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租船合同

<u>比较分析</u> 贸发会议秘书处的报告

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## 关于贸发会议出版物的质量和效用及其最终用户的调查表

贸发会议秘书处在其方案评价活动中,应政府间组织的要求。正在征求最终用户的意见。以便取得评价其研究报告和出版物的质量、效用和功效等方面所需的基本资料。这项工作成功与否基本上取决于是否可收到足够的答复。所以,如果您能够花些时间回答下述问题并提出您对目前文件可能有的任何其他意见。我们将很感激。

1.	文件的标题或文号	••••	••••
2.	您什么时候收到文件的?	••••	••••
3.	您如何收到文件的?(在一个或多个括号中打勾)		
	通过驻联合国常设代表团	(	)
	从部或政府办事处	(	)
	直接从贸发会议秘书处	(	)
	通过参加一次联合国/贸发会议的政府间会议	(	)
	通过参加一次联合国/贸发会议主持的训练班或讨论会	(	)
	从联合国书店	(	)
	通过大学图书馆	(	)
	自己的要求	(	)
	贸发会议自动提供	(	)
	其他(请具体说明)	••••	••••
4.	您使用该文件的主要目的何在? (在一个或多个括号中打勾)		
	政策制定	(	)
	分析和研究	(	)
	立法	(	)
	背景资料	(	)
	教育和训练	(	)
	管理	(	)
	其他(请具体说明)	••••	••••

5.	您在下述各方面对文件的评价	如	何:							
	文件对您的工作的效用(在一	<u>^</u>	括号	中打	勾)	)				
	极为有用();非常有	用	(	);	有用	fl (	);	勉强有用	(	);
	无用( )。									
	从下述各方面的角度看文件的	质	量(	在一	个指	舌号内	打么	g):		
		卓	越	极	好	良	好	尚可	较	差
	编制方式和可读性	(	<b>,</b> )	(	)	(	)	( ).	(	)
	观点的独创性	(	)	(	)	(	)	( )	(	)
	资料的丰富性	(	)	(	)	(	)	( )	(	)
	最新资料	(	)	(	)	(	)	( )	(	)
	技术精确性	(	)	(	)	(	)	( )	(	)
	分析的质量,包括客观性	(	)	(	)	(	)	( )	(	)
	结论的确实性	(	)	(	),	(	)	( )	(	)
	建议的明确性	(	)	(	)	(	)	( )	(	)
	所包括内容的全面性	(	)	(	)	(	)	( )	(	)
6.	其他意见(如有的话)									
	••••			••••		• • • • •		• • • • • • • • • •		
	•••••	• • •	• • • •	• • • • •	• • • •	• • • • •	•••	• • • • • • • • •	• • • • •	• • • •
	•••••		• • • •	• • • • •	• • • •	••••	•••		• • • •	
最后	5,如果您能够提供下述有关您	自	己的	1情况	我们	门将很	感浪	<b>ጵ</b> :		
	姓名:	• • •	• • • •	••••	• •	职业	/ 耳	只称:	• • • • •	
	地址:					••••		• • • • • • • • •	• • • •	
您的	1回答只供内部使用,并将得到									
	PROGRAMME EVALUATI	CON	ANI	CO-C	RDI	NATION	ומטו	IT		
	EXECUTIVE DIRECTION AND MANAGEMENT									
	UNITED NATIONS CON PALAIS DES NATIONS		RENC	E ON	TRA	DE ANI	) DE	VELOPMENT		
	CH-1211 GENEVA 10			•						

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#### 导言

- 1. 根据第7 (III) 号决议的规定, 航运委员会在其第三届会议上设立了国际航运立法问题工作组, 并建议该工作组应特别把租船合同的问题列入其工作计划。1
- 2. 国际航运立法问题工作组在其于 1969 年举行的第一届会议上通过了一项 把租船合同列为优先问题的工作计划。 2 对该工作组的工作计划进行修正的航运 委员会第 49 (X) 号决议,也把租船合同包括在内。 3 工作组在其于 1975 年举 行的第四届会议上,审议了这个问题, 4 并请贸发会议秘书处起草下列研究报告,以便使该工作组能够决定它认为必须采取什么样的进一步行动:
  - "(i) <u>关于期租约</u>: 对期租约的三种主要格式 波罗的海期租约范本、纽约产物交易所租船合同和班轮期租约范本 进行比较分析,重点放在下列条款,包括普遍使用的这些条款的修正的部分: 与对货物灭失和损坏所负责任有关的条款、共同海损条款、解约条款、仲裁条款、赔偿条款、通知条款。
  - (ii) 关于程租约: 对与发展中国家利害攸关的货物,如粮食、大豆、稻米、化肥和磷酸盐、矿石、木材、水泥、糖、椰子肉、牲畜以及石油的装运有关的主要条款,其中包括上文(i)项中所述各项条款,绕运条款和首要条款进行比较分析。

<sup>&</sup>lt;sup>1</sup>《贸易和发展理事会正式记录,第九届会议》,(TD/B/240-TD/B/C.4/55),附件 1,第 26 页。

<sup>&</sup>lt;sup>2</sup>《国际航运立法问题工作组关于其第一届会议的报告》(TD/B/189-TD/B/C.4/64),第6页。

<sup>&</sup>lt;sup>3</sup>《贸易和发展理事会正式记录,第二十五届会议》,(TD/B/921-TD/B/C.4/254),附件 1,第 51 页。

<sup>4 《</sup>国际航运立法问题工作组关于其第四届会议的报告》(TD/B/126-TD/B/C.4/ISL/17)。

- (iii) 结合上述各项研究对这些条款进行审查以确定它们对不同租船合同的相对影响。"
- 3. 关于上述各项研究,请秘书处向工作组第七届会议提供更多的资料以使它能够决定是否有:
  - "(i) 可以实行标准化,进行协调或改进的条款以实现不同租船合同在权利和义务方面的公平;
    - (ii) 租船合同中适于采取国际立法行动的方面;
  - (iii) 在租船合同中使用的基本用语的定义方面取得一致意见的可能性。"5
- 4. 但是,由于国际航运立法问题工作组和贸发会议/海事组织关于海上优先请求权和抵押权及有关问题政府间联合专家组在审查海上保险和海上优先请求权及抵押权等问题,对这一议题的审议推迟了。由于关于海上保险的工作已经结束,政府间联合专家组关于海上优先请求权和抵押权的讨论也将于1989年结束,6. 航运委员会第十三届会议遂通过了第61 (XIII) 号决议<sup>7</sup> ,批准国际航运立法问题工作组在1989年下半年召开第十二届会议,讨论租船合同的问题。但是,为了使秘书处能够编写出必要的文件,该工作组的第十二届会议不得不推迟到1990年10月举行。

## 摘要与结论

- 5. 本报告是根据国际航运立法问题工作组第四届会议接受的任务编写的。它力图对各种格式的租船合同的条款进行比较分析,说明在执行某些标准格式的租船合同与条款方面现存的一些问题,并且表明目前国际上对它们的解释缺乏一致性,以证明在这个问题上有必要进行进一步的工作。
  - 6. 为了得到编写本报告所需资料,曾于1975年在国际航运立法问题工作组

<sup>&</sup>lt;sup>5</sup> 同上、第 17-18 页。

<sup>6</sup> 政府间联合专家组最后一届会议 1989 年 9 月在伦敦举行。

<sup>7《</sup>航运委员会第十三届会议报告》,附件 1,第 14 段。

第四届会议结束之后向各国政府和有关组织寄送了问题调查表,后来又在1988年向包括船东、承租人和船舶经纪人在内的租船活动参与者寄送了问题调查表。在编写本报告过程中,考虑了秘书处调查表的答复者提供的资料。

- 7. 本报告分为六章。第一章在简要介绍了租船合同的主要种类之后,分析了目前仍在使用的一些旧的、过时的租船合同格式,其中包括一些对这些格式所提出的意见和批评。第二章和第三章只限于分别对期租约和程租约格式的某些条款进行比较分析。在这两章里,试图找出在解释和实施租船合同条款方面现存的问题、不一致之处和不确定性。第四章是要说明,租船合同中的用语能在几个重要方面对第三方提单持有人产生影响,而且,作为租船合同局外人的第三方,甚至在没有见到该租船合同的情况下也会受其用语的约束。第五章特别讨论对租船合同和提单实行不同责任制度所产生的,以及在租船合同中载入《海牙/海牙一维斯比规则》以及在租船合同中排除这些规则所产生的困难和不确定性。报告提议,可通过对租船合同强制实行一种类似于《海牙/海牙—维斯比规则》但又是专门为应用于租船合同面强制实行一种类似于《海牙/海牙—维斯比规则》但又是专门为应用于租船合同面是草的货物责任制度来克服这种困难。第六章为结论与建议,对它们可作如下归纳:
  - (a) 本报告(在第406段中)指出期租约和程租约中的一些条款是能够加以协调和/或改进的。报告进一步提议,可请秘书处经与有关商业和国际组织协商决定所指出的条款中哪些是租船合同适宜的核心条款;并于此后在这些组织的帮助与合作下拟出核心条款草案,供工作组审议。
  - (b) 本报告进一步得出结论说,为了使租船合同实际上写进一种类似于《海牙或海牙-维斯比规则》的货物责任方案,需要一套强制应用于租船合同的现成规则以将主要责任范围包括在内。但是,报告认为进行进一步研究可能是可取的,以确定: (i) 这类强制性规则如只应用于程租约、或者如果应用于程租约和期租约会产生什么影响; (ii) 这类强制性规则如只应用于《海牙规则》第二条中谈到的业务活动,或者如果应用于租船合同中的所有航程和所有业务活动会产生什么影响。
  - (c) 报告还建议,应结合租船合同条款的起草工作考虑起草租船合同用语的商定的定义问题。报告确定了最适合于商定的定义的租船合同用语,并建

议经与有关商业组织协商和在这些组织的帮助下编写定义草案, 供该工作组审议。

8. 国际航运立法问题工作组可能想采取上段中建议采取的行动。

## 第一章

#### 租船合同 — 标准格式

- 9. 租船合同是用船或租船的契约。它们用于各种目的。承租人可能打算自行承运货物,或者他也可能将该船转租出去,或者把该船作为普通船舶使用。在每一种情况下,当运输货物时,一般都开出提单。提单一般都载有关于承运/条件的规定,而这些规定常常与租船合同的条件相抵触,因而引起一些问题。8
  - 10. 租船合同主要有三种:程租约、期租约、光船租船合同。
- 11 根据程租约,船东负责用指定的船舶以一个或数个航次载运规定的货物。承租人有责任提供商定的货物并支付运费,运费一般根据装载或承运货物的数量计算,有时亦为包干运费。<sup>9</sup>
- 12. 根据<u>期租约</u>,船东负责由其船长和船员在所规定的时期内或限定的"航次"期内提供服务,以载运期承租人或别人代表期承租人装上其船的货物。<sup>10</sup> 由 承租人支付的报酬一般称为"租金",按照承租人有权使用该船的时间计算。
- 13. 无论是签订了程租约还是签订了期租约,船东仍拥有船舶,只不过是通过其船长和船员提供服务而已,但是如果签订了光船租船合同,船舶的所有权和控制权就转给承租人,在租船合同期间内,承租人实际上被认为是该船的所有人,因此,船长和船员成为了承租人的雇员,他们对该船的管理、操作和航行负有一切责任。11
  - 14. 尽管租船合同总是以书面形式签订,而且在多数情况下都是在现用标准

<sup>&</sup>lt;sup>8</sup> 见斯克鲁顿,《租船合同与提单》,第 19 版,(伦敦,斯威特和马克斯韦尔出版社,1984年),第 3 页。

<sup>9</sup> 同上,第 51 页。

<sup>10</sup> 同上。

<sup>&</sup>lt;sup>11</sup> 同上, 第 49 页; 另见卡弗, 《海上运输》, 第 13 版 (伦敦, 史蒂文斯父子 出版社, 1982年), 第 582-588 段。

格式的基础上写成,但是在大多数司法管辖范围内都允许口头租船合同。<sup>12</sup> 有大量的标准租船合同格式,特别是程租约格式。波罗的海和国际海事会议已批准了50多项租船合同,其中大多数是涉及各种货载的程租约。还有油轮租船合同的标准格式,其部分原因是由于这类载运的具体特点,部分也反映了油轮承租人具有相对较强的讨价还价能力。<sup>13</sup>

- 15. 除了现在使用的大量标准格式租船合同,还有为数众多的私人租船合同 ("内部"租船合同)。有些非常大的承租人有他们自己的租船合同格式<sup>14</sup> ,同样,有些大型航运公司只使用他们自己的标准格式。标准格式和私人租船合同都有大量补充条款 (即所谓的"附加条款"),其中有些条款本身已有了标准化的措辞,而许多条款则是临时草拟的。
- 16. 一些标准格式自 19 世纪末或 20 世纪初起就存在了,并没有真正考虑过根据现代商业生活情况它们加以改造的问题。因此,现今仍在使用许多过时的,措辞模糊不清的标准老格式。每种这样的格式都需要大量"附加"条款,仅这个事实就可以证明,有大量附加条款增补的标准租船合同格式需要加以补充。有些老式干货租船合同的情况尤其如此。干货标准格式中较老的格式的一个突出特点就是它们趋于有利于船东,而比较近期起草的格式则趋于有利于承租人。
- 17. 在详细审查各种租船合同格式之前,简要地回顾一下一些最老的和受批评最多的租船合同格式以及某些主要司法当局对这些合同格式及其所载条款发表的评论可能是有益的。

<sup>&</sup>lt;sup>12</sup> 见斯克鲁顿,前引书,第3页。根据德意志民主共和国1976年2月5日的海上运输法第4(3)条和第5(4)条的规定,承租人可要求签发一份租船合同。根据德意志联邦共和国的法律,存在着类似的情况,见1897年的德国商法典(修正案)(HGB),第五卷,第557条。

<sup>13</sup> 保罗·托德,《海上货物运输合同》, (1988年 BSP 专业书籍), 第 19 页。

<sup>&</sup>lt;sup>14</sup> 例如,各大石油公司就有它们自己的格式,如壳牌公司程租约 5 和 Beepee 程租约 2。

#### A. 程租约

- 18. 贸发会议秘书处最近的调查表明,在较老和受批评最多的程租约格式中,仍在普遍使用的有波罗的海和国际海事会议杂货统一租约(标准杂货租船合同)、巴尔的摩班轮谷物租船合同(巴尔的摩班轮丙式谷物租船合同)、航运公会拉普拉塔河租船合同(标准谷物租船合同)、以及美式威尔士煤炭租船合同(Amwelsh 租船合同)。
- 19. 在这些租船合同中,就其起源来说,美式威尔士煤炭租船合同是最古老的。它是在1953年采用航运公会1896年威尔士煤炭租船合同而来的。60多年前在米格尔·德拉里纳加轮船公司诉 D L 弗拉克父子公司的英国案例中,15 法官阿特金上议员就1953年美式威尔士煤炭租船合同格式中基本上完全采用的,尔后在1979年经过修正的格式中再次采用的条款说了如下一段话:

"这个案例是由航运公会1896年威尔士煤炭租船合同引起的,其滞期条款已证明过去是律师业的一个财源,而且看来可能今后也是律师业的有利可图所在。这种格式或类似格式的条款肯定曾提交过上议院,多次提交商事法庭,也多次提交上诉法院;而且从事与之有关的工业和航运业的知名人士仍可能认为,采取步骤使这些条款比现在更加明确是适宜的。"

20. 1985年,在莫扎特号一案中,<sup>16</sup> 英国商事法庭在不得不对美式威尔士租船合同中的这些条款之一作出解释时有机会发表如下评论:

"该条款的语言是不精确的;它在过去曾引起一些问题,因此在目前情况下,在那些试图对之加以解释的人中间存在不同意见是毫不令人奇怪的······实际上,该条款是如此松散和不精确,以致于传统的字句分析得不出任何结果。"

21. 标准谷物租船合同是 1914 年通过,并在 1950 年和 1974 年修正的。 1924 年,法官斯克鲁顿勋爵在英国上诉法院审理 H.A.布赖特曼及公司诉邦格·Y.

<sup>&</sup>lt;sup>15</sup> (1925年)《劳氏日报》报告 21,284,第 288页。

<sup>16 (1985</sup>年) 劳合社报告 1, 239, 第 241-243 页。

#### 博恩一案17 时曾说过:

"这个租船合同的格式名为1914年航运公会拉普拉塔河租船合同,它是在 航运公会和有代表性的阿根廷托运人团体之间商定的。它所用措辞不容易加以 解释,当利益冲突的各方采取含糊不清的格式时情况往往是这样,因为每一方 都不敢明确说明,恐怕另一方不同意他们确切说明的意思。"

22. 在上述案例中,该法院审议了标准谷物租船合同中的罢工条款。在 35年之后,有人要求英国法院在印度工会诉阿奥卢斯航运公司(斯帕尔马托里号)案的不同情况下审议同一条款的意义(该租船合同的 1950年修正案未对该条款加以修订)。 18 商事法庭的法官作出的裁决是,在该案的情况下,罢工条款并不妨碍船东提出索取滞期费的要求。尽管包括各方在内的所有的人都一致认为"按字面意义解释所用词句是不可能的",但上诉法院的三名法官并不同意上述结论。而上议院又以三票对二票的多数不同意上诉法院的裁决,多数中的一位评述说:

"对这个条款的第三部分没有完全令人满意的解释或说明,因此任何人都必须从这两个几乎同样令人不满意的结论中加以选择。"

23. 在 1961 年 N V 利德里支阿姆斯特丹航运公司诉印度总统(阿姆斯特尔摩伦号)一案<sup>19</sup> 中这一罢工条款被上诉到英国上诉法院,10 年之后,在爱奥尼亚航运公司诉大西洋航运公司(路卡斯号)一案中再次被上诉到英国上诉法院。<sup>20</sup> 虽然现在有了该条款的"建议"修正案供在其他租船合同中使用,但标准谷物租船合同格式的租船合同中的罢工条款仍未加以修正。在航运公司诉弗伦塔达斯航运有限公司(科斯蒂斯号)一案中,<sup>21</sup> 英国商事法庭法官说,标准谷物租船合同,特别是该合同中的罢工条款"多年来一直使律师们工作惬意"。

24. 标准杂货租船合同格式是最常用的通用程租约格式。它可以追溯到

<sup>17 (1924</sup>年)《劳氏日报》报告 19, 384, 第 385 页。

<sup>&</sup>lt;sup>18</sup> (1960年) 1.W.L.R.297; (1962年) 1Q.B.1; (1964年) A.C.868。

<sup>19 (1961</sup>年) 劳合社报告 2, 1.

<sup>&</sup>lt;sup>20</sup> (1971 年)劳合社报告 1,215。

<sup>&</sup>lt;sup>21</sup> (1968年)劳合社报告 1,379,第 382 页。

1922 年对它进行第一次修订之前。在 1976 年再次对它加以修订。它的条款引起了无数纠纷。在路易斯·德雷菲斯及公司诉帕纳索航运公司(支配者号)一案中,<sup>22</sup> 英国商事法庭法官说,法院以前并未处理过标准杂货租船合同的免责条款问题,并说:"现在我不得不努力弄懂它的意思,这显然是我的不幸"。他认为这一条款是含糊不清的,并在对之加以解释时借助了对提出建议的一方的反对规则。

25. 在萨拉米斯航运公司(巴拿马)诉埃德姆·范尼尔比克公司(奥尼西洛斯号)一案中, 23 标准杂货租船合国罢工条款中"半数滞期费"的规定在英国上诉法院被说成是"含糊不清的",其本身既能有船东解释的意思,又能有承租人解释的意思。在瑟普尔福斯租船公司诉 N.B.R.有限公司(萨图尼亚号)一案中, 24 上诉法院再次被要求审议标准杂货租船合同罢工条款,因为仲裁员们在此问题上产生分歧意见,而该法院则又不同意仲裁长的意见。该法官说:"不论从(该条款的有关部分),还是从整个条款,还是从整个租船合同,我都看不出对这个问题作出正确答案的任何一个有决定意义的迹象。"

26 对标准杂货租船合同的一个重要的批评就是它不够全面,因此几乎在每一种情况下都需要添加过多的附加条款。因此,在海外运输公司诉矿石进出口公司(辛诺依号)一案中, <sup>25</sup> 英国商事法庭法官评论说:

"这项租船合同本身是在标准杂货租船合同格式的基础上形成的,但须进行广泛的修订和补充。实际上,这一次所有问题都出自那些起草得最不适当的附加条款"。

27. 最近在纽约对泛太平洋航运公司诉米特休公司 (美) 一案的仲裁中, <sup>26</sup> 仲裁员再次指出,根据标准杂货租船合同格式拟定的这项租船合同"简直不是一个明晰的典范, 这种使较老的格式适应新用途的做法并不是不常见的。"

<sup>&</sup>lt;sup>22</sup> (1959年) 劳合社报告 1,125。

<sup>&</sup>lt;sup>23</sup> (1971 年)劳合社报告 2,29。

<sup>&</sup>lt;sup>24</sup> (1984年) 劳合社报告 2,366,确认 (1987年) 劳合社报告 2,43。

<sup>25 (1971</sup>年) 劳合社报告 1,514。

<sup>&</sup>lt;sup>26</sup> S.M.A.2505 号 (1988 年在纽约仲裁)。

28. 巴尔的摩班轮丙式谷物租船合同是在 1913 年通过的,它也造成了多次仲裁和向法院提出许多诉讼的事件。在 J.C.卡拉斯父子(船舶经纪人)有限公司诉印度总统(阿格比姆号)一案中<sup>27</sup> ,英国商事法庭法官对这种"有些陈旧而且常常是最令人莫名其妙的巴尔的摩班轮丙式谷物租船合同"发表了看法。他继续指出:

"到目前为止,美国、加拿大或本国有资格的律师们还没有接到起草一份现代的和更为明白易懂的代用租船合同的指示,这是令人惊奇的。这不会是一项困难的任务,而且,如果其结果被人们所接受,现行格式被废除的话,它通过随后托运人、承租人、船东以及谷物进出口商诉讼费用的节省很快就会证明,支出最起码的费用是必要的。"<sup>28</sup>

29. 就油轮程租约而言,现仍普遍使用的最老的标准格式是 Asba 油轮程租约 (原为 69 年 Exxon 程组约),这种租约是从于 1942 年通过并于 1950 年修订的战舰运油程租约格式修改而来的。关于这种租约已发表了下列意见:

"Asba油轮程租租约(又称Texa程租约)完全是从老的战舰运油程租约格式演变而来的,因此早已过时。有些条款涉及的是过去的贸易格局和惯例,而当前的许多要求并未包括在内。Asba油轮程租约现仍在十分广泛地使用,但都是自担风险。这种租约所需的许多附加条款并没有弥补印刷格式中的所有缺陷,而且从其整体来看扩大了冲突的范围。进一步增加过渡性条款也不可能消除由于使用这种过时的格式而引起的种种纠纷和诉讼。"<sup>29</sup>

<sup>&</sup>lt;sup>27</sup> (1970年) 劳合社报告 1, 282, 第 287 页。

<sup>&</sup>lt;sup>28</sup> 1973 年北美谷物租船合同后来得到了北美谷物出口协会、波罗的海和国际海事会议、联合王国航运公会和各国船舶经纪人和代理人协会联合会的同意。后于1989 年作了进一步的修正。但波罗的海期租约范本丙式比北美谷物租船合同的格式用得更为广泛。

<sup>&</sup>lt;sup>29</sup> 威廉斯和邦尼克,《关于油轮程租约的评论》,(Intertanko 1989 年) 第 2 页。

#### B. 期租约

- 30. 在期租约标准格式中,只有两种比较古老,而这些正是最常用的干货期租约:波罗的海和国际海事会议统一期租约(波罗的海期租约范本)和纽约产物交易所期租约(纽约产物交易所租船合同)。
- 31. 波罗的海期租约范本格式最初是在 1909 年发布的,后在 1911 年、1912 年、1920 年、1939 年和 1950 年加以修正。在 1974 年又进一步作了小修正以提及当年的《约克—安得卫普规则》。波罗的海期租约范本格式中的许多条款都曾被提交仲裁和诉讼,但是使该合同格式声名狼藉(贸发会议秘书处调查表的答复者就是这样形容的)的条款就是责任和免费条款(现行格式的第 13 条)。1984年,英国上议院裁决,对在以前至少 24 年中被人们接受的这一条款的理解是不正确的。上述案件是托尔船舶公司诉加拿大有限公司奥特兰斯集团(兴隆号)<sup>30</sup>,在这一案件中,上议院不同意澳大利亚新南威尔士最高法院对威斯特法尔—拉尔森有限公司诉殖民糖业提炼有限公司一案<sup>31</sup>的判决,并批评了英国商事法庭以前对民法协会诉瑞典斯德哥尔摩航运有限公司(布拉班特号)一案<sup>32</sup>的判决以及上诉法院对日本邮船会社诉艾克梅航运公司(查拉兰博斯·N.帕特拉斯号)<sup>33</sup>一案的判决。
- 32. 上议院在兴隆号一案中对波罗的海期租约范本第 13 条的 4 句话进行了详细的分析,并在介绍这次分析时指出:

"这一期租约的印刷格式早在1909年2月就问世了。因此,它已有几乎四分之三个世纪的历史······这 4个句子的语法,实际上是草稿的措词有许多严重缺陷,而且,无论从哪个方面看,这个条款的许多地方都有多余的话,这样说并没有解决结构问题,而只能大大增加其复杂性。严重的语法缺陷、措词不

<sup>&</sup>lt;sup>30</sup> (1984 年)劳合社报告 1,123。

<sup>31 (1960</sup>年) 劳合社报告 2, 206。

<sup>&</sup>lt;sup>32</sup> (1965年) 劳合社报告 2,546。

<sup>&</sup>lt;sup>33</sup> (1972年) 1W.L.R; 74。

当和多余的字句是租船合同条款草稿措词的共同特点。"34

- 33. 以纽约产物交易所租船合同为格式的干货期租约格式是最常用的干货租船合同格式。它发行于 1913 年,并于 1921 年、1931 年和 1946 年加以修正。1981 年推出了一种以"Asba 期租约范本"为代号的纽约产物交易所租船合同格式的新文本,但是与 1946 年纽约产物交易所租船合同格式相比使用甚少。
- 34. 纽约产物交易所租船合同有些部分是含糊不清的,有些部分是过时的。 在顶峰投资公司诉英国钢铁公司(苏尼翁号)一案中,<sup>35</sup> 英国上诉法院被要求 对该租船合同的第 20 条加以解释,该条规定:

"须就船舶停租时已用燃料,也包括用于炊事、冷凝水或者用于炉格和火炉的燃料数量达成协议,补充燃料的费用须经船东允许。"

35. 对这一条款的解释若干年来众说纷纭。在上述案件中,一个由三名仲裁员组成的小组持有不同意见,多数人赞成从宽解释。初审法院一接到上诉,赞同少数仲裁员作出的较为严格的解释。上诉法院恢复了多数仲裁员的意见,因而在最主要的判决中出现了以下意见:

"现在被广泛应用的纽约产物交易所租船合同格式是1913年问世的,那时,船舶的主机都是蒸汽驱动的,锅炉是烧煤的。鉴于这种情况,海员的住处都备有开式烧煤'炉格'和闭式烧煤'火炉'。今天,许多船舶都用马达驱动,而且即使在不是用马达驱动的情况下,也是用燃油而不是用煤来产生蒸汽了。因此,备有'炉格'或'火炉'的船舶肯定是极为罕见的。但是,尽管在1921年、1931年和1946年加以修订,纽约产物交易所租船合同格式仍继续固执地提及'炉格和火炉',而我们却被要求对这些用语加以解释。"

36. 关于较老式的期租约格式,据说这些租船合同"大部分都是由拥有船舶的利益集团制订的,因此在某种程度上,这些合同偏向船东,波罗的海期租约范本格式尤其如此。人们还说,它们的措辞常常过于松散,甚至连纽约产物交易所租船合同格式也达到了晦涩难解的程度•••••许多捉摸不定的情况、矛盾和不平等之处都不

<sup>34 (1984</sup>年) 劳合社报告 1, 123, 第 126 页。

<sup>&</sup>lt;sup>35</sup> (1987年) 劳合社报告 1, 230。

是国际海洋运输的特殊性(互相矛盾的法律、海上风险等)所固有的,而常常是现行基本合同中措辞松散、概念不清、过时的航海时代的传统所造成的结果。当它们在 6O 多年前出现的时候,它们起到了有益的作用;但是,现在显而易见的是它们表述各方在签订合同时打算相互承认的权利和义务不够精确。这给出现毛病时提出诉讼敞开了大门,而且由于大多数案件在法律以先例为基础的盎格鲁撒克逊国家都提交仲裁或法院,但在先例不一定对仲裁员起约束作用的地方,混乱则是不可避免的。讲究实际的航运界人士并不都接受过法律培训或有这方面的经验来避免其租船活动中等待他的许多圈套,而且在需要他迅速作出决定时也没有时间来加以权衡。"得出的结论是,"如能制订出更适合于现代货运方法、消除了不讲道德的方面能够钻空子的含糊不清之处、经过改进成为公平的更加明确的合同格式,而且绝大多数航运界人士普遍使用这样一种格式,那么就会获得很大益处"。36

<sup>&</sup>lt;sup>36</sup> J.E.卡斯格兰,《定期承租人的职责与责任》,在各国船舶经纪人和代理人协会联合会主办的一次关于"定期承租人——为什么出现混乱?"的研讨会上发表的论文,伦敦,1977年3月24-25日,第2页和第9-10页。

#### 第二章

#### 对期租约某些条款的分析

- 37. 本章着重对期租约中所载的某些条款进行审查,以找出由于这些条款的解释和实行而引起的某些问题。先谈国际航运立法问题工作组第四届会议提出的要求中说明的条款。<sup>37</sup> 另外,再谈谈贸发会议秘书处调查表的答复者表示关注的那些条款以及一些被认为含糊不清、过时或在不同的管辖系统可以作出不同解释的条款。
- 38. 这一分析主要是根据两个使用得最广泛的标准干货期租约格式—— 1974年波罗的海期租约范本和 1946年纽约产物交易所定期租船合同 —— 以及代号为Asba 期租约范本的纽约产物交易所定期租船合同 1981年修订本,代号为班轮期租约范本的 1974年波罗的海和国际海事会议深海定期租船合同所载的条款作出的。本章还谈及由全国船舶经纪人和代理人协会联合会编写的代号为 Fon 期租约范本的期租约草案以及一些油轮期租约格式。
- 39. 大多数期租约纠纷都是在伦敦或纽约作出裁决的。因此,本报告中提到的案件主要是英国法院作出的裁决(一般根据以仲裁裁决的上诉作出的)、美国法院的裁决和纽约仲裁裁决(一般不能上诉)。<sup>38</sup>

## A. 航速与消耗条款

40. 期租约中对船舶的说明,尤其要包括船名、船旗、所有权、船级、载重量、注册吨位、以及航速和燃料消耗。对于定期承租人来说,对船舶的说明,特别是关于航速和消耗的陈述,具有特别重要的意义,因为租人承担该船的商业性运营

<sup>37</sup> 见本报告第2段。

<sup>38</sup> 见威尔福德、科格林和金布尔,《期租约》,第三版,(伦敦劳埃德出版社,伦敦,1989年),导言,第 vii 页。

并担负与其租用有关的某些费用。<sup>39</sup> 定期承租人负责提供燃料仑燃料,因此,船舶的消耗对承租人的财政支出具有重要影响。此外,由于承租人按照租船时间支付租金而不管该船可能航行多少次,所以该船的航速就成了协定的重要部分。

- 41. 波罗的海期租约范本、纽约产物交易所租船合同、Asba 期租约范本和班 轮期租约范本各自载有一个类似的序言,留待填入关于船舶的说明。波罗的海期租 约范本规定,船舶须"在消耗约……吨优质威尔士煤或约……吨燃油时在天气晴朗和 风平浪静的情况下每小时能行驶约……海里",这是很典型的。纽约产物交易所租 船合同、Asba 期租约范本和班轮期租约范本载有类似规定,但纽约产物交易所租 船合同和 Asba 期租约范本的限制较小、只提及"在天气晴朗的条件下"。
- 42. 秘书处调查表的答复者对这些规定提出了许多批评。它们被认为是真正的问题所在。据说问题的根源在于这样一个事实: 尽管人们承认,在一定程度上,根据天气情况选定航线的公司以及官方来源提供的气象数据会减轻这个问题,但是所遇天气的证据只掌握在船长手里。"大约"、"在天气晴朗和风平浪静的情况下"以及"在天气晴朗的情况下"等词语被认为是含糊不清的; 因而其意思会引起争议。"对于'天气晴朗'一词是指在风力低于蒲福 4 级、5 级还是低于 6 级的情况下,仲裁人和市场的意见是不同的。实际上,'风平浪静'是从未遇到的或是极少遇到的。它实际上要求死一样平静的条件,因此,如果从字面解释,它就会使得航速和消耗保证毫无意义"。40
  - 43. 对波罗的海期租约范本中这一条款提出了一下列评论:

"尽管如果租期非常短或者,例如,只进行沿海短程航行而有时被省去,但几乎所有期租约都规定船东作出关于航速和消耗的保证。航速和消耗与载重量同样重要,而提起诉讼的情况则更多。

<sup>39</sup> 根据期租约的规定,所租船舶运营费一般由船东和承租人共同分担:船东一般担负固定费用 (例如工资、保险等),承租人则支付可变费用 (例如燃料和各种捐税和手续费用)。见班轮期租约范本第 4 条和 5 条;纽约产物交易所租船合同第 1 条和 2 条;波罗的海期租约范本第 3 条和 4 条。

<sup>40</sup> 各国船舶经纪人和代理人协会联合会提出的意见。

如果你很细心,看一下波罗的海期租约范本的序言,你就会发现这一许诺 是在非常有利的条件作出的 —— 不是任何平均航速,而是试航速度。按照人 们的一般理解,'天气晴朗和风平浪静'是指风力在蒲福 3 级或 3 级以下,而不 论海洋的情况如何。除非有大浪,海面没有太大差别。该条款根本没有说明船 舶在整个期间实际达到的航速。船东只要表明一下在一天左右的时间里船舶达 到了所许诺的航速就够了。

如果船舶不用其最大功率怎么办?不错,第9条规定船长须'使船以最大速度'航行,但什么是最大呢?而且如果船长不这样做又怎么样呢?第13条明确规定即使是由于船东的雇员违约或有过失而造成延误也不承担责任。

有了波罗的海期租约范本一类的条款······承租人就很难证明船舶的性能差。性能资料的主要来源是航行日志。点间的勘定距离可用来进行控制,发动机日志中关于每分钟转数的记录也可用来进行控制。"<sup>41</sup>

- 44. 但是,正如纽约的一位仲裁员<sup>42</sup> 在一次也许可能被认为打了折扣的陈述中所指出的,"\*\*\*\*\*众所周知,从日志上摘录的数字有点成问题......"。
- 45. 另外据说"波罗的海期租约范本中方框表 12 仅列出大概的数字……而且 …… 〔从〕第二部分可清楚地看出,所列各项均限于'天气晴朗和风平浪静'的情况。这样,船东对协定期间的实际履约情况没有作出任何保证,而且承租人也难以表明这种保证遭到违反(但并不是不可能:见阿波罗尼俄斯号)。这并不奇怪,因为起草波罗的海期租约范本时心里想的主要是船东的利益。纽约产物交易所租船合同与波罗的海期租约范本是类似的。班轮期租约范本亦如此"。43
  - 46. 与其他说明性的细节不同的是,关于船舶航速的说明已被解释为在交船

<sup>&</sup>lt;sup>41</sup> 邦尼克,《租船文件的语法》,第二版,劳合社伦敦出版社,1988年,第59页。

<sup>42</sup> 米查尔·A. 范格尔德,在 1979年 5月于伦敦举行的第四次国际海事仲裁员大会上提交的论文。

<sup>&</sup>lt;sup>43</sup> P.托德, 前引书, 第 133 页。

时适用。在阿波罗尼俄斯号一案中,<sup>44</sup> 英国商事法庭法官由于不同意前此一个案件<sup>45</sup> 中表示的意见,作出如下裁决:从业务观点来看,很清楚,商业考虑要求关于船舶航速的说明在交船之日能应用,而不管它在租船之日是否适用。因此,承租人就被认为有权追偿损失(波罗的海期租约范本格式规定的),因为该船被说成能够达到约 141/2 节,但是实际上由于船底脏污而在交船时只能达到 10.61 节。

- 47. 根据美国法律的规定,情况看起来相同。46
- 48. 伦敦的一位仲裁员<sup>47</sup> 以下列词句描述了这些租船合同中在说明船舶航速和燃料消耗量时由于使用"约"字而引起的困难:

"现用的波罗的海期租约范本和纽约产物交易所租船合同格式中所用措辞源于第一次世界大战之前的时代。这些格式主要适用于 8000 吨、时速为 9-10 节、烧煤、蒸汽往复式船舶的合同格式。开船之后,船长听不到也传不出任何可能影响船舶运行的消息,除非他到达一个他能够收到电报的港口。他没有收音机,没有雷达,没有天气资料,煤是多种多样的;开航前后的维修差别很大;没有通电话的船东,没有挂出主管人的旗或没有零件。在那些日子里,真可谓船不是时钟;因此除了船名、船旗、船级和吃水深度之外,租船合同的几乎每个细节都或明或暗地被约字所团团包围。

除了已与传统决裂•••••正在彻底修订合同以使其执行情况尽可能符合航次估算的石油公司以外,今天正在根据波罗的海期租约范本或纽约产物交易所租船合同格式谈判租赁条件或者正在做航次估算的定期承租人,仍然面临着在货物、航速、燃料等方面把什么数据输入其计算机的问题。

法院在那些逼远的日子里对约字所作的解释现仍被引用,并应用于大不相

<sup>44 (1978</sup>年) 劳合社报告 1, 53.

<sup>45</sup> 洛伦岑诉怀惠特航运公司案 (1943年)《劳氏日报》报告 74, 161。

<sup>&</sup>lt;sup>46</sup> 见威尔福德·····,《期租约》,前引书,第82-83页。

<sup>&</sup>lt;sup>47</sup> J.塞尔温,在第四次国际海事仲裁人大会上提交的论文,伦敦,1979年5月。

同的情况。人们认为,1979年,'将近'或"差不多"的含义与1914年之前大不相同。除非明确作出相反说明或暗示,否则过去的必定是伸缩范围颇大的一些解释,现在则必然作狭义的解释。"

- 49. 但是,这位仲裁员得出的结论是,即使对波罗的海期租约范本和纽约产物交易所租船合同等租船合同中的伸缩范围作出狭隘的解释,"印制的格式仍然把航行的风险推给承租人"而不是推给确实存在风险的船东,因为只有他们才了解和操纵船舶。
- 50. "约"字曾是最近在伦敦的一次仲裁中进行解释的课题,讨论的问题是:如有差别的话,"约"字可以有大差别。有人说,由于船东了解(或者应已了解)其船舶性能的详细情况,他会情不自禁地不给"约"字留有余地。但是,法庭认为,不能忽视各方之间已明确商定并已写进租船合同的字眼,以使"约"字产生作用。在该案的情况下,法庭认为"约"字的适当余地为四分之一节,而不是伦敦海事仲裁员以前在一般情况下常常给予的半节。<sup>48</sup> 在阿拉伯海洋石油运输公司、诉勒克苏尔贸易公司(比达号)一案<sup>49</sup> 中,认为"约"字的范围永远应为半节或 5%的想法也遭到了英国上诉法院的驳回。该法院认为,范围必须按船只的外形、大小、吃水深度和平舱等条件具体规定。因此,船东和承租人就难以事先预测将给予多大的范围。
- 51. 为了避免这些困难,大多数油轮期租约格式都载有一个性能条款,要求船东在参考具体最大蒲福风级确定的天气条件下保证达到的最低平均航速。STB油轮租船合同第8条规定,在整个租船期,船舶在所有天气条件下都应保持保证的平均航速和燃料消耗量。有些油轮租船合同规定如达不到规定的性能可对租金进行调整<sup>50</sup> ,而诸如80年 Inter油轮期租约范本等少数租船合同则规定每12个月对船舶的航速和燃料消耗量进行一次检查,并相应地对租金进行调整(下调或上调)。<sup>51</sup>

<sup>48</sup> 见波罗的海和国际海事会议公报 6/88,1988 年 12 月。

<sup>49 (1987</sup>年) 劳合社报告 1, 124。

<sup>50</sup> 见 STB 格式第 9 条。

<sup>51</sup> 见第 23 条。

## B. 安全港条款

- 52 大多数租约,不论定期租约还是程租约,都载有明确承诺,保证承租人须在安全港之间使用船舶。例如,班轮定期租约范本第3条规定,"船舶只得在良好的安全港或地点之间的合法贸易中用来运输合法商品······"。波罗的海期租约范本第2条用了类似的措辞。从字面上解释,这些字句似乎是如果该船按承租人命令驶抵的港口证明不安全承租人要负绝对责任。
- 53. 在利兹航运公司诉弗朗塞·邦格公司 (东方城市号) 这一英国判例中, 52 法官塞勒斯上议员对安全港下了如下定义:
  - "•••••除非在有关的时期内某一艘船能够抵达、使用和驶离一港口而在没有发生某种异常情况的条件下未遇即使以良好的导航和船舶驾驶术也不能避免的危险,否则该港不能算作安全•••••"。
- 54. 这一定义已作为对可以构成"安全港"的港口的正确说明而被广泛接受。 53 这一定义被认为包含了地理和政治两方面的安全。 54 英国上议院在科德罗斯航运公司诉古巴货运公司(艾维亚 2 号)一案 55 中把这一责任解释为只要求在指定港口时该港预期是安全的。但是,这项裁决并没有回答下列问题:承租

<sup>52 (1958</sup>年) 劳合社报告 2, 127, 第 131 页。

<sup>53</sup> 见波罗的海和国际海事会议、国际海事委员会、各国船舶经纪人和代理人协会联合会以及英国航运总理事会公布的 1980 年租船合同装卸货时间定义。装卸货时间定义中的"安全港"定义完全是以东方城市号一案中的陈述为基础的。

<sup>54</sup> 见奥格登诉格雷厄姆案(1961年),IB.&.S.773;图图尼亚号(1972年)L.R.4.P.C.171。关于承租人是否对租船合同中所指定的港口出现不安全情况负有责任的问题,见休斯敦城号(1954年)劳合社报告 2,148;斯托克号(1954年)劳合社报告 2,397;海伦·米勒号(1980年)劳合社报告 2,95-101;玛丽·卢号(1981年)劳合社报告 2,272-280;威尔福德·····,《期租约》,前引书,第152页。

<sup>&</sup>lt;sup>55</sup> (1982年) 劳合社报告 2,307。

人在指定港口时相当谨慎是否足够了,承租人对关于该港安全与否被征求意见的代理人或独立承包商方面的不谨慎行为是否要承担责任。

- 55. 在艾维亚 2 号轮一案中,根据波罗的海期租约范本格式租用的船舶奉命开往巴士拉,但是由于两伊战争爆发而不能离开该港。船东声称,承租人违反了他们按照租船合同第 2 条的规定承担的安全港责任。上议院认为,承租人并没有违反第 2 条的规定,因为在指定港口时巴士拉预期是安全的,而且是在该船到达之后才出现不安全情况,这是由于预想不到的非常事件造成的。罗斯基尔勋爵指出,承租人在合同中的承诺与上述港口或地点的特点有关,因此它的意思是在下达命令时该港口或地点预期是安全的,该船可以入港作必要的停留,在适当的时候离港。但是,如果此后突然发生某些预想不到的非常事件,因而造成原来存在安全条件的地方出现了不安全情况,该船因此而延误、遭损坏或破坏,合同中的那项承诺并没有扩大到使承租人对由此引起的任何实物或财政损失负有责任。否则,会使承租人会成为这种预想不到的异常风险的保险人,而这种风险应由该船的保险人承担,这才是正当的做法。56
- 56. 尚不清楚的是,美国法律是否会仿效艾维亚 2 号轮案而认为在指定港口时的预期安全就足够了。显而易见的是在不安全港案件中对可以得到补偿的损坏,美国法律和英国法律存在重大差异。常常发生这样的情况,即船舶遭受损坏是两方面原因造成的,一方面是承租人下令船舶前往的港口不安全,另一方面是船长(或者船东为其负责的其他人)在决定进港、船舶在港调度以及在已明显看出要发生危险时不离港等方面出现疏忽。现在,看来这个问题根据美国法律已得到很好解决,即在这类情况下船舶遭受的损坏可参照双方各自的"过失"程度,根据最高法院在美国诉信赖运输公司一案<sup>57</sup> 中规定的原则由船东和承租人分摊。这种办法已在包

<sup>&</sup>lt;sup>56</sup> 同上,第 315 页。还进一步裁定,波罗的海期租约范本第 2 条规定承租人负有指定另一港口的次要责任,其本身在当时预期是安全的,如果在到达前指定港变得不安全,如果在该船进港后指定港变得不安全时离开该港的话。这一责任是否也适用于程租约目前尚不清楚。

<sup>&</sup>lt;sup>57</sup> 421 U.S.397 (1975年)。

括海洋第一号<sup>58</sup> 、美国挑战者号<sup>59</sup> 、督察官委员会诉空间国王号案<sup>60</sup> 、以及梅普尔班克号<sup>61</sup> 在内的一些安全港、安全泊位和类似合同案件中采用。

57. 但是,在类似情况下,英国法院将不根据过失程度对损坏进行同样的费 用分摊,因为在波罗的海期租约范本、纽约产物交易所租船合同和班轮期租约范本 中都明确载有这类安全港保证。在最近的维斯塔保险有限公司诉布彻一案 中, 62 上诉法院认为, 根据 1945 年的法律改革 (共同过失) 法的规定按照过 失程度分摊损坏费用的做法并不适用于合同中的诉讼,除非被告在合同中的责任与 其由于过失而承担的侵权行为的赔偿责任相同。如果承租人在租船合同中明确保证 他们可能指定的港口是安全的,那就完全不是这种情况。根据英国法律,衡量标准 在于承租人由于命令船舶前往一个不安全港而违反合同的行为是否是造成损坏的实 际原因,在这种情况下,承租人的赔偿责任将不因船长与船员的过失而减少,标准 还在于这一过失是否打破了因果关系,在这种情况下,承租人将不负任何责 任。63 尽管一艘船遭受损坏很大程度上可能要责怪该船的船长,但是假如责任 少于 50%, 在英国, 船东很可能成功地追回 100%的损坏费用, 而在纽约, 在同样 情况下,船东追偿损失的数额则会根据其船长在所造成的损坏中的过失程度而减 少。64 正是这些差别造成了不同的结果。相比之下,在英国,如果船长是主要 责任者,那么即使承租人也有很大责任,船东什么也追不回来,而在纽约,损坏费 用还要分摊。

58. 把承租人关于指定安全港的责任作为一项应有注意的责任来对待的一些

<sup>&</sup>lt;sup>58</sup> S.M.A.1054 号 (1976 年在纽约仲裁)。

<sup>59 1977</sup> 年《美国海事判例》318。

<sup>60 1978</sup>年《美国海事判例》856 (E.D.La.1978年)。

<sup>61 1982</sup> 年《美国海事判例》2564 (E.D.La.1981 年)。

<sup>62 (1988</sup>年) 劳合社报告 1, 19.

<sup>63</sup> 见威尔福德\*\*\*\*\*,《期租约》,前引书,第149-150页。

<sup>64</sup> 见尼科尔斯和库福勒向第八次国际海事仲裁员大会提交的论文中关于"安全 泊位/安全港纠纷中的违约和损失分摊"一节,马德里,1987年。

大陆法系国家,不大可能接受美国法律分摊损坏费用的办法。看来,根据斯堪的纳维亚法律<sup>65</sup> 和德意志联邦共和国法律<sup>66</sup> 以及德意志民主共和国法律<sup>67</sup> ,如果指定的港变得不安全,而且如果承租人(他本人或通过其雇员或代理人)在指定安全港时犯有过失或未能应有注意,那么他只对所造成的损坏负责。

## C. 交船条款

- 59. 波罗的海期租约范本和班轮期租约范本第 1 条写道: "从交船之时起,船东出租,承租人租用船舶为期······"。纽约产物交易所租船合同同样规定,"从交船之时起,上述船东同意出租,上述承租人同意租用上述船舶······"。 68 这些条款规定船东同意将其船舶通过其船长和船员的服务交给承租人支配使用,以便承租人象对其雇员一样发布命令。 69
- 60. 但是,所有这三项租船合同都令人误解地使用了"交船"和"出租"等用语(以及诸如"还船"和"转租"等用语),因为这些用语适用于船舶的租赁或光船租赁,而不适用于期租约,因为在几乎所有管辖范围内期租约只是一种租船运货的合同,并不涉及任何船舶的租赁。一般说来,承租人根据这些租船合同格式并未获取对船舶的任何所有权。在陆海安全有限公司诉威廉斯·迪金森一案中,70 法官麦金森上议员把期租约说成是一种最初作为实际上的光船租船的文件,并认为它是一

<sup>&</sup>lt;sup>65</sup> 见 H. 蒂伯格,《滞期法》, 第三版(伦敦,史蒂文斯父子出版公司,1979年),第 289-290页。

<sup>&</sup>lt;sup>66</sup> 见 H. 普鲁斯曼,《海上贸易法》, (慕尼黑, H.C.贝克出版公司, 1968年), 第 401-404页。

<sup>&</sup>lt;sup>67</sup> 见德意志民主共和国商船运输法, 1976年, 第 12 (1) 条、第 12 (2) 条和第 57 (3) 条。

<sup>68</sup> 序言, 第 13 行。

<sup>69</sup> 见马德莱娜号案 (1967年) 劳合社报告 2, 224, 第 238页; 威尔福德 ······, 《期租约》, 前引书, 第 88 页。

<sup>&</sup>lt;sup>70</sup> (1942年) 2K.B.65,第69页。

份:

"······使人误解的文件,因为船东所承诺的真正性质由于使用了一个世纪或更长时间以前适用于当时所用的具有不同特点的合同的用语而被掩盖起来了······。从本质上来说,现代的期租约格式是这样一种格式,船东用这种格式与定期承租人商定,在规定的期限内他将用其雇员和船员提供的服务,来承运定期承租人装到其船上的货物。但是,在现在使用的印制格式中仍在使用的某些词句则只适用于较老的光船租船合同格式。这样的词句有········ '船东同意出租'以及'承租人同意租用'轮船。没有'出租'或'租用'这条轮船的提法"。

## 交船的条件 —— 适航性

<sup>&</sup>lt;sup>71</sup> 至于被认为适航的船舶,它在设计、结构、状况和设备方面必须没有毛病,能够克服航行中的普通风险。它还必须有一位称职的船长、一班称职和足够的海员,并适于承运货物。见卡弗,前引书,第147-151段。

<sup>72</sup> 序言,第 21-24 行。

<sup>73</sup> 吉尔特森诉特恩布尔 (1908年) S.C.1101。

- 62. 根据英国上议院对阿达马斯托斯航运公司诉英美石油公司(萨克逊明星号)一案<sup>74</sup> 作出的上诉法院在后来一些案件中应用于对纽约产物交易所租船合同格式的租船合同的裁决,纽约产物交易所租船合同格式第 24 条(首要条款)的含糊措词具有把美国海上货物运输法载入该租船合同的效力。因此,船东的责任从作绝对保证降为为使船舶在租船合同规定的每个航次之前和开始时具有适航能力而给予应有注意的一项保证。但是,这就是说,不仅船东本人,而且他们的所有雇员、代理人和独立承包人都必须已给予应有的注意。Asba 期租约范本有一个条款与纽约产物交易所租船合同序言中的条款是相似的,但是其首要条款只把适用的美国海上货物运输法或者《海牙/海牙—维斯比规则》载入根据租船合同开出的提单中而不是载入租船合同中。既然它没有进一步限制船东交付适航船舶,这一严格的义务的条款,所以,船东根据 Asba 期租约范本承担的关于最初适航性的责任就大于根据《海牙/海牙—维斯比规则》承担的责任。Fon 期租约范本草案采用了一种类似的办法,但由于它使这项要求成为连续的保证,因此船东承担的责任甚至更加严格。
- 63. 根据波罗的海期租约范本格式,第13条把船东交付适航船舶的严格义务降为所谓"个人应有注意"。换句话说,船东只对由于"船东或其经理对船舶具有适航能力和适于航行未予应有注意"而对货物造成的任何物质灭失或损坏或延误负责。<sup>75</sup> 这样,该条款一般免除了由于船员或独立承包人的疏忽所造成的不适航性。<sup>76</sup>
- 64. 班轮期租约范本第 12 (C) 条关于船东责任采用了《海牙/海牙-维斯比规则》的概念,要求"他们(船东)在每个航次之前和开始时为使船舶适航而给予应有的注意"。
  - 65. 因此,尽管纽约产物交易所租船合同、波罗的海期租约范本和班轮期租

<sup>&</sup>lt;sup>74</sup> (1959 年) A.C.133。

<sup>&</sup>lt;sup>75</sup> 托尔船舶公司诉加拿大有限公司奥特兰斯集团 (兴隆号) 案, (1984年) 劳合社报告 1, 123。

<sup>&</sup>lt;sup>76</sup> 见布拉班特号 (1967年) 1Q.B.588。

约范本给人的最初印象是船东绝对保证交付适航船舶,但从后面的条款中可以清楚地看出,船东关于适航能力的责任被局限于为使船舶适航而给予应有的注意。

66. 根据大多数期租约的规定,提供适航船舶的责任与租船期开始时有关,此后船东保证在整个服务期使船舶保持有效状态。<sup>78</sup> 在这一方面,各国采用的办法有很大差异。尽管根据英国普通法的规定,如果租船期开始时船舶处于适航状态的话适航性的默示保证即得到满足<sup>79</sup> ,但美国的法律则要求船东在租船期进行的每一航次开始时均使船舶具有适航能力<sup>80</sup> 。德意志联邦共和国的法律<sup>81</sup> 和德意志民主共和国的法律<sup>82</sup> 则规定船东负有为使船舶在每一航次开始时具有适航能力而给予应有注意的责任。

## 解约条款

67. 租船合同一般载有一项解约条款,根据这个条款,如果不在规定日期交

<sup>&</sup>lt;sup>77</sup> 见 A. 戴蒙德,"航东的责任和与其有关的免责条款",在全国船舶经纪人和代理人协会联合会主办的一次关于"期租约——为什么出现混乱"的研讨会上发表的论文,1977年3月24-25日,伦敦。

<sup>&</sup>lt;sup>78</sup> 见本报告第.......段维修条款。但是,Fon 期租约范本草案要求船舶"不漏、牢固、结实,并完全适于货载,而且在本租船合同有效期内保持这种状态,这就使船东承担了连续的责任"。这项责任比《海牙/海牙—维斯比规则》规定的责任大得多,《海牙/海牙—维斯比规则》规定的责任是在航程之前和开始时为使船舶适航而给予应有注意。

<sup>&</sup>lt;sup>79</sup> 见吉尔特森诉特恩布尔案, (1908年) S.C.1101: 卡弗, 前引书, 第 155 段。

<sup>80</sup> M.克拉克,"期租约中的适航能力",《劳合社海事和商法季刊》,1977年,第493-494页。

<sup>81</sup> 见 1897 年的德国商法典(修正案)第 559 节。

<sup>82</sup> 见德意志民主共和国海上运输法规第79节和第80节 (1)。

船, 承租人有权解除 --- 假如他愿意的话 --- 租船合同。

- 68. 班轮期租约范本第 2 条和波罗的海期租约范本第 22 条规定: "假如船舶到 19 年 月 日还未交付,承租人则有解约的选择权。如果到解约日期还不能交船,承租人必要时可在收到有关通知书后的 48 小时内(星期日和假日除外)宣布他们是解约还是接受船舶的交付"。纽约产物交易所租船合同载有一个类似波罗的海期租约范本和班轮期租约范本条款第一句话的条款,但没有相当于第二句的条款。该条款规定,"假如船舶没有发出准备就绪的通知收, •••••"。83
- 69. 解约条款的作用是,尽管其行使并不取决于船东对租船合同的任何违反,然而,如果船舶未以租船合同规定的条件,<sup>84</sup> 也就是说处于适航状态和完全适合提供服务的状态交付,承租人有权解约。<sup>85</sup>
- 70. 对关于解约条款、特别是关于纽约产物交易所租船合同格式中的这一条款的问题作了如下描述:

"在有解约条款而船舶到其解约日期还不能到达装货港口的情况下,该船仍有义务继续行驶,除非由于例外的风险造成的延误达到终止租船合同的程度。当解约日期已过时,船东不得要求承租人宣布他是否将装船。实际上,在运费下降后,承租人一般都拒绝回答,希望与处于压力之下的船东进行新的讨价还价。船东可以通过拒绝继续行驶而击败这一策略,因此,承租人将十有八九不能证明任何损坏·····。承租人无权在解约日期之前解约(似乎是根据不同于按普通法规定他可能必须放弃任何权利的条款),即使船东显然不能按时提供该船。"86

<sup>83</sup> Asba 期租约范本第 14 条使用相同措词。

<sup>84</sup> 见波罗的海期租约范本第 1 条和纽约产物交易所租船合同序言第 22-24 行。但是,行使解约权并不排除承租人对任何其他违约行为采取补救措施; 见纳尔逊父子公司诉敦提东海岸航运有限公司案 (1907年) S.C.927。

<sup>&</sup>lt;sup>85</sup> 见马德莱娜号 (1967年) 劳合社报告 2, 224; 德莫克里托斯号 (1976年) 劳合社报告 1, 149; 威尔福德······, 《期租约》, 前引书, 第 287-294 页。

<sup>86</sup> 斯克鲁顿关于租船合同的论述,前引书,第123页。

- 71. 本段强调秘书处调查表答复者对期租约和程租约中解约条款提出的批评。承租人在船舶的状况符合要求时必须接受交船的绝对义务,或者根据程租约的规定必须进行装货的绝对义务这种情况,与根据这类解约条款到解约日期到达的船舶不承担任何绝对义务的情况可以形成很好的对照。英国法律默示的对船舶的唯一义务就是合理速遣的义务。87 美国的情况与此相同。88
- 72. 波罗的海期租约范本和班轮期租约范本解约条款中的第二句话,企图通过要求承租人在船东发出到解约日期不能交船的通知书后 48 小时内宣布他们是否解约的办法来缓和这个问题。但是这对承租人和船东都能起不利的作用,这是不公平的。如果在发出这样一项通知书之后承租人宣布他们将接受交船,那么即使船舶后来仍出现进一步延误的情况,他们通常也将受其宣布的约束。而且,"如果不能交船"的意思也是含糊不清的。船东根据合理的理由估计到解约日期船舶到不了交船港是否足够,或者承租人是否能要求船东证明,鉴于在发出通知书之日船舶的实际状况,到解约日期是不可能交船的,这一点尚不明确。89

<sup>87</sup> 纳尔逊父子公司诉敦提东海岸航运有限公司案 (1907年), 44S.L.R.661 和马别内斯航运公司诉费罗斯塔尔公司 (德莫克里托斯号)案 (1976年) 劳合社报告 2, 149.

<sup>88</sup> 美国吉普萨姆运输公司诉卡莫伊轮船有限公司案 (1930年) 联邦报告 48 (2d), 376。

<sup>89</sup> 见 1982 年多种格式合同第 4 条 (1986 年修订本),该条规定承租人在以下情况下有解除该租船合同的选择权,即在发出通知书之前"船舶的解约日期已经过去或者·····船舶已开始进港而且按一般趋势将不能在解约日期之前发出通知书;船东在确定经修订的预期的装货准备就绪日期以后可要求承租人宣布他们是否选择解除租船合同,并给承租人最长为连续 48 小时的时间以宣布这件事。假如承租人未选择解约,解约日期则应从船舶经修订的预期的装货准备就绪日期连续延长三天,星期日和假日除外。

## E. 保养条款

73. 每种格式的租船合同都载有一个所谓"保养条款",在纽约产物交易所租船合同中,该条款规定船东须支付船舶的某些日常费用并"维持其船级和在服务期间使船舶的船壳、机械和设备保持完全有效的状态。"90 根据美国法律和英国法律对这一条款所作的解释有所不同。根据美国法律,保养条款被视为是对租船开始时明示的适航能力保证的补充,也是使船东承担在租船期每一航次开始时均使船舶具有适航能力的义务;而就纽约产物交易所租船合同而言,则是船东承担在期租约生效期每一航次开始时均为使该船具有适航能力而给予应有注意的责任。91 在勒肯巴赫诉麦卡思糖业公司一案中,有人争辩说,在将船舶交给承租人时原适航能力保证即已结束,所依据的保养条款也并不意味着在根据期租约进行的每一航次开始时保证船舶适航,而只是意味着承担为在整个服务期间修理船壳和机械支付费用的义务。但是,最高法院驳回了声称"该条款的用语和期租约的性质都不支持这一论点"的说法。

74. 另一方面,英国的法院认为保养条款仅使船东承担在船舶适航能力显出 缺陷以后予以弥补的比较有限的义务,而并没有(在未将《海牙/海牙-维斯比规则》载入租船合同的情况下)规定船东对每个航次的船舶适航能力作出保证。在吉尔特森诉乔治•V特恩布尔及公司一案中,<sup>92</sup> 苏格兰上议院认为,保养条款使船东担负使船舶保持有效状态的费用,但并没有让船东承担使船舶保持那种状态的

<sup>90</sup> 第 1 条, 第 37-38 行; 类似的条款见波罗的海期租约范本第 3 条; 班轮期租约范本第 4 条以及 Asba 期租约范本第 1 条, 第 68-69 行。

<sup>&</sup>lt;sup>91</sup> 见勒肯巴赫诉麦卡恩糖业公司一案,248U.S.139 (1918年):盖恩斯堡号21F.2d865,1927年《美国海事判例》1778 (D.Md.1927年);斯特朗诉美国一案,154U.S.632 (1878年);蒙德拉诉蒸汽机船伊利号一案,223F.Supp.390 (S.D.N.Y.1963年);约翰船长号,1973年《美国海事判例》2005,(1973年在纽约仲裁)。

<sup>&</sup>lt;sup>92</sup> (1908年)S.C.1101。

义务。此外,在斯尼亚船舶公司诉铃木及公司一案<sup>93</sup> 中,据说,船东使船舶保持有效状态的义务"并不意味着船舶在服务期间的每一分钟都要保持这种状态,它的确意味着当船舶的船体和机器处于不完全有效状态时,船东将在合理的时间内采取合理步骤来使船舶处于有效状态。"<sup>94</sup>

## F. 装货、积载及卸货责任

75. 在没有明示规定的情况下,装货和积载作业是船东的责任。根据波罗的海期租约范本、纽约产物交易所租船合同、Asba 期租约范本和班轮期租约范本的规定,这些责任被转移到定期承租人身上。波罗的海期租约范本第 4 条规定,承租人须安排和支付装货、平舱、积载和卸货的费用。根据第 9 条的规定,船东"对由于堆放不当或其他原因造成的货物损坏或索赔"不负责任。而且,第 13 条还免除了船东对任何灭失承担责任,除非灭失是由于"船东或者经理个人的行为或疏忽或过失造成的"。

76. 波罗的海期租约范本以相当明确的措辞把关于装货、积载和卸货作业的一切责任都转移给了承租人,而纽约产物交易所租船合同的条款却有些含糊不清。

77. 就纽约产物交易所租船合同而言,该格式的第8条规定:"承租人须在船长的监督下自行支付费用进行装货、积载和平舱"。"这项条款起草得一点也不明确。乍看起来,积载的责任由承租人承担,还是由于'船长的监督'等措辞而由船东承担,这一点是不明确的。由于这种固有的模棱两可,大西洋两岸的法院都不得不对这个问题加以考虑。不幸的是,它们都得出了相同的结果,即积载的责任由承租人承担",95 但是,船长的责任,因而也就是其船东的责任程度仍是争论的老问

<sup>93 (1924</sup>年) 《劳氏日报》报告 17,78,第88页。

<sup>94</sup> 亦见廷内代尔轮船公司诉英苏航运公司一案 (1936 年) 41 Com. Cas. 106.

<sup>95</sup> Q.C.A.戴蒙德,《船东的责任和与其有关的免责条款》,前引书,第6页。这些意见看来也适用于 Asba 期租约范本,因为其措词与纽约产物交易所租船合同的措词相似。它在第8条中规定:"承租人须在船长的监督下自行支付费用进行货物装卸"。

题。

- 78. 在美国尼奇曼公司诉"法兰"号案中,<sup>96</sup> 据认为纽约产物交易所租船合同第8条把积载这一基本责任从船东转给了承租人。<sup>97</sup>
- 79. 在考特航运公司诉加拿大运输公司案中, <sup>98</sup> 英国上议院作出了类似裁决, 赖特勋爵说:

"······根据该租船合同第8条的规定,承租人要自费进行装货、积载和平舱。我认为这些话必然意味着承租人承担装货和积载的工作。结果必然是他们不仅免除了船舶装货和积载的责任,而且在承租人和船东之间还免除了船东承担堆放不善的责任,用'在船长的监督下'等字眼加以限制的除外······"

80. 纽约产物交易所租船合同(和 Asba 期租约范本)中这一条款——装货、平舱和积载须"在船长的监督下"进行——的效力在英国和美国法律中是不同的。英国法律的立场是:由于船长介入第8条所述的作业——而且这特别适用于积载作业——由于船长及其高级船员的介入而造成了损坏,船东是要负责的。在考特航运公司诉加拿大运输公司一案中,赖特勋爵继续论述了对这些措辞的解释,他说:

"这些措辞明确规定船长有权监督承租人的装货和积载作业,我认为在任何情况下他都必须有这一权利。船长负责该船的适航性,还要负责确保货物的装船不会由于缺乏填舱物料和不分隔、不会由于放置在靠近容易造成损坏的其他货物或船上某些部件的地方或者以其他方式而遭受损坏······但是我认为明确规定这项权利不仅仅是为了准确的缘故,也是为了具体地限制承租人对积载的控制。因此可以说,由于船长实行监督并限制承租人控制积载,承租人的责任将受到相应的限制。"

<sup>&</sup>lt;sup>96</sup> 462F2d319 (第2期1972年)。

<sup>97</sup> 另见日商岩井株式会社诉内燃机油轮斯托尔特.莱昂号一案,1980 617F 2d 907,1980 年《美国海事判例》868 (第2期)和塞克罗斯·班文内斯公司诉蒸汽机船奥利弗·德雷舍尔号一案,1985 761 F.2d 855,1985 年《美国海事判例》1168 (第2期)。

<sup>&</sup>lt;sup>98</sup> (1940年) A.C. 934。

81 另一方面,美国的法律对"在船长的监督下"这些字——这些字来自这样一个概念:根据期租约的规定,一船的船长,按他所履行的职责,或是船东的受雇人或是承租人的受雇人——作了不同的解释。正如在桑多纳号一案<sup>99</sup> 中所表达的那样:

"船是船东的船,船长和船员是他雇来负责航行的所有细节和照料船舶的;但是就所有与收交货物有关的事项以及那些装入承租人腰包的船舶收入而言,船长和船员又是承租人的受雇人"。

82. 在尼奇曼公司诉法兰号一案中,法院用下面的话表达了对船长的行动分担责任的概念:

"·····我们认为,船东对由于积载不善造成货物损坏所承担的责任仅限于船长为保护船舶的安全和抵御海上风险的能力而干预积载过程的情况;由于他的行为仅仅是为了保护货物,应由承租人承担责任。"100

83. 在"监督"一词后常常加上"与负责"等字,这样这一条就变成这样了:"承租人须在船长的监督与负责下·······装货······"。这也使情况变得复杂了。在宍道津丸5号一案中,<sup>101</sup> "与负责"等字样的作用被认为是使积载不善的责任表面上从承租人转到船东身上,但是,据认为,如果在哪一案件中可以表明承租人在积载过程中例如下达了某些指示,因而造成了有关的灭失或损坏,那么船东就能够相应逃避责任。后来的阿戈诺特号案<sup>102</sup> 和 P 阿勒克珊德洛斯号案<sup>103</sup> 就沿用了这一案件中的判决。在后一案件中,J 斯坦强调指出,第 8 条中的"与负责"等字样以及由此包含的风险转移与装货、积载、平舱和卸货的整个作业联系了起来。再者,它不仅包括了操纵船具和装卸货物的机械程序,而且包括了装卸货物的重要规划中装卸的过失等事项。

<sup>&</sup>lt;sup>99</sup> 152 Fed.516 (S.D.N.Y.1907 年)。

<sup>100</sup> 另见罗伯蒂纳号案, S.M.A.第 1151 号 (1977 年在纽约仲裁)。

<sup>101 (1985</sup>年) 劳合社报告 1,568。

<sup>102 (1985</sup>年) 劳合社报告 2, 216.

<sup>103 (1986</sup>年) 劳合社报告 1, 421。

- 84. 这三个案件已使船东和承租人各自的责任发生了变化,变化的程度尚未被租船市场充分了解,因为它并未反映出实际的现实。定期承租人可能常常拥有或者至少经营装货泊位和搬运公司,并且具有关于货物的特殊要求的知识和经验,特别是如果这种货物是一种不寻常的货物时就更是如此。纵然他们控制和管理整个装货作业,英国法院近来的一些裁决却使船长对例如搬运工人的过失承担责任——尽管实际上他对他们也许根本就没有进行真正的管制。
- 85. 纽约产物交易所租船合同第8条的意思由于该条款中没有提到"卸货"而变得更加捉摸不定。据讲<sup>104</sup> ,即使租船合同中不添加"和卸货"等字样(情况经常如此),在英国法律的规定大概也会与添加了一样。但美国法律的立场似乎又有所不同。<sup>105</sup>

### G. 协会间协定

- 86. 确定纽约产物交易所租船合同规定的货物索赔的最终责任的整个困难,导致主要的相互保护与赔偿保险协会 (保赔协会) 于 1970 年在它们之间实行纽约产物交易所格式协会间协定,后在 1984 年加以修正,加入了一项为期两年的时间期限。根据这一协定,某几类货物理赔为对半分摊,而其他种类的货物理赔则100%地划归承租人或100%地划归船东,须视造成灭失或损坏的原因而定。
- 87. 协会间协定在船东和承租人之间不具约束力,除非它载入租船合同。<sup>106</sup> 英国上诉法院在斯特拉思牛顿号一案中曾对将 1970 年文本的协会间协定写进受《海牙规则》制约的一项租船合同的效力进行了审议。<sup>107</sup> 此案证实,这项协定规定了在船东和承租人之间实行经济责任机械分摊,不管在《海牙规则》

<sup>104</sup> 威尔福德 •••••,《期租约》,前引书,第 245 页。

<sup>105</sup> 见日商岩井株式会社诉内燃机油轮斯托乐特·莱昂号一案, (1980 617 F.2d 907, 1980 年《美国海事判例》(第 2 期) rev'g 1979 年《美国海事判例》 2415 (S.D.N.Y.1979 年)。

<sup>106</sup> 约恩号案 (1980年) 劳合社报告 2, 245。

<sup>107 (1983</sup>年) 劳合社报告1,219。

基础上规定的职能和责任分配。实际上,避免这种分配被认为是协定的根本目标<sup>108</sup> 。因此,写进租船合同第 24 条的美国海上货物运输法规定的一年索赔时限不适用,根据英国法律,属于协定范围内的索赔可在为期六年的限期内提出。该协定在 1984 年进行了修正,规定所有赔偿要求必须在卸货后两年内以书面形式提出。

- 88. 协会间协定不会对每一个案件都适用。"为使该协定适用,决不能对纽约产物交易所租船合同中的货物责任条款进行实质性修正。实质性修正就是使船东和承租人之间对货物理赔的责任变得明确的修正·····。第8条中"在······监督"的后面添加"与负责"等字样以及在第26条第2句中添加"货物理赔"等字样,将会使该协定无法执行"。109

<sup>108</sup> 据法官克尔勋爵在报告第 223 和第 225 页的论述; 另见本劳尔斯号, (1989年) 劳合社报告 2, 第 51 页。

<sup>109</sup> 协会间协定第1(ii)(b)条; 另见第1(ii)(c)条, 其中载有一种一致同意的责任分配办法, 唯一的实质性修正是在"在\*\*\*\*\*监督"等字样之后添加"与负责"等字样。

<sup>110</sup> D.米德,《协会间协定-有纰漏?》,国际保赔协会,1989年8月,第7页。

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90. 这项条款的本来目的是解决由于纽约产物交易所租船合同格式中涉及一些货物理赔责任条款的不充分所引起的问题的。而这一条款,事实证明它本身就是一个产生纠纷的根源。<sup>112</sup>

## H. 货物责任条款

- 91. 在每一个案件中货物理赔责任的分配一般都取决于租船合同中各自责任条款的措词。根据四种租船合同格式船东对货物灭失或损坏所承担的责任的基础是不同的,有的几乎是严格的责任(Asba 期租约范本),有的责任十分有限(波罗的海期租约范本)以及《海牙规则》制度(纽约产物交易所租船合同和班轮期租约范本)。纽约产物交易所租船合同在第24条(首要条款)中将《海牙规则》的美国法令写进了租船合同。因此,要求承运人在每一航次开始之前和开始时给予应有注意,以使船舶具有适航能力,并对货物妥为照料,但有相当广泛的免责事项。113 由于对纽约产物交易所租船合同第24条的解释以及由天在租船合同中写进《海牙规则》而引起的问题在本报告的后面一部分中讨论。114
- 92. 另一方面, Asba 期租约范本 (纽约产物交易所租船合同的 1981 年修订本) 只通过首要条款 (第 23 条) 把《海牙/海牙-维斯比规则》载入根据租船合同开出的提单, 而没有载入租船合同本身。因此, 除了一个非常笼统的免责条款 (第 16 条第二句话) 外, Asba 期租约范本并未写进任何具体涉及货物理赔责任的条款, 这项免责条款规定:

"天灾,敌人,火灾,王子、当权者和人民的扣押,海洋、江河、机械、锅炉和轮船航行的一切危险与意外事故,以及本租船合同整个期间的航行误差

<sup>.111</sup> 同上, 第8页。

<sup>112</sup> 据了解,各保赔协会现正对该协定进行审查。

<sup>113</sup> 关于就《海牙/海牙-维斯比规则》的要求进行的讨论,见本报告第 段。

<sup>114</sup> 见关于首要条款的讨论, 第....段。

- 一般均属免责"。
- 93. 在纽约产物交易所租船合同中也可看到相同措词。<sup>115</sup> 该条款对船东和承租人的保护是十分有限的,而且它并不包括疏忽免责。英国法院认为该条款所列免责事项是保护船东或承租人的,其条件是灭失或损坏并非由于他们的过失或者他们的受雇人或代理人的过失所造成的。例如,在雷波莱米斯和福尔内斯,威遂及公司一案中,<sup>116</sup> 法院判决"火灾"免责条款并不包括由于疏忽引起的火灾。而在最近的 C 伊曼纽埃尔号案<sup>117</sup> 和萨蒂亚。凯拉什号案<sup>118</sup> 中,纽约产物交易所租船合同第 16 条中的"航行误差"免责被认为只包括非疏忽性误差,因为该条款的范围被认为不足以包括疏忽误差。
- 94. 因此,可以认为,船未根据 Asba 期租约范本和纽约产物交易所租船合同所承担的责任,比根据《海牙或海牙-维斯比规则》承担的责任大得多,在 Asba 期租约范本和纽约产物交易所租船合同中,正像经常发生的情况一样,取消了第 24 条(首要条款),因而也就取消了美国海上货物运输法。 Fon 期租约范本持相似的立场。例如,《规则》第 4 条第 2 款所列免责事项,就比 Asba 期租约范本和纽约产物交易所租船合同第 16 条以及 Fon 期租约范本草案第 26 条所列免责事项广泛得多。特别是《规则》第 4 条第 2 款(a)项规定了对"船长、船员、引水员或承运人的雇佣人员,在船舶的航行或管理中的行为、疏忽或不履行义务"的免责,而第 16 条仅仅包括了并非过失造成的航行误差。此外,关于"火灾"免责,根据《规则》给予承运人的保护也扩大到"由于承运人实际过失或私谋所引起的火灾除外"119 ,而第 16 条再次包括了疏忽造成的火灾。
  - 95. 因此,根据删除了第 24 条的 Asba 期租约范本和纽约产物交易所租船合

<sup>115</sup> 见第 16 条的第二句话; Fon 期租约范本草案中也载有类似条款, 第 26条。

<sup>&</sup>lt;sup>116</sup> (1921 年)《劳氏日报》报告 8,351;(1921 年)3K.B.560。

<sup>&</sup>lt;sup>117</sup> (1982 年)劳合社报告 1,310。

<sup>118 (1984</sup>年) 劳合社报告 1, 588。

<sup>119</sup> 见第 4 条第 2 款 (b) 项。

同以及 Fon 期租约范本的规定,船东将对任何灭失或损坏负责,除非这种灭失或损坏是由于第 16 条中所列有限免责事项之一所造成的。还应指出,船东承担的这么大的责任一般不由船东的保障赔偿协会来解决,因为协会规则把他们对货物的责任限制在《海牙或海牙-维斯比规则》规定的水平,除非向协会送交一份通知书并且由船东额外出钱而得到这类责任的保险。120

96. 根据波罗的海期租约范本第 13 条的规定,只有在船东或其经理在使船舶具有适航能力过程中个人缺乏应有注意或者这些人的任何其他个人行为或不行为而造成延误交船,或在租船合同有效期内延误或货物遭到灭失或损坏的情况下,船东才对这种延误或损失负责。第 13 条的全文如下:

"船东只对延误交船或在租船合同有效期内的延误或船上货物遭到灭失或 损坏负责,如果这类延误或损失是由于船东或其经理在使船舶具有适航能力和 适于航行的过程中缺乏应有注意或者船东或其经理的任何其他个人行为或不行 为或过失而造成的。在任何其他情况下船东一概不负责任,也不对不管什么和 不管怎样造成的损坏或延误负责,即使是由于其受雇人员的疏忽或过失造成的 亦不负责。船东对罢工、雇主停工闭厂或停工或部分或完全限制劳力(其中包 括船长、高级船员或船员)而引起或造成的灭失或损坏不负任何责任。

承租人要对由于不按租船合同的条件装载货物或由于承租人或其受雇人员补充燃料或装货、积载或卸货不当或马虎或者其他不当或疏忽行为而给船舶或给船东造成的灭失或损坏负责"。

- 97. 英国上议院在托尔船舶公司诉加拿大有限公司奥特兰斯集团(兴隆号) 一案<sup>121</sup> 中在不得不对第 13 条加以解释的情况下把它说成具有"严重缺陷",其 多余的话"只能大大增加其复杂性"。<sup>122</sup>
- 98. 在那个案件中,根据波罗的海期租约范本格式租用的那艘船在附加条款中载明其主甲板高度为610米,而实际上其高度为605米。这样,承租人就不

<sup>120</sup> 见联合王国轮船相互保险协会的规则第 25 条第 XXIII 款 (a) 项。

<sup>121 (1984</sup>年) 劳合社报告 1, 123.

<sup>122</sup> 另见本报告第 31-32 段。

能装能载垛两层集装箱的拖车。在由于船东违反船舶说明条款使承租人遭受经济损失而提出索赔时,上议院认为,第 13 条并没有免除船东对违反船舶说明条款以及对与货物有关的经济损失(与有形灭失或损坏形成对照)的责任,除非它可列为延误所致灭失。但是,这项裁决并没有解决哪类与货物有关的经济损失可由船东承担责任,哪类可由承租人承担责任的难题。上议院进一步裁决,第 13 条的第一句话只包括由于船东或其经理在使船舶具有适航能力过程中缺乏应有注意或者由于他们中任何人的任何其他个人行为或不行为或过失所造成的延误交船、租船合同有效期内的延误以及船上货物遭到有形灭失或损坏。第二句话被认为与第一句话有联系,因此与在这两句话中提到的原因之一造成延误和有形灭失或损坏这一相同主题有关。

99. 因此,上议院认为新南威尔士最高法院在威斯特法尔—拉尔森有限公司诉殖民糖业提炼有限公司案<sup>123</sup> 中所作判决是不正确的,在这一案件中,船东要求以船舶不适航为辩护词的承租人分担共同海损费。依仗第 13 条的船东被认为有权在其索赔中胜诉——尽管"这起索赔不属货物的灭失或损坏索赔,而是由于船舶燃料舱故障——这似乎是轮机长的过失——而使其不能维持正常行驶所引起的"。<sup>124</sup> 在勃兰特号案<sup>125</sup> 和阿波罗尼俄斯号案<sup>126</sup> 中,威斯特法尔—拉尔森号案件的判决曾被认为是正确的。上议院在兴隆号案中对这些判决的推理提出了批评。日本邮船会社诉艾克梅航运公司(查拉兰博斯·N.帕特拉斯号)案件被认为受到错判。<sup>127</sup> 在这个案件中,上诉法院认为第 13 条的确保护了船东免付经济损失索赔款。

100. 但是,上议院对兴隆号案的裁决也使得关于解释波罗的海期租约范本

<sup>&</sup>lt;sup>123</sup> (1960年) 劳合社报告 2,206.

<sup>124</sup> 兴隆号 (1984年) 劳合社报告 1, 123, 据罗斯基尔在第 129 页上的论述。

<sup>125 (1965</sup>年) 劳合社报告 2, 546; (1967年) 1Q.B.588。

<sup>126 (1978</sup>年) 劳合社报告 1,53.

<sup>&</sup>lt;sup>127</sup> (1972年) IW.L.R.74。

的条款的其它问题非常捉摸不定。由于把责任限制在船东或其经理在使船舶具有适 就能力过程中"个人"缺乏应有注意,对第 13 条规定的责任的评定就更加捉摸不定 了。正是这种对船东的责任的限制——这使得秘书处调查表的一些答复者提出了批评——才使得该条款严重偏袒船东。撒开这一点不说,限于"个人"缺乏应有注意必然要对船东组织中可能要对任何亏损负责的某些个人以及对这些个人行事的确切身份——他们是作为拥有船舶的公司董事会成员行事,还是代表董事会行事,还是以其他身份行事——进行复杂的调查,而这些资料无疑完全是由船东自己掌握的。

101. 班轮期租约范本第 12 条也产生困难或也有含糊不清之处。它没有写进《海牙规则》。它规定船东对由于船舶不适航和对船上的货物缺乏照料而造成的货物理赔要根据《海牙规则》的规定承担责任——但是有所保留。承租人必须"在装货港和卸货港保管和照料货物",并须"在船长的监督下自费装货、积载和卸货"。该条还明确规定承租人对由于"船舶货舱和/或油舱准备不妥或者由于不影响船舶平舱或航行稳定性的货物装载不当"所造成的索赔承担责任。但是,由于船长或高级船员积极介入积载或货舱或油舱的准备工作或岸上的装卸作业,根据这些条款责任如何分配尚不清楚。

# 1. 首要条款

102. 《1924年统一提单的若干法律规则的国际公约》(《海牙规则》) 或经1968年议定书修正的《海牙规则》(《海牙-维斯比规则》) 不适用于租船合同。<sup>128</sup> 不过,相当经常地用一项所谓的"首要条款"将它们载入期租约和程租约。该条款采取各种格式。有些格式意欲将全部《海牙规则》或《海牙-维斯比规则》, 抑或将颁布《规则》的国家某一立法的相关条款载入租船合同中。<sup>129</sup> 其他的格式只将部分《海牙规则》或《海牙-维斯比规则》或它们在国家某一法规中

<sup>128</sup> 见《规则》第五条。

<sup>129</sup> 见纽约产物交易所租船合同, 第 24 条; 1982 年多种格式租船合同 (1986年修订), 第 33 条; 1984 年万国程租约 (1984年修正的程租约), 代名: Nu 程租约-84, 第 43 条。

的相应规则载入其中。<sup>130</sup> 不过,有些格式只将《规则》载入根据租船合同发出的提单,而另外一些格式则使这些规则既适用于租船合同,又适用于据此发出的提单。在一项标准租船合同中,列入首要条款作为一项增添的"附加"条款也是颇为常见的做法。

103. 首要条款主要是为了适用于提单,而且在这一方面,"它意指一项《海牙规则》据此载入以提单作凭证的合同的条款,并且它使与它不一致的任何明示豁免或条件失效"。<sup>131</sup> 它对租船合同的适用性已引起了某些问题。<sup>132</sup> 产生的问题涉及:《海牙/海牙-维斯比规则》的条款在多大范围内以一项首要条款载入租船合同,以及如此载入的有关条款是否凌驾于租船合同的其余条款之上。

104. 首要条款本身的措辞还可能造成更多的复杂情况。"载入条款有时文字很粗糙:例如,特别是美国的以'本提单应具有······的效力'为开头的首要条款,这一条款经常附加于原先显然无意这样做的租船合同。"<sup>133</sup> 与波罗的海期租约范本和班轮期租约范本不同,纽约产物交易所租船合同第 24 条含有这样的规定:该租约得依照 1893 年的哈特法,而且接着一句话规定,该租约得依照"美国首要条

<sup>&</sup>lt;sup>130</sup> 见"Beepee 程租约 2'83'", 第 40 条。

<sup>&</sup>lt;sup>131</sup> 见 M.R.丹宁勋爵在阿基奥·拉萨罗斯号案中的论述, (1976年) 劳合社报告 2, 47, 第 50 页。

<sup>&</sup>lt;sup>132</sup> 见卡弗论著, 第 13 版, 前引书, 第 474 段: "当《海牙规则》载入租船合同时就产生特殊的困难, 因为这些规则只是为了适用于提单及其所列的载货航次"。

<sup>133</sup> 斯克鲁顿, 第 18 版, 第 405 页, 注释 12.

105. 但是,纽约产物交易所租船合同第24条起草得并不令人非常满意,因为它没有明确表示首要条款是只适用于提单还是也将载入租船合同。它也没有表明,如果航程的起终点不在美国,首要条款是否也适用。最后,它没有明确首要条款是否适用于不载货航程。<sup>135</sup> 在英国,上议院对阿达马斯托斯航运公司诉英美石油公司(萨克逊明星号)一案所作的裁决解决了这些问题中的某些问题,<sup>136</sup>上诉法院将此裁决应用于阿利亚克蒙海运公司诉远洋航运公司(阿利亚克蒙进步号)案、<sup>137</sup> 阿克蒂斯公司诉三光汽船株式会社(阿瓜亚查姆号)案<sup>138</sup> 和七海运输公司诉太平洋联合海运公司(萨蒂亚·凯拉什号)案等案件中以纽约产物交易所租船合同为格式的租船合同。<sup>139</sup> 在阿达马斯托斯号案中,该船被租用来在18个月期间完成尽可能多的连续航次。租船合同中载有明示的绝对的适航保证,并采用一项打印的条款,双方商定所附的首要条款载入租船合同。所附的首要条款

## 美国首要条款

本提单应具有依照 1936 年 4 月 16 日批准的美国海上货物运输法规定的效力,这些规定应被视为已包含在其中,以及其中所载的任何内容都不应被视为承运人放弃任何它的权利或豁免,或增加上述法令规定的责任或义务。如果本提单的任何条款与上述法令有所相悖,这种条款中相悖的部分应无效,但不得进一步引伸。"

<sup>134</sup> 纽约产物交易所租船合同第 24 条称:

<sup>&</sup>quot;还共同商定,本租约依照于1983年2月13日批准、题为'一项有关船舶航运等法'的美国国会法中所载有关根据本租约运往或运出美利坚合众国所有货物的全部条款和规定及所有责任免除的规定。它还依照下述条款——这两条都将列入根据下面的条款发出的所有提单:

<sup>·135</sup> A.戴蒙德,"船东的责任和有关这些责任的豁免条款",前引书,第3页。

<sup>136 (1958</sup>年) 劳合社报告 1,73。

<sup>137 (1978</sup>年) 劳合社报告 2, 449。

<sup>138 (1982</sup>年) 劳合社报告 1, 7.

<sup>139 (1984</sup>年) 劳合社报告 1, 588.

与纽约产物交易所租船合同第 24 条中的美国首要条款相一致。在仲裁诉讼中,首席仲裁人认为该条款没有意义,因为他无法将"本提单"这一术语解释为意指"本租船合同"。但商事法庭法官推翻了他的裁决,判定: 就合同双方理解这种载入而言,该条款已将《海牙规则》纳入租船合同中了。上诉法院的看法与首席仲裁人的相同。但是上议院一致肯定商事法庭在此问题上的判决,断定: (1) 合同双方意欲将《海牙规则》纳入租船合同,因此首要条款中的"本提单"应理解为"本租船合同"; (2) 美国法第 5 条的措辞认为,"该法的规定不应适用于租船合同"。必须将此说法斥之为没有意义;并且以多数判定,(3) 该法第 13 条——它将其效力限于往返于美国的航程——应不予理睬,而且航程应受该法的制约,而不管其起终点在哪里; (4) 该法的规定适用于所有的航次,而不管船舶是放空还是满载。

106. 上议院在将《美国法》《海牙规则的条款》纳入租船合同时,采纳了就早先一个案件<sup>140</sup> 中将租船合同条款纳入提单时所制定的规则:"租船合同的条件必须逐字地理解成提单的条件,就如它们是在提单中从头至尾全文印刷的一样。然后,如果在这样理解时发现租船合同的任一条件与提单不一致,这些条件就失去意义,因此必须不予理睬"。在采用这一规则时,上议院发现该法有关租船合同的很大一部分是不适用的,因此应置之不顾。<sup>141</sup> 这样,所剩的相关部分是该法的第4条第(1)和(2)款(《海牙规则》第四条第1和2款)。<sup>142</sup>

107. 在阿达马斯托斯号案中适用于连续程租约的原则,根据英国法律下也适用于期租约,同时也适用于纽约产物交易所租船合同格式的租船合同。<sup>143</sup> 在对阿达马斯托斯号案进行推理后,最近的一些英国判例认为纽约产物交易所租船合

<sup>&</sup>lt;sup>140</sup> 哈密尔顿诉麦凯案 (1889年) 5T.L.R.677。

<sup>141</sup> 西蒙兹子爵说:"很显然,该法中与这种租船合同有关的许多内容是无意义的,或者我得说是不适用的,因此必须置之不顾。"

<sup>&</sup>lt;sup>142</sup> 见卡弗论者,前引书,第 476-477 段;威尔福德······,《期租约》,前引书,第 425-426 页。

<sup>143</sup> 威尔福德 ••••••,《期租约》,前引书,第 426 页。

同第 24 条已将《海牙规则》纳入了租船合同。<sup>144</sup> 但是,考虑到期租约和程租约之间的一些重要差别,例如关于适航条件,阿达马斯托斯一案中规定的原则是否能够适用于期租约的所有方面仍是令人怀疑的,正如英国商事法庭法官在智利硝酸盐销售公司诉海洋运输有限公司(赫莫萨号)一案中<sup>145</sup> 所说:

108. 在《海牙/海牙-维斯比规则》载入租船合同的方式上,还出现了更大的困难,即关于它们在一项租船合同的上下文中的含义,以及载入的规则与租船合同条款的关系。新阿格雷克斯股份公司诉波罗的海航运公司(阿吉奥斯·拉扎罗斯号)一案<sup>146</sup> 就是一个例子。这艘船是按标准杂货租船合同格式租用的,在其"附加"条款中载入了第 31 条。该条规定: "\*\*\*\*\*\*\*\*\*而且首要条款也被认为应载入本租船合同。"在一项承租人就货损对船东提出的索赔中,船东辩解说,该索赔已失去时效,因为租船合同载入了首要条款,因而也就载入了《海牙规则》的规定,而海

<sup>144</sup> 见阿利亚克蒙海运公司诉远洋航运公司(阿利亚克蒙进步号)一案, (1978年) 劳合社报告 2, 499-501, M.R.丹宁勋爵在此案中说: "从上议院就阿达马斯托斯号案所作的判决可以明显地看出,虽然有一条款说'本提单应具有······效力', 但是该条款的实际意思是'本租船合同应具有······效力', 所以,《海牙规则》的规定适用于本期租约"。还请参阅阿克蒂斯公司诉三光汽船株式会社(阿瓜亚查姆号)一案, (1982年) 劳合社报告 1, 7; 七海运输公司诉太平洋联合海运公司(萨蒂亚·凯拉什号) 一案 (1984年) 劳合社报告 1, 588。

<sup>&</sup>lt;sup>145</sup> (1980年) 劳合社报告 1,638,第 647页。

<sup>146 (1976</sup>年) 劳合社报告 2, 47。

牙规则第三 6 条免除了承运人在货物灭失或损坏方面的全部责任,除非在交货一年以内提起诉讼。英国商事法庭判定,第 31 条中"而且首要条款也"这一短语是无效的,因为有许多不同的首要条款,他不能说应载入哪一项首要条款,因此,任何一条《海牙规则》都不适用,因而不存在时限问题。上诉法院撤销了他的判决,认为由于合同双方已明确表示"首要条款被认为应载入租船合同,就应当努力使这种载入生效而不是使它失去意义。因此,上诉法院认为,当"首要条款"不加任何限制条件地载入时,它意指全部《海牙规则》,包括一年的时限(第三 6 条)都载入了其中。147

109. 在此案中,M.R.丹宁勋爵从该具体租船合同上下文审议"首要条款"的含义时说:"首要条款将《海牙规则》载入租船合同,以便可适用于租船合同,使该航次,或若干航次遵照《海牙规则》;而且它使这些规则凌驾于租船合同中的任何免责情况之上。"<sup>148</sup> 这似乎表明,一旦所载的《海牙规则》与租船合同中的其他条款(至少是其他印刷的条款)出现不一致,将以《海牙规则》的规定为主。<sup>149</sup> 但是如果不存在冲突,具体合同的条款与《海牙规则》就捏合在一起。合并的条款相互发生效用。在性质或效力上不存在分界线或差异,只是如果载入的条款也是一项首要条款,那么《海牙规则》将不仅仅补充具体的合同,而且还将自行起作用,以修正该合同中任何不相一致的条款。"<sup>150</sup>

110. 但是在下述条件下情况并不总是很清楚的,即在纽约产物交易所租船合同条件下用标准格式中一项印刷的条款或在阿吉奥斯·拉扎罗斯号案件中用另一"附加"条款引入首要条款时,对租船合同其他条款的作用是否相同。如果首要条款是印刷的,而其他相冲突的规定是打印的,那么也许可能以后者为主。<sup>151</sup>

<sup>147</sup> 还请见福尔内斯·威遂公司(澳)诉金属经销有限公司(英)(阿马佐尼亚号)一案,(1990年)劳合社报告1,236。

<sup>148</sup> 见同上, 第 50 页。

<sup>149</sup> 也请见法官戈夫勋爵的论著,第53页。

<sup>150</sup> 根据大法官肖的论著,同上,第59页。

<sup>151</sup> 见萨蒂亚·凯拉什号案。

- 111. 《海牙/海牙-维斯比规则》中的规定载入租船合同时所作的解释也许 与对载入提单时所作的解释不一样,这一情况更使人们感到捉摸不定。在澳大利亚 案件澳大利亚石油提炼公司诉米勒 (E.W.) 公司<sup>152</sup> 中,租船合同载有这样一个 条款 (第15条): 免除船东因"船长、船员、引水员或船东的雇佣人员, 在航行或 管理船舶中的行为、疏忽或不履行义务造成灭失或损坏的责任•••••"。另一条款规 定,"船东应享有启运国实施《海牙规则》的法令中所载的承运人或船舶拥有的'权 利和豁免'的好处·····"。这一条款的作用是将《海牙规则》第四2(a)条(与第 15 条的措辞相同)载入租船合同。该船与承租人的码头相撞,因此问题是应由谁 负责造成的损坏。法院不得不判定第15条中的措辞与《海牙规则》中的措辞含义 是否相同。在此情况下,该条将只适用于货物方面的灭失或损坏,而不包括码头的 损坏。新南威尔士最高法院裁定,该条款的解释与《海牙规则》中所用措辞的解释 相同,因此,船东应负责因碰撞造成的损坏。澳大利亚高等法院撤销了这一判决, 认为《海牙规则》载入租船合同并不意味着第 15 条中的相关措辞在提单中作什么 解释就应作什么解释。因此该条款应包括码头的损坏,船东有权得到该条款提供的 保护。153 在萨蒂亚·凯拉什号一案以纽约产物交易所租船合同为格式的期租合 同的上下文中,"灭失或损坏"这些字眼被赋予了范围甚至更大的含义。
- 112. 此外,在有关租船合同的各国不同的法律的上下文中,《海牙/海牙-维斯比规则》载入租船合同一事也可能产生不同的结果。举例来说,当《海牙规则》载入期租合同时,如在纽约产物交易所租船合同中列入美国海上货物运输法那样,美国和英国的法律在租船全国开始生效时对明示的绝对的适航保证的作用似乎是不同的。在美国,在伊利坎国际公司诉约翰·韦尔豪泽一案中裁定,<sup>154</sup> 虽然1936年美国海上货物运输法载入一项纽约产物交易所租船合同格式的租船合同中使默示的绝对的适航保证降低为一项仅对船舶适航给予应有注意的许诺,但它不影

<sup>152 (1968</sup>年) 劳合社报告 1,448.

<sup>153</sup> 见卡弗论著,前引书,第 478 段。

<sup>&</sup>lt;sup>154</sup> 1974 年 372F.Supp.859, 1974 年《美国海事判例》1719 (S.D.N.Y), aff'd 507 F.2d 68 (2d Cir.1974 年) cert. denied 421 U.S.956。

响如下明示的绝对的保证:交付的船舶应当"不漏水、牢固和结实,并在一切方面适于使用"。相比之下,根据英国法律的情况似乎是,《海牙规则》载入一项期租合同将把明示的绝对的适航保证和默示的绝对的适航保证二者都取代。在阿达马斯托斯航运公司诉英美石油公司(萨克逊明星号)一案中,<sup>155</sup>对连续程租约的案件就是这样裁定的。在阿达马斯托斯航运公司一案中适用于连续程租约的原则,根据英国的法律,在这方面也适用于期租约。<sup>156</sup>

### J. 赔偿条款

<sup>&</sup>lt;sup>155</sup> (1959 年) A.C.133, 恢复 (1957 年) 劳合社报告 1, 79.

<sup>.&</sup>lt;sup>156</sup> 见阿利亚克蒙海运公司诉远洋航运公司(阿利亚克蒙进步号)案, (1978年) 劳合社报告 2, 499; 阿克蒂斯公司诉三光汽船株式会社(阿瓜亚查姆号)案, (1982年) 第 1W.L.R.119 及七海运输公司诉太平洋联合海运公司(萨蒂亚·凯拉什号)案, (1984年) 劳合社报告 1, 588.

<sup>157</sup> Asba 期租约范本第 8 条规定了一项明示赔偿,其内容是:"船长 (虽然是由船东指定的) 应在使用和代理业务方面服从承租人的指令和指示······而承租人应使船东免于承担本租船合同与由承租人或其代理人或由船长应他们的请求签署的提单或运货单之间的不一致可能引起的一切后果或责任。"

题常常采取不同的方针。

- 114 在某些管辖系统内,租船合同不规定明示赔偿条款,对于因船长服从承租人的指令给第三方造成的责任船东可依法免于受罚。例如,根据英国的法律,假定船长服从承租人的命令的行为并不是明显非法的话,可以默示免罚。<sup>158</sup>
- 115 在特尔费尔航运公司诉伊纳西航运公司(P卡罗琳号)一案中, 159 该船是按纽约产物交易所租船合同格式租用的, 因装载不良造成货物的灭失和损坏, 根据提单船东对收货人负有责任, 而根据租船合同, 船东对此是没有责任的。在涉及承租人赔偿的诉论中, 英国商事法庭判决, 提单规定的船东承担的义务比租船合同规定的更为繁重, 而且虽然租船合同不载有明示赔偿规定, 船东还是有权获取默示赔偿规定的好处, 这种规定使他们免于承担船长签署提单造成的后果, 而且这种赔偿不因诉讼而变成强制付诸实施, 除非法院及早查明船东对收货人的责任。
- 116. 这样,根据英国法律,默示赔偿与明示赔偿一样,将使船东有权要求得到承租人的赔偿。承租人把提单出示给船长签署,这种提单使船东承担的责任比他们根据租船合同承担的责任更大,如果根据提单他们被裁定对提单持有人负有责任的话。<sup>160</sup> 但是,在某些管辖系统内,如果加重的赔偿责任是法律本身引起的,这样一种赔偿似乎是不允许的。这样,"•••••如果收货人根据适用于提单的强制性规则认为承运人负有责任,承运人就无权得到承租人的赔偿,即使根据租船合同

<sup>158</sup> 斯特拉思洛内轮船公司诉安德鲁·韦尔一案 (1934年)《劳氏日报》报告50,185;也见汉森-坦杰斯·雷德里有限公司诉运输总公司(萨戈纳号)一案, (1984年)劳合社报告1,194。

<sup>159 (1984</sup>年) 劳合社报告 2, 466.

<sup>&</sup>lt;sup>160</sup> 克鲁格诉莫尔·特里范一案, (1907年) A.C.272。

的条款承运人的责任已被有效地排除在外也罢。"161

117. 一家英国法院在本恩轮船公司诉安一布鲁德·贝恩(C乔伊斯号)一案中<sup>162</sup> 也否定了赔偿权。标准杂货租船合同格式的租船合同以一项打印的附加条款明确规定,根据该租船合同发出的所有提单可包含一项首要条款,因此船东就得承担根据提单而加重的责任。英国商事法庭法官说:"这些措辞必然默示这样一点吗?即如果根据(船东的责任条款)第2条不使他们对承租人承担责任的理由,船东应对提单持有人负有责任的话,船东应有权不承担此种责任而由承租人赔偿吗?我认为不是这样。条款中明确规定,根据租船合同签署的所有提单都应包含首要条款。这种规定必然使船东对提单的被背书人负有《海牙规则》的责任。这必定亦即应当是明显的。如果船东在出现那种不测情况时想要承租人赔偿,显而易见的办法是就要求赔偿。"<sup>163</sup>

118. 尽管明示赔偿条款,如波罗的海期租约范本所载的条款,所涉范围显然都很广,但该条款提供的保护受到如下条件的限制:承租人的指令必然是船东所受损失的直接原因。因此,英国法院把赔偿条款解释成只管承租人的指示直接引起的损失,因为"如果有某种过失行为或某种海上意外发生,那么因果链就断开,赔偿条款就不起作用"。164 这样,该条款并不在承租人下达一项将使船东与责任

<sup>161</sup> 韦斯特基斯特 1 号案, 1961 年, 北方海事案件, 325, P格拉姆援引, 他评述了 1893 年 7 月修正后的《挪威海事法典》第 95 条最后一段。该段内容为: "如果根据一项合同发出的一份提单造成承运人责任的加重, 承租人应赔偿承运人。"在上述一案中, 该段被裁定为不是为了在责任的加重产生于法律本身时保护承运人。见 P格拉姆翻译并附有评注的《挪威海事法典》, (奥斯陆, 1975 年) 第 22 页。

<sup>&</sup>lt;sup>162</sup> (1986年)劳合社报告 2,285。

<sup>163</sup> 同上,根据 J.宾厄姆的论著,第 289 页。

<sup>&</sup>lt;sup>164</sup> 拉里纳贾轮船公司诉英王案, (1945年) A.C.246, 根据波特勋爵的论著, 第 263 页。

发生牵连关系的指令后发生的每一次事故中都保护船东。165

119. 法院的判决尚未完全解决这种条款对船东提供的保护的范围问题。166 这样,期租约中的明示和默示赔偿,都存在不确定的情况。

### K. 根据期租约发出的提单

120. 所有四种租船合同都规定船长得"在使用、代理业务和其他安排方面服从承租人的指令"或有类似意思的措辞。<sup>167</sup> 纽约产物交易所租船合同、Asba 期租约范本和班轮期租约范本还明确要求船长"在所出示的提单上签字",但是不管这些补充字眼加不加上,看来承租人都可能要求船长签署他们订购货物的提单或由承租人自己签署提单。<sup>168</sup>

121. 只要提单仍在承租人手中,这些提单就只被认为是货物的收据,因而租船合同仍是指导船东与承租人合同关系的文件,<sup>169</sup> 即使承租人成为原先签发给承租人本人以外的托运人的提单的被背书人。<sup>170</sup> 但是,如果承租人将提单转让给非租船合同一方的第三方,或如果承租人本人不装运货物因而将提单签发给承租人以外的托运人,提单就调节与这种提单持有人的关系。但是由此出现的问题是

<sup>165</sup> 白玫瑰号案, (1969年) 劳合社报告 2, 52; 希腊皇家政府诉交通大臣 (安·斯塔塔拉斯号), 案 (1950年) 《劳氏日报》报告 83, 228; 也见卡弗论著, 前引书, 第 680-681 段; 斯克鲁顿的论著, 前引书, 第 370页; 威尔福德····,期《租约》, 前引书, 第 199页。

<sup>166</sup> 参见麦克奈尔法官先生在博斯马诉拉森 (1966年) 一案中的论述, 劳合社报告 1, 22, 第 27 页。

<sup>&</sup>lt;sup>167</sup> 见波罗的海期租约范本, 第 9 条; 纽约产物交易所租船合同、第 8 条; Asba 期租约范本第 8 条; 以及班轮期租约范本, 第 10 条。

<sup>&</sup>lt;sup>168</sup> 蒂尔曼斯公司诉克努斯福德轮船公司案, (1908年) A.C.406。

<sup>&</sup>lt;sup>169</sup> 见卡弗的论著,前引书,第 699-701 段;斯克鲁顿的著作,前引书,第 58-62 页。

<sup>&</sup>lt;sup>170</sup> 印度总统诉梅特卡夫航运公司案, (1970年) 1Q.B.289。

载入提单的合同是与船东签的还是与承租人签的。问题仍需依然每一案件的具体情况来断定。但总的说来,如果租船合同不是一个光船租船合同,船长签署的提单通常被认为是提单持有人与船东之间的合同,<sup>171</sup> 即使租船合同载有一项条款规定船长应作为承租人的代理人签署提单——假定提单持有人不了解有这一条款。<sup>172</sup> 另一方面,船长的签署对承租人具有约束力,如果从周围的情况可以看出船长在作为承租人而不是船主的代理人行事;以及如果促使提单持有人相信,他是在与承租人签订合同,例如在承租人经营一家知名的班轮公司并使用其自己的提单格式的情况下。<sup>173</sup>

- 122. 如提单由承租人或其代理人签署,情况就更不清楚了。纽约产物交易所租船合同、Asba 和班轮期租约范本所载那一条款的大意是,船长得在使用和代理业务方面服从承租人的指令及"签署所出示的提单"。根据英国法律,此条被解释为承租人或其代理人有权代表船长签署提单。这样,"承租人可以不把这类提单交由船长让他代表船东签署,而自己代表船东签署提单。在任何一种情况下,不论是船长根据承租人的指示签署,还是承租人绕过船长自行签署,这种签署对船东具有约案,使他成为提单中所载或由提单作证的合同的当事方。"174
- 123. 在蒂尔曼斯公司诉克努斯福德轮船公司一案中<sup>175</sup> ,租船合同中没有要求船长签署所出示的提单的具体措辞,而由承租人"为船长和船东"签署了一份提单。L.J.肯尼迪就此案在上诉法院中说:
  - "(船东)不应当否定这种签署作为代表船东和船长所作签署的权力,因为他们自己根据合同同意船长应按承租人的指示行动,因此我认为,当把货物

<sup>&</sup>lt;sup>171</sup> 魏纳诉迪恩轮船公司案, (1905) 2K.B.92-98; 委内瑞拉号案 (1980年) 劳合社报告 1, 393。

<sup>&</sup>lt;sup>172</sup> 曼彻斯特信托公司诉福尔内斯·威遂公司一案, (1895年) 2Q.B.539。

<sup>&</sup>lt;sup>173</sup> 埃尔德, 登普斯特诉佩特森, 佐乔尼斯一案, (1924年) A.C.522; 塞缪尔 诉西哈特普尔航行公司一案, (1906年) 11Com.Cas.115。

<sup>&</sup>lt;sup>174</sup> 伯克郡号案, (1974年) 劳合社报告 1, 185-188。

<sup>&</sup>lt;sup>175</sup> (1908年)2 K.B.,第 385页。

装上船的托运人对他们提出起诉时,必须把承租人代表他们所作的签署看作是一种他们无法否认的签署,因为他们在合同中以明示的条款赋予承租人指示在单据上签字的权利,因此必须暗示假定他们既代表船长又代表船东给了承租人代表他们任一方或双方签署的权力。"

上议院确认了提单对船东具有约束力的判决。176

- 124. 另一方面,根据美国法律,由承租人"为船长"签署的提单对船东本人作为缔约方没有约束力,而被认为是一项与承租人签订的合同,除非船长或船东实际授权承租人签署。<sup>177</sup>
- 125. 在耶拉梅克斯国际公司诉蒸汽机船'特多'号一案中, <sup>178</sup> 法院根据美国法律解释了船长权力的两重性原则, 法院是这样说的:
  - "•••••船舶的期租约的条款赋予船长以分别作为船东代理人和承租人代理人行事的双重权力,负责处理涉及船东为船舶承担的和承租人为货物承担的不同责任的事务。"
- 126. 在该案中,承租人的提单是为"船长"签署的,但是仍然判定,根据提单,船东本人不承担作为缔约方的责任。<sup>179</sup>
- 127. 此外,纽约产物交易所租船合同、Asba 和班轮期租约范本要求船长 "签署所出示的提单"的措辞并不授权承租人签署提单以便约束作为缔约一方的船 东。这样,"根据美国法律,船长在签署承租人出示的提单时,可以严格地作为承租

<sup>&</sup>lt;sup>176</sup> (1908年) A.C.406。

<sup>177</sup> 见威尔福德 ••••• 《期租约》,前引书,第 276 页。

<sup>&</sup>lt;sup>178</sup> 1979 年 595F., 第 2 版 943; 1979 年 《美国海事判例》1282 (第 4 期)。

<sup>179</sup> 也请见登塞联营公司诉蒸汽机船海星号一案,1972年461F.第2版1009 (第2期)及罗斯工业公司诉格雷克·奥登多夫一案,1980年483F.Supp.195;1980年《美国海事判例》1397。

人的代理人,而不是象传统上按一船海洋法那样作船东的代理人。"180

# L. 租金支付和撤船条款

128. 期租约的标准格式无不载有关于船舶在承租人支配期间支付租金的条 款。通常情况下租金要求预付,每历月(或其他适当期限)一次,用现金付款,不 打折,如不支付,允许船东完全终止租船合同。波罗的海期租约范本格式第6条 要求: "承租人按费率支付租金·····每30日一次,按照第1条(从上午9时至下午 6时,或在星期六从上午9时至下午2时之间把船舶交由承租人支配之时〕起算直 至该船舶交还船东时为止。租金以现金支付\*\*\*\*\*不打折,每30日一次,预付\*\*\*\*\* 如拖延付款,船东有权从承租人的使用中撤回船舶,无需提出任何海事报告书和任 何法院或其他形式不得干预,也不损害船东根据租船合同可能对承租人提出的索 赔。"班轮期租约范本在第7条中也载有类似的措辞并且多加一条规定,支付最后 一期租金。纽约产物交易所租船合同(第5条)的措辞有所不同。它规定租金支 付"用现金\*\*\*\*\*提前半月,而且为最后半月或不到半月的时间,预付相近数目的租 金,如果实际时间超出半月,余下的租金到期时按日支付——如果船东如此要求的 话,除非承租人作了银行担保或有银行存款。如果承租人不准时和不按时支付租 金,或不作出银行担保,或违反本租船合同,船东应可自由地从承担人的使用中撤 回船舶,而不影响他们(船东)对承租人可能提出的索赔。时间从工作日的上午7 时起算,但在前一天的下午4时以前,已向承租人或其代理人发出了装卸准备就 绪通知书 \*\*\*\*\*。"

129. 这些条款的解释近年来引起了一系列争端。英国和美国的法院及仲裁法庭对此作了各种迥然不同的解释; 秘书处调查表的答复者批评了这些条款。

<sup>180</sup> 威尔福德······《期租约》,前引书,第 276 页。Asba 期租约范本和一些油轮期租约范本载有关于承租人签署提单的具体措辞。Asba 期租约范本内容: "·········· 船长······得签署所出示的货物提单········然而,承租人可自行选择由承租人或其代理 人代表船长签署提单·······": 第 8 条,第 147-150 行。

#### 1. 现金支付

130. 波罗的海期租约范本、纽约产物交易所租船合同和班轮期租约范本规定以"现金"支付租金。"现金支付"这些词是基于现代商业惯例这一背景解释的。按此解释,它们获得了"更广泛的含义,包括任何商业上承认的转拨资金的方法,这种转拨的结果是为了使受让人获得无条件地即期使用转拨资金的权利"。 181 这样,在这种情况下,根据伦敦货币结算方案 185 所开的"银行付款传票"、 182 "银行记票"、 183 "银行间转帐单" 184 及 "付款凭证"等都以现金等值对待。

131. 对于粗心大意的承租人来说,"现金"支付的条件可能是个陷阱, 奇库马号案就真是这种情况。<sup>186</sup> 在此案中, 英国上议院裁定, 船东有权收取现金或现金等值, 而且这种款项必须能够无条件地使用才行。<sup>187</sup> 在奇库马号案中, 船舶是按纽约产物交易所租船合同租用的, 租金于应支付日付给了船东在热那亚的银行, 但是付款银行——也在热那亚——在电汇中列入的"起息日"为四天以后。这样做的结果是, 根据意大利的银行业务惯例, 在起息日以前, 船东不付利息不能提款。在行情上涨情况下, 船东试图解除租船合同, 因此撤回了该条船舶。

<sup>181</sup> 根据 J.布兰登在布里姆内斯号案中的陈述, (1971年) 劳合社报告 2, 465-476。该陈述得到审理该案的上诉法院的核准, (1974年) 劳合社报告 2, 241-248; 并在随后的案件中被采纳: 见拉科尼亚号案, (1976年) 劳合社报告 1, 395, 第 402 - 404页; 奇库马号案, (1979年) 劳合社报告 1, 367-372; (1980年) 劳合社报告 2, 409-412 (C.A), 以及 (1981年) 劳合社报告 1, 371, 第 375-376页 (H.L)。

<sup>182</sup> C.热奥吉斯号案, (1971年) 劳合社报告 1, 7-14。

<sup>.183</sup> 布里姆内斯号案, (1974年) 劳合社报告 2, 241。

<sup>184</sup> 同上。

<sup>185</sup> 拉科尼亚号案, (1977年) 劳合社报告 1, 315。

<sup>186 (1981</sup>年) 劳合社报告 1, 371。

<sup>&</sup>lt;sup>187</sup> P.托德, 前引书, 第 141 页。

- 132. 仲裁人发现,尽管这笔款子要到四天以后才给船东生息,他们却可以立即使用这笔款子,而且如果他们提款,他们将不得不向他们的银行支付四天的利息。另一方面,商事法庭法官判定,鉴于电汇的条件是,要到规定的应支付日以后的日期这笔款子才给受让人生息,承租人当时没有支付现金或现金等值,因此,没有赋予受让人以无条件即期使用所转拨款项的权利。上诉法院撤销了该项判决,裁定在租金应付之日,船东已能充分使用这笔款项。这不是有条件的,仅仅在帐上记入一笔微不足道的银行手续费而已,将不会使这笔款子的提取成为有条件。
- 133. 接着上议院又否决了上诉法院的判决,恢复了商事法庭法官的原判,裁定承租人没有以现金支付应付的租金,因此船东有权根据租船合同和 5 条撤回船舶。布里奇勋爵指出:"当不以实实在在的现金,即美元汇票或其他法定货币 (无人期望得到它) 向银行付款时,就不是第 5 条含义范围内的"现金支付",除非债权人收取的是现金等值,或和现金一样可靠的东西。船东银行在(应付租金日)记入船东帐户的帐面记录显然不是现金等值······它不能用来生息,例如立即转入存款帐户。这笔款子只能在(很可能)必须付息之后才可提取。"188
- 134. 在美国,似乎存在着一种普遍的商业惯例,承认普通支票、付款凭证或电汇为"现金"的等值,即使船东银行需要一天或一天以上的时间兑现支票或汇款之后才让船东不加限制地使用款项。不过,在彭塔号案中对此惯例提出了疑问, 189 在此案中,用应支付日以后兑现的普通支票支付租金被裁定为承租人违反了"现金"支付的义务: "\*\*\*\*\*\*如果(承租人)决意以支票支付,发票或者可以联邦资金偿付,或者大大提前,以便有时间兑现支票。"190
  - 135. 这样,有些现代的干货期租约和油轮期租约191 没有特别要求是用

<sup>&</sup>lt;sup>188</sup> (1981 年)劳合社报告 1,371,第 375-376 页。

<sup>189</sup> S.M.A.1603 号 (在纽约仲裁, 1981 年)。

<sup>190</sup> 见威尔福德•••••,《期租约》前引书, 第 220 页。

<sup>191</sup> 例如 Asba 期租约范本, 见第 5 条; 1980年 Intertank 期租约范本, 第 3 条; Fon 期租约范本草案, 条 16 条; 及美国 STB 油轮期租约范本, 第 3 (a) 条。

"现金"支付租金。美国 STB 油轮期租约规定用支票支付租金。

136 在确定付款的确切时间时问题上还出现了进一步的复杂情况。确定付款的确切时刻对于断定准时还是迟延付款具有十分重大的意义。在允许用支票付款的情况下,受款人收到支票就当作充分履行了合同,即使通常认为在支票兑现和信贷转帐前,支票付款是有条件的付款。<sup>192</sup>

137 在用"银行汇票"或等同单据付款时,船东银行递交这种单据就是付款时间,即使它需要一段处理的时间才能将它贷入船东的帐户。<sup>193</sup> 但是,在根据伦敦货币结算方案用"付款凭证"付款方面,情况还不明朗。在拉科尼亚号案中出现了问题,<sup>194</sup> 在此案中,英国商事法庭法官发表看法认为,在款项得到处理并贷入船东帐户前,付款手续是不完备的。上诉法院的看法却不同。当付款凭证交给船东银行时,租金的支付就被认为已经完成。虽然此案是依据其他原因判决的,但是在上议院仍有三位议员就此问题发表了意见。萨蒙勋爵指出:"用美元汇票付款和用付款凭证付款之间不存在实际差异。在银行界,用付款凭证所付的款项被普遍看成和公认为现金"。<sup>195</sup> 拉塞尔勋爵表示了类似的看法。<sup>196</sup> 但是,弗雷泽勋爵看法不同。他认为:"承租人必须以充裕的时间提前支付以便留出他们所选择的支付方法通常所需的处理时间"。<sup>197</sup>

138. 当承租人银行以发电报通知方式向船东银行——承租人银行本身与之有着帐户关系以便把租金转入船东帐户——付款时,就产生了何时实施支付的问题? 是银行收到用户电报就构成付款,抑或这仅仅是付款过程的一部分? 在布里姆

<sup>192</sup> 快捷油船公司诉比利时金融石油公司 (1948年)《劳氏日报》报告 82, 43, 第 54-59页;布里姆内斯号案 (1974年)劳合社报告 2, 241-257。

<sup>193</sup> 布里姆内斯号案 (1974年) 劳合社报告 2, 241-248。

<sup>194 (1975</sup>年) 劳合社报告 1,640。

<sup>&</sup>lt;sup>195</sup> (1977年) 劳合社报告 1,315,第 327页。

<sup>&</sup>lt;sup>196</sup> 同上,第 333 页。

<sup>&</sup>lt;sup>197</sup> 同上,第 330 页。

内斯号案中,<sup>198</sup> 英国上诉法院裁定,仅仅收到载有指示的单据并不构成"付款",而且在作出将款项从承租人帐户转入船东帐户的决定以前,没有构成付款。<sup>199</sup>

## 2. 预付款

139. 组金一律要求"预付"。要求"预付款"的规定必须严格履行,因为违反这一规定将使船东有权立即撤回船舶。关于预付款的条款适用于整个租船期,甚至适用于第一期付款。在川崎汽船株式会社诉本瑟姆轮船公司一案中,<sup>200</sup> 承租人争论说,关于预付款的规定不适用于第一期付款,因为不知道船舶何时抵达,预付款有困难。不过法院仍裁定,合同规定预付款,甚至第一期付款也如此。该租船合同载有一项与纽约产物交易所租船合同第5条中的规定相类似的规定。它规定"交付时间从工作日的上午7时起算,但需在前一天的下午4时以前已发出书面通知。"法官指出,在按这一条规定发出通知的情况下,存在着从某天下午4时至下一个工作日上午7时的一段时间,在这段时间内可以预付款。由于要求在一个不同于交船地的地点支付租金,就可能产生问题;而且在某些国家,银行下午4时前关门,翌日上午7时以后才重新开始营业,承租人实际上找不到银行营业时间预付款。<sup>201</sup>

140. 至于最后一期租金的支付,纽约产物交易所租船合同和班轮期租约范本都载有明确条款,允许承租人按照合理预计的还船日期支付相称数额的租金。在租船合同不载有此类明确条款,如在波罗的海期租约范本那样的情况下,规定承租人有责任全额支付最后一期租金,即使按照合理预计船舶在月底前归还,但船东有

<sup>&</sup>lt;sup>198</sup> (1974年) 劳合社报告 2,241。

<sup>199</sup> 也见 M. 佐格拉菲亚号案, (1976年) 劳合社报告 2, 382; 埃菲号案, (1972年) 劳合社报告 1, 18。

<sup>&</sup>lt;sup>200</sup> (1938年) 1K.B.805。

<sup>&</sup>lt;sup>201</sup> 为了解决这些难题, Fon 期租约范本草案规定第一期租金"在不迟于交船后一个银行营业日之内"支付, 见第 16 条。

责任退回可能证明多付的款项。<sup>202</sup> 在此类情况下,据认为赋予"因预付和尚未应得的全部租金而留置船舶的权利"的条款已确保承租人收回份外的租金。<sup>203</sup> 所产生的问题是这样一种留置权的有效性如何,因为由于租船合同不是光船租船合同,承租人不掌握该船从而对它行使留置权。

141. 对于"预付"款的条件,在应支付日为非银行营业日的情况下,美国和英国的法律在处理上有明显的差异。根据纽约普通建筑法,星期六、星期日或假日应支付的款项可依法于下一个营业日支付。在马里亚。G.库鲁坎蒡斯号案中,本原则已应用于期租约的租金支付。<sup>204</sup> 但是英国法律把事情搅乱了,它主张:如果应支付日为星期六、星期日或假日,那么就必须在上一个营业日付款。<sup>205</sup> 如果租金要通过一家对英国法律可能不了解的美国银行支付给一家伦敦银行,这就可能造成困难。<sup>206</sup>

#### 3. 租金扣除

142. 关于可租金扣除问题,所有四项租船合同都载有明确条款,赋予承租人对租金有所扣除的权利。所有四项租船合同都规定船舶通常费用备用金可从"租金中扣除"。<sup>207</sup> 纽约产物交易所租船合同和 Asba 期租约范本还在第 15 条中进一步规定可因时间损失、消耗的额外燃料和由于船舶的船壳、机器和设备的缺陷或

<sup>&</sup>lt;sup>202</sup> 汤内莱尔诉史密斯案, (1897年) 2Com.Cas.258; 斯图尔特诉范奥默伦案, (1918年) 2K.B.560。

<sup>203</sup> 同上, 也见波罗的海期租约范本格式第 18 条。

<sup>&</sup>lt;sup>204</sup>1954 年《美国海事判例》325 (在纽约仲裁, 1952 年)。

<sup>&</sup>lt;sup>205</sup> 见阿斯特罗·阿莫航运公司诉埃尔夫联合公司(佐格拉菲亚 M 号)案, (1976年)劳合社报告 2,382 及马尔多夫·皮奇及其公司诉阿蒂卡海航运公司(拉科尼亚号)案,(1977年)A.C.850。

<sup>&</sup>lt;sup>206</sup> 见埃菲号案, (1972年) 劳合社报告 1, 18。

<sup>&</sup>lt;sup>207</sup> 见纽约产物交易所租船合同,第5条;波罗的海期租约范本,第14条;班 轮期租约范本,第16条。

故障引起船速下降而产生的所有额外费用而扣除一定的租金。根据纽约产物交易所租船合同第20条,用于港口內消耗的燃料费用也可以扣除。对于停租索赔,纽约产物交易所租船合同和Asba期租约范本没有明确规定,但波罗的海期租约范本第11 (A)条则规定"任何预付租金因此作相应调整",而班轮期租约范本第14条将这一规定的应用限于绞车出故障。英国上诉法院把波罗的海期租约范本中的措辞解释为使承租人有权在停租索赔时从随后的租金付款中扣款。<sup>208</sup>

143. 不过,这些条款都没有明确承租人打算扣除的数额是否需要在他们能够扣款前加以商定和确认。这方面产生的问题是,如果有争议的索赔不能从租金中扣除,而承租人根据该条款扣款——扣除额未经商定——那么他将冒船舶被撤回的风险。南弗里号案就出现了这个问题。209 法院裁定,承租人有权根据波罗的海期租约范本第11条,不经船东同意,扣除正当的索赔款,即合理基础上估价的善意索赔款。在上诉法院中,M.R.丹宁勋爵说,承租人有资格通过诚意的合理估算确定其损失的数量,并从租金中扣除如此确定的数额。然后,实际数字可在以后确认:或者由合同双方商定;或者如果达不成一致意见,通过仲裁确定。他说,如果承租人不得不等待商定或确认一个数字,扣除权对他来说就没有用处了,因为在那种情况下,事情可能会无限期地拖着。210

144. 为了避免这类困难,有些油轮租船合同载有关于这个问题的明确条款。例如,美国 STB 油轮期租约第 3 (b) 条允许承租人扣除"任何多付的租金,对此可能存有善意的争议,但是(在这种情况下)承租人应根据船东的请求提供适当的银行担保或其他可靠和充分的担保"。有些油轮租船合同甚至不要求银行担保或其他担保。<sup>211</sup>

145. 所产生的另一个问题是,在无相反方面明确规定的情况下,承租人是 否有资格通过公平的抵消扣除对因违反合同所造成损失的索赔。几家英国法院在此

<sup>&</sup>lt;sup>208</sup> 南弗里号一案, (1978年) 劳合社报告 2, 132。

<sup>209 (1978</sup>年) 劳合社报告 2, 132。

<sup>&</sup>lt;sup>210</sup> 见同上,第 141-142 页。

<sup>&</sup>lt;sup>211</sup> 见 Beepee 期租约范本, 第 13 条。

问题上的裁决不一致,但多数的意见是,只有在船东行为不当和违反合同从而使承租人丧失船舶的使用权 —— 不论是全部还是部分 —— 的情况下,才允许使用抵消权。<sup>212</sup> 因此,承租人被裁定有资格从未付的租金中扣除对船东未能装载全部货物<sup>213</sup> 和违反速度保证<sup>214</sup> 造成的损失的索赔。但是,扣除权未扩大到船东的其他违约行为,例如由于船员疏忽造成的货物的损坏。<sup>215</sup>

146. 这样,为了排除抵消权,将要求有明确的规定,而且仅仅列入一个允许一定扣款的条款被认为是不够的。<sup>216</sup> Fon 期租约范本草案似乎排除任何扣款权,但租船合同指明允许的可以除外。该期租约草案在第 16 条中还进一步规定,任何未经批准的扣款都将被认为是未能准时支付租金,因此会引起撤船权利的应用。

#### 4. 撤船

147. 撤船条款旨在使船东立即和及时地得到租金,而且如果承租人发生财政困难,就保护船东,其方式是授权他们无须经过法定程序就能收回船舶。在行情上涨时,这些条款的执行十分频繁。在那种情况下,船东得密切注意付款时间上哪

<sup>&</sup>lt;sup>212</sup> 特诺号案, (1977年) 劳合社报告 2, 289; 南弗里号案, (1978年) 劳合社报告 2, 132; 也见陆海安全有限公司诉威廉斯·迪金森案, (1942年) 1K.B.187-298; 哈拉容轮船公司诉大陆谷物运输公司案, (1943年) 《劳氏日报》报告 75, 80-84; 哈拉兰博斯·N.帕特拉斯号案, (1971年) 劳合社报告 2, 42。

<sup>&</sup>lt;sup>213</sup> 特诺号案, (1977年) 劳合社报告 2, 289。

<sup>&</sup>lt;sup>214</sup> 克里索沃兰·迪奥号案, (1981 年) 劳合社报告 1, 139。

<sup>&</sup>lt;sup>215</sup> 见南弗里号案, (1978年) 劳合社报告 2, 132-141; 阿利亚克蒙进步号案, (1978年) 劳合社报告 2, 499; 利昂号案, (1985年) 劳合社报告 2, 470。

<sup>&</sup>lt;sup>216</sup> 见特诺号案, (1977年) 劳合社报告 2, 289, 第 293页; 南弗里号案, (1978年) 劳合社报告 2, 132, 第 148页。

怕最短的迟延,以便根据该条款行使他们的权利并终止租船合同,从而得到市场费 率。由于知道根据判例规定,租金应在应支付日准时支付,迟付数小时甚至几分 钟,即使是由于承租人银行在将租金转拨给船东银行的过程中造成延迟,也将使船 东有资格根据撤船条款行使他们的权力。<sup>217</sup> M.R.丹宁勋爵在南弗里号案中 将此称为"航运市场的比赛",而在马尔多夫·皮奇及其公司诉利比里亚阿蒂 卡海运公司(拉科尼亚号)案中219 将此称为"船东和承租人在律师和银行家支 持下所进行的一场智力竞赛\*\*\*\*\* 〔它〕对参赛者也许具有迷惑力,但是它非常费 钱,非常费时间,而且其结局就象玩掷硬币一样捉摸不定。"220 他还说:"租一艘 期租船,租金通过银行支付;而且通常有一条款,使船东能够'在拖欠付款时'或 '不能准时和按时支付租金时,撤回船舶。在合同期内,货运市场行情看涨。船东 盯着注意拖欠付款的现象。根据上议院的判例,船东知道,承租人必须在应支付日 支付租金,否则风险自负。拖一两天 —— 或迟一两分种 —— 都不成。所以船东心 里盘算着: '只要承租人疏忽,少许迟延一点时间,我就能撤船。'随后,由于事有不 巧、承租人出了岔子。可能是租金正好在银行不开门营业的星期六或星期日应支 付。承租人心想星期一付款也不迟。但船东说:'这不行。你本应该上星期五付款。' 他发出了撤船通知。要不,承租人在伦敦的会计或银行也许迟了一个小时把租金转 给纽约的银行; 反之亦然。这都是 6 小时的时差造成的。未受丝毫损失的船东立 即急忙发出撤船通知。承租人不知所措。他早就把一切安排停当,因为他有把握: 他可以使用这条船; 但现在他却被剥夺了使用权。他设法寻出一条脱生之路。有时 候他对支付时间提出异议。他说他以充裕的时间对违约作了弥补。他指望弃权或禁

<sup>&</sup>lt;sup>217</sup>在 M. 佐格拉菲亚号案中, (1976年) 劳合社报告 2, 382, 由于租金费率 在租船合同生效日后大幅度上升, 船东指示其代理人密切注意承租人支付租金的时 间, 以便在拖欠租金时使他们有机会终止合同, 然后以大大提高了的现行租金率与 承租人治谈新合同。如果承租人不准备同意, 那么就以市场费率租给其他承租人。

<sup>218 (1978</sup>年) 劳合社报告 2, 132-134。

<sup>&</sup>lt;sup>219</sup> (1976年) 劳合社报告 1, 395。

<sup>220</sup> 同上, 第 401 页。

止翻供的规定。但他只是发现自己陷入了不仅是法律而且是银行业务惯例的技术性问题的迷津。如果他不能摆脱船东的控制,他就可能转向他的银行并说这是他们的过失。就这样,这场竞赛不断地进行下去。"

148. 因此,完全为了不同的目的而制定的该条款"只是单向起作用,而且只是在行情看涨的情况下发生作用。在行情下跌时,承租人丝毫用不着担心。行情下跌时,船东因意外事故或失误而撤船的情况是非常罕见的。在行情下跌时,船东通常只在承租人无力或不愿付款时才撤回船舶。<sup>221</sup> 在南弗里号案中,当时行情暴跌,尽管承租人对租金进行了据说是未经批准的扣款,船东仍无意终止租船合同。

149. 波罗的海期租约范本和班轮期租约范本中撤船条款的措辞与纽约产物交易所租船合同和 Asba 期租约范本的不同。前两个租船合同载有一项类同的条款,规定: "在拖欠付款时,船东得拥有撤船权······"。后两个租船合同规定: "······如果不能准时和按时支付租金,或不能提供银行担保,或违反本租船合同,船东应可自由地撤回船舶······"。根据英国法律,对这些条款的解释引起了一些争议和混乱。在古巴货运公司诉拉戈尼西航运公司(C.热奥吉斯号)案中,<sup>222</sup> 需要断定的问题是,波罗的海期租约范本格式中的"拖欠付款"这些措辞是否意味着"如果已拖欠付款"或"在拖欠付款时",因为付款虽然迟了,但是款子还是在撤船前支付的。上诉法院在肯定初审法院的判决时裁定,这些措辞意味着"在拖欠付款和只要拖欠状况持续下去"。因此,由于承租人支付了该笔分期付款而弥补了其过失,船东就无权撤船了。在商事法庭,法官评论说,如果想要他们现在争取得到的权利,写上"拖欠准时付款"这样的字眼会更合适些。

150. 在 M.佐格拉菲亚号一案中<sup>223</sup> 遵循了 C.热奥吉斯号一案的判决,用

<sup>&</sup>lt;sup>221</sup> 根据 J 劳埃德在阿福沃斯号案中的论述, (1980年) 劳合社报告 2, 469-479; (1982年) 劳合社报告 1, 262-263; 也见特罗温德号案, (1982年) 劳合社报告 1, 232-234; 另外还有里奥苏号一案, (1981年) 劳合社报告 2, 489-495页。

<sup>222 (1971</sup>年) 劳合社报告 1, 7。

<sup>223 (1976</sup>年) 劳合社报告 2, 382.

此判决解释在壳牌公司期租约范本格式中所用的"拖欠这种付款"。法院判决,虽然承租人支付租金迟了,但是在撤船之前,船东根据该条款终止租船合同的权利已不再有效了,因为不支付的情况已由迟支付补救了。"拖欠这种付款"这种措辞曾经受到以前在快捷公司诉比利时金融石油公司一案中<sup>224</sup> 所作解释的制约。在该案中,上议院裁定,该条款使船东有权在迟付租金时撤回船舶。上议院指出:"拖欠付款,也就是说在应支付日拖欠付款是不能用意外事故或疏忽辩解的。就租船合同的明示条款而言,支付的责任是无条件的。"法院在审理时认为,"按时和准时的"这两个形容词没有使租船合同中简单和无条件的用语的严谨性增加。<sup>225</sup>

- 151. 上诉法院在拉科尼亚号案中<sup>226</sup> 也按照 C.热奥吉斯号一案解释纽约产物交易所租船合同格式中的措辞 (即"如果不能准时和按时付款")。
- 152. 但是,在法院审理布里姆内斯号案中<sup>227</sup> 当提出纽约产物交易所租船合同格式中该条款的解释时,承担人根据 C.热奥吉斯号案的判例 (因为当时这是有关这个问题的一个有约束力的判例)争论说,他们付款在撤船之前,而且根据在快捷公司案中所表明的看法,"按时和准时"这些字眼没有使在所规定的日期付款的义务加重份量。上诉法院裁定,尽管迟付款的时间在应支付日之后但又在撤船之前,船东根据该条款撤船的权利仍然有效。法院认为,虽然可以说迟付款的人弥补了他不付款的过失,但不能说他准时弥补了不付款的过失。"准时"和"按时"这两个形容词增加了严谨性,以便有别于 C.热奥吉斯号案中的措辞 (即波罗的海期租约范本格式中的"拖欠付款")。
- 153. 但是在拉科尼亚号案中,<sup>228</sup> 上议院明确驳回了在 C.热奥吉斯号案中的判决,其理由是,"拖欠付款"这些措辞必须与撤船条款硬性规定的预付每月租金的义务联系起来。构成拖欠的是未预付款,这种过失不能用迟付款来补救,因为船

<sup>224 (1949</sup>年)《劳氏日报》报告82,43。

<sup>&</sup>lt;sup>225</sup> 见同上, 第 53 页。

<sup>226 (1976</sup>年) 劳合社报告 1, 395。

<sup>&</sup>lt;sup>227</sup> (1974年) 劳合社报告 2, 241; (1972年) 劳合社报告 2, 465。

<sup>228 (1977</sup>年) 劳合社报告 1,315。

东是以拖欠付款的理由获得撤船权的,除非船东接受迟付款或以前容忍过迟付款从 而放弃他们的权利。

154. 在拉科尼亚号案中,船舶是根据纽约产物交易所租船合同格式租用的。相关的一期租金应在星期日支付,直到紧接着的那个星期一才付款,大约在下午3时15分,承租人的银行把"付款凭证"送交船东的银行。船东于当日下午6时55分撤回船舶。上议院否决上诉法院的判决,裁定撤船是有效的。对要求"准时付款"和"预先"付款的规定的解释非常严格。迟延一天付款就不是预先付款,波罗的海期租约范本和纽约产物交易所租船合同的措辞之间实际上不可能有差别。一旦承租人不能预先付款,他们就无法弥补这种违约行为了。

155. 在这方面,美国和英国法律在因迟付租金而撤船的权利方面又存在着差异,这主要是对似乎由英国法院通过的撤船条款作更为严格的解释造成的。在纽约的仲裁中,对若干案件都裁定:由银行失误引起的迟延付款,如果承租人本身没有过失,就不能证明船东有理由行使撤船的权利。229 在纽约的仲裁中也已表示了这种看法,即船东不应有资格行使他们的撤船权,除非他们事先发出通知书,说他们有这样做的意图。230 另一方面,还有这样一些仲裁:在没有事先通知的情况下确认了撤船行为。但是一艘情况下,纽约的仲裁人对租金的迟延支付采取了比英国法院更为宽容的态度。如果有关银行是承租人自己的银行或被认为是承租人的代理人,租金迟付可能是由于银行方面疏忽所致的这种事实在英国法律下是不相关的。231 在斯堪的纳维亚贸易油船公司诉厄瓜多尔油船公司(斯卡普特雷德号)

<sup>&</sup>lt;sup>229</sup> 见潘朵拉号 (No.2) 案, S.M.A.755-A 号 (1973年); 埃西·吉纳案, S.M.A.534号 (在纽约仲裁, 1970年); 以及梅尔特米号案, S.M.A.491号 (在纽约仲裁, 1970年)。

<sup>&</sup>lt;sup>230</sup> 见诺图号案,1979 年《美国海事判例》**11**6(在纽约仲裁,1976 年)。

<sup>&</sup>lt;sup>231</sup> 阿福沃斯航运公司诉 R.帕格南和 F.列 (阿福沃斯号)案, (1980年) 劳合 社报告 2, 469; (1982年) 劳合社报告 1, 562; (1983年) 劳合社报告 1, 335。

案中,<sup>232</sup> 上议院确认,根据英国法律,不存在根据期租约对撤船案实行衡平法上的补救的余地。所以,在租金的支付和撤船领域,美国和英国法律之间,无论在法律还是强调点上,都存在着明显的差异。

156. 纽约产物交易所租船合同和 Asba 期租约范本格式还多一条可据以撤船的理由。这两个租船合同的第5条规定,船东不仅凭不能准时和按时支付租金可有权撤船而且凭"违反本租船合同"也有权撤船。人们对如下情况业已表示了不同看法,即对这些措辞是作字面上的解释——这样,即使出现轻微的违约行为,船东就将有权撤船——还是将它们解释为仅限于严重违约行为。<sup>233</sup> 而且,即使上议院在较近的一个案件中<sup>234</sup> 仍表示,只有严重违约才有理由撤船,所以对于船东可以根据本项规定撤船的细节仍然存在着不确定的情况。

157 秘书处调查表的一些答复者对撤船条款持批评的态度。各国船舶经纪人和代理人协会联合会提出,"这四个 (租船合同) 都没有考虑到银行业的失误,也没有要求船东在撤船前发出未收到租金的通知书。在过去,这已证明是诱使船东利用技术原因造成的拖欠"玩弄策略",以图解除一项由于行情变化后来证明不利的租船合同。能够促成解除一项合同的条款必须是全面的和极为公正的。它毕竟是为了保护受财力有限或不讲道德的承租人之害的船东,而不是敲同样不幸但是善意的有偿付能力的承租人的价杠,因为他们本身也是无法控制的情况的受害者。因此,许多上述格式的租船合同载有"特别的"反技术性条款,作为使问题的处理不发生偏差的附加条款。这样,有时候所增添的"反技术性条款,作为使问题的处理不发生偏差的附加条款。这样,有时候所增添的"反技术性"条款使撤船条款的严格性有所削弱。这种添加条款要求船东在撤船前先发出通知书,但是这些条款本身也引起了不少争议。

158. 这些条款的措辞互不相同,但是它们多数都要求船东向承租人发出通

<sup>&</sup>lt;sup>232</sup> (1983年) 劳合社报告 2, 253.

<sup>&</sup>lt;sup>233</sup> 见特尔费尔航运公司诉阿托斯航运公司 (阿托斯号) 案, (1981 年) 劳合社报告 2, 74; (1983 年) 劳合社报告 1, 127.

<sup>&</sup>lt;sup>234</sup> 安泰奥航运公司诉萨伦航运有限公司(安泰奥斯号 2 号), (1984 年) 劳合 社报告 2, 235。

知书后有一个数天的宽限期,然后才能撤船。在利比亚维尔号案中,<sup>235</sup> 向法院提交的该条款的措辞被法官认为起草得不好。他还说:"除了一些可能因此产生的困难外,作为一位律师还可以想象发生这样的情况:船东也许难以知道未能准时和按时付款的违约行为是否属于条款规定的范围之内。"<sup>236</sup>

159. 关于根据反技术性条款向承租人发出通知书的时机及其措辞,也产生了争议。在阿福沃斯号案中,<sup>237</sup> 该条款规定,"当租金应付而未收到时,船东在行使按租船合同撤船的选择权前,提前 48 小时 —— 星期六、星期日和假日除外 —— 向承租人发出通知书。如果在这 48 小时内支付了租金,就将不撤回船舶。"租金应于 6 月 14 日支付但未支付,因此船东于当天 16 时 40 分向承租人发出通知书,由于在 6 月 18 日 19 时前未收到租金,船东就撤回了船舶。英国商事法庭法官判定,根据该条款,通知书可以在租金应支付日发出。因此,14 日发出的通知有效。上诉法院驳回了该判决,裁定通知书只能在撤船条款规定的拖欠已发生而且承租人不履行支付租船合同规定的租金的义务后发出。承租人必须在应支付日最后时刻,即 6 月 14 日午夜前付款,因而通知不能在午夜前发出。因此,船东无权撤回船舶。<sup>238</sup>

160. 此外,要使反技术性条款规定的通知书有效,它就必须明确船东现在提出警告,如果在48小时的宽限期内不如数支付租金,他们将撤回船舶。<sup>239</sup>

161 这样,从上述情况可以清楚看出,支付租金和撤船条款在过去引起了相当多的争议,而且在有些情况下甚至就在同一个管辖系统内作出了互相矛盾的判决。在承租人无法控制的情况下对这些条款的严格解释给他们带来了不应有的困难。正如一位评论家所说,"如果从字面上去解释目前的条款可能导致这样的局面: 承租人方面一个 20 美元的错误或 20 分钟的迟延,就使船东获得数百万美元的暴

<sup>. 235 (1975</sup>年) 劳合社报告 1, 537。

<sup>236</sup> 见同上,根据莫卡塔法官先生论述,第 554 页。

<sup>237 (1980</sup>年) 劳合社报告 2, 469。

<sup>238</sup> 也见卢特蒂思号案, (1982 年) 劳合社报告 2, 140。

<sup>&</sup>lt;sup>239</sup> 见里奥苏号案, (1981 年) 劳合社报告 1, 404。

# M. 停租条款

- 162. 大多数法律制度规定,根据期租合同,承租人支付租金的责任是一项连续责任,除非另有明文规定,在整个租船期内应支付租金,即使船舶不处于正常状态来履行合同规定的任务。<sup>241</sup> 支付租金的义务并不仅仅因为在租船期内船舶需要修理——即使船东明示承诺对船舶进行修理——而中止。<sup>242</sup>
- 163. 因此,期租合同总是包括停租条款,这些条款规定在某些特定事件中停付租金。停租条款免除承租人支付租金的连续义务,只要造成延误的事件显然在该条款的规定范围之内。承租人的责任是证明,此项条款适用,并且该事件属于该条款规定的免责事项之一。<sup>243</sup>
- 164. 各停租条款的措词不尽相同。波罗的海期租约范本第 11 (A) 条规定:

"如果为保持船舶航行能力而入坞修理或采取其他必要措施、人力或船东所备物料不足、机器故障、船壳损坏或其他意外事故,致使船舶营运受到妨害或者阻碍达连续24小时以上,对于由此而损失的任何时间——其间船舶不能履行其即需担任的任务——不得付以租金。预付的租金应作相应调整。244

165 班轮期租约范本第 14 条载有类似措词, 但还包括"船长、高级船员和

<sup>240</sup> 根据格拉姆,前引书,第67页。

<sup>&</sup>lt;sup>241</sup> 哈夫洛克诉格迪斯案 (1809 年) 10 East 555; 里普利诉斯卡里夫案 (1826 年) 5 B.&C.167; 穆尔松诉格里夫斯案 (1911 年) 2 Canap.626.

<sup>&</sup>lt;sup>242</sup> 里普利诉斯卡里夫案 (1826 年) 5 B.&C.167; 吉尔特森诉物恩布尔案 (1908 年) S.C.1101。

<sup>&</sup>lt;sup>243</sup> 希腊王国政府诉运输部长案 (1949 年) 1K.B.525-529; A.S.马里瓦号案, (1977 年) 劳合社报告 1, 368-381。

<sup>&</sup>lt;sup>244</sup> 该条 (B) 部分列明了船舶出租的各种情况,尽管这些情况可能是船东的疏忽造成的。

船员"罢工,而波罗的海期租约范本规定的24小时免赔部分空着,待经谈判确定。

- 166. 纽约产物交易所租船合同包括"••••••人力或所备物料不足,火灾,船壳、机器或设备的故障或损坏,搁浅,因船舶或货物遇海损事故而阻留,入坞修理••••••或者阻碍船舶充分营运的其他原因,•••••和如果由于船壳、机器或设备的任何部分的缺陷或故障而致使航行速度减低•••••\*。245
- 167. 波罗的海期租约范本(被认为是偏向船东的租船合同)规定很有限的事件为停租事件,而较为现代的各种停租条款涉及的面很广,包括各种各样的事件。<sup>246</sup>
- 168. 停租条款引起了一些争议,并且容易被各管辖系统作不同的解释。"无疑,期租合同中的停租条款是造成商人以及仲裁人、法官和律师们脑子混乱的根源。"<sup>247</sup> 一位英国商事法庭法官评论纽约产物交易所租船合同中的停租条款时说:"这一条款无疑造成解释上的困难,并且很可能包含一些重复内容,例如在提及船壳、机器或设备的损坏后,接着又提到船舶遇海损事故"。<sup>248</sup>
  - 169. 下述词语解释了停租条款实施中造成困难的一些原因:

"虽然〔停租条款的原则〕似乎是明确的,但实际上执行起来极其困难。至于为何如此,有许多原因。首先,停租条款是因一些事实或情况引起的,而不考虑原

<sup>&</sup>lt;sup>245</sup> 第 15 条; 也见 Asba 期租约范本第 15 条, 该其中类似事件被列作停租事件。

<sup>&</sup>lt;sup>246</sup> 见 1980 年油轮期租约范本第 20 条;油轮期租约范本 STB 格式第 11 条; Fon 期租约范本草案第 23 条。

<sup>&</sup>lt;sup>247</sup>M.M 科思,"停租条款拟订和实施中的混乱",在关于"期租合同:为什么混乱"的各国船舶经纪人和代理人协会联合会研讨会上提出的文件,前引书,第1页。

<sup>&</sup>lt;sup>248</sup> 根据 J.基尔关于 A.S.马里瓦号案的论述, (1977年) 劳合社报告 1,368。

因是因船东的疏忽还是因其他过失造成的。这是一项"不追究责任"条款。<sup>249</sup> 该条款在租船合同中是独立的,不受将责任归于当事一方或另一方的其他条款的影响;也不受免除当事各方义务的免责事项或不可抗力情况的影响。

"实际上,特定停租条款的实施已造成了诸如停租这样一些令人不安的事件, 但承租人支付燃料和港口服务费等其他义务在整个停租期间继续履行。<sup>250</sup>

"·····如果造成延误有多种原因,典型的停租条款就造成麻烦了,因为这是一件黑白分明的事情 —— 要么停租,要么不停租。虽然最近的一些期租合同对按比例停租作了临时规定,但没有任何合同规定用某些延误归因于船东其余的归因于承租人的办法来确定按比例停租。

<sup>&</sup>lt;sup>249</sup> 不过,一些英国有关部门持这种看法,即如果引起时间损失的事件是因承租人违约而造成的,承租人也许无权停租:见弗雷泽诉比尔案,(1900年)17T.L.R.101;商会诉坦佩利轮船公司案,(1927年)《劳氏日报》报告17,230;诺斯诉埃尔德,登普斯特案,(1922年)《劳代日报》报告13,197。一些油轮期租约格式规定,停租事件应该不是承租人的过失造成的"。见STB格式第11(a)条;也见班轮期租约范本第14(A)条,其中规定"不是因岸上工人的疏忽而造成的"绞车的故障。

<sup>&</sup>lt;sup>250</sup> 鉴于英国法律(见吉尔特森诉特思布尔案(1908年)S.C.1101-1111;沃格曼诉赞齐巴尔轮船公司案(1902年)6Com.Cas.253-255;阿利德诉航运协会案(1923年)2K.B.141)和美国法律(见诺塞思轮船公司诉厄恩海运公司案,175F.529(1910年第2号通告);挪威航运贸易团诉智利硝酸盐公司案,1942年《美国海事判例》1523(1942年在纽约仲裁)中没有与此相反的明文规定,根据租船合同承租人承担的其他义务将继续履行,即使在他们支付租金的责任因实施停租条款而停止的时期内也是如此。正如有人评论的那样(P.格拉姆,前引书,第7页),"看来令人不可思议的是,船东可以烧毁期租人的燃料舱,以便把船舶开进修船厂——但似乎法律就是这样规定的。"此外,班轮期租约范本第5条明文规定,"租赁期内,承租人应提供所有燃料并支付其费用······"(也见纽约产物交易所租船合同第20条)。

"当承租人谋求扣除未来的预付租金来补偿停租时,对停租条款不满意的主要原因就出现了•••••"。<sup>251</sup>

170. 作者得出结论说,"两个最常用的期租合同,即波罗的海期租约范本和纽约产物交易所租船合同中的停租条款不充分,这两个合同已有四分之一个世纪多没有修订了"。因此,他建议:"我们所能做的是吸取历史教训,并努力起草新条款,以防止特定停租事件可能造成的不愉快情况再次发生"。

171. 停租事件的措词不明确和解释不相同造成了进一步的困难。波罗的海期租约范本,纽约产物交易所租船合同和班轮期租约范本中使用的"人力不足"这一词语被英国法院解释为只涉及人员不全,而不涉及船员不愿工作或生理上无能力工作的情况。因而,在第二次世界大战期间,在若没有护航船员便拒绝出航的情况下,上诉法院判定,未出现该条款意义上的"人力不足",因为这一措词涉及的是定员不足而不是全体船员不愿工作。<sup>252</sup> 这被认为是"一位英国法官提出的更令人吃惊的字面解释之一"。<sup>253</sup> 另一方面,美国案例裁定,全体船员不能工作属"人力不足"这一措词的含义范围之内。<sup>254</sup> 为了避免困难,Asba 期租约范本规定"高级船员和船员的不足和/或过失"。

172. 波罗的海期租约范本和班轮期租约范本把"人力或船东所备物料不足"列为停租事件,而纽约产物交易所租船合同的规定是"人力或所备物料不足"。Asba 期租约范本中的措词是"所备物料不足"。不过,至于"所备物料"一词的含义中包括些什么,并不明确,但已确定其中不包括弹药。<sup>255</sup>

173. 关于被所有四个租船合同都列为停租事件的"机器的故障",业已裁定,船舶有适当理由开进避风港修理时,"故障"即发生了;"机器"中仅仅存在某种缺

<sup>&</sup>lt;sup>251</sup> M.M 科恩,"停租条款拟订和实施中的混乱",前引书,第1-3页。

<sup>&</sup>lt;sup>252</sup> 见希腊王国政府诉运输部长案 (1949 年) K.B.525。

<sup>&</sup>lt;sup>253</sup>P.格拉姆, 前引书, 第 70 页。

<sup>&</sup>lt;sup>254</sup> 见 Rober 程租约范本, S.M.A.No.1151 (1977 年在纽约仲裁); 克莱德商业轮船公司诉西印度轮船公司案, 169F.275 (1909 年第 2 期)。

<sup>&</sup>lt;sup>255</sup> 见拉德克利夫诉总公司案 (1918 年), 24Com.Cas.40。

陷并不等于是机器发生故障,从而使承租人有权停租。<sup>256</sup> 不过,并不一定必须将船舶扣留起来进行修理。如果机器的故障妨碍了船舶的运转,那就足够了。<sup>257</sup>

174. 停租条款中的"碰撞"被解释为意指与另一艘船舶或小艇或其他航行物体相触撞,<sup>258</sup> 即使碰撞是在租船合同签订之日之前发生的,条件是损坏是在船舶租赁后发现的。<sup>259</sup>

175. 纽约产物交易所租船合同和 Asba 期租约范本规定"因船舶或货物遇海损事故而阻留"是停租事件。根据"马雷瓦有限公司"这一英国案<sup>260</sup> 中的判决,"阻留"一词并不仅仅意味着延误,而且"意指船舶航行中在执行任务方面遇到的某些自然和地理上的限制"。"海损事故"并不是指共同海损事故,而只指造成损坏的事故。但根据巴克诉穆尔及麦克洛马克公司这一美国案例,<sup>261</sup> 在船舶出现阻碍它充分使用的意外功能损坏时,即发生了海损事故。<sup>262</sup>

176. 波罗的海期租约范本和班轮期租约范本使用一般性措词"或者妨碍或阻止船舶营运的其他事故"。根据英国法律,"其他事故"这一措词不按照同类规则解释为指其前面的词语。<sup>263</sup> 在马格希德诉麦金太尔案中<sup>264</sup> 判定,"或其他事故"这一措词不遵从同类规则,因为不可能确定具体措词的共同范畴。<sup>265</sup> 不过,"其他

<sup>256</sup> 见吉尔特森诉特恩布尔案 (1908年) S.C.1101。

<sup>&</sup>lt;sup>257</sup>"特诺"号案 (1977年) 劳合社报告 2, 289。

<sup>&</sup>lt;sup>258</sup> 霍夫诉黑德案(1885 年)54L.J.Q.B.294,55L.J.Q.B.43。

<sup>&</sup>lt;sup>259</sup> 埃森使者号案(1929 年)35Com.Cas.61。

<sup>260 (1977</sup>年) 劳合社报告, 368-382。

<sup>&</sup>lt;sup>261</sup>1930 年 40F.2d.410, 1930 年《美国海事判例》779 (第 2 期)。

<sup>262</sup> 见威尔福德……《期租约》,前引书,第314页。

<sup>&</sup>lt;sup>263</sup> 同类规则即解释规则,将一般性措词的广泛含义限于与其前面的具体措词属同一范畴。

<sup>&</sup>lt;sup>264</sup> (1920年) 3K.B.321, (1921年) 2K.B.97-107。

<sup>&</sup>lt;sup>265</sup> 也见阿波罗尼俄斯号案, (1978年), 劳合社报告 1, 53-65。

事故"这一措词由"妨碍或阻止船舶营运"这一短语所限定。这样,如果发生诸如搁浅这样的"事故",而船舶在重浮之后能够履行所要求的任务,那么停租船舶的诉讼将败诉。<sup>266</sup>

177. 纽约产物交易所租船合同中的一般性措词与波罗的海期租约范本有所不同。这一措词是: "·······或者阻止船舶充分营运的任何其他原因"。不过, "或者任何其他原因"这一措词是否应该以与"或者其他事故"同样的方式来解释, 或者它们是否应遵从同类规则,尚不明确。有些案例假设,同类规则适用于"或者任何其他原因"这一措词。<sup>267</sup> 有人提出, "试图通过援引同类规则来限定'任何其他原因'这一措词的做法不恰当。再说即使与该建议相反, 试图实施同类规则······这种尝试也因缺少前面列明的原因所属范畴而会失败"。<sup>268</sup> 另一方面,美国案例在解释这一规定时遵循同类解释规则。<sup>269</sup> 然而, Asba 期租约范本采用"·······或者阻止船舶充分营运的任何其他类似原因"这一措词而澄清了这个问题。

178. "任何其他原因"这一措词与"或者其他事故"一样,只有当船舶的充分营运受到阻碍时才是起作用的。<sup>270</sup> 根据里恩号这一英国案例<sup>271</sup> ,如果这一措词要适用的话,那就需要有意外和偶然的因素。在这个案例中,承租人把根据纽约产物交易所租船合同格式租用的船舶用于在热带水域中航行,致使船壳因船底附生物而严重污染,从而影响了航速,承租人要求在因此而损失的时间里停租。马斯蒂

<sup>&</sup>lt;sup>266</sup> 考特航运公司诉芬奇内特 (杰文顿·考特号) 案 (1966年), 劳合社报告 1, 683。

<sup>&</sup>lt;sup>267</sup> 见阿德莱德轮船公司诉英王案(1923 年)20Com.Cas.165;阿波罗号案(1978 年),劳合社报告 1,200;关于相反的看法,见考特航运公司诉丹特和拉塞尔案(1939 年)44Com.Cas.345。

<sup>268</sup> 威尔福德••••• 《期租约》,前引书,第 306 页。

<sup>&</sup>lt;sup>269</sup> 同上, 第 262 页; 爱迪生轮船公司诉东方矿业公司案, 167F. 增补 601-605 (D.Mass.1958年)。

<sup>&</sup>lt;sup>270</sup> 见"马雷瓦有限公司"案 (1967年), 劳合社报告 1, 368-382。

<sup>&</sup>lt;sup>271</sup> (1981年) 劳合社报告 2, 267。

尔法官先生驳回了这一要求,指出:"起草的意图不可能是,在船舶的充分营运受到阻碍的每一种情况下均应停租。这种解释在商业上是荒谬的,并使该条款第二部分成为多余。我认为,只有那些偶然的意外原因才值得考虑,而不是船舶执行承租人指示的自然结果。"<sup>272</sup>

179. 不能仅仅因发生停租条款内提及的事件,承租人便有权停租,如果船舶能够履行其即需执行的任务,而且并没有因此而损失时间。<sup>273</sup> 如何计算时间损失,这取决于条款的措词,以及该条款是属于称之为"期限"条款类,还是属于"净时间损失"条款类。<sup>274</sup> "期限"条款是这样的条款,即规定一旦发生事件即停租,并且因此而开始的停租期一直持续直到另一事件发生时终止。<sup>275</sup> 纽约产物交易所租船合同,Asba 期租约范本,波罗的海期租约范本和班轮期租约范本中的停租条款属于"净时间损失"条款类。<sup>276</sup> 纽约产物交易所租船合同中的停租条款规定"对由此而损失的时间,应停付租金;……由此而损失的时间……应从租金中扣除"。Asba 期租约范本中有类似的措词。波罗的海期租约范本和班轮期租约范本中在这方面载有类似的规定:"……对于在船舶不能履行其即需承担的任务这段期间所损失的任何时间,不得付以租金"。

180. 因此,根据"净时间损失"条款,在失去部分航行能力的情况下,只有

<sup>272</sup> 同上,第 272 页。

<sup>&</sup>lt;sup>273</sup> 霍格斯诉米勒案 (1981 年) A.C.48。

<sup>&</sup>lt;sup>274</sup> 见皮西亚号案 (1982 年), 劳合社报告 2, 160-168。

<sup>&</sup>lt;sup>275</sup>H.R.麦克米伦号案(1973年),劳合社报告 1,27-32;这一类条款的例子可见廷内尔轮船公司诉英苏航运公司案(1936年),41Com.Cas.206;和霍格斯诉米勒案(1891年)A.C.48。在前一个案例中该条款规定"•••••从此种时间损失的开始即停付租金,直至恢复有效状态能重新担当其任务时为止"。

<sup>&</sup>lt;sup>276</sup> 关于纽约产物交易所租船合同中的条款,见皮西亚号案 (1982年),劳合社报告 2,160; H.R.麦克米伦号案 (1974年),劳合社报告 1,311-314。

若因此而实际损失了时间,才能扣除租金;<sup>277</sup> 但是根据"期限"条款,在失去部分航行能力的情况下,停付租金,直至船舶恢复有效状态能继续服务之时为止。<sup>278</sup>

- 181. 当船舶在航海途中因所规定的原因之一而失去航行能力时,便产生这样的一个问题,即是否在该船恢复航行能力时,便停止计算净时间损失,还是只有在它重返它失去航行能力时所处的海上位置(或相当位置)时,才停止计算净时间损失。班轮期租约范本明文规定,停租期持续"直至船舶重返离目的地相同的或相当的位置上并且从那里恢复航行之时为止",<sup>279</sup> 而纽约产物交易所租船合同和波罗的海期租约范本对此未作任何规定。
- 182. 克里斯号案中仲裁人小组认为, 280 纽约普遍遵循的纽约产物交易所租船合同第 15 条的解释是, 停租期持续到超过船舶恢复航行能力之时, 直至船舶抵达原停租的位置上时为止。 281 不过, 英国法院对第 15 条作了不同的解释。在沃格曼诉赞齐巴尔轮船公司一案 282 中, 上诉法院在解释与纽约产物交易所租船合同第 15 条类似的条款时说:
  - "一旦事故不再阻碍船舶充分运转,即应起租。这是对该条款的必然解释,其他任何解释都会使损失时间的计算复杂化"。

<sup>&</sup>lt;sup>277</sup> 见"皮西亚"号案 (1982年), 劳合社报告 2, 160-168; H.R.麦克米伦号案 (1974年), 劳合社报告 1, 311-314。

<sup>&</sup>lt;sup>278</sup> 霍格斯诉米勒案 (1891年) A.C.48; 廷内代轮船公司诉英苏航运公司案 (1936年) 41Com.Cas.206.

<sup>&</sup>lt;sup>279</sup> 第 14 (A) 条; 也见 Asba 期租约范本第 15 条和载有类似规定的 Fon 期租约范本草案第 24 条。

<sup>&</sup>lt;sup>280</sup>S.M.A.199号 (1958年在纽约仲裁)。

<sup>&</sup>lt;sup>281</sup> 也见"V格雷斯"号一案, S.M.A.1760号, 和克里桑蒂号一案, S.M.A.1417号 (1980年在纽约仲裁)。

<sup>&</sup>lt;sup>282</sup> (1902年) 2Com.Cas.254。

- 183. 在东地中海海运公司诉联合海运公司 (M 马里卡号) 一案中, <sup>283</sup> 判定在沃格曼诉赞齐巴尔轮船公司一案中采用的解释也适用于纽约产物交易所租船合同中的停租条款,在西塞莱恩斯公司诉联合海运公司一案中得出了类似的结论。<sup>284</sup>
- 184. 因此,如果船舶为开进避风港修理而偏离其正常航向,根据英国法院对纽约产物交易所租船合同中停租条款的解释,船舶一经修毕并准备就绪时,即应起租;而根据美国案例,停租期持续直至船舶重返停租时的位置上时为止。

# N. 在港燃料条款

185. 在四个期租合同中只有纽约产物交易所租船合同规定为船员所使用的燃料应由船东支付费用。波罗的海期租约范本对承租人支付"所有燃料费"的义务没有作任何限定。班轮期租约范本中的唯一保留(在波罗的海期租约范本中常在此处插入另外的词语)是,只有在"租船期",承租人才应支付燃料费。不过,纽约产物交易所租船合同第 20 条要求"在停租期间,船舶也用于炊事、冷凝水,或用于炉格和火炉的燃料的量应予商定,补充燃料的费用须得到船东许可。纽约仲裁人把这一规定解释为船东支付燃料费的责任局限于支付用于炊事和在港供热的燃料费。<sup>285</sup> 另一方面,英国上诉法院判定,这一过时措词应根据当今的情况自由地加以解释,并应解释为,所有在港燃料费用,无论是用于炊事、取暖的还是其他方面的——空调是一个特别有争议的问题——均应由船东负担。英国若干年来对该条款的这一解释看法不一。在一个有争议的案例(顶峰投资公司诉英国钢铁公司(苏尼翁号)中<sup>286</sup> ,仲裁人小组中有三人不同意,而大多数人赞成自由解释。初审法庭审理该上诉时赞同少数仲裁人的较为严谨的解释。上诉法院恢复了多数人

<sup>283 (1981</sup>年) 劳合社报告 2, 622。

<sup>284 (1982</sup>年) 劳合社报告 2, 160。

<sup>&</sup>lt;sup>285</sup>"明秋"号案 S.M.A.2189 号 (1986 年在纽约仲裁)。

<sup>286 (1987</sup>年) 劳合社报告 1, 230。

的看法,强调了因未能摒弃或修订过时的措词所造成的问题。287

186. Asba 期租约范本 1981 年对纽约产物交易所租船合同的修订本中没有提及"炉格和火炉",只是在第 2 条中指出,"在船舶租赁期间,承租人应提供所有燃料并支付其费用,除非另有协议"。正如所指出的那样,"新的措词也并不令人满意,不过,承租人同意提供所有燃料,"除非另有协议":人们本来以为,标准格式的整个设想是不必就细节达成一次性协议"。<sup>288</sup>

## O. 还船条款

188. 根据所有这四个期租合同,承租人有义务以同样良好状态还船,正常损耗除外。有关承租人的这一义务产生的一个问题是,如果船舶是在损坏状态下交还的,哪种损坏应由承租人负责。还船条款的措词可解释为,承租人负有赔偿所有损坏的义务,而不管此种损坏是否是因违反租船合同规定的义务所造成的,除非这种损坏被认为是"正常损耗"。因此,该条款似乎与船东承诺保持船舶处于完全有效状态的义务不一致,<sup>289</sup> 除非将它解释为只适用于承租人负有责任的事项所造成

<sup>287</sup> 关于涉及第 20 条的主要评价中的意见,见本报告第•••••段。

<sup>&</sup>lt;sup>288</sup>P.托德, 前引书, 第 129 页。

<sup>&</sup>lt;sup>289</sup> 见纽约产物交易所租船合同和 Asba 期租约范本第 1 条; 波罗的海期租约范本第 3 条和班轮期租约范本第 4 条。

的损坏。<sup>290</sup> 根据保养条款,船东有义务修理租船合同期内发生的损坏,承租人有义务支付因违反租船合同规定的义务而造成的损坏的修理费。"似乎不合逻辑的是,承租人只应支付租船合同期内的修理费用,如果损坏是他们造成的;但在租船合同终止时他们却应承担所有其余损坏的费用,而不管损坏是否是他们造成的。然而情况就是如此,如果对承租人的还船义务作严谨解释的话"。<sup>291</sup>

189. 根据英国法律,还船条款被解释为,承租人有权在租期届满时正当交还处于损坏状态的船舶,即使此种损坏是承租人违反租船合同规定的义务所造成的。如果承租人负责赔偿损坏,便不再支付租金。<sup>292</sup> 另一方面,根据美国法律,该条款似乎被解释为,为了使船舶在与交付时同样良好状态下交还而进行清洗<sup>293</sup> 和熏舱<sup>294</sup> 期间,船东有权得到租金。

190. 还船条款引起的另一个问题是,如果船舶在租期届满后交还,租金是按规定费率付至实际还船之日为止,还是若市场费率提高,则按租船费率付至租期届满之时为止,并随后按市场费率付至还船之日为止。纽约产物交易所租船合同和Asba 期租约范本只规定,租金按租船费率付至还船之日的还船之时为止,而波罗的海期租约范本和班轮期租约范本中另有一项规定,允许承租人完成最后航次,如果这个航次的安排可以使船舶大约在确定的租船合同终止时交还,但是对于超过终止日的任何时间,则按市场费率支付租金,若市场费率高于规定费率。

191. 租船期何时届满的问题取决于租船合同的规定。如果租船合同规定了

<sup>&</sup>lt;sup>290</sup> 见 L.J.帕尔·斯克拉顿对利默里克诉斯托特案(1921 年)的论述, 2K.B.613-621; 卡弗,前引书,第697 段; 威尔福德·····,《期租约》,前引书,第188-189 页。

<sup>&</sup>lt;sup>291</sup> 威尔福德·····, 《期租约》, 前引书, 第 188-189 页。

<sup>&</sup>lt;sup>292</sup> 维伊航运公司诉巴黎-奥尔良铁路公司案 (1922 年) 1K.B.617。

<sup>&</sup>lt;sup>293</sup> 贾拉马尔号案, (1969 年)《美国海事判例》354 (1969 年在纽约仲裁)。

<sup>&</sup>lt;sup>294</sup> 埃伦·劳茨克克号案, S.M.A.362 号 (1965 年在纽约仲裁)。

期限,诸如"六个月",而没有明确的申缩期,英国法院<sup>295</sup> 和美国法院<sup>296</sup> 以及大多数其他管辖系统则默示一个合理的申缩期,因为不可能确切计算最后航次的结束日期。因此,承租人派船进行可能超过规定期限不长的最后航次是正当的。如果另一方面,租船合同以明确措词或默示方式规定没有申缩期,承租人必须确保在规定期限内还船。<sup>297</sup> 租船合同可以明文规定申缩期是多长,诸如"6个月20天左右。"在这种情况下,承租人必须确保在允许的申缩期内还船。<sup>298</sup>

192. 因此,如果船舶被派去进行合理的最后一个航次——,有理由预计可以在租期届满前完成的一个航次,并且如果"船舶随后被当事任何一方都不负责的事情所耽误,租船合同则被认为继续有效,直至该航次结束时为止,即使它超过了租期。租金应按租船费率支付,至还船之时为止,即使市场费率可能已经提高或降低"。<sup>299</sup> 另一方面,如果承租人派船进行不合理的最后一个航次——已预计到租期内不可能完成的一个航次,船东则可以拒绝执行此项通知,并要求得到关于合理的最后航次新通知。如果承租人拒绝发出新通知,船东则可以认为他的行为根本违反合同,可以为该船重新订立租船合同,并可以起诉,要求赔偿损失。如果船东接受该项指示并进行不合理的最后航次,他有权要求,租金应按租船费率支付,直至租期届满时为止,而对于超过的时间,租金则按市场费率支付,如果市场费率已提高到高于租船费率。<sup>300</sup>

193. 纽约产物交易所租船合同和 Asba 期租约范本没有涉及最后航次的具体规定,而波罗的海期租约范本和班轮期租约范本允许承租人完成最后航次,但对于

<sup>&</sup>lt;sup>295</sup> 见格雷诉克里斯蒂案(1889 年)ST.L.R.577。

<sup>296</sup> 多佛海峡轮船公司诉芒森案, 95F.690 (S.D.N.T.1989 年), 100F.1055 (第2期, 1900年)。

<sup>&</sup>lt;sup>297</sup> 沃森诉梅里韦瑟案 (1913年) 18Com Cas 294。

<sup>&</sup>lt;sup>298</sup> 迪翁号案 (1975年), 劳合社报告 1, 115。

<sup>&</sup>lt;sup>299</sup> 根据 M.R.丹宁勋爵关于迪翁号一案的论述 (1975年), 劳合社报告 1, 115-117.

<sup>300</sup> 见前引书, 第 118 页。

超过租船合同终止日的任何时间,按市场费率支付租金,如果市场费率高于租船费率。 301 波罗的海期租约范本和班轮期租约范本中,该项规定的解释和实施似乎尚未解决。在约翰尼号一案中, 302 唐纳森法官指出,采用这一条款是为了避免在最后航次是否合理或者所涉申缩期问题上出现纠纷。但是在上诉法院,M.R.丹宁勋爵持不同意见,他认为该条款只适用于合理的最后航次。他说,该条款"只适用于短暂延期,允许承租人命令船舶进行最后一个航次,如果经合理推算,该航次的安排使船舶可以在'大约'(租期)届满时交还。我认为'大约'只是两、三天。但是,如果有可能超过两、三天,则不允许他命令船舶进行最后航次"。 303

194. 另一方面,在赫克托轮船公司诉苏联货运公司一案中,<sup>304</sup> 波罗的海期租约范本和班轮期租约范本中的条款被判定不适用于合理的最后航次。在这一案例中,波罗的海期租约范本格式中该条最后一款的限制性条件被删去了,因而成了:

"如果轮船被通知进行一个将超过租期的航次,承租人得使用该轮船完成 这个航次,但对于超过终止日的任何时间,承租人应按市场费率支付租金,如 果市场费率高于规定的费率"。

195. J.阿特金森认为,该条款"只涉及因情况紧急而违约的情形,即通知进行一次承租人无权通知进行的航次"。因此,当船舶被派去进行一次有理由预计可以在租期内完成的航次,但因某些被认为承租人不能承担责任的情况,船舶在租期届满很久之后才交还时,那就裁定,承租人通知船舶进行这样一个航次并不违反租船合同。因而该条款不适用,承租人只应按合同规定的费率支付租金,直至船舶交还之时为止,而对超过的时间不应按高于合同费率的市场费率支付租金。

<sup>301</sup> 见本报告第 187 段。

<sup>&</sup>lt;sup>302</sup> (1977年) 劳合社报告 1, 257-260。

<sup>&</sup>lt;sup>303</sup> (1977年) 劳合社报告 2, 1-2。

<sup>&</sup>lt;sup>304</sup> (1945年) 1K.B.343。

#### P. 留置权条款

- 196. 期租合同通常包含留置权条款,规定船东有权对于租船合同规定应付而尚未支付的任何款额扣留货物和二程运费。波罗的海期租约范本第 18 条和班轮期租约范本第 20 条规定,"就根据这一租船合同而提出的所有索赔而言,船东对属于期租人的所有货物和二程运费以及任何提单运费拥有留置权·····"。纽约产物交易所租船合同和 Asba 期租约范本第 18 条指出,"船东为了得到这一租船合同规定应付的任何款额,对所有货物和所有二程运费,包括共同海损分摊费,拥有留置权·····"。
- 197. 租船合同中的留置权条款是既受批评又有争议的问题。有人说,纽约产物交易所租船合同第 18 条是一项"麻烦的条款:它实际上根本没有表示对租金的留置权,虽然可以设想租金包含在'租船合同规定应付的任何款额'这一词语中"。<sup>305</sup> 还有人认为,这种"留置权没有给予运费非常可靠的担保,更不用说对租金了。之所以如此是因为提单是定期签发和转让的,而期租合同租金从未在提单上注明。提单持有人只要支付了提单上注明的款额,便可获得货物,如果他取得提单时具有良好信誉。交货承诺从不受到期租金支付情况的制约。因此,除非期承租人拥有货物,否则租金留置权是没有作用的"。<sup>306</sup>
- 198. 波罗的海期租约范本和班轮期租约范本中的条款明确限定船东只对属于承租人的货物拥有留置权,而纽约产物交易所租船合同和 Asba 期租约范本却规定船东对"所有货物"都拥有留置权,而未加任何限制。因为船东的留置权属契约性质,问题是如果提单中没有将租船合同留置权条款列入提单的规定,能否对非租船合同一方的提单持有人行使留置权,以及船东能否对不属于承租人的货物像对承租人那样行使留置权。换言之,纽约产物交易所租船合同和 Asba 期租约范本第 18 条中"所有货物"一词是指属于承租人的所有货物,还是指不管是承租人还是非租船合同一方的其他人装上船的所有货物。根据英国法律,对这个问题有着互相矛盾的

<sup>&</sup>lt;sup>305</sup> 卡弗著,前引书,第 2017 段。

<sup>&</sup>lt;sup>306</sup>P.格拉姆著,前引书,第 68 页。

裁决。

199. 阿基奥·乔吉斯号 —— 是根据纽约产物交易所租船合同格式租赁的一艘船舶 —— 一案中, 307 承租人在按月支付租金时对于违反航速保证扣減一定金额。根据船东的指示,扣留了非租船合同一方的货主的货物。莫内塔法官先生认为,船东不能以第18条为依据,因为货物不是承租人的;他指出:

"我认为船东方面的困难是,他们依靠普通法中没有规定的合同留置权来对付非期租合同一方的货主。人们提醒我,在期租合同波罗的海期租约范本格式中,对留置权规定了限制条件,其大意是,船东只对属于期承租人的货物拥有留置权。尽管这里没有这一条限制,我仍无法看出第 18 条怎么能授权船东扣留不属于承租人而且其运费不应支付给船东的货物。没有发现提单中载有使根据提单装运的货物受制于这一租船合同留置权的任何条款"。<sup>308</sup>

200. 但是在艾格诺西奥蒂斯号一案中,<sup>309</sup> 唐纳森法官先生得出了不同的结论。他说:

"第18条应解释为它所表达的意思,即期承租人同意船东应对所有货物拥有留置权。只要此类货物为第三方所有,期承租人接受确立有利于船东的合同留置权的义务。如果他们不这样做,并且船东声称对此类货物拥有留置权,第三方就有理由对船东提出诉讼。但是期承租人的情况则不同;他们不能维护和利用他们自己的违约行为。对他们有目的地行使留置权是有效的"。

201. 另一方面,根据美国法律,船东被认为为收取租船合同规定应付的租金而对货物拥有留置权,如果货物属于承租人而不属于第三方。<sup>310</sup>

202. 所有这四个租船合同中的条款还规定船东对"二程运费"拥有"留置权"。

<sup>&</sup>lt;sup>307</sup> (1976年) 劳合社报告 2, 192。

<sup>308</sup> 同上, 第 204 页; 也见克里索沃兰·迪奥号一案 (1981 年), 劳合社报告 1, 159, 其中, 提单列入了租船合同的条件, 据裁定, 船东有权行使留置权。

<sup>&</sup>lt;sup>309</sup> (1977年) 劳合社报告 1, 268-276。

<sup>310</sup> 古德帕斯丘公司诉 M.V.波勒克斯案, 602F.2d84, 1979 年, 《美国海事判例》 2515; 606F.2d321 (1979 年第 5 号通告); 也见威尔福德••••• 《期租约》, 前引书, 第 407-408 页。

之所以需要这一留置权是为了使船东在二程运费应付给承租人而不付给船东的情况下拥有留置权。严格说来,对"二程运费"的留置权并不是留置权,而被认为是"这样的一种"权利,即把二程运费作为运费收取,并且在此运费付给承租人或其代理人之前的任何时候阻止支付这一运费的权利;但拥有这种留置权不意味着有权追索已支付给应收入腰包中的运费,仅仅因为这笔运费是作为拖欠的应付运费收取的。"311

203. 引起的另一个问题是,"二程运费"是否包括二程期租约租金。在卡尔航运公司诉拉美航运公司(塞布号)一案中,<sup>312</sup> 裁定二程运费包括承租人无论是通过航次运费还是二程期约租金从雇用船舶中赚取的任何报酬,但在塞布 2 号一案中,<sup>313</sup> 另一法官拒绝遵循塞布 1 号一案中的如下裁定,即"二程运费"包括二程租约租金。

204. 波罗的海期租约范本和班轮期租约范本中的条款还明文规定船东对"任何提单运费"拥有留置权。这一规定的必要性也许令人怀疑,因为"二程运费"一词也包括"提单运费"。此外,如果船东是提单中所载合同的一方,他们则有权取得提单运费,而无须依靠留置权。"说什么船东对于根据以提单与他签订的合同而拖欠他的债务拥有留置权,似乎是误用了措词。租船合同中,留置权条款之所以需要是为了在二程运费应付给承租人而不付给船东的情况下给船东以留置权"。<sup>314</sup> 因而在这种情况下,作为提单合同一方的船东有权要求收货人支付运费,并有权保留货物,直至提单运费付清之时为止。如果提单运费已支付给船舶代理人,他可要求得到代理人掌握的运费。<sup>315</sup> 如果提单运费由承租人的代理人托收,那么在代理人

<sup>311</sup> 塔格特, 比顿诉费希尔案 (1903年) IK.B.391-395。

<sup>312 (1983</sup>年) 劳合社报告 1, 302。

<sup>&</sup>lt;sup>313</sup> 劳合社的海运通讯, 1990年4月21日。

<sup>314</sup> 根据 J.格里尔关于莫尔特轮船公司诉威尔逊轮船公司(埃勒曼轮船总公司)案的论述 (1926年),《劳氏日报》报告 26, 259-262; 威尔福德······《期租约》,前引书,第 399 页。

<sup>315</sup> 韦纳诉迪奈案 (1905 年) 2K.B.92。

收到运费前的任何时候他可以干预,通知代理人,要求代他托收提单运费。<sup>316</sup> 在这种情况下,船东有责任向承租人说明扣除根据租船合同应付款额后他手里还剩 下的余款。<sup>317</sup>

205. 不过,该条款规定船东对于在行使留置权时已拖欠的应付租金额拥有留置权。因此,对于在行使了留置权后再拖欠的应付租金额没有留置权,虽然在这些款额应付之时已收取的运费仍在船东或其代理人手中。<sup>318</sup>

206. 所有四个租船合同都规定承租人就"预付的尚未应得的全部钱款"而言对船舶拥有留置权。这一所谓的留置权的意义和效用不很明确。正如有人评论的那样,"这对承租人来说似乎是合意的,但它没有任何实际的意义。承租人并不掌握船舶,因而奈何它不得,除非通过索赔扣船。但这一点他们总是能做的"。<sup>319</sup> 在一个英国案例中,<sup>320</sup> 这一措词被解释为使承租人有权"推迟还船,直至尚未应得的款项付清时为止"。在随后的一个案例中,指出了这种解释造成的困难,即如果承租人为了行使留置权而推迟还船,他们将继续有义务进一步支付租金。<sup>321</sup> 在较近的一个案例中,有人指出承租人可以还船,然后通过法院强制令阻止船东恢复对船舶使用的控制权。<sup>322</sup>

<sup>316</sup> 菲尔特轮船公司诉威尔逊轮船公司(埃勒曼轮船总公司)案 (1927年) 1K.B.710。

<sup>317</sup> 韦纳诉迪奈案 (1905 年) 2K.B.92。

<sup>318</sup> 韦纳诉迪奈案(1905 年)2K.B.92;塞缪尔诉西哈特尔普尔案(1906 年)11Com.Cas.115,(1907 年)12Com.Cas.203;卡弗,前引书,第 2013 页。

<sup>&</sup>lt;sup>319</sup>P.格拉姆, 前引书, 第 69 页。

<sup>&</sup>lt;sup>320</sup> 汤内莱尔和博尔科夫,沃汉诉史密斯案(1897 年)2Com.Cas.258,根据 L.J.里格比的论述。

<sup>321</sup> 见萨默勋爵关于法国海运公司诉那不勒斯公司案的论述 (1921 年), 2A.C.494-516。

<sup>322</sup> 见 J 罗伯特·戈夫关于兰开斯特号案的论述, (1980年) 劳合社报告 2, 497; 威尔福德·····, 《期租约》, 前引书, 第 404 页。

## 第三章

#### 对程租约某些条款的分析

- 207. 本章审查程租约载有的一些主要条款,其中包括在国际航运立法问题 工作组第四届会议上所提要求中指明的条款。<sup>323</sup> 和期租约的情况一样,对秘书 处散发的调查表的答复表明,人们对国际航运立法问题工作组的要求中未明确提到 的条款表示关注,看来可取的是,这项研究也应包括对这些条款的评论。
- 208. 然而,目前使用的经不同组织核可的标准程租约格式大概有 50 多种, 其中有些租船合同格式,其正式条款多达 45 项以上(此外,附加条款的数目也常 常很多),在这样一个领域,任何初步分析都必须极有选择性。
- 209. 这项分析的基础是应用最广的通用干货程租约,即统一杂货租约 (GENCON) 和各国船舶经纪人和代理人协会联合会编制的、更现代的多种用途租船合同格式,即 1986 年修订的 1982 年多种用途租船合同,代号为"1982 年多种格式租约" (1986 年修订)。在分析中将提及各种商品租船合同,其中包括油轮货运中使用的标准合同格式。

# A. 装卸时间条款和滞期条款

- 210. 对订立一项程租约的经济后果来说,根本问题是租船合同分担延迟风险的方式。这类风险中最普遍的是装卸港出现船位拥挤,造成船舶等待腾出泊位才能装货或卸货。
- 211. 一些现代标准格式租船合同,例如代号为"89年北美谷物程租约" (Norgrain 89) 的北美谷物程租合同,<sup>324</sup> 非常详细地说明了如何分担这样的风险。较老的格式,尤其是干货租约格式,行文已经过时且不确切,常常引起争议。

<sup>323</sup> 见本报告第2段。

<sup>324</sup> 见第 18、19 和 20 条。

- 212. "关于滞期问题的法律浩如烟海。"<sup>325</sup> "由于滞期案几乎总是牵涉是否已违反租约规定的问题,还由于许多租约格式中现在或过去使用的术语多得令人迷惑不解,以致任何两起案件都很少完全一样,因此,简直不可能使法院的裁定系统化。"<sup>325</sup>
- 213. 关于这个问题的专家著作<sup>327</sup> 和较一般性的著作中的广泛评论<sup>328</sup> ,都证明了装卸时间条款和滞期条款的多样性和这样的条款引起的争议多么频繁。正如丹宁勋爵在莫斯沃斯·雷德里有限公司诉印度食品公司(特拉斯王号)案中所说的那样: <sup>329</sup> "要是船东和承租人(a)避免就滞期问题做复杂的交易,并且(b)比较明确地表述他们的交易条件,那么,日子会好过得多。"
- 214. 秘书处调查表的答复者认定,程租约出现的大多数争议都是装卸时间条款和滞期条款引起的。实际上,由于装卸时间和滞期情况复杂,人们拟订了一套在租船合同中最常用的、与装卸时间有关的措词和术语的定义。这些定义的题目是"1980年租船合同装卸货时间定义",拟订这些定义的工作是由国际海事委员会着手进行的。这些定义最终由波罗的海和国际海事会议、国际海事委员会、各国船舶经纪人和代理人协会联合会和英国航运总会联合发布,供在租船合同中自愿采纳,以避免对装卸时间条款作出相互抵触的解释。但是,据秘书处获得的信息,实践中几乎没有使周这些定义。

<sup>&</sup>lt;sup>325</sup> 拉瑟格伦轮船公司诉霍华德·霍德尔及其合伙人,203F.848-851 (第 2 期,1913年)。

<sup>326</sup> 吉尔摩和布莱克,《海事法》,第二版,基金会出版社,纽约,1975年,第 213页。

<sup>327</sup> 例如戴维斯,《装卸货时间的开始》,斯科菲尔德,《装卸时间和滞期》 (1986年),萨默斯基尔,《装卸时间》(1989年),蒂伯格,《滞期法》(1979年)。

<sup>328</sup> 例如斯克鲁顿,《租船合同》,卡弗,《海上运输》,吉尔摩和布莱克,《海事法》以及本尼迪克特,《海事》。

<sup>329 (1984</sup>年) 劳合社报告 1, 1。

215 装卸时间是指分配给承租人用于装卸货而不额外付款的时间。如果承人装卸货的时间超过了所允许的时间,根据租船合同,他可能有责任支付滞期费。根据英国法律,滞期费是对超过装卸货时间的延迟支付规定的(即商定的)违约偿金。另一方面,如果承租人完成装卸货的时间少于允许的装卸时间,那么,通常他有资格获得速遣费,如果租船合同有此规定的话。330

#### 1. 装卸时间的开始

- 216. 装卸时间开始需要的条件将取决于每项租船合同的规定,但是,一般 说来必须满足下述条件:
  - 一一船舶必须已抵达租船合同中商定的一个地点,这时才被视为"到达船舶";并且
  - ——船东必须通知船舶已抵达并作好装货或卸货的准备。331

## "到达船舶"

- 217 至于船舶是不是"到达船舶"的问题,这取决于租船合同是泊位装卸货租船合同(租船合同指定一个泊位为'目的地',或者将由承租人过后指定一个泊位),还是港口租船合同(租船合同要求船舶驶向一个指定的港口,或者将由承租人过后指定一个港口)。在一项泊位装卸货租船合同中,船舶不在特定的泊位,则不成为"到达船舶",因此,船舶一旦作好装货准备并且按租船合同规定向承租人发出有效的准备就绪通知书,就开始计算装卸时间。<sup>332</sup> 因此,根据一项泊位装卸货租船合同,在船舶能到达可以装卸货的泊位之前损失的任何时间都算在船东头上,除非有相反的明文规定。另一方面,根据一项港口租船合同,船舶一俟抵达港口,随后靠港出现的任何延迟通常都由承租人自负。
  - 218. 关于船舶是否已经"到达",以便发出有效的准备就绪通知书这个问题

<sup>330</sup> 见斯克鲁顿,前引书,第 305 页。

<sup>331</sup> 在包括英国法律在内的某些法律制度中不需要发出卸货准备就绪通知书。

<sup>332</sup> 北江货运公司诉印度总统 (1956 年) 1Q.B.333-348。

是极其重要的。然而,看来不同国家的法院和仲裁法庭对船舶是否在平平常常的情况下已经"到达"的问题好象得出了不同的结论。虽然根据"泊位"装卸货租船合同断定船舶是否成为"到达"船舶比较简单明了,但是关于"港口"租船合同,这个问题则比较复杂。就装卸时间条款而言,关于什么构成港口的问题已带来很多困难。有关这个问题的最早英国案例,可追溯到一百多年前。当时人们认为,1908年上诉法院对莱昂尼斯轮船有限公司诉兰克有限公司案<sup>333</sup> 的判决提供了权威性的答复,但是,由于在商业惯例发生变化的同时标准格式租船合同没有发生相应的变化,1957年至1977年期间就这个问题作出了大量的判决,其中包括呈报上议院的三个案件:金融和不动产公司诉匈牙利农产品贸易公司(埃罗号)案,<sup>334</sup> E.L.奥登多夫诉特拉达克斯出口公司(约翰娜·奥登多夫号)<sup>335</sup> 以及联邦商业航运有限公司诉特拉达克斯出口有限公司(马拉第人使者号)。<sup>336</sup>

219. 莱昂尼斯轮船有限公司诉兰克有限公司案确认,在商定的目的地只是一个港口而没有进一步限制的情况下,当船舶在港口的商务区域内并且可由承租人支配时,它就是"到达船舶",即使它在已抵达的地点可能无法装卸货也是如此。另一方面,在埃罗号案中,上议院将一个港口的"商务区域"解释为"会找到实际装货地点并且寻求装载有关品名的货物的船舶通常前往和通常进行装载这类货物的工作的港区"。

220. 在约翰娜·奥登多夫号案中,上议院推翻了对埃罗号案的判决。上议院裁定,如果船舶要成为到达船舶,即使它不能立即驶往一个泊位,也必须抵达港口范围内的一个可承租人立即有效地加以支配的位置。如果它在等候船舶通常停泊的一个地点,那么它将处于这样一个位置,除非在一些异常情况下承租人有责任对此出示证据。如果船舶等候在港口的某个其他地点,那么将由船东证明它可完全由

<sup>&</sup>lt;sup>333</sup> (1908年) 1K.B.499。

<sup>&</sup>lt;sup>334</sup> (1961年) A.C.135。

<sup>&</sup>lt;sup>335</sup> (1974年) A.C.479。

<sup>&</sup>lt;sup>336</sup> (1978年) A.C.1。

租人支配,就象它要是在装卸货的泊位附近一样。337

221. 然而,正如经常出现的情况那样,当船舶必须等候在不在法定、财政和行政的港区之内的惯用锚地时,困难就出现了。在马拉第人使者号案中曾出现过这种问题。上诉法院在作出这艘货轮没有必要抵达港口的法定、财政或行政范围之内的裁定时,所依据是纽约仲裁人在海洋散装货船公司诉加纳克谷物公司案中作出的判定。338 在纽约的这个案件中,一艘准备在鹿特丹卸货的货轮到达了一个为等候进入鹿特丹港的船舶指定的"建议锚地",随后抛锚并发出了准备就绪通知书。绝大多数仲裁人裁定,准备就绪通知书是有效的。

222. 在纽约作出判定之后,丹宁勋爵在英国上诉法院说:"大西洋两岸的商人和托运人员使用的都是同样的标准合同格式,同样的措词和短语,无论在哪个地方需要作出判定,都应该以同样的方式加以解释。不管是在伦敦还是在纽约,结果都应该一样。"然而,在马拉第人使者号案中,上议院依据它先前在约翰娜·奥登多夫号案中的判定推翻了上诉法院的判定。上议院在先前的判定中认定,一艘船要成为"到达船舶",必须抵达"港口内"的一个地点。因此,想使英国法律和美国法律在这一点上取得一致的尝试未能奏效。正如本尼迪克特在《海事》一书中所说: 339

"关于船舶的抛锚地点,美国当局一般判断商业上的正当意义; 地理上的考虑只具有微乎其微的重要性,一艘船在港口的地理范围和实际界限外的一个惯用锚地停泊时可被视为"到达"船舶,尤其是如果船舶的活动仍受地方当局的某种控制(例如指定轮流靠泊)的话。然而,英国当局最近比较遵从先例而不是实用性,坚持认为,如果一艘船在指定港口的法定、财政和行政范围之外抛锚,就不算"到达"。

223. 就民法国家而言, 德意志联邦共和国的法律在这一点上看来同美国的

<sup>337</sup> 见里德勋爵的论述,第 291 页。

<sup>3381975</sup>年《美国海事判例》1826。

<sup>&</sup>lt;sup>339</sup> (第六版), 第 28 卷, 第 2-14 页。

法律有相同的作用。<sup>340</sup> 蒂伯格在《滞期法》一书中<sup>341</sup> 列举了瑞典最高法院的初期判决,大意是,即使港口或码头当局命令船舶在港口或码头外等候,船舶也会被视为"到达"。随后,他继续写道:"由于斯堪的纳维亚的规则很灵活,很少有必要为断定船舶是否已抵达目的地而给港区下定义。另一个比较重要的问题涉及船舶在发出有效通知书之前必须抵达的地点。在这方面,在海事法典的文本中发现了差异。瑞典的文本规定,当船舶到达它要驶往的'地点'('港口') 时,可以发出通知,而丹麦、芬兰和挪威的文本则要求船舶抵达港口本身。根据挪威委员会报告,'港口'一词应从其商务意义而不是行政意义上来理解。"

224. 一些现代租船合同格式载有避免马拉第人使者号案在英国法律中的那些影响的条款,规定船舶一俟到达惯用锚地(如果不能马上靠泊)就可发出准备就绪通知书。油轮租船合同通常载有这样一项条款,<sup>342</sup> 结果,油轮行业很少出现关于船舶是否算作到达船舶的争议,而解决争议花费是很大的。关于干货租船合同,诸如巴尔的摩班轮两式租船合同和标准谷物租约等较老的租船合同一般只规定,船舶应"驶往"一个港口("港口租船合同")或一个"泊位"("泊位"装卸货租船合同"),然后才能发出准备就绪通知书,并开始为船东计算装卸货时间。然而,一些现代合同格式非常详细地规定了可发出准备就绪通知书的各种情况,如果船舶仍在港区外等候泊位的话。例如,89年北美谷物程租约第18(b)条中规定:

"如果船舶由于港区内没有第一或唯一装货/卸货泊位或者一个停泊泊位或锚地,或按照承租人/收货人或任何官方主管机构或当局的指示而无法进入装货/卸货港区内,并且船长证明船舶已在各方面都作好了装卸货的物质准备,那么,船长可从港区外的常用锚地通过电台发出船舶准备就绪通知书(如果有此要求的话),不管是否处于无疫状态,不管是否结关,都是如此。如果在进入装货港区后,船舶未能按第18(e)条通过检验,从船舶未能通过检验

<sup>&</sup>lt;sup>340</sup> 见特拉普提到的 1974 年 9 月 18 日和 1977 年 6 月 8 日的汉堡仲裁裁决 (1988年), LMCLQ251, 第 258 页。

<sup>341 (</sup>第三版) 第 231 页。

<sup>342</sup>例如,见87年油轮程租约,第8条。

之时起到通过检验时为止这样损失的任何时间都不得算作装卸货时间或滞期时间,但是,如果获得上述通行证的这种延迟连续超过24小时,除星期日和节假日以外,在港口区外等候的所有时间都不应算数。"

#### 准备就绪通知书

225. 装货时间要等到船东在租船合同要求的时间并以租船合同要求的方式发出船舶已作好装货准备就绪通知书之后才开始计算。这样的通知书可口头发出,除非租船合同规定(正如通常的情况那样)用书面形式发出准备就绪通知书。与装货港的情况相比,根据英国法律,不要求(在没有明确规定的情况下)在卸货港发出准备就绪通知书。<sup>343</sup> 另一方面,其他国家的法律看来好象规定在装货港和卸货港都得发出准备就绪通知书。<sup>344</sup>

226. 现代租船合同常常详细说明必须下达准备就绪通知书的情况和下达这样的通知的方式。因此,在"82年多种格式租约"(1986年修订)中,准备就绪通知书条款(第7条)的规定如下:关于船舶在第一或唯一装货/卸货港的装货/卸货准备就绪的通知,须以书面形式递交给托运人/收货人或其代理人的办事处,具体时间是,除星期日(或当地的相当日期)和假日以外,在任何一天的9时至17时,在星期六(或当地的相当日期)的9时至12时。这样的准备就绪通知书须在船舶已进入装货/卸货泊位并且在各方面都作好装货/卸货准备时递交。然而,如果没有装货/卸货泊位,船长可在船舶到达港内或港区外的一个惯用等候地点之后发出准备就绪通知书,不管是否处于无疫状态,不管是否已结关都是如此••••••"。随后,这项条款又对下达准备就绪通知书后从何时开始计算装卸货时间作了规定。

227. 然而,较老的租船合同格式对发出准备就绪通知书的要求远不象现代合同格式那样明确,因此在这方面引起争议的情况多得多。例如,C Ore7 铁矿砂租船合同规定:"装货时间从船舶申报和准备就绪并处于无疫状态(不管是否在泊位)之后从上午6时开始计算,卸货时间从船舶申报和在各方面都准备就绪并处

<sup>&</sup>lt;sup>343</sup> 纳尔逊诉达尔 (1879 年) 12Ch.D.583。

<sup>&</sup>lt;sup>344</sup> 见 H 蒂伯格,《滞期法》,前引书,第 208-213页。

于无疫状态 (不管是否在泊位) 之后从上午 6 时开始计算。轮船只在办公时间申报。"而统一杂货租约第 6 (c) 条规定:"关于装货和卸货时间,如果在午前发出准备就绪通知书,应从下午 1 时开始计算,如果在午后办公时间发出通知,应从下一个工作日上午 6 时开始计算·····"。

228. 有时还对承租人在发出准备就绪通知书之前开始装货的情况作出规定。如果租船合同明确规定发出书面准备就绪通知书,而装卸货时间在发出准备就绪通知书后规定的若干小时才开始计算,那么,承租人开始装货或卸货这一事实本身不会构成放弃通知书要求。因此,在普特罗蒂航运公司诉国家煤炭局案中,345 租船合同规定,卸货时间应"在·····船舶作好卸货准备并发出书面通知书后二十四小时开始计算。"这艘船舶已经靠港,承租人开始卸货,随后船长才发出准备就绪通知书,结果出现的问题是,在开始卸货的时候是否就开始计算卸货时间,或者这样做是否只符合关于发出准备就绪通知书的条款。当时裁定,承租人仅仅开始卸货并不构成放弃租船合同关于发出通知书和开始计算装卸货时间的明确条款。

229. 租船合同的印制格式很少说明需要在多大程度上准备就绪,尽管 Amwelsh 租船合同明确规定,应发出通知说明船舶所有货舱的进口货物和压舱物全部卸完并且已作好装货准备\*\*\*\*\*\*。然而,英国法院裁定:"一艘船舶要是作好了装货准备,所有货舱必须完全准备就绪\*\*\*\*\*\*\*以便使商人能够完全控制船舶可供装货的每一个部分。"346 而且货舱必须适合装货。能在很短的时间内使货舱适合装货是不够的。所以,在内德尔卡船舶公司诉特拉达克斯(国际)出口公司(特雷斯·弗洛雷斯号)案中,347 一艘船舶的货舱在发出准备就绪通知书时出现了虫害,本来只需几个小时就能熏蒸灭虫,但是英国商事法庭和上诉法院裁定,那艘船舶在发出准备就绪通知书时并未作好准备。然而,一些国家的法律看来允许提前发出准备就绪通知书。例如,斯堪的纳维亚行动守则第82条似乎授予了在船舶到达装货港

<sup>345(1958</sup>年)劳合社报告 1,245。

<sup>346</sup> 格罗夫斯,麦克莱恩诉福卡特 (1884) C.&E.309。

<sup>&</sup>lt;sup>347</sup> (1973年) 劳合社报告 2, 247。

后提前发出通知的权利。348

- 230. 然而,英国法律好象对船舶的货舱立即作好装货准备的必要性同装货作业不马上需要的设备的准备就绪状态加以某种程度的区别。所以,在诺埃米朱莉亚轮船公司诉粮食部长案中<sup>349</sup> ,一艘船舶是按标准谷物租约格式租赁的。根据租约,如果船舶在某个日期之前未作好装货准备,承租人有权选择解除租船合同。船长在那个日期发出了准备就绪通知书,但是当时船舶缺少某种装货设备,然而,这种设备要到装货作业的后期才会需要(如果真有需要的话)。当时裁定,缺少这种设备无碍船舶"准备就绪",从而能发出准备就绪有效通知书。
- 231. 程租约的附加条款常常详细说明船舶必须准备好供装货或卸货作业使用的什么设备。这样的设备是否必须在发出准备就绪通知时就位,这将取决于条款的准确措词。<sup>350</sup>
- 232. 然而,即使没有发出通知书或有效通知书,装卸货时间也将开始计算,如果承租人或其代理人放弃了对发出有效的准备就绪通知书的要求的话。在许多情况下,承租人或其代理人开始装卸货作业将被视为已放弃对发出有效准备就绪通知书的要求。至于弃权是否成立,这是一个在每一个案中都得确定的问题。

## 2. 装卸时间的计算

233. 干货和油轮航程租约通常都载有关于如何计算装卸时间的条款。装卸时间可参照一定的"小时"、"天数"、"连续日"、"工作日"、"晴天工作日"、"24小时天数"或者连续 24 小时来确定。有时,装卸时间不在租船合同中规定,而是需要参照每天的装货或卸货量,例如"每个晴天工作日装卸货……吨"来计算。有时采用进一步的限制条件,例如"每天每个舱口平均装卸货……吨"或者"每个晴天工作日每个可供使用的有效舱口装卸货……吨"。有时装卸货时间参照一些一般性的含糊条款来商定,例如"轮船能装卸多快就装卸多快"、"按惯例快速装卸"或者"以通常的轮

<sup>348</sup> 见 H.蒂伯格,《滞期法》, 前引书, 第 211-214 页。

<sup>349 (1950</sup>年)《劳氏日报》报告83,500。

<sup>350</sup> 见热朗尼航运公司诉统一供货组织案, (1982年) 劳合社报告 1,275。

船装卸速度"。

234 统一杂货租约第 6 条规定,货物的装和/卸须在"天气允许的情况下在 ······中列明的连续小时数目之内完成,除非占用了星期日和假日,否则星期日和假日除外,如果占用了星期日和假日,实际占用的时间应计算在内"。多种格式租约载有备选措词,允许各方参照下述两项条件中的任何一项来确定装卸货时间:"连续 24 小时工作日,如天气允许,星期日(或当地的相当日期)和假日除外,除非占用了星期日和假日······",或者"以每个连续 24 小时工作日平均装卸....千公斤的速度装卸,如天气允许,星期日(或当地的相当日期)和假日除外,除非占用了星期日和假日······"。 351 1922 年航运会水泥租船合同(1974 年修正)"水泥租约"(Cemenco)第 5 条规定,货物须在一定的"连续小时"数内装卸,装卸货时间不包括法定假日和从星期六中午到下一个星期一上午 7 时的时间。北美化肥租船合同"88 年化肥程租约"(Fertivoy 88)第 14(b)条规定"所有装卸货时间根据连续 24 小时晴天工作日计算"。而巴尔的摩班轮丙式租船合同规定,"轮船须根据泊位条件,以通常的泊位装货速度装货······"。

235 合同中使用的与计算装卸时间有关的术语和短语引起了很多争议。就那些没有明确确定装卸时间而仅仅使用一般性提法(例如"轮船能装卸多快就装卸多快","按惯例快速装卸"等)的条款而言,情况尤其如此。"虽然不确定装卸时间显然变得更加普遍,但是了解这样做有什么好处并非容易,(就租船合同的任何方面)缺乏明确规定都很可能产生争议"<sup>352</sup> 和根据各种法律制度作出相互冲突的解释。<sup>353</sup>

236. 此外,人们常常对这些条款中使用的术语和短语作出不同的解释。例如,象"如天气允许"和"晴天工作日"这样的短语,根据大多数法律制度其含义是相同的,<sup>354</sup> 但是英国法律在使用这两个短语时是加以区别的。"如天气允许"这个

<sup>351</sup> 第 8 条; 见 89 年北美谷物程租约第 19 条。

<sup>352</sup>P.托德,《海上货物运输合同》,前引书,第93页。

<sup>&</sup>lt;sup>353</sup> 见蒂伯格, 《滞期法》, 前引书, 第 343-382 页。

<sup>354</sup> 同上, 第 411-412 页。

短语一直被视为例外的措词,如果天气实际妨碍装卸,才能中断装卸时间。<sup>355</sup> 另一方面,"晴天工作日"这个术语被视为限定装卸时间的长短,要是天气本不允许装卸,就无法计算装卸时间,即使不想装卸或者不计划装卸也是如此。"一天作为一个晴天工作日的状况,不管是整整一天,还是部分时间,还是一点时间都没有,是由其本身天气来决定的,而不是由诸如任何人的行动、意图和计划这样的外部因素来决定的。"<sup>356</sup> 因此,人们的意见是,"象'如天气允许'这样的短语在这方面模棱两可,应谨慎使用。"<sup>357</sup>

237. 一些租船合同参照正在使用舱口或可使用舱口的数目确定装卸时间,这方面纠纷更多。按"每个可使用的舱口"或"每个正在使用的舱口"计算的办法引起了异议。<sup>358</sup> 在桑德盖特号案中<sup>359</sup> L.J.斯克鲁顿说这种措词是一个"模棱两可和不可思议的条款"。然而,英国法院认为,这些短语有一种类似的意义,即一个舱口一旦装满货物或者卸空货物,就不再是一个正在使用的或可使用的舱口。因此,预期的装货或卸货速度随着装卸货的继续而放慢,因为舱口不再是正在使用的或可使用的舱口。<sup>360</sup> 在过去十年里,就装卸时间条款中"可使用的"或"可供使用"

<sup>355</sup> 见斯蒂芬斯诉哈里斯公司 (1887年) 57L.J.Q.B.203 (C.A.); 里尔登·史密斯轮船公司诉农业部 (1963年) A.C.691 (H.L.); 但是见格伦德冯号 (1893年) 第 269页; 另见萨默斯基尔,《装卸时间》, 前引书, 第 175-179页。

<sup>356</sup> 阿格罗轮船公司诉英国榨油及油饼公司 (1957年) 2QB.293, 第 303页; 另见萨默斯基尔,《装卸时间》,前引书,第 44-46页。

<sup>&</sup>lt;sup>357</sup> 卡弗, 前引书, 第 1857 段。

<sup>&</sup>lt;sup>358</sup>J.蒂伯格,《滞期法》,前引书,第 428 页。

<sup>&</sup>lt;sup>359</sup> (1930年) P.30, 第 32 页。

<sup>360</sup> 见 P.托德,《海上货物运输合同》,前引书,第 92 页;萨默斯基尔,《装卸时间》,前引书,第 37-44 页;桑德盖特号 (1930 年)第 30 页;齐塔航运公司诉路易斯·德雷菲斯及公司(齐塔号)(1953 年)劳合社报告 2,472。

的舱口的含义问题提交给英国法院裁决的案件不少于五起,其中最近一起<sup>361</sup> 涉及不同租船合同的另外四起争议,现已上诉到上诉法院和上院。

238. 装卸条款既适用于装货,又适用于卸货。虽然一些租船合同载有关于装货和卸货的单独条款,但是,象统一杂货租约、多种格式租约和北美谷物租约这样的其他租船合同提供了可供选择的方案,允许合同各方为装货和卸货选择总的装卸时间,如果它们愿意这样做的话。

#### "等候泊位损失的时间计为装卸时间/装货时间"

239. 一些租船合同载有明确的条款,要求将一定的等候时间计为承租人的装卸时间,即使船舶未到达合同规定的目的地,船长尚未发出准备就绪通知书也是如此。标准杂货租船合同第6(c)条规定,"等候泊位损失的时间须根据具体情况计为装货或卸货时间"。这项条款的应用引起了各种问题。有人说:"这项条款最初想在'泊位'装货租船合同中应用。它所引起的问题有许多起因于它在'港口'租船合同中的应用。"362

240. 然而,在解释较老的租船合同的这项共同条款方面,英美两国的法律同某些欧洲大陆法系国家的法律看来是有差异的。标准杂货租船合同的等候时间规定,多年来曾是在英国法院起诉的主题,直到在阿尔德巴拉恩海运公司诉奥森汉德尔公司(达拉号)案中<sup>363</sup> 上议院才推翻了人们以前接受的对这项条款的解释。问题是,根据这项规定,等候时间是否以一般的装卸货时间免责条款为准。在北江货运公司诉印度总统(拉德诺号)案中,<sup>364</sup> 上诉法院曾声明过,"损失时间"规定完全不受装卸时间条款制约。十年以后,这使商事法庭在金属与绳索有限公司诉

<sup>&</sup>lt;sup>361</sup> 印度总统诉耶布森斯 (联合王国) 有限公司和其他公司 (卡平平将军号) (1989年) 劳合社报告 1, 232。

<sup>&</sup>lt;sup>362</sup> 斯克鲁顿,前引书,第 150页,注释 72。

<sup>&</sup>lt;sup>363</sup> (1976年) 劳合社报告 2, 359。

<sup>&</sup>lt;sup>364</sup> (1955年) 劳合社报告 2, 668。

菲利亚有限公司(瓦斯特里克号)案中<sup>365</sup> 断定,等候损失的所有时间都算作装卸时间,不论装卸时间免责条款如何都是如此。在爱奥尼亚航运公司诉大西洋航运公司(路卡斯号)案中也得出了类似的结论。<sup>366</sup> 随后,上议院在达拉号案中否决了执行 20 多年的对"损失时间"规定的解释,并且判定,不管船舶是不是"到达船舶",装卸时间规定都适用于等候时间。看来这也是根据美国法律采取的立场。<sup>367</sup>

- 241. 然而,根据法国法律和德意志联邦共和国法律采取的立场则看来与此不同。<sup>368</sup> 特拉普评论说,"损失时间条款"······"并没有规定这样等候损失的时间按装货时间'计算'或'应这样计算',即以计算装货时间的同样方式计算。等候泊位浪费的这段时间,即'损失时间'与(例如)并不算数的星期日和假日相反,而是肯定"算数"的。因此,这项条款明确规定,损失时间,即等候的时间按装卸时间计算,换句话说,完全按装卸时间计算,不管船舶在周末等候还是在假日等候都是如此。"
- 242 所以,一是从字面上对一项规定作出解释,另一个是从更加广泛的角度,也许更着重于从商业角度对很不确切、以致不能只有一个含义的措词作出解释,这两者也是有明显差异的。

## 3. 油轮租船合同中的装卸时间条款

243. 直到不久前,法院和仲裁法庭受理的主要案件一直是干货租船合同的装卸时间和滞期条款引起的争议,但是,在过去 20 年里,就油轮租船合同的装卸时间和滞期条款——特别是 Asba 油轮程租约及其前身 1969 年 Exxon 油轮程租约的那些条款——发生的争议很多。

<sup>365 (1966</sup>年) 劳合社报告 2, 219。

<sup>&</sup>lt;sup>366</sup> (1971年) 劳合社报告 1, 215。

<sup>&</sup>lt;sup>367</sup> 见本尼迪克特,《海事》(第六版) 第 28 卷, 第 2-29 页。

<sup>&</sup>lt;sup>368</sup> 见法国仲裁 357 号, 1980 年 5 月 6 日, DMF1980, 695, 以及特拉普提到的 1974 年 9 月 18 日伊尔斯号案的汉堡仲裁裁决 (1986 年) L.M.C.L.Q.251。

244. 争议的一个主要方面是 Asba 油轮程租约第 9 条的规定与第 6 条最后一 句有明显矛盾。第9条规定,"船舶须在到达后可以停靠的、由承租人指定和获得 的任何安全地点或码头或横靠船舶或驳船装货和卸货,而第6条最后一句规定, "\*\*\*\*\*如果在发出准备就绪通知书之后由于承租人无法控制的任何原因而致使船舶 延误靠泊,这样的延误不应算作所耗的时间"。在三起英国案件中369 合同较早的文本中"到达后可以停靠"这一措词的解释并没有解决模棱两可的问题。 1969 年 Exxon 油轮程租约第 6 条规定和第 9 条规定之间的表面矛盾最终在内雷 德航运有限公司诉国际散装石油公司 (劳拉·普里马号) 案中提交给上议院审 理。<sup>370</sup> 当时裁定,这些条款必须被视为一个整体,"到达后可以停靠"的含义恰 恰就是字面上的意思。如果船舶到达后不能在一个泊位停靠,这种保证就失去了作 用,除非有某种有关的给予保护的免责条款并且要求这个泊位既安全又可供船舶到 达后停靠。只有承租人指定和获得了船舶到达后可以停靠的一个安全地点,并且只 有在船舶到达后发生一个介入事件造成承租人无法控制的延误,第6条中的最后 一句才适用并不让再按装卸时间计算。结果, 第6条中的免责条款实际上很少应 用。看来是由于 Asba 油轮程租约引起混淆的行文才作出了一项总的说来并不反映 承租人和船东的意图的判决。从在对随后案件的仲裁裁决中显然可以看到这一点。 在这些案件中,在向法院上诉之后,对劳拉·普里马号案的判定已用于不同的情 况。所以, 在阿恩特·J.穆尔兰德公司诉科威特石油公司(菲尤拉斯号)案 绝大多数仲裁人认为,对劳拉·普里马号案的判定 (承租人有责任指定 一个可马上停靠的泊位,不管他们能否控制向泊位停靠的延误都是如此) 应该仅 限于泊位拥挤的情况。仲裁人说:"程租约中有关航行问题的责任完全由船东而不是

<sup>369</sup> 远洋货运公司诉伊多林诺埃尔贸易公司(安杰罗斯·路西斯号)(1964年) 劳合社报告 2,28;印加航运有限公司及其他公司诉莫菲诺尔公司(布兰德总统号)(1967年)劳合社报告 2,338以及航运开发公司诉苏联石油出口公司(德利安精神号)(1972年)1Q.B.103.

<sup>370 (1982</sup>年) 劳合社报告 1, 1。

<sup>&</sup>lt;sup>371</sup> (1988年) 劳合社报告 1, 336。

承租人承担,这是一个根本的和基本的事实。据我们所知,在航次租船方面没有任何租船合同条款试图将这种关于航行问题的责任转嫁到承租人身上。"但是,在菲尤拉斯号案中,法院认为它本身受上议院在劳拉·普里马号案中的裁定的约束,因此裁定,对后一起案件的裁定适用于所有延误,其中包括航行延误。在帕尔姆轮船公司诉科威特石油公司(女王号)案中得出了一项类似的结论,这与商业仲裁人对根据一项程租约按惯例划分风险的看法也是背道而驰的。<sup>372</sup> 在另一项仲裁中,<sup>373</sup> 据说,对劳拉·普里马号案的裁定是一项艰难的裁定,并且无疑导致了(据大多数人说)违反商业道德的后果和租船合同正式格式的起草人或采纳这种格式的各方从未打算造成的后果……"。人们进一步发表评论说:"如果对劳拉·普里马号案的判定使承租人在天气不好的情况下得不到(Asba油轮程租约 C/P)第6条最后一句所说的好处,其结果看来非常不合情理。在坏天气使船舶无法在开始计算装卸时间之前进入泊位的情况下,承租人得不到一项免责条款的普遍保护,而是剩下一项实际上毫无价值的免责条款。"374

245. Asba 油轮程租约第 6 和第 9 条的这些规定,并不是已引起争议的这种租船合同中仅有的装卸时间规定。第 6 条中关于在六小时内发出通知书的规定一直是美国作出相互冲突的仲裁裁决的问题,第 7 条中的移泊时间规定和第 8 条中的半滞期规定就是如此。<sup>375</sup> 虽然比较新近的 Asball 格式油轮租船合同纠正了 Asba 油轮程租约中的一些不足之处,但是它的行文仍然容易引起争议。尽管有了比较现代的和行文比较明确的油轮租船合同格式,例如 1984 年 Exxon 油轮程租约、壳牌公司程租约 5 或 87 年油轮程租约,这两种格式的租船合同仍得到广泛使用。

<sup>&</sup>lt;sup>372</sup>215LMLN, 1988年1月30日。

<sup>&</sup>lt;sup>373</sup>151LMLN, 1985年8月15日。

<sup>&</sup>lt;sup>374</sup>D.戴维斯,《装卸时间的开始》, 伦敦劳合社出版社, 1987, 第 35 页。

<sup>&</sup>lt;sup>375</sup> 关于这些条款,一般见麦丘恩,《Asba 油轮程租合同》,(1984年),第26-54页。

#### 4. 装卸时间的中断

246. 在解释装卸时间的规定方面,欧洲大陆法有时不同于英美两国的法律。正如象 1957 年大陆谷物租船合同和 1950 年非洲磷酸盐租约这样的较老租船合同格式中常常发生的情况那样,对装卸时间可以中断的情况并未明确地或十分详细地加以说明,在不同的管辖系统,装卸时间的计算可能不同。斯克鲁顿在《租船合同》 376 一书中对英国法律在中断装卸时间问题上的看法作了如下说明:"如果承租人根据租船合同的条件同意在一段固定的时间内装货或卸货,这是一种绝对的和无条件的保证,他应对不履行保证负责,不管使他无法履行保证的障碍是什么性质都是如此,除非这样的障碍为租船合同中的免责条款所适用,或者起因于必须装卸货的地方的法律使装货或卸货成为非法的情况,或者起因于船东或他为之负责的那些人的过失。"

247. 在巴拿马运输总公司诉阿莫科贸易公司 (阿尔特斯号) 案中<sup>377</sup> 对什么等于船东的"过失"问题进行了审议。在这个案件中,人们说:"装卸时间可因船东的行为而中止或中断,这一行为即使在他不违反合同的情况下也能起到阻止完成装货或开始航行的效果,如果这种行为构成了未违反合同的过失的话,或者如果它没有合法的借口的话"。

248. 虽然美国的案件前后矛盾相当大,但是最近的权威论断看来大体上符合根据英国法律采取的立场。<sup>378</sup> 然而,根据大多数斯堪的纳维亚国家的法律和德意志联邦共和国的法律,大概还根据荷兰和法国的法律,延误的原因分为承租人的"风险范围"和船东的风险范围。所以,蒂伯格在《滞期法》<sup>379</sup> 中说:"斯堪的

<sup>376</sup> 前引书,第 317 页。

<sup>377 (1985</sup>年) 劳合社报告 1, 423-430。

<sup>378</sup> 见马尔莫赫斯号 1960 年《美国海事判例》1191; 马德林港航运公司诉埃索标准油料公司 (S.D.M.Y.1961 年) 1962 年《美国海事判例》147; 宾夕法尼亚 R.R.公司诉穆尔麦科马克航运公司, 1967 年《美国海事判例》5。

<sup>&</sup>lt;sup>379</sup> 第三版, 第 496 页。

纳维亚和德国划分风险范围的做法(在按照合同确定装卸时间的荷兰法律中也发现了这种做法)超出了船东的实际过失并允许承担人不为属于船东'范围'——分配给船东的工作份额—— 的任何延误承担责任。以船边交货思想为基础的德国守则现定船舶在船上接收货物,在卸货港从船上交付货物。在船方不负担装卸费用的条款变得比较普遍的时候颁布的荷兰守则规定,当船东疏忽或无法履行其职责时,应中止装卸时间。斯堪的纳维亚守则比较全面地谈到'船方的障碍'使装卸时间中止的情况。由于有了斯堪的纳维亚办法,才有可能考虑除了谁实际上从事这项工作这个问题以外的其他干预因素"。

- 249. 可见根据斯堪的纳维亚、德国和荷兰的法律, 装卸时间是可以中断的, 而根据美国和英国的法律, 装卸时间在没有明确规定的情况下或许是不可中断的, 即使有障碍。凡障碍:
  - "一、 •••••干扰船东应该从事的工作。除非可把障碍归咎于承租人的过失或者 归咎于他能控制的原因。
  - "二、······起因于船舶在结构上不能按商定的快捷进度交接货物,或者起因于船舶装卸设备的故障或者船员不足或者对船舶或承运人规定的禁令或限制。
  - "三、 ······由于合同规定的货物的性质而在船上出现,倘若不是仅仅为了货主的自身利益而停工的话。
  - "四、 •••••由于货物在船上运输途中已遭损失而引起,除非这样的损失由于货物本身固有的性能所致•••••"。 380

## 5. 滞期费

250. 如果装卸时间已经到期而装货或卸货尚未完成,那么,承租人将有义

<sup>&</sup>lt;sup>380</sup>J.蒂伯格,前引书,第 497-501页;并见弗里德于 1987年在马德里举行的第八次海事仲裁人国际代表大会上宣读的论文"意想不到的额外卸货费和滞期费",和特拉普 (1986) L.M.C.L.Q.251。从最后提到的文章中看来,在这个问题上,法国的法律与德国的法律类似。

务支付滞期费, 因任何额外的延迟而给船东以赔偿。正如一位英国法官所说:

"即使船舶在港口里,也要支付所有的间接费用和船舶的很大一部分日常费用。因此,如果装卸货的过程超过船东本来预期的时间,他就面临严重的损失,船舶在下一次约定航程运货的时间就要推迟。通过同意赔偿这些损失,承租人通常就超出装卸时间的延误订约按日费率进一步支付的款项,这叫做滞期费。"381

251 关于滞期费的性质,各国的法律采取不同的方针。虽然根据一些法律制度,例如英国法律,滞期费被视为因违反合同,使船舶延迟的时间超过装卸时间而支付的规定违约偿金,但是其他一些法律制度则把滞期费说成附加运费。"附加运费理论在法国有历史渊源,看来已为法院所公认,而一些法律问题撰稿人则倾向于把滞期费视为赔款,而另一些撰稿人则放弃了在理论上对这样的先入之见的依恋,尤其最近几年更是如此。一般说来,比利时持有将滞期费视为赔款的理论。在意大利,把滞期费视为特殊赔偿的意见越来越占上风,看来这主要是由于《守则》把租船运输说成运输合同,但是最近出现了附加运费理论。后来研究荷兰法律的撰稿人不是把滞期费说成赔款,而是说成对拖延等候时间的赔偿·······在美国法律中,几乎没有讨论过滞期费的性质问题,尽管常常发现一些前后矛盾的直率声明,说它要么是附加运费,要么是赔款;有时它干脆被说成是一项惩罚条款·······。一般说来,斯堪的纳维亚和德国的撰稿人喜欢采取一种比较中立的方针,把滞期费说成为超出装卸时间的延迟支付的特殊赔偿。382

252. 各国方针的这些差异可能导致法院和仲裁法庭作出相互矛质的判决。 正如蒂伯格评说: "在对滞期费的基本性质的这种混乱的讨论中,这些基础理论有时 被用来为一种特定的结果辩护,而在另一些案件中,法院得出的结果或者通过立法

<sup>&</sup>lt;sup>381</sup> 根据 J. 唐纳森对航运有限公司诉弗伦塔多斯航运有限公司案的论述 (1968年) 劳合社报告 1,379-383。

<sup>&</sup>lt;sup>382</sup>H. 蒂伯格, 《滞期法》, 前引书, 第 531-535 页。

选定的解决办法将为采纳的理论辩护。"<sup>383</sup> 在英国的利普斯号案中,<sup>384</sup> 船东不能收回对迟付滞期费的损害赔款,他已由于英镑与美元汇率的变动而蒙受损失。在上议院,麦凯勋爵发表的看法是,要是租船合同规定了支付滞期费的日期,这种损失本来可以得到补偿。但是,布兰登勋爵认为,由于滞期费是规定的违约偿金,在合同中规定支付这种赔款的日期的概念和为迟付赔款而支付赔款在法律中没有依据。

- 253. 大多数租船合同载有涉及滞期费的条款。标准杂货租船合同是限制滞期期限的少数几种租船合同之一。它规定: "在装货港和卸货港允许商人总共有连续十天的滞期,按每天或每天任何一部分的比例······的规定费率,逐天支付滞期费。" 385 另一方面,大多数租船合同并不限制滞期期限。例如,多种格式租约的这项条款说: "如果船舶在装卸货时滞留的时间较长,承租人须按每天或成比例······的费率向船东支付滞期费。" 386
- 254. 如果租船合同中没有关于滞期的规定并且装卸时间已经用完,或者说如果租船合同已规定的滞期期限在装货或卸货完成之前已经到期,那么,船东将有资格就船舶的延滞费提出索赔。这样的赔款是事前未订定金额的损害赔偿,并且根据各国法律确定。各国法律又对这个问题采取了不同的方针。387
- 255. 滞期连续计算,适用于装卸时间的免责情况(例如,星期日和假日、坏天气、罢工等)通常并不适用于滞期,除非有与此相反的明确规定。"一旦滞期,就永远滞期"的说法,是航运界公认的一项准则。其理由是,要是承租人在允许的装卸时间内完成了装货或卸货,船舶就不会在其他情况下的除外期间滞留。
  - 256. 已经出现的问题是,这项规则是否也适用于这样的情况:在装货港,

<sup>383</sup> 同上, 第 533 页。

<sup>&</sup>lt;sup>384</sup> (1987年) 3 A11 ER 110。

<sup>385</sup> 第 7 条,看来第 7 条实际上经常被删除。另见载有一项类似规定的北欧程租约第 10 条。

<sup>386</sup> 第 9 条; 另见 89 年北美谷物程租约第 20 条。

<sup>&</sup>lt;sup>387</sup>H. 蒂伯格, 《滞期法》, 前引书, 第 556-566 页。

船舶已经用完了装货和卸货所允许的所有装卸时间,在到达卸货港时已经滞期。在这样的情况下,承租人是否有资格在滞期重新开始之前享有租船合同的通知期限的好处?在日本邮船会社诉摩洛哥工业冶炼有限公司(筑波丸号)案中<sup>388</sup> 出现了这种情况,法院应用了这项规则,因为租船合同(69年 Exxon 程租约)中没有任何条款表明,一旦船舶滞期,就可应用装卸时间的免责条款。虽然标准干货租船合同中没有关于这个问题的明确规定,但是,一些油轮租船合同明确规定,在通知期限内不得计算滞期。例如,84年 Exxon 程租约在第13(a)条中规定:"本合同规定的装卸时间或滞期时间应在承租人或其代表收到准备就绪通知书后的六小时一终止就开始计算或重新计算……"。

257. 然而,一些租船合同明确规定,装卸时间的免责条款适用于滞期时间,或者在发生某些事件之后,将滞期费率减半。例如,87年油轮程租约规定:"由于下述原因中的任何原因损失的时间都不得算作装卸时间,或者如果船舶滞期,也不得算作滞期时间······"。列举的事件包括这样一些原因:等候下次高潮或白天从等候地点驶入进口航道、船舶通知中止、船舶故障或、租东或其代理人疏忽或不履行职责、罢工、关厂或者船员和引水员或拖轮工作人员的劳动受到的其他限制。389 它进一步规定,如果由于下述事件中的任何事件而造成滞期,滞期费率须减半:"(a)海上天气条件恶劣;(b)火灾或爆炸的影响或者不是由于承租人、托运人或收货人或其雇员或代理人疏忽而引起的岸上设施的机器故障;(c)天灾、战争行为、公敌行为、检疫限制、罢工、关厂、限制劳动、风险、民变,或者统治者或人民的逮捕或管制等(但是,对指定该港口时已经发生的罢工、关厂或种种限制造成的时间损失应交付全部滞期费)······"。390 根据84年 Exxon 程租约的条款,由于"火灾、爆炸或罢工、关厂或工人停工,或者设施内或设施附近的

<sup>&</sup>lt;sup>388</sup> (1979年) 劳合社报告 1, 459。

<sup>389</sup> 见第 9(b)条。

<sup>&</sup>lt;sup>390</sup> 第 10 条; 另见 Asba 油轮程租约第 8 条; Asba II 租约第 8 条; 83 年 Beepee 程租约 2, 第 19 和第 20 条; 壳牌公司程租约 5, 第 14 和第 15 (2) 条。

机器或设备的故障"而造成的任何延迟都应算作装卸时间,或者,如果船舶滞期,应算作滞期时间,发生的任何滞期费应全部交付。在大多数油轮租船合同中,这些事件会使滞期费按半价支付。这项条款还规定,对"超出船东或承租人的合理控制范围"的任何延迟应支付半价滞期费。对于这一点,这种租船合同未在其他地方详细说明装卸时间/滞期的后果。<sup>391</sup> "只有经验才会表明在解释'超出'一方的'合理控制范围'时可能遇到什么困难"。<sup>392</sup>

258. 就干货程租约的免责条款而言,标准杂货租船合同和标准谷物租船合同的罢工条款显然容易引起争议,因为它们的措词已经过时并且含糊不清。标准杂货租船合同的罢工条款第15条规定,如果发生了影响装货的罢工或关厂,船东可解除租船合同,除非承租人同意"象未发生罢工或关厂那样计算装卸货日数"。如果在罢工或闭厂开始之前已装好一部分货物,船东必须运走装好的货物,只收取这部分货物的运费,但是可为自己的利益在途中装满其他货物。然而,在卸货时:

"·····如果在船舶到达卸货港或卸货港附近时或在此之后发生了影响卸货的罢工或关厂,而这些问题未在 48 小时之内得到解决,收货人应作出选择,要么使船舶等候到这样的罢工或关厂结束,在规定的卸货时间终止后支付一半滞期费,要么指示船舶驶往一个可以安全地卸货而又没有因罢工或关厂被滞留的风险的安全港口·····"。

259 标准杂货租船合同的罢工条款常常载入其他租船合同,有时作为印刷格式的一部分 —— 例如在 1967年 Riodoceore 铁矿砂租船合同中就是这样。在萨拉米斯航运公司 (巴拿马) 诉埃德姆·范尼尔比克及公司 (奥尼西洛斯号) 案 393 以及瑟普尔福斯租船公司诉 N.B.R. (伦敦) 有限公司 (萨图尼亚号) 案 394 中,英国法院不得不对标准杂货租船合同的罢工条款加以解释,说这项条

<sup>391</sup> 见第 14 (a) 和 (d) 条。

<sup>392</sup>H 威廉斯,《对油轮航程租船合同的评论》,前引书,第 42 页。

<sup>&</sup>lt;sup>393</sup> (1971年) 劳合社报告 2, 29。

<sup>&</sup>lt;sup>394</sup> (1984年) 劳合社报告 2, 366, 经确认的 (1987年) 劳合社报告 2, 43。

款含糊不清、模棱两可。395

260. 标准谷物租船合同的罢工条款也引起了许多争议。该条款的全文如下 (括号内是"建议的"修正):

"如果由于暴乱、民变或者对于装货必不可少的任何类别的工人的罢工或停工,或者由于(暴乱、民变或在铁路、码头或其他装货地点发生的罢工或关厂引起的)承租人无法控制的闭塞或停工而不能装货,或者如果由于暴乱、民变或对卸货必不可少的任何类别的工人的罢工或停工而不能卸货,在连续出现这样的原因期间应视具体情况不计算装货或卸货的时间,但是,托运人和/或收货人的雇员的罢工或停工不应妨碍滞期的计算,如果通过作出合理的勤勉,他们本来能够以罢工或停工之前的时价获得其他适当的劳动力的话。一旦由于上述原因引起任何延迟,承租人/收货人或者船东都不得索取任何赔款或滞期费。然而,为了结清速遣减免帐目,轮船由于上述情况中的任何情况损失的任何时间都应视具体情况被算作装货或卸货使用的时间。"

261. 在印度工会诉阿奥卢斯航运公司(斯帕尔马托里号案中, <sup>396</sup> 英国法院认为,标准谷物租船合同的罢工条款含糊不清。上议院的一位法官说:"可以相当清楚地看出.第三部分并不是这项条款原来的一部分,而是后来补充的一部分:我简直不能想象这位最不关心法律的起草人竟然以目前的格式起草整个条款。"他进一步补充说:"对这项条款第三部分没有完全令人满意的解释或说明,人们必须在这两种几乎同样不能令人满意的结论之间作出选择。"<sup>397</sup>

<sup>395</sup> 详见这份报告的第 25 段。

<sup>&</sup>lt;sup>396</sup> (1960年) 1W.L.R.297; (1962年) 1Q.B.1; (1964年) A.C.868。

<sup>&</sup>lt;sup>397</sup> 利德里支阿姆斯特丹航运公司诉印度总统(阿姆斯特尔摩伦号)(1961年) 劳合社报告 2,215。关于标准谷物租船合同罢工条款的进一步评论,见本报告第22-23 段。

### 6. 速遣费

262 如果承租人在装卸货时间到期之前完成装货或卸货,这样,船舶可供船东使用的时间就早于要是已用完承租人所享有的全部装卸时间,那么,船东应付给承租人一笔钱,这叫作速遣费。节省装卸时间并不就使承租人有资格索取速遣费,除非租船合同中有一项这种意思的特别条款。在干货程租约中常常有一项规定支付速遣费的条款。然而,标准杂货租船合同并没有这样一项条款。

263. 多种格式租约第9条规定:"对于装货/卸货节省的时间,船东应以每 天或成比例的滞期费率的一半付给承租人速遣费。"89年北美谷物程租约的这项条 款规定:"对在装货和/或卸货港节省的所有装卸时间,船东应以滞期费率的一半支 付速遣费。"<sup>398</sup> 所用的其他措词有"节省的所有时间"、"节省的任何时间"、"节省 的所有工作时间"以及"节省的时间"等。

264. 对速遣条款的解释引起了争议。正如卡弗所说,"在解释为"节省的"装货或卸货时间支付速遣费的规定时遇到了很大困难。"这是指为船东节省的时间还是指未用的装卸时间?如果装卸时间不包括星期天,那么在计算"节省的"时间时是否要把星期天考虑进去? 399 在英国皇家邮政公司和拉普拉塔河轮船公司一案中,400 租船合同的条款规定,"应当允许承租人有······20个连续日来装卸货物(假日和从星期六下午1时到星期一上午7时的时间除外),······船东应为每节省一个连续日支付每日10英镑的速遣费。"法院认为,必须把"节省的"一词解释成为船东节省的时间,因此,应为节省的全部时间支付速遣费,不得扣除在此期间的假日和周末。在莱思诉霍尔韦案401 中也得出了类似的结论,在这一案件中,条款是这样写的:"装货和(或)卸货节省的任何时间都要按每小时10先令付速遣

<sup>&</sup>lt;sup>398</sup> 第 20 条;另见大陆谷物租船合同第 7 条;88 年化肥程租约第 16 条。

<sup>399</sup> 卡弗, 前引书, 第 1948 段。

<sup>&</sup>lt;sup>400</sup> (1910年) 1K.B.600。

<sup>&</sup>lt;sup>401</sup>(1878年)3.Q.B.P.437。

费"。但是对格伦德冯号案<sup>402</sup> 作出了不同的裁决,在这个案例中,租船合同规定,"如果天气许可",船舶以"每天 200 吨的速度卸货(星期日和节日除外)","如果提前卸完,每节省 1 小时以每小时 8 先令 4 便士付费"。在计算"节省的每一个小时"的速遣费时在是否应当计算卸货结束和装卸时间结束之间的星期日和节日这个问题上发生了争执。法院认为,"节省的每一个小时"是指从许可的装卸时间起节省的每一个小时,而不是指卸货提前完成的每一个小时。因此,在计算速遣费时应该减去两天。

265. 在纳尔逊诉纳尔逊航运公司案<sup>403</sup> 中也作出了与格伦德冯号案相同的决定。在这个案例中,使用了"装货时节省的每一个晴天"这些字。租船合同的条款写道:"船东准许承租人有7个晴天工作日(星期日和假日除外)来装货······凡超过上面规定的期限,承租人都应向船东支付滞期费······装货时间每节省一天,船东应向承租人支付20英镑或酌情增减"。

266. 在莫森汽船公司诉拜尔案<sup>404</sup> 中,J.贝拉切对他从这些决定中得出的 结论作了如下归纳:

- "1. 初步推论如下:这些速遣条款的目的和意图是,船东应为替船舶节省的所有时间向承租人支付速遣费,速遣费的计算方法与在相反的情况下计算滞期费一样;这就是说,不考虑装卸期限的免责规定•••••
- "2. 这种初步推论在遇到下面两种情况之一时可以被排除和予以排除; 凡是(i) 装卸期限和速遣节省的时间在同一条款中作了规定,而滞期费在另一条款中作了规定;(ii) 装卸时间,速遗节省的时间和滞期费在同一条款中作了规定,但是在解释该条款时,法院因选词关系或其他原因认为,节省的时间是由于条款中所说明的装卸期限而引起的,并与装卸期限用于同样的意义,而不用于与滞留期损失的时间相同的意义"。
- 267. 速遣费通常规定为滞期费的一半:"由于船东可能难以即刻获得另一次

<sup>402 (1893</sup>年)第 269 页。

<sup>&</sup>lt;sup>403</sup> (1907年) 2K.B.705。

<sup>&</sup>lt;sup>404</sup> (1914年) 1K.B.304-312。

租约或提前船舶的下一个航次的日期,所以出乎意料的快装快卸带给他的赢利小于拖延给他造成的损失。因此,速遣费通常只以滞期费的一半支付"。405

## B. 运费条款

- 268. 在无明文规定时,普通法的一般规则是交货时支付运费。<sup>406</sup> 老式程租约实行这项规则,标准杂货租船合同第 4 条或 1942 年航运公会化肥租船合同(化肥程租租约) 第 1 条就是这样规定的。
- 269. 例如,标准杂货租船合同规定,"交货时以付款当天或那几天实行的平均汇率"支付运费,"不打折扣······"。 407 因此,如果在交货时支付运费,那么运费风险通常在船东方面,如果船舶到达时货物短缺,或者根本无货可交,那么不支付未交货物的运费。另一方面,如果货物交了,那么应当如数支付运费,即使货物受到了损坏。根据英国法律,承租人可对损坏单独提起诉讼,但是在没有明文规定的情况下,他无权从运费中扣除因违背租船合同而提出的任何损坏索赔费用。在达金诉奥克斯利案中, 408 承租人因运费而放弃了所装运的煤,由于船长和船员的过失,使运载的煤遭到严重损坏,以致于造成煤的价值还不如运费高昂。法院认为,尽管货物遭到损坏,但由于已经承运并已交货,所以应付全部运费,承租人的解决办法是提出反诉。

<sup>405</sup> 根据 A.G.纳维科诉 P.E.弗龙塔多斯·纳菲基·埃塔伊里亚案 (1968年) 中的 J.唐纳森 (1968年) 劳合社报告 1,379,第 383 页。

<sup>406</sup> 见哈里曼号, 76U.S. (9 Wall.) 161 (1870年); 伦敦运输公司诉特雷奇曼案 (1904年) 1K.B.635。

<sup>&</sup>lt;sup>407</sup> 第 1 条。也可见 1956 年波罗的海和国际海事会议斯堪的纳维亚程租约,1962 年修正,代号为北欧程租约其中第 2 条规定"以付款当天或那几天的平均汇率,按卸货时的帐户,不打折扣地"支付运费。还可见大陆谷物租船合同,代号Synacomex,1957 年通过,1960 年和 1974 年修正,其中第 4 条规定,"应得的运费在如数交货时支付"。

<sup>&</sup>lt;sup>408</sup> (1864年) 15C.B. (N.S.646)。

- 270. 在布雷德号案<sup>409</sup> 以及艾利思油轮公司诉运输总公司(艾利思号)案中,<sup>410</sup> 承租人对这项规则的公正性提出了异议,由于租船合同上已经写上了《海牙规则》第三6条而导致时间上的限制,使得承租人对船东为承租人按短交或受损货物的价值扣去的运费差额提出的诉讼不能提出反索赔。
- 271. 因此,在布雷德号案中,承租人请法官"采取略微'大胆的步骤',把 19世纪初的免责条款看作已经过时,看作有点陈腐的过去的残余,认为这种残余在发达的当代法律中不可能有任何存在的理由"。 411 但是贾斯蒂斯·莫卡塔先生认为,初审法官脱离强大的权力系统是错误的,因此应把"大胆的步骤"(如果采取的话)留给高等法院去采取。 412 可是,上诉法院并没有采取承租人建议采取的"大胆的步骤",因为它认为没有必要证明这项规则在现代条件下的正确性。 413并且认为,由于这项规则至少已经存在了一个半世纪,这本身就足以证明不必对它进行修改。 414 同样,在艾利思号案中,上议院认为不应对这项规则进行修改。
- 272. 因此,在最近的殖民银行诉欧洲谷物和轮船公司(多米尼克号)案中,<sup>415</sup> 英国上议院认为,即使在船东后来无力偿付,并在装船后不久解除租船合同的案例中,承租人也无权从运费中扣除他们由于放弃航次而遭受的损失。在那种情况下,运费实际上可在签署提单后五天支付,但是"被认为是装货应得的"。
- 273. 有些现代租船合同 (特别是油轮租船合同) 确实规定可以扣款。波罗的海和国际海事会议同世界粮食计划署通过谈判签订的一项干货租船合同——"世界粮食"程租约格式—— 在运费条款中规定,在没有保赔协会的担保的情况下,可以从交货后支付的运费和滞期费差额中扣除货物灭失或损坏赔偿额。

<sup>409 (1972</sup>年) 劳合社报告 2, 511- (1973年) 劳合社报告 2, 333.

<sup>&</sup>lt;sup>410</sup> (1977年) 劳合社报告 1, 334。

<sup>411 (1972</sup>年) 劳合社报告 2,511-523。

<sup>412</sup> 同上, 第 525 页。

<sup>&</sup>lt;sup>413</sup> 参见 L.J 凯恩斯的陈述, (1973年) 劳合社报告 2, 333-341。

<sup>414</sup> 同上, L.J.罗斯基尔的陈述, 第 337 页。

<sup>&</sup>lt;sup>415</sup> (1989年) 劳合社报告 1, 431。

274. 然而,现代干货租船格式以及运费条款增编通常规定货物一装船就应得到全部运费,运费应在装运时或装运后不失支付,例如88年化肥程租约案,租约第20条规定,运费应在装船完成和签发提单后72小时支付,"不论船舶和(或)货物是否损失,应当认为一装运就应得到全部运费"。"82年多种格式租船合同"(1986年修订)第5条规定,"运费应按提单毛重······每吨······支付·······应当认为货物装上船就应得到运费,不论船舶和(或)货物是否损失,运费均不得打折扣,不得退还"。89年北美谷物程租约第9(a)条也采用了类似的措词,尽管它明确规定,"应在出示经过签署的提单时预付全部运费······"。这些条款由于规定不论货物运输和交货情况如何,都应得到运费,而且都应支付,因而把运费的风险加到承租人身上了。

276. 在多米尼克号案中, 419 租船合同是按照标准杂货租船合同的形式签

<sup>416</sup> 见德席尔瓦勒诉肯德尔案 (1815 年) 4M 和 Ad.445; 伯恩诉希勒案 (1871 年) L.R.6Ex.319.

<sup>&</sup>lt;sup>417</sup> 参见阿利森诉布里斯托尔海运公司案 (1876 年) 1A.C.209-253。

<sup>418 (1871</sup> 年) 6L.R.Ex.319, 第 325 页; 还可见第 327 页。

<sup>&</sup>lt;sup>419</sup> (1989 年) 劳合社报告 1,431.

订的.附有打印的修正和一系列打印的附加条款,包括预付运费的规定,这些规定写道:"运费应在签发最后提单后五天内预付,一签署提单,就应认为应得全部运费,运费不打折扣,不退还,无论船舶和(或)货物是否损失······"。在签发提单以后和支付运费之前,船东破产,航次取消。因此,承租人不得不安排由另一艘船将货物运往目的地,这带来了很大的花费。上议院认为,承租人仍有义务交付全部运费,因为这一条款的意思是,所有提单一签发完毕,船东就有权收取运费,但是付款推迟到将已经签发的提单递交给托运人以后5天。因此,船东收取运费的权利产生于租船合同终止之前。不过,人们承认这一条款混乱不清,因此很难解释。420

277. 然而,油轮程租约格式一般不规定预付运费。大多数油轮租船合同规定按装船量计算运费,交货时或卸完货后支付运费。Asba油轮程租约第2条写道:"运费应当按规定的费率收取•••••并应按装船量计算(象第3条那样的空舱费除外),这是检验员的检验证书上写明的。承租人应在目的地交货时如数支付运费,减去已经付给船长或船东代理人的费用或预付款•••••"为了解决由于没有承租人检验员的证书而引起的问题和争执,有些油轮租船合同格式规定按提单上的总量支付运费。421 规定卸完货支付运费的作用是,船东将丧失确保承租人支付运费的对货物的留置权,但是这看来没有多大重要性,因为对油轮货载的留置权的价值看来不如对干货货载的留置权的价值大,这是由于行使这种留置权会产生困难。422

278. 对 1969 年 Exxon 油轮程租约条款(与上面引证的 Asba 油轮程租约条款相同)的解释问题在壳牌国际石油公司诉西布里奇轮船公司(梅图托号)案中提交给英国上诉法院审理。<sup>423</sup> 在这个案件中,部分货物在航行中损失,承租人按交货的数量支付运费。法院认为,在交任何装船量的货物时,应当支付按装船量计

<sup>420</sup> 同上, 第 435 页。

<sup>&</sup>lt;sup>421</sup> 见 84 年 Exxon 油轮程租租约第 6 (a) 条; 和壳牌公司程租约 5 第 5 条。

<sup>&</sup>lt;sup>422</sup>P.托德,前引书,第70-71页。

<sup>&</sup>lt;sup>423</sup> (1978年) 劳合社报告 2, 5。

算的全部运费。法院认为,按装船量计算运费的目的是,当时就应当确定运费,尽管要到船舶到达目的地以后支付。虽然确切说这不是包干运费,但是它具有包干运费的特点,因为它是根据装船量计算的,并且按装船量支付运费,即使出现货物短缺情况。

279. 油轮程租约的运费条款中往往限定要写上所谓卸货损失和货物留置条款,使得承租人能从运费中扣除短交货物的价值,其中包括与此有关的运费。"这些条款正在油轮租船合同中开始使用,除非起草时非常谨慎,否则很有可能引起法律争端。"<sup>424</sup>

### C. 责任终止条款

280. 责任终止条款设法终止装运时承租人的责任,并将完成租船合同的责任转移到收货人身上。这些条款看来大约在上一世纪中叶就已在英国的一些案件中实施,在这些案件中,承租人仅仅扮演代理人的角色。<sup>425</sup> "最初实施目的是为了保护代理他人的经纪人,现已成为大多数租船合同格式中的一个标准特点,在货运中所用的文件中已被当作一件理所当然的事情,不论实际上是否有此必要"。426

281. 各责任终止条款的措词有很大差别。在巴尔的摩班轮丙式谷物租船合同中,这项条款是这样写的:"装运后,承租人根据本租船合同规定所应承担的责任

<sup>424</sup>P.托德,前引书,第78-80页;货物留置条款的例子见B.P.航运修订和补充条款,C1.12;至于对一项卸货损失条款的解释,参见奥林匹克光辉号(1981年)劳合社报告2,176,其中认为,这项条款使承租人有权最后从运费中扣除短交货物的价值。并不仅仅作为预防将来可能提出索赔的一项保障措施而予以扣留。

<sup>&</sup>lt;sup>425</sup> 弗朗切斯科诉马西案 (1873年) L.R.8 EX.101; 这一条款早期的格式见米尔韦恩诉佩富斯案 (1861年) 3E.和 E.495; 奥格尔斯比诉伊格莱西亚斯案 (1858年) E.B. 和 E.390.

<sup>&</sup>lt;sup>426</sup>H. 蒂伯格, 《滞期法》, 前引书, 第 610 页。

就终止了"。<sup>427</sup> 铁矿砂租船合同(第 21 条是这样写的:"一装完货并预付了运费(如果预付的话),承租人的一切责任均应停止,为了收取运费、空舱费和滞期费,船东对货物有留置权。"非洲磷酸盐租船合同和水泥租船合同中的条款是相似的。标准杂货租船合同第 8 条保留了承租人支付因在装货港口被扣留而造成的空舱费、滞期费和损坏赔偿费,以及因在卸货港口被扣留而造成的运费、滞期费,包括损坏赔偿费的责任,但是"仅仅以船东行使对货物的留置权而无法得到这些付款的程度为限"。根据 89 年北美谷物程租约第 35 条的规定,承租人仍然有责任在装货时支付运费、空舱费和滞期费,以及在确定承租人责任的租船合同中规定的所有其他费用。82 年多种格式租船合同(86 年修订)在以"留置权与责任终止"为标题的第 24 条中规定船东为索取租船合同中规定的他们应得的运费、空舱费和滞期费以及在具体规定了承租人责任的租船合同中所规定的所有其他费用。

282. 责任终止条款引起许多争执。正如人们所评述的:

"如果说从法院在责任终止条款和留置权问题上已经作了裁决的许多案例中可以得出一套合乎逻辑的简单规则,那是言过其实。商界的要求不断变化,例如它逐渐放弃滞期费的固定天数就证明了这一点;法官们逐渐改变看法,他们反过来受商人们的愿望的影响;装卸时间、责任终止、留置权和滞期费的条款五花八门,往往制订得很糟糕:所有这些在100年的时间里造成了在法学的这一分科中仍然存在着捉摸不定的情况"。428

283. 所引起的关于其解释的问题包括诸如承租人的责任终止在什么程度上以及责任终止是涉及一切索赔还是只涉及未来的责任等问题。早期的条款格式往往明文规定承租人对所有的事项的责任都终止,不论"在装运货物之前、期间还是之

<sup>&</sup>lt;sup>427</sup> 第 6 条; 第 5 条规定为索取全部运费、空舱费、滞期费或海损费而对货物 拥有留置权。

<sup>428</sup> 萨默斯基尔论《装卸时间》,前引书,第 311-312 页。

- 后"。<sup>429</sup> 但是在这一条款没有明确免除承租人在装运之前承担的责任的地方,已经对于这样一项条款是否会产生使承租人免于承担在装货之前产生的责任的作用产生了互相抵触的意见。一些权威的论断现已认定,如果通过留置权使船东能用其他办法来解决应付未付的债务,<sup>430</sup> 例如在装货港的空舱费或滞期费,如果把这种留置权写入提单,以便使船东能够对提单持有人实行留置权,<sup>431</sup> 那么承租人的责任就免除了。
- 284. 一些权威的论断进一步断定,这项条款只免除承租人根据租船合同承担的责任中与给予船东的留置权共同延伸的或相等的那一部分责任。在辛诺依号案中,<sup>432</sup> J.唐纳森称责任终止条款为"奇怪的动物",因为"它们并没有它们看来说过的意思,即如果和因为船东通过对货物的留置权有其他解决办法,那么承租人的责任就应当终止"。<sup>433</sup>
- 285. 美国的法院采用了类似的办法。在克罗斯曼诉伯里尔案中。<sup>434</sup> 据说在解释责任终止条款时应当采取的原则是,这项条款"如有可能,应解释为对一种与留置权不相称的责任是不适用的"。
- 286. 因此,留置权是由租船合同产生的,并写进递交给收货人的提单里, 提单调节船柬和收货人之间的合同关系。可是,除非留置权在卸货时起作用,否则

<sup>&</sup>lt;sup>429</sup> 米尔韦恩诉佩雷斯案 (1861年) 3E和 E.495; 奥格尔斯比诉伊格莱西亚斯案 (1858年) E.B和 E, 390。

<sup>430</sup> 见菲德利塔斯航运公司诉苏联粮食进口公司案 (1963年) 劳合社报告 2, 113; 法朗切斯科诉马西案 (1873年) L.R.8EX.101。

<sup>&</sup>lt;sup>431</sup> 见基施诉泰勒案 (1912 年) A.C.604。

<sup>432 (1971</sup>年) 劳合社报告 1, 第 516 页。

<sup>&</sup>lt;sup>433</sup> 还可见汉森诉哈罗德案 (1894年) 1Q.B.D.612-619; 克拉克诉雷德福案 (1891年) 1Q.B.625。

<sup>&</sup>lt;sup>434</sup> (179U.S.1), 21S.ct.38 (1900年)。

责任终止条款是不会起作用的。435

287. 为了将租船合同中的条件写进提单,使用了载入条款。保留了"支付运费和租船合同规定的其他一切费用"等载入条款的措词,以便将船东为索取装货港口滞期费和空舱费而具有的留置权写进提单<sup>436</sup> 因此对提单真诚的被背书人是具有约束力的。<sup>437</sup>

### D. 绕航条款

288. 在实行普通法国家,程租约中规定了一个条件,即船舶按合同中商定的航线航行,没有正当理由不得绕航,也不能有不合理的拖延。任何不正当地偏离商定的航线的行为构成绕航,通常会使承租人有权认为船东取消了这项租船合同。有些偏离直接航线的行为被认为是正当的,并不构成绕航,例如为了救人(尽管不是抢救财产)以及为了避免危险和进行必需的修理等必要目的而偏离航线。

289. 《海牙/海牙-维斯比规则》把为了救人而绕航这项普通法权利扩大到 财产,把合理性的概念作为一般检验标准来实行。因此,第四 4 条规定:

"为救助或企图救助海上人命或财产而发生的绕航,或任何合理绕航,都不能作为破坏或违反本公约或运货合同的行为,承运人对由此而引起的任何灭失或损害,都不负责。"

290. 在美国 1936 年海上货物运输法中,有一个附加但书是这样写的: "然而条件是,如果绕航是为了装卸货物或旅客,那么很明显,这应被看作是不合理

<sup>435</sup> 辛诺依号 (1972 年) 劳合社报告 2, 201; 丘纳德·卡里尔号 (1977 年) 劳合社报告 2, 261。

<sup>436</sup> 空舱费确切说不是运费,而是承租人由于未能按照其租舱合同规定把货物装满船舱而付给船东的补偿费。因此它是承租人的个人债务,在签发提单之前或者在被背书人在写入提单内的货物方面获得任何权利之前就背上了。

<sup>437</sup> 见基施诉泰勒案 (1912) A.C.604; 菲德利塔斯航运公司诉苏联粮食出口公司案 (1963年) 劳合社报告 2, 113; 关于载入条款的进一步讨论见本报告第四章。

的"。

- 291. 租船合同即使明确写进《海牙/海牙-维斯比规则》,一般也载有所谓"绕航条款"或"特许权条款"。有些租船合同,例如世界粮食租船合同和 84 年 Nu 程租约都在第四 4 条中作了有点类似的规定。
- 292. 然而其他租船合同在其绕航条款中谋求给予船东比《海牙规则》中更广泛的特许权。秘书处调查表的一些答复者对标准租船合同格式中的这种条款,例如标准杂货租船合同和铁矿砂租船合同中的条款,以及给予船东偏离正常航线的非常广泛的特许权的波罗的海木材租船合同中的条款提出了批评。标准杂货租船合同中的条款规定:

"船舶应拥有为了任何目的以任何次序停靠任何一个港口或多个港口, 航行不用引水员, 在任何情况下拖带和(或)协助其他船舶,以及为了救助人命和(或)财产而绕航的特许权"。<sup>438</sup>

293. 1973年航运公会波罗的海木材租船合同试图在航线和停靠港口方面给 予船东几乎是无限的选择权。第13条规定:

"船舶应享有航行不用引水员,按任何航线航行,按或不按航线以任何次序驶往或停靠任何一个港口或多个港口,或者朝着与目的地港口相反的方向航行,或者一次或多次驶过目的地港口,以补充燃料或装卸货物或让旅客上下船或为了其他任何目的特许权••••••"。

294. 从表面上看,这些条款的措词似乎范围很广,足以使船东免受任何绕航后果的影响。但是绕航条款赋予船东的特许权的范围引起了许多争端。尽管绕航条款的起草偏差很大,但是英国的法院把这些条款解释得有很大的局限性。根据惯例,属于合同的商业范围的绕航条款是允许的,但是如果条款的实施会破坏合同的商业目的那是不许实行的。在勒迪克诉沃德案中,<sup>439</sup> 伊谢尔勋爵说:"对这项条款〔"以任何顺序停靠任何港口的特许权"这些字在标准杂货租船合同和铁矿砂租船合同的条款中也使用了〕给予停靠世界上任何港口的特许权这种说法是有争议的。

<sup>438</sup> 第 3 条;有点类似的条款可见铁矿砂租船合同第 20 条。

<sup>&</sup>lt;sup>439</sup>(1888年)20Q.B.D.475-482。

这又是对商务文件中所使用的商务用语的解释问题,我认为,这样的用语只能有一个意思,即打算给予停靠特许权的港口必须基本上是在指定的航行中所要经过的港口",在斯塔格船舶公司诉福斯科洛·曼戈案中,440 阿特金斯勋爵说:"即使限于地理航线上的一个港口或多个港口,我想它们显然必定受到限制,停靠的目的也必须受到某种限制。为了给予停靠或让船东的朋友们上船游览的权利的特许权不可能是合理的。•••••我自己认为,预定的宗旨是被租船合同设想为产生于船舶的预期航行的商业宗旨"。441 但是,如果这项条款的措词足够强硬的话,法院或仲裁人参考合理的规定对船东的特许权范围也许既不能局限于航线,也不能局限于所要停靠的港口;例如,有一种看法认为,凡是使用诸如"任何港口"一类的用语的条款,如上面引证的波罗的海木材租船合同中的条款那样,他们也许难以作有限制的解释。442

295. 凡是租船合同载有绕航条款和将《海牙或海牙-维斯比规则》写进租船合同的首要条款,都可能出现问题。可能出现的问题是:这两项条款是否会发生抵触,抵触到什么程度,万一发生抵触,应以哪一项条款为主。如果租船合同中也包括一项补充燃料绕航条款,情况就变得更复杂了。例如,包括一项把《海牙-维斯比规则》写进租船合同的首要条款(第 33 条)的 82 年多种格式租船合同(86 年修订),也载有一项绕航条款(第 25 条),它的限制比《海牙-维斯比规则》第四4条要大,因为它只准许为救助人命或财产而绕航,而不准许《海牙-维斯比规则》所允许的任何其他合理的绕航。它还包括一项保赔补充燃料条款(第 32条),作为合同规定的航次的一部分,这项条款给予船舶驶向任何港口补充燃料的特许权,不论这些港口是否在租船合同中指定的任何装货港口或卸货港口这间的直接和(或)传统航线上,以及补充任何数量的燃料的特许权,"不论租船合同上的航

<sup>440 (1932</sup>年) A.C.328; 这些案件是提单案件,但是同样的原则也与租船合同中绕航条款有关。还可见格林诉马吉特森案 (1893年) A.C.35。

<sup>&</sup>lt;sup>441</sup> 美国的法院采取类似的办法。见吉尔摩和布莱克,《海事法》,前引书,第 178,209-210页。

<sup>&</sup>lt;sup>442</sup> 弗伦克尔诉麦克安德鲁斯案 (1929 年) A.C.545, 564。

次是否需要这么多的燃料。"

296. 但是,这项条款准许的为了租船合同上的航次以外的一个航次补充燃料而导致的绕航是否会被认为是合理绕航,从而根据写进多种格式租船合同的《海牙-维斯比规则》是否也是合理绕航,这是值得怀疑的。

297. 相反,89年北美谷物程租约并没有把《海牙或海牙-维斯比规则》写进租船合同,只是列入了一项保赔燃料条款和一项绕航条款,其中包含一项与美国实施《海牙规则》的规定相似的规定,这项规定明确说明,为装货或卸货而绕航初步被认为是不合理的。

298. 《海牙或海牙-维斯比规则》对强制实施《规则》的提单中所包含的明示特许权或绕航条款的影响,在不同的司法管辖范围内似乎是不同的。根据英国法律的规定,绕航条款的有效性只可用普通法原则来确定,因此,可以继续不受这些规则的影响。据说,《规则》只被认为对船东提供额外保护。443 而在美国,《海牙规则》规定的合理性标准似乎已经得到应用,因为法院似乎已经表明,必须把一个广泛的特许权或"航次条款"解译为或限于只准许合理地偏离正常航线。444 德意志联邦共和国似乎已持类似的看法。445

299. 然而,尚不清楚的是,同样的规则是否也适用于这样的租船合同:它通过一项首要条款写进了《海牙/海牙-维斯比规则》(第四4条)的规定,还包含有一项明示绕航条款,在这项条款中,《规则》只根据合同相应得到应用,而不是象在提单中那样强制应用。看来各法院并没有具体考虑这种情况。在阿吉奥斯·拉扎洛斯号案中,446 在审议一个租船合同范围内的首要条款的含义时,丹宁勋爵说,这项条款把《海牙规则》引入租船合同,只要适用,可使租船合同受《规

<sup>443</sup> 见斯克鲁顿,前引书,第 439 页;斯塔格船舶公司诉福斯科洛·曼戈案 (1932年) A.C.328;伦顿诉帕尔米拉案,10.B.462。

<sup>🌙 444</sup> 吉尔摩和布莱克,前引书,第 178 页。

<sup>445</sup> 见 H.J.西伯拉罕,《德意志联邦共和国海洋法》,柏林(西),格里尤特,1978年,第734页。

<sup>446 (1976</sup>年) 劳合社报告 2, 47-50。

则》的制约,万一引入的《海牙规则》与租船合同的其他条款发生抵触,将以《海牙规则》的规定为主。如果打印的附加条款中包括明示绕航条款,那么情况可能有所不同,引入《海牙规则》的首要条款构成印制的标准租船合同条款的一部分。在英国的七海运输公司诉马里纳太平洋联合公司(萨蒂亚·凯拉什号)案中,<sup>447</sup>以纽约产物交易所租船合同格式签订的租船合同包括规定绝对适航保证的打印的附加条款,在这个案件中,上诉法院的法官评论说,"作为打印的条款,它们在第 24条中可能优先于印制的首要条款,以便使载入租船合同的美国法案第 4 (1)条的规定相应失效"。

300. 绕航条款并没有具体说明不合理绕航的后果。在这一点上,各国法律似乎采取了不同的态度。根据英国和美国普通法的规定,受绕航影响的一方,有权把绕航作为一种结束该运输合同的废约行为对待,这一点不论是在租船合同中明示还是在提单中明示。448 因此,结果是船东/承运人根据其合同可能拥有的任何权利和辩护均被取消,使他处于公共承运人的地位,只能用无灾,公敌和固有的瑕疵作为辩护。然而,民法国家似乎采取不同的态度。例如,根据德意志民主共和国和德意志联邦共和国的法律,不合理的绕航被认为是违反合同的行为只使承租人和货主有权提出赔偿损坏的要求。449

301. 虽然在英国,可以认为《海牙/海牙-维斯比规则》并没有改变适用于不合理绕航的普通法原则, 450 但是美国的立场似乎有所不同,因为据认为,《海牙规则》废除了在绕航以后使承运人处于保险人地位的严厉的普通法原则,并

<sup>447 (1984</sup>年) 劳合社报告 1, 588.

<sup>448</sup> 英国的法律参见斯克鲁顿,前引书,第 258-260页;卡弗,前引书,第 1187-1200段。根据美国法律采取的态度参见吉尔摩和布莱克,前引书,第 180-182页和第 209-210页。

<sup>449</sup> 德意志民主共和国的法律见 D.里克特-汉纳斯; R.里克特; N.特罗茨; 前引书, 第 200 页。德意志联邦共和国的法律见 H.J.亚伯拉罕, 前引书, 第 419 页。

<sup>450</sup> 斯克鲁顿,前引书,第 440 页;卡弗,前引书,第 550 段。

且用一项责任代替了绕航造成的损害赔偿。451

### E. 货物责任条款

- 302. 程租约和期租约相似,通常载有关于船东对货物的灭失和损害承担责任的规定。在大多数油轮程租约和比较现代的干货程租约中,这种责任是以《海牙或海牙—维斯比规则》为依据的。办法或者是通过首要条款把《规则》写进租船合同,或者将装运国或目的地国实施《规则》的法规写进租船合同,或者列入一项仿照《规则》某些规定制定的明示条款。
- 303. 多格式租船合同中有一项首要条款 (第 33 条),它将《海牙-维斯比规则》写进租船合同和根据租船合同签发的提单。这种租船合同中还有一项一般免责条款 (第 28 条),使"船舶、船长、船东和承租人"免除由于包括"火灾"在内的某些事件造成货物受"灭失、损害或推迟或没有供货、装货、卸货和交货"所应承担的责任,除非租船合同中另有明文规定。这种一般免责条款大概是为了处理不属于《海牙-维斯比规则》的范围的事件。
- 304. 84年 Nu 程租约第 43 条也规定《海牙规则》的规定适用于租船合同和根据租船合同签发的任何提单。关于强制实施《海牙规则》的国家法令的货载,以这种法令的规定为主。它进一步规定在强制实行《维斯比规则》的货运中,《海牙一维斯比规则》适用于租船合同。于是这项条款试图澄清关于在租船合同中应用《海牙或海牙一维斯比规则》的某些问题。如租船合同范围内"承运人"和"责任期"等名词的意义。这项条款也规定了与多种格式租船合同中的一般免责事项有点相似

<sup>· 451</sup> 见吉尔摩和布莱克,前引书,第 180-182 页。

的一般免责事项,可是它不包括火灾免责。452

305. 另一方面,有些租船合同只引入《海牙或海牙-维斯比规则》或各国根据《规则》制定的法令的某些规定。Beepec 程租约 2"83"第 40 条说:"联合王国 1971 年海上货物运输法附表第三条 (而不是第 8 条)、第四条、第四条副条和第八条的规定应被看作全文写在这里了。本章应被认为是一份应用上述各条的海上货物运输合同,船东在根据上述各条的规定提出任何索赔时,应当有权得到这些条文的保护"。这一条的第二部分只涉及在某些具体说明的事件中使承租人免于承担责任。因此,船东的责任只受在联合王国制定的《海牙-维斯比规则》的规定的制约,而且不象其他多数程租约,除了《海牙-维斯比规则》规定的免责,没有有利于船东的更多的免责事项。453

306. 北美化肥租船合同即 88 年化肥程租约第 36 条就船舶的适航性而言是以《海牙-维斯比规则》为依据的,使货物灭失或损害的责任适应于实施《规则》的加拿大或美国国家法令。这项条款还规定了某些一般免责事项。但它强调,租船合同中没有任何规定可以使船东免于对未履行加拿大 1970 年水上货物运输法或美

<sup>452</sup> 第 43 (c) 条;类似的条款可见日本航运交易所跟单委员会 1983 年发行的代号为日本煤炭的煤炭租船合同第 15 条;代号为矿砂程租约 (1980 年)的波罗的海和国际海事会议标准矿砂租船合同第 21 条;也可见代号为化学品程租提单的用油轮运输化学品的波罗的海和国际海事会议标准程租约第 26 和 27 条;油轮程租约——ASBAII,第 20 (b)条和第 23 条;84 年 Exxon油轮程租租约第 27 (b条和第 29 条;还可见北欧程租约 (1962 年修正)第 4 条,其中规定,目的地国实行的《海牙规则》应适用于租船合同,如果目的地国未实行任何这样的条例,那就实行启运国的相应法律,如果目的地国和启运国都未实行这种法律,那么就实行 1924 年英国的海上货物运输法。

<sup>453</sup> 类似的条款也可见 76 年油轮程租约第 25 条。

国 1936 年海上货物运输法为承运人规定的责任所应承担的任何责任。454

- 307. 《海牙和海牙-维斯比规则》中关于货物责任的规定(在这方面是相同的)主要载于第三 1 和 2 条以及第四。第三 1 条规定承运人有责任克尽职责使船舶适航,它规定"承运人须在开航前和开航时克尽职责,(a) 使船舶适于航行,(b) 适当地配备船员,装备船舶和供应船舶,(c) 使货舱、冷藏舱和该船其他载货处所能适宜和安全地接受、运送和保管货物。"根据英国的法律,本条中关于克尽职责的条件被认为不仅适用于承运人本身,而且适用于他所雇用的包括他的雇佣人员、代理人和独立承包人在内的所有人员。455 关于对货物的照料,第三 2 条规定,"承运人应适当和谨慎地装载、搬运、积载、运送、保管、照料和卸载所运货物"。不过,这个条件要符合列出免责风险的第四条的规定。还应当指出,第三 1 条中关于克尽职责使船舶适航的义务是一项绝对的义务,因此,未克尽职责使船舶适航的承运人,如果由于船舶的不适航造成货物损失或损坏,不能受到第四条中任何免责条款的保护(使用"无论如何"一词的第 5 条除外)。456
- 308 用一项首要条款或其他办法将《海牙或海牙-维斯比规则》引入租船 合同所起的作用和所产生的困难,在本报告的其他各节中讨论。<sup>457</sup>
- 309. 然而目前使用的一些标准格式租船合同未引入印制的《规则》,但是载有限制船东对货物灭失或损害的责任的各种条款。
- 310a. 这些条款中受批评最多的是标准杂货租船合同中的船东责任条款。标准杂货租船合同第二条规定:

<sup>454</sup> 也可参见 89 年北美谷物程租约第 36 条;还可参见 1973 年波罗的海木材租船合同第 12 条;此条是以《海牙和海牙-维斯比规则》第三 1 条以及第四 2 条的规定为根据的。

<sup>455</sup> 见里弗斯顿肉品公司诉兰开夏轮船公司案 (1961年) A.C.807; 印度工会诉 N.V.里德里伊·阿姆斯特丹案 (1962年) 劳合社报告 1,539, (1963年) 劳合社报告 2,223。

<sup>456</sup> 见斯克鲁顿,前引书,第 448 页。

<sup>457</sup> 见第 102-112 段。

"船东只有在以下情况下必须对灭失或损坏的货物或延迟交货负责,即这种灭失、损坏或延迟交货是由于货物积载不当或疏忽 (除非积载是由托运人/承租人或他们的搬运工或雇用人员进行的),或者由于船东或他们的经理个人未克尽职责以使船舶在一切方面都适航,确保对船舶配备了适当的人员、安装了适当的设备,提供了适当的供应,或者由于船东或其经理的个人行为或违约所造成的。

船东对由于任何其他原因造成的灭失,损坏或延迟交货均不承担任何责任,即使是由于船长或船员或船东所雇用的、要是没有本条款就应对其行为负责的任何其他船上或岸上人员的疏忽或违约,或者由于在装货或启程或在任何时间船舶的不适航所造成的。由于与其他货物接触或其他货物泄漏,产生的气味或蒸发造成的,或者由于其他货物的易燃或易爆性或包装不善造成的损坏,不应被认为是积载不当或疏忽造成的,即使事实上是由此造成的。"

310b. 这一条的措词特别混乱,因为这一条的不同部分的用词是互不一致的。第一句即第一段提到"货物的灭失或损坏,或延迟交货"。第二句即第二段第一句显然比较笼统地提到"由于任何其他原因造成的灭失、损坏或延迟"。而第三句仅仅谈到在看来只与货物的物质损坏有关的情况下的"损坏"。458

311. 这一条一般被理解为在货物索赔方面免除船东的一切责任。除非这种责任是由于积载不善或由于船舶拥有公司的一位董事或其经理个人工作疏忽所造成的。但是英国商事法庭在路易斯·德富菲斯及公司诉、帕纳索航运公司(支配者号)459 ;案中对用词前后不一致作了详细的分析以后发现,根据这一条的规定,船东免于对货物的物质灭失和损坏,而不是对财政损失承担责任(大概除非财政损失是由延迟交货所造成的,但是这不是这个案件涉及的问题)。可是上诉法院以其他理由推翻了商事法庭的裁决,这样,商事法庭裁决的权威性仍然令人怀疑。因

<sup>&</sup>lt;sup>458</sup> 见托尔船舶公司诉加拿大有限公司奥特兰斯集团 (兴隆号)案 (1984年) 劳合社报告 1,123,以及对波罗的海期租约范本第 13条的类似规定所作的评述。

<sup>&</sup>lt;sup>459</sup> (1959年) 10.B.498。

此,在日本邮船会社诉艾克梅航运公司(查拉兰博斯 N 巴特拉斯号)案中,<sup>460</sup>上诉法院认为,波罗的海期租约范本格式中有点相似的第 13 条的确包括货物的财政损失和物质损失,但是在托尔船舶公司诉加拿大有限公司奥特兰斯集团(兴隆号)案中,<sup>461</sup> 这项裁决又被上议院驳回,在这个案件中,上诉法院在得出结论时对波罗的海期租约范本第 13 条进行逐字逐句的分析,并在分析时批评了起草工作有"很大的缺陷"。这一评语同样适用于标准杂货租船合同的第 2 条。

312. 然而,像标准杂货租船合同第 2 条那样的条款实际上不可能为船东带来很大的好处,因为在一般情况下,他无法在条件对他如此有利的情况下限制提单规定的他对货主的责任,他可能难以从承租人那里得到赔偿。 462 比较现代的标准格式和一切油轮格式不是直接引入《海牙规则》,就是直接引入《海牙—维斯比规则》,其部分原因可能就在这里,因为无论如何,船东要在那种程度上对货主负责(除非货物为承租人本人所有)。 463

313. 在本恩轮船公司诉安-布罗德·贝恩 (C.乔伊斯号) 案中, 464 租船合同用的是经过修正的标准杂货租船合同格式, 规定"根据租船合同签发的一切提单都要列入首要条款"。船东要对作为必须遵守《海牙规则》的提单被背书人的货主负责, 尽管根据标准杂货租船合同第 2 条的规定他们本来是不承担责任的。英国商事法庭驳回了船东(根据默示条件)向承租人提出的赔偿要求。J.宾厄姆评述说,"这就是船东反对这个结论的主要论点。第 2 条确定了租船合同中船东的责任范围。对于不属于本条范围的损坏,船东概不负责。因此,如果船东对承租人与之谈判提单的第三方负责,那么显然不用说,承租人必须赔偿损失。但是据我认为,这个论点的根据是有缺陷的。第 2 条规定了船东对承租人的责任范围。提单条款规定以使船东对被背书人承担更广泛的责任的形式签发提单。租船合同必须被看作

<sup>460 (1972</sup>年) /W.L.R.74。

<sup>461 (1984</sup>年) 劳合社报告 1, 123.

<sup>&</sup>lt;sup>462</sup> 见本报告第 325-328 段和第 387-391 段。

<sup>&</sup>lt;sup>463</sup>P.托德,前引书,第53页。

<sup>464 (1986</sup>年) 劳合社报告 2, 285。

是一个整体。没有适当的用语,不会贸然牺牲一项规定来使另一项规定占据优势的 重要地位。提单条款和第2条一样,都是租船合同的一部分"。<sup>465</sup>

314. 其他货物责任条款在用词上已经过时了,它们的措词使人难以肯定造成货物灭失或损坏的哪些原因是船东的责任。地中海铁矿砂租船合同 (C (ore)7) 第 20 条和大陆谷物租船合同第 19 条——两者仍在普遍使用——就是这种已经过时的条款的例子。铁矿砂租船合同是这样写的:

"天灾,公敌,统治者、亲王和人民的逮捕和(或)监禁,检疫,船上、废船或驳船或岸上发生火灾,冰,船长和船员的不法行为,敌人,海盗,陆地或海上的强盗,锅炉发生故障,并造成损坏和滞留,机器故障、碰撞、搁浅、遇险抛弃货物,或领航员、高级船员或船东的其他雇用人员在轮船的管理和(或)航行中的任何行为、疏忽、不履行义务或判断错误造成的损坏或滞留,以及在航行前和航行中海上、江上和运河上发生的各种性质和类型的一切其他危险和事故,始终属于免责······船和不应对由于爆炸、锅炉爆炸、轴断裂或者并非由于船东们或任何一个船东或船长或管理人没有给予应有注意引起的机器或船体的任何潜在缺陷造成的损失承担责任"。

315. 这种措词在本世纪初的租船合同中可能是合适的, 当时铁矿砂租船合同首次使用, 但是如今, 这种措词只能造成混乱。

# F. 共同海损条款

316 如果船舶和货物受到共同危险,为了避免危险有意牺牲部分货物或船舶或带来特别开支,这种损失或开支将是共同海损分摊的主题,将在船舶、货物和运费中间按它们保全的价值的比例分摊。共同海损理论由来已久。它是从罗得兹人海事法中派生出来的,已被所有从事海上贸易的国家所采纳。然而在运用这种理论时,不同的国家实行不同的规则,因此到19世纪中叶,这项法律和共同海损惯例在全世界有很大的差别。为了使这个问题在国际上取得一致,已经作了各种尝试,结果是在1877年通过了一套题为"约克-安特卫普规则"的有关共同海损的规则。

<sup>465</sup> 同上, 第 289 页。

这套规则几经修订和修正,最新一次修正是在国际海事委员会 1974 年的一次会议上进行的。<sup>466</sup>

- 317. 约克-安特卫普规则现在已普遍引入租船合同、提单和海运保险单,因为除非写进合同,否则它们本身没有任何法律效力,因此,标准杂货租船合同格式第 11 条规定,"按照 1974 年约克-安特卫普规则结算共同海损。货主应支付货物在一般费用中的份额,即使由于船东的雇用人员工作疏忽或不履行义务已经支付了同样的费用,也得照付"。北欧程租约第 12 条仅仅规定,"共同海损应按照 1974年约克-安特卫普规则结算"。比较现代的租船合同,如 1989 年北美谷物程租约第 40 条和 82 年多种格式租船合同 (86 年修订) 第 26 条进一步要求租船合同中规定共同海损理算。
- 318. 对秘书处调查表的答复中提出的批评主要是,标准格式租船合同中的 共同海损条款有时并不具体说明何处进行理算,有时共同海损理算处、仲裁处和适 用的法律之间并不协调。对赞成和反对在海上贸易中保留共同海损概念的论点进行 分析不属本报告的范围。

# G. 仲裁条款

319. 大多数租船合同都载有一个仲裁条款,规定由租船合同引起的任何争执都应提交仲裁。但是也有一些租船合同格式没有这样一项条款。因此,批评一直是针对那些标准租船合同的,如标准杂货租船合同和铁矿砂租船合同,它们根本没有这样一项仲裁条款。这可能导致把仲裁条款写进租船合同的增编中,这是不合适的。"\*\*\*\*\*在谈判合同时,通常经纪人或主要委托人最不愿意想到的是争端,除了有时也许考虑仲裁地点以外,很少考虑仲裁条款本身的措词。即使在今天,在印制的仲裁条款未写进合同的案件中,这种情况也会导致引入含糊不清的和不能令人满意的条款,如"在伦敦仲裁"或"用惯常方式在伦敦仲裁",这可能导致想象不到的复杂

<sup>466</sup> 关于这个问题的详细资料,见朗兹和鲁道夫,《共同海损与约克-安特卫普规则》,《英国航运法》,第7卷,第9版,1975年,史蒂文斯父子公司,伦敦。

情况。467

320. 并不是标准格式租船合同中的所有印制的仲裁条款的意思都是一目了然的。标准谷物租船合同的仲裁条款已引起许多争端。它的最初格式规定,从提出要求的"最后清偿"到指定仲裁人的时限为 3 个月。经过修正的格式为索赔通知和指定仲裁人规定了 6 个月、9 个月和 12 个月的各种时限。常常作为增订条款写进其他租船合同的条款的最初格式如下:

"本合同不时引起的一切争执,除非各方立即同意请一名仲裁人,都应当提交在伦敦操业的两名仲裁人进行最后仲裁,仲裁人应是波罗的海的成员,从事航运和(或)谷物货运,双方各指定一名仲裁人,他们有权指定一名首席仲裁人。任何索赔必须书面提出,索赔人的仲裁人必须在3个月最后清偿期内指定,如果不遵守这一规定,索赔应被认为已经放弃和绝对失去时效。不得以任何仲裁人不具上述资格为理由对裁决表示怀疑或宣布无效,除非反对他的行为是在作出裁决之前提出的。"

321. "经过修正的"标准谷物租船合同仲裁条款中时限短且种类多,这使粗心大意的人很容易上当。此外,如果把标准谷物租船合同中的仲裁条款写进单一程租约以外的租船合同(这一条款就是为它们设计的),那么在确定计算时限的"最后清偿"日期时就会遇到困难。阿格罗加拿大有限公司诉里什芒轮船有限公司(西蒙伯思号)案<sup>468</sup> 就是这样一个案件。在这个案件中,把标准谷物租船合同的仲裁条款写进了连续程租约。法官说,"在没有把为之设计了条款的合同改变为好不容易才能使它们适用的其他合同的情况下,只能完全取消共同格式条款,这种情况在租船合同和提单方面是经常发生的,并不是由于租船经纪人高明"。在另一个特拉达克斯出口有限公司诉意大利碳水化合物航运公司(桑达良号)案中,<sup>469</sup> 法院不得不确定标准谷物租船合同仲裁条款被写进纽约产物交易所租船合同格式的期租约

<sup>467</sup>由租船经纪人协会汇编的《租船经纪人手册》,第 1 卷,伦敦劳埃德出版有限公司,伦敦,1983年,第 114 页。

<sup>468 (1972</sup>年) 劳合社报告 2355。

<sup>&</sup>lt;sup>469</sup> (1983年) 劳合社报告 1514.

产生什么作用。"最后清偿"这几个字又是引起混乱的根源。

322. 秘书处调查表的答复者还对标准格式租船合同中的仲裁条款和并没有 具体说明仲载人所要应用的实体法的附加条款所造成的困难发表了意见。老式租船 合同中的仲裁条款以及附加仲裁条款,往往只规定对将要应用的法律可能并无决定 性作用的仲裁地点。例如,1942年的航运公会化肥租船合同(化肥程租租约)第 17条规定:

"由本租船合同引起的任何争端均应根据1950年的仲裁法条款在伦敦解决....."

323. 1961 年苏联木材租船合同第 24 (a) 条规定:

"由本租船合同引起的任何争端均应根据被告的国家实行的仲裁法律和程序在该国提交仲裁"。

324. 在这两个案件中,都没有关于在仲裁中用于解决争端的与程序相对的法律的任何规定。这可能导致仲裁人不得不应用他们不熟悉的法律这种不能令人满意的局面。<sup>470</sup> 如果仲裁地点在一个国家,而合同各方和合同的主题事项与另一个国家的法律关系更加密切,那就会出现这种情况。因此,确定,各方的意图是,应当由后一个国家的法律来管辖它们的合同,不管仲裁地点在哪里。

## H 赔偿条款

325. 在现代干货程租约格式中很少看到明示赔偿条款。尽管合同各方有时把明示赔偿条款写进租船合同的附录。这种赔偿通常是针对船东们由于其船长签发承租人所要求的那种格式的提单而可能承担的责任的。在米尔本诉牙买加公司案中,<sup>471</sup> 租船合同规定,承租人务必"保证船东不因船长执行承租人指示和签发提单可能造成的任何后果而受罚。"根据租船合同的条款,船东免于对船长失职承担责任,但是船长按承租人要求签发的提单上并没有这种过失免责条款。英国法院裁

<sup>470</sup> 见英国上议院审理的船舶装备海运公司诉突尼斯航运公司案 (1971年) A.C.572。

<sup>&</sup>lt;sup>471</sup> (1900年) 2Q.B.540。

定,船东有权不对由于船长的过失造成的碰撞承担责任,损失由承租人赔偿。

326. 尽管在现代干货程租约格式中很少看到明示赔偿条款,但是在油轮程租约中出现明示赔偿条款的情况并不少见。因此,STB 程租约格式规定: "船长签署所出示的提单······所有提单均不得有损于本租船合同,承租人应保证船东不因本租船合同与任何提单或由承租人或其代理人签署的或按他们的要求由船长签署的其他文件之间的不一致而可能产生的,或因承租人或其代理人提供的文件不合常规而可能产生的一切后果或责任而受罚。"

327 在布卡道拉海运公司诉摩洛哥工业冶炼公司案中, <sup>472</sup> 承租人交给船长签发的提单中货物装船量计算有误。在这种情况下,船东根据这一条款的规定索回了承租人的赔偿,这种情况被认为是在赔偿条款含义范围之内的"不常见现象"。

328. 即使租船合同中也许没有明示赔偿条款,租船合同中通常被称为"提单条款"的条款也可能就是一项默示赔偿条款。多种格式租船合同第22条是这样说的:"船长应签发所出示的提单(但是要符合大副收据)而不损害本租船合同的条款、条件和免责事项。如果船长不能签发提单,他可以书面授权港口代理人根据大副收据代他签发。"最通常,例如在巴尔的摩泊位丙式谷物租船合同中,提单条款规定由船长在"不损害本租船合同的情况下"签发所出示的提单。标准杂货租船合同和许多其他程租约载有类似的规定。如果租船合同中确有这样一个条款,而且船东根据提单所应承担的责任大于他们根据租船合同承担的责任,那么船东可以有权在那种程度上从承租人索回赔偿,如果他们(船东)根据提单承担了责任的话。473船东在这种情况下向承租人索赔的性质是由于提单条款中的默示赔款而产生的,还是它符合由于违反租船合同对损坏要求赔偿的性质,英国法律中对这一问题没有明确定论。不能令人满意的是,在大多数标准干货租船合同格式中没有明确规定产生获得赔偿权利的条件。

<sup>472 (1989</sup>年) 劳合社报告 1393。

<sup>473</sup> 琼斯诉霍夫案(1879 年)5EX.D.115, 汉森诉哈罗德案(1894 年)1Q.B.612,海湾钢铁公司诉哈里法轮船公司案(1980 年)劳合社报告 2261 和加比斯海运公司诉菲律宾全国公司案(1982 年)劳合社报告 2283。

#### 第四章

### 租船合同规定对第三方提单持有人的法律效力

- 329. 已建议将许多程租约标准格式与提单标准格式一起使用。因而,例如建议标准杂货程租租船提单格式与标准杂货租船合同一起使用,北美谷物提单与北美谷物租船合同一起使用。提单格式与租船全同格式一起使用的原因是提单中载入了租船合同的规定。因而,关于标准杂货程租租船提单,提单在其正面说明:"根据日期为\*\*\*\*\*的租船合同应支付的运费"和提单背面的第一款则规定:"在次页注明日期的租船合同的所有规定和条件、特许权和免责事项均载入此条内。"
- 330. 这一条的意图是使租船合同规定尽可能适用于不是承租船人的、货物利益关系各方——即托运人,但他不是承租人和提单被背出人、即货物的收货人、银行家或其他人。由于在订立或转让航运文件时,租船合同副本往往并不附有所谓的租船合同提单,银行家有时可能不接受租船合同提单。但是租船合同提单被背书人受到经提及而载入提单的租船合同规定的约束,虽然他没有见过租船合同。474 然而租船合同提单是常用的,特别是在建议使用标准格式租船合同提单的贸易中,诸如谷物、矿石、木材、硝酸盐、石油和化学物品的贸易。也已建议标准格式租船合同提单与一般租船合同 Nu 程租约,Britcon 合同和北欧程租约以及标准杂货租船合同一起使用。
- 331. 即使提单被背书人可以得到租船合同以供参考,但是这样的第三方也不容易在没有法律咨询意见的情况下确定众多规定中的哪几条规定载入提单。现在英国法律已确定,采纳了一份租船合同中"所有条件"或"所有规定"的提单条款决不会切实地把租船合同的仲裁条款载入提单内。<sup>475</sup> 因此,一些标准格式租船合同提单除了载入所有的"规定、条件、特许权和免责事项"之外,还特别提及租船合同

<sup>&</sup>lt;sup>474</sup> 芬斯卡·塞路洛萨诉韦斯菲尔德纸张公司案 (1941 年), 46.Com.Cas.87。

<sup>475</sup> 见托马斯诉波特锡轮船公司案 (1912年) A.C.L; 和诺德海姆船舶有限公司诉叙利亚石油公司 (沃雷娜号)案 (1983年), 劳合社报告 2.1592 和联邦散装货船公司诉伊藤忠商事 (联邦散装货船号)案 (1989年), 劳合社报告 1, 103。

仲裁条款。谷物程租提单、Bisc 石油程租提单,Bimchem 化学品程租提单和矿砂程租提单都是这种提单的例证。如果提单一般地提及租船合同的仲裁条款,而没有提到条款的序号,则英国法院通常认为这就足够了。<sup>476</sup> 但是看来在某些大陆法系国家中,法院不会承认在提单中提及仲裁条款,除非提单由双方签字。

332. 因而可以认为,如果一个载入其他内容的条款没有提及租船合同仲裁条款,则一定不适用于提单。但是情况往往并非如此。在《梅拉克号》案中, 477 上诉法院裁定,提单中的一个条款如规定一份租船合同的"所有规定、条件、条款·····"都应载入提单,则此条款可切实地载入租船仲载条款,而后一条款则涉及提单争端。租船条款行文如下:"本租船合同或据此开立的任何提单引起的任何争端应提交仲裁。"

333 另一方面在《安妮菲尔德号》案<sup>478</sup> 中,法院拒绝将标准谷物租船合同的仲裁条款载入,因该条款涉及"有时因本合同而引起的各种争端······",虽然标准谷物租船合同格式的提单已将租船合同的"所有规定"载入,"包括疏忽条款在内"、贾斯蒂斯·布兰登先生(其判决已得到上诉法院肯定说):

"在本案中,我认为人们必须自问,面对这两份文件的一个普通商人会对租船合同中的仲裁条款对提单争端的适用性有什么看法······。在我看来,这位假定的商人将会或可能对这一问题心怀疑虑。我认为,他对这一问题将会或可能心怀疑虑的原因是没有使用具体语句清楚地表明意图。"

334. 在《联邦散装货船号》案(见前文)中, 法院对于巴尔的摩班轮丙式提单和租船合同的解释得出类似的结论。

335. 上诉法院在《联邦散装货船号》一案中得出该一结论时,认为他们自己受到以前判例的约束,申明了下述原则:同时面对提单和租船合同及其中有关条款的任何"普通商人"肯定不可能认为这是合乎情理的。巴尔的摩班轮丙式泊位谷物提单包括了这一条款:"根据日期为••••••的租船合同的所有规定、条件和免责事项将

<sup>&</sup>lt;sup>476</sup> 见《端纳克号》案 (1978 年) Q.B.377。

<sup>477 (1965</sup>年) 第 223 页。

<sup>&</sup>lt;sup>478</sup> (1971年) 第 168177页。

被视为完全载入此条,如同完全写明一样。"巴尔的摩班轮丙式租船合同中的仲裁条款规定:"由于本全同而不时引起的一切争端……应提交仲裁"。上诉法院裁定,在托马斯诉波特锡轮船公司一案中479 ,按照英国上议院决定的真实含义,提单中的并入词句"所有规定、条件和免责事项……"不足以载入租船合同的仲裁条款,不论租船合同中的仲裁条款如何措词。但是法院承认,上诉法院在《梅拉克号》案(见前文)中早些时候做出的决定的效力是:如果在提单的并入词句中包括"条款"一词,而不是"规定"或"条件",或除了"规定"或"条件"之外还包括"条款"一词,则初步推定并入条款的范围就相当广泛足以载入租船合同中措词恰当的仲裁条款。法官宾厄姆勋爵说:

"《梅拉克号》案或许是如菲利莫尔勋爵在《安妮菲尔德号》案中所说,是一个不寻常的案件······但是可以提出这一建议:在这第一阶段提及"条款"一词足以允许载入一个措词恰当的仲裁条款。〔对收货人提出的咨询意见〕在很大程度上取决于这一判决,这是可以理解的,这一意见认为,如果提及"条款"就可以载入仲裁条款,这是与常识相悖的,但是提及"规定"就并非如此。我同情这一提法,因为在我看来,一并阅读托马斯诉波特锡轮船公司案和《梅拉克号》案时,界限就划在这里,我不认为我们可以随意给予"规定"一词在托马斯诉波特锡轮船公司案中拒绝给予的含义,我也不认为在任何情况下这样做都是适宜的。"

- 336. 因而看来,如同英国法律现在规定的那样,第三方提单持有人看到一份提及载入租船合同所有"规定和条件"的租船合同提单,可能可以假定——如果提单受英国法律的制约(如果不看到租船合同,他可能在任何情况下都无法确定这一点)——他将不受租船合同仲裁条款的约束。但是如果载入其他内容的条款也提及租船合同的"条款",他可能受到仲裁条款的约束,虽然不一定如此。
- 337. 如上所述,由于考虑到适用法律,情况更为复杂。第三方提单持有人如果不看租船合同和接受法律咨询意见,就不可能确定制约提单的法律。(关于什么是适用法律的问题将在下文谈及)。如果适用法律是美国的法律,看来与英国法

<sup>&</sup>lt;sup>479</sup> (1912年) A.C.1。

律原则不同的原则可以适用。在索恩航运公司诉德福瑟和坦格一案<sup>480</sup> 中,第二巡回上诉法院必须考虑内容如下的一个提单条款的效力:

"这次货运是根据和依照日期为••••••的租船合同规定进行的•••••上述租船合同的所有任何规定,除具体说明的运费率和支付运费外,均适用于和支配这次货运中有关各方权利。"

- 338. 据认为,这一条款有效地载入了租船合同仲裁条款,以约束提单持有人。
- 339 除了仲裁条款外,不能直截了当地确定,通过所使用的并入措词,还可以将租船合同的哪些规定载入提单。除了运费的支付外,仅仅载入租船合同的"其他条件"不能有效地将租船合同的免责条款载入提单。<sup>481</sup> 这种载入其他内容的条款只能采用直接适用于提货方的条件。<sup>482</sup> 它不会载入一个终止条款。483 这些措词也不会载入一个租船合同中的最后证据条款。<sup>484</sup> 但是它们会有效地载入留置权条款(见下文)和关于在卸货港口滞期的规定。<sup>485</sup>
- 340. 另一方面,提及租船合同的"规定"可能具有更广泛的法律效力,特别是如果同时提及许多现代租船合同中常见的词语形式如"所有的规定、条件、特许权和免责事项。"等就是如此。贾斯蒂斯·戈夫先生在加比斯海运公司诉菲律宾全国石油公司(加比斯号)案<sup>486</sup> 中说,已经肯定,于并入的一般措词可以有效地载入"与装运、运输货物和卸货及运费支付有关的租船规定,当然,只要租船合同规定与提单规定相一致。"然而在加比斯号案中,提单规定"租船合同的所有任何规定(强调)均将载入,运费率及运费支付除外,据认为这些措词相当广泛,足以载入

<sup>480199</sup> F.2d 687, 1952 《美国海事判例》1931 (第 2 期 1952 年)

<sup>&</sup>lt;sup>481</sup> 拉塞尔诉尼曼(1864 年)34L.J.C.P.10。

<sup>482《</sup>诺苏布里亚号》案 (1906年), 第 262 页。

<sup>&</sup>lt;sup>483</sup> 格利谢恩诉斯图尔特 (1884年) 13Q.B.D.317。

<sup>&</sup>lt;sup>484</sup> 霍卡尔斯航运公司诉布利斯 (1917年) 2K.B.534。

<sup>485</sup> 格利谢恩诉斯图尔特 (见前文)。

<sup>486 (1982</sup>年) 劳合社的参考文件。

一个与装货有关的条款,而不仅仅是与运输和交付货物有关的条款。

- 341. 因而可以说,与装货、积载和卸货有关的租船合同规定可能已对租船合同提单的第三方持有人具有深远的法律效力(即使提单要遵从《海牙和海牙-维斯比规则》,如果采纳租船合同规定的提单中的措词范围很广。如果提单中并入其他内容的措词范围很广,第三方提单持有人例如可以发现,根据提单,他不能向船东索赔货物在装载或积载过程中造成的损坏。如果租船合同包括免除船东装载和积载货物的责任的规定,情况就会如此。如果有一个并入广泛内容的条款,这些规定可以被理解为提单合同的一部分。它们不会因《海牙规则》第二2条中的要求而作废,这些要求说:"承运人应适当和谨慎地装载、搬运、积载、运输、保管、照料和卸载所运货物",因为根据英国法律,这些措词并没有确定合同服务的范围,而是确定了商定的服务将据以实施的规定。487
- 342 关于装载、积载或卸货,《海牙规则》在这些授权方面仅仅规定了义务,假如船东根据合同已保证履行这些义务。如果根据一份租船合同规定,船东被免去履行这方面的义务,则船东也将免去对第三方提单持有人所负的有关装载、积载或卸货的责任,只要提单和租船合同充分包括广泛规定的条款。即使提单要遵从《海牙或海牙-维斯比规则》;即使第三方提单持有人既没有看到所提及的租船合同,也没有得到有关的租船合同条款的预先通知,情况也会是如此。
- 343. 可能影响第三方提单持有人的其他租船合同规定主要是法律条款、装卸时间和滞期条款及留置权条款。
- 344. 就法律条款而言——这是指确定制约合同的法律的条款——某些标准格式租船合同提单明显地把"可匹配的"租船合同中的法律条款载入提单。因而Bimchem 化学品程租提单液体化学品提单规定: "日期在次页注明的租船合同的所有规定和条件、特许权和免责事次,包括战争危险条款(第 36 条)和法律及仲裁条款(第 39 条)都明显地载入在内。"Bimchem 化学品租租提单租船合同的第 39

<sup>&</sup>lt;sup>487</sup> 根据德夫林 • J.皮勒内诉辛蒂亚海运公司案(1954年)20.B.402,载于第417和418页,由英国上议院在G.H.伦顿公司诉巴拿马帕尔米拉贸易公司案(1957年)A.C.149中确认。

条规定,依照在租船合同首页适当的"方栏"中说明的租船合同各当事方进行的选择,实施英国法律、美国法律或任何其他法律。法律条款也明显并入 Bisc 石油程租提单 (植物油) 和矿砂程租提单。

345 然而,将制约提单的法律,即使在提单没有具体提到租船合同中的法律条款的情况下,可能也受租船合同的支配。"虽然提单载入一个租船合同的若干条款,但一般说来,后者的法律将制约前者,两者的依据是当事方假定的意图和商业便利。"488 在恩吉戈斯号一案中,根据在英国签订的包括伦敦仲裁条款的租船合同,货物在阿根廷装船。货物装上一艘南斯拉夫船运往挪威和丹麦。在载入租船合同条件的提单的持有人在英国提出的诉讼中,法院裁定虽然伦敦仲裁条款没有载入提单,但在处理提单时,该条款原载租船合同受何种法律制约,该提单即应受何种法律制约。

346. 与卸货港有关的装卸时间和滞期条款甚至通过一个内容有限的条款也将载入提单。此外,与装货港有关的装卸时间和滞期条款也可能载入,以使提单持有人个人对于在装货港发生的滞期负责,如果在提单中使用足够广泛的并入措词,而租船合同条款可以理解为明确地为收货人及承租人规定了支付滞期费的责任。489 但是要求"承租人"支付装货港滞期费的租船合同条款不可理解为指的是"收货人",从而使收货人个人对于装货港滞期负有责任,即使提单载入租船合同的"所有任何条款。490

347. 租船合同中的留置权条款的法律效力可能对第三方提单持有人有更为沉重的负担,因为它实际上可能会迫使提单持有人在他得到货物的利益之前,对于他不负有任何个人责任的货物支付费用。例如,提单持有人根据他的采购合同,并

<sup>&</sup>lt;sup>488</sup>Scrutton 租船合同,前引书,第12页,引用恩吉戈斯号案 (1936年),第90页。

<sup>&</sup>lt;sup>489</sup> 格雷诉卡尔案(1871 年)L.R.6Q.B.,波蒂厄斯诉沃特尼案(1878 年)3Q.B.D.534 和米拉马尔海事公司诉霍尔本石油贸易公司(米拉马尔号案(1984年),劳合社报告 2,129)。

<sup>490</sup> 米拉马尔号案 (见前文)。

没有合同规定的义务支付在装货港的滞期费,但是由于装货港或卸货港滞期而对货物提出的留置权将有效地包含在仅仅提及"根据租船合同的其他条件"的提单内,491 因而收货人可能必须支付这些款项,以使他的货物免予留置,虽然他可能对于滞期不负有任何个人责任。492 出于同样的原因,第三方提单持有人可能也必须清偿因空舱费而引起的留置,这一留置权也将由于一般地提及"根据租船合同的其他条件"而从一个租船合同载入提单。493

- 348. 与租船合同条款对第三方提单持有人产生法律效力问题有联系的一个问题是确定哪一个租船合同将载入提单的问题,这种问题经常会遇到。
- 349. 提单中某些载入其他内容的条款仅仅提到载入"根据租船合同"的规定(或有类似法律效力的措词),而实际上并没有说明指的是哪份租船合同。在这种情况下,英国法院"将假定这是货物据以运输的任何租船合同"。<sup>494</sup> 西蒂姆有限公司诉伊拉克国家石油公司(塞冯尼亚蒂姆号)案<sup>495</sup> 批准了这种做法,根据是如果按照一个程租约运输货物,就应做出如此假定。如果据以运输货物的唯一租船合同是一个期租约,则可能不能做出这样的假定。但除此之外,结果可能是:第三方提单持有人将受到在提单中甚至没有注明日期的一份租船合同的规定的约束。
- 350. 如果据以运输货物的租船合同不止一个,情况则更为复杂。太平洋莫拉塞斯公司诉纳维拉江河航运公司(尼克拉号)案<sup>496</sup> 就是如此。在此案中,船舶是程租的,程租人则转租,因而存在两个程租约。主要程租约服从英国法律,而

<sup>&</sup>lt;sup>491</sup> 菲德利**塔**斯航运公司诉苏联粮食出口公司案 (1963年) 劳合社报告 2, 113-125。

<sup>&</sup>lt;sup>492</sup> 米拉马尔海事公司诉霍尔本石油贸易公司 (米拉马尔号) 案 (1983年) 劳合社报告 2, 319, (1984年), 劳合社报告 1, 142, (1984年), 劳合社报告 2, 129.

<sup>&</sup>lt;sup>493</sup> 基施诉秦勒案 (1912 年) K.B.604, 614。

<sup>&</sup>lt;sup>494</sup>Scrutton 租船合同, 前引书, 第 65 页。

<sup>495 (1983</sup>年) 劳合社报告 2,640,644。

<sup>&</sup>lt;sup>496</sup> (1976年) 劳合社报告 1, 8.

转租约并不服从英国法律,在这一案中,提单持有人认为提单包含于主要租约,因而提单也服从英国法律。法院裁决,如同在这种情况下一样,如果提单提及一个租船合同,但没有提到其日期,一般说来可以假定虽然程租约不止一个,但是指的是主要租约。作出这一判决的理由是:主要租约是以船东为一方的租船合同,由于在这种情况下提单是船东发出的,或代表他发出的,可以假定它指的是该租船合同。497

- 351 这种做法给第三方提单持有人(他也是货物买主)造成的困难是:他 更有可能注意到据以运输货物的任何转租约,仅仅看提单和租船合同可能不会明显 看出该租船合同实际上是一个转租约,而另外还存在一个主要租约。
- 352. 如果提单是承租人发出的,或代表他发出的,情况可能不同。在这种情况下,根据这一分析可以认为,所指的是转租约。但是依据第三方提单持有人的看法,这只不过是在确定哪些租船合同规定可适当载入他所持有的提单方面又增加一个不肯定的因素。
- 353. 而且,如果主要租约是一个期租约,情况也可能不同。由于一个期租约的许多规定和条款不适于载入提单,则转租约可能被载入,只要它是程租约格式。498

## 结论

354. 从上述情况可以看出,租船合同规定可能在若干重要方面对第三方提单持有人产生影响,据认为,在考虑租船合同规定的任何标准化、协调或改进以及采取国际法律合同的必要性时,应该适当考虑第三方提单持有人的利益以及承租人和船东的利益。

<sup>&</sup>lt;sup>497</sup> 亦参见 S.L.S.埃弗里斯特 (1981 年) 劳合社报告 2, 389。

<sup>&</sup>lt;sup>498</sup> 见 SLS 埃弗里斯特 (1981 年) 劳合社报告 2, 389。

### 第五章

#### 租船合同和强制法规

- 355. 秘书处调查表的许多答复者坚决支持对租船合同适用强制法规,以避免特别由于对提单和租船合同适用不同的责任制而引起的困难和疑问。
- 356 实际上,在某些国家,强制法规已适用于租船合同。在苏联,1968年的海上运输法第八章关于海运合同的条款强制地既适用于提单,又适用于程租约。根据第119条,"在苏联各组织之间的相互关系中和在本章明确提到的案例中,各方之间不符合本章规定的任何协议一律无效"。然而看来,如果租船合同中的一方是一个外国国民,则第八章的某些条款可强制适用。这些条款包括:
  - 357. 关于船舶适航的第 129 条规定:

"承运人须在启航前及时使船舶适航:保证船舶在技术上适于航行,为船舶适当配备一切必要的最备、人员和供应,使货舱和所有其他船舱适于收受、运输和保管货物。

承运人如果证明船舶不适航是由即使克尽职责也难以发现的缺点 (潜在缺点) 引起的,可不负责任,当事各方不符合本条第一款规定的任何协议一律无效。"

- 358. 关于货物灭失或损坏赔偿责任的第 160 条规定:
  - "承运人须对收讫待运的货物的任何灭失、短缺或损坏负责,除非他证明 这种灭失、短缺或损坏不是由于他的过失造成的,而特别是由于:
    - (1) 不可抗力;
    - (2) 海上灾难和意外事故及其他通航问题;
    - (3) 菅救人命、船舶和货物;
    - (4) 不是由于承运人的过失而引起的火灾;
    - (5) 当局的行为或命令 (拘留、逮捕、检疫等等);
    - (6) 战争行为;
    - (7) 发货人或收货人的行为或不行为;
    - (8) 货物的潜在缺点、货物的特性或自然损耗;

- (9) 在货物的容器或包装中或在木筏中从外观发现不了的缺点;
- (10) 唛头不全或不清;
- (11) 罢工或造成停工或怠工的其他环境,不管是全面还是局部的。

本条规定的责任从收讫待运时起,延续到交货时止。

凡与本条条款不一致的规定一律无效,但关于收货到装货期间和卸货到交 货期间的责任的规定除外"。

- 359. 根据斯堪的纳维亚国家海事法典,涉及在斯堪的纳维亚国家内或在斯堪的纳维亚国家间的航行的租船合同在货物责任方面须遵守强制性法规。根据挪威海事法典第 168 条,"在按照第 169 条可适用挪威法律时,不得回避第 118 至 123 条 (关于承运人对货物的责任)各项条款的约束而损害托运人、承租人或收货人•••••。而根据第 169 条第 1 款,在运输过程中,即使没有签发提单,而货物是根据租船合同承运的,也须遵守强制性规则。该款规定:"挪威、丹麦、芬兰和瑞典的国内贸易运输和这些国家间的贸易运输须遵守启运国家的法规。"
- 360. 其他国家的一些撰稿人认识到,由于对根据提单运输的货物可适用强制性制度而对根据租船合同运输的货物却没有普遍适用的制度,必然存在某些问题。奥斯陆北方船东辩护协会前会长,Znter油轮期约单据委员会主席、已故的佩尔·格拉姆说:

"关于海上运输,在货物责任方面区域间公约和强制性法规的统一适用仅限于根据提单的运输。然而《海牙规则》往往作为"首要条款"明确地列入租船合同。因此货物的灭失、损坏和延误等方面已包括在内,换言之,对于适航、货物的保管以及在无不合理的绕航的情况下,履行合同等作出了规定•••••已提议对租船合同适用强制性国际法规的唯一领域是关于提单、即货物责任一类的法规迄今为止所包括的领域。这不应该引起难题,但有一个例外,即文件的范围:应该把哪类租船合同包括进去?程租约?连续租约?显然不会是期租约或光船租约?这些规则应该只适用于证明承运人/货物的直接关系的合同、例如

提单。"499

361. 在下列说明中进一步谈到强制性法规的可能范围: "至少,不定期货船提单从签发时起就可列入这个范围,而不仅仅从其转让时起。按照现行制度,在发货人/承租人决定转让提单时,承运人的责任可从标准杂货租船合同改到《海牙规则》,这个制度是奇怪的,会引起难以处理的追索权问题······如果认为必须按照强制性法规执行根据首要条款普遍实行的规定——不管从区域来说是否适用——,那么一个简单的解决办法可能是对签发任何种类交货收据的任何承运人都适用强制性规则,不管交货收据是提单,还是货运单,还是运费通知书。"500

362. 据说《海牙规则》或《海牙-维斯比规则》也许"普遍"列入租船合同,但是实际情况决不是它们"一律"列入租船合同。例如,人们经常使用标准杂货租船合同,但不列入任何首要条款,而在许多租船合同中只部分列入《海牙规则》或《海牙-维斯比规则》。因此,另一些撰稿人更加深信必须制订强制性法规,规定按照租船合同运输的货物的责任。例如,在美国、吉尔摩和布莱克在《海事法》一书中501 说:

"在本国(或总的来说在别处)没有制约租船合同条款的法规,如同《海上货物运输法》制约提单条款那样。显然,历来认为,承租人和船东的讨价还价能力几乎相等,因此可以听由他们自由地订立合同,这种情况同航运公司和包装货物托运人之间能力的悬殊形成鲜明的对照······近来,这种订立合同的自由可能正在发生变化。在比索诉内陆航运公司案中,最高法院在确实出现讨价还价能力不等的情况下均使用了可用于租船合同的用语。迄今为止,最高法院没有就这个问题发表过意见;联邦低级法院的判决也难免模棱两可。显然,只有最高法院能权威地判决比索案裁决是否或在何种程度上可适用于租船合同案。看来,任何真正实际的解决办法必须来自一项国际公约,类似构成海上货

<sup>&</sup>lt;sup>499</sup> 佩尔·格拉姆提交图兰 (Tulane) 海运协会的一个文件 (1975年) 49, 《图兰法律评论》1076。

<sup>500</sup> 同上。

<sup>501</sup> 前引书, 第198页。

物运输法基础的国际公约;在这个极具国际性的领域坚决维护国家的"公共政策",是非常成问题的"。(着重线是另加的)

363. 同样,另一些撰稿人说明了就货物责任而言在租船合同和提单之间关系中目前存在的法律困难。因此,斯克鲁顿在《租船合同》一书中指出: 502 "在目前格式的规则以及最初格式的规则下出现的最严重的困难之一是确定根据租合同签发的提单的地位。"问题出现在四个主要方面: 第一,对根据租船合同签发的提单适用《海牙规则》或《海牙一维斯比规则》的范围; 第二,尝试以一项首要条款把有关规则列入租船合同的法律效力; 第三,列入或删去有关规则的租船合同的解释; 第四,承租人和船东之间按照租船合同的赔偿要求。

# A. 《规则》适用于根据租船合同签发的提单

364. 为了目前的讨论,可以假设,据以签发提单的租船合同根据租船条款并不必须遵守《规则》或不必须完全遵守《规则》。根据租船合同签发的提单要么是班轮提单,要么是租船合同提单,依承租人的交易的性质而定。这两种格式的提单如果成为运输合同,通常必须强制性地遵守《海牙规则》或《海牙-维斯比规则》。但是,提单可能成为运输合同,也可能不成为运输合同,因此可能要遵守《规则》,也可能不必遵守《规则》,视发给提单、或持有提单或出示提单的一方的身份和地位而定。

365. 根据英国和美国的法律规定,凡是承租人是托运人,向承租人开出的提单初步推定只作为货物收据生效。503 提单可能明文列入有关"《规则》,或提单已在一个缔约国签发或是为了两个缔约国之间的货物运输,这一事实无关紧要。因为据说船长靠签署提单无权修改或改变租船合同的条款。所以,即使船东根据租

<sup>502</sup> 前引书, 第 417 页.

<sup>503</sup> 罗多卡纳奇诉米尔本案 (1986 年), 18 Q.B.D.67, 75; 北方 29 号, 85 F. 2d 39, 41, 1936 年 《美国海事判例》 1296, 1298; 索尼亚Ⅱ, 151 F.2d 727, 730, 1946 年 《美国海事判例》 90, 94; 印度总统诉梅特卡夫航运公司案 (1979 年) 劳合社报告 2, 476.

船合同所负的责任比根据《海牙规则》对货物所负的责任更具有限制性,承租人也将无权援引有关《规则》。

366. 然而,如在上一章中见到的,如果持有只作为收据的提单的承租人背书提单把权利转让给第三方,这份提单随即成为第三方和船东之间的合同。504如在斯克鲁顿著的《租船合同》一书中所说:"然而,这种观点不易解释清楚。根据法规 (1855年提单法)通过,背书就向被背书人转让了所有这些权利和责任,'好象提单中所载的合同是同他签订的'。但是,就由承租人—托运人背书一份不同于租约的提单而言,根据伊谢尔勋爵在罗多卡纳奇诉米尔本案中的原则,'提单中不载合同',而只有一张'纯粹的收据'。那么,背书怎能交转并不存在的东西呢?难道因为背书,一个以前并不存在的合同就产生了吗?505

367. 在一次航程的一段特定时间中,货物载运需遵守一种货物责任制,随之在背书提单后又有可能需遵守《海牙规则》或《海牙-维斯比规则》的责任制,而不通知船东,船东也不知情,这确实很反常。事实上,根据英国的法律,可能出现这样的情况,即一个航程结束,货物卸掉,显然是根据租船合同规定的一种责任制,然后,在出示一份《海牙规则》提单并按此交货时却改为遵守这些规则规定的责任制。在勃兰特诉利物浦航运公司案中506 据认为,如提单持有人出示提单并表示愿意支付运费和接受交货,而船东接受了这个表示,曾可以推断他与船东之间有一个合同。

368. 同时,如已经见到的,还存在一种类似的异常情况:一个船东签发一份提单给第三方托运人,随后托运人背书提单给承租人。这份提单在签发后将作为一个运输合同生效,在正常情况下受《海牙规则》或《海牙—维斯比规则》制约。但是,在托运人背书给承租人后,受《海牙规则》制约的合同将失效,这份提单在承租人手中回复为一张收据,因此货物将按照租船合同的条款运输。507 如果这

<sup>&</sup>lt;sup>504</sup> 勒迪克诉沃德案 (1888年), 20Q.B.D.475, 479.

<sup>505</sup> 斯克鲁顿,前引书,第62页。

<sup>&</sup>lt;sup>506</sup>(1924年)1K.B.575。

<sup>507</sup> 印度总统诉梅特卡夫航运公司案,见前文。

份提单被一个第三方背书给法律上认定为承租人代理的一方,也将出现同样的结果。<sup>508</sup>

369. 从上文可以看到,不仅在处理提单和租船合同之间目前存在的差别导致改变货物在航程中的责任制.而且在同一艘船上运往同一目的地的同一货物也会在同时遵照不同的责任制。例如,凡由订立租船合同的一艘船把提单签发给一个第三方托运人,发货人随后背书一些提单转给另外的第三方,又背书一些提单转给承租人自己或列为承租人代理的一方,就将出现这种情况。

370. 凡租赁船舶最初签发给承租人的提单,如承租人然后又经背书转给第三方,也可能导致更多的困难。如在斯克鲁顿著的《租船合同》一书中指出: 509

"《规则》第五条(第二款)规定,这些规则的规定不应适用于租船合同,但是如果提单是在一艘订立租船合同的船舶的情况下签发的,这些提单须遵守那些规则的条款。"看来所指的是第三7条所规定的格式,根据该条款,"承运人"遇有要求须签发一份提单,标明货物的唛头,包装数或件数、质量、重量和外表状况,还指第三7条,该条涉及"已装船"提单。如托运人不是承租人,那可能不会出现困难;但是,如承租人想要使用这艘船装运他自己的货物,他是否有权要求按照《规则》的规定签发提单,就大有疑问。"

371. 如上文已经说明,承租人和船东之间的有效文件仍然是租船合同本身,提单被认为是一张纯粹的收据。因此,按照第一(b)条的含义,在承租人和船东之间没有"运输合同",而按照第一(a)条的含义,船东也不是"承运人"。第三3条只要求"承运人"遵守第三3条的规定。如果在这种情况下船东签发的提单同租船合同的条款相一致,那么《规则》中没有什么规定强制船东以第三3条要求的格式签发提单。因此,看来在这种情况下将不对船东进行制裁,虽然船东对提单中关于唛头、数量、重量或状况的陈述的限制已使提单的证据价值无效,即使提

<sup>&</sup>lt;sup>508</sup> 克恩诉德兰案(1861 年)10C.B. (N.S.) 205 和印度总统诉梅特卡夫航运公司案,见前文。

<sup>509</sup> 前引书, 第 417 页。

单在后来的被背书人手中,而被背书人本将从《规则》中获得好处。

# B. 试图把《规则》作为合同条款列入租船合同

372. 许多标准的租船合同格式谋求把《海牙规则》或《海牙-维斯比规则》或这些规则的具体规定列入印刷文本。在另一些情况下,通常谋求用一项所谓"首要条款"的办法把《规则》列进去。首要条款有各种格式;有时详细地说明意旨,但详细的程度不同,在另一些情况下,只提到"首要条款",而不具体说明首要条款的意旨是什么。

373. 在本报告的前面一部分中讨论了通过一项首要条款把《海牙规则》或《海牙-维斯比规则》列入租船合同而产生的困难。510 如已说明的那样,出现的问题包括关于用一项首要条款把什么规定列入租船合同和在租船合同的条款同列入租船合同的规则的规定发生抵此对应实行哪些规定的问题。这些问题在许多案件中出现,也在最近的福尔内斯·威遂公司(澳)诉金属经销有限公司(英)(阿马佐尼亚号)案中出现。511 这个案件中的问题是,租船合同中的首要条款(第33条)512 的措词是否有把《1924年澳大利亚海上货物运输法》的所有条款,包括该法的第9条(该条规定实行发货地的法律,即南澳大利亚和澳大利亚联邦的法律)列入租船合同的法律效力,或它是否只把澳大利亚法附表中开列的《海牙规则》列进去。英国上诉法院裁决,根据首要条款整个澳大利亚法包括第9条在内,都已列入租船合同,因此,规定在租约中出现任何纠纷均应根据英国法律仲裁解决的第34条是无效的。如大法官狄龙所说明,结果是,租船合同的第34条是不合法的,无效的和不发生效果的。租船合同要受货物发运地南澳大利亚的法律所支配,双方之间的任何纠纷均应由南澳大利亚的法院裁决,而不是在伦敦或任何别

<sup>510</sup> 见本报告第 102 至 112 段。

<sup>511 (1990</sup>年) 劳合社报告 1, 236.

<sup>512</sup> 第 33 条如下: "本租约遵守《1924 年澳大利亚海上货物运输法》的条款和规定·····任何不符合此法规则和规定的条款都无法律效力,但不得进一步引伸。"

的地方仲裁解决。513

374. 即使很清楚,首要条款的目的是把《规则》列入租船合同,但是并不始终清楚,人们有意在所有方面使《规则》实际上成为"首要的"。在马里福图纳海运公司诉锡兰政府一案中<sup>514</sup> ,给标准杂货租船合同增添一项首要条款,成为打字文本附加条款之一,于是出现这样的问题:是否这项首要条款实际上应被看作可取代打字文本中的其他条款。这位法官说:

"据我判断,如果在与摆在我面前的问题相关的第 29 条的标题中过多强调'首要'这个词,那是错误的。首先,在《海牙规则》问题上,人们在两种截然不同的意义上使用这个词。有时,这个词用作速记形式,以表明提单或租船合同中的一项条款使全部或部分《海牙规则》可应用于这些文件,但不增添任何条款。在另一些场合,它具有更广泛的含义,因为它不仅指把《海牙规则》列入提单或租船合同的一项条款,而且指该条款更进一步地明文规定,遇有同提单或租船合同的条款相抵触时,以《海牙规则》的条款为准,换言之,《海牙规则》的条款是首要的。"

375. 同样,在七海运输公司诉马里纳太平洋联合公司 (萨蒂亚·凯拉什号)案中<sup>515</sup> ,上诉法院指出,某些打字文本附加条款可以压倒通过一项首要条款列入租约中的《美国海上货物运输法》的条款。

376. 尝试用明确的合同条款把《规则》列入租船合同,导致对把哪些规则——《海牙规则》还是《海牙—维斯比规则》列进去产生疑问,因为列入的条款只提"首要条款"。在新阿格雷克斯股份公司诉波罗的海航运有限公司案中,<sup>516</sup> 问题由一个英国法院顺利解决,理由是,在订立租船合同的日期,《海牙—维斯比规则》尚未经任何国家正式通过,因此很自然设想双方打算把最初的《海牙规则》列入。

377. 今天,一个英国法院考虑到由英国法律支配的一个合同,无疑将以不

<sup>513</sup> 同上, 第 248 页。

<sup>514 (1970</sup>年) 劳合社报告 1, 247-255。

<sup>515 (1984</sup>年) 劳合社报告 1, 588。

<sup>516 (1976</sup>年) 劳合社报告 2, 47.

同方式解决这个问题,因为后来在 1971 年海上货物运输法中制定了《海牙-维斯比规则》的法令。但是,只要对有效的提单可应用不同的制度,把《规则》作为合同条款列入租船合同的做法所固有的疑问就将加倍复杂。<sup>517</sup>

# C. 已列入《规则》或已删去《规则》的租船合同的解释

378. 初步看来,把《规则》作为合同条款列入租船合同后,有抵触的规定就被推翻。<sup>518</sup> 但是,这作为一种普遍性就不一定准确。可能有这样的情况:《规则》并不压倒租船合同的其他条款,因为如果《规则》是作为合同条款列入的,而不是强制性地列入的,就必须应用普通解释原则。<sup>519</sup>

379. 在萨蒂亚·凯拉什案中,《1936年美国海上货物运输法》格式中的《海牙规则》由第24条印刷条款列入纽约产物交易所定期租船合同,但是,打印的租船合同附则载有绝对适航担保性质的条款。按照上诉法院判断,建议(虽然这个问题并不必须裁决),绝对适航担保条款可取代《美国海上货物运输法》4(1)条(《海牙规则》第四1条)。在另一个案件中,520 法院裁决,在由一项"首要条款"作为合同条款列入租船合同的《海牙规则》第四3条中······"船长在管理船舶中的行为、疏忽或不履行义务"的免责条款不能取代租船合同中一项关于准备就绪通知书的特别条款,因此并不保护船东不负违反该条的责任。在解释一个把《海牙规则》作为合同条款列入的租船合同时,列入《规则》的方式——在列入《规则》时使用的具体措词和用来说明其预定法律效力的措词——也是一个重要因素。

<sup>517</sup> 对这个问题的进一步讨论,见本报告第.....段。

<sup>518</sup> 新阿格雷克斯股份公司诉波罗的海航运有限公司(阿吉奥斯·拉扎罗斯号)案 (1976年) 劳合社报告 2,47; 埃芬森公司诉思里贝斯(三湾)有限公司案,238F.2d.611,1957年《美国海事判例》16 (第五期,1956年。)

<sup>519</sup> 斯克鲁顿著《租船合同》一书,前引书第 420 页和七海运输公司诉马里纳太平洋联合公司(萨蒂亚·凯拉什号)案(1984年)劳合社报告,588。

<sup>520</sup> 马里福图纳海运公司诉锡兰政府案 (1970年) 劳合社报告 1,247。

因此,在阿达马斯托斯航运公司诉英美石油公司(萨克逊明星号)案中,<sup>521</sup> 首要条款具体地规定,如果任何条款同《美国海上货物运输法》的条款不一致,那项条款应无效。法院在马里福图纳海运公司诉锡兰政府案中(见前文)提请注意这样的事实:在该案中,在首要条款中没有同阿达马斯托斯航运公司案中的具体规定相类似的规定。

380. 作为合同条款列入的做法同强制性适用的做法相对比,在法律效力方面可能不同的另一个例子是在绕航方面。《海牙规则》的绕航规定可能产生不同的法律效力,要看该规定可强制性地适用还是按照合同适用。有人提议,根据英国的法律,提单中的绕航条款须按照普通法原则加以解释,如果按照这些原则解释,该条款有效,它就不受强制适用《海牙规则》第四 4 条的影响。 522 但是,如果把《海牙规则》作为合同条款列入一个租船合同,就必须把《规则》(包括第四 4 条)同租船合同的其他条款一起解释,好象"已熔合在一起"523 ,产生的结果必定不同。此外,解释提单中绕航条款的普通法原则主要是在上世纪制定的,今天用以解释一个租船合同的绕航条款可能不恰当。 524 如本报告在前面关于绕航条款的部分已经提出, 525 让人们得出这样的结论:根据英国的法律,一个租船合同,如果已经把《海牙规则》作为合同条款列入,则绕航的法律效力是一件疑问相当大的事项,现有的典据对此提供不了任何指导。

381. 《海牙规则》第四 2 条的前言中对"灭失或损坏"这些词的解释也说

<sup>521 (1958</sup>年) 劳合社报告 1,73.

<sup>522</sup> 见斯克鲁顿著《租船合同》一书,前引书,第 452 页,其中援引了上诉法院在伦敦诉帕尔米拉案 (1956 年) 1Q.B.505 中的判决,这个问题已容许在英国上议院辩论 (1957 年) A.C.147, 171。

<sup>&</sup>lt;sup>523</sup> 新阿格雷克斯诉波罗的海航运公司案 (1976年) 劳合社报告 2, 47, 按照 大法官肖, 第 59 页。

<sup>524</sup> 见瑞士大西洋公司诉荷兰国营鹿特丹煤碳联盟案 (1967年) A.C. 361; 照相制品有限公司诉塞柯里科尔运输有限公司案 (1980年) A.C.827。

<sup>525</sup> 见本报告第 288 至 230 段。

明,把《海牙规则》或《海牙—维斯比规则》作为合同条款列入租船合同后法律效力不同。如英国的法院解释,一直认为,"灭失或损坏"这些词的本意是指由于根据一份《规则》所适用的提单运输的货物的"装载、搬运、积载、运输、保管、照料和卸载"而造成的物质的或财政的灭失或损坏。526 换言之,《海牙规则》第四条中的"灭失或损坏"是参照第二条和第一(b)条解释的。然而,如果把《海牙规则》作为合同条款列入一份连续程租约,据法院裁定,"灭失或损坏"这些词就包括承租人由于船舶不适航、能够进行的航次减少而遭受的利润损失。上文讲到的阿达马斯托斯航运公司诉英美石油公司案的情况就是如此。而在另一个程租约中,法院又裁定,这些词包括承租人由于船舶碰撞造成的延迟而支出的费用。527

382. 从由于在纽约产物交易所租船合同第 24 条中提到《1936 年美国海上货物运输法》而把《海牙规则》列入的一份期租约来看,法院裁定"灭失或损坏"这些词具有更广泛的含义。在七海运输公司诉马里纳太平洋联合公司(萨蒂亚·凯拉什号)案中,<sup>528</sup> 法院认为,这些词含义广泛得足以包括在萨蒂亚·凯拉什号减载期间由于船东的船舶海洋和好号的疏忽航行而给承租人的船舶萨蒂亚·凯拉什号造成的碰撞损坏。上诉法院说,一个租船合同要求船东进行的合同规定的活动范围要比一个提单合同要求船东进行的合同规定的活动范围更广,把《海牙规则》列入一个租船合同,"可以使船东不仅在〔第二条〕中规定的事项方面,而且在他根据租船合同进行的其他合同规定的活动方面,获得法定豁免的保护"。<sup>529</sup>

383. 有人可能会问,在这些情况下,把《海牙规则》作为合同条款列入的结果是否反映了双方的实际意图。但是,不管是否如此,把为适用于提单合同而草拟的一套规则不加修改地适用于租船合同,显然是不令人满意的。因为租船合同实质上是不同的合同。

<sup>&</sup>lt;sup>526</sup> 阿达马斯托斯航运公司诉英美石油公司 (萨克逊明星号) 案 (1958年) 劳合社报告 1,73。

<sup>527</sup> 马里福图纳海运公司诉锡兰政府案 (1970年) 劳合社报告 1,247。

<sup>528 (1984</sup>年) 劳合社报告 1, 588。

<sup>529</sup> 同上, 第 596 页。

384. 不把《海牙规则》作为合同条款列入租船合同,也可能会产生预期不到的结果。1936年《美国海上货物运输法》中实行的《海牙规则》经租约第24条作为合同条款列入纽约产物交易所租船合同,但是,纽约产物交易所租船合同有时加以修改,删掉第24条。直到纽约产物交易所租船合同1981年文本(代号为Asba期租约范本)的印刷格式始终是这种情况。该文本格式中去掉了第24条,因此没有把《海牙规则》列入标准格式。根据英国的法律,这产生的意外结果是,船东在租船合同开始生效时适航的最初义务从克尽职责以使船舶适航加重到绝对的适航保证。删掉或不列入《海牙规则》还产生这样的结果:船东失去他在《美国海上货物运输法》第四(2)(a)条(《规则》第四2(a)条)中针对"船长、船员、引水员或承运人雇用人员在航行中或船舶管理中的行为、疏忽或不履行义务"的免责条款中享有的疏忽免责条款的保护。其原因是,1981年文本(Asda期租约范本)中的租船合同免责条款的同1946年文本一样,没有改变,根据英国的法律不足以广泛地用来对疏忽给予有效的免责。530 在萨蒂亚。凯拉什号案中,上诉法院裁定,船东得不到这项免责条款的保护以免除对他们的船长的疏忽造成的碰撞损坏的责任,因为这项条款不足以用来免除疏忽的责任。

385 举这个例子来说明这样一点:对租船合同作出契约性修改适应,如果不按照所有相关的国家法律来考虑,如果不对条文进行仔细的分析和校勘(在承运人对货物的责任方面的国际强制性法规历来经受仔细的分析和校勘),那么就很容易导致意想不到的和有害的结果。在这个过程中也能非常有效地达到船东的利益和承租人的利益之间的平衡。对秘书处调查表的许多答复抱怨说,某些标准的租船合同格式,特别是波罗的海期租约范本和标准杂货租船合同,过分地偏袒船东。在1976年的 Fon 期租约范本草案中可以见到一个尝试制定一种有利于承租人的令人满意的现代干货期租约的例子。但是,经分析,这个草案似乎太过分有利于承租人,因为该草案规定船东对货物的责任和对承租人的责任相当于一个保险人的责任和甚至大于一个公共承运人的责任。

<sup>530</sup> 见七海运输公司诉马里纳太平洋联合公司 (萨蒂亚·凯拉什号) 案 (1984年) 劳合社报告 1,588。

386. 例如,Fon 期租约范本草案第 9 条规定: "在交船时,得保持船舶的船壳、机械和设备处于完全有效状态(有必需的有效检验证明书和其他证明书),要不漏、牢固、结实,在一切方面适于航行,在本租船合同的有效期间都须如此"。这项条款似乎等于在租船合同的整个期间连续绝对担保适航。而 Fon 期租约范本的免责条款(第 26 条)则同纽约产物交易所租船合同 1946 年和 1981 年文本(Asba 期租约范本) 中的免责条款一样,如在上面已见到的,它没有规定对疏忽的免责条款,至少按照英国的法律是如此。

# D 承租人和船东之间根据租船合同的索赔要求

387. 这些问题是在这样的情况下出现的:根据提单对货物应承担的责任受《海牙规则》或者《海牙-维斯比规则》制约,而根据租船合同对货物应承担的责任则不受这些规则制约,其所受限制要么小于《规则》"要么大于《规则》。在提单受英国法律制约的情况下,船东一方通常(尽管并不总是)将根据提单负责赔偿货物的灭失或损坏。在美国和其他管辖系统,承租人对提单索赔负责的情况较多。如果裁定船东或承租人根据遵从《海牙规则》或者《海牙-维斯比规则》的提单负责赔偿货物的灭失或损坏,他们显然想向租船合同另一方索取赔偿,如果根据租船合同,另一方(例如在承租人和船东之间)应负责赔偿引起提单索赔的特定灭失或损坏的话。然而,在这样的案件中在什么情况下才给予提出索赔要求的权利并非始终有都明确规定。

388. 在莫戈尔海运公司诉诺曼底冶金公司(诺格尔·马林号)案中,<sup>531</sup> 英国上诉法院审查了以前关于索赔权利问题的论断,但是并没有就应执行的原则作出明确的结论,特别是当租船合同中没有明确的赔偿规定时在什么情况下可能意味着应给与赔偿。

389. 然而,上诉法院确实设法总结了这些论断的影响,并且说:"以前引用的案例表明,在明确要求船长签署所出示的提单的情况下和在合同规定这一举动应不妨害租约的情况下,承租人为了自己方便而开提单的权利必须受到限制,即他为

<sup>&</sup>lt;sup>531</sup> (1988年) 劳合社报告 1, 412。

此而强加给船东的一项新合同的条件不得比船东原先订约时为换取运费而接受的那些条件更难于承受。但是,在大多数案例都强制实施《海牙规则》或者《海牙-维斯比规则》时,谈论对承租人"方便"的开提单权利问题看来好象是不现实的。正如当事法庭法官在同一个案件初审时所说的那样<sup>532</sup>:

"只是由于在启运国强制实施《海牙规则》,〔提单〕常常载有此租船合同中的条件更为麻烦的条件。船长或者船舶代理人只要看看提单就能够弄清是什么条件,假定(我对此表示怀疑)他们还不完全知道这些条件的话。在这些情况下,在我看来,如果说承租人提交一份其条件比租船合同更为麻烦的提单就是违反了合同,因此船东有资格获得损害赔偿金,那是有点儿武断的。如果说有一个默示条件,责成承租人向船东赔偿,那是比较合理的。"

390. 但是,在本思轮船公司诉安-布罗德·贝思公司(C.乔伊斯号)案中,533 英国商事法庭驳回了船东根据一项标准杂货租船合同提出的索赔要求,这项租船合同载有关于船东责任的条款(第2条),将船东对不适航造成的货物灭失或损害的责任限定的范围比《海牙规则》规定的范围窄得多。合同双方删除了标准杂货租船合同的第9条(该条规定船长须签署提单,"但不得损害本租船合同"),并换上一项条款,其大意是,遵从《海牙规则》的所有提单须由船东开出。他们必须根据提单解决货物理赔,要是提单受租船合同中的责任条款制约,他们就不会对货物索赔负责。然而,法院驳回了船东根据租船合同对承租人的索赔要求,理由是,租船合同明确规定提单须按照一项首要条款开出;而且这一规定必然使船东承担提单中《海牙规则》规定的责任,并且没有必要(在没有一项明示条件的情况下)默示一种获得赔偿的权利,这只是由于根据租船合同船东对货物的责任的限制性比根据提单大。在这一案件中,有人提出,这样一种解决办法没有多大商业意义,而在本思轮船公司案中的承租人依据的是上诉法院在早期的莫尔·特里范轮船公司诉克鲁格公司案534 中的其中一项判决的一段话:

<sup>532 (1987</sup>年) 劳合社报告 1,456,第460页。

<sup>533 (1986</sup>年) 劳合社报告 2, 285。

<sup>&</sup>lt;sup>534</sup> (1907年) 1K.B.809。

"直到启运,船东一直同托运人打交道。从启运时刻起,就运货而言,他想处于同样的地位,不管货物是否还是托运人的财产,或者不管托运人是否选定把货物售出并将财产权转交给他人,都是如此。这是一个常识问题。他当然不希望——任何船东都不会希望——他对承租人承担一套义务,如果承租人选定售出他的货物,他也不希承担更重的义务。我应该说,用一句常用的话说,这不是在做生意。"

391. 在上述情况下根据租船合同提出的索赔要求中出现的另一种反常现象是《海牙规则》第三6条中的期限规定。在根据一项明确载入《海牙规则》的租船合同就货物灭失或损坏提出索赔要求的情况下,船东可在承租人提出索赔要求的案件中根据英国法律依赖第三6条的一年期限规定。在承租人是提单合同的一方并且必须满足提单索赔要求(根据租船合同的条件这是船东的最终责任)的情况下,承租人可提出索赔要求。然而,在船东对承租人提出索赔要求(因为船东是提单的一方并且必须根据提单满足索赔要求)的情况下,根据英国法律承租人则不得依赖第三6条的一年期限规定。535 在这样的情况下,船东可在六年内提出索赔要求。在凯恩。齐菲尔号案中,承租人认为,承租人也应该能够依赖第三6条,因为《海牙规则》第一条中的"承运人"的定义包括同托运人签订了运输合同的承租人。然而,英国法院驳斥了这种论点,其理由是,在《海牙规则》作为合同内容载人。然而,英国法院驳斥了这种论点,其理由是,在《海牙规则》作为合同内容载入一项租船合同的情况下,只能有一个"承运人",而这个承运人必须是船东。根据租船合同,承租人不能成为承运人,即使根据一项分提单合同他可能处于一个承运人的地位。在这方面,美国的法律与英国的法律不同,因为它规定《海牙规则》的一年期限规定不适用于船东或承租人根据租船合同提出的索赔要求。536

<sup>535</sup> 弗里登航运公司诉东海航运有限公司(凯恩·齐菲尔号)(1982年)劳合社报告 1,73。

<sup>&</sup>lt;sup>536</sup> 赫尔克里士公司诉史蒂文斯航运公司 (1983年) 698F.2d726, 1983年 《美国海事判例》1786 (第5期)。

# 结论

392 综上所述, 将《海牙规则》排除在租船合同之外和试图在租船合同中 采纳《海牙规则》, 在合同方面都造成了严重的困难和不确定性。因此建议可通过 对租船合同强制实施与《海牙/海牙-维斯比规则》制度类似的、但是专门为用于 租船合同而拟订的一种货物责任制度来解决这些困难和不确定性。 货物责任方案相类似的方案纳入租船合同,需要一套强制性适用于租船合同的"制订好的"规则。

415. 原则上,与根据《海牙和海牙-维斯比规则》强制性适用于提单的相类似的责任标准也应强制性适用于租船合同。这就是说,应该制订一些和租船合同特别有关的规则,以包括以下几个主要的责任方面:

适航

照管货物

与根据租船合同开出的提单有关的义务

行动限制

船东的权利和豁免

绕航

责任限制

危险货物

- 416. 然而,已建议秘书处进行进一步的研究与调查以期确定:
- (1) 这些强制性规则如果仅仅适用于程租合同,或如果适用于程租合同也适用于期租合同会产生什么影响;
- (2) . 这些强制性规则如果仅仅用于《海牙规则》第2条提及的营运,或者如果用于根据一个租船合同的所有航程和所有营运会产生什么影响。
- 417. 以后,秘书处将向工作组进一步报告情况,并就将用于租船合同的强制性立法的确切范围提出建议。

# C. 租船合同中使用的基本用语的定义

418. 国际海事委员会执行委员会 1976 年 9 月决定查明是否可以起草通常使用的用语的定义以减少租船合同引起的争端。已经商定,理想的办法是制定出包括租船合同的各个方面的定义,但是已经决定装卸时间应是考虑的第一个问题。已经在国际海事委员会、波罗的海和国际海事会议以及英国航运总会的主持下成立了一个工作组。1977 年在国际海事委员会的一次全体会议上审议了一套装卸时间定义的草案,在此之后成立了一个国际工作组,其中包括各国船舶经纪人和代理人协会

# 结论

392 综上所述,将《海牙规则》排除在租船合同之外和试图在租船合同中采纳《海牙规则》,在合同方面都造成了严重的困难和不确定性。因此建议可通过对租船合同强制实施与《海牙/海牙-维斯比规则》制度类似的、但是专门为用于租船合同而拟订的一种货物责任制度来解决这些困难和不确定性。

# 第六章

# 结论和建议

- 393 自从国际航运立法问题工作组第四届会议召开以来已经过去 15 年多了。在这段期间,已经采用了一些新的租船合同格式,毫无疑问这些格式比过去有所改进,目的是制订兼顾各方面的租船合同。采用的其他租船合同格式由于为船东规定了严格得多的责任,似乎过于有利于承租人。然而,很难认为,认识到其涉及的问题的任何船东会接受这种租船合同,正如大多数承租人不会自愿接受未经修改的波罗的海期租约范本或标准杂货租船合同一样。
- 394. 据秘书处得到的信息,与比较现代的格式不同,旧的和过时的租船合同格式仍在广泛使用。如同本报告一直表明的那样,大部分租船合同争端仍然是这些租船合同的不明确的、含混的和过时的措词引起的,在某些案件中造成的结果是,即使在一个单一的管辖系统内做出的判决也是相互矛盾的。
- 395. 除了航运业以外,很难想到还有任何其他的产业,其合同往往是在生效之前几天——如果不是几小时的话——才谈判的,而且在谈判中又是那么不注意合同条款的措词,即使这些条款很可能涉及到巨额款项。出于可以理解的商业原因,船东、承租人和他们的经纪人集中谈判在商业方面最重要的一些要素,诸如运费率、租金、装货港或交货地区等等,而往往没有充分注意租船合同的其他条件。在其他的贸易和行业中,谈判合同中每个条件时遇到的困难都是通过使用为数有限、措词全面的标准格式的合同来解决的。然而,航运业继续使用对今天的状况来说已不够全面的、过时的、印制的格式。可以毫不夸张地说,这意味着在航运业中的许多贸易里,已不再存在标准格式合同。在干货租船合同,特别是期租合同和程租合同的情况下,据秘书处得到的信息,一份印制的租船合同附上多达50条打印的附加条款是屡见不鲜的,而且印制的格式中的条款本身还作了大量的删节和修改。这些附加条款和印制的格式的修改意见并不都是每次进行谈判的,而往往完全摘自有关方面缔结的一份以前的租船合同,有时在"有着合乎逻辑的修改意见的"谈判中附带空泛的保留意见。由于反复使用成套的附加条款,同时塞入一些新的条款,而这些新条款本身又在以后的租船合同中反复使用,这样就在印制的条款和附

加条款之间引起矛盾,甚至也在附加条款本身之间引起矛盾。

- 396. 除了这些矛盾和某些印制的旧租船合同格式的含混不清造成的混乱和不确定性外,还有规定船东对货物责任的强制性规则的异常情况,这些规则适用于原始提单合同,而不适用于据以开出这些原始提单的租船合同。
- 397. 国际航运立法问题工作组在其第四届会议上,还要求秘书处就以下几个问题提供补充材料:
  - (a) 是否有一些租船合同条款可以实行标准化、协调或改进,从而使当事 各方之间的权利和义务实现公正的平衡。
  - (b) 租船合同是否有一些方面适合于采取国际立法行动; 和
  - (c) 对于租船合同中使用的基本用语提出商定的定义的可能性如何。

# A. 租船合同条款的标准化、协调或改进

- 398. 将标准格式的租船合同强加于世界航运业的任何做法是完全不能接受的和不适宜的。但是人们认为,租船合同条款的标准化、协调和改进不仅是适宜的而且是必要的。特别是有必要将今天使用的众多不同条款合理化,这些条款以基本相同的方式包括租船合同的同样的主要内容。还必须改进这些条款起草的方式,以澄清所承担的义务和减少争端。
- 399. 明确和全面的条款不仅对于租船合同当事各方本人具有重要意义。租船合同条款也在一些不同的和重要的方面影响第三方提单持有人,如本报告前文所述,第三方无法控制一份租船合同的内容,而其条件可能给他们规定了严重的义务,因而第三方应该有权期望租船合同提单以及载入这些提单内的租船合同条款的有关措词明确规定它们的权利和义务。
- 400. 据认为,有利于船东的一个具体条款,或有利于承租人的一个具体条款不一定会破坏一份租船合同当事各方的权利和义务的公正平衡,如果它没有不合理地危害第三方,和如果一方得到的好处可以由于有利于另一方的一种适宜的财务调整而得以抵消的话。只有在这种好处没有,或看上去没有由于一种适宜的金融调整而得以抵消的话,才会出现不平衡。
  - 401. 某些现代的租船合同的确包括了规定以任选方式分摊风险或费用的条

- 款。但是据认为,这种任选规定的范围还可大得多。由于明确规定了任选的义务,租船合同的当事各方可以更为容易地从运费或租金的角度评估每种以任选方式分摊风险或费用办法的价值。相比之下,措词含混的条款就使人比较难以对风险或成本进行估价。
- 402 条款措词不明确的后果是:一个条款,或一个条款中的表达方法,对航运界一个普通成员可能传达的是一种意义,但当它受到律师、仲裁人或法院细致的法律分析时,又可能被看作具有完全另外一种意义。秘书处调查表的一位答复者发表意见说:"我们认为对于专业人员来说,使用(一份租船合同的条款)并没有什么困难,依据仲裁法庭的解释,事业人员是明确知道这些条款的确切含意的。"对于主要的航运和法律中心的专业人员来说,情况可能是这样,但是经常使用的租船合同格式需要专家来解释是不适宜的。
- 403. 目前使用的租船合具格式多种多样,这无助于解释工作。根据秘书处进行的研究,可以看得很明显,众多不同的货运租船合同中的许多条款并不因为具体的货运的不同要求,也不因为船东和承租人分摊不同的风险或费用,而其条件就有所不同。这些条件仅仅是由于历史原因而有所不同。看来,在这些租船合同中只有为数很少的条款是为特定的货运具体规定的,据建议可以对主要的核心条款实行合理化,而不会使灵活性受到损失,因为正在为在必要的情况下以任选方式分摊风险或费用制订规定。
- 404. 从秘书处进行的调查中也可以看出,在起草租船合同时,并不是简明的措词一定有利于说明情况。引起大部分争议的许多比较陈旧格式的租船合同文字往往过于简略,以致无法为可能很复杂的环境做出充分的规定。引人注意的是,详细的但通常起草很全面的现代油船期租合同引起的争议比传统的干货期租合同格式少得多。
- 405. 用于特定货物的陈旧的、起草不周到的租船合同格式仍一直在许多货运中使用,过时的一般格式的程租合同及干货期租合同也一直在使用。从本报告中可看出,一些格式最陈旧的租船合同几十年来一直由于起草得拙劣、含混不清和容易引起争端而受到批评,但这些租船合同今天仍在广泛使用。总的说来,国际航运业看来并没有建立任何足够有效的机制,以劝阻使用过时的格式,也没有鼓励使用

现代的起草得更为周到的格式。

406. 据认为,特别是以下的条款可以实行协调和(或)改进

仲裁期租和程租

提单期租和程租

解约期租和程租

责任终止程租

确定租船期限的条款期租

载入租船合同条件的租船合同提单中 程租

的条款

交船和还船的条件 期租

危险货物 期租和程租

绕航 程租

运费程租

共同海损 期租和程租

赔偿期租和程租

装卸时间和滞期费 程租

留置权 期租和程租

保养条款期租

停租期租

支付租金和撤船 期租

责任和免责条款 期租和程租

安全港和安全泊位期租和程租

407 因此我们建议,贸发会议秘书处在同有关的商业和国际组织磋商后确定上述条款中哪些是适宜的租船合同核心条款。在有些情况下,标准格式的租船合同中某些现有条款可能被认为是适宜用作核心条款的。在另一些情况下,就有必要在审议目前使用的条款后起草新的条款。然后可以在有关的商业和国际组织的协助和密切合作下编写核心条款草案,以提交国际航运立法问题工作组。

# B. 国际立法行动的必要性

- 408. 全世界绝大多数提单合同是受《海牙或海牙-维斯比规则》制约的。当货物根据附有一份原始的租船合同的提单运输时,不能对两个合同实行类似的强制性的、承运人对货物的赔偿责任制度,这是不正常的情况。
- 409. 如同上文所说明的那样,目前,如果根据一份租船合同对货物规定的合同责任与根据依照租船合同开出的提单对货物实行的《海牙或海牙-维斯比规则》规定的责任有所不同,则承运人的责任在航程期间可以根据提单是否经过谈判,由什么人进行谈判和同什么人进行谈判而改变。因而,如果遵从《海牙规则》的提单是向承租人开出的,而提单没有谈判或转让,则货物赔偿责任制度仍以租船合同的条件为准。然而,如果这种提单,或其中某些提单是承租人转让给第三方的,则货物赔偿责任制度改为《海牙或海牙-维斯比规则》的货物赔偿责任制度。如以前由第三方掌握的提单已转让给承租人,或在法律上被看作是承租人代理人的当事各方,则根据这些提单运输的货物的赔偿责任制度仍以租船合同的条件为准。
- 410. 而且,货物托运人有时根据班轮提单在他们正常的货载承运过程中可能强制性地遵从《海牙或海牙-维斯比规则》,在其他情况下又作为根据任何强制性法律对之均不适用的程租合同的承租人。承运人对货物的责任不能始终一致也是不正常的情况。
- 411 在许多现代租船合同中,正在设法通过加入一些条款(往往有一个"首要条款")来改善不一致的情况,加入的这些条款的目的是使《海牙或海牙-维斯比规则》以合同内容适用于租船合同以及适用于根据租船合同开出的提单。如本报告以前几部分所述,这些设法将一套旨在强制性适用于提单合同的规则用合同内容方式载入租船合同的做法既引起不确定的情况也引起争议。例如:
- (1) 载入条款将《海牙或海牙-维斯比规则》载入租船合同,在法律上是否有效,这点不明确;如果这种做法原则上是有效的,则哪些规则是适用的,哪些是不适用的。
- (2) 《海牙或海牙-维斯比规则》的具体规定在像租船合同这样的合同范围 内和它们在提单范围内的含义是否是一样的,这一点可能也不明确。

- (3) 根据载入的方式,可能会产生一些问题:在租船合同范围内,《规则》 是否的确是"首要的",或在某些方面则租船合同的其他条款取代《规则》。
- (4) 提单和租船合同之间,以及总租船合同和转租租船合同之间的货物赔偿责任制度的不一致引起船东和承租人在货物索赔方面的赔偿权利的不确定性及有 关这些权利的争端。
- (5) 不同国家法律可以为所有这些问题提出不同答案。如本报告以前部分 所述,经过修订的现代租船合同标准格式和新近起草的租船合同格式尚未很好解决 这些问题。
- 412. 发达国家中许多答复贸发会议秘书处调查表的人表示了强烈的看法:对租船合同实施强制性立法将会使得允许当事各方完全自由地制订他们所需要的合同的这种体制失去它固有的必不可少的灵活性。但是由于强制性立法涉及的范围同《海牙和海牙—维斯比规则》所涉及的一些问题相似,租船合同当事各方仍可以自由地谈判他们为缔结具体租船合同所需的特别条件。而且,即使没有强制性的国际立法,国家法律也不允许租船合同当事各方完全自由地确定他们自己的合同。因而取消了范围太广的绕航条款,或对这些条款进行了狭义的解释,对于适航和其他问题提出默示担保,制订一些规则以限制免责条款的范围,并在本来未打算采用合理性标准的情况下采用了这种标准。在所有这些方面,一个国家的法院可能采取与另一个国家的法院迥然不同的做法。虽然租船合同与大部分提单合同一样,并不是附意合同,但是证明对提单强制执行《海牙或海牙—维斯比规则》是正确之举的许多论点也适用于租船合同,特别是那些更为肯定、更为明确和更为一致的合同。
- 413. 作为一个反对强制性立法的论点,已经有人指出,今天大多数租船合同都以印制格式明确提及《海牙或海牙-维斯比规则》,或者用打印的附录将这些规则包括在内,以此来载入《规则》。即使这是一个反对强制性立法的论点——也可以说它正好是个赞成的论点——,用合同规定的方式将旨在应用于提单的《规则》载入租船合同,不仅在租船合同和根据租船合同开出的提单两者的关系中造成法律上的困难(前文已谈过这些问题),而且也在租船合同本身的解释中造成法律上的困难。
  - 414. 因而人们认为,为了有效地将一个与《海牙或海牙-维斯比规则》中的

货物责任方案相类似的方案纳入租船合同,需要一套强制性适用于租船合同的"制订好的"规则。

415. 原则上,与根据《海牙和海牙-维斯比规则》强制性适用于提单的相类似的责任标准也应强制性适用于租船合同。这就是说,应该制订一些和租船合同特别有关的规则,以包括以下几个主要的责任方面:

适航

照管货物

与根据租船合同开出的提单有关的义务

行动限制

船东的权利和豁免

绕航

责任限制

危险货物

- 416. 然而,已建议秘书处进行进一步的研究与调查以期确定:
- (1) 这些强制性规则如果仅仅适用于程租合同,或如果适用于程租合同也 适用于期租合同会产生什么影响;
- (2). 这些强制性规则如果仅仅用于《海牙规则》第2条提及的营运,或者如果用于根据一个租船合同的所有航程和所有营运会产生什么影响。
- 417. 以后,秘书处将向工作组进一步报告情况,并就将用于租船合同的强制性立法的确切范围提出建议。

# C. 租船合同中使用的基本用语的定义

418. 国际海事委员会执行委员会 1976 年 9 月决定查明是否可以起草通常使用的用语的定义以减少租船合同引起的争端。已经商定,理想的办法是制定出包括租船合同的各个方面的定义,但是已经决定装卸时间应是考虑的第一个问题。已经在国际海事委员会、波罗的海和国际海事会议以及英国航运总会的主持下成立了一个工作组。1977 年在国际海事委员会的一次全体会议上审议了一套装卸时间定义的草案,在此之后成立了一个国际工作组,其中包括各国船舶经纪人和代理人协会

联合会的代表。最后,波罗的海和国际海事会议、国际海事委员会、各国船舶经纪人和代理人协会联合会及英国航运总会在1980年12月联合发表了以"1980年租船合同装卸时间定义"为题的最后一组定义。这些定义的目的是为了作为合同一部分载入租船合同,定义的前言如下:

"以下的定义(用删除或其他方式明文排除的定义除外)应适用于在租船合同中使用的词和短语,但任何定义或其中的一部分与租船合同其他任何明示规定相抵触者除外。这些定义中使用的词本身应根据本文给予的任何定义进行解释。词或短语如果仅仅是本文中下过定义的词或短语的变形或任选形式,则应根据定义进行解释,(例如:"船舶准备就绪通知书","准备就绪的通知书")。"

- 419. 因而这些定义不是"首要的"。据秘书处了解,上述这些组织或任何其他国家或国际组织都没有编写过租船合同中使用的其他用语的一致同意的定义。一个原因可能是,据秘书处进行的调查,实际上承租人和船东都没有大量应用"1980年租船合同装卸时间定义"。而且,关心租船合同标准格式的发行和修改的一些组织尚未将一致同意的定义包括在它们发行的任何标准格式租船合同内。
- 420. 某些租船合同用语的定义显然有助于减少争端。便是很明显,只有在 当事各方真正将一致同意的定义写入他们的合同中,这一目的才能达到。我们建 议,对于使用定义最有效的鼓励是将一致同意的定义包括在租船合同印制的格式 中。将定义包括在印制的格式中并不会阻止当事各方从印制的格式中删去定义,如 果他们在他们具体的合同中断然反对这些定义的话。
- 421. 因此,我们建议,租船合同用语的一致同意的定义的起草工作应该结合上文(A)项中提及的租船合同条款的起草工作一起审议。
- 422. 据认为, (除了装卸时间和滞期费以外) 最适宜制订一致同意的定义的 租船合同用语是用于下列条款中的用语:

免责条款

留置权条款

与货物装卸和积载有关的条款 与运费和租金支付有关的条款 停租条款 确定定期租船合同期限的条款

- 423. 因而我们建议在同有关组织磋商后再确定哪些租船合同用语适于包括 在一致同意的租船合同定义中。此后可能在这些组织帮助下编写定义草稿,供国际 航运立法问题工作组审议。
- 424. 随后, 贸发会议秘书处将进行进一步的研究, 以确定鼓励最广泛地使用核心租船合同条款和一致同意的定义的最好方法, 和采取诸如在这方面看来是必要的进一步行动。

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AMM	T-V	_

ANNEX	I					
1. Shipbroker .	THE BALTIC AND INTERNATIONAL MARITIME CONFERENCE UNIFORM TIME-CHARTER (Box Layout 1974) CODE NAME: "BALTIME 1939"					
	PAR 2. Place and date					
	2. Flace and date					
3. Owners/Place of business	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						
4. Period of hire (Cl. 1)	15. Port of delivery (Cl. 1)					
	16. Time of delivery (Cl. 1)					
	is time of control, (ci. 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 nire (Cl. 5)	20. Hire payment (state currency, method and place of payment; also beneficiary and bank account) (Cl. 5)					
	·					
	·					
21. Place or range of re-delivery (Cl. 7)	22. War (only to be filled in if Section (C) agreed) (CI. 21)					
23. Cancelling date (Cl. 22)	24. Place of arbitration (only to be filled in if place other than London					
	24. Frace of arbitration (only to be fined in it 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 su	ubject to the conditions contained in this Charter which shall include Part I and so f Part I shall prevail over those of Part II to the extent of such conflict.					
real containing the event of a conflict of conditions, the provision	is of rate small prevail over those of ran II to the extent of such conflict.					
Signature (Owners)	Signature (Charterers)					

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### PART II

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

It is agreed between the party mentioned in Ecx 3 as Owners of the Vessel named in Box 5 of the gross/net Register tonnage indicated in Eox 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 or burkers, stores, provisions and boiler water, having as per builder's plan a cubic-leet grain bale capacity as stated in Box 19, exclusive of permanent bunkers, which contain about the number of tons stated in Box 11, and fully loaded cubable of steaming about the number of knots indicated in Box 12 in good weather and smouth water on a consumption of about the number of tons best Wetch 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:

Period/Port of Dalivery/Timo of Dalivery
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 piaced 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 porstated in Box 15 in such available both where
she can safely lie always alloat, 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.

Trade
The Vessel to be employed in tawful trades for the carriage of lawful merchandise only between good end safe ports or places where she can safely lie always afloat within the limits stated in Page 17.

BOX 17 No live stock nor injurious, inflammable or dan-gerous goods (such as acids, explosives, calcium carbide, ferro silicon, napitha, moior spirit, tar, or any of their products) to be shipped.

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.

the Crew. the Charterers to provide and pay qualitied shore-winchmen.

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), cama steersmen, boalage, 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 cay for loading, trimming, stowing (including dunnage and shifting boards, excepting any alreacy 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 fumgation 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 litted with winches, derricks, wheels and ordinary runners capable of handling lifts up to 2 tons.

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 Vesset's bunkers at current price at the respective ports. The Vesset to be re-delivered with not less than the number of ions and not exceeding the number of tons of coal or oil-fuel in the Vesset's bunkers stated in Box 18.

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.

rayment
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 Control of the control of

in Box 20.

In default of payment the Owners to have the 101 in default of payment the Owners to have the 101 right of withdrawing the Vessel from the service 102 of the Charterers, without noting any protest and 103 without interference by any court or any other 104 formality whatsoever and without prejudice to 105 any claim the Owners may otherwise have on the 106 Charterers under the Charter.

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 5 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.

shall not be a Sungay 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-dolivery 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.

Cargo Space
The whole reach and burthen of the Vessel, in- 132 cluding lawful deck-capacity to be at the Char- 133 terers' disposal, reserving proper and sufficient 134 space for the Vessel's Master, Officers, Crew, 135 teck's, apparel, furniture, provisions and stores, 136

Haster

Haster

The Master to prosecute all yoyages with the utilias most obsolute and to render customary assistance vith the Vessel's Grew. The Master to be 140 under the orders of the Charterers as regards 141 embloyment, agency, or other arrangements. The 1-2 Charterers to indemity the Owners against all 143 consequences or liabilities arising from the Mailator of Charterers to indemity the Owners against all 143 consequences or liabilities arising from the Mailator of Charterers or Agents signing Bills of Lading 145 or other documents or otherwise complying with 146 such orders, as well as from any irregularity in 147 the Vessel's papers or for overcarrying goods, 148 The Owners not to be responsible for shortage, 149 mixture, marks, nor for number of pieces or 150 packages, nor for damage to or claims on cargo 151 caused by bad stowage or otherwise.

If the Charterers have reason to be dissatisfied 153 with the conduct of the Master, Officers, or En-154 gineers, the Owners, on receiving particulars of 155 and, if necessary and practicable, to make a 157 change in the appointments.

10. Directions and Logs 159
The Charterers to lumish the Master with all in-160 structions and sailing directions and the Master 161 and Engineer to keep full and correct logs ac-162 cessible to the Charlerers or their Agents. 163

cessible to the Charlerers or their Agents.

Suspension of Hire etc.
(A) in the event of crydocking or other necessary 165 measures to maintain the efliciency of the Ves-166 sei. deficiency of men or Owners' stores, break-167 down of machinery, dairage to hull or other ac-168 cident, either hindering or preventing the work-169 ing of the Vessel and continuing for more than 170 wentyfour consecutive hours, no hire to be paid 171 in respect of any time lost thereby during the 172 period in which the Vessel is unable to perform 173 the service immediately required. Any hire paid 174 in advance to be adjusted accordingly.

(B) In the event of the Vessel being driven into 176 port or to anchorage through stress of weather. 177 trading to shallow harbours or to rivers or ports 178 with bars or suffering an accident to her cargo. 179 any detention of the Vessel and/or expenses re-180 retrieved. The contributed to 184 by, the negligence of the Owners' servants.

12. Cleaning Boilers

Cleaning boilers
Cleaning of boilers whenever possible to be done 187
during service, but if impossible the Charterers 188
to give the Owners necessary time for cleaning, 189
Should the Vessel be detained beyond 48 hours 190
hire to cease until again ready.

hire to cease unit again ready.

Responsibility and Exemption
The Owners only to be responsible for delay at 193
delivery of the Vessel or for delay during the 194
currency of the Charter and for loss or damage 195
to goods onboard if such delay or loss has been 196
caused by want of due diligence on the part of 197
the Owners or their Manager in making the Ves198
sel seaworthy and fitted or the vogage or any
other personal at or omission or default of the 200
Owners or their Manager. The Owners not to be 201
responsible in any other case nor for damage or 202
delay whatsoever and howsoever caused even if 203
caused by the neglect or default of their serod wants. The Owners not to be ilable for loss- or 205
damage arising or resulting from strikes, lock205
outs or stoppage or restraint of labour (including 207
the Master, Officers or Crew) whether partial or 208
general.

general.

The Charterers to be responsible for loss or dam- 210 age caused to the Vessel or to the Owners by 211 goods being loaded contrary to the terms of the 212 Charter or by improper or careless bunkering or 213 loading, stowing or discharging of goods or any 214 other improper or negligent act on their part or 215 that of their servants.

14. Advances 217
The Charterers or their Agents to advance to the 218
Master, if required, necessary funds for ordinary 219
disbursements for the Vessel's account at any 220
port charging only interest at 6 per cent. p. a... 221
such advances to be deducted from hire.

15. Excluded Ports
The Vessel not to be ordered to nor bound to 2 enter: a) any place where fever or epidemics are 2 prevalent or to which the Master. Officers and 2 Crew by law are not bound to follow the Vessel 2

Crew by law are not bound to follow the Vessel 227 (2e b) any ice-bound place or any place where lights, 229 lightships, marks and buoys are or are likely to 230 be withdrawn by reason of ice on the Vessel's 231 arrival or where there is risk that ordinarily the 232 Vessel will not be able on account of ice to 233 reach the place or to get out after having com-234 pleted loading or discharging. The Vessel not to 235 be obliged to force ice. If on account of ice the 236 Master considers it dangerous to remain at the 237 loading or discharging place for fear of the Ves-238 sel being frozen in and or damaged, he has 239 liberty to sail to a convenient open place and 240 await the Charterers' fresh instructions.

241 Unforeseen detention through any of above cau-242 ses to be for the Charterers' account.

Loss of Vessel

Should the Vessel be lost or missing, hire to 245 cease from the date when she was lost. If the 246 date of loss cannot be ascertained half hire to 247 be paid from the date the Vessel was last re-248 ported until the calculated date of arrival at the 249 destination. Any hire paid in advance to be ad-250 justed accordingly.

Overtime 252
The Vessel to work day and night if required, 253
The Charterers to refund the Owners their out-254
lays for all overtime paid to Officers and Crew 255
according to the hours and rates stated in the 256
Vessel's articles. 257

Lien
The Owners to have a lien upon all cargoes and 259
sub-freights belonging to the Time-Charterers and 260
any Bill of Lading freight for all claims under 261
this Charter, and the Charterers to have a lien 262
on the Vessel for all moneys paid in advance 263
204 001 agreed.
244 on the Vessel and not earned.

Salvage 265
All savage and assistance to other vessels to be 266
for the Owners and the Charterers' equal benefit 267
after deducting the Master's and Crew's propor-268
tion and all legal and other expenses including 269
hire paid under the charter for time lost in the 270
salvage, also repairs of damage and coal or oil-271
fuel consumed. The Charterers to be bound by 272
all measures taken by the Owners in order to 273
secure payment of salvage and to fix its amount, 274

Sublet
The Charterers to have the option of subletting 276 the Vessel, giving due notice to the Owners, but 277 the original Charterers always to remain respon- 278 sible to the Owners for due performance of the 279 Charter.

sible to the Owners for due performance of the 279 Charter.

28.

21. War

(A) The Vessel unless the consent of the Owners 252 be first obtained not to be ordered nor continue 283 to any place or on any voyage nor be used on 264 any service which will bring her within 'a zone 285 which is dangerous as the result of any actual 286 or threatened act of war, war hostilities, warlike 287 operations, acts of piracy or of hostility or ma- 288 licious damage against this or any other vessel 289 or its cargo by any person, body or State what- 290 soever, revolution, civil war, civil commotion or 291 the operation of international law, nor be ex- 292 posed in any way to any risks or penalties whatso-293 ever consequent upon the imposition of Sanc-295 expose her to any risks of seizure, capture, pe- 296 natities or any other interference of any kind 297 whatsoever by the beltigerent or lighting powers 298 or parties or by any Government or Ruler.

(B) Should the Vessel approach or be brought or 300 ordered within such zone, or be exposed in any 301 inthe Vessel and/or hire against any cit he risks 304 likely to be involved thereby on such terms as 305 they shall think lift. the Charterers to make a re- 306 fund to the Owners of the pre-ium on demand; 307 and (2) notwinstanding the terms of Clause 11 308 hire to be paid for all time lost including any 309 lost owing to loss of or injury to the Master, 310 Officers, or Crew or to the action of the Crew in 311 refusing to proceed to such zone or to be ex- 312 posed to such risks.

(C) In the event of the wages of the Master, O- 314 licers and, or Crew or the cost of provisions and, 315

Officers, or Crew or to the action of the Crew in 311 refusing to proceed to such zone or to be ex-312 posed to such risks.

(C) In the event of the wages of the Master, Of-314 ficers and or Crew or the cost of provisions and, 315 or stores for deck andior engine room and/or 316 insurance premiums being increased by reason 317 of or during the existence of any of the matters 318 mentioned in section (A) the amount of any in-319 crease to be added to the hire and paid by the 320 Charterers on production of the Owners' account 321 therefor, such account being rendered monthly, 322 (D) The Vessel to have liberly to comply with 323 any drders or directions as to departure, arrival, 324 routes, ports of call, stoppages destination, de-325 livery or in any other wise whatsoever given by 326 the Government of the nation under whose flag 327 the Vessel sails or any other Government or any 322 person (or body) acting or purporting to act with 329 the authority of such Government or by any com-330 mittee or person having under the terms of the 331 war risks insurance on the Vessel the right to 332 give any such orders or directions.

(E) In the event of the nation under whose flag 334 the Vessel sails becoming involved in war, ho-335 stillties, warlike operations, revolution, or civil 336 commotion, both the Owners and the Charterers 337 may cancel the Charter and, unless otherwise 338 agreed, the Vessel to be re-delivered to the Ow-329 ners at the port of destination or, if prevented 340 through the provisions of section (A) from reach-341 ing or entering it, then at a near open and safe 342 port at the Owners' option, after discharge of any 343 cargo on boarc.

(F) If in compliance with the provisions of this 345 clause anything is done or is not done, such not 346 deleted unless agreed according to Box 22.

Cancelling 350
Should the Vessel not be delivered by the date 351
indicated in Box 23, the Charterers to have the 352
option of cancelling.
If the Vessel cannot be delivered by the cancel-354
ling date, the Charterers, if required, to declare 355
within 48 hours after receiving notice thereof 356
whether they cancel or will take delivery of the 357
Vessel.
358

23. Arbitration

Arbitration
Any dispute arising under the Charter to be re-350 ferred to arbitration in London (or such other 361 place as may oe agreed according to Box 241 362 one Arbitrator to be nominated by the Owners 363 and the other by the Charterers, and in case the 364 Arbitrators shall not agree then to the decision 365 of an Umpire to be appointed by them, the award 366 of the Arbitrators or the Umpire to be final and 367 binding upon both parties.

General Average 369 General Average to be settled according to York/ 370 Antwero Rules, 1974, Hire not to contribute to 371 General Average. 372

General Average.

25. Commission
The Owners to pay a commission at the rate 374
stated in Box 25 to the parry mentioned in Box 375
25 on any hire paid under the Charler, but in no 376
case less than is necessary to cover the actual 377
expenses of the Brokers and a reasonable fee 378
for their work. If the full hire is not paid owing 379
to breach of Charler by either of the pariles the 380
parry liable therefor to incemnify the Brokers 381
against their loss of commission.
Should the parties agree to cancel the Charter, 383
the Owners to indemnify the Brokers against any 384
loss of commission but in such case the com-385
mission not to exceed the brokerage on one 386
year's hire.

# Time Ularter

Approved by the New York Produce Exchange

November 6th, 1913-Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

1	ONE Whatter Harly, made and concluded in
3	Between  Owners of the good  Steamship    Motorship    Motorship
4	oftons gross register, andtons net register, having engines ofindicated horse power
5	and with hull, machinery and equipment in a thoroughly efficient state, and classed
6 7	at
8	allowing a minimum of fifty tons) on a draft offeetinches on
9	which are of the capacity of abouttons of fuel, and capable of steaming, fully lader, under good weather
10	conditions aboutknots on a consumption of abouttons of best Welsh coal-best grade fuel oil-best grade Diesel oil
11 12	now
13	Miturnsvill, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for
	about
15 16 17	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
19 20	in such dock or at such wharf or place (where she may safely lie, always affoat, at all times of tide, except as otherwise provided in clause No. 6), as
21 22 23 24	the Charterers may direct. If such dock, wharf or place he 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 to run all the winches at one and the same time (and with full complement of officers, scamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchan-
25 26 27 28	disc, including petroleum or its products, in proper containers, excluding
29 30 31	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 Magdaiena River, River St. Lawrence between October 31st and May 16th, Hudson Bay and all unsafe ports; also excluding, when out of season, White Sea, Black Sea and the Baitic.
32	
34	
5 16	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
37 38	insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain ber class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.  2. That the Chartlerers 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
19 10	2. That the Charlerers 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
1	a port for causes for which vessel is responsible, then all such configes incurred shall be paid by the Owners. Furnigations ordered because of
3	charter to be for Charterers account. All other furnigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more.
6	Charterers are to provide necessary dunuage 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.
8	S. 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
9	board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than
1	4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of
2	
	atores, on
6	unless otherwise mutually agreed. Charterers are to give Owners not less than days
8	notice of vessels expected date of re-delivery, and probable port.  5. Payment of said bire to be made in New York in cash in United States Currency, semi-monthly in advance, and for the last half month or
0 1 2 3	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 bire, 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
5	to have the privilege of using vessel at once, such time used to count as hire.  Cash for vessel's ordinary disoursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject to 21/3% commission and such advances shall be deducted from the bire. The Charterers, however, shall in no way be responsible for the application
7 8 9	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 affect at any time of tide, except at auch places where it is customary for similar size vessels to safely
1	lie aground.  7. Thut the whole reach of the Vessel's Hold, Decks, and Laual 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,
3	tackle, apparel, furniture, provisions, stores and fuel. Charterers have the privilege of passengers as far as accommodations allow, Charterers paying Ownersper day per passenger for accommodations and meals. However, it is agreed that in case any fines or extra expenses are
5 6 7	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
9	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
2	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
5 6 7	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 fine con-
	sumption of fuel. 12. That the Captain shall use diligence in caring for the ventilation of the cargo.
2	13. That the Charterers shall have the option of continuing this charter for a further period of

171

172

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. 98 103 104 105 106 107 134 135 138 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; atcamer to provide one winchman per latch 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 sbip'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. 139 141 142 144 145 146 147 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: 151 168 169

ich 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

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 with-drawn 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 21/2 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.

# ANNEX III



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Code Name: ASBATIME

# 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	1
	day of	2
Owners	between	3 4
	the good Steamship Owners of the good	5
Description	of tons gross register, and	6
of	tons net register, having engines of	7
Vessel	horsepower and with hull, machinery and equipment in a thoroughly efficient	8
	state, and classed of about	9
	bic feet grain/bale capacity	10
	, and about	11
	long/metric tons deadweight capacity (cargo and	12
	bunkers, including fresh water and stores not exceeding	13
	long/metric tons) on a salt water draft of on summer	14
	freeboard, inclusive of permanent bunkers, which are of the capacity of about	15
	long/metric tons of	16
	fuel oil and	17
	long/metric tons of, and capable of steaming, fully laden, under good weather conditions about	18 19
	knots on a consumption of about	20
	long/metric tons of	21
	tong/metric tons or	22
	now	23
		24
Charterers		25
	Charterers of the City of	26
	The Owners agree to let and the Charterers agree to hire the vessel from the	27
Duration	time of delivery for about	28
		29
<b>.</b>	within below mentioned trading limits.	30
Sublet	Charterers shall have liberty to sublet the vessel for all or any part of the	31 32
	time covered by this Charter, but Charterers shall remain responsible for the fulfillment of this Charter.	33
Delivery	Vessel shall be placed at the disposal of the Charterers	34
Delivery	vesser shall be placed at the disposar of the charterers	35
		36
		37
	in such dock or at such berth or place (where she may safely lie, always affoat,	38
	at all times of tide, except as otherwise provided in Clause 6) as the Charterers	39
	may direct. If such dock, berth or place be not available, time shall count as	40
	provided in Clause 5. Vessel on her delivery shall be ready to receive cargo with	41
	clean-swept holds and tight, staunch, strong and in every way fitted for ordi-	42
	nary cargo service, having water ballast and with sufficient power to operate all	43
	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-	44 45
Dangerous	dise excluding any goods of a dangerous, injurious, flammable or corrosive	46
Cargo	nature unless carried in accordance with the requirements or recom-	47
<b>0</b> 2.g0	mendations of the proper authorities of the state of the vessel's registry and of	48
	the states of ports of shipment and discharge and of any intermediate states or	49
	ports through whose waters the vessel must pass. Without prejudice to the	50
Cargo	generality of the foregoing, in addition the following are specifically excluded:	51
Exclusions	livestock of any description, arms, ammunition, explosives	52
		53
	•••••••••••••••••••••••••••••••••••••••	54
		55
T	The vessel shall be employed in such lawful trades between safe ports and	56 57
Trading Limits	places within	58
Limits .	excluding	59
	·	60
		61
		62
	as the Charterers or their agents shall direct, on the following conditions:	63
Owners	1. The Owners shall provide and pay for the insurance of the vessel and	64
to	for all provisions, cabin, deck, engine-room and other necessary stores, in-	65
Provide	cluding boiler water; shall pay for wages, consular shipping and discharging	66
	fees of the crew and charges for port services pertaining to the crew; shall	67 59
	maintain vessel's class and keep her in a thoroughly efficient state in hull,	68

	machinery and equipment for and during the service.	69
Charterers	2. The Charterers, while the vessel is on hire, shall provide and pay for all	70
to	the fuel except as otherwise agreed, port charges, pilotages, towages, agen-	71
Provide	cies, commissions, consular charges (except those pertaining to individual	72
	crew members or flag of the vessel), and all other usual expenses except those	73
	stated in Clause 1, but when the vessel puts into a port for causes for which	74
	vessel is responsible, then all such charges incurred shall be paid by the	75
	Owners. Fumigations ordered because of illness of the crew shall be for	76
	Owners' account. Furnigations ordered because of cargoes carried or ports	77
	visited while vessel is employed under this Charter shall be for Charterers'	78
	account. All other fumigations shall be for Charterers' account after vessel has	79
	been on charter for a continuous period of six months or more.	80
	Charterers shall provide necessary dunnage and shifting boards, also	81
	any extra fittings requisite for a special trade or unusual cargo, but Owners	82
	shall allow them the use of any dunnage and shifting boards already aboard	83
	vessel.	84
Bunkers	3. The Charterers on delivery, and the Owners on redelivery, shall take	85
on	over and pay for all fuel and diesel oil remaining on board the vessel as	86
Delivery	hereunder. The vessel shall be delivered with:	87
and	long/metric* tons of fuel oil at the price of per ton;	88
Redelivery	tons of diesel oil at the price of	89
•	per ton. The vessel shall be redelivered with:	90
	tons of fuel oil at the price of per ton;	91
	tons of diesel oil at the price of per ton	92
	per ton	93
		94
	(*Same tons apply throughout this clause)	95
Rate of	4. The Charterers shall pay for the use and hire of the said vessel at the	96
Hire	rate of daily, or	97
77110		98
	per ton on vessel's total deadweight carrying capacity, including bunkers and	99
	stores, on summer freeboard, per calendar month,	100
	commencing on and from the day of her delivery, as aforesaid, and at and after	101
	the same rate for any part of a month; hire shall continue until the hour of the	102
Redelivery	day of her redelivery in like good order and condition, ordinary wear and tear	103
Areas and	excepted, to the Owners (unless vessel lost) at	104
Notices		105
		106
	unless otherwise mutually agreed.	107
	Charterers shall give Owners not less than days notice	108
	of vessel's expected date of redelivery and probable port	109
		110
Hire	5. Payment of hire shall be made so as to be received by Owners or their	111
Payment	designated payee in New York, i.e	112
and		113
Commencement		114
	in United States Currency, in funds	115
	available to the Owners on the que date, semi-monthly in advance, and for the	116
	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	116
	last half month or part of same the approximate amount of hire, and should	116 117
	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 palance day by day as	116
	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 palance day by day as it becomes due, if so required by Owners, Failing the punctual and regular	116 117 118 119
	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 palance 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	116 117 118 119 120
	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 palance 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 pre-	116 117 118 119 120 121
	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 palance 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.	116 117 118 119 120 121 122
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	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 palance 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	116 117 118 119 120 121 122 123 124
	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 calance 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	116 117 118 119 120 121 122 123 124 125
	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 calance 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 com-	116 117 118 119 120 121 122 123 124 125 126
Cash	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 calance 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.	116 117 118 119 120 121 122 123 124 125 126 127
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Cash Advances	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 calance 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 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	116 117 118 119 120 121 122 123 124 125 126 127 128 129
	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 calance 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 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	116 117 118 119 120 121 122 123 124 125 126 127 128 129 130
	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 dalance 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 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	116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131
Advances	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 dalance 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 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.	116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132
	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 calance 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 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.  6. Vessel shall be loaded and discharged in any dock or at any berth or	116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133
Advances	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 calance 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 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.  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	116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134
Advances	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 calance 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 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.  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	116 117 118 119 120 121 122 123 124 125 126 127 128 130 131 132 133 134 135
Advances Berths	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 calance 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 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.  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.	116 117 118 119 120 121 122 123 124 125 126 127 128 130 131 132 133 134 135 136
Advances  Berths  Spaces	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 calance 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 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.  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.  7. The whole reach of the vessel's holds, decks, and usual places of	116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 131 132 133 131 133
Advances Berths	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 calance 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 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.  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.  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	116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137
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Annex IV 45-0

	i. Shipbroker		C	HE BALTIC AND INTERNATIONA BED SEB Time Charter (Box Layo DDE NAME: "LINERTIME"  Place and date	
	•	·			
3	3. Owners/Place of business		4. Charterers/Place of business		
-5	5. Vessel's name	6. GRT/NRT	7.	Class	8. Indicated horse power
_					
3	9. Total tons d.w. (abt.) on summe	r rreedoard	10.	Quantity of stores, provisions and	d fresh water not exceeding (tons)
11	1. Cubic-feet grain/bale capacity	available for cargo	12.	Permanent bunkers (abt.)	
13	<ol><li>Speed capability in knots (abt.)</li></ol>	on a consumption per 24 hours of (abt.)	14.	Present position	
15	5. Period of hire (Cl. 1)		16. Port of delivery (also indicate alternative (a) or (b)) (Cl. 1)		
			17.	Time for delivery (Cl. 1)	
16	8. Number of days' notice of expe	cted date of delivery (Cl. 1)	19.	Cancelling date (Cl. 2)	-
20	0. Trade limits (also indicate alter	native (a) or (b)) (Cl. 3)			
					•
					7 1944 1724
21	<ol> <li>Injurious, inflammable or dange</li> </ol>	erous goods limited to (also state name of authorities concerned) (Cl. 3)	22.	Vessel's cargo handling gear (CI	1. 5)
	<ol><li>Fuel consumption in part per 2</li></ol>				e (a) or (b) and fixed price if agreed) (CI. 6)
25	<ol><li>Bunkers on delivery (state min.</li></ol>	and max. quantities) (Cl. 6)	26.	Bunkers on re-delivery (state mir	n, and max, quantities) (Cl. 6)
27	7. Charter hire (also indicate alter	native (a) or (b)) (Cl. 7)	28.	Hire payment (state currency, mo	ode and place of payment; also bene- ficiary and bank account) (Cl. 7)
	0. Plane	N 01	130	Number of days' and initiation	d final notice of pert and data of an
29	9. Place or range of re-delivery (C	51. 8)	30.	Number of days preliminary and	d final notice of port and date of re- delivery (Cl. 8)
3	1. Suspension of hire etc. (indic. r	o. of consecutive hours) (Cl. 14 (A))	32.	Cleaning of boilers etc. (indicate	number of hours) (Cl. 15)
3:	3. Advances (only to be filled in I	f special agreement made) (Cl. 16)	34.	Overtime (state lumpsum or if oti	her special agreement made) (Cl. 19)
3	5. War (only to be filled in if Sec	tion (C) agreed) (Cl. 23)	36.	General average to be settled in	(CI. 24)
37	7. Supercargo (state price agreed	) (C1. 27)	38.	Meals (state price agreed) (Cl. 26	
35	9. Brokerage commission and to	whom payable (Cl. 33)			
30	0. Numbers of additional clauses	covering special provisions, if agreed	•••		
4					

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)
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### 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:

### 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 7a.m. and 10 p.m., or between 7 a.m. and noon if on Saturday, at the port stated in Box 15 in such ready berth where she can safely lie

- (a) always afloat\*

(b) always affoat 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 12 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.

Should the Vessel not be delivered by the date indicated in 8ox 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.

### 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 affoat 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).

(\* 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.

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.

# Owners to Provide

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.

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 snifting 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.

C	Charter	raye
	<b>-</b>	

Cargo Gear Certificate 107 The Owners guarantee the Vessel possesses cargo gear register and 108 certificates in compliance with requirement of international Labour 109 Organization Convention No. 32,

Fuel Consumption in Port

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The Vessel's normal fuel consumption whilst in port working all 112 cargo gear is about the number of tons stated in Box 23 per 24 hours. 113

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.

127 Hire

7. The Charterers to pay as hire the rate stated in Box 27 128 (a) per 30 days\* 129 130 (b) per day\*.

commencing in accordance with Clause 1 until her re-delivery to the Owners.
(\* state alternative agreed in Box 27).

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 othar formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter.

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

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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.

# 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.

Master

The Charterers to give the necessary sailing instructions, subject to 186 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 194 the Master. Officers, or Engineers, the Owners on receiving particulars of the complaint, promptly to investigate the matter, and, if 196 necessary and practicable, to make a change in the appointments.

# 11. Bills of Lading

198 The Charterers to have the option of using their own regular Bill of 199 Lading form. The Bill of Lading to contain Paramount Clause in- 200 corporating Hague Rules legistation, the Amended Jason Clause and 201 the Both-to-Blame Collision Clause.

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.

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The Charterers shall load, stow, trim and discharge the cargo at 207 their expense under supervision of the Master who shall sign Bills 208 of Lading as presented, in conformity with Mate's or tally clerk's 209 receipts. The Charterers shall be responsible for the accuracy of 210 all statements of fact in such Bills of Lading.

The Owners shall be liable for claims in respect of cargo arising or 212 resulting from:

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 Charterer.

terers.
c) Lack of due diligence on their part before and at the beginning of each voyage to make the Vessel seeworthy 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

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 hars 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. 238 239

### 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.

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, 264 strike of Master, Officers and Crew, breakdown of machinery, damage 265 to hull or other accident, either hindering or preventing the working 266 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 268 any time lost thereby during the period in which the Vessel is unable 269 to perform the service immediately required.

Should the Vessel deviate or put back during a voyage, contrary to 271 the orders or directions of the Charterers, for any reason other than 272 accident to the Cargo, the hire to be suspended from the time of 273 her deviating or putting back until she is again in the same or 274 equidistant position from the destination and the voyage resumed 276 therefrom.

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In the event of a breakdown of a winch or winches, not caused by 278 carelessness of shore labourers, the time lost to be calculated pro 280 rata for the period of such inefficiency in relation to the number of 280 winches required for work. If the Charterers elect to continua work, 281 the Owners are to pay for shore appliances in lieu of the winches, 282 but in such cases the Charterers to pay full hire.

Any hire paid in advance to be adjusted accordingly.

# Detention for Charterers' Account

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 295 intention of dry-docking the ship for bottom painting and normal 296 maintenance work and actual time and place for such dry-docking 297 to be mutually agreed.

# 15. Cleaning Boilers, etc.

Cleaning boilers, etc.

Cleaning of boilers or opening of pistons whenever possible to ba 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. 304 305

The Charterers or their Agents to advance to the Master, if required, 308 necessary funds for ordinary disbursements for tha Vessel's account 309 at any port charging only one per cent, commission, such advances 310 to be deducted from hire, unless other agreement is made according 311 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 315 Master, Officers and Crew by law are not bound to follow the Vessel; 316

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b) any ice-bound place or any place where lights, lightships, marks 318
and buoys are or are likely to be withdrawn by reason of ice on the 319
Vessel's arrival or where there is risk that ordinarily the Vessel will not 320
be able on account of ice to reach the place or to get out after 321
having completed loading or discharging. The Vessel not to be 322
obliged to force ice, nor to follow ice-breakers when inwards bound, 323
If on account of ice the Master considers it dangerous to remain 324
at the loading or discharging place for fear of the Vessel being 325
frozen in and/or damaged, he has liberty to sail to a convenient 326
open place and await the Charterers' fresh instructions.

Detention through any of above causes to be for the Charterers 328
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 helf 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. 331 332

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 be-342 longing to the Time-Charterers and any Bill of Lading freight for 343 all claims under this Charter, and the Charterers to have a lien on 344 the Vessel for all moneys paid in advance and not earned.

The Charterers will not suffer, nor permit to be continued any lien of rencumbrance incurred by them or their Agents, which might have priority over the title and interest of the Owners in the Vessel.

### 21. Salvage

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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. 352 353

The Charterers to have the option of subletting the Vessel, giving 358 due notice to the Owners, but the original Charterers always to 359 remain responsible to the Owners for due performance of the 360 Charter.

# 23.

(A) The Vessel unless the consent of the Owners be first obtained and to to be ordered nor continue to any place or on any voyage nor 364 be used on any service which will bring her within a zone which 365 is dangerous as the result of any actual or threatened act of war, 366 war, hostilities, warlike operations, acts of piracy or of hostility or 367 malicious damage against this or any other vessel or its cargo by 368 any person, body or State whatsoever, revolution, civil war, civil commotion or the operation of international law, nor be exposed in 370 any way to any risks or penalties whatsoever consequent upon the 371 imposition of Sanctions, nor carry any goods that may in any way expose her to any risks of seizure, capture, penalties or any other 373 interference of any kind whatsoever by the belligerent or fighting 374 powers or parties or by any Government or Ruler.

(B) Should the Vessel approach or be brought or ordered within 376 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 378 in the Vessel and/or hire against any of the risks likely to be in 379 volved thereby on such terms as they shall think fit, the Charterers 380 to make a refund to the Owners of the premium on demand; and 381 2) notwithstanding the terms of Clause 14 hire to be paid for all 382 time lost including any lost owing to loss of or injury to the Master, 383 Officers or Crew or to the action of the Crew in refusing to proceed 384 to such zone or to be exposed to such risks.

(C)In the event of tha wages and/or war risk insurance premium 388 and/or Crew or the cost of provisions and/or stores for deck and/or 387 engine room and/or insurance and/or war risk insurance premium 388 being increased by reason of or during the existence of any of the 389 matters mentioned in Section (A) the amount of any increase to be 390 dedet to the hire and paid by the Charterers on production of the 391 Owners' account therefor, such account being rendered monthly.

(D) T

or in the event of the nation under whose flag the Vessel sails be- 406 coming involved in war (whether there be a declaration of war 407 408

in the event of the nation under whose flag the Vessel sails becoming involved in war (whether there be a declaration of war 407
or not)
either the Owners or the Charterers may cancel this Charter, whereupon the Charterers shall re-deliver the Vessel to the Owners in acthereof at destination or if debarred under this clause from reaching
or entering it at a near open and safe port as directed by the
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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
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Owners, In all cases hire shall continue to be paid in accordance
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with Clause 7 and except as aloresaid 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.

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Section (C) is optional and should be considered deleted unless
agreed according to Box 35.

	"LINERTIM	E"	Dee	ep Sea Time Charter	Page 4	
	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.	425 426	30.	Stevedoring Damage The Owners to instruct the Master to report in writing cargo, if on board, and to the Charterers and/or the port involved, about any stevedoring damage cause Such reports to be made immediately after the dunless the damage could not be detected at once is supervision of the stevedoring.	ir Agents at the d to the Vessel. lamage is done	455 456 457
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.	429 430	31.	Ballast  If any ballast is required, all expenses for same, inclin loading and discharging, to be for the Owners'	uding time used account.	460
			32.	Arbitration		463
28.	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.	435 436	•	Any dispute arising under the Charter to be referred in London, one Arbitrator to be nominated by the other by the Charterers, and in case the Arbitrators then to the decision of an Umpire to be appointe award of the Arbitrators or the Umpire to be final as both parties.  If either of the appointed Arbitrators refuses to act, of acting, or dies, the party who appointed him may Arbitrator in his place.	Owners and the shall not agree d by them, the hid binding upon or is incapable, appoint a new	465 466 467 468 469 470 471
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.	439 440 441 442		If one party fails to appoint an Arbitrator, either of way of substitution as aforesaid, for seven clear day party, having appointed his Arbitrator, has served it default with notice to make the appointment, the appointed an Arbitrator may appoint that Arbitrator Arbitrator in the reference and his award shall be parties as if he had been appointed by consent.	s after the other he party making party who has to act as sole	474 475 476 477
28.	Menis	443				
	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.	445 446	33.	Commission  The Owners to pay a commission at the rate stated party mentioned in Box 39 on any hire paid under in no case less than is necessary to cover the act the Brokers and a reasonable fee for their work. If not paid owing to breach of Charter by either of	the Charter but ual expenses of the full hire is the parties the	482 483 484 485
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.	450		party liable therefor to indemnify the Brokers again commission.  Should the parties agree to cancel the Charter, the demnify the Brokers against any loss of commissions to exceed the brokerage hire.	e Owners to in-	487 488 489

Adopted by
the Documentary Committee of 'General
Council of British Shipping, Lo.
and the Documentary Committee of The Japan
Shipping Exchange, Inc., Tokyo

1. Shipbroker	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
	2. Place and date
3. Owners/Place of business (Cl. 1)	4. Charterers/Place of business (Cl. 1)
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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)
	: .
<ol> <li>Loading and discharging costs (state alternative (a) or (b) of Cl. 5; also indicate if vessel is gearless)</li> </ol>	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. 5;
	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)	
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<u> </u>		

## PART II

# "Gencon" Charter (As Revised 1922 and 1976)

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Including "F.I.O." Alternative, etc.

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:

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 15.

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 unsaworthiness 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.

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 massels in all situations, and also to deviate for the purpose of saving life and/

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.

# Loading/Discharging Costs

\*\*Color of the color of the color of 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.

alongside the vesser not beyond the reach of his basis.

(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

indicate alternative (a) or (b), as agreed, in Box 15.

(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.

snain 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.

Demurrage 101
Ten running days on demurrage at the rate stated in Box 18 per 102
day or pro rata for any part of a day, payable day by day, to be 103
allowed Merchants altogether at ports of loading and discharging. 104

Lien Clause

Owners shall have a lien on the cargo for freight, dead-freight, 106 demurrage and damages for detention. Charterers shall remain re- 107 sponsible for dead-freight and demurrage (including damages for 108 detention), incurred at port of loading. Charterers shall also remain 109 responsible for freight and demurrage (including damages for deten-110 tion) incurred at port of discharge, but only to such extent as the 111 Owners have been unable to obtain payment thereof by exercising 112 the lien on the cargo.

Bilis of Lading

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The Captain to sign Bills of Lading at such rate of freight as 115
presented without prejudice to this Charterparty, but should the 116
freight by Bills of Lading amount to less than the total chartered 117
freight the difference to be paid to the Captain in cash on signing 118
Bills of Lading.

10. Cancelling Clause

Should the vessel not be ready to load (whether in berth or not) on 121 or before the date indicated in Box 19, Charterers have the option 122 of cancelling this contract, such option to be declared, if demanded, 123 at least 48 hours before vessel's expected arrival at port of loading, 124 Should the vessel be delayed on account of average or otherwise, 125 Charterers to be informed as soon as possible, and if the vessel is 126 delayed for more than 10 days after the day she is stated to be 127 expected ready to load, Charterers have the option of cancelling this 128 contract, unless a cancelling date has been agreed upon.

General Average
General average to be settled according to York-Antwerp Rules. 131
1974. Proprietors of cargo to pay the cargo's share in the general 132
expenses even if same have been necessitated through neglect or 133
default of the Owners' servants (see clause 2).

Indemnity indemnity for non-performance of this Charterparty, proved damages, 136 not exceeding estimated amount of freight. 12.

13. Agency In every case the Owners shall appoint his own Broker or Agent both 139 at the port of loading and the port of discharge.

14. Brokerage 141
A brokerage commission at the rate stated in Box 20 on the freight 142
earned is due to the party mentioned in Box 20.
In case of non-execution at least 1, of the brokerage on the estimated 144
amount of freight and dead-freight to be paid by the Owners to the 145
Brokers as indemnity for the latter's expenses and work. In case of 146
more voyages the amount of indemnity to be mutually agreed.

GENERAL STRIKE CLAUSE

Neither Charterers nor Owners shall be responsible for the con-149 sequences of any strikes or lock-outs preventing or delaying the 150 fulfillment of any obligations under this contract.

If there is a strike or lock-out affecting the loading of the cargo, 152 or any part of it, when vessel is ready to proceed from her last port 153 or at any time during the voyage to the port or ports of loading or 154 after her arrival there. Captain or Owners may ask Charterers to 155 declare, that they agree to reckon the laydays as if there were no 156 strike or lock-out, Unless Charterers have given such declaration in 157 writing (by telegram, if necessary) within 24 hours, Owners shall 158 have the option of cancelling this contract. If part cargo has already 159 been loaded, Owners must proceed with same, (freight payable on 160 loaded quantity only) having liberty to complete with other cargo 161 on the way for their own account,

If there is a strike or lock-out affecting the discharge of the cargo 163 on or after vessel's arrival at or off port of discharge and same has 164 not been settled within 48 hours, Receivers shall have the option of 165 keeping vessel waiting until such strike or lock-out is at an end 166 against paying half demurrage after expiration of the time provided 167 for discharging, or of ordering the vessel to a safe port where she 168 can safely discharge without risk of being detained by strike or lock-out of this Charterparty and of the Bill of Lading shall apply and vessel 173 shall receive the same freight as if she had discharged at the 174 original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo 176 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 179 action which is announced as a blockade by any Government or by any 180 beiligerent or by any organized body, sabotage, piracy, and any actual 181 or threatened war, hostilities, warlike operations, civil war, civil com- 182 motion, or revolution.

(2) If at any time before the Vessel commences loading, it appears that 184 performance of the contract will subject the Vessel or her Master and 185 crew or her cargo to war risks at any stage of the adventure, the Owners 186 shall be entitled by letter or telegram despatched to the Charterers, to 187 cancel this Charter.

cancel this Charter.

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(3) The Master shall not be required to load cargo or to continue 189 loading or to proceed on or to sign Bill(s) of Lading for any adventure 190 on which or any port at which it appears that the Vessel, her Master 191 and crew or her cargo will be subjected to war risks, in the event of 192 the exercise by the Master of his right under this Clause after part or 193 full cargo has been loaded, the Master shall be at liberty either to 194 discharge such cargo at the loading port or to proceed therewith 195 in the latter case the Vessel shall have liberty to carry other cargo 196 for Owners' benefit and accordingly to proceed to and load or 197 discharge such other cargo at any other port or ports whatsoever, 198 backwards or forwards, although in a contrary direction to or out of or 199 beyond the ordinary route, in the event of the Master electing to 200 proceed with part cargo under this Clause freight shall in any case 201 be payable on the quantity delivered.

(4) If at the time the Master elects to proceed with part or full cargo 203 under Clause 3, or after the Vessel has left the loading port, or the 204

#### 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 205 performance of the contract will subject the Vessel, her Master and 206 crew or her cargo, to war risks, the cargo shall be discharged, or if 207 the discharge has been commenced shall be completed, at any safe 208 port in vicinity of the port of discharge as may be ordered by the 209 Charterers. If no such orders shall be received from the Charterers 210 within 48 hours after the Owners have despatched a request by 211 telegram to the Charterers for the nomination of a substitute discharge-212 ing port, the Owners shall be at liberty to discharge the cargo at 213 any safe port which they may, in their discretion, decide on and such 214 discharge shall be deemed to be due fulfilment of the contract of 215 affreightment. In the event of cargo being discharged at any such 216 other port, the Owners shall be entitled to freight as if the discharge 217 had been effected at the port or ports named in the Bill(s) of Lading 218 or to which the Vessel shall have liberty to comply with any directions 220

or to which the Vessel may have been ordered pursuant thereto.

(5) (a) The Vessel shall have liberty to comply with any directions 220 or recommendations as to loading, departure, arrival, routes, ports 221 of call, stoppages, destination, zones, waters, discharge, delivery or 222 in any other wise whatsoever (including any direction or recom-223 mendation not to go to the port of destination or to delay proceeding 224 thereto or to proceed to some other port) given by any Government or 225 by any belligerent or by any organized body engaged in civil war, 225 hostilities or warlike operations or by any person or body acting or 227 purporting to act as or with the authority of any Government or 228 belligerent or of any such organized body or by any committee or 228 person having under the terms of the war risks insurance on the 230 Vessel, the right to give any such directions or recommendations. If, 231 by reason of or in compliance with any such direction or recom-232 mendation, anything is done or is not done, such shall not be deemed 233 a deviation.

(b) If, by reason of or in compliance with any such directions or re- 235 commendations, the Vessel does not proceed to the port or ports 236 named in the Bill(s) of Lading or to which she may have been 237 ordered pursuant thereto, the Vessel may proceed to any port as 238 directed or recommended or to any safe port which the Owners in 239 their discretion may decide on and there discharge the cargo. Such 240 discharge shall be deemed to be due fulfilment of the contract of 241 affreightment and the Owners shall be entitled to freight as if 242 discharge had been effected at the port or ports named in the Bill(s) 243 of Lading or to which the Vessel may have been ordered pursuant 244 thereto.

(6) All extra expenses (including insurance costs) involved in discharge 246 ing cargo at the loading port or in reaching or discharging the cargo 247 at any port as provided in Clauses 4 and 5 (b) hereof shall be paid 248 by the Charterers and or cargo owners, and the Owners shall have 249 a lien on the cargo for all moneys due under these Clauses.

17.	GENERAL	ICE	CLAUSE
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(a) In the event of the loading port being inaccessible by reason of 253 ice when vessel is ready to proceed from her last port or at any 254 time during the voyage or on vessel's arrival or in case frost sets in 255 after vessel's arrival, the Captain for fear of being frozen in is at 256 liberty to leave without cargo, and this Charter shall be null and 257 void.

void.

(b) If during loading the Captain, for fear of vessel being frozen in, 259 deems it advisable to leave, he has liberty to do so with what cargo 260 he has on board and to proceed to any other port or ports with 261 option of completing cargo for Owners' benefit for any port or ports 262 including port of discharge. Any part cargo thus loaded under this 263 Charter to be forwarded to destination at vessel's expense but 264 against payment of freight, provided that no extra expenses be 265 thereby caused to the Receivers, freight being paid on quantity 266 delivered (in proportion if lumpsum), all other conditions as per 267 Charter.

Charter.

(c) In case of more than one loading port, and if one or more of 2569
the ports are closed by ice, the Captain or Owners to be at liberty 270
either to load the part cargo at the open port and fillup elsewhere 271
for their own account as under section (b) or to declare the Charter 272
null and void unless Charterers agree to load full cargo at the open 273
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 277 port of discharge Receivers shall have the option of keeping vessel 278 waiting until the re-opening of navigation and paying demurrage, or 279 of ordering the vessel to a safe and immediately accessible port 280 where she can safely discharge without risk of detention by ice. 281 Such orders to be given within 48 hours after Captain or Owners 282 have given notice to Charterers of the impossibility of reaching port 283 of destination.

(b) If during discharging the Captain for fear of vessel being frozen 285 in deems it advisable to leave, he has liberty to do so with what 286 cargo he has on board and to proceed to the nearest accessible 287 port where she can safely discharge.

(c) On delivery of the cargo at such port, all conditions of the Bill 289 of Lading shall apply and vessel shall receive the same freight as 290 if she had discharged at the original port of destination, except that if 291 the distance of the substituted port exceeds 100 nautical miles, the 292 freight on the cargo delivered at the substituted port to be increased 293 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.

waers we: Delete ax	IT IS THIS DAY MUTUALLY AGREED. between				
Perspessite	Onsponent Owners of the SS Tween Decker Call Sign Call Sign Call Sign Chartered Owners Owners On the SS Tween Decker Chartered Owners				
ecription Vessel	Buill ofofof				
	deadweight all told, or thereabouts, and with a grain cubic capacity available for cargo of				
BALLICHION	Classedin				
arterers	and				
eding	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				
эстірноп Сагро	always alloat. a full and complete" cargo in bulk of				
	2,240 lbs.*				
otice and	at Charterers' option				
sading Port rders	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 Characters are to be kept continuously advised by selegram/telex of any alteration in vessel's readiness to load date.  Maybe to work to				
	Master to apply to				
	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.				
	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.  3. Vessel is to load under inspection of National Cargo Bareau, 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.				
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	Charterers/Receivers have the option of ordering the vessel to discharge at						
in which case the rate of freight to be			66				
			67				
			6				
		2,240 lbs/1,000 Kilos*	69				
	If more tha	an one port of loading and/or discharging is used, the rate of freight shall be increased by	70				
		per ton of 2,240 lbs/1,000 Kilos® for each additional loading and/or discharging port on the entire cargo.	7				
Freight Payment	9. <i>(a)</i>	Freight shall be fully prepaid on surrender of signed Bills of Lading in	7:				
- 2,			74				
	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.	7:				
	Once the I	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 by with such call for surrender during office hours. Mondays to Fridays inclusive.	78				
(Other)	(b)		79				
			80				
Cost of	10. (a)*	Cargo is to be loaded and spout trimmed (to Master's satisfaction in respect of seaworthiness) free of expense to the vessel.	82				
Loading and Discharging	/L.:	Cargo is to be discharged free of expense to the vessel (to Master's satisfaction in respect of seaworthiness).  Cargo is to be loaded and trimmed at Owners' expense,	83				
	(b)*	Cargo is to be discharged free of expense to the vessel (to Master's satisfaction in respect of seaworthiness).	85				
Stevedores at Loading	II. Stev	redores at loading Pont(s) are to be appointed by Charterers* and paid by Charterers* Owners*	80				
Port(s) and Discharging Port(s)	If stevedore	res are appointed by Owners, they are to be approved by Charterers at loading port(s), and such approval is not to be unreasonably withheld.  s at discharging port(s) are to be appointed and paid for by Charterers/Receivers*.	88				
		s, stevedores shall be deemed to be the servants of the Owners and shall work under the supervision of the Master.	89				
Bulk Carrier and Wing	12. <i>(a)</i>	The vessel is warranted to be a self-trimming bulk carrier.* non-self-trimming bulk carrier.*	~				
Spaces	(h)	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	91				
Overtime	dischargin	g are to be for Owners' account, and additional time so used is not to count as laytime or time on demurrage.  Expenses	92 93				
		(i) All overtime expenses at loading and discharging ports shall be for account of the party ordering same.	94				
		(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 Charterist Receivers*	9: 9:				
		(iii) Overtime expenses for vessel's officers and crew shall always be for Owner's account.	97				
		Time Counting convers 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 entire or the party controlling the loading action discharging terminal or facility half the actual time used shall count.	98 99 100				
Separations	14. Cost o	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	101				
Securing	15. (a)	Characters shall be made to Master's satisfaction (but not exceeding the requirements of the competent authorities).  For Owners' account	102				
	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.  104 Bleeding of bags, if any, at discharge port(s) to be at Owners' expense, and time actually lost is not to count.						
	(b) Any secur	For Charterers' account in great the state of the state o	100				
		of bags, if any, at discharge port(s) to be at Charterers'/Receivers' expense.  fier loading has commenced, and at any time thereafter until completion of discharge, the cargo is required to be furnigated in vessel's holds, the Owners are to permit same to take place at	108				
Fumigation		iter loading has confinenced, and at any time increasiter until completion of discharge, the cargo is required to be family affect in vesser's notice, the Owners are to pertain same to take place at 'risk and expense, including necessary expenses for accommodating and victualling vessel's personnel ashore.	110				
	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.						
Opening/	17. At a	to the vessel is to count at the demurrage rate.  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	112				
Closing Hatches	closing of	hatches, removal and replacing of beams shall be for Charterers'/Receivers' account.	114				
	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 benth or anchorage within limits of the port, or otherwise as provided in Clause 18 (h) hereunder.						
Time Counting	(h) If the vess	Waiting for Berth Outside Port Limits et is prevented from entering the limits of the loading/discharging port(s) because the first or sole loading/discharging berth or a lay benth or anchorage is not available within the port limits,	119				
	tender ves	order of the Charterery/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 skel's notice of readiness, by radio if desured, 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 after pratique or not, whether uses inspections as per Clause 18 (e) any time so lost shall not count as layure or time on demurrage from the time vessel fails inspections until she is passed, but if	121 122 123				
	this delay	in obtaining said passes exceeds 24 running hours shex all time spent waiting outside the limits of the port shall not count.	124				
	Following	Commencement of Laytime green in the second of the second	125 126 127				
	(d) At second applicable	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	128 129 130				
	Unless the	(c) 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 overested by the Charterpary as per Clause 3. In the event that vessel loads in subsequent port(s) and is required to 13 re-pass inspections in these ports, any time lost thereat in securing the required certificates shall not count as laytime or time on demurage.					
Laytime	19 (a)	Vessel is to be loaded and discharged withinworking days of twenty-four (24) consecutive hours each (weather permitting).	135				
	Sundays and Holidays excepted.  (h) Vessel is to be loaded withinworking days of twenty-four (24) consecutive hours each (weather permitting).						
	Sundays and Holidays excepted.  (c) Vessel is to be discharged at the average rate of						
	(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.						
		here only part of Saturdays is affected by such conditions, as described above, laytime shall count until the expiration of the last straight time period.	143				
	Where six or more hours of work are performed as normal rates, Saturday shall count as a full lay day.						

	(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.	14
Demurrage/ Despatch Money	20. Demurrage at loading and/or discharging ports is to be paid at the rate of	14 14
	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	15
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'*/Chanterers'/Receivers'* account, time	15 15
	counting.  (ii) If vesset is required to shift from one loading or discharging benth to a lay benth or anchorage due to subsequent loading or discharging benth(s) not being available, all such shifting expenses, as defined above shall be for Owners'*/Charterers /Receivers'* account, time counting.	15 15
	(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.	15 15
	(iv) Cost of shifting from lay benth or anchorage within the port limits to first loading or first discharging benth to be for Owners' account, time counting.	15
	(h) Shifting in and out of the same berth If vessel is required by Charteres/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.	15 16 16
	(c) Overtime expenses for vessel's officers and crew shall always be for Owners' account.	16
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.	16
	Vessel's personnel is to operate the gear if permitted to do so by shore regulations, failing which shore operators are to be used.	16
	Such shore operators are to be for Owners' account at loading port(s) if the provisions of Clause 10 (h) apply, otherwise for Chanterers' account at loading and Chanterers' */Receivers'* account at discharging port(s).	16 16
	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 tal applies any stevedore standby time charges incurred thereby shall be for Owners' account.	16
٠	If required, Master shall give free use of the vessel's lighting as on board for night work,	16
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 into 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 Characters' expense at loading and at Characters' Receivers' expense at discharging ports, and time used for placing vessel in seaworthy trim shall count as laytime or time on demurrage.	170 171
Draft/ Lighterage	24. Owners warrant the vessel's deepest salt water draft shall not exceed	17: 17:
	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 lightenage 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 not withstanding, but time occupied in proceeding from the anchorage to the discharging benth is not to count as laytime or time on demurrage.	175 176 177
	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.	178 179
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.	180
Dues and/or Taxes	26.	183
		184
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.	185
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 demurage.	186
Agents	29. Owners */Charterers* are to appoint agents at loading port(s) and Owners*/Charterers* are to appoint agents at discharging port(s).	187
	In all instances, agency fees shall be for Owners' account but are not to exceed customary applicable fees.	188
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 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 precuring if by the use of reasonable diligence they could have obtained other suitable labor at rates current before the Strike or Lock-out of Shippers' and/or Receivers' men shall not precuring if by the use of reasonable diligence they could have obtained other suitable labor at rates current before the Strike or Lock-out of Shippers' and/or strike the strike or Lock-out of Shippers' and/or strike or Lock-out of Shippers' and/or strike or Lock-out of Shippers' and/or strike the strike or Lock-out of Shippers' and/or strike or Lock-out o	190 190 190 190 190
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	.196
	arrival, the Master - for fear of the Vessel being frozen in - is at liberty to leave without cargo; in such cases this Chanterparty 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	198
	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 Chanceparty 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 tin proportion if lump sum), all other conditions as per Chanceparty.	200 201 202
	(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 (h) or to declare the Charterparty null and void unless the Charterers agree to load full cargo at the open port.	203 204
	Voyage and Discharging Port  (d) Should be 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 demurage 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.	205 206 207 208
	(c) 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.	209 210 211
	(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 natureal miles the freight on the cargo delivered at that port to be increased in proportion.	212 213
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	214 215
F. & I. Bunker Clause	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	216 217 218 219
Deviation		220 221
Lien and Cesser Clause		222
	Charteren' liability under this Charterpany 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 Charterpany where the Charterers' responsibility is specified.	223 224
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 Camage of Goods by Water Act, 1970, or any statutory re-enactment thereof.	225 226 227
	to supply, load, discharge or deliver the cargo ansing 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; russ; insurrections; Civil Commotions; earthquakes; explosions. No exception afforded	228 229 230 231

## page 4

- U.S.A. Clause 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 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."

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#### 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." 237 238 239 240

# Both-to-Blame Collision Clause

- 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 follows 241 242
- "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, manner, pilot or the servants of the Carmer in the navigation or in the management of the vessel, the owners of the goods carmed hereunder will indominly the Carmer against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability to prevents loss of or damage to or any claim whatsoever or the said goods, paid or payable by the other or non-carrying vessel or her owners of the said goods, paid or payable by the other or non-carrying vessel or her owners so 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 Carmer."
- 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

- 40. General Average shall be adjusted according to the York/Antwerp Rules 1974 and shall be settled in .... 250
- Where the adjustment is made in accordance with the law and practice of the United States of America, the following clause shall apply: 251

"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, consigness or owners of the goods shall contribute with the Carrier in general average to the payment of any searfices, lookes or expenses of a general average to that may be made or incurred and shall pay stalvage and special charges incurred in respect of the goods.

If a salving vessel is owned or operated by the Carner, salvage shall be paid for as fully as if the said salving vessel or vessels belonged to strangers. Such deposit as the Carner or his agents may deen 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 Carner before delivery." 255 256 257

The Charterers shall produce that all Bills of Lading issued under this Charterparty shall contain the same clause.

#### War risks

- 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, hostifities, warlike operations, civil war, civil commotions, revolutions, or the operation of international law rai entry to any such port of loading or of discharge of the loading or discharge of curgo at any such port be considered by the Master or Owners in his or their discretion dangerous or ith it be considered by the Master or Owners in his or their discretion dangerous or ith it be considered by the Master or Owners in his or their discretion dangerous or ith 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 is not blockaded or that entry thereto or loading or of discharge within the range of loading or discharge over the range of loading or discharge within the have received from the Owners discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Owners within the hornamistion 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 (which they or the Master may in their or his discretion decide on (which they or the Master may in their or his discretion decide on (which they or the Master may in their or his discretion decide on (which they or the master may in their or his discretion decide on (which they or the Master may in their or his discretion decide on twithin the range of discharges have received from the Owners of arts accurge so discharged in the event of the contract or contracts of affreightments of arts accurge so discharged 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 what
- 3. The vessel shall have liberty to comply with any directions or a mineral state of the state o

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 fulfillment 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 the contract of the cargo is 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 of spenses.

#### Address

...... % on gross freight, deadfreight, and demurrage is payable by Owners to ...

### Brokerage Commi-

at time of receiving freight payment and/or demurrage payments(s), vessel lost or not lost,

Charterers have the privilege of transferring/assigning/releting all or part of this Charterparty to others (guaranteeing to the Owners the due fulfillment of this Charterparty).

#### Assignment Arbitration

45. (a) New York. All disputes arising out of this contract shall be abturated at New York in the following manner, and be subject to U.S. Law:

One Arbitrators 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.

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- For disputes where the total amount claimed by either party does not exceed U.S.S. Shortened Arbitration Procedure of the Society of Mantime Arbitrators Inc. ... \*\* the arbitration shall be conducted in accordance with the
- (h) London. All disputes ansing 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. S...... Small Claims Procedure of the London Maritime Arbitrators Association. ... \*\* the arbitration shall be conducted in accordance with the

<sup>\*\*</sup>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

## FONASBA MULTI-PURPOSE CHARTER PARTY 1982

		Place19
	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
		and
		of, the Charterers.
ssel's		The Owners describe the vessel as: Built 19 Flag Classed
scription	•	Callsign Summer deadweight all told of about
		metric/long tons on a draft ofin salt water.
		Number of decks
		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.
•		
ding Place	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
Cargo		
		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 minimumtons of 1000 kilos and maximum
		tons of 1000 kilos,
		Master's option, of
ers for iding Port(s)		The loading port(s) shall be declared by Charterers not later than
ionig i or clor		
ation		If the vessel loads at more than one port, the rotation shall be
charging ce	3.	Being so loaded, the vessel shall proceed to
, E		
		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 affoat. Owners guarantee the vessel's deepest draft in saltwater on arrival at first or sole discharging port shall not
		exceed
ers for :harging Port(	(0)	The discharging port(s) shall be declared by Charterers not later than
argmy rott	٠,	
ation		If the vessel discharges at more than one port, the rotation shall be
		Laytime for loading shall not commence before 0800 hours onand should the vessel's notice
calling		of readiness not be given before 1700 hours on
		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

		ressel'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 ofper 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.
	8.	The cargo shall be:— (a) loaded and stowed/trimmed at the average rate oftons of 1000 kilos and discharged at the
and Discharging and Excepted Time		average rate oftons 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 withinworking days of 24 consecutive hours, weather permitting, Sundays (or their local equivalents) and Holidays excepted, unless used when only time actually used shall count.
Demorrage 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
		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 givedays' approximate anddays' 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
		giving the sailing time, the quantity of cargo loaded and the vessel's ETA at first or sole discharging port and shall thereafter radiohours' and,hours' notice of her ETA to
Closing of	11.	giving the sailing time, the quantity of cargo loaded and the vessel's ETA at first or sole discharging port and shall thereafter radio
Opening and Closing of Hatches Gear and Lights		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
Closing of Hatches Gear and		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.  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
Closing of Hatches Gear and		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. Any other such operations shall be effected by shore labour at Charterers' expense and time so used shall count as laytime. 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
Closing of Hatches Gear and Lights	12.	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. 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.  Any separations required by Charterers between parcels within the vessel's compartments shall be at their risk and expense and to the
Closing of Hatches  Gear and Lights  Separations  Grab	12.	giving the sailing time, the quantity of cargo loaded and the vessel's ETA at first or sole discharging port and shall thereafter radio
Closing of Hatches  Gear and Lights  Separations  Grab  Discharge	13.	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. Any other such operations shall be effected by shore labour at Charterers' expense and time so used shall count as laytime.  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.  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.  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 demurrag
Closing of Hatches Gear and	13.	giving the sailing time, the quantity of cargo loaded and the vessel's ETA at first or sole discharging port and shall thereafter radio
Closing of Hatches  Gear and Lights  Separations  Grab Discharge  Stevedore	13.	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. Any other such operations shall be effected by shore labour at Charterers' expense and time so used shall count as laytime. Any other such operations shall be effected by shore labour at Charterers' expense and time so used shall count as laytime. 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.  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.  The vessel is to he 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 expen
Closing of Hatches  Gear and Lights  Separations  Grab Discharge  Stevedore	13.	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. Any other such operations shall be effected by shore labour at Charterers' expense and time so used shall count as laytime. Any other such operations 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 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.  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.  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 inac

Packaged Cargo	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.	124 125
Tallying Cargo Battens		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.	126 127 128
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.	129 130 131
•		Overtime expenses for the vessel's officers and crew shall always be for Owners' account.	132
Seeworthy 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 demurtage.	133 134 135
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.	136 137
Dues and Taxes Any other	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	138 139
Taxes			140
Agents	21.	Owners shall appoint their own agents at loading port(s) and their own agents at discharging port(s).	141
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.	142 143 144
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.	145 146 147
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.	148 149 150
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.	151 152
		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.	153 154
General Average	26.	General Average shall be settled according to the York/Antwerp Rules 1974 and shall be adjusted inand paid in	155 156
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.	157 158 159 160 161 162
		If a salying 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."	163 154 165 166
		The Charterers shall procure that all Bills of Lading issued under this Charter Party shall contain this clause.	167
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.	168 169 170 171
		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.	172 173 174
		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.	175 176 177 178 179 180 181
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:	183 184
		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.	185 186 187
		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.	186 189
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.	190 191

#### Annex VII page 4

#### 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 hasis, 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 shall 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 203 204

#### 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 damagement 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 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.

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 produce that all Bills of Lading issued under this Charter Party shall contain the same 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 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 Capitain 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 are (except in the Spring) prevent vessel from reaching port of discharge Receiters 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 versel 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 the original port of destination, except that if t 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.

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, if 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 affecightment. 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 8ill(s) of Lading or to which the 1/essel may have been ordered pursuant thereto.

[5] Ia 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 pelligerent or of any such organized body 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

(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 fulfillment of the contract of affreightment and the Owners shall be entitled to freight as if discharge had been effected at the port or norts 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.

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1. IT IS THIS DAY MUTUALLY AGREED BETWEEN ...

owners of the good Steamship or vessel called the

## C. (Ore) 7 MEDITERRANEAN IRON ORE

# Charter Party.

oftons net register, now trading and expected ready to load about
he
Charterers.
2. That the said Ship being warranted tight, staunch, and strong, and in every way fitted for the voyage, shall afte
solivery of her outward cargo, proceed with all convenient speed to
and there load always affect in the customary manner, free of turn, when, where and as soon as ordered by Shipper's agent full and complete Cargo of Iron Ore, say abouttons, not exceeding what she can reasonably stow and carry over the description of the Tackle, Apparel, Provisions and Furniture, and being so loaded, shall with all convenient speed procees of the convenient speed procees.
and there deliver the same as customary, when, where and as directed by Consignee, to whom written notice is to be given durin office hours. 9 s.m. to 5 p.m., or Saturdays 9 s.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
beer ton of 20 cwt. delivered, in full of all port charges, pilotages, consulages, light dues, trimming, lighterage, and all other due isually paid by Steamers, including dues on Cargo as customary if Steamer discharges at a Scottish port. If the Steamer is ordered to Briton Ferry Iron Works Wharf and discharge there at her ow isk, Master or Owners to satisfy themselves that ship may safely do so and there deliver the said Cargo, as customary, by nights well as by day
4. Sufficient Cash (if required) for Ship's ordinary disbursements to be advanced at Port of Loading, at the curren xchange, 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
6. Time for loading to count from 6 a.m. after the Ship is reported and ready, and in free pratique (whether in bert's not), and for discharging from 6 a.m. after Ship is reported and in every respect ready, and in free pratique, whether in bert's not. Steamer to be reported during official hours only. In case Shippers can arrange to load or discharge on Sunday Holidays, or before time commences to count, Captain to allow work to be done; half such time used to count. Time between 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 clay 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 therwise shore hands to be employed, and Charterers to pay cost of same. The Ship to work at night, if requested to do so, all xtra expenses incurred thereby being paid by Owners unless steamer is on demurrage. The Ship to keep the steam winches in cook working order.
8. Demurrage (if any) at the rate of eightpence per ton per running day on the total quantity of cargo delivered but no case less than £50 per day.
<ol><li>Charterers to have the right to average the days allowed for loading and discharging.</li></ol>
10. If any wilful misrepresentation be made in respect of the size, position, &c., or should the Steamer not be in Loading ort and ready to load within 28 days from the date of this Charter Party, it shall be at the option of the Charterer whether not be will load the vessel.
<ol> <li>The Captain to sign Bills of Lading at any Freight required by Charterers, not less than Chartered rate. Cost of loading argo is to be considered as advance of Freight and signed for accordingly, unless paid for in cash.</li> </ol>
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 reight. Agents at discharging port will be
<ol> <li>Any averages occurring under this Charter to be settled according to York-Antwerp Rules, 1974.</li> </ol>
14. Master to telegraph "Charterers," as well as Charterer's agents at Port of Loading, should be have to put in at any cort or Ports.
15. In case of Jettison, the Captain to report the same to Consignees immediately on arrival.
16. An address commission of 21 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
Thatterers on delivery of cargo.  19. Ship to apply to
acilities, failing which Shippers to be allowed one day extra for loading.

At Lin Goulette the Charterers are not responsible for draught, of water exceeding 201 English feet.

SERIOUS LOSSES have recoully been caused to Chartevers by Captains signing Bills of Lading for a greater quantity than they knew to have been leaded.

OWNERS ARE REQUESTED to assist Charterers by warning the Captuin not to sign Bills of Lading for one ton more THE GAPTAIN should enrolully calculate from ship's displacement the weight of carge, and make sufficient allowance OWNERS ARE PAID freight on output weight, and where Captains sign for an excessive quantity, dues paid by the

than Captain bolioves to be on board his Steamer.

for weight of bunker coal, water, stores, &c. Stennior on such excess are not recoverable.

A true copy of original Charter in..

- 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 eea, 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 covor 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.

### AMERICANIZED WELSH COAL CHARTER®

APPROVED BY
ASSOCIATION OF SHIP BROKERS & AGENTS (U.S.A.), INC.
NEW YORK-1953; AMENDED 1979.

	At in this Any materally varied an		19
1	At is this day mutually agreed, B	ETWEEN	
2	Owner of the	Steamship/Mo	ptorship
3	of , built	at	of
4	tons net register, or thereabouts, and about		leadweight inclusive of bunkers, classed
Ś	in	length overall	beam
6	draft	now	
7	and		Charterer;
<b>8</b> 9	<ol> <li>That the said vessel being tight, staunch and spatch, sail and proceed to</li> </ol>	strong, and in every way fill	ed for the voyage, shall, with all possible dis-
10			omary manner from the Charterer, in such dock
11 12	as may be ordered by him, a full and complete cargo tons, quantity a		tons nor less than eeding what she can reasonably stow and carry,
13	over and above her tackle, apparel, provisions and furn	iture; and being so loaded, sha	ll therewith proceed, with all possible dispatch, to
14	or so near thereunto as she can safely get, and there d	leliver her cargo alongside any	wharf and/or vessel and/or craft, as ordered,
15	where she can safely deliver, always affoat, on being I		of lading quantity. The Owner shall furnish, if
16 17	required, a statutory declaration by the master and of		
18 - 19	is in full of loading, dumping and trimming, and all I dues on the cargo to be paid by the Charterer.	oort charges, pilotages, agency	fees and consulages on the vessel. All wharfage
20	2. The FREIGHT is to be paid	•	
•		1 . 1 . 2 . 11	
21 22	<ol> <li>Notice of approximate quantity of cargo requir Charterer or his agents at least days in advance.</li> </ol>		ate of arrival at port of loading to be given to
23	4. The Cargo to be loaded into vessel		weather working day(s) of 24 contractive hours
24 25	(excluding bunkering time, Sundays, custom house, c	olliery, legal and/or local hol	weather working day(s) of 24 consecutive hours, idays, and from noon on Saturday or the day
26	previous to any such holiday to 7 a.m. on Monday or used in loading cargo to count) commencing 24 hours	the day after any such holida	y, unless used in which event only time actually
27 28	is to commence and written notice is given of the vi	essel's being completely discha	rged of inward cargo and ballast in all her holds
29 30	and ready to load, such notice to be given between bus lost through riots, strikes, lockouts, or any dispute be		
31	hands connected with the working or delivery of the	coal for which the vessel is s	temmed, or by reason of accidents to mines or
32 33	machinery, obstructions, embargo or delay on the railw whatsoever beyond the control of the Charterer affects		
34	puted as part of the loading time (unless any cargo be	e actually loaded during such	time). In the event of any stoppage or stoppages
35	arising from any of these causes continuing for the per Charter shall become null and void; provided, however,		
37	page or stoppages. In case of partial holiday, or partial	l stoppage of colliery, collieries	or railway from any or either of the aforenamed
38 39	causes, the lay-days to be extended proportionately to longer detained, Charterer to pay		ncy per running day (or pro rata for part thereof)
4()	demurrage. If sooner dispatched, vessel to pay Charter	rer or his agents	U.S. Currency per day (or pro rata
41	for part thereof) dispatch money for notice be given at the time to the master or Owner.	time saved. No deduction of	time shall be allowed for stoppage, unless due
43 44	<ol> <li>If any dispute or difference should arise under to to be appointed by each of the parties hereto, the thir</li> </ol>		
45	be final and binding, and this agreement may, for en		
46 47	men.  6. The cargo to be loaded, dumped and trimmed l	by men appointed by the Cha	rierer at the tariff rate of the port at vessel's
48	expense.		
49 50	<ol> <li>The bills of lading shall be prepared in accordagent or Owner, weight unknown, freight and all cond</li> </ol>		
51	terer's or shipper's office within twenty-four hours	after the vessel is loaded. N	laster shall sign a certificate stating that the
52 53	weight of the cargo loaded is in accordance with ra shortage occur.	iliway weight certificate. Cha	merer is to noid Owner harmless should any
54	8. The Act of God, the king's enemies, restrain	us of princes and rulers and	perils of the sea excepted. Also fire, barratry of

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 to the purpose of the permitting day (or pro rata for part thereof). If sooner dispatched, vessel to pay Charterer or his agents 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
- 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 or 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.
- 71 72 73 74 75 76 77 78 79 80 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

- - 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 effec

    - 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
    - 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.

      PROTECTION & INDEMNITY BINKERING CLAUSE: The vessel in addition to all other liberties shall have liberty as

  - 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 woyage.

    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 fulfillment 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