

## **NYPE 93**

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# **The New York Produce Exchange Time Charter - Revised 14 September 1993**

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### **General Background**

The New York Produce Exchange Time Charter (hereinafter referred to as the NYPE) was first published by the New York Produce Exchange in 1913 although, as far as can be determined, the substance of the form was in use much earlier but probably with another title.

Under the auspices of the New York Produce Exchange, the NYPE has been amended from time to time, i.e., in 1921, in 1931 and in 1946.

In the period after World War II, the New York Produce Exchange declined as a commodity exchange and in the late 1960's or early 1970's the Produce Exchange disbanded and its functions were taken over by what was known as the International Commodity Exchange which, it is understood, is now defunct or inactive.

With no up-dating or amendment to the NYPE since 1946, a first attempt to modernise the charter was initiated by The Association of Ship Brokers & Agents (U.S.A.), Inc. (ASBA), New York in 1977. During the revision work ASBA undertook a wide consultation with interested parties including The Baltic and International Maritime Council (BIMCO) and The General Council of British Shipping (now The Chamber of Shipping).

In pursuance of this initiative, it was the wish of ASBA not to produce an entirely new form but to amend the 1946 Form by incorporating the changes which were then most frequently being made in the negotiating of time charters in the market place. Next to this, ASBA decided that clauses only occasionally negotiated should not be included in the revised form, but would be placed in an attached Rider of Suggested Additional Clauses some or all of which might then be added to the basic charter when so agreed by the parties involved in a particular fixture.

The revised form, known as the "ASBATIME" was published by ASBA in 1981 but gained only limited acknowledgment and use in the market place. Although ASBA had hoped that the technique adopted in the "ASBATIME 1981" by making available a comprehensive list of suggested, optional clauses in the attached printed Rider would help to combat the "Rider Syndrome" so inherent to the NYPE 1946 form, the market continued to use the old NYPE 1946 with an ever-increasing number of "home-made", often badly drafted rider clauses, many of which appeared to have been hastily drafted during late afternoon rush hours and, as a result, causing numerous disputes. Many examples of executed NYPE 1946 forms have shown that, in a great many instances, very little of the printed text is left intact because of numerous deletions and amendments combined with sometimes up to 40-50, if not more, rider clauses. It is, therefore, not surprising that over the years the charter parties agreed on the NYPE 1946 form have been the subject of a drastic increase in litigation and arbitration.

On this background and recognising the importance of the NYPE as the most commonly used time charter form for dry cargo vessels, the Chartering and Documentary Committee of ASBA decided in 1992, in co-operation with The Baltic and International Maritime Council (BIMCO) and the Federation of National Associations of Ship Brokers and Agents (FONASBA), to undertake a general revision of the NYPE/ASBATIME Charter, taking into account changes in market practices and ship's types etc. which had taken place since the latest revision and, thereby, hopefully produce a workable and up-to-date form which would be endorsed in the market place and which would assist the parties in their day-to-day business transactions.

In pursuance of this objective, a Joint Working Group consisting of representatives from ASBA, BIMCO and FONASBA has since been working closely together. Throughout the preparatory revision work great efforts have been made to revise the charter in such a

manner so as to strike a fair balance between the parties; where shortcomings and uncertainties existed, to try to clarify the document by use of apt words and recognised trade terminology; to improve the structure of the charter in order to facilitate reading and general overview; to integrate into the basic form of the charter such clauses which are already commonly added in a Rider in order to reduce the scope of disputes so often arising from badly drafted rider clauses and to introduce such changes as deemed necessary to conform to modern customs and modern ship technology. In this connection, a number of the Rider Clauses suggested in the ASBATIME Rider of Suggested Additional Clauses has now been incorporated in the printed body of the revised Charter; other clauses represent a new approach to long-standing problems and new clauses have been added such as, for instance, an Anti-Drug Abuse Clause and a Stowaways Clause comparable to those often added to many proforma NYPE Charters used by major charterers.

The revision work has now been completed and the resulting revised **New York Produce Exchange Time Charter, Code Name: NYPE 93**, marked "Revised September 14th, 1993" has been officially approved by the Board of Governors of ASBA and has been adopted by the Documentary Committee of BIMCO as a "Recommended" form; similarly, the charter has been adopted by the Chartering and Documentary Committee of FONASBA.

## **Explanatory Notes on Clauses**

### **Preamble**

To conform to modern ship technology, a reference to "GT" has been added.

It is left to the parties to fill in the actual figure agreed in respect of maximum force on the Beaufort wind scale depending on the size and type of vessel and her engine power.

In the Preamble as well as in various other places in the charter, it is necessary to specify whether "long" or "metric" tons which is also important in relation to the rate of hire (Clause 10) if fixed per ton on the vessel's total deadweight carrying capacity.

An Appendix "A" has been provided for filling-in such further details of the vessel as may be required. It is of particular importance to insert in Appendix A a full specification of the bunker fuel oil to be supplied for burning in the vessel's main engines and auxiliaries (for further comments on this subject see also comments on Clause 9 below).

### **Clause 1 - Duration**

To avoid recurring disputes on the duration of charter, it is recommended to specify clearly the exact period of hire with any margin, if also agreed.

### **Clause 2 - Delivery**

The NYPE 1946 provided in Line 22 for the vessel to be "in every way fitted for the service". This was amended in the ASBATIME 1981 revision to read "in every way fitted for ordinary cargo service" which was found to be clearer and has, therefore, been maintained in the NYPE 93.

### **Clause 3 - On-Off Hire Survey**

Whereas the NYPE 1946 Charter contained no On-Off Hire Survey Clause, such clause was included as an optional clause in the ASBATIME Rider of Suggested Additional Clauses.

This clause has now been incorporated in the NYPE 93 and has been clarified to take into account, inter alia, the fact that nowadays vessels are often delivered/re-delivered during sea passage or on arrival/departure pilot station where no such surveys can be conducted.

### **Clause 4 - Dangerous Cargo/Cargo Exclusions**

Instead of a blanket exclusion of dangerous cargoes as found in the NYPE 1946, Line 25, this clause follows the corresponding clause in the ASBATIME 1981 which permits the carriage of dangerous cargo if carried in accordance with the requirements of relevant authorities but still excludes the carriage of livestock, arms, ammunition, explosives, as well as nuclear and radioactive materials (sub-clause (a)).

Recognising that many hull insurance policies put a limit on the amount of dangerous cargo to be carried on any voyage, new provisions have been included (sub-clause (b)) which, if IMO - classified cargo is agreed to be carried, require the parties to agree and fill in the maximum amount of such cargo; the clause also gives clear rules as to the packing, labelling,

loading and stowing of such cargo according to IMO regulations.

#### **Clause 5 - Trading Limits**

The printed provisions in the NYPE 1946 (Lines 27-31) specifying trading areas and limits are obsolete and often amended in practice. This was changed in the ASBATIME 1981 leaving it to the parties to specify the agreed trading limits and excluded areas. The NYPE 93 also provides accordingly.

#### **Clause 6 - Owners to Provide and Clause 7 - Charterers to Provide**

These clauses, which are common in all time charter party forms, remain essentially the same as in the ASBATIME 1981, with some minor revision of wording.

#### **Clause 8 - Performance of Voyages**

This clause, whilst keeping the basic owners'/charterers' division of responsibility for cargo, has been clarified in order to remove uncertainties existing in Clause 8 of the NYPE 1946 including its serious shortcoming of omitting any reference to "discharge" which, therefore, is usually being type-added in practice. In the ASBATIME 1981 (Clause 8), instead of describing charterers' cargo responsibilities in terms of an obligation "to load, stow and trim" as found in the NYPE 1946, the clause provides that the charterers are "to perform all cargo handling". This provision which encompasses the previously described functions (including "discharge" as omitted in the NYPE 1946) has been kept in the NYPE 93 and does not, as said, alter the basic owners'/charterers' division of responsibility for cargo in the original NYPE 1946.

Both the NYPE 1946 and the ASBATIME 1981 contain provisions regarding signing of bills of lading, etc., which, it has been found to be somewhat misplaced in a clause which basically deals with the performance of the voyage. Provisions covering the signing of bills of lading, etc. are now found in a self-standing clause (Clause 30) for comments on which see below.

#### **Clause 9 - Bunkers**

The provisions found in Clause 3 of the NYPE 1946 according to which payment of bunker fuel oil on delivery and re-delivery, respectively, should be settled on the basis of "current price" in the respective ports often give rise to disputes. This has now been clarified in Clause 9 of the NYPE 93 which requires the parties to agree and fill in not only the quantities of bunker fuel oil on delivery/re-delivery, but also the prices.

The supply of inferior bunker fuel oil has become a growing problem over recent years and serious damage to main engines or auxiliaries caused by unsuitable bunker fuel oil has frequently occurred.

Sub-clause (b) of Clause 9 addresses this problem and the parties are strongly recommended to agree and specify clearly in Appendix A the specification(s) of bunker fuel oil(s) required for the particular vessel and her main auxiliary engines.

#### **Clause 10 - Rate of Hire/Redelivery Areas and Notices**

Whereas the NYPE 1946 only provided for a monthly hire based on the vessel's deadweight carrying capacity, the ASBATIME 1981 provided for the parties to agree either a daily rate of hire or a hire based on the vessel's total deadweight carrying capacity. These options have been maintained in Clause 10 of the NYPE 93 and nowadays most but not all fixtures are based upon a daily rate of hire.

To avoid recurring disputes on whether local time or GMT shall apply for the purpose of hire calculation or termination, Clause 10 now solves this problem by providing that for this purpose the times of delivery/re-delivery or termination of charter shall be adjusted to GMT.

#### **Clause 11 - Hire Payment**

The Hire Payment Clause in the NYPE 1946 (Clause 5) was significantly changed when revising the charter in 1981 and the resulting ASBATIME 1981 Charter in Clause 5, combined with Clause 29 in the Rider of Suggested Additional Clauses, introduced some novelties including a grace period for payment of hire as well as stipulations which entitle the owners to withhold the performance of any of their obligations while hire is outstanding. Both the NYPE 1946 and the ASBATIME 1981 contain the important principle which gives the owners the right to withdraw the vessel in the event of failure of the charterers to pay hire on time.

Rather than continue to make some of these provisions optional as in the ASBATIME 1981, all these elements have now been integrated in Clause 11 of the NYPE 93 also because, in practice, they are commonly added to the basic NYPE 1946 form, albeit often in a badly drafted manner.

The right of withdrawal (cancelling) when the charterers are in default of payment of hire is a traditional and very important safeguard for owners. This principle has, therefore, been fully maintained in sub-clause (a) of Clause 11.

In recent years there have been frequent delays of remittances through banks and in order to avoid abuse of the right of withdrawal, it has become common practice, in many instances, to insert in time charter forms a so-called "Anti-Technicality" Clause or a "Grace Period" Clause. In some charter forms, the length of the period of grace has been arbitrarily determined, whereas other charter forms leave it open to the parties to agree on the length of the period of grace normally stipulated as "banking days" and, usually, combined with notification to the charterers.

This latter choice has been included in sub-clause (b) of Clause 11 and it is strongly recommended to study carefully the provisions of sub-clause (b) and to fill in the number of days of grace etc., as agreed, in a correct manner.

These provisions are also fair to charterers since they should prevent cancellations for trifling delays where the situation is no signal of lasting failure to pay.

On the other hand, any abuse of the period of grace by constant late remittance should be safeguarded against by the provisions in the last paragraph of sub-clause (b) entitling owners to withdraw in the case of continued "misuse" of the grace period.

If the hire happens to be still outstanding on the expiry of the grace period, or any time thereafter, the second paragraph of sub-clause (a) of Clause 11 entitles the owners, without prejudice to the liberty to withdraw, to withhold the performance of any and all of their obligations under the charter. The hire may happen to be missing, for instance, just when the vessel is about to load for a new voyage and with a charterer who is about to go bankrupt, the owners then run the risk of being saddled with the performance of a new voyage without hire being paid and without cover for expenses falling upon the charterer. It is too late to withdraw the vessel if cargo has been loaded and bills of lading have been signed obliging the owners to perform the voyage according to the bill of lading contract. Such risk is guarded against by the last paragraph of sub-clause (a).

In matters such as late hire payment, the parties must know where they stand, both when it comes to trifling delays or protracted delays, not to speak of complete failure to pay. It is believed that Clause 11 solves these problems in a fair and equitable manner.

It should also be noted that, whereas the Hire Payment Clause in both the NYPE 1946 and the ASBATIME 1981 provided for payment of hire in U.S. currency only, Clause 11 provides for the option of agreeing on payment in a currency other than United States currency.

Finally, sub-clause (c) deals with last hire payment and sub-clause (d) covers the matter of cash advances.

#### **Clause 12 - Berths**

This is self-explanatory.

#### **Clause 13 - Spaces Available**

Sub-clause (a) is identical with Clause 7 of the ASBATIME 1981 whereas sub-clause (b) is new and has been included as a consequence of charterers' right to carry deck cargo (see also comments on Clause 30 below).

#### **Clause 14 - Supercargo and Meals**

This is a usual clause in time charters and follows the pattern of Clause 10 in both the NYPE 1946 and the ASBATIME 1981.

#### **Clause 15 - Sailing Orders and Logs**

This is another standard clause which follows closely the text of Clause 11 in both the NYPE 1946 and the ASBATIME 1981 with a new provision added to the effect that the English

language shall apply in so far as matters dealt with in this clause are concerned.

### **Clause 16 - Delivery/Cancelling**

The principle normally observed in charter parties for both voyage and time chartering that the charterers shall have the right to cancel if the vessel is not ready for delivery (loading) latest on the cancelling date agreed is fully maintained in the first paragraph of Clause 16.

The second paragraph titled "Extension of Cancelling" is a so-called Interpellation Clause. It is an attempt to avoid the sometimes harsh result to an owner who cannot make a cancelling date but, nevertheless, is legally obliged to tender his vessel perhaps at a remote port after having performed a long ballast voyage, only to be cancelled and find himself with a spot prompt vessel. With today's high capital investment in new vessels and high daily running costs this is not considered fair and equitable when, for bona fide reasons, the vessel is delayed because of events beyond owners' control.

Within certain time limits, the clause requires the charterer either to cancel in advance or extend the cancelling date in circumstances when the vessel cannot make her cancelling date.

Over the last 10-15 years it has become common practice to include such interpellation provisions in modern charterparties for both voyage and time chartering.

### **Clause 17 - Off Hire**

The Off-Hire Clause in the NYPE 1946 (Clause 15) is an example of a clause which, because of its short-comings, is commonly amended if not deleted in its entirety and substituted by a far more elaborate rider clause.

This practice was already recognised and acknowledged in connection with the ASBATIME 1981 revision which contained a very detailed off-hire clause. Subject to a few minor amendments, the text of the ASBATIME Off-Hire Clause has also been incorporated in Clause 17 of the NYPE 93 and should, hopefully, meet the requirements for a modern off-hire clause acceptable to both sides.

### **Clause 18 - Sublet**

This is a clause found in most modern time charter forms.

### **Clause 19 - Drydocking**

With modern paints and ship technique, the provisions in Clause 21 of the NYPE 1946 requiring shipowners to drydock the vessel "at least once in every six months" has become obsolete.

A modern solution which reflects present-day practice, is now offered in Clause 19 and leaves it to the parties to agree between themselves as to whether option (a) or (b) shall apply.

### **Clause 20 - Total Loss**

This is self-explanatory.

### **Clause 21 - Exceptions**

This is a mutual exceptions clause for the protection of both charterers and owners, similar to Clause 16 in both the NYPE 1946 and the ASBATIME 1981.

### **Clause 22 - Liberties**

This is standard and self-explanatory.

### **Clause 23 - Liens**

This is another standard clause found in most time charter forms and follows closely the pattern of Clause 18 in both the NYPE 1946 and the ASBATIME 1981.

### **Clause 24 - Salvage**

This is self-explanatory.

### **Clause 25 - General Average**

This clause has been considerably simplified as compared with the extremely lengthy provisions contained in Clause 19 of both the NYPE 1946 and the ASBATIME 1981, which provides for general average to be adjusted and settled in the United States in U.S. currency.

Given the global use of the NYPE Charter, it is now left to the parties to agree on the venue and currency for adjustment/settlement of general average.

### **Clause 26 - Navigation**

This clause follows very closely the text of the corresponding clauses in the NYPE 1946 (Clause 26) and the ASBATIME 1981 (Clause 25).

### **Clause 27 - Cargo Claims**

In daily chartering practice, a so-called "Inter-Club Agreement" Clause is often found to be attached as a rider clause to the NYPE 1946.

The background to this clause is a more than 25 year old dispute resolution agreement between the International Group of P & I Clubs, the objective of which is to avoid costly litigation in matters of cargo claims.

According to the Inter-Club Agreement, ultimate liability for cargo loss or damage is allocated in accordance with a widely accepted formula based on the cause of damage. Basically, cargo claims caused by unseaworthiness of the vessel are borne 100% by the owners; cargo claims resulting from improper loading, stowing or discharging are allocated 100% to charterers and shortage claims are split equally between owners and charterers.

Regrettably, the Inter-Club Agreement has been considerably undermined over the years by owners and charterers agreeing on numerous deletions, alterations and additions to the printed text of the basic NYPE 1946 form resulting in a very considerable increase in litigation and arbitration over cargo claims arising under charterparties agreed on the NYPE 1946 form.

In the ASBATIME 1981 revision an attempt was made to curb the problem by including a so-called Cargo Claims Clause (Clause 30) which may, at best, be described as a simplified version of the Inter-Club Agreement, but without making any express reference to the Inter-Club Agreement itself. Moreover, and unfortunate enough, it was decided at that time to include the Cargo Claims Clause in the Rider of Suggested Additional Clauses instead of incorporating the clause in the printed body of the ASBATIME 1981, thus, limiting the use of the clause in practice.

This problem has now been solved in Clause 27 of the NYPE 93 which makes an express reference to the Inter-Club New York Produce Exchange Agreement and also includes a catch-all provision which will pick up any further modification or replacement thereof, thus, avoiding the necessity of revising the charter solely for the purpose of any future revision or replacement of the Inter-Club Agreement.

In this connection it may be mentioned that a sub-committee under the International Group of P & I Clubs is presently reviewing the Inter-Club New York Produce Exchange Agreement with a view to re-enforce the principle of the agreement, viz., to allocate the risks and costs of cargo claims between owners and charterers in a fair and equitable manner. For that purpose, the provisions in Clause 27 of the NYPE 93 expressly specifying that all cargo claims between the owners and charterers shall be subject to the Inter-Club New York Produce Exchange Agreement will be most helpful.

In this context there is reason to warn the commercial parties against any attempt to tamper with the text of Clause 27 or, for that matter, all other pertinent clauses in the printed text of the NYPE 93 including but not limited to Clause 8 (Performance of Voyages) and Clause 26 (Navigation) by way of amendments, deletions or additions as this may destroy the equitable allocation of responsibility for loss of or damage to cargo laid down in the Inter-Club Agreement and which, it is submitted, is not in the interest of either owners or charterers.

### **Clause 28 - Cargo Gear and Lights**

Such a clause is commonly added to the NYPE 1946 and, in recognition of this practice, a similar clause was also included in the ASBATIME 1981 (Clause 21), the text of which has also been embodied in Clause 28 of the NYPE 93.

### **Clause 29 - Crew Overtime**

The provisions in Clause 23 of the NYPE 1946, according to which charterers shall pay crew overtime in accordance with "the rates stated in the ship's articles" is frequently amended in practice and a lumpsum payment is usually agreed instead. This practice is now reflected in Clause 29 of the NYPE 93, the text of which follows closely the wording of Clause 22 in the ASBATIME 1981.

### **Clause 30 - Bills of Lading**

As mentioned in the comments on Clause 8 above, it has been found more appropriate to make the provisions concerning signing of bills of lading etc. appearing in Clause 8 in both the NYPE 1946 and the ASBATIME 1981 appear in a self-standing clause as now suggested in

Clause 30 which, in addition, now also includes a reference to waybills as well as provisions dealing with clausing of bills of lading when deck cargo is carried.

### **Clause 31 Protective Clauses**

In the NYPE 1946 Charter, Clause 24 makes the charter subject to the Harter Act as well as making the charter and all bills of lading issued hereunder subject to the Carriage of Goods by Sea Act of the United States. Given the use of the NYPE form world-wide as the most used time charter form for dry cargo vessels and also considering that in many instances no U.S. interests are involved, it has been found that it is no longer appropriate to make the charter subject to the Harter Act, the reference to which, therefore, has been left out.

Clause 31 of the NYPE 93 makes the charter and all bills of lading or waybills issued hereunder, subject to the provisions of the Carriage of Goods by Sea Act of the United States, the Hague Rules or the Hague-Visby Rules, as applicable, or "such other similar national legislation as may mandatorily apply by virtue of origin or destination of the bills of lading", as stipulated in sub-clause (a) (Clause Paramount) as well as the other protective clauses specified in sub-clauses (b), (c), (d) and (e).

Whereas sub-clause (b) (the Both-to-Blame Collision Clause) and sub-clause (c) (the New Jason Clause) are standard clauses, sub-clauses (d) and (e) may call for some observations.

#### *Sub-clause (d) (U.S. Trade - Drug Clause).*

It is a regrettable fact that during recent years the incidence of drug smuggling on board vessels has increased dramatically and has caused serious problems to the shipping industry, also resulting in the introduction of strict legislation and its enforcement in an attempt to curb this evil. To ignore this serious problem in a modern charterparty form would be wrong and the fact is that such an "anti-drug abuse clause" in one or the other form is commonly included in or added to the basic form of many charterparties. Sub-clause (d) of Clause 31 is an example of a clause commonly attached to, for instance, the NYPE 1946 and has been chosen for inclusion in the NYPE 93.

#### *Sub-clause (e) (War Clauses).*

One of the serious shortcomings of the NYPE 1946 is that it contains no war clause in its printed text which, from time to time, has caused serious problems when parties having fixed on the basis of the NYPE 1946 form were confronted with a war or warlike situation. Even worse, in order to rectify this obvious shortcoming, there are many examples of parties having agreed to include as a rider clause to the NYPE 1946, the old Chamber of Shipping War Risks Clauses 1 & 2 which since long have been withdrawn as obsolete clauses and which were drafted way back in 1935 in connection with the Spanish Civil War for use with voyage charter parties only and, therefore, totally unsuitable for time chartering. This problem was recognised in the ASBATIME 1981 which in Clause 23 (Clauses Paramount) included a proper war clause. In addition, a war cancellation clause as well as a war bonus clause were included as well, but only in the form of Rider Clauses in the Rider of Suggested Additional Clauses for use with the ASBATIME 1981 which limited the use of these clauses in practice.

Conscious of the necessity of including a proper war clause which would apply not only to the charterparty itself but also to all bills of lading and sea waybills issued under the charter, Clause 31 in the NYPE 93 now provides that the charterparty is subject to the war clause (sub-clause (e)) which is also to be included in all bills of lading or waybills issued hereunder. The war clause as such contains no cancellation rights and for practical reasons provisions dealing with the parties' right to cancel in case of war has been kept separate from the war clause and are to be found in the self-standing War Cancellation Clause (Clause 32).

Things are changing fast in a fast-changing world and as far as international shipping is concerned, the necessity of up-dating and modernising charterparties to match changes and

new developments is more important than ever before. This also applies to war clauses - be it for voyage or time chartering - and has recently prompted the Documentary Committee of BIMCO to revise its time-honoured and well tested standard war clauses, i.e., the CONWARTIME 1939 War Risk Clause for Time Charters and the VOYWAR 1950 War Clause for Voyage Chartering because of recent developments and, in particular, the fact that new supranational organisations such as the United Nations and the European Community are daily acquiring more power to intervene in war situations (the Gulf War and the situation in former Yugoslavia are recent examples of such intervention by the issuance of U.N. Security Council Resolutions and Directives issued by the European Community seriously affecting trading to and from war zones).

In connection with the discussions on how best to deal with the matter of a war clause in the NYPE 93, BIMCO had suggested that the revised CONWARTIME Clause known as the CONWARTIME 1993 War Risks Clause for Time Charters, be incorporated in the NYPE 93 since this clause has been thoroughly revised to meet present-day requirements for a modern war clause including the possible action or intervention by supranational bodies or organisations as referred to above; besides, given the multitude and characteristics of war or warlike operations now seen, the Definitions in the CONWARTIME have been considerably expanded and clarified.

Whilst acknowledging that the CONWARTIME 93 Clause is a great improvement, since the revision of the clause is of very recent date ASBA would prefer to see the clause in use and tested for some time before including the CONWARTIME Clause in the NYPE 93. However, ASBA would be prepared to circulate the CONWARTIME 93 Clause to its members as an alternative clause and to consider including the clause in an amendment to the NYPE 93 at a future date when time had shown that the clause works satisfactorily.

### **Clause 32 - War Cancellation**

This clause is intended to give either party the right to cancel the charter in case of outbreak of war.

The parties should ensure to fill in the names of the countries as may be agreed. In the event of the charter being concluded on the basis of world-wide trading, it may be advisable to mention the five Permanent Members of the U.N. Security Council, i.e., the United States of America, Russia, the United Kingdom, France and the People's Republic of China, whose conflict, in case of a conflict between themselves, may spread throughout the world or a large part of it.

If a vessel is chartered to trade in a restricted part of the world only, parties may wish to restrict the name of countries to be inserted, accordingly.

### **Clause 33 - Ice**

This is a traditional clause similar to Clause 25 in the NYPE 1946 and Clause 24 in the ASBATIME 1981 but has been somewhat broadened to include an obligation for the vessel to follow ice-breakers subject to the conditions stated in the last sentence of the clause.

### **Clause 34 - Requisition**

Such clause was not found in the NYPE 1946, but included in the Rider of Suggested Additional Clauses to the ASBATIME 1981 (Clause 33), the text of which has also been incorporated in Clause 34 of the NYPE 93.

### **Clause 35 - Stevedore Damage**

No such clause is found in the NYPE 1946, failing which it is common practice nowadays to add a rider clause dealing with stevedore damage; unfortunately, some of these clauses found in executed charter parties based on the NYPE 1946 form would appear to have serious shortcomings resulting in frequent disputes. An attempt to address this problem was made in Clause 35 in the Rider of Suggested Additional Clauses recommended for use with the ASBATIME 1981.

The text now included in Clause 35 of the NYPE 93 has been carefully drafted in order to overcome the shortcomings of many home-made stevedore damage clauses presently seen in current charter parties and also with a view to ensure a balanced and equitable solution fair to both sides, thus, representing a new approach to a long-standing problem.

### **Clause 36 - Cleaning of Holds**



This is another example of a clause commonly added as a rider clause to the NYPE 1946 basic form, which contained no such clause in its printed text, nor does the ASBATIME 1981 Charter. The text proposed in Clause 36 of the NYPE 93 reflects current practice and the parties should ensure to agree and insert the relevant figures in the fill-in spaces.

#### **Clause 37 - Taxes**

Neither the NYPE 1946 nor the ASBATIME 1981 contain any such clause even if such a clause is a common feature in other time charter forms for both dry cargo and tank vessels. Clause 37 aims at remedying this short-coming in an equitable manner.

#### **Clause 38 - Charterers' Colors**

This is self-explanatory.

#### **Clause 39 - Laid Up Returns**

Although a common feature in many other time charter forms, still, such clause is not found in the NYPE 1946 but is included in the Rider of Suggested Additional Clauses for use with the ASBATIME 1981 (Clause 37), the text of which has been followed in the NYPE 93.

#### **Clause 40 - Documentation**

This is a new clause which obliges owners to provide all necessary documentation relating to the vessel as may be required to permit the vessel to trade within the agreed trade limits.

#### **Clause 41 - Stowaways**

As will, undoubtedly, have been seen from the international shipping press, during recent years the number of incidents of stowaways has increased considerably and has become a growing problem in many parts of the world. To ignore this problem in a modern charterparty form would be wrong; hence the provisions now laid down in Clause 41 which, in a balanced manner, attempt to allocate the risks and costs between owners and charterers in the case of stowaways gaining access to the vessel.

#### **Clause 42 - Smuggling**

This is new and it has been found useful to address this problem in a proper manner.

#### **Clause 43 - Commission**

No comments.

#### **Clause 44 - Address Commission**

It is, of course, left open to the parties to decide whether address commission should be paid and, if not, the provisions of Clause 44 may be disregarded.

#### **Clause 45 - Arbitration**

As a matter of consistency, ASBA has suggested that the arbitration clause in the various charter parties issued under the auspices of ASBA, including the NORGRAIN 89 Charter, the NYPE 93 and the now revised Amwelsh Charter (AMWELSH 93), be identical by using the text of the Arbitration Clause in the NORGRAIN 89 Charter (except for deleting the reference to "grain trade" which is peculiar to the NORGRAIN Charter). This was agreed and, as will be seen, Clause 45 provides for a choice between New York or London as venue for arbitration. It is not unusual that arbitration clauses in various charter parties provide for an optional choice of venue of arbitration but, surprisingly enough, there have been quite a few examples showing that the parties by oversight or ignorance have forgotten to decide which of the alternatives should apply. In order to avoid any surprises later on, it is therefore important to remember this during negotiations and to delete sub-clause (a) or sub-clause (b) as appropriate. Similarly, if the parties should wish to avail themselves of the possibility of conducting arbitration according to the Shortened Arbitration Procedure in New York or the Small Claims Procedure in London the actual figures as may be agreed during chartering negotiations should be duly filled in in (a) or (b) as the case may be.

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