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Contractual commitment, or obligation? The linguistic interactions in Charter Parties

In words of the International Maritime Organization (IMO), the history of the world is one of “conquest, trade and exploration by sea”¹ Nevertheless, and despite the importance of shipping trade in the present-day globalized world –it is calculated that 90% of the global trade is carried out by sea, and this volume is on the increase–, few studies have been carried out on the linguistic meaning and the wording of the documents which instrument such trade and its regulation, such as bills of lading, insurance policies and charter parties (Orts, 2006: 170). Specifically the latter, which constitutes the focus of our present work, has also attracted scarce literature, with some exceptions (Van Hooydonk 2003; Bhatia, 2010), and these studies have always been tackled from the point of view of legal interpretation and understanding, and not from any linguistic perspective whatsoever. With the present analysis of the genre constituted by charter parties, we expect to shed some light on the mechanics that articulate this particular form of contract as a genre and on the interactions that take place between the *dramatis personae* that integrate it.

1 International Maritime Organization: International Shipping Facts and Figures <<http://www.imo.org/KnowledgeCentre/ShipsAndShippingFactsAndFigures/TheRoleandImportanceofInternationalShipping/Documents/International%20Shipping%20-%20Facts%20and%20Figures.pdf>>.

1. Charter Parties in context.

Chartering, and particularly voyage chartering, is the oldest way of exploitation of commercial ships. Indeed, maritime law – a normative body which consists of rules and regulations related to the shipping industry– has its roots in ancient times, when trade and commerce through sea routes became a flourishing business. Within maritime law, contracts of affreightment for cargo ships are embodied in a singular instrument, the so-called ‘charter party’ (from the Latin *charta partita*, “a divided legal paper”), which is made up after a verbal agreement (a ‘fixture’) between vessel owners and charterers (i.e., the people who wish to hire a vessel), such agreement usually being arrived at through a broker. As we say, the name comes from the fact that the document is written in duplicate, with one half retained by each party, meaning that both sides are aware of the rights given to them under law by the agreement. By virtue of this contract between the ship-owner and the charterer, vessels are rented out for a period of time or a specific journey, to be used for freight transport.

There are two main differing kinds of charter: a ‘time charter’ which allows the hiring of a vessel for a specific period of time, covering any number of journeys made within that time, and a ‘voyage charter’ –according to Carr (2005: 164), the most commonly used type of charter, and the one which will constitute the object of our study– which covers one specific journey from a point of departure to one of arrival. Among time charters there is also a subset which is named a ‘demise’ or ‘bareboat charter’, in which the charterer takes full legal responsibilities over the vessel and all crewing and maintenance matters, becoming the *de facto* owner of the boat for the duration of the charter. While contractual conditions may vary widely among charters, we will see below that standard language is currently used to describe the basic undertakings of the parties.

The law governing charter parties is a difficult issue to clarify. In principle, unlike bills of lading, charter parties are not subject to both mandatory applications of The Hague and the Hague-Visby Rules and to statutory obligations. Ostensibly, a charter party is a

contract negotiated in a free market where the trading power of the parties is highly dependent on the factor of supply and demand. Accordingly, charters are governed by the ordinary law of contracts either in the domestic or the international legal scenario, depending on the context of the deal. No matter this premise, Maniruzzaman (2006: 658) points out the following:

Neither municipal law nor international law is appropriate or suitable for dealing with international commercial disputes when parties from different countries are involved. In their view, a national legal system may not be sensitive to the expectations of a disputing party from a different national legal background, and international law proper may not be adequate to deal with cross-border commercial transactions. Thus, a third legal order, popularly known as the *lex mercatoria*, which is neither national nor international law but a mixture with the characteristics of both, is an attractive option. The so-called third legal system has been described in the literature by various names, such as 'transnational law', 'transnational commercial law', and "the *lex mercatoria*, and international law of contracts."

This *lex mercatoria*, or 'Law Merchant', as it has usually been called in England, was the general law (*ius commune*) applicable in all countries of Western Europe until the fifteenth century (Tetley, 1999:36). Today, the law is a system of norms which has as its main purpose self-regulation within a defined category of trade (De Ly, 1992: 208). In the maritime shipping industry, such self-regulation includes the standard forms of charter parties and bills of lading, as well as the York/Antwerp Rules and the Uniform Customs and Practice for Documentary Credits, among others (Montori Díez, 2009:65). Consequently, as we pointed out above, charter parties are, indeed, contracts and, thus, liable to be interpreted in the light of the basic principles of contract law. Nonetheless, when used transnationally, they become a body of self-regulating norms with their own interpretational regime, in tune with the background of custom and commercial usage of the shipping industry.

In law there is no requirement that charter parties are in writing, but these contracts have been, in general, standardized in English due to the international character of the industry. Only in 1995 the IMO designated English as the official language for mariners, but this language has been the working communication tool in the specific

area of merchant marine transportations for a long while (Ziarati, 2009:2), probably due to the central role of the Common Law in the marine world since the expansion of the country's maritime trade in the 18th century (Tetley, 1999:10). It is undeniable that the shipping community is an international one, and, following the general spirit of standardization of the IMO, a range of universal forms for charters has been available in the market for a while, some for use with all cargoes and some with special cargoes, for different types of vessel, different types of trade and for different forms of chartering. The process of standardization has been carried out mainly by organizations such as the Chamber of Shipping and, mainly and more importantly, by the Baltic and International Maritime Council (BIMCO). BIMCO is an independent organization that aims at protecting the interests of the international shipping industry by means of the provision and application of global regulatory instruments. Being the largest of the international shipping associations and representing ship-owners, it controls around 65 percent of the world's tonnage and has members in more than 120 countries, including managers, brokers and agents, as well as many other stakeholders with vested interests in the shipping industry. It is not strange, thus, that the standard forms for contracts coming from such a prominent institution should be leaders in the market.

As we have seen above, international and domestic law –with the exception of English Common Law, the inspiration of most of the marine documents and instruments in current use, among them The Hague-Visby rules– have a relative role in the matter of the international carriage of goods by sea (Maniruzzaman, 2006:658), being, therefore, the *lex mercatoria* of the trade in charge of the regulatory activities of this industry. In standardizing the activities of the trade through their contracts of affreightment models, it is the hypothesis of our study that the powerful collective of ship-owners represented by BIMCO invest themselves with the authority to control how transactions take place and how disagreements should be resolved, against the framework of their own interests and welfare.

2. Charter Parties as Genres. A method of analysis.

Charter parties are made up of a set of complex and quite hackneyed clauses drafted in the most orthodox style of Legal English as the *lingua franca* of maritime communication (Bocanegra, 2013: 3570). The clauses, as we hope we will be able to demonstrate, are ostensibly difficult to understand by the layman, no matter how standardized and widely used they may be. Despite this fact, and that the use of private contracts in an international environment poses problems in terms of interpretation and applicable law, the truth is that the texts in hand – i.e., the different types of charter parties BIMCO offers for time, voyage and bareboat – have achieved international scope and influence in all countries, transcending the difficulties that those problems may pose, both of comprehension and/or application. This work aims to prove that the reason for that transcendence is, precisely, the power of the communicative community it emanates from.

Following the traditional definitions of the concept of specialized discourse community by Swales (1981, 1985, 1990) and Bhatia (1993, 2002) a genre may be defined as a very well-structured communicative event that is ultimately envisaged for a due community to legitimately attain its professional (and, sometimes, personal, according to Bhatia, 2002:7) purposes. Hence, getting to know how a specific kind of genre works amounts to acquiring familiarity with the communicative resources that the specialized community that issues the genres in question deploys to accomplish those legitimate goals. It follows that the more generic knowledge one may acquire of a profession, the more inside, privileged, knowledge he/she will have about the mechanisms that articulate the communication within such a community. The text under study arises from the transfer of power to an elite of professionals –BIMCO in this case– who, in constituting a powerful group of vessel suppliers, have also established themselves as the providers of the norms. To what extent this elite, as the specialized community that emits these texts, is willing to give up the complexity of the language for the benefit of its

users, the charterers, as they seem to suggest², is something that remains to be seen.

Hence, the purpose of this work is to analyse charter party clauses in depth –and, more specifically, GENCON voyage charter–, both as an illustrative example of English legal discourse and as a genre of its own right, seeking to unravel the interactive entanglement between the participants (suppliers and customers, or, here, ship-owners and charterers) in the communication act that the contract constitutes. More concretely, the present study will focus upon the linguistic, discursive and pragmatic peculiarities of the genre constituted by this modality of charter party. Indeed, our analytical approach contemplates genre at large as "a communicative vehicle for the achievement of goals" (Swales, 1990:46), the generic analytical model we propose dividing, thus, the research process into three different levels: the formal level (with lexical and syntactic sublevels), the discursive or textual level, and the pragmatic level, which has to do with the charter party as a communicative event in context. All in all, the research process has proven the efficacy of the method as an analytical and enlightening tool.

2.1. The formal level:

The present level deals with the study of the surface elements (Crystal and Davy, 1969:201), or the substance, or raw material of the text, as well as the peculiar combinations of that substance which can develop into higher units. Taken in isolation, the presence or absence of certain formal traits are unreliable indicators of analysis; together and in their context they can supply very useful information about their discursive/pragmatic function.

Our analysis has a lexical part in which we will take into account those vocabulary elections which are carried out in terms of the type

² BIMCO pride themselves of endeavouring “the harmonisation and standardisation of all shipping related activity” by promoting “fair business practices, free trade and open access to markets” <https://www.bimco.org/en/About/About_BIMCO.aspx>

of the legal genre that charter parties constitute as instances of legal discourse, namely the use of archaisms, of technical terms and of formal and ritual language.

The first lexical analysis filter constitutes the level of terminological precision. In this context, it is pertinent to study the very specialized words or *terms of art* of legal language (Mellinkoff, 1963:63) but not only, since the text belongs also to the area of marine activity, this constituting “a unique language that only men and women of sea will understand” (Pritchard, 2002: 14).

Lexical rituality and formality go hand in hand with archaic forms in French, English and Latin, which, in turn, are remnants of the time when the legal profession was trilingual. As Lakoff has pointed out (1990:100), formality in the context of the courts serves to remind participants that this is an adversarial context. The rituals and formal parts of a legal document occur are marked by the presence of often polysyllabic words and archaic or unusual grammatical forms, often of Latin origin or as infrequent prepositional combinations like ‘hereby’ or ‘theretofore’. The trace of these will be searched in our document, as well.

In the area of syntax and discourse of legal discourse in English, complexity is also the rule. Sentences around a hundred words long or more are common, when the average norm is for lawyers to include 20–30 words per sentence at most. Syntax is made up of complex structures embedded into one another, in an attempt to capture every possibility of regulation, and overusing conditionals with complex prepositional phrases. Nominalizations and passive structures obscure the agent of the sentence and make the prose heavy and unclear. The discourse focuses on exceptions and negatives, rather than on basic principles, setting the things that negate or form exceptions or limitations to the front of the sentence or paragraph, and relegating the main principle to the back of the line. Such a convoluted syntactical trend makes comprehension difficult and gives a negative, threatening meaning to legal texts.

2.2. The discursive level:

Once the formal analysis is concluded, GENCON is to be analysed as an instance of text or written discourse from the basic rules of linguistic organisation that makes it work, and not just as a mere chain of words randomly arranged. The textual elements of professional language at large are visible in its supra-organisation or macrostructure, which is a very definite part within the text, and frames the textual segment, assisting the reader in its global comprehension. The macrostructure represents the dominion of the text in its functional level, revealing the way in which the elements of a textual typology operate. This textual structuring reflects the conventionalised social knowledge at the disposal of the discursive or professional community, BIMCO, besides the strategies or tactic choices used in general to render the discourse more effective for the communicative purpose of such a community.

2.3. The pragmatic level:

Finally, genres are, mainly, the stratified discourse of a very specific specialised community. This, generically speaking, is shown both in their external and internal organizational structuring and in their communicative function and sociopragmatic conventions. Looking at language from its communicative perspective implies introducing a description of language in use, the specification of its pragmatic discursive meaning, combining the linguistic aspects of textual construction and interpretation together with the sociocultural factors that integrate the text. At this pragmatic level, the charter party will be studied from the point of view of speech act theory: as a peculiar generic type of legal agreement where commitment between the parties is not established in the form of a symmetrical relationship, or commissive act, whereby both parties equally oblige themselves for the sake of a mutual benefit (Trosborg, 1995: 33). Rather, charter parties are established as a directive, i.e. an obligation issued by a party –the powerful collective of ship-owners as represented by

BIMCO, the profferer of these policies, in their various forms— over the other, namely charterers, who in hiring the vessel for the transportation of cargo assume all sorts of risks and liabilities.

3. Genre in Context: Analysis of GENCON.

As we mentioned above, charter parties are classified into three basic types, voyage, time and demise (or bareboat), according to the regime of charter they seek to cover. We have also mentioned that voyage charter parties are the commonest type of contract for the transportation of goods. By virtue of this particular contract of affreightment, the owner of the ship agrees to lease the cargo to the charterer for a particular voyage in exchange for freight payment, retaining control of the vessel and the crew, the charterer being responsible for the number and destination of voyages, and for the deployment of the ship itself (Carr, 2006:156). In addition to the express clauses agreed by the parties limiting mutual obligations and rights in the charter, there are also implied obligations and rights which are automatically incorporated into the contract in the absence of agreement to the contrary (Bhatia, 2010: 115).

Being a voyage-bound trip with availability of crew, the voyage charter party is one of the most famous charter parties, and GENCON is the standard form recommended by BIMCO for the transportation of general cargo. Since first being issued in 1922, the GENCON form has been revised in 1976 and 1994. As we will see when we discuss the macrostructure of the text, the form contains two main parts: the first is made up of 26 sections (or boxes) for the owner and charterer to provide the specific details of the transaction in question, while the second contains 19 standard clauses which refer to the rules governing the charter party. Despite being one of BIMCO's most widely used general purpose voyage charter party forms, used for all kinds of trades and for various types of cargoes, and the one recommended by the UNCTAD Secretariat, the clauses in GENCON have been given rise to much criticism for reasons of its obscurity and

ambiguity, its construction being the usual cause of litigation between the parties³.

3.1 Formal aspects of GENCON.

3.1.1. The lexicon in GENCON.

Generally speaking, the lexicon of BIMCO's voyage charter party shares many of the terminological traits of legal discourse in general, and more specifically of the lingo that characterizes contracts in Common Law. Nevertheless, a thorough search of the document has rendered interesting results regarding its idiosyncrasy. Discarding words of low information value such as ordinary prepositions and determiners (articles, demonstratives and the like) the lexical world of the text –which has almost five thousand eight hundred words in all– is reduced to a group of more or less definable categories, such as the *dramatis personae* in the contract (the Owner, the Charterer, the Vessel, the Charter Party, the Shippers, the Stevedores and the Agents), a sizable number of very specialized words referring to maritime transport and risks, and an interesting, more limited number of words pertaining to the legal lexicon. The tables below provide an illustration of the lexical study. Frequencies have been obtained with MonoConc Pro and etymologies with *Merriam Webster Dictionary Online*. Also, marine terms were classified as such in the light of Tetley's *Dictionary of Maritime Terms* and legal terms according to *Black's Law Dictionary*:

TERM	OCCURRENCES	ORIGIN
OWNER	79	MIDDLE ENGLISH FROM

³ See as examples *Louis Dreyfus & Cie v Parnaso Cia Naviera SA (The Dominator)* [1959] 1 QB 498, and *Salamis Shipping (Panama) SA v Edm van Meerbeeck & Co SA, (The Onisilos)* 2 QB 500.

		PROTO-GERMANIC
VESSEL	79	OLD FRENCH
CHARTERER	51	OLD FRENCH FROM LATIN
MASTER	19	OLD ENGLISH FROM LATIN
AGENT /S	10	MIDDLE ENGLISH FROM LATIN
STEVEDORES	8	SPANISH
SHIPPERS	4	MIDDLE ENGLISH FROM PROTO-GERMANIC
CHARTER PARTY	4	OLD FRENCH FROM LATIN

Table 1: The *dramatis personae* in GENCON

TERM	OCCURRENCES	ORIGIN
AFLOAT	2	OLD ENGLISH
ASHORE	1	OLD ENGLISH
AVERAGE	6	MIDDLE FRENCH
BERTH	4	MIDDLE ENGLISH
BILL OF LADING	3	OLD ENGLISH
CARGO	71	SPANISH
CARRIAGE	6	ANGLO-FRENCH
CARRIER	1	ANGLO-FRENCH
COLLISION	3	MIDDLE ENGLISH FROM LATIN
CONSIGNEE	2	MIDDLE FRENCH
CREW	10	MIDDLE FRENCH
DEADFREIGHT	1	DUTCH
DEADWEIGHT	1	OLD ENGLISH
DISCHARGE	26	ANGLO FRENCH
DUNNAGE	4	PROTO-GERMANIC
FREIGHT	33	DUTCH
GEAR	8	OLD ENGLISH
HOLD	2	OLD ENGLISH
LASH	1	MIDDLE FRENCH

LAYTIME	15	OLD ENGLISH
LAYDAY	1	OLD ENGLISH
LOAD, LOADING	61	MIDDLE ENGLISH
MARINER	1	ANGLO FRENCH
PILOT	2	MIDDLE FRENCH
PIRACY	1	LATIN
PORT	70	OLD FRENCH
READINESS	6	MIDDLE ENGLISH
SAIL	4	PROTO-GERMANIC
SALVAGE	3	OLD FRENCH
SEAWORTHINESS, UNSEAWORTHINESS	2	OLD ENGLISH
(SUMMER) LOADLINE	1	MIDDLE ENGLISH
STOW, STOWAGE	1	OLD ENGLISH
TRIM	1	PROTO-GERMANIC
SHIPMENT	2	MIDDLE ENGLISH FROM PROTO-GERMANIC
TALLY	1	ANGLO-FRENCH
TOW	1	PROTO-GERMANIC
TRIM	1	OLD ENGLISH
VOYAGE	11	OLD FRENCH
WINCH	3	OLD FRENCH

Table 2: Marine terminology in GENCON

TERM	OCCURRENCES	ORIGIN
BROKER, BROKERAGE	4	ANGLO FRENCH
CANCEL	13	ANGLO FRENCH
CLAIM	8	OLD FRENCH
COMPLIANCE	2	OLD FRENCH
COMMENCEMENT	4	OLD FRENCH
CONDITION	5	MIDDLE FRENCH
CONTRACT	11	MIDDLE FRENCH
DAMAGE	14	MIDDLE FRENCH
DEEM	8	OLD ENGLISH
DEFAULT	4	OLD FRENCH

DELAY	5	OLD FRENCH
DEMURRAGE	14	OLD FRENCH
DISBURSEMENT	1	OLD FRENCH
DUE	11	OLD FRENCH
DUE DILIGENCE	2	OLD FRENCH
EXPIRATION	2	MIDDLE FRENCH
INDEMNIFY	2	MIDDLE FRENCH
HOWSOEVER	3	OLD ENGLISH
LIABILITY	4	OLD FRENCH
LIEN	3	MIDDLE FRENCH
LOSS	8	OLD ENGLISH
NEGLIGENCE	3	MIDDLE FRENCH
NOTICE	14	MIDDLE FRENCH
NOTWITHSTANDING	1	OLD ENGLISH
NULL AND VOID	3	MIDDLE FRENCH
OPTION	12	OLD FRENCH
OWNERSHIP	1	OLD ENGLISH
PARTY	34	OLD FRENCH
PROVISION	9	MIDDLE FRENCH
REASONABLE, REASONABLY	5	MIDDLE FRENCH
SHALL	106	OLD ENGLISH
RIGHT	1	OLD ENGLISH
STRIKE	9	OLD FRENCH
TERMINATE	2	MIDDLE FRENCH
THEREBY	2	OLD ENGLISH
THEREOF	2	OLD ENGLISH
THEREON	1	OLD ENGLISH
THERE TO	2	OLD ENGLISH
WARRANT	1	MIDDLE FRENCH
WEAR AND TEAR	1	OLD ENGLISH
WILL	4	OLD ENGLISH

Table 3: Legal Terminology in GENCON

The lexical analysis carried out demonstrates several factors about the text.

1. There is a clear relevance given to the *dramatis personae* taking part in the agreement. Notably, ‘the Vessel’ acquires as much significance as the parties to the contracts themselves. The transcendence of this factor will be discussed later on, when dealing with the aspects of GENCON as a discourse type.
2. Terminological precision is evident: marine vocabulary –both naming the main parties or elements in the contract and other terms describing the maritime activity– is also salient, most of the terms (such as *dunnage*, *laytime* or *stow*) being highly specialised. Nevertheless, the legal flavour of the corpus is patent: even if the number of words that have been classified as pertaining to the legal area is lower than that in the marine area, the most frequent word in the corpus overall is the verb *shall*, used in legal texts to convey a strong sense of obligation (Tiersma, 1999:139); there is also a sizable and representative group of terms indicating contractual obligations, options and contingencies.
3. As the tables show, the language of the different specialised areas is very archaic in origin, with words from Anglo-French, but also from Proto-Germanic and from Old and Middle French and English, and occasionally from Spanish and Dutch, confirming what has been asserted before: that legal English used to be legal French and that the marine activity harks back to the very beginning of commercial activity. The vestiges of Dutch, English, French and Spanish exist in English because these were once great imperial powers and the only nations with full-fledged fleets (Garcia-Herrera et al, 2003:6).
4. Formality and rituality, typical of contract language, is manifest in the occasional legal binomial like *null and void* or *wear and tear*, the use of polysyllabic words of Latin origin (*disbursement*, *indemnify*, *commencement* or *expiration*), in the uncommon combinations of *there+preposition*, typical of legal discourse– clear indicators, as we will see later on, of

intertextuality–, in the above-mentioned use of imperative *shall*, and long connectors such as *notwithstanding*, *howsoever* and *whatsoever*.

These lexical phenomena acquire their full meaning when contextualized in the subsequent levels of analysis, making GENCON a peculiar instance of legal discourse, a genre, which responds to the communicative needs of the community that articulates the message, BIMCO, with a significant role in the complex and fascinating field of international marine normative.

3.1.2. The syntax in GENCON

Sentence length is the distinctive seal of legal discourse, and this is not an exception in the present text. Indeed, the contract is made up of long and quite convoluted sentences, the average being 70 words in length, where the shortest is made up of 28 words and the longest reaches 209. Remarkably, the lengthiest syntactical constructions are to be found both in the clauses having to do with payment and compensation for damages (the ‘Both to Blame Collision Clause’ with 139 words and the ‘General Average/New Jason Clause’, with 197 words) and in the compensation for extraordinary risks (the ‘Strikes’, ‘General Ice’ and ‘War’ Clauses, with 139, 110 and 197 words per sentence, respectively). If the average length of legal sentences reaches 50 to 80 words per sentence (Gustaffson, 1975; Hiltunen, 1984), it is obvious that some of the most interpretation-sensitive clauses in the contract exceed this length by far. Complexity is also apparent in the preference of subordination to coordination and the frequent use of legal qualifications to introduce exceptions or inclusions in the sentences, and conditional sentences with *if*, *unless* or *provided that* being abundant.

Another, quite consequential, trait in the text is the common use of passive structures. The impersonality of legal texts as a symbol of the impartiality of the law and its institutional weight has been highlighted as one of the features that characterize legal discourse. The desire for impersonality is also present in our corpus through its passive constructions, which make the universality and impartiality of

these texts visible. As a genre in its own right, GENCON also uses this resource to convey the authority-obedience relationships between the actors, as well as the expression of the ubiquitous nature of uncertainty that is especially present in the world of marine trade. All of this will be discussed in the subsequent levels of analysis.

3.2. Textual aspects of GENCON. Macrostructure and cohesion.

The perception that texts are linguistically coherent segments and not a collection of randomly arranged sentences is what makes us perceive how our corpus works at a structural level. We have studied BIMCO's voyage charter party as discourse instance, that is, from the basic rules of linguistic organization that makes the text work, analyzing the linguistic tools that provide its informational role and the linguistic recurrences in the form of textual segments with logical relationships between them.

The textual elements of professional language are visible in its supra-organisation or macrostructure, which is frames the textual segments, assisting the reader in its global comprehension. It reveals the way in which the elements of a textual typology operate, reflecting the conventionalised social knowledge at the disposal of the discursive or professional community.

The macrostructural rigidity of GENCON as a standard contractual form is unquestionable, with a predetermined structure that has changed little over time. It shows a peculiar structuring of its own which has already been mentioned above, in two parts:

1. Part I, containing, in boxes, all the details of the ship and the voyage, as follows:

DATA	BOX
THE NAME AND THE ADDRESS OF THE SHIPBROKER	1
THE DATE AND THE PLACE WHERE THE CHARTER PARTY WAS CONCLUDED	2

THE NAME AND THE ADDRESS OF THE CONTRACTING PARTIES	3/4
THE NAME AND A SHORT DESCRIPTION OF THE SHIP	6/7
THE POSITION OF THE SHIP	8
THE DATE THE SHIP IS EXPECTED TO LOAD	9
THE LOADING AND CHARGING PORTS OR PLACES	10/11
THE CARGO	12
THE FREIGHT	13/14

Table 4: Part I, Details

2. Part II, the text part with the printed clauses, which contain the terms and conditions ostensibly agreed between the parties.

CLAUSE	NAME
1	NO SPECIFIC NAME: PREAMBLE
2	OWNERS' RESPONSIBILITY
3	DEVIATION CLAUSE
4	PAYMENT OF FREIGHT: SUBCLAUSES A) (UNNAMED) B) PREPAID C) ON DELIVERY
5	LOADING/DISCHARGING COSTS
6	LAYTIME SUBCLAUSES A) SEPARATE LAYTIME FOR LOADING AND DISCHARGING B) TOTAL LAYTIME FOR LOADING AND DISCHARGING C) COMMENCEMENT OF LAYTIME (LOADING AND DISCHARGING)
7	DEMURRAGE
8	LIEN CLAUSE
9	CANCELLING CLAUSE
10	BILLS OF LADING
11	BOTH-TO-BLAME COLLISION
12	GENERAL AVERAGE AND NEW JASON
13	TAXES AND DUES SUBCLAUSES A) ON VESSEL B) ON CARGO C) ON FREIGHT

14	AGENCY
15	BROKERAGE
16	GENERAL STRIKE
17	WAR RISKS 1 TO 6 SUBCLAUSES
18	GENERAL ICE PORT OF LOADING A), B), C) SUBCLAUSES PORT OF DISCHARGE A), B), C) SUBCLAUSES
19	LAW AND ARBITRATION A) B) C) SUBCLAUSES FOR LIEU OF ARBITRATION

Table 5: Part II, the Clauses

The text such as it is organized has a visible, coherent organization of its terms by categorizing those provisions topically, including explicit headings dealing with each topic and arranging the categories in a proper sequence. Theoretically, organizing the terms of an agreement in this way permits the parties to locate the provisions or details that they need in an easier way. Such a distribution obeys a pre-established organization with stereotyped formulae and conventional schemas which are usually present in general charter party contracts. That is the case of some standard clauses –also included in other contracts of affreightment and bills of lading– like the Both to Blame Collision Clause or the New Jason clause. Specifically, the former has a very confusing wording and occasionally renders a deceitful interpretation. Still, allegedly, it is normally introduced in charter parties and imposed by P&I Clubs⁴ as a mandatory requirement to protect ship-owners’ liability in case of collision (Barder and Fordam, 2009: 18). This could be applicable to the rest of the text at large: the macrostructural clarity is deceiving throughout the contract, and generally thwarted by the long-windedness and complexity of the constructions and the peculiarity of its terminology.

As far as cohesion and textuality devices are concerned, the text is set to reflect the enforceable promises that are the expression of the

⁴ Protection and Indemnity Associations, organizations providing cover for its members, typically ship-owners and ship operators.



parties' intent, fulfilling the goal of the text to create pacts between ship-owners and charterers. Nevertheless, expressions of prohibition and condition are often concealed into apparently impartial expressions, being substituted with nominalizations and passives, or obliterated by the 'fallacy of the Vessel', a concept that will be explained later on, when we talk about the peculiarities at generic level.

Finally, intertextuality shows the presence of other texts in the charter party, but not in the way that this usually takes place in legal agreements. Regular contracts reflect the legal constraints that limit the private scope of rights and duties of the parties by means of the citation of the relevant laws in force, having to do with a spirit of legal compliance. This happens also in GENCON, of which the main references as to jurisdiction are to English or US law ('York-Antwerp Rules 1994') but with some peculiarities, since the main references are to other parts or the text (or *Boxes*) and to other documents generated by BIMCO itself. In a type of contract like this, for the international transport of cargo by sea, legal references are ambiguous, as we explained above, because they are part of the *lex mercatoria*, which is transnational. The placing of the charter within the context of Anglo-Saxon law, and the continuous references to concepts generated by BIMCO itself conveys a sense of security which is, to my understanding, unreal, inasmuch as it refers to the world created by one of the parties, namely the ship-owners or their representatives.

3.3. Pragmalinguistics in GENCON.

As Trosborg points out (1995:31), contrary to legislation –where there exists an asymmetry between the legislative power and the citizens– in contracts parties have a symmetrical relationship between them, based upon a common interest ('promise' and 'consideration'). Citing Searle's taxonomy (1976:12), she states that regulative speech acts in contracts may have the illocutionary force of the law when an

obligation is issued by one party over the other –thus constituting a ‘directive’– or they may be ‘commissive’ acts, ie those which commit the participants in the interaction to do or refrain from doing something. Aiming at isolating the pragmalinguistic realization patterns of directives and commissives in contractual texts, Trosborg further develops a taxonomy of different categories in a scale that ranges between the direct directives of obligation and permission (with the subcategories ‘assignment of rights’ and ‘limitation of liability’ for the granting of benefits to the parties) to the unmarked character of constitutive rules (statements of legal effect with unidentifiable pragmatic realizations), to commissives, as set out in Table six below.

CATEGORY	MEANING	FULFILMENT
DIRECT DIRECTIVES  OBLIGATION	ILLOCUTIONARY FORCE OF ORDER	<i>SHALL+VERB</i> <i>BE+TO, MUST, HAVE TO, OBLIGATE</i> <i>SHALL +PASSIVE (FACE REDRESS)</i>
<hr/> PERMISSION  ASSIGNMENT OF RIGHTS/ LIMITATION OF LIABILITY	SYMMETRICAL RELATIONSHIP RIGHTS/EXEMPTIONS FOR EITHER PARTY	<i>MAY</i> LEXICAL VERBS (<i>GRANT, GIVE, ALLOW</i>) <i>SHALL+RIGHT</i> <i>SHALL +LIMITATION OF LIABILITY</i>
CONSTITUTIVE RULES	ESTABLISHING THE TERMS OF THE CONTRACT SPELLING OUT CONDITIONS AS TO PRICE OR DATE	LEXICAL VERBS (<i>MEAN, APPLY, INCLUDE, EXCLUDE</i>) CONSTRUCTIONS <i>BE+RESPONSIBLE, BE+DEEMED</i>

COMMISSIVES	THE PARTIES COMMIT THEMSELVES BEFORE THE LAW	LEXICAL VERBS: <i>AGREE, UNDERTAKE, WARRANT, ACCEPT, ACKNOWLEDGE</i>
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Table 6: Trosborg’s regulative speech acts in English contracts.

The hypothesis of the current study –which has been present throughout the rest of our scrutiny of BIMCO’s charter party– is that this type of contract, due to its sociopragmatic peculiarities, is less an exchange of symmetrical promises that characterize commissive acts than a directive, an asymmetrical act issued for the benefit of the profferer, the Owner, and at the cost of the recipient, the Charterer. A faithful application of Trosborg’s taxonomy through a manual tagging of the different speech acts contained in the 19 Clauses of GENCON has, indeed, rendered the results below. For the purposes of our scrutiny, though, it is relevant to point out that, in order to tally illocutionary force, the act was solely attributed to the parties to the contract, namely ‘the Owner’ and ‘the Charterers’. Sentences with *the Vessel, the Master* or *the operators* as subjects were attributed to the party ultimately in control of the speech act, ie, *the Owners*.

CLAUSE	SHIPOWNER	CHARTERER
1, Preamble (unnamed)	2 right (VESSEL) 1 commissive	1 obligation 1 commissive
2, Owners’ Responsibility	2 obligation (1 with redress) 1 limitation of liability	
3, Deviation Clause	1 right (VESSEL)	
4 Payment of Freight	1 obligation (1 with redress) 1 limitation of liability	3 obligation(1 with redress) 1 right
5 Loading, discharging	3 permission 1 right (MASTER) 1 constitutive rule	9 obligation (1 with redress) 1 constitutive rule
6 Laytime	2 obligation with redress 1 right (VESSEL) 2 constitutive rule	3 obligation with redress 2 limitation of liability 1 constitutive rule

7 Demurrage	1 right 1 permission	2 obligation with redress
8 Lien Clause	1 right	
9 Cancelling Clause	1 obligation 2 constitutive rule, 1 with redress	1 obligation with redress 3 right 1 constitutive rule
10 Bills of Lading	1 obligation (MASTER)	1 obligation
11 Both to Blame Collision Clause	1 right 1 constitutive rule (OWNERS, OPERATORS)	1 obligation (OWNERS OF THE CARGO)
12 General Average and New Jason	1 right 1 limitation of liability 1 constitutive rule	3 obligation (OWNERS OF THE CARGO, CONSIGNEES, SHIPPERS) 1 constitutive rule
13 Taxes and Dues Clause	1 obligation 1 right	2 obligation (1 with redress)
14 Agency	1 right	
15 Brokerage	1 constitutive rule	1 constitutive rule
16 General Strike Clause	1 obligation 5 right (MASTER, OWNER, VESSEL) 1 limitation of liability	1 obligation with redress 1 right 1 limitation of liability
17 War Risks	1 constitutive rule 8 right 6 limitation of liability	2 obligation 1 constitutive rule
18. General Ice	6 right (VESSEL, one with redress) 1 constitutive rule	2 obligation with redress 1 commissive
19 Law and Arbitration	1 obligation 10 constitutive rule	1 obligation 10 constitutive rule
TOTAL	OBLIGATION 9 (4 WITH REDRESS) PERMISSION 5 RIGHT 29 LIMITATION OF LIABILITY 10 CONSTITUTIVE RULE 29 COMMISSIVE 1	OBLIGATION 33 (10 WITH REDRESS) PERMISSION 0 RIGHT 5 LIMITATION OF LIABILITY 3 CONSTITUTIVE RULE 16 COMMISSIVE 2

Table 7: Regulative speech acts in GENCON

There are several phenomena worth pointing out in the Clauses, as follows:

The text shows a case of clear asymmetry in mandatory character: regarding the obligations of the parties, it is patent that the structures of *shall+verb*, *be+to* and *must*, or those with *shall+passives-* when face redress is used as a mitigating device (Brown and Levinson, 1987:13)–, were much more abundant –33 out of 42– in the sentences where the Charterers were the subject. Contrarily, direct directives of obligation were scarce –9 in all – in those cases where the Owner was, directly or indirectly, the subject of the duty. Power to grant permission is very irregular too, all the occurrences being assigned to Owners.

There is also a patent unevenness in the granting of rights, with 29 occurrences for Owners and 5 for Charterers, as well as limitation of liability, with 10 cases for Owners and 3 for Charterers. An indication is to be given there, though, because in the inordinate yielding of benefits for the Owners a phenomenon I have termed ‘the fallacy of the Vessel’ takes place: the ship, under the power and control of the Owners by virtue of this specific kind of charter, ie, the voyage charter, acquires the stature of a *dramatis personae*, being given the animate qualities (as in the recurrent sentence “the Vessel has the liberty to”), and, in this case, rights, of a human being. Reification is not rare in legal instruments, but in this case the strategy of rendering human something that it is not is a clever strategy to conceal the lack of balance of the document: the Owners are, indeed, in control, but the Vessel is the decoy to pretend they are not so much so.

Constitutive rules in the text take different shapes, and are almost always used to explain or define words in the charter (as in “for the purposes of this clause, the words...shall mean”, in clause number 17, War) or to supply information concerning the application of the contract (as in “Time used before commencement of laytime shall count”, in Laytime, Clause number 6). The situation in which they are placed indicates that norms are more explicatory for Owners in the charter, in 29 cases, than for Charterers, with 16 occurrences. This

may be due to the fact that in the absence of express clauses the charter is to be explained implicitly. The text keeping silence in some indications for Charterers could mean yet another device to remit the clauses to the *stored knowledge patterns* (De Beaugrande and Dressler 1980:197) of the profession, the specialized community of ship-owners that is BIMCO.

Finally, the absence of commissives is striking, in a text that should be based upon the exchange of promises and which is, in fact, a compilation of indications to the client, the unknowing Charterer.

4. Concluding remarks

The voyage charter parties issued by BIMCO are set to be contracts, understood as the exchange of binding promises in the interest of the parties under the law; in fact, the present work has endeavoured to prove that they are not. The power and authority of BIMCO as the profferer of these policies and its role as the world representative of one of the parties involved, the ship-owners, together with the ubiquitousness of its contracts of affreightment in the world of carriage of goods by sea, has turned what should be a 'convivial act' (Leech 1983:104) of agreement for the benefit of both parties into a directive for the benefit of the speaker and at the cost of the recipient, the Charterer. Our generic analysis in its different levels has proved as much, showing the sophisticated way in which the collective of ship-owners provide a text with a visible, coherent organization where stereotyped formulae and conventional schemas belie the complexity of its wording and the sensitiveness of interpretation of the mandatory requirements which the policy sets out. Such an imperative character is concealed in the face redress usage of passive constructions to issue orders to the recipient and in the constitution of the persona of the Vessel, which is none other than the ship-owner itself.

Such a state of affairs, I conclude, is not the result of a scheming conspiracy on the part of the professional community that issues the text which is the charter party. On the contrary, the popularity and wide-spreading of these peculiar contracts has to be regarded in the context of international transactions, where the rules of the game have to be negotiated between the parties and where BIMCO charter parties constitute one more instance of a well-organized communicative group successfully administering its genres to the collectivity at large.

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