

The ‘Greening’ of Contracts of Carriage of Goods by Sea

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Main thesis question:

Do we need an interpretive set of 'green principles' for the interpretation of contracts of Carriage by Sea?

Sub-questions:

1. Do 'green' obligations in the current regime exist?
2. How are environmental standards being included in present contracts as obligations and are these sufficient?
3. Do we need directional guidance on how to interpret these obligations in the event of disputes?



Scope: Narrowing down from “contracts of carriage”

This investigation is limited to **voyage charterparties** and **time charterparties**

- This is where real negotiation takes place
- Bargaining power between parties
- Often the terms of the charterparty are simply reflected in BoL with smaller cargo holders (take-it-or-leave-it scenarios)
- Analysis done within the context of English law, but relevant at an international scale



1. Do 'green' or environmental obligations in the current regime exist?

- **Hague-Visby Rules** and **Rotterdam Rules** - no real reference to environmental obligations, Rotterdam Rules limits liability for delays caused by avoiding damage to the environment.
- **“Seaworthiness?”** – necessarily considers external circumstances, such as environmental standards and necessary documentation
- There are in fact hindrances to environmental practices: obligation of **due despatch** vs. slow steaming of JIT Arrival
- It is clear that these Rules govern **commercial relationships**, whilst environmental interests stem from the prevailing public law regime

2. How are environmental standards being included in present contracts as obligations and are these sufficient?

1. Ballast Water Management

- INTERTANKO endorsed two broadly worded clauses for dealing with ballast water management in respect of both voyage charters and time charters

2. Sulphur Cap

- BIMCO has formulated two clauses, the 2020 Marine Fuel Sulphur Content Clause and the 2020 Fuel Transition Clause
- INTERTANKO's Bunker Compliance Clause for Time Charterparties
- Scrubbers: BIMCO and INTERTANKO Joint Guidance: Contractual Issues for Scrubber-Fitted Ships (2019)

Are these sufficient?

Narrowly focused on party interests as bilateral arrangements.

1. Assumption that non-compliance will be attributed to the behaviour of either of the contracting parties.
2. Deal with issues of environmentalism as a regulatory hindrance, as opposed to a convergence of ideals.
3. Issue of split incentives still remains.



So how do we evaluate these relationships in terms of green performance?

- More appropriate question might be one of **interpretation** rather than incorporation.
- Do we have any prevailing norms? E.g. sustainable development
- Thus far we can only interpret these clauses commercially, therefore we only maintain the status quo: mere regulatory compliance

3. Do we need directional guidance on how to interpret these obligations in the event of disputes?

- Can environmental goals guide the spirit of these clauses?
- Should parties be guided along environmental lines and not just commercial ones?
- What normative guidance can we give these terms to overcome some of the aforementioned issues?



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Thank you!