Paramount clause specifically provided that if any term should be repugnant to the terms of US Carriage of Goods by Sea Act, it should be void. The Court in Marifortuna Naviera SA v.Government of Ceylon, (supra.) drew attention to the fact that there was no provision in the Paramount clause in that case similar to the specific provision in The Adamastos case.

380. Another example of the probable difference in effect of contractual incorporation as opposed to mandatory application lies in the area of deviation. The deviation provision of the Hague Rules may have a different effect, depending on whether it is applicable mandatorily or contractually. It has been suggested that under English law a deviation clause in a bill of lading is to be construed on common law principles and that, if valid on those principles, it is not affected by the compulsory application of Article 4, Rule 4 of the Hague Rules 522/ But if the Hague Rules are contractually incorporated into a charter party, then the Rules (including Article 4, Rule 4) must be read together with the other terms of the charter party as if "fused together" 523/ with consequences which must necessarily be different. Further, the common law principles of construction of deviation clauses in bills of lading which were developed mainly in the last century may not be apt in the construction of the deviation provisions of a charter party today. 524/ As has been suggested earlier in this report on the section on deviation clauses, 525/ one is left with the conclusion that under English law, the effect of deviation under a charter party into which the Hague Rules have been contractually incorporated is a matter of considerable uncertainty upon which such modern authorities as there are provide scarcely any guidance.

381. The different effect of Hague or Hague-Visby Rules provisions when contractually incorporated into charter parties is also illustrated by the interpretation of the words "loss or damage" in the preface to Article 4, Rule 2 of the Hague Rules. As interpreted by the English Courts, the words "loss or damage" in their intended context have been held to mean physical or financial loss or damage arising in relation to the "loading, handling, stowage, carriage, custody, care and discharge" of goods carried under a bill of lading to which the Rules apply. 526/ In other words "loss or damage" in Article 4 of the Rules are defined by reference to Article 2 and Article 1(b). However, in the context of a consecutive voyage charter, into which the Hague Rules were contractually incorporated, it was held that the words "loss or damage" covered losses of profit suffered by charterers from the reduction in the number of voyages the ship could perform, as a result of unseaworthiness: Adamastos Shipping v. Anglo Saxon Petroleum, supra. And in another voyage charter case, it was held that the words covered expenses incurred by the charterers as a result of delay caused by a collision. 527/

521/ (1958) 1 Lloyd's Rep. 73.

522/ See Scrutton on Charter Parties, op.cit., p.452, citing the judgments of the Court of Appeal in Renton v. Palmyra (1956) 1 Q.B. 505, the question having been left open in the House of Lords (1957) A.C. 147, 171.

523/ Nea Agrex v. Baltic Shipping Co. (1976) 2 Lloyd's Rep. 47, per Lord Justice Shaw at p.59

524/ See Suisse Atlantique v. N.V. Rotterdamsche Kolen Centrale (1967) A.C. 361; Photo Production Ltd. v. Securicor Transport Ltd. (1980) A.C. 827.

525/ See paras 288-301 of this report.

526/ Adamastos Shipping v. Anglo Saxon Petroleum (The Saxon Star) (1958) 1 Lloyd's Rep. 73.

527/ Marifortuna Naviera SA v. Government of Ceylon (1970) 1 Lloyd's Rep. 247.

382. In the context of a time charter into which the Hague Rules were contractually incorporated by virtue of the reference to the US Carriage of Goods Act 1936 in clause 24 of the NYPE, the words "loss or damage" were held to have an even wider meaning. In Sevens Seas Transportation v. Pacifico Union Marina Corp. (The Satya Kailash), 528/ the words were held to be wide enough to cover collision damage caused to the charterers' vessel "Satya Kailash" by the negligent navigation of the shipowner's vessel "Ocean Amity" during the lightening of the "Satya Kailash". It was said by the Court of Appeal, that under a charter party the shipowner is required to carry out a wider range of contractual activities than under a bill of lading contract, and the incorporation of the Hague Rules into a charter party "can be effective to give an owner the protection of the statutory immunities in respect not merely of those matters specified in [Art.2], but also of other contractual activities performed by him under the charter". 529/

383. One may question whether, in these cases, the outcome of the contractual incorporation of the Hague Rules reflected the parties' actual intention. But whether that be so or not, it is plainly not satisfactory that a set of Rules drafted for application to Bill of lading contracts should be applied without suitable adaptation to charter parties, which are essentially different contracts.

384. The contractual exclusion of the Hague Rules from a charter party may also produce unintended results. The NYPE in which the Hague Rules, as given effect to in the US Carriage of Goods by Sea Act 1936, are contractually incorporated by clause 24 of the charter is sometimes amended by the deletion of clause 24. This is carried through into the printed form in the 1981 version (the latest version) of the NYPE (Code named "Asbatime") which excludes clause 24 from the form so that the Hague Rules are not incorporated into the standard form. The surprising result of this under English Law is that the shipowners' initial obligations of seaworthiness at the commencement of the charter are increased from those of the exercise of due diligence to make the ship seaworthy to absolute warranties of seaworthiness. The deletion or exclusion of the Hague Rules also has the result that the shipowner loses the protection of an exception of negligence which he has in the exception in Section 4(2)(a) of the American Act (Article IV, Rule 2 (a) of the Rules) against "Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship". The reason for this is that the charter party exception clause in the 1981 version (the Asbatime) which remains unchanged from the 1946 version is insufficiently widely drawn to constitute an effective exception against negligence under English law. 530/ In The Satya Kailash case, the Court of Appeal held that a shipowner was not protected by this exception clause for collision damage, caused by negligence of their master, because the clause was not widely enough drawn to cover negligence.

385. This example is mentioned to illustrate the point that contractual adaptations of charter parties, if not considered in the light of all relevant national laws and not subjected to the close textual analysis and criticism, to which international mandatory legislation in the area of carriers' responsibility for cargo has traditionally been subjected, are liable to result in unexpected and unwanted consequences. A balance between the interests of shipowners and charterers can also be most effectively achieved

528/ (1984) 1 Lloyd's Rep. 588.
529/ Ibid. p.596.
530/ See Seven Seas Transportation Ltd v. Pacifico Union Marina (The Satya Kailash) (1984) 1 Lloyd's Rep. 588.

in this process. Many respondents to the enquiries made by the secretariat complained that certain standard forms of charter party, the Baltime and the Gencon in particular, unduly favoured shipowners. An example of an attempt to produce a satisfactory modern dry cargo time charter party in favour of charterers is to be found in the "Fontime" draft of 1976. However, upon analysis, this draft appears to go much too far in the charterers' favour, in that it imposes upon the shipowner responsibilities for cargo and liabilities to the charterer equivalent to those of an insurer and greater even than those of a common carrier.

386. Thus, clause 9 of the "Fontime" draft provides: "on her delivery, the vessel to have hull machinery in class and equipment in a thoroughly efficient state (with necessary valid inspection or other certificates), and is to be tight, staunch, strong and in every way fit for trading - and shall remain so for the currency of this charter". This clause appears to amount to a continuing absolute warranty of seaworthiness throughout the whole period of the charter party. And the exceptions clause of the "Fontime" (clause 26) being in the same terms as the exceptions clause in the NYPE 1946 and 1981 (Asbatime), provides, as has been seen above, no exception against negligence - at least under English law.

D. Claims for indemnity between charterers and shipowners under charter parties

387. The problems here arise in circumstances where the responsibility for cargo under bills of lading is governed by the Hague Rules or the Hague-Visby Rules and the responsabilities for cargo under the charter party are not governed by the Rules and are either less (or more) restrictive than the Rules. Where the bill of lading is governed by English law the shipowners will normally, although not invariably, be the party liable for loss of or damage to cargo under bills of lading. In the United States and in other jurisdictions, charterers are more often exposed to liability for bill of lading claims. If shipowners or charterers are held liable for loss of or damage to cargo under bills of lading which are subject to the Hague or Hague-Visby Rules, they will obviously wish to claim an indemnity from the other party to the charter party, if under the latter contract the other party is (as between the charterers and the shipowners) responsible for the particular loss or damage which gave rise to the bill of lading claim. However, the circumstances in which a right to claim indemnity is given in a case such as this are not always clearly defined.

388. In the case of Naviera Mogor S.A v. Société Métallurgique de Normandie (The "Nogar Marin") 531/ the English Court of Appeal reviewed the previous authorities on the question of the right to claim indemnity but did not reach any clear conclusion on the principles to be applied: and in particular what were the circumstances in which an indemnity might be implied where there was no express indemnity provision in the charter.

389. The Court did however try to summarize the effect of the authorities and stated that: "The cases previously cited show that where the Master is expressly required to sign the bills as presented, and where the contract stipulates that the act is to be without prejudice to the charter, the charterer's right to issue bills to suit his own convenience must be constrained by the need not to make the terms of a new contract which he thus imposes on the shipowner more burdensome than those which the owner originally contracted to assume in exchange for the freight." But to speak of the issue

531/ (1988) 1 Lloyd's Rep. 412.

of bills suiting the charterer's "convenience" when in most cases the Hague Rules or Hague-Visby Rules are compulsory applicable seems unrealistic. As the Commercial Court Judge said in the same case at first instance 532/:

> "Frequently [the bills of lading] will contain terms which are more onerous than those in the charter party, if only because the Hague Rules are compulsorily applicable in the country of shipment. The Master, or the ship's agents, will be able to ascertain what the terms are simply by looking at the bill of lading, assuming (which I doubt) that they are not well aware of them already. In those circumstances, it seems to me a little artificial to say that a charterer commits a breach of contract when he presents a bill of lading containing terms more onerous than the charter party, and that the owner is entitled to damages. It makes better sense to say that there is an implied term which obliges the charterer to indemnify the owner."

390. But in Ben Shipping Co. (Pte.) Ltd. v. An-Bord Bainne (The "C. Joyce"), 533/ the English Commercial Court rejected a shipowner's claim for indemnity under a Gencon charter party containing the owners' responsibility clause (clause 2), restricting the shipowners' liability for loss or damage to goods caused by unseaworthiness to much narrower limits than those imposed by the Hague Rules. The parties had deleted clause 9 of the Gencon charter providing that the Captain is to sign bills of lading "without prejudice to this charter" and substituted a clause to the effect that all bills of lading subject to the Hague Rules were to be issued by the shipowners who had to settle cargo claims under them for which they would not have been liable had the bills been governed by the responsability clauses in the charter party. However, the Court rejected the shipowner's claim for indemnity agianst the charterers under the charter party on the ground that the charter party expressly provided for bills of lading to be issued subject to a paramount clause; that this stipulation necessarily exposed the shipowners to Hague Rules liability under the bills of lading and there was no necessity (in the absence of an express term) to imply a right to an indemnity, merely because the shipowners' responsibilities for cargo under the charter party were more restrictive than they were under the bills of lading. It was argued in that case that such a solution made little business sense and the charterers in the Ben Shipping case relied upon a passage in one of the judgements of the Courts of Appeal in the early case of Moel Tryvan Steam Ship Co. v. Kruger & Co. 534/ where it was said:

> "Up to the time of shipment, the shipowner deals with the shipper. From the moment of shipment he wants to be in the same position as regards carrying the goods, whether the goods remain the property of the shipper or whether the shipper chooses to sell them and pass the property to someone else. That is a matter of common sense. He certainly does not desire - no shipowner would desire - that he is to be under one set of obligations to the charterer, and to be under heavier obligations if the charterer chooses to sell his goods. That, I should say, to use a common expression, is not business."

391. Another anomale which arises in claims for an indemnity under charter parties in the circumstances described above is the effect of the time limit provision in Article III, Rule 6, of the Hague Rules. Where a claim for indemnity in respect of loss or damage is made under a charter party which expressly incorporates the Hague Rules, the shipowner may under English law

532/ (1987) 1 Lloyd's Rep. 456, at p.460.
533/ (1986) 2 Lloyd's Rep. 285.
534/ (1907) 1 K.B. 809.

rely upon the one-year time limit provision of Article III, Rule 6, in cases where the claim for indemnity is brought by the charterer. A claim for indemnity by a charterer may arise where the charterer is a party to the bill of lading contract and has to meet bill of lading claims which, under the terms of the charter, are the ultimate responsability of the shipowner. Where, however, the claim for indemnity is brought by the shipowner against the charterer (because the shipowner is the party to the bills of lading and has had to meet claims under them), the charterer may not under English law rely upon the one-year time limit provision of Article III, Rule 6. 535/ The shipowner has six years to bring his claim for indemnity in such circumstances. It was argued by the charterer in The "Khian Zephyr" case that the charterer should also be able to rely upon Article III, Rule 6, because "Carrier" in Article I of the Hague Rules is defined to include the charterer who entered into a contract of carriage with the shipper. The English Court, however, rejected this argument on the grounds that where the Hague Rules are contractually incorporated into a charter party, there could be only one "carrier" and that carrier must be the shipowner. The charterer could not be the carrier under the charter party even though he might be in the position of being a carrier under a separate bill of lading contract. United States law differs from English law in this regard in that the one-year time limit provision of the Hague Rules has been held not to apply to claims for indemnity under charter parties by either the shipowner or the charterer. 536/

Conclusion

392. As appears from the foregoing, both exclusion of the Hague Rules from charter parties and attempts to incorporate the Rules into charter parties contractually creates serious difficulties and uncertainties. It is suggested that these difficulties and uncertainties could be resolved by the mandatory application to charter parties of a regime of responsibility for cargo similar to the Hague/Hague-Visby Rules regime, but drafted especially for application to charter parties.

535/ Freedom General Shipping S.A v. Tokai Shipping Co. Limited (The "Khian Zephyr") (1982) 1 Lloyd's Rep. 73.

536/ Hercules Inc. v. Stevens Shipping Co. Inc. (1983) 698 F.2d 726, 1983 AMC 1786 (5th Cir.).

Chapter VI

CONCLUSIONS AND RECOMMENDATIONS

393. More than 15 years have elapsed since the fourth session of the Working Group on International Shipping Legislation. During this time some new charter party forms have been introduced which are undoubtedly improvements that tend towards the achievement of well-balanced charter parties. Other charter party forms introduced appear to go too far in the charterers' favour, by the imposition of much stricter liability upon the shipowners. It is, however, difficult to believe that any shipowner aware of the implications would accept such a charter party, anymore than most charterers would willingly accept unamended Baltime or Gencon charters.

394. According to the information obtained by the secretariat, unlike the more modern forms, the old and outdated charter party forms are still widely used. And as has been demonstrated throughout this report, the unclear, vague and outdated wording of these charter parties continues to give rise to most charter party disputes, resulting, in some cases, in conflicting decisions even within a single jurisdiction.

395. It is difficult to think of any other industry, apart from the shipping industry, in which contracts are often negotiated within a matter of days, if not hours, before the contracts come into effect and where so little attention is paid in the negotiations to the wording of the contractual terms even though potentially large sums of money may turn upon them. For understandable commercial reasons, shipowners and charterers and their brokers concentrate on negotiating the most commercially important elements such as rates of freight or hire, loading ports or delivery areas, etc., often without giving detailed attention to the other charter party terms. In other trades and industries the difficulties involved in negotiating each and every term of the contract are solved by the use of a limited number of comprehensively worded standard form contracts. In the shipping industry, however, the continued use of outdated printed forms which are also insufficiently comprehensive for today's conditions means that it can be said, without exaggeration, that in many trades in the shipping industry there are no longer standard-form contracts. In the case of dry cargo charter parties in particular, both time and voyage charter parties, it is, according to information obtained by the secretariat, not uncommon to have up to 50 additional typescript clauses attached to a printed form of charter party, with the clauses of the printed form themselves being extensively deleted and amended. These additional clauses and the amendements to the printed forms are not all negotiated on each occation, but are often adopted <u>in toto</u> from a previous charter party concluded between the parties, sometimes with the vague qualification in negotiations "with logical amendments". The repeated use of series of additional clauses, with new clauses being grafted on and then themselves becoming repeated in subsequent charter parties, give rise to contradictions between printed and additional clauses and indeed contradictions between additional clauses themselves.

396. Added to the confusion and uncertainty caused by such contradictions and by the obscurity of some of the older printed charter forms is the anomaly of mandatory rules governing the shipowners' responsibilities for cargo being applicable to underlying bill of lading contracts, but not applicable to the charter parties under which such underlying bills are issued.

397. The WGISL, at its fourth session, also requested the secretariat to provide additional data on:

(a) whether there were charter party clauses susceptible to standardization, harmonization, or improvement with a view to bringing about an equitable balance of rights and obligations between the various parties;

(b) whether there were aspects of charter parties suitable for international legislative action; and

(c) what were the possibilities of arriving at agreed definitions of basic terms used in charter parties.

A. Standardization, harmonization or improvement of charter party clauses

398. Any imposition of standard form charter parties on the world shipping industry would plainly be unacceptable and undesirable. It is, however, considered that the standardization, harmonization and improvement of charter party clauses is not only desirable but necessary. There is, in particular, a need for the rationalization of the multitude of different clauses which are in use today covering the same core elements of charter parties in essentially the same way. And there is also a need for improvement in the drafting of such clauses so as to clarify the obligations undertaken and to reduce disputes.

399. Clear and comprehensively drafted clauses are not only of importance to the parties to the charter party themselves. Charter party clauses also affect third party bill of lading holders in a number of different and important respects, as has been indicated earlier in this report. Third parties who have no control over the contents of a charter party, the terms of which may impose serious obligations upon them, should be entitled to expect that the relevant wording of both charter party bills of lading and the charter party clauses incorporated into them define clearly their rights and obligations.

400. It is suggested that a particular clause which benefits the shipowner or a particular clause which benefits the charterer is not necessarily inimicable to the equitable balance of rights and obligations of the different parties to a charter party, if it does not unreasonably prejudice third parties and if the benefit to the one party can be offset by an appropriate financial adjustment in favour of the other. It is only if the benefit is not offset, or is not seen to be offset, by an appropriate monetary adjustment that imbalance occurs.

401. Some modern charter parties do contain clauses providing for alternative divisions of risk or expense. But it is considered that there is much greater scope for such alternative provisions. With the alternative obligations clearly set out, the parties to the charter party can more easily assess the value of each alternative division of risk or expense in terms of freight or hire. By contrast, obscurely worded clauses make it more difficult to assess risk or cost.

402. Lack of clarity in the wording of clauses has the result that a clause, or expression in a clause, may convey one meaning to an ordinary member of the shipping community, but may be held to have quite another meaning when subjected to close legal analysis by lawyers, arbitrators or the Courts. One respondent to the enquiries made by the secretariat commented: "We do not see difficulties using (the clauses of a charter party) for professional people knowing precisely what is their exact meaning, according to the interpretations of the arbitration courts." This may be so for those professional people in the major shipping and legal centres, but it is not desirable that charter party forms in common use require experts to interpret them.

403. Ease of interpretation is not assisted by the multiplicity of charter party forms in current use. From the studies made by the secretariat it is apparent that many of the clauses in the numerous different trade charter parties do not differ in their terms because of different requirements of the particular trades, nor because of a different division of risk or expense between the shipowner and the charterer. They differ for historical reasons only. Often only a few clauses in such charter parties appear to be specific to the particular trade, and it is suggested that the main core clauses could be rationalized without loss of flexibility, provision being made for alternative divisions of risk or expense where necessary.

404. It is also apparent from the studies carried out by the secretariat that in the drafting of charter parties, it not the case that concise wording necessarily makes for clarity. Many of the older forms of charter party which have given rise to most controversy often employ too few words to provide adequately for potentially complex circumstances. It is significant that the detailed and usually comprehensively drafted modern tanker time charter parties give rise to far less disputes than the traditional dry cargo time charter forms.

405. Old, poorly drafted charter party forms used for particular cargoes, continue to persist in many trades and the outdated general forms of voyage charter and dry cargo time charter also persist. As can be seen from this report, several of the oldest forms of charter party which have been criticized for decades as being badly drafted, obscure and prone to dispute, still remain in widespread use today. The international shipping industry does not in general appear to have developed any sufficiently effective mechanisms for discouraging the use of outdated forms nor for encouraging the use of modern better drafted forms.

406. It is considered that the following clauses, particularly, are capable of harmonization and/or improvement:

Arbitration	Time and voyage
Bills of lading	" "
Cancelling	" "
Cesser of liability	Voyage
Clauses defining charter period	Time
Clauses in charter party bills of lading incorporating charter party terms	Voyage
Condition of vessel on delivery and re-delivery	Time
Dangerous cargo	Time and voyage
Deviation	Voyage
Freight	"
General average	Time and voyage
Indemnity	Time and voyage
Laytime and demurrage	Voyage
Lien	Time and voyage
Maintenance clause	Time
Off hire	"
Payment of hire and withdrawal	"
Cargo responsibility and exception clauses	Time and voyage
Safe ports and berths	" "

407. It is therefore recommended that after consultation with the relevant commercial and international organizations, the UNCTAD secretariat determine which of the above-mentioned clauses are suitable core charter party clauses. In some cases, certain existing clauses in standard form charter parties may be judged as suitable for use as core clauses. In other cases it will be necessary, after considering the clauses at present in use, to draft new clauses. The preparation of the draft core clauses could then be carried out, with the assistance and close collaboration of the relevant commercial and international organizations for submission to the WGISL.

B. Necessity for international legislative action

408. The overwhelming majority of bill of lading contracts worldwide are governed by the Hague or Hague-Visby Rules. It is anomalous that, where cargo is shipped under bills of lading with an underlying charter party, a similar mandatory regime of carrier's responsibility for cargo should not apply to both contracts.

409. As has been explained above, at present, if the contractual responsibilities for cargo under a charter party differ from the Hague or Hague-Visby Rules responsibilities for cargo under the bills of lading issued pursuant to the charter party, the carrier's liabilities can change during the voyage depending upon whether the bills of lading are negotiated, by whom they are negotiated and to whom. Thus, if bills of lading subject to the Rules are issued to the charterer and the bills are not negotiated or transferred, the regime of responsibility for cargo remains governed by the terms of the charter party. However, if such bills of lading, or some of them, are negotiated by the charterer to third parties, the regime of responsibility for cargo thereupon changes to that of the Hague or Hague-Visby Rules. Then, if bills of lading previously in the hands of third parties are transferred to the charterer or to parties regarded legally as agents of the charterer, the regime of responsibility for cargo carried under those bills of lading is again governed by the charter party terms.

410. Further, shippers of cargo may in the course of their ordinary trading ship cargo on some occasions under liner bills of lading, subject mandatorily to the Hague or Hague-Visby Rules, and on other occasions as charterers under voyage charter parties to which no mandatory legislation is applicable. It is again anomalous that carriers' responsibilities for cargo should not be consistent.

411. In many modern charter parties attempts are made to ameliorate the inconsistencies by the insertion of clauses (often a "Paramount Clause") intended to make the Hague or Hague-Visby Rules contractually applicable to the charter party as well as to bills of lading issued under it. As appears from earlier sections of this report these attempts to incorporate contractually into charter parties a set of Rules designed to apply mandatorily to bill of lading contracts gives rise to both uncertainty and dispute. For example:

(1) It may be unclear whether the incorporating clause is, in law, effective to incorporate the Hague or Hague-Visby Rules into the charter party at all; and if it is in principle effective, which Rules are applicable and which are not.

(2) It may be unclear whether particular provisions of the Hague or Hague-Visby Rules have the same meaning in the contractual context of a charter party as they have in the context of a bill of lading.

(3) Questions may arise, depending on the manner of incorporation, whether in the context of the charter party, the Rules are indeed "Paramount" or whether in certain respects the Rules are overridden by other clauses of the charter party.

(4) Disparities in the regimes of responsibility for cargo between bills of lading and charter parties and between head and sub-charters give rise to uncertainties and disputes as to rights of indemnity between shipowners and charterers in respect of cargo claims.

(5) Different national laws may provide different answers to all such questions.

As also appears from earlier sections of this report, modern updated versions of standard form charter parties and newly drafted charter party forms have not successfully solved these problems.

412. Many developed country respondents to the UNCTAD secretariat's enquiries expressed strong views that the application of mandatory legislation to charter parties would eliminate the essential flexibility inherent in a system which allows the parties complete freedom to make the contract they want. But with mandatory legislation covering similar ground to the matters covered by the Hague and Hague-Visby Rules, the parties to a charter party would still be left free to negotiate the special terms they required for their particular charter. Further, even in the absence of mandatory international legislation, national laws do not leave the parties to a charter party completely free to determine their own contract. Thus, wide deviation clauses are struck down or construed narrowly, warranties are implied in regard to seaworthiness and other matters, rules are developed to limit the scope of exceptions clauses, and standards of reasonableness are introduced where they may not have been intended. And in all such respects, the Courts of one country may adopt wholely different approaches to the Courts of another country. Although charter party contracts are not contracts of adhesion in the same way as are most bill of lading contracts, many of the arguments which justify the mandatory application of the Hague Rules or Hague-Visby Rules to bills of lading apply to charter parties; in particular, those pertaining to greater certainty, greater clarity and greater uniformity.

413. It has also been pointed out, as an argument against mandatory legislation, that the great majority of charter parties today incorporate the Hague or Hague-Visby Rules either by express reference in the printed forms or by inclusion in typescript addenda. Even if this is an argument against mandatory legislation - and it might be said that it points the other way - the contractual incorporation into charter parties of Rules designed for application to bills of lading not only creates legal difficulties in the relationship between charter parties and bills of lading issued under them (matters which have been dealt with above), but also in the interpretation of the charter parties themselves.

414. It is, therefore, considered that in order, effectively, to carry through into charter parties a similar scheme of responsibility for cargo to that in the Hague or Hague-Visby Rules, a set of "tailor-made" rules mandatorily applicable to charter parties is required.

415. In principle the similar standards of responsability as are applied mandatorally to bills of lading under the Hague and Hague-Visby Rules should be applied mandatorally to charter parties. That is to say Rules should be formulated, with specific reference to charter parties, to cover the following main areas of responsiblity:

Seaworthiness
Care of cargo
Obligations in regard to bills of lading issued under charter parties
Limitation of actions
Rights and immunities of the shipowner
Deviation
Limitation of liability
Dangerous cargo

416. It is, however, proposed that the secretariat carry out further studies and inquiries in order to determine:

(1) the impact of such mandatory Rules if applied to voyage charter parties alone or if applied to both voyage and time charter parties;

(2) the impact of such mandatory Rules if applied only to the operations referred to in Article II of the Hague Rules, or if applied to all voyages and all operations under a charter party.

417. Thereafter, the secretariat would report further to the Working Group with recommendations as to the exact scope of the mandatory legislation to be applied to charter parties

C. Definitions of basic terms used in charter parties

418. The Executive Council of the Comité Maritime International (CMI) in September 1976 resolved to ascertain whether it would be possible to reduce disputes under charter parties by drafting definitions of commonly used terms. It was agreed that the ideal would be to have definitions covering all aspects of charter parties, but it was resolved that laytime should be the first subject for consideration. A working group under the auspices of the CMI, BIMCO (The Baltic and International Maritime Council) and GCBS (The General Council of British Shipping) was set up. A draft set of laytime definitions was considered at a plenary meeting of the CMI in 1977 after which an international working group was set up, including representatives of FONASBA (The Federation of National Associations of Ship Brokers and Agents). Ultimately, a final set of definitions under the title of "Charter Party Laytime Definitions 1980" was issued jointly by BIMCO, CMI, FONASBA and GCBS in December 1980. The definitions are intended for contractual incorporation into charter parties, and the preamble to the definitions reads :

> "The definitions which follow (except such as are expressly excluded by the deletion or otherwise) shall apply to words and phrases used in the charter party, save only to the extent that any definition or part thereof is inconsistent with any other express provision of the charter party. Words used in these definitions shall themselves be construed in accordance with any definition given to them therein. Words or phrases which are merely variations or alternative forms of words of phrases herein defined are to be construed in accordance with the definition, (e.g. "Notification of Vessel's Readiness," "Notice of Readiness")."

419. The definitions are therefore not "paramount". So far as the secretariat is aware, neither the above-mentioned organizations nor any other national or international organization have produced agreed definitions of other terms used in charter parties. One reason for this may be that, according to enquiries made by the secretariat, the "Charter Party Laytime Definitions 1980" are not in practice used by charterers and shipowners to any significant extent. Furthermore, the organizations concerned with the issue and amendment of standard charter forms have not chosen to include the agreed definitions in any standard-form charter parties issued by them.

420. Definitions of certain charter party terms would obviously assist in reducing disputes. But plainly that aim will only be achieved if agreed definitions are actually incorporated by the parties into their contracts. It is proposed that the most effective encouragement of the use of definitions would be the inclusion of the agreed definitions in the printed forms of charter parties. The inclusion of the definitions in the printed forms would not prevent the parties deleting the definitions from the printed forms if they positively objected to them in their particular contract.

421. Accordingly, it is proposed that the drafting of agreed definitions of charter party terms should be considered in conjunction with the drafting of charter party clauses referred to under A. above.

422. The terms in charter parties considered most suitable for agreed definitions (apart from laytime and demurrage) are those used in :

exception clauses
lien clauses
clauses relating to loading stowage and discharging of cargo
clauses relating to payment of freight and hire
off-hire clauses
clauses defining the period of time charters.

423. It is, therefore, suggested to determine, after consultation with the relevant organizations, which charter party terms are suitable for inclusion in agreed charter party definitions. Thereafter, draft definitions may be prepared, with the assistance of those organizations, for consideration of the WGISL.

424. Subsequently, further studies would be carried out by the UNCTAD secretariat to determine the best means of encouraging the widest use of the core charter party clauses and agreed definitions and to take such further action as appears necessary in this regard.

ANNEX I

Adopted by the Documentary Committee of the Chamber of Shipping of the United Kingdom and the Documentary Committee of The Japan Shipping Exchange, Inc.

Issued 1/1/1909
Amended 15/1/1911
Amended 1/1/1912
Amended 16/6/1920
Amended 1/1/1939
Amended 1/1/1950
Amended 1/1/1974

1. Shipbroker	THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE UNIFORM TIME-CHARTER (Box Layout 1974) CODE NAME: "BALTIME 1939" PART I
	2. Place and date
3. Owners/Place of business	4. Charterers/Place of business
5. Vessel's name	6. GRT/NRT
7. Class	8. Indicated horse power
9. Total tons d.w. (abt.) on Board of Trade summer freeboard	10. Cubic feet grain/bale capacity
11. Permanent bunkers (abt.)	
12. Speed capability in knots (abt.) on a consumption in tons (abt.) of	
13. Present position	
14. Period of hire (Cl. 1)	15. Port of delivery (Cl. 1)
	16. Time of delivery (Cl. 1)
17. (a) Trade limits (Cl. 2)	
(b) Cargo exclusions specially agreed	
18. Bunkers on re-delivery (state min. and max. quantity) (Cl. 5)	
19. Charter hire (Cl. 6)	20. Hire payment (state currency, method and place of payment; also beneficiary and bank account) (Cl. 6)
21. Place or range of re-delivery (Cl. 7)	22. War (only to be filled in if Section (C) agreed) (Cl. 21)
23. Cancelling date (Cl. 22)	24. Place of arbitration (only to be filled in if place other than London agreed) (Cl. 23)
25. Brokerage commission and to whom payable (Cl. 25)	26. Numbers of additional clauses covering special provisions, if agreed

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)

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by authority of The Baltic and International Maritime Conference, Copenhagen.

PART II
"BALTIME 1939" Uniform Time-Charter (Box Layout 1974)

It is agreed between the party mentioned in Box 3 as Owners of the Vessel named in Box 5 of the gross/net Register tonnage indicated in Box 6, classed as stated in Box 7 and of indicated horse power as stated in Box 8, carrying about the number of tons deadweight indicated in Box 9 on Board of Trade summer freeboard inclusive of bunkers, stores, provisions and boiler water, having as per builder's plan a cubic-feet grain/bale capacity as stated in Box 10, exclusive of permanent bunkers, which contain about the number of tons stated in Box 11, and fully loaded capable of steaming about the number of knots indicated in Box 12 in good weather and smooth water on a consumption of about the number of tons best Welsh coal or oil-fuel stated in Box 12, now in position as stated in Box 13 and the party mentioned as Charterers in Box 4, as follows

1. Period/Port of Delivery/Time of Delivery
The Owners let, and the Charterers hire the Vessel for a period of the number of calendar months indicated in Box 14 from the time (not a Sunday or a legal Holiday unless taken over) the Vessel is delivered and placed at the disposal of the Charterers between 9 a.m. and 6 p.m., or between 9 a.m. and 2 p.m. if on Saturday, at the port stated in Box 15 in such available berth where she can safely lie always afloat, as the Charterers may direct, she being in every way fitted for ordinary cargo service.
The Vessel to be delivered at the time indicated in Box 16.

2. Trade
The Vessel to be employed in lawful trades for the carriage of lawful merchandise only between good and safe ports or places where she can safely lie always afloat within the limits stated in Box 17.
No live stock nor injurious, inflammable or dangerous goods (such as acids, explosives, calcium carbide, ferro silicon, naphtha, motor spirit, tar, or any of their products) to be shipped.

3. Owners to Provide
The Owners to provide and pay for all provisions and wages, for insurance of the Vessel, for all deck and engine-room stores and maintain her in a thoroughly efficient state in hull and machinery during service.
The Owners to provide one winchman per hatch. If further winchmen are required, or if the stevedores refuse or are not permitted to work with the Crew, the Charterers to provide and pay qualified shore-winchmen.

4. Charterers to Provide
The Charterers to provide and pay for all coals, including galley coal, oil-fuel, water for boilers, port charges, pilotages (whether compulsory or not), canal steersmen, boatage, lights, tug-assistance, consular charges (except those pertaining to the Master, Officers and Crew), canal, dock and other dues and charges, including any foreign general municipality or state taxes, also all dock, harbour and tonnage dues at the ports of delivery and re-delivery (unless incurred through cargo carried before delivery or after re-delivery), agencies, commissions, also to arrange and pay for loading, trimming, stowing (including dunnage and shifting boards, excepting any already on board), unloading, weighing, tallying and delivery of cargoes, surveys on hatches, meals supplied to officials and men in their service and all other charges and expenses whatsoever including detention and expenses through quarantine (including cost of fumigation and disinfection).
All ropes, slings and special runners actually used for loading and discharging and any special gear, including special ropes, hawsers and chains required by the custom of the port for mooring to be for the Charterers' account. The Vessel to be fitted with winches, derricks, wheels and ordinary runners capable of handling lifts up to 2 tons.

5. Bunkers
The Charterers at port of delivery and the Owners at port of re-delivery to take over and pay for all coal or oil-fuel remaining in the Vessel's bunkers at current price at the respective ports.
The Vessel to be re-delivered with not less than the number of tons and not exceeding the number of tons of coal or oil-fuel in the Vessel's bunkers stated in Box 18.

6. Hire
The Charterers to pay as hire the rate stated in Box 19 per 30 days, commencing in accordance with Clause 1 until her re-delivery to the Owners.

Payment
Payment of hire to be made in cash, in the currency stated in Box 20, without discount, every 30 days, in advance, and in the manner prescribed in Box 20.
In default of payment the Owners to have the right of withdrawing the Vessel from the service of the Charterers, without noting any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter.

7. Re-delivery
The Vessel to be re-delivered on the expiration of the Charter in the same good order as when delivered to the Charterers (fair wear and tear excepted) at an ice-free port in the Charterers' option at the place or within the range stated in Box 21, between 9 a.m. and 6 p.m., and 9 a.m. and 2 p.m. on Saturday, but the day of re-delivery shall not be a Sunday or legal Holiday.

Notice
The Charterers to give the Owners not less than ten days' notice at which port and on about which day the Vessel will be re-delivered.
Should the Vessel be ordered on a voyage by which the Charter period will be exceeded the Charterers to have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow re-delivery about the time fixed for the termination of the Charter, but for any time exceeding the termination date the Charterers to pay the market rate if higher than the rate stipulated herein.

8. Cargo Space
The whole reach and burthen of the Vessel, including lawful deck-capacity to be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores.

9. Master
The Master to prosecute all voyages with the utmost despatch and to render customary assistance with the Vessel's Crew. The Master to be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers to indemnify the Owners against all consequences or liabilities arising from the Master, Officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods.
The Owners not to be responsible for shortage, mixture, marks, nor for number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise.
If the Charterers have reason to be dissatisfied with the conduct of the Master, Officers, or Engineers, the Owners, on receiving particulars of the complaint, promptly to investigate the matter, and, if necessary and practicable, to make a change in the appointments.

10. Directions and Logs
The Charterers to furnish the Master with all instructions and sailing directions and the Master and Engineer to keep full and correct logs accessible to the Charterers or their Agents.

11. Suspension of Hire etc.
(A) In the event of drydocking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners' stores, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the Vessel and continuing for more than twentyfour consecutive hours, no hire to be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required. Any hire paid in advance to be adjusted accordingly.
(B) In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbours or to rivers or ports with bars or suffering an accident to her cargo, any detention of the Vessel and/or expenses resulting from such detention to be for the Charterers' account even if such detention and/or expenses, or the cause by reason of which either is incurred, be due to, or be contributed to by, the negligence of the Owners' servants.

12. Cleaning Boilers
Cleaning of boilers whenever possible to be done during service, but if impossible the Charterers to give the Owners necessary time for cleaning. Should the Vessel be detained beyond 48 hours hire to cease until again ready.

13. Responsibility and Exemption
The Owners only to be responsible for delay in delivery of the Vessel or for delay during the currency of the Charter and for loss or damage to goods onboard, if such delay or loss has been caused by want of due diligence on the part of the Owners or their Manager in making the Vessel seaworthy and fitted for the voyage or any other personal act or omission or default of the Owners or their Manager. The Owners not to be responsible in any other case nor for damage or delay whatsoever and howsoever caused even if caused by the neglect or default of their servants. The Owners not to be liable for loss or damage arising or resulting from strikes, lockouts or stoppage or restraint of labour (including the Master, Officers or Crew) whether partial or general.
The Charterers to be responsible for loss or damage caused to the Vessel or to the Owners by goods being loaded contrary to the terms of the Charter or by improper or careless bunkering or loading, stowing or discharging of goods or any other improper or negligent act on their part or that of their servants.

14. Advances
The Charterers or their Agents to advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port charging only interest at 6 per cent. p.a., such advances to be deducted from hire.

15. Excluded Ports
The Vessel not to be ordered to nor bound to enter: a) any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel

Ice

b) any ice-bound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the place or to get out after having completed loading or discharging. The Vessel not to be obliged to force ice. If on account of ice the Master considers it dangerous to remain at the loading or discharging place for fear of the Vessel being frozen in and/or damaged, he has liberty to sail to a convenient open place and await the Charterers' fresh instructions.
Unforeseen detention through any of above causes to be for the Charterers' account.

16. Loss of Vessel
Should the Vessel be lost or missing, hire to cease from the date when she was lost. If the date of loss cannot be ascertained half hire to be paid from the date the Vessel was last reported until the calculated date of arrival at the destination. Any hire paid in advance to be adjusted accordingly.

17. Overtime
The Vessel to work day and night if required. The Charterers to refund the Owners their outlays for all overtime paid to Officers and Crew according to the hours and rates stated in the Vessel's articles.

18. Lien
The Owners to have a lien upon all cargoes and sub-freights belonging to the Time-Charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.

19. Salvage
All salvage and assistance to other vessels to be for the Owners' and the Charterers' equal benefit after deducting the Master's and Crew's proportion and all legal and other expenses including hire paid under the charter for time lost in the salvage, also repairs of damage and coal or oil-fuel consumed. The Charterers to be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount.

20. Sublet
The Charterers to have the option of subletting the Vessel, giving due notice to the Owners, but the original Charterers always to remain responsible to the Owners for due performance of the Charter.

21. War
(A) The Vessel unless the consent of the Owners be first obtained not to be ordered nor continue to any place or on any voyage nor be used on any service which will bring her within a zone which is dangerous as the result of any actual or threatened act of war, war hostilities, warlike operations, acts of piracy or of hostility or malicious damage against this or any other vessel or its cargo by any person, body or State whatsoever, revolution, civil war, civil commotion or the operation of international law, nor be exposed in any way to any risks or penalties whatsoever consequent upon the imposition of Sanctions, nor carry any goods that may in any way expose her to any risks of seizure, capture, penalties or any other interference of any kind whatsoever by the belligerent or fighting powers or parties or by any Government or Ruler.
(B) Should the Vessel approach or be brought or ordered within such zone, or be exposed in any way to the said risks, (1) the Owners to be entitled from time to time to insure their interests in the Vessel and/or hire against any of the risks likely to be involved thereby on such terms as they shall think fit, the Charterers to make a refund to the Owners of the premium on demand; and (2) notwithstanding the terms of Clause 11 hire to be paid for all time lost including any lost owing to loss of or injury to the Master, Officers, or Crew or to the action of the Crew in refusing to proceed to such zone or to be exposed to such risks.
(C) In the event of the wages of the Master, Officers and/or Crew or the cost of provisions and/or stores for deck and/or engine room and/or insurance premiums being increased by reason of or during the existence of any of the matters mentioned in section (A) the amount of any increase to be added to the hire and paid by the Charterers on production of the Owners' account therefor, such account being rendered monthly.
(D) The Vessel to have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or in any other wise whatsoever given by the Government of the nation under whose flag the Vessel sails or any other Government or any person (or body) acting or purporting to act with the authority of such Government or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such orders or directions.
(E) In the event of the nation under whose flag the Vessel sails becoming involved in war, hostilities, warlike operations, revolution, or civil commotion, both the Owners and the Charterers may cancel the Charter and, unless otherwise agreed, the Vessel to be re-delivered to the Owners at the port of destination or, if prevented through the provisions of section (A) from reaching or entering it, then at a near open and safe port at the Owners' option, after discharge of any cargo on board.
(F) If in compliance with the provisions of this clause anything is done or is not done, such not to be deemed a deviation.
Section (C) is optional and should be considered deleted unless agreed according to Box 22.

22. Cancelling
Should the Vessel not be delivered by the date indicated in Box 23, the Charterers to have the option of cancelling.
If the Vessel cannot be delivered by the cancelling date, the Charterers, if required, to declare within 48 hours after receiving notice thereof whether they cancel or will take delivery of the Vessel.

23. Arbitration
Any dispute arising under the Charter to be referred to arbitration in London (or such other place as may be agreed according to Box 24) one Arbitrator to be nominated by the Owners and the other by the Charterers, and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them, the award of the Arbitrators or the Umpire to be final and binding upon both parties.

24. General Average
General Average to be settled according to York/Antwerp Rules, 1974. Hire not to contribute to General Average.

25. Commission
The Owners to pay a commission at the rate stated in Box 25 to the party mentioned in Box 25 on any hire paid under the Charter, but in no case less than is necessary to cover the actual expenses of the Brokers and a reasonable fee for their work. If the full hire is not paid owing to breach of Charter by either of the parties the party liable therefor to indemnify the Brokers against their loss of commission.
Should the parties agree to cancel the Charter, the Owners to indemnify the Brokers against any loss of commission but in such case the commission not to exceed the brokerage on one year's hire.

Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

This Charter Party, made and concluded in.....day of.....19.....

Between.....

Owners of the good.....{ Steamship / Motorship }.....of.....

of.....tons gross register, and.....tons net register, having engines of.....indicated horse power and with hull, machinery and equipment in a thoroughly efficient state, and classed.....

at.....of about.....cubic feet bale capacity, and about.....tons of 2240 lbs. deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding one and one-half percent of ship's deadweight capacity, allowing a minimum of fifty tons) on a draft of.....feet.....inches on.....Summer freeboard, inclusive of permanent bunkers, which are of the capacity of about.....tons of fuel, and capable of steaming, fully laden, under good weather conditions about.....knots on a consumption of about.....tons of best Welsh coal—best grade fuel oil—best grade Diesel oil, now.....

.....and.....Charterers of the City of.....

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for about.....

.....within below mentioned trading limits. Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party.

Vessel to be placed at the disposal of the Charterers, at.....

.....

in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6), as the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 5. Vessel on her delivery to be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, including petroleum or its products, in proper containers, excluding.....

(vessel is not to be employed in the carriage of Live Stock, but Charterers are to have the privilege of shipping a small number on deck at their risk, all necessary fittings and other requirements to be for account of Charterers), in such lawful trades, between safe port and/or ports in British North America, and/or United States of America, and/or West Indies, and/or Central America, and/or Caribbean Sea, and/or Gulf of Mexico, and/or Mexico, and/or South America.....and/or Europe and/or Africa, and/or Asia, and/or Australia, and/or Tasmania, and/or New Zealand, but excluding Magdalena River, River St. Lawrence between October 31st and May 15th, Hudson Bay and all unsafe ports; also excluding, when out of season, White Sea, Black Sea and the Baltic.

.....

.....

.....

as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more.

Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but Owners to allow them the use of any dunnage and shifting boards already aboard vessel. Charterers to have the privilege of using shifting boards for dunnage, they making good any damage thereto.

3. That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than.....tons and not more than .....tons and to be re-delivered with not less than.....tons and not more than.....tons.

4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of.....

.....United States Currency per ton on vessel's total deadweight carrying capacity, including bunkers and stores, on.....summer freeboard, per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at.....

.....unless otherwise mutually agreed. Charterers are to give Owners not less than.....days notice of vessels expected date of re-delivery, and probable port.

5. Payment of said hire to be made in New York in cash in United States Currency, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. Time to count from 7 a.m. on the working day following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers, they to have the privilege of using vessel at once, such time used to count as hire.

Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject to 2½% commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances.

6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to safely lie aground.

7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. Charterers have the privilege of passengers as far as accommodations allow, Charterers paying Owners.....per day per passenger for accommodations and meals. However, it is agreed that in case any fines or extra expenses are incurred in the consequence of the carriage of passengers, Charterers are to bear such risk and expense.

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are prosecuted with the utmost despatch. He is to be furnished with free accommodation, and same fare as provided for Captain's table, Charterers paying at the rate of $1.00 per day. Owners to victual Pilots and Customs Officers, and also, when authorized by Charterers or their Agents, to victual Tally Clerks, Stevedore's Foreman, etc., Charterers paying at the current rate per meal, for all such victualling.

11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

12. That the Captain shall use diligence in caring for the ventilation of the cargo.

13. That the Charterers shall have the option of continuing this charter for a further period of.....

.....

on giving written notice thereof to the Owners or their Agents.....days previous to the expiration of the first-named term, or any declared option.

14. That if required by Charterers, time not to commence before.....and should vessel not have given written notice of readiness on or before.....but not later than 4 p.m. Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness.

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Average contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel.

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crew's proportion. General Average shall be adjusted, stated and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of York-Antwerp Rules 1924, at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in United States money.

In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, the shipper and the consignee, jointly and severally, shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.

Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. That as the vessel may be from time to time employed in tropical waters during the term of this Charter, Vessel is to be docked at a convenient place, bottom cleaned and painted whenever Charterers and Captain think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.

.....

.....

22. Owners shall maintain the gear of the ship as fitted, providing gear (for all derricks) capable of handling lifts up to three tons, also providing ropes, falls, slings and blocks. If vessel is fitted with derricks capable of handling heavier lifts, Owners are to provide necessary gear for same, otherwise equipment and gear for heavier lifts shall be for Charterers' account. Owners also to provide on the vessel lanterns and oil for night work, and vessel to give use of electric light when so fitted, but any additional lights over those on board to be at Charterers' expense. The Charterers to have the use of any gear on board the vessel.

23. Vessel to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch to work winches day and night, as required. Charterers agreeing to pay officers, engineers, winchmen, deck hands and donkeymen for overtime work done in accordance with the working hours and rates stated in the ship's articles. If the rules of the port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of a disabled winch or winches, or insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby.

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels; etc.," in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both of which are to be included in all bills of lading issued hereunder:

U. S. A. Clause Paramount

This bill of lading shall have effect subject to the provisons of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

Both-to-Blame Collision Clause

If the ship comes into collison with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

25. The vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or discharging.

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.

27. A commission of 2½ per cent is payable by the Vessel and Owners to

.....

on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

28. An address commission of 2½ per cent payable to.....on the hire earned and paid under this Charter.

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By permission of the NEW YORK PRODUCE EXCHANGE

ANNEX III

TIME CHARTER

New York Produce Exchange Form

November 6th, 1913 — Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946; June 12th, 1981

THIS CHARTER PARTY, made and concluded in .....
..... day of ..... 19 .....
Owners between .....
..... Owners of
the good ..... Steamship / Motorship .....
Description of Vessel of ..... of ..... tons gross register, and
..... tons net register, having engines of .....
horsepower and with hull, machinery and equipment in a thoroughly efficient
state, and classed ..... of about
..... cubic feet grain/bale capacity .....
....., and about
..... long/metric tons deadweight capacity (cargo and
bunkers, including fresh water and stores not exceeding .....
long/metric tons) on a salt water draft of ..... on summer
freeboard, inclusive of permanent bunkers, which are of the capacity of about
..... long/metric tons of
..... fuel oil and .....
long/metric tons of ....., and
capable of steaming, fully laden, under good weather conditions about
..... knots on a consumption of about .....
long/metric tons of .....
.....
now .....
..... and
Charterers .....
..... Charterers of the City of .....
The Owners agree to let and the Charterers agree to hire the vessel from the
Duration time of delivery for about .....
.....
..... within below mentioned trading limits.
Sublet Charterers shall have liberty to sublet the vessel for all or any part of the
time covered by this Charter, but Charterers shall remain responsible for the
fulfillment of this Charter.
Delivery Vessel shall be placed at the disposal of the Charterers .....
.....
.....
.....
in such dock or at such berth or place (where she may safely lie, always afloat,
at all times of tide, except as otherwise provided in Clause 6) as the Charterers
may direct. If such dock, berth or place be not available, time shall count as
provided in Clause 5. Vessel on her delivery shall be ready to receive cargo with
clean-swept holds and tight, staunch, strong and in every way fitted for ordi-
nary cargo service, having water ballast and with sufficient power to operate all
cargo-handling gear simultaneously (and with full complement of officers and
crew for a vessel of her tonnage), to be employed in carrying lawful merchan-
Dangerous Cargo dise excluding any goods of a dangerous, injurious, flammable or corrosive
nature unless carried in accordance with the requirements or recom-
mendations of the proper authorities of the state of the vessel's registry and of
the states of ports of shipment and discharge and of any intermediate states or
ports through whose waters the vessel must pass. Without prejudice to the
Cargo Exclusions generality of the foregoing, in addition the following are specifically excluded:
livestock of any description, arms, ammunition, explosives .....
.....
.....
.....
.....
Trading Limits The vessel shall be employed in such lawful trades between safe ports and
places within .....
..... excluding .....
.....
.....
.....
as the Charterers or their agents shall direct, on the following conditions:
Owners to Provide 1. The Owners shall provide and pay for the insurance of the vessel and
for all provisions, cabin, deck, engine-room and other necessary stores, in-
cluding boiler water; shall pay for wages, consular shipping and discharging
fees of the crew and charges for port services pertaining to the crew; shall
maintain vessel's class and keep her in a thoroughly efficient state in hull,

machinery and equipment for and during the service.

Charterers to Provide

2. The Charterers, while the vessel is on hire, shall provide and pay for all the fuel except as otherwise agreed, port charges, pilotages, towages, agencies, commissions, consular charges (except those pertaining to individual crew members or flag of the vessel), and all other usual expenses except those stated in Clause 1, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew shall be for Owners' account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this Charter shall be for Charterers' account. All other fumigations shall be for Charterers' account after vessel has been on charter for a continuous period of six months or more.

Charterers shall provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but Owners shall allow them the use of any dunnage and shifting boards already aboard vessel.

Bunkers on Delivery and Redelivery

3. The Charterers on delivery, and the Owners on redelivery, shall take over and pay for all fuel and diesel oil remaining on board the vessel as hereunder. The vessel shall be delivered with: ..... long/metric* tons of fuel oil at the price of ..... per ton; ..... tons of diesel oil at the price of ..... per ton. The vessel shall be redelivered with: ..... tons of fuel oil at the price of ..... per ton; ....tons of diesel oil at the price of ..... per ton ....

(*Same tons apply throughout this clause)

Rate of Hire

4. The Charterers shall pay for the use and hire of the said vessel at the rate of ..... daily, or ..... United States Currency per ton on vessel's total deadweight carrying capacity, including bunkers and stores, on ..... summer freeboard, per calendar month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire shall continue until the hour of the day of her redelivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless vessel lost) at .... unless otherwise mutually agreed.

Redelivery Areas and Notices

Charterers shall give Owners not less than ..... days notice of vessel's expected date of redelivery and probable port ....

Hire Payment and Commencement

5. Payment of hire shall be made so as to be received by Owners or their designated payee in New York, i.e. .... in United States Currency, in funds available to the Owners on the due date, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire shall be paid for the balance day by day as it becomes due, if so required by Owners. Failing the punctual and regular payment of the hire, or on any breach of this Charter, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers without prejudice to any claims they (the Owners) may otherwise have on the Charterers.

Time shall count from 7 A.M. on the working day following that on which written notice of readiness has been given to Charterers or their agents before 4 P.M., but if required by Charterers, they shall have the privilege of using vessel at once, in which case the vessel will be on hire from the commencement of work.

Cash Advances

Cash for vessel's ordinary disbursements at any port may be advanced, as required by the Captain, by the Charterers or their agents, subject to 2½ percent commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances.

Berths

6. Vessel shall be loaded and discharged in any dock or at any berth or place that Charterers or their agents may direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to safely lie aground.

Spaces Available

7. The whole reach of the vessel's holds, decks, and usual places of loading (not more than she can reasonably and safely stow and carry), also accommodations for supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.

Prosecution of Voyages

8. The Captain shall prosecute his voyages with due despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners) shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to perform all cargo handling at their expense under the supervision of the

S.S./M.S. .....Charter Dated .....

Bills of Lading

Captain, who is to sign the bills of lading for cargo as presented in conformity with mate's or tally clerk's receipts. However, at Charterers' option, the Charterers or their agents may sign bills of lading on behalf of the Captain always in conformity with mate's or tally clerk's receipts. All bills of lading shall be without prejudice to this Charter and the Charterers shall indemnify the Owners against all consequences or liabilities which may arise from any inconsistency between this Charter and any bills of lading or waybills signed by the Charterers or their agents or by the Captain at their request.

Conduct of Captain

9. If the Charterers shall have reason to be dissatisfied with the conduct of the Captain or officers, the Owners shall, on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

Supercargo and Meals

10. The Charterers are entitled to appoint a supercargo, who shall accompany the vessel and see that voyages are prosecuted with due despatch. He is to be furnished with free accommodation and same fare as provided for Captain's table, Charterers paying at the rate of ..... per day. Owners shall victual pilots and customs officers, and also, when authorized by Charterers or their agents, shall victual tally clerks, stevedore's foreman, etc., Charterers paying at the rate of ..... per meal for all such victualling.

Sailing Orders and Logs

11. The Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep full and correct deck and engine logs of the voyage or voyages, which are to be patent to the Charterers or their agents, and furnish the Charterers, their agents or supercargo, when required, with a true copy of such deck and engine logs, showing the course of the vessel, distance run and the consumption of fuel.

Ventilation

12. The Captain shall use diligence in caring for the ventilation of the cargo.

Continuation

13. The Charterers shall have the option of continuing this Charter for a further period of .....
.....

Laydays/ Cancelling

14. If required by Charterers, time shall not commence before .....
..... and should vessel not have given written notice of readiness on or before ..... but not later than 4 P.M. Charterers or their agents shall have the option of cancelling this Charter at any time not later than the day of vessel's readiness.

Off Hire

15. In the event of the loss of time from deficiency and/or default of officers or crew or deficiency of stores, fire, breakdown of, or damages to, hull, machinery or equipment, grounding, detention by average accidents to ship or cargo unless resulting from inherent vice, quality or defect of the cargo, drydocking for the purpose of examination or painting bottom, or by any other similar cause preventing the full working of the vessel, the payment of hire and overtime, if any, shall cease for the time thereby lost. Should the vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the cargo, the hire is to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom. All fuel used by the vessel while off hire shall be for Owners' account. In the event of the vessel being driven into port or to anchorage through stress of weather, trading to shallow harbors or to rivers or ports with bars, any detention of the vessel and/or expenses resulting from such detention shall be for the Charterers' account. If upon the voyage the speed be reduced by defect in, or breakdown of, any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

Total Loss

16. Should the vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once.

Exceptions

The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation, and errors of navigation throughout this Charter, always mutually excepted.

Liberties

The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

Arbitration

17. Should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any two of them, shall be final and for the purpose of enforcing any award this agreement may be made a rule of the Court. The arbitrators shall be commercial men conversant with shipping matters.

Liens

18. The Owners shall have a lien upon all cargoes and all sub-freights for any amounts due under this Charter, including general average contributions, and the Charterers shall have a lien on the ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once.

Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the vessel.

Salvage

19. All derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and crew's proportion.

General Average

General average shall be adjusted, according to York-Antwerp Rules 1974, at such port or place in the United States as may be selected by the Owners and as to matters not provided for by these Rules, according to the laws and usage at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the Owners, must be furnished before delivery of the goods. Such cash deposit as the Owners or their agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Owners before delivery. Such deposit shall, at the option of the Owners, be payable in United States money and remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the general average and refunds or credit balances, if any, shall be paid in United States money.

York-Antwerp Rules

Charterers shall procure that all bills of lading issued during the currency of the Charter will contain a provision to the effect that general average shall be adjusted according to York-Antwerp Rules 1974 and will include the "New Jason Clause" as per Clause 23.

Drydocking

20. The vessel was last drydocked ..... The Owners shall have the option to place the vessel in drydock during the currency of this Charter at a convenient time and place, to be mutually agreed upon between Owners and Charterers, for bottom cleaning and painting and/or repair as required by class or dictated by circumstances. Payment of hire shall be suspended upon deviation from Charterers' service until vessel is again placed at Charterers' disposal at a point not less favorable to Charterers than when the hire was suspended. .....

.....

.....

Cargo Gear

21. Owners shall maintain the cargo-handling gear of the ship which is as follows: .....

.....

.....

providing gear (for all derricks or cranes) capable of lifting capacity as described. Owners shall also provide on the vessel for night work lights as on board, but all additional lights over those on board shall be at Charterers' expense. The Charterers shall have the use of any gear on board the vessel. If required by Charterers, the vessel shall work night and day and all cargo-handling gear shall be at Charterers' disposal during loading and discharging.

Stevedore Stand-by

In the event of disabled cargo-handling gear, or insufficient power to operate the same, the vessel is to be considered to be off hire to the extent that time is actually lost to the Charterers and Owners to pay stevedore stand-by charges occasioned thereby. If required by the Charterers, the Owners are to bear the cost of hiring shore gear in lieu thereof.

Crew Overtime

22. In lieu of any overtime payments to officers and crew for work ordered by Charterers or their agents, Charterers shall pay Owners $ ..... per month or pro rata.

Clauses Paramount

23. The following clause is to be included in all bills of lading issued hereunder:

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, the Hague Rules, or the Hague-Visby Rules, as applicable, or such other similar national legislation as may mandatorily apply by virtue of origin or destination of the bills of lading, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said applicable Act. If any term of this bill of lading be repugnant to said applicable Act to any extent, such term shall be void to that extent, but no further.

This Charter is subject to the following clauses all of which are to be included in all bills of lading issued hereunder:

New Both-to-Blame Collision Clause

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off,

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recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

New Jason Clause

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

War Clauses

(a) No contraband of war shall be shipped. Vessel shall not be required, without the consent of Owners, which shall not be unreasonably withheld, to enter any port or zone which is involved in a state of war, warlike operations, or hostilities, civil strife, insurrection or piracy whether there be a declaration of war or not, where vessel, cargo or crew might reasonably be expected to be subject to capture, seizure or arrest, or to a hostile act by a belligerent power (the term "power" meaning any de jure or de facto authority or any purported governmental organization maintaining naval, military or air forces).

(b) If such consent is given by Owners, Charterers will pay the provable additional cost of insuring vessel against hull war risks in an amount equal to the value under her ordinary hull policy but not exceeding a valuation of ..... In addition, Owners may purchase and Charterers will pay for war risk insurance on ancillary risks such as loss of hire, freight disbursements, total loss, blocking and trapping, etc. If such insurance is not obtainable commercially or through a government program, vessel shall not be required to enter or remain at any such port or zone.

(c) In the event of the existence of the conditions described in (a) subsequent to the date of this Charter, or while vessel is on hire under this Charter, Charterers shall, in respect of voyages to any such port or zone assume the provable additional cost of wages and insurance properly incurred in connection with master, officers and crew as a consequence of such war, warlike operations or hostilities.

Ice

24. The vessel shall not be required to enter or remain in any icebound port or area, nor any port or area where lights or lightships have been or are about to be withdrawn by reason of ice, nor where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter and remain in the port or area or to get out after having completed loading or discharging.

Navigation

25. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The Owners shall remain responsible for the navigation of the vessel, acts of pilots and tug boats, insurance, crew, and all other similar matters, same as when trading for their own account.

Commissions

26. A commission of ..... percent is payable by the vessel and Owners to .....
.....
on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

Address

27. An address commission of ..... percent is payable to .....
.....
on hire earned and paid under this Charter.

Rider

Rider Clauses ..... as attached hereto are incorporated in this Charter.

Rider of Suggested Additional Clauses

(None of these Clauses apply unless expressly agreed during the negotiations and enumerated in line 362)

Extension of Cancelling

28. If it clearly appears that, despite the exercise of due diligence by Owners, the vessel will not be ready for delivery by the cancelling date, and provided Owners are able to state with reasonable certainty the date on which the vessel will be ready, they may, at the earliest seven days before the vessel is expected to sail for the port or place of delivery, require Charterers to declare whether or not they will cancel the Charter. Should Charterers elect not to cancel, or should they fail to reply within seven days or by the cancelling date, whichever shall first occur, then the seventh day after the expected date of readiness for delivery as notified by Owners shall replace the original cancelling date. Should the vessel be further delayed, Owners shall be entitled to require further declarations of Charterers in accordance with this Clause.

Grace Period

29. Where there is failure to make "punctual and regular payment" of hire, Charterers shall be given by Owners two clear banking days (as recognized at the agreed place of payment) written notice to rectify the failure, and when so rectified within those two days following Owners' notice, the payment shall stand as regular and punctual. Payment received by Owners' bank after the original due date will bear interest at the rate of 0.1 percent per day which shall be payable immediately by Charterers in addition to hire.

At any time while hire is outstanding the Owners shall be absolutely entitled to withhold the performance of any and all of their obligations hereunder and shall have no responsibility whatsoever for any consequences thereof in respect of which the Charterers hereby indemnify the Owners and hire shall continue to accrue and any extra expenses resulting from such withholding shall be for the Charterers' account.

Cargo Claims

30. Damage to and claims on cargo shall be for Owners' account if caused by unseaworthiness of the vessel, but shall be for Charterers' account if caused by handling and stowage, including slackage. Claims for shortage ex ship shall be shared equally between Owners and Charterers.

War Cancellation

31. In the event of the outbreak of war (whether there be a declaration of war or not) between any two or more of the following countries: The United States of America, the United Kingdom, France, the Union of Soviet Socialist Republics, the People's Republic of China, ...
.....
.....
or in the event of the nation under whose flag the vessel sails becoming involved in war (whether there be a declaration of war or not), either the Owners or the Charterers may cancel this Charter. Whereupon the Charterers shall redeliver the vessel to the Owners in accordance with Clause 4; if she has cargo on board, after discharge thereof at destination, or, if debarred under this Clause from reaching or entering it, at a near open and safe port as directed by the Owners; or, if she has no cargo on board, at the port at which she then is; or, if at sea, at a near open and safe port as directed by the Owners. In all cases hire shall continue to be paid in accordance with Clause 4 and except as aforesaid all other provisions of this Charter shall apply until redelivery.

War Bonus

32. Any war bonus to officers and crew due to vessel's trading or cargo carried shall be for Charterers' account.

Requisition

33. Should the vessel be requisitioned by the government of the vessel's flag during the period of this Charter, the vessel shall be deemed to be off hire during the period of such requisition, and any hire paid by the said government in respect of such requisition period shall be retained by Owners. The period during which the vessel is on requisition to the said government shall count as part of the period provided for in this Charter.

If the period of requisition exceeds .....months, either party shall have the option of cancelling this Charter and no consequential claim may be made by either party.

On/Off-hire Survey

34. Prior to delivery and redelivery the parties shall each appoint surveyors, for their respective accounts, who shall conduct joint on-hire/off-hire surveys. A single report shall be prepared on each occasion and signed by each surveyor, without prejudice to his right to file a separate report setting forth items upon which the surveyors cannot agree. If either party fails to have a representative attend the survey and sign the joint survey report, such party shall nevertheless be bound for all purposes by the findings in any report prepared by the other party. On-hire survey shall be on Charterers' time and off-hire survey on Owners' time.

Stevedore Damage

35. Any damage caused by stevedores during the currency of this Charter shall be reported by Captain to Charterers or their agents, in writing, within 24 hours of the occurrence or as soon as possible thereafter. The Captain shall use his best efforts to obtain written acknowledgement by responsible parties

causing damage unless damage should have been made good in the meantime.

Stevedore damages involving seaworthiness shall be repaired without delay to the vessel after each occurrence in Charterers' time and shall be paid for by the Charterers. Other minor repairs shall be done at the same time, but if this is not possible, same shall be repaired while vessel is in drydock in Owners' time, provided this does not interfere with Owners' repair work, or by vessel's crew at Owners' convenience. All costs of such repairs shall be for Charterers' account. Any time spent in repairing stevedore damage shall be for Charterers' account.

Charterers shall pay for stevedore damages whether or not payment has been made by stevedores to Charterers.

Charterers' Colors

36. Charterers shall have the privilege of flying their own house flag and painting the vessel with their own markings. The vessel shall be repainted in Owners' colors before termination of the Charter. Cost and time of painting, maintaining and repainting those changes effected by Charterers shall be for Charterers' account.

Return Premium

37. Charterers shall have the benefit of any return insurance premium receivable by Owners from their underwriters as and when received from underwriters by reason of vessel being in port for a minimum period of 30 days if on full hire for this period or pro rata for the time actually on hire.

Water Pollution

38. The vessel shall be off hire during any time lost on account of vessel's non-compliance with government and/or state and/or provincial regulations pertaining to water pollution. In cases where vessel calls at a U.S. port, Owners warrant to have secured and carry on board the vessel a Certificate of Financial Responsibility as required under U.S. law.

ANNEX IV

45-0

THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE
Deep Sea Time Charter (Box Layout 1974)
CODE NAME: "LINERTIME" **PART I**

1. Shipbroker		2. Place and date	
3. Owners/Place of business		4. Charterers/Place of business	
5. Vessel's name	6. GRT/NRT	7. Class	8. Indicated horse power
9. Total tons d.w. (abt.) on summer freeboard		10. Quantity of stores, provisions and fresh water not exceeding (tons)	
11. Cubic-feet grain/bale capacity available for cargo		12. Permanent bunkers (abt.)	
13. Speed capability in knots (abt.) on a consumption per 24 hours of (abt.)		14. Present position	
15. Period of hire (Cl. 1)		16. Port of delivery (also indicate alternative (a) or (b)) (Cl. 1)	
		17. Time for delivery (Cl. 1)	
18. Number of days' notice of expected date of delivery (Cl. 1)		19. Cancelling date (Cl. 2)	
20. Trade limits (also indicate alternative (a) or (b)) (Cl. 3)			
21. Injurious, inflammable or dangerous goods limited to (also state name of authorities concerned) (Cl. 3)		22. Vessel's cargo handling gear (Cl. 5)	
23. Fuel consumption in port per 24 hours (abt.) (Cl. 5)		24. Bunker price (indicate alternative (a) or (b) and fixed price if agreed) (Cl. 6)	
25. Bunkers on delivery (state min. and max. quantities) (Cl. 6)		26. Bunkers on re-delivery (state min. and max. quantities) (Cl. 6)	
27. Charter hire (also indicate alternative (a) or (b)) (Cl. 7)		28. Hire payment (state currency, mode and place of payment; also beneficiary and bank account) (Cl. 7)	
29. Place or range of re-delivery (Cl. 8)		30. Number of days' preliminary and final notice of port and date of re-delivery (Cl. 8)	
31. Suspension of hire etc. (indic. no. of consecutive hours) (Cl. 14 (A))		32. Cleaning of boilers etc. (indicate number of hours) (Cl. 15)	
33. Advances (only to be filled in if special agreement made) (Cl. 16)		34. Overtime (state lumpsum or if other special agreement made) (Cl. 19)	
35. War (only to be filled in if Section (C) agreed) (Cl. 23)		36. General average to be settled in (Cl. 24)	
37. Supercargo (state price agreed) (Cl. 27)		38. Meals (state price agreed) (Cl. 28)	
39. Brokerage commission and to whom payable (Cl. 33)			
40. Numbers of additional clauses covering special provisions, if agreed			

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (for the Owners)	Signature (for the Charterers)

Printed and sold by Fr. G. Knudtzon Ltd., 55, Toldbodgade, Copenhagen.
by authority of The Baltic and International Maritime Conference, Copenhagen.

PART II

"LINERTIME" Deep Sea Time Charter

It is agreed between the party mentioned in Box 3 as Owners of the Vessel named in Box 5 of the gross/net Register tons indicated in Box 6, classed as stated in Box 7 and of indicated horse power as stated in Box 8, carrying about the number of tons deadweight indicated in Box 9 on summer freeboard inclusive of bunkers, as well as stores, provisions and fresh water not exceeding the number of tons indicated in Box 10 having a cubic-feet grain/bale capacity available for cargo as stated in Box 11, exclusive of permanent bunkers, which contain about the number of tons stated in Box 12, and fully loaded capable of steaming about the number of knots indicated in Box 13 in good weather and smooth water on a consumption of about the number of tons stated in Box 13 per 24 hours, now in position as stated in Box 14, and the party mentioned as Charterers in Box 4, as follows:

1. Period and Port of Delivery

The Owners let, and the Charterers hire the Vessel for a period of the number of calendar months indicated in Box 15 from the time (not a Sunday or a legal Holiday unless taken over) the Vessel is delivered and placed at the disposal of the Charterers between 7 a.m. and 10 p.m., or between 7 a.m. and noon if on Saturday, at the port stated in Box 16 in such ready berth where she can safely lie

(a) always afloat*

(b) always afloat or safely aground where it is customary for vessels of similar size and draught to be safe aground*

as the Charterers may direct, she being in every way fitted for ordinary dry cargo service with cargo holds well swept, cleaned and ready to receive cargo before delivery under this Charter.
(state alternative agreed in Box 16).*

Time for Delivery

The Vessel to be delivered not before the date indicated in Box 17.
The Owners to give the Charterers not less than the number of days' notice stated in Box 18 of the date on which the Vessel is expected to be ready for delivery.
The Owners to keep the Charterers closely advised of possible changes in Vessel's position.

2. Cancelling

Should the Vessel not be delivered by the date indicated in Box 19, the Charterers to have the option of cancelling.
If the Vessel cannot be delivered by the cancelling date, the Charterers, if required, to declare within 48 hours (Sundays and Holidays excluded) after receiving notice thereof whether they cancel or will take delivery of the Vessel.

3. Trade

The Vessel to be employed in lawful trades for the carriage of lawful merchandise only between good and safe ports or places where she can safely lie

(a) always afloat*

(b) always afloat or safely aground where it is customary for vessels of similar size and draught to be safe aground*

within the limits as stated in Box 20.
(state alternative agreed in Box 20).*

No live stock, sulphur and pitch in bulk to be shipped. Injurious, inflammable or dangerous goods (such as acids, explosives, calcium carbide, ferro silicon, naphta, motor spirit, tar, or any of their products) to be limited to the number of tons stated in Box 21 and same to be packed, loaded, stowed and discharged in accordance with the regulations of the local authorities and Board of Trade as specified in Box 21, and if any special measures have to be taken by reason of having this cargo aboard including cost of erection and dismantling magazines, etc., same to be at Charterers' expense and in Charterers' time.

Nuclear Fuel

Notwithstanding any other provisions contained in this Charter it is agreed that nuclear fuels or radioactive products or waste are specifically excluded from the cargo permitted to be loaded or carried under this Charter. This exclusion does not apply to radio-isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purposes provided the Owners' prior approval has been obtained to loading thereof.

4. Owners to Provide

The Owners to provide and pay for all provisions and wages, for insurance of the Vessel, for all deck and engine-room stores and maintain her in a thoroughly efficient state in hull and machinery during service.
The Owners to provide one winchman per working hatch. In lieu of winchmen the Charterers are entitled to ask for two watchmen. If further winchmen or watchmen are required, or if the stevedores refuse or are not permitted to work with the Crew, the Charterers to provide and pay qualified men. The gangway watchman to be provided by the Owners but where compulsory to employ gangway watchmen from shore, the expenses to be for the Charterers' account.

5. Charterers to Provide

The Charterers to pay all dock, harbour, light and tonnage dues at the ports of delivery and re-delivery (unless incurred through cargo carried before delivery or after re-delivery).
Whilst on hire the Charterers to provide and pay for all fuel, water for boilers, port charges, pilotages (whether compulsory or not), canal steersmen, boatage, lights, tug-assistance, consular charges (except those payable to the consulates of the country of the Vessel's flag) canal, dock and other dues and charges, including any foreign general municipality or state taxes, agencies, commissions, also to arrange and pay for loading, trimming, stowing (including dunnage and shifting boards, excepting any already on board), unloading, weighing, tallying and delivery of cargoes, surveys on hatches, any other survey on cargo, meals supplied to officials and men in their service at the rate per man per meal indicated in Boxes 37 and 38, respectively, and all other charges and expenses whatsoever.

Cargo Gear

All ropes, slings and special runners actually used for loading and discharging and any special gear, including special ropes, hawsers and chains required by the custom of the port for mooring to be for the Charterers' account unless already on board. The Vessel is fitted with cargo handling gear as specified in Box 22.
This gear is to be kept in full working order for immediate use, the Charterers however to give sufficient notice of their intention to use heavy lift gear.

Cargo Gear Certificate

The Owners guarantee the Vessel possesses cargo gear register and certificates in compliance with requirement of International Labour Organization Convention No. 32.

Fuel Consumption in Port

The Vessel's normal fuel consumption whilst in port working all cargo gear is about the number of tons stated in Box 23 per 24 hours.

6. Bunkers

The Charterers at port of delivery and the Owners at port of re-delivery to take over and pay for all fuel remaining in the Vessel's bunkers at

(a) current price, at the respective ports*

(b) a fixed price per ton*

(state alternative agreed in Box 24)*

The Vessel to be delivered with no less than the number of tons and not exceeding the number of tons stated in Box 25 in the Vessel's bunkers.
The Vessel to be re-delivered with not less than the number of tons and not exceeding the number of tons stated in Box 26 in the Vessel's bunkers.

7. Hire

The Charterers to pay as hire the rate stated in Box 27

(a) per 30 days*

(b) per day*,

commencing in accordance with Clause 1 until her re-delivery to the Owners.
(state alternative agreed in Box 27).*

Payment

Payment of hire to be made in cash, in the currency stated in Box 28 without discount, every 30 days, in advance, and in the manner prescribed in Box 28.
In default of payment the Owners to have the right of withdrawing the Vessel from the service of the Charterers, without noting any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter.

Last Hire Payment

Should the Vessel be on her voyage towards port of re-delivery at time a payment of hire is due, said payment to be made for such length of time as the Owners or their Agents and the Charterers or their Agents may agree upon as estimated time necessary to complete the voyage, taking into account bunkers to be taken over by the Vessel and estimated disbursements for the Owners' account before re-delivery and when the Vessel is re-delivered any difference to be refunded by the Owners or paid by the Charterers, as the case may require.

8. Re-delivery

The Vessel to be re-delivered on the expiration of the Charter in the same good order as when delivered to the Charterers (fair wear and tear excepted) at a safe and ice-free port in the Charterers' option in the place or within the range stated in Box 29 between 7 a.m. and 10 p.m., and 7 a.m. and noon on Saturday, but the day of re-delivery shall not be a Sunday or legal Holiday.
Repairs for the Charterers' account as far as possible to be effected simultaneously with dry-docking or annual repairs, respectively; if any further repairs are required, for time occupied in effecting such repairs the Owners to receive compensation at the hire agreed in this Charter. The Charterers always to be properly notified of the time and place when and where repairs for their account will be performed.

Notice

The Charterers to give the Owners not less than the number of days' preliminary and the number of days' final notice as stated in Box 30 of the port of re-delivery and the date on which the Vessel is expected to be ready for re-delivery. The Charterers to keep the Owners closely advised of possible changes in the Vessel's position.
Should the Vessel be ordered on a voyage by which the Charter period may be exceeded the Charterers to have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow re-delivery about the time fixed for the termination of the Charter, but for any time exceeding the termination date the Charterers to pay the market rate if higher than the rate stipulated herein.

9. Cargo Space

The whole reach and burden of the Vessel, including lawful deck-capacity to be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores.

10. Master

The Charterers to give the necessary sailing instructions, subject to the limits of the Charter.
The Master to be under the orders of the Charterers as regards employment, agency, or other arrangements. The Master to prosecute all voyages with the utmost despatch and render customary assistance with the Vessel's Crew.
The Master and Engineer to keep full and correct logs including scrap logs accessible to the Charterers or their Agents.
If the Charterers have reason to be dissatisfied with the conduct of the Master, Officers, or Engineers, the Owners on receiving particulars of the complaint, promptly to investigate the matter, and, if necessary and practicable, to make a change in the appointments.

11. Bills of Lading

The Charterers to have the option of using their own regular Bill of Lading form. The Bill of Lading to contain Paramount Clause incorporating Hague Rules legislation, the Amended Jason Clause and the Both-to-Blame Collision Clause.

12. Responsibility

The Charterers shall keep and care for the cargo at loading and discharging ports, arrange for any transhipment, and deliver the cargo at destination.

The Charterers shall load, stow, trim and discharge the cargo at their expense under supervision of the Master who shall sign Bills of Lading as presented, in conformity with Mate's or tally clerk's receipts. The Charterers shall be responsible for the accuracy of all statements of fact in such Bills of Lading.
The Owners shall be liable for claims in respect of cargo arising or resulting from:
a) Failure on their part properly and carefully to carry, keep and care for the cargo while on board.
b) Unreasonable deviation from the voyage described in the Bills of Lading unless such deviation is ordered or approved by the Charterers.
c) Lack of due diligence on their part before and at the beginning of each voyage to make the Vessel seaworthy but claims arising or resulting from faulty preparation of the holds and/or tanks of the Vessel or from bad stowage of the cargo not affecting the trim or stability of the Vessel on sailing shall be the Charterers' liability.
Except as aforesaid the Charterers shall be liable for all cargo claims.
If the cargo is the property of the Charterers, the Owners shall have the same responsibility as they would have had under this Clause had the cargo been the property of a third party and carried under a Bill of Lading incorporating the Hague Rules.
The Charterers shall be liable for Customs or other fines or penalties, whether or not lawfully levied or imposed, relating to the cargo or other property or persons carried with Charterers' approval or to the acts or omissions of the owners of the cargo.
Claims for death and personal injury shall be borne by the Owners unless caused by the act, neglect or default of the Charterers, their servants or agents including stevedores and all others for whom Charterers are responsible under this Charter.
If for any reason the Owners or the Charterers are obliged to pay any claims, Customs or other fines or penalties, for which the other party has assumed liability as above, that other party hereby agrees to indemnify the Owners or Charterers as the case may be against all loss, damage or expenses arising or resulting from such claims. However, the Owners' indemnity to the Charterers under this clause shall be restricted in that amount to which the Owners' liability would have been limited had they been sued directly.

13. Exceptions

As between the Charterers and the Owners, the responsibility for any loss, damage, delay or failure in performance of this Charter, not dealt with in Clause 12, to be subject to the following mutual exceptions:
Act of God, act of war, civil commotions, strikes, lock-outs, restraint of princes and rulers, quarantine restrictions.
Further, such responsibility upon the Owners to be subject to the following exceptions:
Any act or neglect by the Master, pilots or other servants of the Owners in the navigation or management of the Vessel, fire or explosion not due to the personal fault of the Owners or their Manager, collision or stranding, unforeseeable breakdown or any latent defect in the Vessel's hull, equipment or machinery.
The above provisions in no way to affect the provisions as to suspension of hire in this Charter.

14. Suspension of Hire, etc.

(A) In the event of dry-docking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners' stores, strike of Master, Officers and Crew, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the Vessel and continuing for more than the number of consecutive hours indicated in Box 31, no hire to be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required.
Should the Vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the Cargo, the hire to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom.

Winch Breakdown

In the event of a breakdown of a winch or winches, not caused by carelessness of shore labourers, the time lost to be calculated pro rata for the period of such inefficiency in relation to the number of winches required for work. If the Charterers elect to continue work, the Owners are to pay for shore appliances in lieu of the winches, but in such cases the Charterers to pay full hire.
Any hire paid in advance to be adjusted accordingly.

Detention for Charterers' Account

(B) In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbours or to rivers or ports with bars or suffering an accident to her cargo, any detention of the Vessel and/or expenses resulting from such detention to be for the Charterers' account even if such detention and/or expenses, or the cause by reason of which either is incurred, be due to, or be contributed to by, the negligence of the Owners' servants.

Dry-docking

Owners to give the Charterers at least four weeks notice of their intention of dry-docking the ship for bottom painting and normal maintenance work and actual time and place for such dry-docking to be mutually agreed.

15. Cleaning Boilers, etc.

Cleaning of boilers or opening of pistons whenever possible to be done during service, but if impossible the Charterers to give the Owners necessary time for such work at an interval of not less than three months for this purpose. Should the Vessel be detained beyond the number of hours stated in Box 32 hire to cease until again ready. The Owners or the Master to give the Charterers reasonable notice of their intention to clean boilers or open pistons.

16. Advances

The Charterers or their Agents to advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port charging only one per cent. commission, such advances to be deducted from hire, unless other agreement is made according to Box 33.

17. Excluded Ports

The Vessel not to be ordered to nor bound to enter:
a) any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel;

Ice

b) any ice-bound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the place or to get out after having completed loading or discharging. The Vessel not to be obliged to force ice, nor to follow ice-breakers when inwards bound.
If on account of ice the Master considers it dangerous to remain at the loading or discharging place for fear of the Vessel being frozen in and/or damaged, he has liberty to sail to a convenient open place and await the Charterers' fresh instructions.
Detention through any of above causes to be for the Charterers' account.

18. Loss of Vessel

Should the Vessel be lost or missing, hire to cease from the date when she was lost. If the date of loss cannot be ascertained, half hire to be paid from the date the Vessel was last reported until the calculated date of arrival at the destination. Any hire paid in advance to be adjusted accordingly.

19. Overtime

The Vessel to work day and night if required. The Charterers to pay Owners a lumpsum per 30 days as indicated in Box 34 or pro rata for any overtime to Officers and Crew, unless other agreement is made according to Box 34.

20. Lien

The Owners to have a lien upon all cargoes and sub-freights belonging to the Time-Charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers to have a lien on the Vessel for all moneys paid in advance and not earned.
The Charterers will not suffer, nor permit to be continued any lien or encumbrance incurred by them or their Agents, which might have priority over the title and interest of the Owners in the Vessel.

21. Salvage

All salvage and assistance to other vessels to be for the Owners' and the Charterers' equal benefit after deducting the Master's and Crew's proportion and all legal and other expenses including hire paid under the Charter for time lost in the salvage, also repairs of damage and fuel consumed. The Charterers to be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount.

22. Sublet

The Charterers to have the option of subletting the Vessel, giving due notice to the Owners, but the original Charterers always to remain responsible to the Owners for due performance of the Charter.

23. War

(A) The Vessel unless the consent of the Owners be first obtained not to be ordered nor continue to any place or on any voyage nor be used on any service which will bring her within a zone which is dangerous as the result of any actual or threatened act of war, war, hostilities, warlike operations, acts of piracy or of hostility or malicious damage against this or any other vessel or its cargo by any person, body or State whatsoever, revolution, civil war, civil commotion or the operation of international law, nor be exposed in any way to any risks or penalties whatsoever consequent upon the imposition of Sanctions, nor carry any goods that may in any way expose her to any risks of seizure, capture, penalties or any other interference of any kind whatsoever by the belligerent or fighting powers or parties or by any Government or Ruler.
(B) Should the Vessel approach or be brought or ordered within such zone, or be exposed in any way to the said risks.
1) the Owners to be entitled from time to time to insure their interests in the Vessel and/or hire against any of the risks likely to be involved thereby on such terms as they shall think fit, the Charterers to make a refund to the Owners of the premium on demand; and
2) notwithstanding the terms of Clause 14 hire to be paid for all time lost including any lost owing to loss of or injury to the Master, Officers or Crew or to the action of the Crew in refusing to proceed to such zone or to be exposed to such risks.
(C)in the event of the wages and/or war bonus of the Master, Officers and/or Crew or the cost of provisions and/or stores for deck and/or engine room and/or insurance and/or war risk insurance premiums being increased by reason of or during the existence of any of the matters mentioned in Section (A) the amount of any increase to be added to the hire and paid by the Charterers on production of the Owners' account therefor, such account being rendered monthly.
(D) The Vessel to have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or in any other wise whatsoever given by the Government of the nation under whose flag the Vessel sails or any other Government or any person (or body) acting or purporting to act with the authority of such Government or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such orders or directions.
(E) In the event of the outbreak of war (whether there be a declaration of war or not) between any two or more of the following countries: the United Kingdom, the United States of America, France, the Union of Soviet Socialist Republics, the People's Republic of China or
in the event of the nation under whose flag the Vessel sails becoming involved in war (whether there be a declaration of war or not)
either the Owners or the Charterers may cancel this Charter, whereupon the Charterers shall re-deliver the Vessel to the Owners in accordance with Clause 8, if she has cargo on board after discharge thereof at destination or if debarred under this clause from reaching or entering it at a near open and safe port as directed by the Owners, or if she has no cargo on board, at the port at which she then is or if at sea at a near open and safe port as directed by the Owners. In all cases hire shall continue to be paid in accordance with Clause 7 and except as aforesaid all other provisions of this Charter shall apply until re-delivery.
(F) If in compliance with the provisions of this clause anything is done or is not done, such not to be deemed a deviation.
Section (C) is optional and should be considered deleted unless agreed according to Box 35.

24. General Average

General Average to be settled in the place stated in Box 36 according to York/Antwerp Rules, 1974. Hire not to contribute to General Average.

25. Fumigation

Expenses in connection with fumigations and/or quarantine ordered because of cargoes carried or ports visited while the Vessel is employed under this Charter to be for the Charterers' account. Expenses in connection with all other fumigations and/or quarantine to be for the Owners' account.

26. Funnel Mark

The Charterers to have the option of painting the Vessel's funnel in their own colours, but the Vessel to be re-delivered with the Owners' colours. Painting and repainting to be for the Charterers' account and time to count. The Charterers also to have the option of flying their house flag during the currency of this Charter.

27. Supercargo

The Charterers to have the option of placing a Supercargo on board, they paying the price stated in Box 37 per day for lodging and victualling at the Master's table.

28. Meals

The Owners to victual pilots and Customs officers and also, when authorised by Charterers or their Agents, to victual tally clerks, stevedores' foremen, Charterers' guests, etc., the Charterers paying the price stated in Box 38 per man per meal, for all such victualling.

29. Light

The Owners to supply light on deck and in holds, as on board at all times, free of expense to the Charterers, unless electrical clusters from shore are compulsory, in which case same to be for the Charterers' account.

30. Stevedoring Damage

The Owners to instruct the Master to report in writing to the Supercargo, if on board, and to the Charterers and/or their Agents at the port involved, about any stevedoring damage caused to the Vessel. Such reports to be made immediately after the damage is done unless the damage could not be detected at once in spite of close supervision of the stevedoring.

31. Ballast

If any ballast is required, all expenses for same, including time used in loading and discharging, to be for the Owners' account.

32. Arbitration

Any dispute arising under the Charter to be referred to arbitration in London, one Arbitrator to be nominated by the Owners and the other by the Charterers, and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them, the award of the Arbitrators or the Umpire to be final and binding upon both parties.

If either of the appointed Arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new Arbitrator in his place.

If one party fails to appoint an Arbitrator, either originally, or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his Arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an Arbitrator may appoint that Arbitrator to act as sole Arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent.

33. Commission

The Owners to pay a commission at the rate stated in Box 39 to the party mentioned in Box 39 on any hire paid under the Charter but in no case less than is necessary to cover the actual expenses of the Brokers and a reasonable fee for their work. If the full hire is not paid owing to breach of Charter by either of the parties the party liable therefor to indemnify the Brokers against their loss of commission.

Should the parties agree to cancel the Charter, the Owners to indemnify the Brokers against any loss of commission but in such case the commission not to exceed the brokerage on one year's hire.

ANNEX V

19-0

Adopted by the Documentary Committee of the General Council of British Shipping, Ltd. and the Documentary Committee of The Japan Shipping Exchange, Inc., Tokyo

1. Shipbroker	RECOMMENDED THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE UNIFORM GENERAL CHARTER (AS REVISED 1922 and 1976) INCLUDING "F.I.O." ALTERNATIVE, ETC. (To be used for trades for which no approved form is in force) CODE NAME: "GENCON" Part I 2. Place and date
3. Owners/Place of business (Cl. 1)	4. Charterers/Place of business (Cl. 1)
5. Vessel's name (Cl. 1)	6. GRT/NRT (Cl. 1)
7. Deadweight cargo carrying capacity in tons (abt.) (Cl. 1)	8. Present position (Cl. 1)
9. Expected ready to load (abt.) (Cl. 1)	
10. Loading port or place (Cl. 1)	11. Discharging port or place (Cl. 1)
12. Cargo (also state quantity and margin in Owners' option, if agreed; if full and complete cargo not agreed state "part cargo") (Cl. 1)	
13. Freight rate (also state if payable on delivered or intaken quantity) (Cl. 1)	14. Freight payment (state currency and method of payment; also beneficiary and bank account) (Cl. 4)
15. Loading and discharging costs (state alternative (a) or (b) of Cl. 5; also indicate if vessel is gearless)	16. Laytime (if separate laytime for load. and disch. is agreed, fill in a) and b). If total laytime for load. and disch., fill in c) only.) (Cl. 6) a) Laytime for loading
17. Shippers (state name and address) (Cl. 6)	b) Laytime for discharging c) Total laytime for loading and discharging
18. Demurrage rate (loading and discharging) (Cl. 7)	19. Cancelling date (Cl. 10)
20. Brokerage commission and to whom payable (Cl. 14)	
21. Additional clauses covering special provisions, if agreed.	

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include Part I as well as Part II. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II to the extent of such conflict.

Signature (Owners)	Signature (Charterers)

Printed and sold by Fr. G. Knudtzon Ltd., 55, Toldbodgade, Copenhagen, by authority of The Baltic and International Maritime Conference (BIMCO) Copenhagen.

PART II

"Gencon" Charter (As Revised 1922 and 1976)

Including "F.I.O." Alternative, etc.

1. It is agreed between the party mentioned in Box 3 as Owners of the steamer or motor-vessel named in Box 5, of the gross/nett Register tons indicated in Box 6 and carrying about the number of tons of deadweight cargo stated in Box 7, now in position as stated in Box 8 and expected ready to load under this Charter about the date indicated in Box 9, and the party mentioned as Charterers in Box 4 that:
The said vessel shall proceed to the loading port or place stated in Box 10 or so near thereto as she may safely get and lie always afloat, and there load a full and complete cargo (if shipment of deck cargo agreed same to be at Charterers' risk) as stated in Box 12 (Charterers to provide all mats and/or wood for dunnage and any separations required, the Owners allowing the use of any dunnage wood on board if required) which the Charterers bind themselves to ship, and being so loaded the vessel shall proceed to the discharging port or place stated in Box 11 as ordered on signing Bills of Lading or so near thereto as she may safely get and lie always afloat and there deliver the cargo on being paid freight on delivered or intaken quantity as indicated in Box 13 at the rate stated in Box 13.

2. Owners' Responsibility Clause
Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by the improper or negligent stowage of the goods (unless stowage performed by shippers/Charterers or their stevedores or servants) or by personal want of due diligence on the part of the Owners or their Manager to make the vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied or by the personal act or default of the Owners or their Manager.
And the Owners are responsible for no loss or damage or delay arising from any other cause whatsoever, even from the neglect or default of the Captain or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this clause, be responsible, or from unseaworthiness of the vessel on loading or commencement of the voyage or at any time whatsoever. Damage caused by contact with or leakage, smell or evaporation from other goods or by the inflammable or explosive nature or insufficient package of other goods not to be considered as caused by improper or negligent stowage, even if in fact so caused.

3. Deviation Clause
The vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist vessels in all situations, and also to deviate for the purpose of saving life and/or property.

4. Payment of Freight
The freight to be paid in the manner prescribed in Box 14 in cash without discount on delivery of the cargo at mean rate of exchange ruling on day or days of payment, the receivers of the cargo being bound to pay freight on account during delivery, if required by Captain or Owners.
Cash for vessel's ordinary disbursements at port of loading to be advanced by Charterers if required at highest current rate of exchange, subject to two per cent. to cover insurance and other expenses.

5. Loading/Discharging Costs
* *(a) Gross Terms*
The cargo to be brought alongside in such a manner as to enable vessel to take the goods with her own tackle. Charterers to procure and pay the necessary men on shore or on board the lighters to do the work there, vessel only heaving the cargo on board.
If the loading takes place by elevator, cargo to be put free in vessel's holds, Owners only paying trimming expenses.
Any pieces and/or packages of cargo over two tons weight, shall be loaded, stowed and discharged by Charterers at their risk and expense. The cargo to be received by Merchants at their risk and expense alongside the vessel not beyond the reach of her tackle.

* *(b) F.i.o. and free stowed/trimmed*
The cargo shall be brought into the holds, loaded, stowed and/or trimmed and taken from the holds and discharged by the Charterers or their Agents, free of any risk, liability and expense whatsoever to the Owners.
The Owners shall provide winches, motive power and winchmen from the Crew if requested and permitted; if not, the Charterers shall provide and pay for winchmen from shore and/or cranes, if any. (This provision shall not apply if vessel is gearless and stated as such in Box 15).

* *indicate alternative (a) or (b), as agreed, in Box 15.*

6. Laytime
* *(a) Separate laytime for loading and discharging*
The cargo shall be loaded within the number of running hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time actually used shall count.
The cargo shall be discharged within the number of running hours as indicated in Box 16, weather permitting, Sundays and holidays excepted, unless used, in which event time actually used shall count.

* *(b) Total laytime for loading and discharging*
The cargo shall be loaded and discharged within the number of total running hours as indicated in Box 16, weather permitting. Sundays and holidays excepted, unless used, in which event time actually used shall count.

(c) Commencement of laytime (loading and discharging)
Laytime for loading and discharging shall commence at 1 p.m. if notice of readiness is given before noon, and at 6 a.m. next working day if notice given during office hours after noon. Notice at loading port to be given to the Shippers named in Box 17.
Time actually used before commencement of laytime shall count.
Time lost in waiting for berth to count as loading or discharging time, as the case may be.

* *indicate alternative (a) or (b) as agreed, in Box 16.*

7. Demurrage
Ten running days on demurrage at the rate stated in Box 18 per day or pro rata for any part of a day, payable day by day, to be allowed Merchants altogether at ports of loading and discharging.

8. Lien Clause
Owners shall have a lien on the cargo for freight, dead-freight, demurrage and damages for detention. Charterers shall remain responsible for dead-freight and demurrage (including damages for detention), incurred at port of loading. Charterers shall also remain responsible for freight and demurrage (including damages for detention) incurred at port of discharge, but only to such extent as the Owners have been unable to obtain payment thereof by exercising the lien on the cargo.

9. Bills of Lading
The Captain to sign Bills of Lading at such rate of freight as presented without prejudice to this Charterparty, but should the freight by Bills of Lading amount to less than the total chartered freight the difference to be paid to the Captain in cash on signing Bills of Lading.

10. Cancelling Clause
Should the vessel not be ready to load (whether in berth or not) on or before the date indicated in Box 19, Charterers have the option of cancelling this contract, such option to be declared, if demanded, at least 48 hours before vessel's expected arrival at port of loading. Should the vessel be delayed on account of average or otherwise, Charterers to be informed as soon as possible, and if the vessel is delayed for more than 10 days after the day she is stated to be expected ready to load, Charterers have the option of cancelling this contract, unless a cancelling date has been agreed upon.

11. General Average
General average to be settled according to York-Antwerp Rules, 1974, Proprietors of cargo to pay the cargo's share in the general expenses even if same have been necessitated through neglect or default of the Owners' servants (see clause 2).

12. Indemnity
Indemnity for non-performance of this Charterparty, proved damages, not exceeding estimated amount of freight.

13. Agency
In every case the Owners shall appoint his own Broker or Agent both at the port of loading and the port of discharge.

14. Brokerage
A brokerage commission at the rate stated in Box 20 on the freight earned is due to the party mentioned in Box 20.
In case of non-execution at least 1/3 of the brokerage on the estimated amount of freight and dead-freight to be paid by the Owners to the Brokers as indemnity for the latter's expenses and work. In case of more voyages the amount of indemnity to be mutually agreed.

15. GENERAL STRIKE CLAUSE
Neither Charterers nor Owners shall be responsible for the consequences of any strikes or lock-outs preventing or delaying the fulfilment of any obligations under this contract.
If there is a strike or lock-out affecting the loading of the cargo, or any part of it, when vessel is ready to proceed from her last port or at any time during the voyage to the port or ports of loading or after her arrival there, Captain or Owners may ask Charterers to declare, that they agree to reckon the laydays as if there were no strike or lock-out. Unless Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, Owners shall have the option of cancelling this contract. If part cargo has already been loaded, Owners must proceed with same, (freight payable on loaded quantity only) having liberty to complete with other cargo on the way for their own account.
If there is a strike or lock-out affecting the discharge of the cargo on or after vessel's arrival at or off port of discharge and same has not been settled within 48 hours, Receivers shall have the option of keeping vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging, or of ordering the vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after Captain or Owners have given notice to Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions of this Charterparty and of the Bill of Lading shall apply and vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

16. War Risks ("Voywar 1950")
(1) In these clauses "War Risks" shall include any blockade or any action which is announced as a blockade by any Government or by any belligerent or by any organized body, sabotage, piracy, and any actual or threatened war, hostilities, warlike operations, civil war, civil commotion, or revolution.

(2) If at any time before the Vessel commences loading, it appears that performance of the contract will subject the Vessel or her Master and crew or her cargo to war risks at any stage of the adventure, the Owners shall be entitled by letter or telegram despatched to the Charterers, to cancel this Charter.

(3) The Master shall not be required to load cargo or to continue loading or to proceed on or to sign Bill(s) of Lading for any adventure on which or any port at which it appears that the Vessel, her Master and crew or her cargo will be subjected to war risks. In the event of the exercise by the Master of his right under this Clause after part or full cargo has been loaded, the Master shall be at liberty either to discharge such cargo at the loading port or to proceed therewith. In the latter case the Vessel shall have liberty to carry other cargo for Owners' benefit and accordingly to proceed to and load or discharge such other cargo at any other port or ports whatsoever, backwards or forwards, although in a contrary direction to or out of or beyond the ordinary route. In the event of the Master electing to proceed with part cargo under this Clause freight shall in any case be payable on the quantity delivered.

(4) If at the time the Master elects to proceed with part or full cargo under Clause 3, or after the Vessel has left the loading port, or the

PART II

"Gencon" Charter (As Revised 1922 and 1976)

Including "F.I.O." Alternative, etc.

last of the loading ports, if more than one, it appears that further performance of the contract will subject the Vessel, her Master and crew or her cargo, to war risks, the cargo shall be discharged, or if the discharge has been commenced shall be completed, at any safe port in vicinity of the port of discharge as may be ordered by the Charterers. If no such orders shall be received from the Charterers within 48 hours after the Owners have despatched a request by telegram to the Charterers for the nomination of a substitute discharging port, the Owners shall be at liberty to discharge the cargo at any safe port which they may, in their discretion, decide on and such discharge shall be deemed to be due fulfilment of the contract of affreightment. In the event of cargo being discharged at any such other port, the Owners shall be entitled to freight as if the discharge had been effected at the port or ports named in the Bill(s) of Lading or to which the Vessel may have been ordered pursuant thereto.

(5) (a) The Vessel shall have liberty to comply with any directions or recommendations as to loading, departure, arrival, routes, ports of call, stoppages, destination, zones, waters, discharge, delivery or in any other wise whatsoever (including any direction or recommendation not to go to the port of destination or to delay proceeding thereto or to proceed to some other port) given by any Government or by any belligerent or by any organized body engaged in civil war, hostilities or warlike operations or by any person or body acting or purporting to act as or with the authority of any Government or belligerent or of any such organized body or by any committee or person having under the terms of the war risks insurance on the Vessel, the right to give any such directions or recommendations. If, by reason of or in compliance with any such direction or recommendation, anything is done or is not done, such shall not be deemed a deviation.

(b) If, by reason of or in compliance with any such directions or recommendations, the Vessel does not proceed to the port or ports named in the Bill(s) of Lading or to which she may have been ordered pursuant thereto, the Vessel may proceed to any port as directed or recommended or to any safe port which the Owners in their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfilment of the contract of affreightment and the Owners shall be entitled to freight as if discharge had been effected at the port or ports named in the Bill(s) of Lading or to which the Vessel may have been ordered pursuant thereto.

(6) All extra expenses (including insurance costs) involved in discharging cargo at the loading port or in reaching or discharging the cargo at any port as provided in Clauses 4 and 5 (b) hereof shall be paid by the Charterers and/or cargo owners, and the Owners shall have a lien on the cargo for all moneys due under these Clauses.

17. GENERAL ICE CLAUSE

Port of loading

(a) In the event of the loading port being inaccessible by reason of ice when vessel is ready to proceed from her last port or at any time during the voyage or on vessel's arrival or in case frost sets in after vessel's arrival, the Captain for fear of being frozen in is at liberty to leave without cargo, and this Charter shall be null and void.

(b) If during loading the Captain, for fear of vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for Owners' benefit for any port or ports including port of discharge. Any part cargo thus loaded under this Charter to be forwarded to destination at vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Receivers, freight being paid on quantity delivered (in proportion if lumpsum), all other conditions as per Charter.

(c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Captain or Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section (b) or to declare the Charter null and void unless Charterers agree to load full cargo at the open port.

(d) This Ice Clause not to apply in the Spring.

Port of discharge

(a) Should ice (except in the Spring) prevent vessel from reaching port of discharge Receivers shall have the option of keeping vessel waiting until the re-opening of navigation and paying demurrage, or of ordering the vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after Captain or Owners have given notice to Charterers of the impossibility of reaching port of destination.

(b) If during discharging the Captain for fear of vessel being frozen in deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest accessible port where she can safely discharge.

(c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

Code Name: Norgrain 89

RECOMMENDED BY
THE BALTIC AND INTERNATIONAL MARITIME COUNCIL (BIMCO)
THE FEDERATION OF NATIONAL ASSOCIATIONS OF SHIP BROKERS AND AGENTS (FONASBA)
AMENDED MAY 1989

NORTH AMERICAN GRAIN CHARTERPARTY 1973

ISSUED BY THE ASSOCIATION OF SHIP BROKERS AND AGENTS (U.S.A.) INC.

.....19.....

Owners IT IS THIS DAY MUTUALLY AGREED, between.....

Note: Delete as appropriate Owners / Disponent Owners / Time-chartered Owners / Chartered Owners } of the ..... SS / M.V. Self/Non Self Trimming Bulk Carrier / Tween Decker / Tanker ..... Call Sign .....

Description of Vessel Built..... at .....of .....tons of 2,240 lbs.

deadweight all told, or thereabouts, and with a grain cubic capacity available for cargo of .....cubic feet (including .....cubic feet in self-bleeding wing spaces)

.....

Classification Classed ..... in..... now .....

Note: Insert vessel's itinerary.

.....

.....

.....

Charterers and .....of .....Charterers.

Loading Port(s) 1. That the said vessel, being tight, staunch strong and in every way fit for the voyage, shall with all convenient speed proceed to .....

.....and there load

at .....safe loading berth(s) in Charterers' option.

Description of Cargo always afloat, $\frac{\text{a full and complete*}}{\text{part*}}$ cargo in bulk of

.....

.....

at Charterers' option ..... tons of $\frac{2,240 \text{ lbs.*}}{1,000 \text{ kilos.*}}$ .....% more or less, quantity at Owners' option.

Notice and Loading Port Orders 2. Owners are to give Charterers (or their Agents) (telegraphic address "..... " telex number: .....) 15 and 7 days notice of vessel's expected readiness to load date, and approximate quantity of cargo required with the 15 days' notice, such quantity to be based on a cargo of Heavy Grain, unless the cargo composition has been declared or indicated.

The Charterers are to be kept continuously advised by telegram/telex of any alteration in vessel's readiness to load date.

Master to apply to .....(telegraphic address " .....") for first or sole loading port orders 144 hours before vessel's expected readiness to load date but not sooner than 144 hours before the laydays in Clause 4 and Charterers or their Agents are to give orders for first or sole loading port within 72 hours of receipt of Master's application, unless given earlier.

Orders for second port of loading, if used, to be given to the Master not later than .....

.....

Master is to give Charterers (or their Agents) 72 and 12 hours notice of vessel's estimated time of arrival at first or sole loading port together with vessel's estimated readiness to load date.

Vessel Inspection 3. Vessel is to load under inspection of National Cargo Bureau, Inc in U.S.A. ports or of the Port Warden in Canadian ports. Vessel is also to load under inspection of a Grain Inspector licensed/authorised by the United States Department of Agriculture pursuant to the U.S. Grain Standards Act and/or of a Grain Inspector employed by the Canada Department of Agriculture as required by the appropriate authorities.

If vessel loads at other than U.S. or Canadian ports, she is to load under inspection of such national and/or regulatory bodies as may be required.

Vessel is to comply with the rules of such authorities, and shall load cargo not exceeding what she can reasonably stow and carry over and above her Cabin, Tackle, Apparel, Provisions, Fuel, Furniture and Water. Cost of such inspections shall be borne by Owners.

Laydays/ Cancelling 4. Laytime for loading, if required by Charterers, not to commence before 0800 on the .....day of .....19.....

Should the vessel's notice of readiness not be tendered and accepted as per Clause 18 before 1200 on the .....day of .....19..... the Charterers have the option of cancelling this Charterparty any time thereafter, but not later than one hour after the tender of notice of readiness as per Clause 18.

Destination 5. On being so loaded, the vessel shall proceed to.....

.....

as ordered by Charterers/Receivers*, and deliver the cargo, according to Bills of Lading at.....
safe discharging berths in Charterers' option, vessel being always afloat, on being* / having been* paid freight as per Clauses 8 and 9.

Discharging Port Orders Master to apply by radio to .....(telegraphic address " .....") for first or sole discharging port orders 96 hours before vessel is due off/at* .....and they are to give first or sole discharging port orders by radio within 48 hours of receipt of Master's application unless given earlier. If Master's application is received on a Saturday, the time allowed shall be 52 hours instead of 48 hours.

Orders for second and/or third port(s) of discharge are to be given to the Master not later than vessel's arrival at first or subsequent port.

Master to radio Charterers/Receivers (or their Agents) 72 and 24 hours notice of vessel's estimated time of arrival at first or sole discharging port. Charterers/Receivers (or their Agents) are to be kept continuously advised by radio/telegram/telex of any alterations in such estimated time of arrival.

Bills of Lading 6. The Master is to sign Bills of Lading as presented on the North American Grain Bill of Lading form without prejudice to the terms, conditions and exceptions of this Charterparty. If the Master elects to delegate the signing of Bills of Lading to his Agents he shall given them authority to do so in writing, copy of which is to be furnished to Charterers if so required.

Rotation of Ports 7. Rotation of loading ports is to be in $\frac{\text{Owners'*}}{\text{Charterers'*}}$ option.

Rotation of discharging ports is to be in $\frac{\text{Owners'*}}{\text{Charterers'*}}$ option, but if more than two (2) ports of discharge are used rotation is to be geographic .....to.....

Freight 8. Freight to be paid as follows:

.....

.....

.....

.....

per ton of 2,240 lbs./1,000 Kilos*
Charterers have the option of ordering the vessel to load at .....

.....

in which case the rate of freight to be .....

.....

.....

per ton of 2,240 lbs./1,000 Kilos.*

*Delete as appropriate

Charterers/Receivers have the option of ordering the vessel to discharge at .....

.....

in which case the rate of freight to be .....

.....

.....

per ton of 2,240 lbs./1,000 Kilos*

If more than one port of loading and/or discharging is used, the rate of freight shall be increased by .....

.....

.....per ton of 2,240 lbs./1,000 Kilos* for each additional loading and/or discharging port on the entire cargo.

Freight Payment

9. *(a)* Freight shall be fully prepaid on surrender of signed Bills of Lading in .....in .....currency to .....

.....

.....

on Bill of Lading weight, discountless, not returnable, vessel and/or cargo lost or not lost. Freight shall be deemed earned as cargo is loaded on board.

Once the Bills of Lading have been signed, and Charterers call for surrender of Original Bills of Lading against freight payment above, it will be incumbent upon Owners or their Agents to comply immediately with such call for surrender during office hours, Mondays to Fridays inclusive.

(Other)

(b) .....

.....

.....

Cost of Loading and Discharging

10. *(a)** Cargo is to be loaded and spout trimmed (to Master's satisfaction in respect of seaworthiness) free of expense to the vessel.
Cargo is to be discharged free of expense to the vessel (to Master's satisfaction in respect of seaworthiness).

*(b)** Cargo is to be loaded and trimmed at Owners' expense
Cargo is to be discharged free of expense to the vessel (to Master's satisfaction in respect of seaworthiness).

Stevedores at Loading Port(s) and Discharging Port(s)

11. Stevedores at loading Port(s) are to be appointed by $\frac{\text{Charterers*}}{\text{Owners*}}$ and paid by $\frac{\text{Charterers*}}{\text{Owners*}}$

If stevedores are appointed by Owners, they are to be approved by Charterers at loading port(s), and such approval is not to be unreasonably withheld.
Stevedores at discharging port(s) are to be appointed and paid for by Charterers/Receivers*.

In all cases, stevedores shall be deemed to be the servants of the Owners and shall work under the supervision of the Master.

Bulk Carrier and Wing Spaces

12. *(a)* The vessel is warranted to be a $\frac{\text{self-trimming bulk carrier.*}}{\text{non-self-trimming bulk carrier.*}}$

(b) Cargo may be loaded into wing spaces if the cargo can bleed into centerholds. Wing spaces are to be spout trimmed; any further trimming in wing spaces and any additional expenses in discharging are to be for Owners' account, and additional time so used is not to count as laytime or time on demurrage.

Overtime

13. *(a)* **Expenses**
(i) All overtime expenses at loading and discharging ports shall be for account of the party ordering same.

(ii) If overtime is ordered by port authorities or the party controlling the loading and/or discharging terminal or facility all overtime expenses are to be equally shared between the Owners and $\frac{\text{Charterers*}}{\text{Receivers*}}$

(iii) Overtime expenses for vessel's officers and crew shall always be for Owner's account.

(b) **Time Counting**
If overtime ordered by Owners be worked during periods excepted from laytime the actual time used shall count; if ordered by Charterers/Receivers, the actual time used shall not count; if ordered by port authorities or the party controlling the loading and/or discharging terminal or facility half the actual time used shall count.

Separations

14. Cost of cargo separations, including labor used for laying same, to be for Charterers' account unless required by Owners, in which case all resultant expenses shall be borne by the Owners. Separations ordered by Charterers shall be made to Master's satisfaction (but not exceeding the requirements of the competent authorities).

Securing

15. *(a)* **For Owners' account**
Any securing required by Master, National Cargo Bureau or Port Warden for safe trim/stowage to be supplied by and paid for by Owners, and time so used not to count as laytime or time on demurrage. Bleeding of bags, if any, at discharge port(s) to be at Owners' expense, and time actually lost is not to count.

Delete para (a) or (b) as appropriate

(b) **For Charterers' account**
Any securing required by Master, National Cargo Bureau or Port Warden for safe trim/stowage to be supplied by and paid for by Charterers, and time so used to count as laytime or time on demurrage. Bleeding of bags, if any, at discharge port(s) to be at Charterers'/Receivers' expense.

Fumigation

16. If after loading has commenced, and at any time thereafter until completion of discharge, the cargo is required to be fumigated in vessel's holds, the Owners are to permit same to take place at Charterers' risk and expense, including necessary expenses for accommodating and victualling vessel's personnel ashore.

The Charterers warrant that the fumigants used will not expose the vessel's personnel to any health hazards whatsoever, and will comply with current IMO regulations.

Time lost to the vessel is to count at the demurrage rate.

Opening/ Closing Hatches

17. At each loading and discharging port, cost of first opening and last closing of hatches and removal and replacing of beams, if any, shall be for Owners' account. Cost of all other opening and closing of hatches, removal and replacing of beams shall be for Charterers'/Receivers' account.

Time Counting

18. *(a)* **Notice of Readiness**
Notification of vessel's readiness to load and discharge at the first or sole loading and discharging port shall be delivered in writing at the office of Charterers/Receivers between 0900 and 1700 on all days except Sundays and holidays, and between 0900 and 1200 on Saturdays. Such notice of readiness shall be delivered when the vessel is in the loading or discharging berth if vacant, failing which from a lay berth or anchorage within limits of the port, or otherwise as provided in Clause 18 *(b)* hereunder.

(b) **Waiting for Berth Outside Port Limits**
If the vessel is prevented from entering the limits of the loading/discharging port(s) because the first or sole loading/discharging berth or a lay berth or anchorage is not available within the port limits, or on the order of the Charterers/Receivers or any competent official body or authority, and the Master warrants that the vessel is physically ready in all respects to load or discharge, the Master may tender vessel's notice of readiness, by radio if desired, from the usual anchorage outside the limits of the port, whether in free pratique or not, whether customs cleared or not. If after entering the limits of the loading port, vessel fails to pass inspections as per Clause 18 *(e)* any time so lost shall not count as laytime or time on demurrage from the time vessel fails inspections until she is passed, but if this delay in obtaining said passes exceeds 24 running hours then all time spent waiting outside the limits of the port shall not count.

(c) **Commencement of Laytime**
Following receipt of notice of readiness laytime will commence at 0800 on the next day not excepted from laytime. Time (not excepted from laytime) actually used before commencement of laytime shall count.

(d) **Subsequent Ports**
At second or subsequent port(s) of loading and/or discharging, laytime or time on demurrage shall resume counting from vessel's arrival within the limits of the port or as provided in Clause 18 (b) if applicable.

(e) **Inspection**
Unless the conditions of Clause 18 (b) apply, at first or sole loading port Master's notice of readiness shall be accompanied by pass of the National Cargo Bureau/Port Warden and Grain Inspector's certificate of vessel's readiness in all compartments to be loaded, for the entire cargo covered by the Charterparty as per Clause 3. In the event that vessel loads in subsequent port(s) and is required to re-pass inspections in these ports, any time lost thereat in securing the required certificates shall not count as laytime or time on demurrage.

Laytime

19 *(a)* Vessel is to be loaded and discharged within .....working days of twenty-four (24) consecutive hours each (weather permitting). Sundays and Holidays excepted.

(b) Vessel is to be loaded within .....working days of twenty-four (24) consecutive hours each (weather permitting). Sundays and Holidays excepted.

Delete para (a), (b) or (c) as appropriate

(c) Vessel is to be discharged at the average rate of .....tons of 2,240 lbs.*/1,000 kilos.* per working day of twenty-four (24) consecutive hours (weather permitting), Sundays and Holidays excepted on the basis of the Bill of Lading weight.

(d) Notwithstanding any custom of the port to the contrary, Saturdays shall not count as laytime at loading and discharging port or ports where stevedoring labor and/or grain handling facilities are unavailable on Saturdays or available only at overtime and/or premium rates.

In ports where only part of Saturdays is affected by such conditions, as described above, laytime shall count until the expiration of the last straight time period.

Where six or more hours of work are performed at normal rates, Saturday shall count as a full lay day.

*Delete as appropriate.

(e) In the event that the vessel is waiting for loading or discharging berth, no laytime is to be deducted during such period for reasons of weather unless the vessel occupying the loading or discharging berth in question is actually prevented from working grain due to weather conditions in which case time so lost is not to count.

Demurrage/ Despatch Money

20. Demurrage at loading and/or discharging ports is to be paid at the rate of .....per day or *pro rata* for part of a day and shall be paid by Charterers in respect of loading port(s) and by Charterers/Receivers* in respect of discharging port(s). Despatch money to be paid by Owners at half the demurrage rate for all laytime saved at loading and/or discharging ports.

Any time lost for which Charterers/Receivers are responsible, which is not excepted under this Charterparty, shall count as laytime, until same has expired, thence time on demurrage.

Shifting

21. *(a)* **Shifting expenses and time**

(i) Cost of shifting between loading berths and cost of shifting between discharging berths, including bunker fuel used, to be for Owners'*/Charterers'/Receivers'* account, time counting.

(ii) If vessel is required to shift from one loading or discharging berth to a lay berth or anchorage due to subsequent loading or discharging berth(s) not being available, all such shifting expenses, as defined above shall be for Owners'*/Charterers'/Receivers'* account, time counting.

(iii) If the vessel shifts from the anchorage or waiting place outside the port limits either directly to the first loading or discharging berth or to a lay berth or anchorage within the port limits the cost of that shifting shall be for Owners' account and time so used shall not count even if vessel is on demurrage.

(iv) Cost of shifting from lay berth or anchorage within the port limits to first loading or first discharging berth to be for Owners' account, time counting.

(b) **Shifting in and out of the same berth**
If vessel is required by Charterers/Receivers* to shift out of the loading berth or the discharging berth and back to the same berth, one berth shall be deemed to have been used, but shifting expenses from and back to the loading or discharging berth so incurred shall be for Charterers'/Receivers'* account and laytime or time on demurrage shall count.

(c) Overtime expenses for vessel's officers and crew shall always be for Owners' account.

Gear and lights

22. If required, the Master is to give free use of vessel's cargo gear, including runners, ropes and slings as on board, and power to operate the same.

Vessel's personnel is to operate the gear if permitted to do so by shore regulations, failing which shore operators are to be used.

Such shore operators are to be for Owners' account at loading port(s) if the provisions of Clause 10 *(b)* apply, otherwise for Charterers' account at loading and Charterers'*/Receivers'* account at discharging port(s).

Time lost on account of breakdowns of vessel's gear essential to the loading or discharging of this cargo is not to count as laytime or time on demurrage, and if Clause 10 *(a)* applies any stevedore standby time charges incurred thereby shall be for Owners' account.

If required, Master shall give free use of the vessel's lighting as on board for night work.

Seaworthy Trim

23. If ordered to be loaded or discharged at two or more ports, the vessel is to be left in seaworthy trim to Master's satisfaction (not exceeding the requirements of the Safety of Life at Sea Convention as applied in the country in which such ports are situated) for the passage between ports at Charterers' expense at loading and at Charterers'/Receivers' expense at discharging ports, and time used for placing vessel in seaworthy trim shall count as laytime or time on demurrage.

Draft/ Lighterage

24. Owners warrant the vessel's deepest salt water draft shall not exceed.....feet.....inches on completion of loading and .....feet .....inches on arrival at first or sole discharging port.

Should the vessel be ordered to discharge at a place in which there is not sufficient water for her to get the first tide after arrival without lightening, and lie always afloat, laytime is to count as per Clause 18 at a safe anchorage for similar vessels bound for such a place and any lighterage expenses incurred to enable her to reach the place of discharge is to be at the expense and risk of the cargo, any custom of the port or place to the contrary notwithstanding, but time occupied in proceeding from the anchorage to the discharging berth is not to count as laytime or time on demurrage.

Unless loading and/or discharging ports are named in this Charterparty, the responsibility for providing safe port of loading and/or discharging lies with the Charterers/Receivers* provided Owners have complied with the maximum draft limitations in Lines 173/174.

Car Decks, etc.

25. It is understood that if this vessel is fitted with car decks, container fittings and/or any other special fittings not connected with the carriage of grain in bulk, any extra expenses incurred in loading and/or discharging as a result of the presence of such car decks, container fittings and/or special fittings are to be for Owners' account. Time so lost shall not count as laytime or time on demurrage.

Dues and/or Taxes

26. .....

.....

.....

Seaway Tolls

27. All St. Lawrence Seaway and/or Welland Canal tolls on vessel and/or cargo assessed by Canadian and United States Authorities are to be paid and borne by Owners.

WaterPollution

28. Any time lost on account of vessel's non-compliance with Government and/or State and/or Provincial regulations pertaining to water pollution shall not count as laytime or time on demurrage.

Agents

29. Owners*/Charterers* are to appoint agents at loading port(s) and Owners*/Charterers* are to appoint agents at discharging port(s).

In all instances, agency fees shall be for Owners' account but are not to exceed customary applicable fees.

Strikes, Stoppages, etc.

30. If the cargo cannot be loaded by reason of Riots, Civil Commotions or of a Strike or Lock-out of any class of workmen essential to the loading of the cargo, or by reason of obstructions or stoppages beyond the control of the Charterers caused by Riots, Civil Commotions or a Strike or Lock-out on the Railways or in the Docks or other loading places, or if the cargo cannot be discharged by reason of Riots, Civil Commotions, or of a Strike or Lock-out of any class of workmen essential to the discharge, the time for loading or discharging, as the case may be, shall not count during the continuance of such causes, provided that a Strike or Lock-out of Shippers' and/or Receivers' men shall not prevent demurrage accruing if by the use of reasonable diligence they could have obtained other suitable labor at rates current before the Strike or Lock-out. In case of any delay by reason of the before mentioned causes, no claim for damages or demurrage shall be made by the Charterers/Receivers of the cargo or Owners of the vessel. For the purpose, however, of settling despatch rebate accounts, any time lost by the vessel through any of the above causes shall be counted as time used in loading, or discharging, as the case may be.

Ice

31. **Loading Port**

(a) If the Vessel cannot reach the loading port by reason of ice when she is ready to proceed from her last port, or at any time during the voyage, or on her arrival, or if frost sets in after her arrival, the Master – for fear of the Vessel being frozen in – is at liberty to leave without cargo; in such cases this Charterparty shall be null and void.

(b) If during loading, the Master, for fear of Vessel being frozen in, deems it advisable to leave, he has the liberty to do so with what cargo he has on board and to proceed to any other port with option of completing cargo for Owners' own account to any port or ports including the port of discharge. Any part cargo thus loaded under this Charterparty to be forwarded to destination at Vessel's expense against payment of the agreed freight, provided that no extra expenses be thereby caused to the Consignees, freight being paid on quantity delivered (in proportion if lump sum), all other conditions as per Charterparty.

(c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Master or Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for the Owners' own account as under sub-clause *(b)* or to declare the Charterparty null and void unless the Charterers agree to load full cargo at the open port.

Voyage and Discharging Port

(d) Should ice prevent the Vessel from reaching the port of discharge, the Charterers/Receivers shall have the option of keeping the Vessel waiting until the re-opening of navigation and paying demurrage or of ordering the vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after the Owners or Master have given notice to the Charterers/Receivers of impossibility of reaching port of destination.

(e) If during discharging, the Master, for fear of Vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest safe and accessible port. Such port to be nominated by Charterers/Receivers as soon as possible, but not later than 24 running hours, Sundays and holidays excluded, of receipt of Owners' request for nomination of a substitute discharging port, failing which the Master will himself choose such port.

(f) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and the Owners shall receive the same freight as if the Vessel had discharged at the original port of destination, except that if the distance to the substitute port exceeds 100 nautical miles the freight on the cargo delivered at that port to be increased in proportion.

Extra Insurance

32. Any extra insurance on cargo incurred owing to vessel's age, class, flag or ownership to be for Owners' account up to a maximum of .....and may be deducted from the freight, in Charterers' option. The Charterers shall furnish evidence of payment supporting such deduction.

P. & I. Bunker Clause

33. The vessel shall have the liberty as part of the contract voyage to proceed to any port or ports at which bunker oil is available for the purpose of bunkering at any stage of the voyage whatsoever and whether such ports are on or off the direct and/or customary route or routes between any of the ports of loading or discharge named in this Charterparty and may there take oil bunkers in any quantity in the discretion of Owners even to the full capacity of bunker tanks and deep tanks and any other compartment in which oil can be carried whether such amount is or is not required for the chartered voyage.

Deviation

34. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of this Charterparty and the Owners shall not be liable for any loss or damage resulting therefrom; provided, however, that if the deviation is for the purpose of loading or unloading cargo or passengers it shall, *prima facie*, be regarded as unreasonable.

Lien and Cesser Clause

35. The Owners shall have a lien on the cargo for freight, deadfreight, demurrage, and average contribution due to them under this Charterparty.

Charterers' liability under this Charterparty is to cease on cargo being shipped except for payment of freight, deadfreight, and demurrage at loading, and except for all other matters provided for in this Charterparty where the Charterers' responsibility is specified.

Exceptions

36. Owners shall be bound before and at the beginning of the voyage to exercise due diligence to make the vessel seaworthy and to have her properly manned, equipped and supplied and neither the vessel nor the Master or Owners shall be or shall be held liable for any loss of or damage or delay to the cargo for causes excepted by the U.S. Carriage of Goods by Sea Act, 1936 or the Canadian Carriage of Goods by Water Act, 1970, or any statutory re-enactment thereof.

And neither the vessel, her Master or Owners, nor the Charterers or Receivers shall, unless otherwise in this Charterparty expressly provided, be responsible for loss of or damage or delay to or failure to supply, load, discharge or deliver the cargo arising or resulting from: – Act of God; act of war; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people; seizure under legal process, provided bond is promptly furnished to release the vessel or cargo; floods; fires; blockades, riots; insurrections; Civil Commotions; earthquakes; explosions. No exception alleged by the Charterers or Receivers under this clause shall relieve the Charterers or Receivers of or diminish their obligations for payment of any sums due to the Owners under provisions of this Charterparty.

* Delete as appropriate

U.S.A. Clause Paramount

37. If the vessel loads in the U.S.A. the U.S.A. Clause Paramount shall be incorporated in all Bills of Lading and shall read as follows:

"This Bill of Lading, shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, or any statutory re-enactment thereof, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such terms shall be void to that extent but no further."

Canadian Clause Paramount

38. If the vessel loads in Canada the Canadian Clause Paramount shall be incorporated in all Bills of Lading and shall read as follows:

"This Bill of Lading, so far as it relates to the carriage of goods by water, shall have effect, subject to the provisions of the Carriage of Goods by Water Act, 1970, Revised Statutes of Canada, Chapter C-15, enacted by the Parliament of the Dominion of Canada, or any statutory re-enactment thereof, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further."

Both-to-Blame Collision Clause

39 If the liability for any collision in which the vessel is involved while performing this Charterparty falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the vessel, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying vessel or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying vessel or Carrier."

The foregoing provisions shall also apply where the Owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect to a collision or contact."

The Charterers shall procure that all Bills of Lading issued under this Charterparty shall contain the same clause.

General Average:

40 General Average shall be adjusted according to the York/Antwerp Rules 1974 and shall be settled in .....

New Jason

Where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:

"In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for the consequences of which, the Carrier is not responsible, by Statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery."

The Charterers shall procure that all Bills of Lading issued under this Charterparty shall contain the same clause.

War risks

41. 1. The Master shall not be required or bound to sign Bills of Lading for any blockaded port or for any port which the Master or Owners in his or their discretion consider dangerous or impossible to enter or reach.

2. *(A)* If any port of loading or of discharge named in this Charterparty or to which the vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or

(B) if owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions, or the operation of international law *(a)* entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or *(b)* it be considered by the Master or Owners in his or their discretion dangerous or impossible for the vessel to reach any such port of loading or of discharge – the Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports respectively established under the provisions of the Charterparty (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owners' discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charterers within 48 hours after they or their agents have received from the Owners a request for the nomination of a substitute port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of the Charterparty or not) and such discharge shall be deemed to be due fulfilment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the provisions of the Charterparty, the Charterparty shall be read in respect of the freight and all other conditions whatsoever as if the voyage performed were that originally designated. In the event, however, that the vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of the Charterparty, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and/or discharging the cargo thereat shall be paid by the Charterers or Cargo Owners. In this latter event the Owners shall have a lien on the cargo for all such extra expenses.

3. The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any other wise whatsoever given by the government of the nation under whose flag the vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

If by reason of or in compliance with any such directions or recommendations the vessel does not proceed to the port or ports of discharge orginally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the vessel may proceed to any safe port of discharge which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfilment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge has been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterers and/or Cargo Owners and the Owners shall have a lien on the cargo for freight and all such expenses.

Address Commission

42. An address commission of .....% on gross freight, deadfreight and demurrage is due to Charterers at time freight and/or demurrage is paid, vessel lost or not lost, Charterers having the right to deduct such commission from payment of freight and/or demurrage.

Brokerage Commission

43. A brokerage commission of ..... % on gross freight, deadfreight, and demurrage is payable by Owners to .....

.....

at time of receiving freight payment and/or demurrage payment(s), vessel lost or not lost.

Assignment

44. Charterers have the privilege of transferring/assigning/reletting all or part of this Charterparty to others (guaranteeing to the Owners the due fulfilment of this Charterparty).

Arbitration

Delete para (a) or (b), as appropriate

45. *(a)* **New York.** All disputes arising out of this contract shall be arbitrated at New York in the following manner, and be subject to U.S. Law:
One Arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. Their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the court. The Arbitrators shall be commercial men, conversant with shipping matters. Such Arbitration is to be conducted in accordance with the rules of the Society of Maritime Arbitrators Inc.

For disputes where the total amount claimed by either party does not exceed U.S.$..... ** the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators Inc.

(b) **London.** All disputes arising out of this contract shall be arbitrated at London and, unless the parties agree forthwith on a single Arbitrator, be referred to the final arbitrament of two Arbitrators carrying on business in London who shall be members of the Baltic Mercantile & Shipping Exchange and engaged in the Shipping and/or Grain Trades, one to be appointed by each of the parties, with power to such Arbitrators to appoint an Umpire. No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his action be taken before the award is made. Any dispute arising hereunder shall be governed by English Law.

For disputes where the total amount claimed by either party does not exceed U.S. $..... ** the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association

**Where no figure is supplied in the blank space this provision only shall be void but the other provisions of this clause shall have full force and remain in effect.

Codename: "Multiform 1982" (Revised 1986)

This Charter Party is not designed for use in the Container trade.

The Shipbroking Organisations of Austria, Brazil, Denmark, Finland, France, Federal Republic of Germany, Greece, Ireland, Italy, Malta, Morocco, Netherlands, Norway, Portugal, Singapore, South Africa, Spain, Sweden, United Kingdom, U.S.A., Uruguay and Yugoslavia, have approved this document.

The Federation of National Associations of Ship Brokers and Agents

F O N A S B A

MULTI-PURPOSE CHARTER PARTY 1982

Place.....19.....

1. IT IS THIS DAY MUTUALLY AGREED between.....
.....of.....
the Owners/disponent Owners, hereinafter called the Owners, of the vessel.....
(as described hereunder), now.....
and expected ready to load under this Charter Party about.....on her present position,
and.....
of....., the Charterers.

Vessel's Description

The Owners describe the vessel as: Built 19..... Flag..... Classed.....
Callsign..... GRT..... NRT..... Summer deadweight all told of about
.....metric/long tons on a draft of .....in salt water.
Number of decks..... Number of holds..... Number of hatches.....
Type of hatch covers in main and tweendecks (and sizes if required).....
.....
.....
Cubic feet grain/bale in main holds and tweendecks.....
.....
Cubic feet grain/bale in other compartments available for cargo.....
.....
Engines placed..... Bridge placed..... Length overall..... Extreme breadth.....
Type, number and capacity of cargo lifting gear.....
.....metric/long tons S.W.L.
.....

Loading Place and Cargo

2. That the said vessel, being tight, staunch and strong and in every way fit for the voyage, shall with all convenient speed proceed to
.....
.....
as ordered by Charterers, or so near thereto as she may safely get and there load at one or two safe berths, as ordered by Charterers, always afloat, a full and complete/part cargo of minimum.....tons of 1000 kilos and maximum
.....tons of 1000 kilos,.....quantity in the Master's option, of.....
.....

Orders for Loading Port(s)

The loading port(s) shall be declared by Charterers not later than.....
.....

Rotation

If the vessel loads at more than one port, the rotation shall be.....
.....

Discharging Place

3. Being so loaded, the vessel shall proceed to.....
.....
.....
as ordered by Charterers, or so near thereto as she may safely get and there deliver the cargo at one or two safe berths, as ordered by Charterers, always afloat. Owners guarantee the vessel's deepest draft in saltwater on arrival at first or sole discharging port shall not exceed.....

Orders for Discharging Port(s)

The discharging port(s) shall be declared by Charterers not later than.....
.....

Rotation

If the vessel discharges at more than one port, the rotation shall be.....
.....

Laydays and Cancelling

4. Laytime for loading shall not commence before 0800 hours on.....and should the vessel's notice of readiness not be given before 1700 hours on.....in accordance with Clause 7, the Charterers shall, at any time thereafter, but not later than the time when such notice has been delivered, have the option of cancelling this Charter Party. If, prior to tendering notice under this Charter Party, the vessel's cancelling date has already passed or, which ever first occurs, the vessel has begun her approach voyage and in the ordinary course of events would be unable to tender notice before the cancelling date, the Owners, having given a revised expected readiness to load date, may require the Charterers to declare whether they elect to cancel the Charter Party and Charterers shall be given up to 48 running hours to make this declaration. Should the Charterers not elect

to cancel, the cancelling date shall be extended by three running days, Sundays (or their equivalents) and holidays excluded, from the vessel's revised expected readiness to load date. This provision shall be without prejudice to any claim the Charterers may have as to Owners' possible misrepresentation of the vessel's expected readiness date and/or laydays/cancelling dates contained herein.

Freight

5. The freight is to be paid at the rate of.....per ton of 1000 kilos on gross Bill of Lading weight and is to be paid in the following manner:—

.....

.....

.....

The freight shall be deemed earned as cargo is loaded on board and shall be discountless and non-returnable, vessel and/or cargo lost or not lost.

Cost of Loading and Discharging

6. The cargo shall be loaded, stowed/trimmed and discharged, to the Master's satisfaction in respect of seaworthiness, free of expense to the vessel.

Stevedores

Stevedores at loading and discharging ports are to be appointed and paid by Charterers. The stevedores shall be deemed to be the servants of the Owners and shall work under the supervision of the Master.

Notice of Readiness/Time Counting

7. Notification of the vessel's readiness to load/discharge at the first or sole loading/discharging port shall be delivered in writing at the office of the Shippers/Receivers or their agents between 0900 hours and 1700 hours on any day except Sunday (or its local equivalent) and holidays, and between 0900 hours and 1200 hours on Saturday (or its local equivalent). Such notice of readiness shall be delivered when the vessel is in the loading/discharging berth and is in all respects ready to load/discharge. However, if the loading/discharging berth is unavailable, the Master may give notice of readiness on the vessel's arrival within the port or at a customary waiting place outside the port limits, whether or not in free pratique and whether or not cleared by Customs. At the first or sole loading/discharging port laytime shall commence at 1300 hours if notice of readiness is given before noon and at 0800 hours on the next working day that is not excepted from laytime, if notice is given after noon, unless sooner commenced, in which case only time actually used shall count against laytime. At any other loading/discharging port laytime shall commence on vessel's arrival as above. However time shifting from the waiting place(s) to the loading/discharging berth shall not count even if the vessel is already on demurrage.

If the vessel is found not to be ready to load or discharge, the time taken to make the vessel ready is not to count as laytime or time on demurrage and all expenses to make the vessel ready shall be for Owners' account.
Provided Charterers consent to loading before lay days (as shown in Line 45) commences, any such time actually used shall count against laytime.

Rate of Loading and Discharging and Excepted Time

8. The cargo shall be:— (a) loaded and stowed/trimmed at the average rate of.....tons of 1000 kilos and discharged at the average rate of.....tons of 1000 kilos, both per working day of 24 consecutive hours, weather permitting, Sundays (or their local equivalents) and Holidays excepted unless used when only time actually used shall count.

OR (b) loaded, stowed/trimmed and discharged within.....working days of 24 consecutive hours, weather permitting, Sundays (or their local equivalents) and Holidays excepted, unless used when only time actually used shall count.

Demurrage and Despatch

9. If the vessel is longer detained in loading/discharging, demurrage is to be paid by Charterers to Owners at the rate of..... .....per day or pro rata.

For laytime saved in loading/discharging, Owners are to pay Charterers despatch money at the rate of half the demurrage rate per day or pro rata.

Notices

10. (a) The Owners shall give.....days' approximate and.....days' definite notice of the vessel's readiness to load date and shall confirm her ETA at the first loading port 48 and 24 hours in advance, to.....

.....

(b) Upon the vessel's sailing from the (last) loading port, the Master shall radio to.....

.....

giving the sailing time, the quantity of cargo loaded and the vessel's ETA at first or sole discharging port and shall thereafter radio .....hours' and, ...hours' notice of her ETA to.....

Opening and Closing of Hatches

11. At each loading and discharging port, provided local regulations permit, the first opening and last closing of hatches including removal and replacing of beams, if any, shall be effected by the vessel's crew at Owners' expense. If local regulations do not so permit, then these operations shall be effected by shore labour at Charterers' expense. In either event, time so used shall not count as laytime. Any other such operations shall be effected by shore labour at Charterers' expense and time so used shall count as laytime.

Gear and Lights

12. The vessel shall give, free of expense to Charterers, full use of vessel's lighting on deck and in the cargo compartments, also full and free use of her tackle, derricks and winches and/or cranes, with the necessary power to work all gear simultaneously at all times, as may be required by Charterers. Shore winchmen/crane drivers shall be for Charterers' account.

The vessel's cargo gear and runners shall be in good working order, the vessel having a valid gear certificate on board. Owners warrant that the vessel's gear complies with Clause 1.

In the event of a breakdown of a winch or winches or crane(s), not caused by Charterers, their Agents or contractors, the period of delay thereby caused to the vessel is not to count as laytime or time on demurrage and the cost of any stevedore stand-by time and all other expenses thereby directly incurred shall be for Owners' account.

Separations

13. Any separations required by Charterers between parcels within the vessel's compartments shall be at their risk and expense and to the Master's satisfaction.

Grab Discharge

14. The vessel is to be suitable for grab discharge. No cargo shall be loaded in any cargo compartments not readily accessible for grab discharge. However, should any cargo be loaded in any inaccessible spaces, all extra expenses so incurred shall be for Owners' account and any time lost to the vessel shall not count as laytime or time on demurrage.

Stevedore Damage

15. Stevedore damage to the vessel shall be for Charterers' account, subject to the following conditions:—
At the time of the occurrence the Master is to notify the Charterers by telecommunication the details of the stevedore damage in the case of damage discoverable by the exercise of due diligence and otherwise on discovery thereof, but in no case later than completion of discharge of the cargo, failing which any claim shall be deemed to be waived.

Furthermore, immediately visible damage occurs the Master shall place the stevedores on notice in writing holding them responsible, and endeavour to obtain their acknowledgement of liability therefor.

Stevedore damage affecting the seaworthiness of the vessel shall be repaired by the Charterers at their expense in the port where the damage occurs and they are to compensate Owners at the demurrage rate for any time so used, over and above that required for cargo handling purposes.

Damage not affecting vessel's seaworthiness shall be for Charterers' account when actually repaired, but no compensation is to be paid to Owners for any time so used.

Packaged Cargo Tallying Cargo Battens

16. Tallying, if ordered by Owners, shall be arranged and paid for by the Owners. If tallying is ordered by any other party, it shall be paid for by Charterers.

If cargo in units/packages is loaded, the vessel shall be fully net or wooden cargo batten fitted. Any missing battens shall be replaced by any suitable material to protect the cargo from the ship's steel plating at Owners' expense and in their time. Any other dunnage required shall be provided, laid and paid for by Charterers.

Overtime

17. All overtime expenses at loading and discharging port(s) shall be for account of the party ordering same. If overtime is ordered by port authorities or the party controlling the loading and/or discharging terminal or facility, all such expenses shall be for Charterers' account.

Overtime expenses for the vessel's officers and crew shall always be for Owners' account.

Seaworthy Trim

18. If ordered to load or discharge at two berths and/or ports, the vessel is to be left in seaworthy trim to the Master's satisfaction for the passage between such berths and/or ports at Charterers' expense. Time used for placing the vessel in seaworthy trim shall count as laytime or time on demurrage.

Shifting

19. If two loading/discharging berths are used, the cost of shifting between berths shall be for Charterers' account and time so used shall count.

Dues and Taxes Any other Taxes

20. Any dues and/or wharfage and/or taxes on the vessel shall be for Owners' account and any on the cargo shall be for Charterers' account

.....

.....

Agents

21. Owners shall appoint their own agents at loading port(s) and their own agents at discharging port(s).

Bills of Lading

22. The Master shall sign Bills of Lading as presented (but in accordance with Mate's receipts) without prejudice to the terms, conditions and exceptions of this Charter Party. Should it be impracticable for the Master to sign Bills of Lading, he may authorise in writing the port agents to sign them on his behalf in accordance with Mate's receipts. See also Clause 34.

Lightening

23. Provided the vessel has complied with the draft provision in Clause 3, any lightening necessary at port(s) of discharge to enable the vessel to reach her discharging berth(s) shall be at Charterers' risk and expense, time counting as laytime or time on demurrage but time shifting from the place of lightening to the discharging berth(s) is not to count.

Lien and Cesser

24. The Owners shall have a lien on the cargo for freight, deadfreight, demurrage and average contributions due to them under this Charter Party. Charterers' liability under this Charter Party shall cease on the cargo being shipped except for payment of freight, deadfreight and demurrage and except for all other matters provided for in this Charter Party where the Charterers' responsibility is specified.

Deviation

25. Any deviation in saving or attempting to save life and/or property at sea shall not be deemed to be an infringement or breach of this Charter Party and the Owners shall not be liable for any loss or damage resulting therefrom.

Should the vessel put into unscheduled port(s) whilst on the voyage, the Owners are to inform Charterers and agents at discharging port(s) thereof immediately.

General Average

26. General Average shall be settled according to the York/Antwerp Rules 1974 and shall be adjusted in.....

and paid in.....

New Jason Clause

Where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply:—

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by Statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving vessel is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees, or owners of the goods to the carrier before delivery."

The Charterers shall procure that all Bills of Lading issued under this Charter Party shall contain this clause.

Strikes

27. Neither Charterers nor Owners shall be responsible for the consequences of any strikes or lock-outs preventing or delaying the fulfilment of any obligations under this contract. If there is a strike or lock-out affecting the loading of the cargo, or any part of it, when the vessel is ready to proceed from her last port or at any time during the voyage to the port or ports of loading or after her arrival there, the Master or Owners may ask Charterers to declare that they agree to reckon the laytime as if there were no strike or lock-out.

Unless Charterers have given such declaration in writing (by telecommunication, if necessary) within 24 hours, Owners shall have the option of cancelling this contract. If part cargo has already been loaded, the vessel must proceed with same and the freight shall be payable only on the quantity loaded, the Owners having the liberty to complete with other cargo on the way for their own account.

If there is a strike or lock-out affecting the discharge of the cargo on or after the vessel's arrival at or off port of discharge and same has not been settled within 48 hours, Charterers shall have the option of keeping vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging or of ordering the vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out. Such orders shall be given within 48 hours after Captain or Owners have given notice to Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at the substituted port, all conditions of this Charter Party and the Bill of Lading shall apply and the vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles the freight on the cargo delivered at the substituted port shall be increased in proportion.

Exceptions

28. The vessel, her Master, the Owners and the Charterers shall not, unless otherwise expressly provided for in this Charter Party, be responsible for loss of or damage or delay to or failure to supply, load, discharge or deliver the cargo arising or resulting from:

Act of God, act of war, act of public enemies, pirates or assailing thieves; arrest or restraints of princes, rulers or people; seizure under legal process provided a bond is promptly furnished to release the vessel or cargo; floods; fires; blockades; riots; insurrections, Civil Commotions; earthquakes; explosions.

No exceptions afforded the Charterers or Receivers under this clause shall relieve the Charterers or Receivers of or diminish their obligations for payment of any sums due to the Owners under the provisions of this Charter Party.

Relet

29. Charterers have the privilege of reletting all or part of this Charter Party to others, subject to Owners' approval, which shall not be unreasonably withheld, Charterers guaranteeing to the Owners the due fulfilment of this Charter Party.

Arbitration

30. Any disputes arising under this Charter Party are to be referred to arbitration in.....and subject to the law applicable to Charter Party disputes in the city of the arbitral forum.
Except where it is the general practice in the selected arbitral forum for such disputes to be arbitrated by a tripartite tribunal, one arbitrator is to be appointed by each of the parties, and in the case the arbitrators shall not agree, the issues in contention shall be submitted to an umpire selected by the two arbitrators. Otherwise, on the second or tripartite basis, one arbitrator is to be appointed by each of the parties, and a third by the two so chosen.
The decision of the arbitrators or umpire in the first case and that of the tripartite tribunal or a majority of it in the second case shal be binding on the parties, subject to the applicable law.

Brokerage

31. A brokerage of.....% to.....
.....% to.....
.....% to.....
on gross freight, deadfreight and demurrage is payable by Owners at the time of receiving freight, respectively demurrage, vessel lost or not lost.

Protecting Clauses

32. The following clauses are fully incorporated in, and are to form part of, this Charter Party:

P. & I. Bunkering clause:

The vessel shall have the liberty as part of the contract voyage to proceed to any port or ports at which bunker fuel is available for the purpose of bunkering at any stage of the voyage whatsoever and whether such ports are on or off the direct and/or customary route or routes between any of the ports of loading or discharge named in this Charter Party and may there take bunkers in any quantity in the discretion of Owners even to the full capacity of fuel tanks and deep tanks and any other compartment in which fuel can be carried, whether such amount is or is not required for the chartered voyage.

Both to Blame Collision clause:

If the liability for any collision in which the vessel is involved while performing this Charter Party falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the vessel comes into collision with another vessel as a result of the negligence of the other vessel and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the vessel, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her Owners in so far as such loss or liability represents loss of or damage to or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying vessel or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying vessel or carrier.

The foregoing provisions shall also apply where the Owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect to a collision or contact."

The Charterers shall procure that all Bills of Lading issued under this Charter Party shall contain the same clause.

Ice clause:

Port of loading.

(a) In the event of the loading port being inaccessible by reason of ice when vessel is ready to proceed from her last port or at any time during the voyage or on vessel's arrival or in case frost sets in after vessel's arrival, the Captain for fear of being frozen in is at liberty to leave without cargo, and this Charter shall be null and void.

(b) If during loading the Captain, for fear of vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for Owners' benefit for any port or ports including port of discharge. Any part of cargo thus loaded under this Charter shall be forwarded to destination at vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Receivers, freight being paid on quantity delivered (in proportion if lumpsum), all other conditions as per this Charter Party.

(c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Captain or Owners shall be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section (b) or to declare the Charter null and void unless Charterers agree to load full cargo at the open port.

(d) This Ice Clause is not to apply in the Spring.

Port of discharge.

(a) Should ice (except in the Spring) prevent vessel from reaching port of discharge Receivers shall have the option of keeping vessel waiting until the re-opening of navigation and paying demurrage, or of ordering the vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders shall be given within 48 hours after Captain or Owners have given notice to Charterers of the impossibility of reaching port of destination.

(b) If during discharging the Captain for fear of vessel being frozen in deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest accessible port where she can safely discharge.

(c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port shall be increased in proportion.

War Risks clause:

(1) In these clauses "War Risks" shall include any blockade or any action which is announced as a blockade by any Government or by any belligerent or by any organized body, sabotage, piracy, and any actual or threatened war, hostilities, warlike operations, civil war, civil commotion, or revolution.

(2) If at any time before the Vessel commences loading, it appears that performance of the contract will subject the Vessel or her Master and crew or her cargo to war risks at any stage of the adventure, the Owners shall be entitled by letter or telegram despatched to the Charterers, to cancel this Charter.

(3) The Master shall not be required to load cargo or to continue loading or to proceed on or to sign Bill(s) of Lading for any adventure on which or any port at which it appears that the Vessel, her Master and crew or her cargo will be subjected to war risks. In the event of the exercise by the Master of his right under this Clause after part or full cargo has been loaded, the Master shall be at liberty either to discharge such cargo at the loading port or to proceed therewith. In the latter case the Vessel shall have liberty to carry other cargo for Owners' benefit and accordingly to proceed to and load or discharge such other cargo at any other port or ports whatsoever, backwards or forwards, although in a contrary direction to or out of or beyond the ordinary route. In the event of the Master electing to proceed with part cargo under this Clause freight shall in any case be payable on the quantity delivered.

(4) If at the time the Master elects to proceed with part or full cargo under Clause 3, or after the Vessel has left the loading port, or the last of the loading ports, if more than one, it appears that further performance of the contract will subject the Vessel, her Master and crew or her cargo, to war risks, the cargo shall be discharged, or if the discharge has been commenced shall be completed, at any safe port in vicinity of the port of discharge as may be ordered by the Charterers. If no such orders shall be received from the Charterers within 48 hours after the Owners have despatched a request by telegram to the Charterers for the nomination of a substitute discharging port, the Owners shall be at liberty to discharge the cargo at any safe port which they may, in their discretion, decide on and such discharge shall be deemed to be due fulfilment of the contract of affreightment. In the event of cargo being discharged at any such other port, the Owners shall be entitled to freight as if the discharge had been effected at the port or ports named in the Bill(s) of Lading or to which the Vessel may have been ordered pursuant thereto.

(5) (a) The Vessel shall have liberty to comply with any directions or recommendations as to loading, departure, arrival, routes, ports of call, stoppages, destination, zones, waters, discharge, delivery or in any other wise whatsoever (including any direction or recommendation not to go to the port of destination or to delay proceeding thereto or to proceed to some other port) given by any Government or by any belligerent or by any organized body engaged in civil war, hostilities or warlike operations or by any person or body acting or belligerent or of any such organized body or by any committee or person having under the terms of the war risks insurance on the Vessel, the right to give any such directions or recommendations. If by reason of or in compliance with any such direction or recommendation, anything is done or is not done, such shall not be deemed a deviation.

(b) If, by reason of or in compliance with any such directions or recommendations, the Vessel does not proceed to the port or ports named in the Bill(s) of Lading or to which she may have been ordered pursuant thereto, the Vessel may proceed to any port as directed or recommended or to any safe port which the Owners in their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfilment of the contract of affreightment and the Owners shall be entitled to freight as if discharge had been effected at the port or ports named in the Bill(s) of Lading or to which the Vessel may have been ordered pursuant thereto.

(6) All extra expenses (including insurance costs) involved in discharging cargo at the loading port or in reaching or discharging the cargo at any port as provided in Clauses 4 and 5 (b) hereof shall be paid by the Charterers and/or cargo owners, and the Owners shall have a lien on the cargo for all moneys due under these Clauses.

Clause Paramount

33. The Hague Rules as Amended by the Brussels Protocol 1968 shall apply to this Charter Party and to any Bills of Lading issued hereunder. The Charterers shall procure that all Bills of Lading issued under this Charter Party shall contain a clause to include these rules.

ANNEX VIII

C. (Ore) 7

MEDITERRANEAN

IRON ORE

Charter Party.

London,..... 19....

1. IT IS THIS DAY MUTUALLY AGREED BETWEEN.....

owners of the good Steamship or vessel called the.....

of..... tons net register, now trading and expected ready to load about.....

the .....

and Charterers.

2. That the said Ship being warranted tight, staunch, and strong, and in every way fitted for the voyage, shall after delivery of her outward cargo, proceed with all convenient speed to.....

and there load always afloat in the customary manner, free of turn, when, where and as soon as ordered by Shipper's agent a full and complete Cargo of Iron Ore, say about .....tons, not exceeding what she can reasonably stow and carry over and above her Tackle, Apparel, Provisions and Furniture, and being so loaded, shall with all convenient speed proceed to .....

and there deliver the same as customary, when, where and as directed by Consignee, to whom written notice is to be given during office hours, 9 a.m. to 5 p.m., or Saturdays 9 a.m. to 1 p.m., of the Vessel being ready to discharge, Ship paying for discharging. One shilling per ton on quantity delivered, also cranage if discharged in a Scottish port.

3. Freight to be paid at and after the rate of.....

.....

per ton of 20 cwt. delivered, in full of all port charges, pilotages, consulages, light dues, trimming, lighterage, and all other dues usually paid by Steamers, including dues on Cargo as customary if Steamer discharges at a Scottish port. If the Steamer is ordered to Briton Ferry to discharge she shall proceed to the Briton Ferry Iron Works Wharf and discharge there at her own risk, Master or Owners to satisfy themselves that ship may safely do so and there deliver the said Cargo, as customary, by night as well as by day

4. Sufficient Cash (if required) for Ship's ordinary disbursements to be advanced at Port of Loading, at the current exchange, by Shippers against the receipt of the Master on Bills of Lading, less Three per cent. to cover commission, interest, and insurance, and the remainder of the freight to be paid on right and true delivery of the Cargo, in Cash.

5. The Cargo to be shipped at the rate of.....Tons and to be discharged at the rate of 500 tons per clear working day of 24 consecutive hours (weather permitting), Sundays and Holidays always excepted. Time lost by reason of all or any of the following causes shall not be computed in the loading or discharging time, viz. : War, Rebellion, Tumults, Civil Commotions, Insurrections, Political Disturbances, Epidemics, Quarantine, Riots, Strikes, Lock-outs, stoppage of Miners, Workmen, Lightermen, Tugboatmen, or other hands essential to the Working, Carriage, Delivery, Shipment or Discharge of the said Cargo whether partial or general, or Accidents at the Mines, at Receiver's Works or Wharf, Landslips, Floods, Frost or Snow, Bad Weather, Intervention of Sanitary, Customs, and/or other constituted Authorities, Partial or Total Stoppage on Rivers, Canals or on Railways, or any other cause beyond control of Charterers, unless steamer is already on demurrage.

6. Time for loading to count from 6 a.m. after the Ship is reported and ready, and in free pratique (whether in berth or not), and for discharging from 6 a.m. after Ship is reported and in every respect ready, and in free pratique, whether in berth or not. Steamer to be reported during official hours only. In case Shippers can arrange to load or discharge on Sundays or Holidays, or before time commences to count, Captain to allow work to be done ; half such time used to count. Time between 1 p.m. Saturday and 7 a.m. Monday not to count, unless used, in which case half such time actually used to count.

7. The Ship to unload barges sent alongside with all possible despatch (should this mode of shipping be used) ; and any delay incurred by not doing so is not to count as part of the lay days. The Ship to load and discharge as rapidly as possible, and give use of steam winches and steam free of expense, and crew to drive the winches, if permitted by local labour regulations, otherwise shore hands to be employed, and Charterers to pay cost of same. The Ship to work at night, if requested to do so, all extra expenses incurred thereby being paid by Owners unless steamer is on demurrage. The Ship to keep the steam winches in good working order.

8. Demurrage (if any) at the rate of eightpence per ton per running day on the total quantity of cargo delivered but in no case less than £50 per day.

9. Charterers to have the right to average the days allowed for loading and discharging.

10. If any wilful misrepresentation be made in respect of the size, position, &c., or should the Steamer not be in Loading Port and ready to load within 28 days from the date of this Charter Party, it shall be at the option of the Charterer whether or not he will load the vessel.

11. The Captain to sign Bills of Lading at any Freight required by Charterers, not less than Chartered rate. Cost of loading cargo is to be considered as advance of Freight and signed for accordingly, unless paid for in cash.

12. The Steamer is to be addressed for the Custom House business to Charterers or their agents at Ports of Loading and Discharging on usual terms under a penalty of £20, which together with all Brokerages and Charges may be deducted from the freight. Agents at discharging port will be.....

13. Any averages occurring under this Charter to be settled according to York-Antwerp Rules, 1974.

14. Master to telegraph "Charterers," as well as Charterer's agents at Port of Loading, should he have to put in at any Port or Ports.

15. In case of Jettison, the Captain to report the same to Consignees immediately on arrival.

16. An address commission of 2½ per cent. to be paid to Charterer, on delivery of Cargo.

17. Shippers to put the mineral on board, Ship paying tenpence per ton on quantity delivered for such operation.

18. A Commission of one-third of Five per cent. on the gross amount of freight, dead freight, and demurrage is due to Charterers on delivery of cargo.

19. Ship to apply to.....

.....for Cargo, and wire them on leaving last Port of Discharge if there are telegraphic facilities, failing which Shippers to be allowed one day extra for loading.

At La Goulette the Charterers are not responsible for draught of water exceeding 20½ English feet.
" Marbella " " " " 21½ " "
" Bejaia " " " " 23 " "

NOTICE.

SERIOUS LOSSES have recently been caused to Charterers by Captains signing Bills of Lading for a greater quantity than they knew to have been loaded.

OWNERS ARE REQUESTED to assist Charterers by warning the Captain not to sign Bills of Lading for one ton more than Captain believes to be on board his Steamer.

THE CAPTAIN should carefully calculate from ship's displacement the weight of cargo, and make sufficient allowance for weight of bunker coal, water, stores, &c.

OWNERS ARE PAID freight on output weight, and where Captains sign for an excessive quantity, dues paid by the Steamer on such excess are not recoverable.

A true copy of original Charter in.....possession.

20. The Act of God, the Queen's enemies, Arrest and/or Restraints of Rulers, Princes and People, Quarantine, Fire on Board, in Hulk or Craft or on Shore, Ice, Barratry of the Master and Crew, Enemies, Pirates, Robbers by land or sea, accidents to and damage and detention from Boilers, and of Machinery, Collisions, Stranding, Jettison, or from any act, neglect, default or error in judgment whatsoever of the Pilot, Master, Crew or other servants of the Shipowners in the management and/or the navigation of the Steamer, and all and every other Dangers and Accidents of the Seas, Rivers and Canals of whatever nature and kind whatsoever, before and during the said voyage always excepted. Steamer has liberty to call at any port or ports, in any order, or places, to bunker, or receive and/or deliver part cargo and/or passengers, or to deviate for the purpose of saving life or property, with leave to sail without Pilots, and tow or to be towed and assist vessels or to be assisted in all situations whatsoever. Salvage and/or towage for Owner's sole benefit. Ship not answerable for losses through explosion, bursting of boilers, breakage of shafts, or any latent defect in the machinery or Hull not resulting from want of due diligence by the Owners of the Ship or any of them or by the Ship's Husband or Manager.

21. All liability of Charterer shall cease on completion of loading and payment of advance, if any, Owner having lien on Cargo for freight, dead freight, and demurrage.

22. Extra duty (if any) in consequence of the Vessel not being British to be borne by Ship.

23. The Captain shall cover the hatch of each hold as soon as the loading into same has finished, and also all hatches when the loading or discharging has finished for the day, if the weather be wet or threatening ; he shall also, during rain and snow, cover up all hatches by which loading or discharging is not actually going on. It is agreed that the Captain may send someone to check the weight of the cargo on delivery so as to avoid dispute, and weight as ascertained to be conclusive.

24. Owners accept the risk of detention which may arise if by reason of insufficient depth of water the steamer cannot get to a usual loading and/or discharging berth, as ordered, when same available.

25. Any time lost at discharging port owing to scarcity of wagons and/or labour is to be computed as lay days.

26. If through congestion at the Port of Discharge steamer is kept waiting off the port lay days are to commence to count as per Clause 6, but not until 36 hours from arrival (Sundays and holidays excepted).

27. In the event of any general strike, riot, insurrection, revolution or war, which may prevent the Shipment of Iron Ore under this Charter, the Owners in the event of no cargo having been loaded, have the option of cancelling this Charter or if any cargo has been loaded they have the right to proceed on the voyage with the cargo so loaded. In the latter case the time to count as lay days to be mutually agreed between Owners and Charterers.

S. Straker & Sons Ltd., 47-51 Great Suffolk Street, London, S.E.1.

FORM NO. 30-104

ANNEX IX

AMERICANIZED WELSH COAL CHARTER*

APPROVED BY
ASSOCIATION OF SHIP BROKERS & AGENTS (U.S.A.), INC.
NEW YORK—1953; AMENDED 1979.

.....19

It is this day mutually agreed, BETWEEN

Owner of the Steamship/Motorship
of , built at of
tons net register, or thereabouts, and about tons total deadweight inclusive of bunkers, classed
in length overall beam
draft now
and Charterer;

1. That the said vessel being tight, staunch and strong, and in every way fitted for the voyage, shall, with all possible dispatch, sail and proceed to

and there load, always afloat, in the customary manner from the Charterer, in such dock as may be ordered by him, a full and complete cargo of coal not exceeding tons nor less than tons, quantity at Vessel's option, and not exceeding what she can reasonably stow and carry, over and above her tackle, apparel, provisions and furniture; and being so loaded, shall therewith proceed, with all possible dispatch, to

or so near thereunto as she can safely get, and there deliver her cargo alongside any wharf and/or vessel and/or craft, as ordered, where she can safely deliver, always afloat, on being paid freight at the rate of U.S. currency per ton of 1,000 kilos on bill of lading quantity. The Owner shall furnish, if required, a statutory declaration by the master and other officers that all cargo received on board has been delivered. The freight is in full of loading, dumping and trimming, and all port charges, pilotages, agency fees and consulages on the vessel. All wharfage dues on the cargo to be paid by the Charterer.

2. The FREIGHT is to be paid

3. Notice of approximate quantity of cargo required and of vessel's expected date of arrival at port of loading to be given to Charterer or his agents at least days in advance.

4. The Cargo to be loaded into vessel weather working day(s) of 24 consecutive hours, (excluding bunkering time, Sundays, custom house, colliery, legal and/or local holidays, and from noon on Saturday or the day previous to any such holiday to 7 a.m. on Monday or the day after any such holiday, unless used in which event only time actually used in loading cargo to count) commencing 24 hours after vessel tenders and is ready to load, unless sooner worked, whereupon time is to commence and written notice is given of the vessel's being completely discharged of inward cargo and ballast in all her holds and ready to load, such notice to be given between business hours of 9 a.m. and 5 p.m., or 9 a.m. and 1 p.m. on Saturdays. Any time lost through riots, strikes, lockouts, or any dispute between masters and men, occasioning a stoppage of pitmen, trimmers or other hands connected with the working or delivery of the coal for which the vessel is stemmed, or by reason of accidents to mines or machinery, obstructions, embargo or delay on the railway or in the dock; or by reason of fire, floods, frosts, fogs, storms or any cause whatsoever beyond the control of the Charterer affecting mining, transportation, delivery and/or loading of the coal, not to be computed as part of the loading time (unless any cargo be actually loaded during such time). In the event of any stoppage or stoppages arising from any of these causes continuing for the period of six running days from the time of the vessel's being ready to load, this Charter shall become null and void; provided, however, that no cargo shall have been shipped on board the vessel previous to such stoppage or stoppages. In case of partial holiday, or partial stoppage of colliery, collieries or railway from any or either of the aforenamed causes, the lay-days to be extended proportionately to the diminution of output arising from such partial holiday or stoppage. If longer detained, Charterer to pay U.S. Currency per running day (or pro rata for part thereof) demurrage. If sooner dispatched, vessel to pay Charterer or his agents U.S. Currency per day (or pro rata for part thereof) dispatch money for time saved. No deduction of time shall be allowed for stoppage, unless due notice be given at the time to the master or Owner.

5. If any dispute or difference should arise under this Charter, same to be referred to three parties in the City of New York, one to be appointed by each of the parties hereto, the third by the two so chosen, and their decision, or that of any two of them, shall be final and binding, and this agreement may, for enforcing the same, be made a rule of Court. Said three parties to be commercial men.

6. The cargo to be loaded, dumped and trimmed by men appointed by the Charterer at the tariff rate of the port at vessel's expense.

7. The bills of lading shall be prepared in accordance with the dock or railway weight and shall be endorsed by the master, agent or Owner, weight unknown, freight and all conditions as per this Charter, such bills of lading to be signed at the Charterer's or shipper's office within twenty-four hours after the vessel is loaded. Master shall sign a certificate stating that the weight of the cargo loaded is in accordance with railway weight certificate. Charterer is to hold Owner harmless should any shortage occur.

8. The Act of God, the king's enemies, restraints of princes and rulers, and perils of the sea excepted. Also fire, barratry of the master and crew, pirates, collisions, strandings and accidents of navigation, or latent defects in or accidents to, hull and/or machinery and/or boilers always excepted, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners or other persons employed by the shipowner, or for whose acts he is responsible, not resulting, however, in any case from want of due diligence by the Owner of the ship, or by the ship's husband or manager. Charterer not answerable for any negligence, default, or error in judgment of trimmers or stevedores employed in loading or discharging the cargo. The vessel has liberty to call at any ports in any order, to sail without pilots, to tow and assist vessels in distress, and to deviate for the purpose of saving life or property, and to bunker.

9. The cargo to be discharged by consignee at port of discharge, free of expense and risk to the vessel, at the average rate of tons per day, weather permitting. Sundays and holidays and after noon on Saturdays excepted provided vessel can deliver it at this rate. If longer detained, consignee to pay vessel demurrage at the rate of U.S. currency per running day (or pro rata for part thereof). If sooner dispatched, vessel to pay Charterer or his agents U.S. currency per day (or pro rata for part thereof) dispatch money for time saved. Time to commence twenty-four (24) hours, Sundays and holidays excepted, after vessel is ready to unload and written notice given, whether in berth or not, even if vessel is already on demurrage, and the time allowable for discharging to be calculated on the basis of the bill of lading quantity. In case

of strikes, lockouts, civil commotions, or any other causes or accidents beyond the control of the consignee which prevent or delay the discharging, such time is not to count unless the vessel is already on demurrage.

10. Notice at port of discharge to be given in writing to consignee's agent on working days between the hours of 9 a.m. and 5 p.m., and 9 a.m. and noon on Saturdays.

11. Shifting time from anchorage place to loading or discharging berth is not to count even if vessel is already on demurrage.

12. Opening and closing of hatches at commencement and completion of loading and discharging shall be for Owner's account and time used is not to count.

13. Lighterage, if any, at discharge port to be at the risk and expense of consignees and time used to count as laytime.

14. In case of average, the same to be settled according to York/Antwerp Rules 1974. Should the vessel put into any port or ports leaky or with damage, the captain or Owner shall, without delay, inform the Charterer thereof. Captain to telegraph Charterer in case of putting in anywhere.

15. Vessel not to tender before 9 a.m. on and if vessel be not ready at loading port as ordered before 9 a.m. on , or if any wilful misrepresentation be made respecting the size, position or state of the vessel, Charterer to have the option of cancelling this Charter, such option to be declared on notice of readiness being given.

16. Vessel to be consigned to agents at port of loading, and to agents at port of discharge.

17. Overtime is to be for account of party ordering same. However, if ordered by port authorities, same is to be for Charterer's account Officers' and crew overtime expenses to be for Owner's account.

18. Extra insurance, if any, due to vessel's age, flag, classification or ownership shall be for Owner's account.

19. No cargo is to be loaded in deeptanks or similar places inaccessible to reach by grabs.

20. Any damage by stevedores shall be settled directly between Owner and stevedores.

21. Owner shall, at his risk and expense, comply with all applicable rules, regulations and laws relevant to water and/or air pollution at ports of loading and discharging. In cases where vessel calls at a U.S. port, Owner warrants to have secured and carry on board the vessel a Certificate of Financial Responsibility as required under U.S. law.

22. All bills of lading shall include the following three clauses:

NEW JASON CLAUSE: In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods, and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

CLAUSE PARAMOUNT: This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16th, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any terms of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

NEW BOTH-TO-BLAME COLLISION CLAUSE: If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

23. PROTECTION & INDEMNITY BUNKERING CLAUSE: The vessel in addition to all other liberties shall have liberty as part of the contract voyage and at any stage thereof to proceed to any port or ports whatsoever whether such ports are on or off the direct and/or customary route or routes to the ports of loading or discharge named in this Charter and there take oil bunkers in any quantity in the discretion of Owners even to the full capacity of fuel tanks, deep tanks and any other compartment in which oil can be carried whether such amount is or is not required for the chartered voyage.

24. C.S.U.K. WAR RISKS CLAUSES 1 & 2: No bills of lading to be signed for any blockaded port and if the port of discharge be declared blockaded after bills of lading have been signed, or if the port to which the ship has been ordered to discharge either on signing bills of lading or thereafter be one to which the ship is or shall be prohibited from going by the government of the nation under whose flag the ship sails or by any other government, the Owner shall discharge the cargo at any other port covered by this Charter Party as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the government of the nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or person having, under the terms of the war risks insurance on the ship the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfilment of the contract voyage and the freight shall be payable accordingly.

25. Charterer shall have the privilege of transferring part or whole of the Charter Party to others, Charterer guaranteeing to the Owner due fulfillment of this Charter Party.

26. The Charterer's liability shall cease as soon as the cargo is shipped, and the freight, dead freight and demurrage in loading (if any) are paid, the Owner having a lien on the cargo for freight, demurrage and average.

27. Penalty for non-performance of this agreement, proved damages, not exceeding the estimated amount of freight.

28. An address commission of percent on the gross amount of freight, dead freight and demurrage is due by the vessel and Owner to the Charterer on payment of freight.

29. A commission of percent on the gross amount of freight, dead freight and demurrage is due on payment of freight by the vessel and Owner to

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