



DIFFERENT WAYS TO CHARTER A VESSEL

ΚΟΥΤΟΥΚΑΣ ΠΑΝΑΓΙΩΤΗΣ

**ΑΚΑΔΗΜΙΑ ΕΜΠΟΡΙΚΟΥ ΝΑΥΤΙΚΟΥ
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ΠΤΥΧΙΑΚΗ ΕΡΓΑΣΙΑ

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ΘΕΜΑ: DIFFERENT WAYS TO CHARTER A VESSEL

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ABSTRACT

This thesis refers to the main categories of *charter parties* and the terms that regulate them.

At the first part of the first chapter, there has been a distinction of the term “*chartering*” into *full* and *partial*, which are the two basic types of chartering. The second part includes the basic standard and pre-planned forms of chartering, which are chosen by the contracting parties as an easy close of trading, since the end of 19th century.

The second chapter, which is the main one analyses the categories of the terms that regulate the charter parties. The shipper’s and charterer’s obligations are determined and created by the self-evident term, whether they are explicitly expressed at the voyage and time charter parties or not. What is more, there has been done a determination of the obligations that the shipper and the charterers have at the contract of affreightment and the consecutive voyages charter party, which are the simplest types of charter parties.

In the end, the appendix encompasses different types of charter parties used by big maritime companies and organizations.

INTRODUCTION

1. GENERALLY, ON SHIPPING CONTRACTS

The charter parties of cargo transportation are divided into two basic categories:

- ❖ the contracts between the operator of the ship, who might be the shipper or/and the shipping agent and is called “*shipper*” and a third person called “*charterer*”. These contracts aim at the allocation of a whole ship for goods delivery in return for remuneration, called “*freight*”. These are the “*charter parties*”.
- ❖ the contracts between a maritime transport operator, who may be the shipper or the charterer, and one or more cargo owner(s), called “*loader*”. These contracts are included in the bills of lading that the transporter edit.

It may happen a charterer to be loader and chief of the transported cargo at the same time. In this case, the bill of lading, which is edited after the loading and remains at the charterer’s or loader’s hands, is used as evidentiary value as far as the quantity and the quality of the loaded cargo is concerned.

The contract of affreightment signed between the charterer or the loader and the ship-owner or the shipper contains a receipt of the contract. In this case, the terms of the transport are expressed on the charter party.

The bill of lading is used as receipt of the affreightment contract since it is legally transferred to a third person, so that its terms regulate the relations between the charterer/loader and the third one. The relations between the shipper and the charterer continue to be regulated by the contract.

CHAPTER 1

1. CATEGORIES OF CHARTER PARTIES

A shipper's promise to a charterer that the former agrees to give the latter the use of the whole ship's cargo-carrying space, either for one or for more journeys, or for a specific period of time is formulated in a document known as an *affreightment contract*, which contains all the terms that regulate the relations between the charterer and the shipper/shipper. The contract of affreightment is freely negotiable and depends on the laws of supply and demand.

Based on the size of the capacity of the ship used by the charterer, there are two types of affreightment:

- ❖ Full chartering: The shipper uses the net tonnage of the ship and is obliged to load complete cargo.
- ❖ Partial chartering: More than one charterers load parts of the capacity of the ship and each one load his own cargo.

The charter parties, based on the type of chartering, are divided into the following basic categories:

✓ Voyage charter party

During a voyage charter, the shipper's main obligation is to allocate his ship to the charterer in order to carry cargo for a specific journey between two or more ports. The charterer's main obligation is to provide the shipper financial compensation, freight rate, for the allocation of the ship. The shipper maintains the commercial and marine control of the ship.

The freight rate is determined as following: a) flat-rate, b) in connection with the quantity of weight or volume or the cargo number loaded.

The freight rate can be: a) advanced, that is to say it has to be paid either during the loading or during the final sailing from the load port or some days after the final sailing from the load port, b) freight collect, that is to say it has to be paid either during the discharge of the cargo or the port of destination.

✓ **Time charter party**

During the time charter, the shipper has to concede the ship to the charterer for carriage of goods for a fixed period of time. The charterer's main obligation is to pay the shipper a sum of money in return for the concession of the ship.

The charterer has the right to carry out as many journeys as he want, providing that this would be feasible during the fixed period of time that the ship is conceded. The shipper maintains the marine control and not the commercial one, which is transferred to the charterer.

The freight is always paid in advance and agreed to be regularly deposited.

✓ **Bareboat charter party**

The bareboat charter assumes the concession of an unmanned ship, so it has been considered that the bareboat charter is not a charter, but just an item leasing.

During the bareboat charter, the charterer takes over the entire naval control of the unmanned ship, which is manned under his own responsibility and he has the commercial control of it. The shipper just provides the charterer the use of the ship.

✓ **Contract of affreightment**

The contract of affreightment determines a mixed type of charter, which borrows from other types of charters and, mainly, the voyage charter. It is recognized as an newer type of inbound freight via the sea, which is implemented in homogenous cargos that are going to be transferred in big quantities over long periods of time among appointed ports and specific journeys.

✓ **Consecutive voyages charter party**

The consecutive voyages charter is a specific case of charter. It is a type of a mixed charter and has to do with the accomplishment of consecutive voyages among appointed ports in a fixed period of time. A modified voyage charter party or a

specialized consecutive voyages charter party that consists the affreightment contract is used as an affreightment. This type of charter appears not only in the purchase of tankers, but also in the purchase of dry cargo vessels (mainly transfer of coal).

2. STANDARD AND PRE-PLANNED FORMS OF CHARTERING

Since the end of 19th century, it has been used to be common practice for contracting parties to choose standardized types of affreightment. The purpose of standard charters is to standardize the number of clauses commonly used in different types of trade routes. That way, the contracting parties have to fill in just a few data and not to create a new affreightment contract.

These contracts are edited mainly by a) either international or national organizations that have taken over the development of standardized charter parties and b) independent, leading commercial companies that have consolidated their position and, as a consequence, they impose their terms and their charter parties on the status of negotiation.

Two of the main organizations engaged with the editing of charter parties are the following: the Baltic & International Maritime Council and the Association of Shipbrokers and Agents.

Besides those organizations, there are others, too, such us the Federation of National Unions of Shipbrokers and Agents, the British Chamber of Shipping and the Japanese Maritime Stock Market. However, big maritime companies or shipping companies have created their own private standardized charter parties, that are the basis of their negotiations and serve their interests.

These standardized charter parties are classified as following:

- **Agreed charter parties**

The agreed charter party has been so between BIMCO or any union of ship owners and one or more unions of charterers. The initial terms should not be changed

without the approval of all the organizations that have contributed to their creation. The agreed charter party has to be implemented on the transfer of goods that is destined for.

- **Adopted charter parties**

If an agreed charter party between an organization and a union of ship owners is supported by another union of ship owners, then this charter party is already acceptable. This is mandatory for the members of the organization, providing that the charter party is already agreed between two other unions.

- **Recommended charter parties**

If there are no unions of charterers with which a ship owner could negotiate a specific chartering, then BIMCO edits charter parties, which are just indicated for the chartering.

- **Approved charter parties**

All the above-mentioned charter parties are approved. BIMCO has created a list that includes all the approved charter parties.

The most usually approved types of charter parties are the following: Baltic and White Sea Conference and Uniform General Charter, known as “GENCON”.

Coal charter parties

Chamber of Shipping Welsh Coal Charter party 1896.

Chamber of Shipping East coast Coal Charter party 1922.

Chamber of Shipping Scotch Coal Charter party 1896.

Grain charter parties

Chamber of Shipping Azoff Berth Contract 1910.

Chamber of Shipping River Plate Charter party 1914.

Australian Grain Charter party 1956.

Ore charter parties

Ore Charter party.

Chamber of Shipping Mediterranean Ore Charter 1921.

Cement charter parties

Chamber of Shipping Cement Charter party 1922.

Approximately 60% of the tankers offered for chartering use the charter party of Asbatankoy type. The big international oil companies have typed their own forms of charter parties that bear their own brand and similar text. Other forms of charter parties are ASBA II, STVOY and EXXONVOY.

CHAPTER 2

CHARTER PARTY TERMS

2.1. Categories of the terms of a charter party

The terms of a charter party determine the rights and the obligations of the contracting parties. According to English law, that most of the times govern this agreement the terms of the parties are divided into two categories:

- Implied terms are the terms are not included on paper at the charter parties, but they are so obvious and powerful that they become silently acceptable by the contracting parties.
- Explicit terms are the terms that are explicitly described at the charter parties or at the standard forms or at the additional annex.

It is important to be mentioned that the implied terms have to do with issues of bigger weight and that's why their infringement brings about significant penalties.

The contractual terms whether implied or explicit are divided into the following categories:

- i) **Conditions** are the terms where the one contracting party entitles the other one to cancel the affreightment contract and claim recompensation in case of infringement. If the concerned person chooses not to cancel the affreightment contract but to continue the power of it, then he/she is committed by his/her

action and he/she cannot claim that the other contracting party did not fulfil his/her obligations. The geographical position of the ship during the agreement of the contract, the time of departure for the loading port, the nationality of the ship, its class declared by the classification society, the transport capacity of the ship for specific cargo and the date that the ship will be ready for loading are defined to be the **conditions**.

ii) **Representations** are the terms that have to do with the presentations given during the negotiations and consist the promises that the contracting parties give to each other. If the provided data is inaccurate and affect the charterer to sign the contract, then the latter is entitled to cancel it. If the provision of inaccurate data was done without intention, the contracting person that gave the inaccurate data is obliged to pay compensation, unless he/she proves that he had reasons to believe that the data he/she provided was real. Terms like these are the characteristics of the ship that have been described by the shipper and the characteristics of the cargo that were described by the charterer.

iii) **Warranties** are the terms the infringement of which by the one contracting party entitles the other party to claim recompensation for the damage incurred, but not the right of withdrawal of the contract of affreightment. Warranties can be the following:

a) the maintenance of ships: if the shipper does not undertake to maintain his/her ship in a good condition, the charterer has the right to claim compensation and not to withdraw of the affreightment contract, unless the problem is not possible to be solved within a reasonable time.

b) the ship's fuel

c) the redelivery of the ship: It is the charterer's obligation to redeliver the ship in exactly the same condition as it had been delivered by the shipper. In the context of this obligation, before the redelivery the charterer has to undertake all the necessary repairs. The charterer is not responsible for the normal depreciation of the ship

d) the speed of the ship

iv) **Innominate terms** are the terms whose non-fulfilment depending on the seriousness of the impacts on the opposing party, whether it causes only the right of compensation or it additionally causes the right of

withdrawal of the affreightment contract. Such a term is the seaworthiness of the ship.

2.2. Common terms of charter parties

- ❖ One basic differentiation of the terms of charter parties is that one that was formerly mentioned, the explicit terms that are divided into representations, conditions and warranties.

❖ Contracting parties

In a charter party, the main contracting parties are the shipper and the charterer, whereas other individuals, such as brokers and agents, are involved in the agreement. The identity and the complete information of the involved parties should be known since the beginning, so as the smooth cooperation is ensured.

Sometimes the shippers and the charterer want to replace themselves with others. For instance, in a long time charter, the shipper may desire to sell his ship and give to its buyer the obligations of the time charter party. Such a case should be explicitly displayed in the contract so as to be implemented. On the other hand, the charterer can sub-charter the ship to another charterer. The right for sub-charter is clearly mentioned in the contract of affreightment.

❖ Ship

In the agreement of affreightment only the name of the ship is determined, the class distinctive mark, the nationality, the type of the ship, the year of construction, the capacity and all the rest of the ship's characteristics. Without the charterer's permission, the shipper cannot change any of the agreed main characteristics of the ship, for example, the flag.

In the time charter and bareboat charter, the ship is a determinant factor, because it has to do with hiring. In the voyage charter, the description of the

ship has not the same importance, because it has to do with transport of specific cargo.

In the contract of affreightment (συμβόλαιο εργολαβικής μεταφοράς), the procedure defines that no specific ship is determined in the charter contract, because it has to do with transport of specific cargo. On the other hand, if a specific ship is determined for a specific chartering, then the presence of agreement depends on the presence of a ship.

As it is going to be mentioned bellow, in the charter contract the shipper states that he maintains the ship in a seaworthy condition. The seaworthiness is mentioned in relation with the technical aspect, that is to say the design, the condition and the stability. The seaworthiness in relation with the transported cargo means that the ship is suitable for the cargo it will carry. The seaworthiness in relation with the imminent journey means that the ship is suitably equipped for the journey.

❖ **Term “Lay/Can”**

In the journey charter and time charter, the time that the ship will be ready for the first port or for delivering to the charterer has to be agreed. The term “lay” is the earliest agreed date during which the loading of the journey charter has to begin or to be delivered to the time charter. This date is called “lay day”. If the ship arrives to the loading port or to the delivering place before the agreed “lay day”, then the charterer is not obliged to load or receive the ship respectively.

The term “can” defines the date during which, if the ship has not arrived to the loading port or to the delivering place, the charterers have the absolute right to cancel the chartering. The cancelation clause is applicable even if the ship has been delayed because of reasons that cannot be checked by the shipper or if the shipper and captain have exerted themselves to make the ship arrive in the agreed time.

❖ **Responsibility for the ship**

As for the responsibility for the ship, the relation between the shipper and the charterer is not regulated by obligatory rules. Some affreightment

contracts limit the shipper's responsibility to a small or big extent, whereas some others incorporate unchanged regulations. The contracts usually include a special term about the sharing of responsibility about damage or cargo loss, "Paramount clause". This clause, however, will incorporate the implementation of rules, called "Hague Rules", that require that:

- All the bills of lading that are edited in relation with the affreightment contract will be regulated by the rules, or
- The sharing for the responsibility for the cargo under the affreightment contract will be regulated by the rules
- All the affreightment contract will be regulated by the rules.

❖ **Responsibility towards third parties**

Many times, requirements by third parties' side, are created, much different from the cargo's interests. For instance, the stevedores' claims for any injury during or loading or unloading, passengers' requests, requirements for pollution, etc, are such requirements. In most of the cases, the shipper is the main responsible for damage to third parties. However, the blame lays to the charterer when, for example, in some countries the time charterers are judged to be responsible for the creation of oil spills. Nevertheless, when the responsibility lies with the shipper, in some cases, he has the right to ask for coverage from the charterer about the amounts of money he has paid and the charterer is responsible for.

❖ **War clause**

The clauses are usually set in the charter parties in order the rights and the obligations of the two parties to be ensured under war conditions or revolution, when the ship, the crew and the cargo are exposed to dangers. These clauses are classified into two categories, the contract cancellation clauses because of war hostilities and the war risk clauses.

The aim of the contract cancellation clause because of war is to give to the two parties the opportunity to cancel the chartering, when the freight market has changed as an impact of the war or because of ship requisition from the country

of his flag. These clauses are usually in contracts of long-term charter agreements.

The war risk clauses are usually met in all the charter agreements. This clause includes the definition of the concept “war risk”, too. It is important that the rights and the obligations of the parties be ensured, when the ship, the cargo and the crew are exposed to war risks.

The standardized affreightment contracts have standardized war risk clauses. The most significant points of the clause are: definition of the term “owner”, description of the term “war risk”, the ship must not be headed by the charterers at dangerous area without the shippers’ consent, in case of dangerous area the captain has the right to move the ship away according to his mind, the shippers will be responsible for the insurance against war risks, the ship-owners has to be compensated if the ship is headed to dangerous region based on the charterers instructions, the ship will be free to abide by the commands of designated authorities or international regulations.

❖ **Arbitration clause**

All the charter parties have to include a clause that reasonably answers this question and determines the procedure for the solution of a disagreement between the parties, so as that any conversations and disputes about the contract’s law be avoided.

❖ **Time-limits for submitting applications**

From country to country time limitations differ. For this reasons, the contracting parties of an affreightment should be aware of which time limits a possible legal action under a specific contract is subject to and the applicable law. It is important that the time of application be clarified in the contract.

❖ **Exception clauses**

The affreightment contracts include clauses that relieve the shipper, the charterer or the two parties from responsibilities and obligations. Sometimes, these clauses are related with specific loss or damages. In general, many different types of exception clauses are noticed in affreightment contracts. As a

consequence, it is often difficult to determine the extent that these clause should be applied.

❖ **Signing the agreement**

The charter parties can be signed whether by the contracting parties or by any other authorized person, for example, the ship broker. Many times, the individuals that sign the contract and the place that it is signed are important factors.

❖ **Retention**

During the voyage charter, the shipper has the right to exert retention to the goods transferred by his/her ship, when the charterer has debts to him/her. Such debts have to do with the freight, the dead freight, the demurrage. The retention of goods is possible to be based on the general law or explicit term of the contract or the bill of lading.

❖ **Arrest and confiscation of the ship**

Individuals or companies that have requests towards a shipper can arrest his/her ship in order to ensure their money. Usually, the implemented law belongs to the country that the arrest takes place. Sometimes, the arrest can take place only for requests that have to do with the right of retention or mortgage of the ship, whereas in other countries the ship is arrested for every type of pecuniary claim.

❖ **General average**

General average is described as a condition during which a special sacrifice or expenditure is carried out, in an intentional and reasonable way, with the aim of saving a property that is at risk during a journey, for example, cargo dropping in the sea.

❖ **Collision**

A ship collision or a collision between a ship and a platform may cause damage or loss to the ship, cargo or other property. The applicable rules for the division of responsibilities for the collision incidents are complicated.

❖ **Towing and rescue**

Towing: The ship and the shipper usually have small possibilities to determine the terms of the towing contract, which are always favorable for the owner of the towboat and his/her crew. In the voyage charter and the liner shipping the contract of towing is between the company of the tugboat and the shipper of the boat trailer. In the time charter or the bareboat charter, the charterer has to pay for the tugboat.

Rescue: Under the international conventions, the captains and the shippers are obliged to provide help in case of life and property rescue. The cost for a ship rescue is at the shipper's expense during the journey charter. Correspondingly, the salvage, the reward for the rescue is in the interest of the shipper, who shares it with the crew. In the time charter, the charter parties have a clause, which defines that the salvage is shared between the shipper and the time charterer.

❖ **Compliance clause in the International Safety Management Code for Ships (ISM)**

The aim of the code is to ensure the catholic compliance of the shipping in the international regulations related to the prevention of marine accidents and marine pollution.

❖ **Ice clause**

In every charter, the charterer has the obligation to head the ship towards a safe port. A port with ice conditions is not considered to be a safe port. In some journeys during specific times of the year when there are ice hazards the affreightment contracts include a protective clause, the ice clause. It has to be added that, in order to reduce the risk, the insurers define specific geographical ship reassignment limits according to the weather conditions and the ice phenomena that appear in some regions.

❖ **Strike clause**

During the journeys, delays and strike expenses are possible to arise in the loading and unloading ports or maritime routes. Strike problems may appear as to a time charter as to a journey charter. For this reason, the affreightment contracts have to include specific clauses which define the risk sharing and the cost for the contracting parties, due to a possible delay because of strikes. The term “strike” means a general unanimously coordinated workers’ refusal for work due to claiming complaints or requirements towards the employers for better salaries or working conditions.

2.3. Self-evident obligations of the shipper and the charterer

In the charters, there are terms which commit the contracting parties whether they are explicitly formulated in the charter parties or not. These self-evident terms create some obligations both for the shipper and the charterer, such as:

The shipper has to:

- to provide a seaworthy ship
- to carry out the journey without undue delays
- to carry out the freight without the ship unjustifiably deviating the agreed course

The charterer has to:

- not to load the ship with dangerous cargo/ to announce to the shipper the loading of dangerous freights
- to nominate a safe destination port for the ship

2.3.1. Seaworthiness

The shipper has to allocate –in all aspects- a suitable ship for a specific journey. For the shipper, it is imposed that the ship be constructed, so as to be able to cope with the dangers that may encounter during the planned journey.

The ship must have a sufficient and capable crew, replenished with fuel, equipage, water, supplies and the necessary navigational documents.

The shipper's obligation about seaworthiness includes both a suitable ship's disposal and the safe freight of the conventional cargo. As a consequence, a seaworthy ship must be able to transfer the agreed freight and prevent its destruction during the journey.

If the contract of affreightment implements the English customary law, the shipper's obligation to dispose a seaworthy ship is strict and absolute. This means that the shipper has the obligation to dispose a seaworthy ship and not just to take preventive measures in order to achieve the seaworthiness or to make great efforts to make it seaworthy.

If the affreightment contract is governed by international regulations, then the shipper's absolute and strict obligation to dispose a seaworthy ship is abolished. This obligation is replaced by the shipper's duty to exert the proper diligence so as the ship to be seaworthy before and during the journey.

In case of journey charter, there is an obligation of seaworthiness during the ship's departure, but also during the preliminary journey towards the port of loading only if it is agreed in the contract of affreightment. For instance, in the standardized affreightment contract "SYNACOMEX", the shipper takes the responsibility to dispose a seaworthy ship since the day that the charter contract was signed.

It is indifferent if there will be drawbacks that render the ship unseaworthy a) during the preliminary journey to the loading port or during the unloading as long as they are mended during the moment of the departure and b) afterwards or during the journey in an intermediary port when there is obligation for seaworthiness when there is opportunity for ship repair.

In the case of time charter, the ship has to be seaworthy only at the time of the delivery of the ship to the shipper according to what is determined in the contract.

In the case of trip charter divided into stages, at the beginning of each step of the journey there is a shipper's obligation to dispose a seaworthy ship.

The infringement of the obligation for seaworthiness usually has to do with infringement in nominate term. Practically, if unseaworthiness is ascertained before the beginning of the charter journey, then the shipper has the right to a) refuse to load the freight until the suitability of the ship is restored and b) ask for compensation for the damage he/she suffered because of delay. If unseaworthiness is ascertained after the departure from the loading port, then the shipper has the right to ask for compensation for the damage he/she suffered because of unsuitability.

In the bareboat charter, the shipper is obliged to provide the charterer a seaworthy ship in accordance with the requirements and references of the affreightment contract. However, during the delivery, this obligation is not absolute in case of bareboat charter, providing that the shipper shows due diligence so as to deliver a seaworthy ship. During the bareboat charter, the shipper is the chief of the ship and has the full control and the commercial and technical responsibility of the ship.

2.3.2 Journey performed without unjustified delays

The shipper's obligation to avoid the irrational delay in the journey's performance has four steps: during the preliminary journey to the loading port, during the loading, during the journey that the goods are transferred to the unloading port and during the unloading. There are delays, but they have to be justified or reasonable.

A delay can be reasonable when:

- ✚ the captain of the ship that has suffered damages by bad weather prolonged the ship's staying at the port so as the essential repairs be made for the ship's safety,
- ✚ the captain delays the departure from a port so as to avoid unusual bad weather in the geographical region that the ship is located.

The opposite case is when the delay is judged to be unjustified and –as a result– the shipper has violated his duty.

The consequences of the shipper's obligation to perform the journey without unjustified delays are the following:

- If the unjustified delay has been made during the preliminary journey to the loading port and is serious, then the charterer has the right to withdraw from the affreightment contract, that is to say not to load the ship and ask for compensation for the damage suffered due to the cancellation of the contract.
- If it is not serious, then the charterer is entitled to a compensation only for the delay.
- If the unjustified delay was done during the journey to the unloading port and is serious, then the charterer is entitled to withdraw from the affreightment contract, not to pay the requisite freight and ask for compensation for the cancellation of the charter.

- If it is not serious, then the charter is entitled to ask for compensation only for the delay he suffered.

It has to be noted that if the delay is reasonable and the performance of the affreightment contract is not possible due to delay -in other words, there is cancellation of the commercial feasibility of the ship- then, there is unintentional failure to provide. As a result, the contract is terminated without any contracting party having the possibility to be compensated.

2.3.3. Deviation

The shipper and the charterer have the obligation not to unjustifiably deviate from the agreed route.

The ship has to keep the “proper route”. “Proper route” is considered to be this one which is explicitly determined in the contract of affreightment. If not, then “proper route” is the “usual route” that ships of this size follow when performing the specific journey. “Usual route” is the route that is recommended by valid nautical publications. If there are not such recommendations, then “usual route” is the straight geographical route from the loading port to the unloading one.

Under the English common law, the deviation is considered to be justified in the following cases:

- ✓ when it is done for human life rescue or for communication with a ship that is at risk or for towing a ship where there are human lives under risk
- ✓ when it is done for avoiding risks that threaten the ship or the cargo
- ✓ when it is done for approaching the nearest port so that the ship be fixed, if necessary
- ✓ if it became necessary because of charterer’s initiative or fault

To sum up, the deviation is justified when the ship goes to a port in order to unload dangerous cargo loaded by the charterer without the shipper being aware or when the captain deviated in order to pick up more cargo if the charterer has infringed his obligation to load complete cargo.

Under international regulations, the deviation is justified when:

- ✓ it is done for rescue or attempt to rescue a human life or property at the sea

- ✓ it is judged as reasonable deviation. It is reasonable when a) it is determined by the shipper before the beginning of the journey or the edition of the bill of lading, b) a shipping error at the navigation of the ship during a reasonable deviation does not render itself the deviation non-reasonable and c) the deviation at a port for refueling is considered as reasonable of this port is usual for this aim.

However, the deviation can be acceptable by the affreightment contract itself.

The standardized contracts and the bill of lading provide the chartered ship freedom of deviation with a special clause named Liberty Clause or Deviation Clause. These clauses are valid, but the English custom law and the international regulations impose some restrictions.

- When the international regulations are implemented: these clauses give the shipper the right to deviate from the agreed suitable route for reasons different from the predicted ones, such as the rescue of a human life or property, as well as reasonable delay, then those clauses are in valid and idle.
- The English common law is implemented. These clauses are valid and give the ship an absolute freedom. These clauses must not be used in a way that the commercial goal of the contract is circumvented. Practically speaking, when there is no damage to the cargo, then the deviation that is covered from such a clause does not circumvent the commercial aim of the affreightment contract. When these clause are cancelled, then there is unjustified deviation.

When there is unjustified deviation, the result are the following:

- ✓ The charterer or the chief of the cargo is entitled to retreat from the contract and ask for compensation for the damage suffered.
- ✓ The shipper cannot restrict his responsibility or be exempted from this.
- ✓ If the charterer retreat from the charter party, the shipper or the transporter can be exempted from the responsibility for damages to the charterer, if: the damage is due to a ground for exemption predicted by the English common law for the transporter, such as: a) force majeure, b) obstruction by rulers, peoples and national enemies, c) general average sacrifice, d) defective packaging of goods, e) intrinsic defect,

if it proved that the damage or the loss of goods would happen anyway even if the unjustified deviation would intervene.

- ✓ If the charterer or the chief of the cargo retreat from the affreightment contract because of unjustified deviation, he/she is also relieved from the obligation to pay the agreed cargo. If the goods reach safe the destination port, then the shipper is entitled to a reasonable compensation.
- ✓ If the charterer does not choose to retreat from the charter party because of unjustified deviation, the chief of the transported goods is not engaged by the charterer's behavior and keeps his/her right to retreat from the contract and ask for compensation for the damaged he/she suffered.
- ✓ In case of general average after unjustified deviation and the charterer retreat from the charter party, the shipper will have the right to require the charterer's contribution, only if he/she proves that the general average would take place under all circumstances and without the intervention of the unjustified deviation.

2.3.4. Dangerous cargo

A self-evident obligation that the charterer has is to render the shipper aware of the dangerousness or not of the cargo that is about to be loaded and transported.

The "dangerous cargo" is the one which:

- i. puts the ship's safety in danger, according to the Dangerous Goods Code of IMO,
- ii. put other loaded goods in danger,
- iii. provokes detention or confiscation to the ship.

The charterer's obligation to render the shipper aware of the dangerousness of the cargo is absolute and strict. The charterer has no excuse so as to be relieved from his/her responsibility for damage provoked to the ship or other cargo because of his dangerous nature. He/ She is responsible for every damage at the ship or other cargo even if the loading was conducted under the captain's permission and he/she did not know about the dangerousness of his/her cargo.

The shipper, at the moment of his/her being aware of the dangerousness of the cargo, he has the option:

- whether to refuse to load the goods and –as a result- not to transport them
- or to accept the loading and transportation, but to take the necessary measures in order to protect his/her ship and possibly another cargo that is already loaded.

This term is condition. The shipper has the right:

- to retreat from the contract of affreightment and, as a consequence, he can ask for proportional freight and compensation for other damages that happened to him/her, because of the dangerousness of the cargo, or
- not to retreat from the contract. In this case, he is still engaged to the terms and the shipper is entitled to ask for compensation for all the damages the dangerousness of the cargo provokes.

When international regulations are implemented, like Hamburg Rules, the obligation remains absolute and strict, the charterer has a defense, that is to say he is not responsible for not sharing the dangerousness of the cargo with the shipper, if he/she proves that the shipper have been aware of or he have been obliged to know how dangerous the cargo has been.

What is more, if the shipper has not been aware of the dangerousness of the cargo, he/she is entitled –before the agreed unloading- to be relieved from the cargo, without having any obligation to compensate the charterer.

This right of relieving belongs to the shipper even if he/she is aware of the nature of the cargo, without any obligation to compensate the charterer. In this case, exactly because there is no infringement of any obligation by the charterer's side, the shipper is not entitled to ask the charterer for compensation.

2.3.5. Duty to nominate a safe port

This self-evident charterer's obligation is not to nominate a safe destination port for the ship. This term is warranty.

The preliminary journey that is usually defined at the affreightment contract is for one port. However, an affreightment contract can give the loader the ability to nominate the port by himself/herself in the future. At this point, the loader owes the

shipper to nominate a safe port. The aim of this obligation is to be ensured that the charterer will make use of this right so as not to put his/her ship or his/her seafarers into danger.

Via the affreightment contract, the charterer can subsequently nominate the ports. There is a definition of safe port warranty.

There is this term in the time charter contracts, too, apart from the contract itself excludes it explicitly, or if –through interpreting the contract- it is concluded that there is no such term, as it happens when the ship is navigated in war zone throughout the whole journey.

In the voyage charter parties, this term exists when the contract gives the charterer the right to nominate a port whether in a specific geographical region that is referred in the affreightment contract or through a list of ports that is also referred in the contract. Of course, when the voyage charter party nominates a specific loading and unloading port, the shipper is absolutely obliged to go there and the above-mentioned term does not exist. This means that the charterer has no responsibility over the safety of those ports.

The nomination of a safe port has to be decided based on the ship, the task that the ship is going to complete there whether it is loading, unloading or refueling, the conditions of the port at that specific time.

The port becomes unsafe when there is risk of provoking damage to the ship. In the following cases, the ports have been judged as unsafe according to the English courts:

- ✚ when the port was blockaded by ice during the period that the ship was sent there,
- ✚ when the port was judged as dangerous for ship of a specific size, due to the fact that it was exposed to storms,
- ✚ when there was lack of reliable depths in the anchorage areas of the ships,
- ✚ when the port did not have the suitable for the specific ship towboats.

Furthermore, the port becomes unsafe when there is political risk, meaning that the port that the charterer will nominate must have political insurance, too, without confiscating risks and detention risk for political purposes. Also, unsafe port is considered to be the one where a specific cargo transferred by a ship cannot be unloaded.

In order a port to be judged as safe, it is not enough for a ship to be able to depart and arrive to it, but also it has to be able to approach and return from it in safety.

In time charters, the port nominated by the charterer has to be expected to be safe during the indicated time. That is to say that during the indicated time and before the arrival of the ship it has to be expected that the port will be safe during the time of the arrival of the ship.

- If, during the indicated time, the port is expected to be unsafe during the arrival time, then the charterer has infringed his initial obligation to nominate a safe port.
- If, between the indicated time and the arrival, the port is expected to be unsafe during the arrival time, then the charterer has a secondary obligation to nominate a second safe port during the arrival. If he/she does not do that, he/she has infringed this obligation.
- If the ship has entered the first indicated port and then it has been rendered unsafe, then the charterer has a secondary obligation to nominate another port under the condition that the departure of the ship is possible.

In fact, if the expected safe port is unsafe during the indicated time till the charterer's instruction for the ship to enter, there is no infringement of the contract of affreightment. The charterer cannot infringe his/her main obligation to nominate a safe port before giving the specific instruction to the ship so as to enter this port.

At the voyage charters, the charterer is obliged to nominate a safe port. It is considered that there is a continuous warranty for the safety of the port since the time of its indication till the time that the port is going to be used. It has to be safe both during its time of indication, the journey of the ship towards it, its arrival and the time period that the ship will make use of it. It is indifferent if the unsafety conditions of the port during the arrival there could be predicted by the charterer during the time of indication.

If the port is rendered unsafe, the charterer will not have the right to nominate an alternative port because the basic object of the voyage charter is a specific journey with specific loading and unloading ports. Only after agreement between the shipper and the charterer another loading and unloading port can be nominated, which means that the contract of affreightment has be modified.

At the voyage charters, if the port is rendered unsafe, the charterer has infringed his obligation to nominate a safe port and he/she has no alternative.

At the time charters, if the port is expected to be unsafe during the indication, then there is infringement of the charterer's obligation to nominate a safe port and if the indicated port is possible to be unsafe before the ship's arrival, then the charterer/loader has to indicate a second port that would be safe. If the charterer refuses to indicate a second port and command the ship to enter the first port, then there is infringement of the charterer's secondary obligation to nominate a safe port. If the indicated port is rendered unsafe after the entering, then the charterer has still the right to indicate a new port, if there is a possibility to exit it. If the charterer refuses, then there is infringement of his/her secondary obligation to nominate a safe port.

As far as the shipper is concerned, he/she has the right to act both at the ναυλώσεις κατά ταξίδι and at the time charters like this:

- to refuse the indication of an unsafe port and the captain of the ship has the right to refuse to enter the unsafe port if he discovers the lack of safety, both without having any responsibility.
- if the shipper is fully aware of the lack of safety of the port and unconditionally accepts the charterers indication, then he/she can recall later his/her choice. It is considered that the shipper has disclaimed whichever right he/she could have according to the affreightment contract.
- if there is danger and the shipper has a dilemma as for if he/she renders the port unsafe and acts bona fide taking all the necessary preventive measures into consideration and enters the unsafe port and suffers damages, then the charterer has the right to receive a compensation.
- the shipper, in case he/she accepts bona fide the charterer's indication that the port is going to be unsafe, it means that the shippers disclaims his/her right to ask for compensation on account of the damages he/she suffered due to the unsafe port.

The shipper has the right to require a compensation from the shipper for damages he/she suffered due to the unsafe port, if he proves that there is a causal link between the damage and the lack of safety of the port. The compensation might have one or all of the following forms:

- compensation for material damages (e.g. ice)
- compensation that the shipper could ask for in order to cover the expenses he had so as to avoid the danger (e.g. towing expenses)
- compensation for damages because of ship detention (e.g. declaration of war conflicts, closing of the port and exit ban of the ships that are inside)

2.4. Shipper's and charterer's obligations at the contract of affreightment

At this charter party, the shipper obliges to fulfill the charterer's needs of transported good at a specific period of time. The freight is usually agreed based on the transported amount of cargo and can be paid either in advance or afterwards, depending on the agreement. This chartering is met when dry bulk cargoes and petroleum are transported.

At the contract of affreightment, the shipper is usually a big ship manager who controls and manages proprietary and charter ships by third parties. Is it essential that the charterer be ensured that the contracting transporter remains responsible under any circumstances towards him/her and for the voyages. The charterer has to assess the adequate capacity, the flexibility and the trustworthiness as important advantages for a reliable cooperation and implementation of the affreightment.

The shipper takes over the general obligation to transfer a total amount of cargo between designated ports within the time period of the contract, as well as the special obligation to transfer an agreed amount of cargo in each partial trip. He/She is obliged to transfer a total amount of cargo with a designated type of ships within a specific period of time, without being forced to perform the affreightment with a specific ship.

The charter parties include a clause that has to do with the ship broker's protection in case of cancellation of the contract. The shipper owns compensation to the ship broker for any loss of supplies because of the cancellation of the contract.

At the contract of affreightment, the charterer is usually a strong economical entity, such as an international company, a governmental organization etc. The charterer has the obligation to load only one piece of cargo and as for the amount, he/she is obliged to deliver a total and agreed amount per journey. Both the charterer and the shipper are possible to aim at loading supplementary cargo. The shipper may need

supplementary cargo if the ship is too big for the specific cargo, so as to make it economically viable.

Like in voyage charter, the charterer has the obligation to nominate safe loading and unloading ports for the journeys. On the basis of the voyage charter, the freight is determined the same way, either it is flat-rate payable or it is calculated in relation with the quantity of the transported cargo. The freight can be paid during the unloading of the cargo according to the tradition. However, it is usual to be paid in advance.

The long-term affreightment agreements include dangers that cannot be predicted, but they are possible to create obstacles to the fulfilment of the obligations. The affreightment contracts include clauses that give the contracting parties the right to be exempted from some of their duties or to proceed to an early termination of the contract.

- From the shipper's side, the following problems are indicatively mentioned: non-arrival or delay of the ship at the loading port, inability of the ship to perform the journey, non-nomination of the ship based on the contract.
- From the charterer's side, it is mentioned: no delivery of the cargo, belated or mistaken delivery of the cargo, no payment of the freight.

2.5. Shipper's and charterer's obligations at the consecutive voyages charter

The affreightment contract mentioned that the ship is chartered in order to perform a specific number of voyages or as many voyages as possible during a specific period of time. The first case refers to the performance of fixed itineraries to specific ports, while at the second case the charterer can choose any voyage in the agreed commercial and time contexts. In both cases, the contracting parties negotiate voyage charter terms and the voyages are performed under charter conditions per journey. As a consequence, the charterer's and shipper's obligations and rights in a consecutive voyages charter are the same with the ones in a contract of affreightment.

APPENDIX

BILL OF LADING

CODE NAME "CONGEBILL" EDITION 1978

Shipper

AJAKAOUA MEMET SA
ISTANBUL TURKEY

Consignee

LOUDOVIKOS SA
CEFALLONIA
28100 GREECE

Notify address

SAME AS
CONSIGNEE

VESSEL

MV
CHRISTINA K

Port of loading

IZMIR/TURKEY

Port of discharge

KEFALLONIA
GREECE

Marks.

IN
BULK

Number and kind of packages/Description of Goods

Received on account of freight

Net/Gross

Weight

1,600.00 TON NET/GROSS

CHARTER PARTY

RAW TALK

PIRAEUS: 18 APRIL 2000

CLEAN ON BOARD

FOB PORT: IZMIR

SHIPPERS: ROMINA LTD

(of which..... on deck at Shipper's risk; the Cashier not being responsible for loss or damage howsoever arising)

SHIPPED at the port of loading in apparent good order and condition on board the vessel for carriage to the port of Discharge or so near thereto as safely get the goods specified above.

Weight measure. Quality condition, contents and values unknown.

IN WITNESS where of the Master or Agent of the said vessel has signed the number of Bills of Lading indicated below all of this tenor and date, anyone of which being accomplished the others shall be void.

Time used for	Freight Payable at
	AS PER CHARTER
	PARTY 'Number' of original
	Bs/L
	3 (THREE)

loading.....days.....hours

Freight payable as for CHARTER PARTY

OWNERS: WEST COAST II MAR. Co.

FOR CONDITION OF CARRIAGE SEE OVERLEAF

Place and date of issue
IZMIR / TURKEY
07.02.2004

Signature

MV CHRISTINA K

REF: M/S CHRISTINA K

-1650 TONS FERROSILICOMANGANESE IN BULK

- TULCEA (ROMANIA) - ELEUSIS (GREECE)

-LAYCAN 02-04 MAY 2000

-2WWDS LOAD , 2WWDS DISCHARGE

-FREIGHT USD 16 PMT FIOST PAYABLE AS FOLLOW

1. BBB

-DEM :1.500 PDPR/FD

-OTHERS AS PER GENCON

WEST COAST II Mar. Co.

PETROMINA LTD

MARINE Mar. Co

M/S "KEYNE P."

To Messrs:

LOUDOVIKOS SA

AMVERSA

BELGIUM

FREIGHT INVOICE

M/V KEYENE P. IZMIR (TURKEY) – THESSALONICA (GREECE)

CHARTER PARTY DATED: 05/02/2002

CARGO: 1,600 M/TON RAW TALC IN BULK.

QUANTITY: 1,600 M/TON.

FREIGHT AMOUNT:

1,600 M/T * 12,5 US\$ /MT

TOTAL: 20,000 US\$

BEST REGARDS

PIRAEUS: 09/02/2002

CONCLUSION

This thesis has as a main goal to make a distinction between cargo shipping contracts and to nominate the basic categories of freight contracts.

Before the analysis of the terms, it has to be mentioned that there are some standard and pre-planned types of freight contracts, which are used for the agreements of the charters of big organizations and maritime companies.

The analysis of the terms shows both the charterer's and the shipper's rights. Moreover, a perception of the responsibilities that the contracting parties have is done, in any case of chartering and under different circumstances.

Furthermore, the shipper's and charterer's self-evident obligations are mentioned, which are created by the self-evident terms, that is to say the terms which are either expressed at the freight contracts or not.

Last but not least, the appendix includes the different types of freight contracts of big maritime companies, where their basic parts are distinguished.

BIBLIOGRAPHY

- Κ. Γκιζιάκης, Α.Ι. Παπαδόπουλος, Ε.Η. Πλωμαρίτου, “Εισαγωγή στις Ναυλώσεις”, εκδόσεις ΑΘ. ΣΤΑΜΟΥΛΗΣ, Αθήνα 2002.
- Ευδοκία Φουρνατζοπούλου, “Πανεπιστημιακές παραδόσεις Νομικές Πτυχές των Ναυλώσεων Πλοίων κατά την Αγγλική Νομοθεσία”, Πανεπιστήμιο Αιγαίου Τμήμα Ναυτιλίας και Επιχειρηματικών Υπηρεσιών, 2002-2003.
- ΝΑΥΤΙΚΑ ΧΡΟΝΙΚΑ, Τεύχος 52, Ιανουάριος 2003, σελ. 26-30.
- ΝΑΥΤΙΚΑ ΧΡΟΝΙΚΑ, Τεύχος 60, Αύγουστος 2003, σελ. 15-20

INTERNET SOURCES

- www.intertanko.com
- www.yen.gr