

ICS* Column – Commercial Aspects of Shipping

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“Commercial Aspects of Shipping – Chartering Practice”

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The traditional contract of carriage for the movement of materials by sea is the charter party. A chartering contract is probably one of the clearest examples of a transaction entirely governed by market forces that one might wish to find. It is invariably negotiated in a free market, subject only to the laws of supply and demand that were addressed in the earlier articles in *Sailor Today*. The relative bargaining strengths of the two parties will depend on the current state of the market and the ship owner and the charterer are able to negotiate terms entirely free from any statutory interference. The outcome of the negotiations is then reflected in the finally agreed Charter Party.

The Charter Party

Most standard forms began by being imposed on the market by the charterers for two reasons. First, they needed a charter party, which fitted into their contracts of sale of the commodity itself. Secondly, the charterer would always tend to be in a somewhat stronger position when it came to terms and conditions because charterers are static and so find it easier to band together even with competitors to devise terms appropriate to the commodity and suitable to them all. Such strength against a single ship is likely to win the day. In some parts of the world individual charterers could even have a virtual monopoly.

The merchants did not have things all their own way for long. Such national bodies as the United Kingdom Chamber of Shipping and international organisations such as the Baltic and International Maritime Council (BIMCO) formed rallying points for shipowners to fight against the more unfair charterers' forms. The result has been mutual agreement between the charterers and the owners so that the charterers' terms have been modified sufficiently for the owners' organisations to 'adopt' them. In many cases it has been the owners' side, which has eventually published the form for the trade. *For example, whenever one sees a charter party form the code name for which ends in 'CON' (for CONtract) it is almost certain that it was published by or with the collaboration of BIMCO who are renowned today for their active and successful documentary committee.*

Even in those cases where the charterers have not had their forms adopted by the owners' organisations, the compilers have been sensible enough to avoid a form too heavily weighted in charterers' favour.

The existence of standard forms, with their world-wide recognition, obviously facilitates negotiations in which the parties being able to say; “otherwise...con charter” save much time. The

printed clauses in so many cases have stood the test of time with legal precedent ensuring that ambiguous wording is avoided.

Unfortunately, when one tries to produce something which seeks to suit everybody it inevitably does not exactly suit anybody so some of the convenience of standard forms is lost due to the amendments and/or additional typed clauses demanded by one side or the other in order to make it fit their precise circumstances. In some trades the standard form has now become nothing more than a framework on which to hang dozens of extra clauses.

A classic example of this is the 'Gencon' charter. As its name suggests it is a general-purpose form intended for cargoes or trades for which no specific form exists. *One has to concede that, as printed, it is heavily weighted in the owners' favour and large areas tend to get deleted and replaced with typed clauses.* Such is the conservatism of the chartering world that both sides seem to prefer using a *radically mutilated 'Gencon' than move over to the more modern and more even handed 'Multiform' charter* published by FONASBA (The Federation of National Associations of Ship Brokers and Agents).

So far we have been considering single voyage charters where the ship agrees to go to 'A' to load a cargo of an agreed quantity of a commodity and carry it to 'B' for which the consideration will be a rate of freight probably calculated on a per tonne basis.

Many charterers, however, have more than just one cargo to move and in consequence, may find it convenient (particularly with an eye to fixing their costs) to contract with an owner for the ship to make a series of **consecutive voyages**. This procedure lends itself especially well to trades where it is usual for the ship to make the passage to loading port in ballast.

However one needs an alternative to consecutive voyages, especially when the frequency of loading does not coincide with the consecutive voyages of the one ship, or in trades where returning in ballast is not the norm. In such a case the method would be for the charterer and owner to agree parameters covering the frequency of loading, the ranges of size of the ships to be employed and the total quantity to be lifted within a given period. This leaves the owner a considerable degree of flexibility so that he can keep his ships as fully employed as the market will allow, even nominating other people's ships chartered-in by the owner should he not have one of his own in the right position. It is such contracts as these, which are known colloquially as '**contracts of affreightment**'.

Where, however, the charterer's commodity is drawn from a number of different places and sold to several buyers in different locations, neither consecutive voyages nor a contract of affreightment will give the merchant the flexibility he requires. Especially if there are marked differences in the speed of loading/discharging at the different places involved. The charterer may overcome this problem by moving entirely away from a contract of carriage based on a rate of freight per tonne of

cargo carried and instead, hire the ship on a contract based on time; not surprisingly called a **time charter**.

In this type of contract, the shipowner still remains responsible for the running of the vessel. The crew, for example are still his employees but the commercial direction of the ship is transferred to the time charterer. He now decides where the ship will load and discharge and such things as the time it takes to do so and who pays for it now becomes his concern. All the incidental expenses directly resulting from those instructions will be for the time charterer's account including port expenses (except those directly for the ship's account such as cash for the captain to use as advances of wages to the crew, medical attention for the crew and such like items). The biggest item of expenditure for the time charterer, after the hire payment will, is of course, the cost of bunker fuel.

The charterer may simply want the ship on time charter for just one voyage but needs the flexibility of a time charter. Such a time charter is often referred to as a 'trip time charter'. On the other hand the charterer may want the vessel to be at his disposal for several months even years. During such time the time charterer acts almost as if the ship belonged to him, in fact in law, he will be described as the '**disponent owner**'.

One advantage of a time charter, unless the wording is extremely restrictive, is that if the charterer's own business does not require the ship for any part of the period, he can sublet it either on a time or a voyage basis to a third party.

There is, of course, one other form of charter party known in chartering circles as a **Bareboat** charter although lawyers prefer the expression '**Demise**' because that word is more akin to such words as 'transfer' or even 'abdicate'. As the name suggests, a bareboat charter 'transfers' the entire job of operating the ship to the charterer so that it is fair to equate this to the original owner 'abdicating' from his responsibility. It is quite usual for the charterer even to change the ship's port of registry and flag for the period of the charter. Such a contract can best be compared to a long-term lease of a house or an office block. To all intents and purposes the bareboat charterer acts as the owner and the outside world looks upon him as such.

In most cases a bareboat charter is, in effect an alternative way of financing where the charterer finds it more convenient or beneficial to pay a monthly hire out of revenue rather than raise the capital to buy a ship himself. Bareboat charter parties are something of a rarity in the life of the average chartering person and, paradoxically, when a broker does encounter one it is probably more likely to be in the Sale & Purchase department where some sort of sale-and-lease-back deal is involved.

Some countries promote BBCD way of increasing the tonnage under the national flag and offer some benefits (e.g. India).

In the next issue we will look at the **The Anatomy of Charter Parties** and it would be helpful if the readers take a quick look at the samples of the Voyage and Time charter parties (Gencon (1994) and NYPE 93) at http://www.bimco.dk/upload/gencon_94.pdf and http://www.bimco.dk/upload/nype_93.pdf respectively. The bones of the “skeletons” called voyage and time charter parties, in a very general way, are:
(Gencon: General Contract; NYPE: New York Produce Exchange)

Voyage Charter Party

- Date
- Names of the parties
- Name of the ship with some description
- Loading port
- Cargo nature and quantity
- Discharging port
- Lay days and Cancelling dates
- Rate of freight and manner of payment
- Loading/Discharging costs
- Speed of Loading and Discharging (laytime)
- Demurrage rate
- Brokerages (Commissions)

Time Charter Party

- Date
- Names of the parties
- Ship's name and particulars
- Speed and fuel consumption
- Duration
- Places of delivery and redelivery
- Trading area/limitations
- Rate of hire
- Laydays/Cancelling
- Commissions

For more details, visit www.ics.org.uk or www.ics.org.hk.

References:

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