UiO : Faculty of Law
University of Oslo

The coastguard contract

A time charter party where the Master is employed by the charterer

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1 Introduction

"…there is all the difference between the contract which a man makes when he hires a boat in which to row himself about and the contract he makes with a boatman that he shall take him for a row."

Mackinnon L.J. in Sea and Land Securities v. William Dickinson (1942)

1.1 Is it a time charter or a bareboat charter?

The Norwegian Coastguard has, since its establishment in 1977, operated both governmental owned vessels and vessels chartered into service from private shipowners. Traditionally the chartered vessels had been older fishing vessels or offshore supply vessels, but in the beginning of this century the Coastguard chartered five smaller vessels of the Nornen-class and three larger vessels of the Barentshav-class to be used in the North Sea and the Barents Sea. All vessels were purpose built and on fifteen year time charter contracts. The new contracts were based on the existing time charter contract already in use, albeit with one distinct difference. Earlier vessels were crewed with one Master from the shipowner and one Commanding officer (CO) from the Coastguard. The CO made decisions on how to best execute the mission and the Master sailed the vessel to where it needed to be. In the newer contracts the two roles were merged and the Coastguard employed a single CO who also fulfilled the Master's role. In 2011 the government decided to buy the smaller vessels in the Nornen-class. The Coastguard are however still chartering three vessels of the Barentshav-class and the former National Guard vessel "Magnus Lagabøte"[1] of the Reine-class on charter contracts.

The changes made to crewing also represents a shift in the ability of the shipowner to command his vessel. A consideration of the degree of control over the vessel raises the question of whether the contract should be interpreted as a bareboat charter rather than a standard time charter. Although the perceived difference in the contracts is small, the consequences may prove to be major. In some instances, the difference could entail shifting

[1] "NoCGV Magnus Lagabøte" is owned by Remøy Shipping AS, while the sister ship SHV "Olav Tryggvasson" is owned by Remøy Management AS,
SHV is an abbrivation for Sjøheimevernet.
NoCGV is an abbrivation for Norwegian Coastguard Vessel.

legal responsibility and liability from the (legal) shipowner to the Coastguard. The change could also have knock-on effects on several other clauses in the contract. This paper will analyse the contract made to charter the NoCGV Barentshav and explain why it should be considered a bareboat charter. Furthermore, it will provide examples of the consequences this interpretation could lead to, both within and outside the contract. Finally the paper will also suggest some potential amendments to the contract.

As a career officer and former employee of the Norwegian Coastguard, these contracts have puzzled me for years. There were several reasons for the curiosity: Why was there a mix of civilians and servicemen on board a naval vessel?[2] Could the Norwegian government not afford to buy its own vessels? Why did vessels doing the same work have different set of rules and regulations?[3] An interest in the charter contracts peaked while studying Contracts in Maritime Law at the University of Oslo when I realized that the crewing arrangements I had come to know lacked a basis in typical examples of charter contacts. In my current position as a project manager in information and communication technology, the contracts remain relevant to my work. When placing equipment on board vessels there is challenges both to the cost allocation between shipowner and the Armed Forces as well as challenges relating to compliance with the The Security Act, as there is often a prerequisite that the government own the area where the equipment is to be stored and used.

1.2 Demarcation of the paper

This paper is based on an analysis and application of the wording in contact 4700001224 "Tidsbefrakting av KV Barentshav til Ytre kystvakt"[4] (The Remøy contract) concluded between Remøy Management AS and Norwegian Defence Logistics Organisation (FLO). In addition, reference is also made to conversations with Commander Senior Grade Jens Christian Egenæs (head of contact department FLO Markap), Commander Senior Grade John Eivind Marstad (head of administrative department at the Coastguard) and Lieutenant Commander Alf Arne Borgund (CO NoCGV Barentshav). These individuals have helped in improving my understanding of the contract and its practical consequences.

The Remøy contract and all material used in this paper are available in the Norwegian Armed

[2] The Norwegian Coastguard is a branch of the Norwegian Navy.
[3] For example, regulation 2007-06-29 nr 819 which exempts the military owned vessels from provisions in The Ship Safety and Security Act and regulation 2001-07-01 nr. 744 cp. 6 gives provisions to how military confidential information and information systems has to be stored on board the civilian owned vessels.
[4] Annex no. 1

Forces and the Norwegian Defence Department public journals. Economic agreements between the government and Remøy Management AS are of a confidential nature and are therefore not discussed in this paper.

1.3 Translations / definitions

"Reder" vs. shipowner

In Norway, both in legislative and in everyday language, the entity responsible for operating a ship are known as the "reder". There is no corresponding term in English. See section 4.4 below.

Vicarious liabilities and enterprise liability

When translating a Norwegian term into English, there is a danger of inadvertently attaching a different legal connotation to its original meaning. In this paper the word "vicarious liability" is used as a translation of the Norwegian "arbeidsherreansvar" and "enterprise liability" is used as a translation of "driftsherreansvar;" both with the Norwegian legal understanding only.

The owners

The contract is signed by Remøy Management AS on behalf of Rem Valhall AS. The contract does not provide information on any connection between the companies, but a simple internet search reveals that the manager in both companies is the same legal entity.[5] Remøy Management AS handles operation and employment whilst Rem Valhall AS is the registered owner of the vessel. This is almost certainly due to financial and/or taxation issues and there is no need to further consider this corporate structure in this paper. Remøy or Remøy Management AS is considered the shipowner in this paper.

[5] E.g. www.proff.no

The charterer

The Norwegian Defence Logistics Organisation (FLO) is the owner and manager of all equipment held by the Norwegian Armed Forces on behalf of the Chief of Defence. The Norwegian Coastguard, as a branch of the Norwegian Navy, is the operator of the vessel in question. For the purposes of this paper there is no need to further differentiate between the various governmental bodies and their connections.

The vessel

The vessel and subject of the contract in question is the NoCGV "Barenshav." The ship has naval pennant number W340 and is a 94m long, 4025 tonn (gross), multi-purpose vessel, built on the Wärtsilä (formerly: Vik-sandvik) ship design VS 794 CGV. Myklebust Verft AS built the vessel on commission from Remøy Management AS.

1.4 Structure

The Remøy contract includes elements typical of both standard charter contracts and bareboat charter contracts. To understand why the Coastguard is chartering vessels, it is worth providing some brief historical background, as well as some reflections on why the vessel is not owned by the government. To prelude a discussion on the nature of the contract when compared to typical time charter and bareboat chartering, it is necessary to give a description of both categories and a comparison relevant to the contract. This will be followed by a description of the contract itself and a closer analysis of the clauses in the contract that are relevant to the distinction made between time charter and bareboat contracts.

The paper will then discusses selected topics of liability and how these are relevant should the contract be considered a bareboat charter rather than a standard time charter.

The paper concludes with a short summary including some recommendations on potential improvements to the contract.

2 Legal sources

The contract in question is entered into by two Norwegian parties on the charter of a vessel primarily sailing within Norwegian territory and legal jurisdiction. The parties to the contract have chosen Norwegian law as the governing law and Norway as the forum state. In theory there is still a possibility that the parties responsible for the ship could be brought before a court in a jurisdiction outside of Norway. This could be the case if an incident occurred during a visit to another country or while the ship was in international waters. This paper will only analyse the legal position of the parties to the contract and the clauses therein on the basis of Norwegian legislation. Still, the concept of chartering has an international character with most of the standard contracts written in English and with a strong historical background founded in English law. Due to the low number of Norwegian arbitration awards and judgments concerning this topic, it is useful to consider some English insight as a secondary source. Mark Davis' *Bareboat Charterers (Second Edition)* and Wilford, Coghlin and Kimball's *Time Charterers (Fifth Edition)* have proved particularly valuable in better illustrating the relevant issues from an English law perspective.

3 Why the Coastguard is chartering vessels

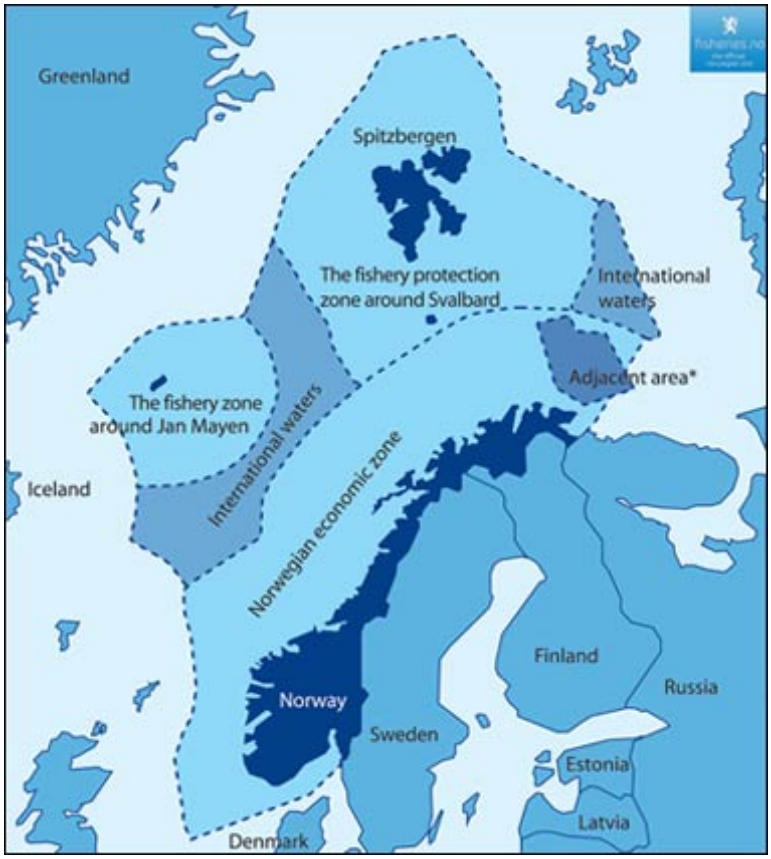

Figure 1: The Norwegain Exclusive Economic Zone <Regjeringen.no/Fiskeri- og kystdepartementet>

The explanation of why the Norwegian Coastguard charters vessels begins with the circumstances under which the Coastguard itself was formed. The Norwegian Coastguard was established in 1977 in response to developments in the legal status of Norwegian coastal waters. The Act relating to the economic zone of Norway of 1976 established an economic zone of 200nm from the territorial border. Norway maintained the exclusive right to control the natural resources in that area.[6] The area in question extends to 787,640 km^2 – 2.4 times the size of mainland Norway.[7] The North Sea and the Norwegian Sea are rich with both petroleum and fishery resources, and the new borders required an expansion of governmental oversight and control. The Coastguard was established as a branch of the Royal Norwegian Navy. Prior to the establishment of the Norwegian Coastguard, different governmental bodies enforced control over the fishery recourses. One example was the traditional cod fishing in

[6] Prior to this Norway had claimed sovereignty over the potential petroleum resources on the continental shelf in the *Act relating to scientific research and exploration for subsea natural resources* (1963) and the oil field "Ecofisk" were discovered in 1969.

[7] Act relating to the economic zone of Norway §1and SSB årbok 2012

Lofoten. This was regulated by legislation as early as in 1816 ("lofotloven"). To oversee and regulate these fishing areas, the Norwegian Navy based some of the service on regular naval vessels, but also relied on chartering civilian owned fishing vessels during the limited periods of time when the migrating fish were inside Norwegian territorial waters. In 1977, with the formation of the Coastguard, the government commissioned the construction of three purpose built vessels – The Nordkapp-class. To fill the gap before the new vessels were functional; the government elected to charter seven vessels on three to five year time charter contracts. If the intention had been to abandon these contracts as soon as the new vessels were built, those plans quickly changed. As it turned out, the tasks for the Coastguard grew and the 3 new vessels were not enough. One of the developments that led to these new expanded tasks was the extension of the Jan Mayen fishery zone in 1980, which expanded the area of responsibility by 288,768 km². This resulted in a permanent chartering of a diverse range of vessels, 7 in total. During the 70s and up until the 90s the contracts were kept short-term, from one to three years. The Defence Department, who had the overall economic responsibility for the fleet, wanted the option to reduce the number of ships if needed.[8]

In the 90s, a discussion grew within the Coastguard on whether the short-term contracts were still viable in the current and future markets. The offshore supply and standby industry was competing for the same vessels, and the Coastguard Inspector feared that the previous hire rates offered would be too low to compete for new contracts. Short-term contracts also made desired changes to the vessels futile or very expensive if the contract was not extended. It was first decided that a ten year contract would provide the desired hire rate as well as justify the costs of the needed customization of the vessels,[9] and after time, contracts for fifteen year terms were entered into. One such fifteen year contract was the contract between FLO and Remøy Management AS for the charter of NoCGV Barentshav. The contract was also the first in which the Coastguard was to employ its Commanding officer as the Master of the vessel. The vessel was supposed to be delivered in late 2007, but due to numerous delays during the construction it was delivered in August 2009.

Instead of entering into the Remøy contract, one logical conclusion would have been for the Defence Department to buy their own vessels. The expansion in the terms of the contract, the fact that the ship would be newly built and fifty years of experience providing insight on the

[8] Jansen (1998) p. 133
[9] Jansen (1998) p. 133

fleet capacity needed, all pointed to the possibility of discarding the charter model and buy their own vessels. One possibility is that the vessels were chartered, not due to cost efficiency or flexibility, but due to the budget and approval system within the government. If one charter contract replaces another charter contract the Coastguard budget and the Defense Departments investment budget do not need as many adjustments. Further, if the contract is below 500 million NOK,[10][11] it does not need to be approved by the Norwegian Parliament, only The Defense Department. Further justification for purchasing the vessel outright comes from the requirement in the Act relating to governmental acquisition. The Remøy contract relates to a governmental acquisition and as such falls under the scope of the Act relating to governmental acquisitions. However the contract relies on an exemption in the Act under §3: "…*The Act does not apply to acquisitions that may be exempted under the EEA Agreement article 123*"[12] *(Loven gjelder ikke anskaffelser som kan unntas etter EØS-avtalen arikkel 123)*. The exemptions given in the EEA Agreement are to protect the members from disclosure of essential security information. It is however not a general exemption for all military acquisitions.[13] This is further clarified in a letter from The Department of Defense of 19.09.05[14] which states that exemptions under EEA article 123 should be:"…invoked and justified in every case." ("...påberopes i hvert enkelt tilfelle og begrunnes konkret."). However, no such specification or justifications are to be found exempting the Remøy contract from being included in public records.

When the Act and regulation of public acquisition is exempted, the primary legal framework is the regulation "Acquisition rules for the defense sector" (Anskaffelsesregelverk for forsvaressektoren) (ARF). The ARF §1.6 applies if, in the acquisition of any equipment, it is to be leased instead of purchased. There are two prerequisites that need to be met in order to justify a lease. First it has to be economically favourable.[15] The second prerequisite is that the decision to lease is to be documented. Extensive research has failed to lead to a public record of this decision. Indeed, the contrary decision appears to have been reached in 2011, when the state secretary Roger Ingebrigtsen concluded that it would be economically better for the

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[10] Konsept for fremskaffelse av materielle kapasiteter I forsvarssektoren (2004)
[11] The actual costs are not part of public record, but NRK reported the NoCGV Barentshav to be in the range of 300 million NOK at delivery. The tree vessels together would then amount to 900 million NOK. *Kysvaktas nye stolthet*, 27.08.2009 <//fil.nirk.no/nyheter/district/nordland/1.6749185> Accessed 08.05.2013
[12] OJ No L 1, 3.1.1994, p.3
[13] ARF §1.2.4 4. paragraph.
[14] EØS Avtalen Artikkel 123 – Presisering: Department of Defence ref. 1998/01100-183/FD
[15] ARF §1.6.1 "Leie av materiell kan gjøres der det er mer økonomisk fordelaktig enn kjøp."

Coastguard to own its vessels when the state bought the five smaller vessels of the Nornen-class.[16]

[16] Press release from Regjeringen.no: *Forsvaret kjøper indre Kystvakt-fartøyene* <regjeringen.no/Forsvarsdepartementet/Aktuelt/Nyheter/> Accessed 08.05.2013

4 What is the distinction between a bareboat and a time charter party?

4.1 How can a shipowner utilize his ship?

A shipowner can exploit the value of his ship in a variety of ways. At one end of the spectrum the shipowner himself takes advantage of the ships capacities, taking the risk and realizing the reward of the ship's activities. If it is a cargo vessel, he might use it to transport his own cargo and if it is a fishing vessel, to catch fish on his own quota. This is generally the way state and naval vessels are utilized as they are owned by the state and are used to perform a service for the state. On the other end of the spectrum, the shipowner can use the ship as a sales object gaining economic value while fully delegating control of the vessel. In between these outer extremities there exists a continuous scale in which the shipowner can transfer the use of the vessel and right of instruction in return for remuneration. There are few boundaries in this transfer, but there are recognisable forms of use that can be distinguishable; cargo capacity in the liner trade, voyage charters, time charters and bareboat charters are typical contracts.

In the liner trade the shipowner carries goods (or passengers) between ports at in return for fright. The freight is typically earned once the cargo has reached its destination, and there are usually several different cargo owners on one voyage. A charter is typically a promise to make the cargo capacities of the ship available either between destinations (a voyage charter) or within a period of time (a time charter). Depending upon the specifics in the contract, a certain number of functions are transferred from the owner to the charterer. For a voyage charter this can be responsibility for loading and discharging as well as deciding what ports to visit. In a time charter most of the commercial management is transferred to the charterer. This may include the right of instruction to what cargoes to carry and were to sail within the boundaries of the contract. The owner provides a fully functional ship. This will include adequate manning, maintenance and insurance. [17]

If both possession and control pass from the owners to the charterer, including the manning of officers and the crew and they act under the orders of the charter, the charterer may take on the role of owners[18] during the period of the charter.[19] This is often called a bareboat charter,

[17] Cf. 4.2 below
[18] Owners "*Pro hac vice*" (Falkanger (2011) p. 147 and "*de facto*" owners Davis (2005) p. 1
[19] Davis (2005) p.1

but is also often referred to as a lease.[20]

In the context of the Remøy contract, the distinction between time charter and bareboat charter becomes highly relevant.

4.2 The time charter

In a standard time charter, the shipowner retains the responsibility for management of the ship, while the charterer can direct the economic operations of the ship within the limits specified in the contract. In The Maritime Code (NMC) §321 time chartering is defined as

"…chartering where the remuneration is to be calculated per unit of time" and further in the §372 the time carrier[21] shall: "…ensure that its condition, mandatory certificates, manning, provisions and other equipment satisfy the requirements of ordinary trade in the trading area stipulated in the chartering agreement."

The charterer determines where the ship is to sail, what kind of cargo is to be taken on board and which port to use. The owners will employ officers and crew and through the Master have nautical control of the vessel. The contract itself is called a time charter party.[22] The remuneration is normally a periodic payment which is called hire.

The owners assume the responsibility for making the ship available to the charterer at the time, place and condition agreed and also the risk if the ship is usable to meet these terms. If the ship is not delivered or something happens rendering the ship in breach of the agreed condition during the performance of the contract (e.g. grounding), the charterer may have a right to stop payment. In some more specific severe incidents like war or the loss of the ship, the charterer may also gain the right to terminate the contract.[23] As long as the ship is available in the condition agreed in the contract, the charterer is liable for most of the additional and unforeseen expenses and risks. These includes bunkers, port fees and a that there is a relevant market for the ships capacities. The charterer also assumes the risk of market fluctuation. Especially with bunkers this may contribute to a considerable cost difference. Conversely, it is important to remember that the charterer stands to benefit

[20] In English legislation “bareboat charter” and “demise charter” is used interchangeably (Davis (2005) p. 1). Leasing contact is also used. In Norway the term bareboat charter is more common and is used in this paper.
[21] "Carrier" is defined in the NMC §251 as ", the person who enters into a contract with a sender for the carriage of general cargo by sea…"
[22] “Charter party” is derived from the Latin “carta partia” - divided paper. The contracts were ripped in two pieces with the Captain keeping one part and the charterer kept the other. Michelet (1997) p. 1
[23] Cf. NMC §§393-394 "Termination etc." and SUPPLYTIME 2005 §23 "War Cancellation Clause 2004"

financially from the potential rewards to be gained. [24]

A simple analogy to a time charter is the concept of hiring a tour bus or a limousine within a specific time period. The bus company provides a bus with all permissions valid and a competent driver. The remuneration to the bus company is a fix sum, but extra fuel costs may be added, as well as example toll charges.

4.3 The bareboat charter

If the charterer not only employs the ship's capacity to the charter's economic advantage, but also equips the vessel and employs the officers and crew, he might not only be considered to have the commercial management and control, but also nautical control of the vessel. The vessel is chartered "bare," hence a bareboat charter exists.[25] As with the time charter, the remuneration is usually based on time, but the allocation of expenses and risk shifts. For example there are usually no provisions for off hire during times of repair or damage.[26] Furthermore, as the charterer also employs the officers and crew, he effectively controls every aspect of the ship thereby assuming greater exposure to third party liabilities under the NMC. Under the NMC, by virtue of his control over the management of the vessel, the bareboat charterer holds the position of the reder (see 4.4 below). Still there are some provisions under

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[24] Time charter has been a concept for a long time, but became more relevant from the beginning of the 20th century. This was probably due to the introduction of steamship and motor ships and their enhanced time predictability over the sailing vessels. Most contracts used are done through a standardized contract. These contacts have an English heritage and many of the clauses can be traced back to the age of the tall ships. As with many of the English contracts, the evolvements have been gradual. As an example the time charter contracts is believed to have evolved from some of the bareboat charter parties. This slow progress has the consequences that the whole shipping industry gets familiar with the contracts, the clauses and the wording used in them. Ambiguity or uncertainty may be solved through customary practice, arbitration awards or court decisions. On the other hand the entire all the adding and subtracting may make the contract unstructured and difficult to understand, especially by unfamiliar reader. Being of common law history and made to be used in several forums, the contracts may end up very comprehensive with a lack of logic structure. Michelet (1997) p. 2

There are several producers of standardized time charter contracts utilized in the market today. Baltic International Maritime Conference (BIMCO) is the producer of many. As they are independent from any company and represented by both sides (shipowner and charterer) they make an effort in producing balanced contract. Examples for time charter are GENTIME for dry cargo, SUPPLYTIME 2005 for supply vessels and BOXTIME for container transport.24 The Association of Ship Brokers and Agents (U.S.A.) Inc. have produced the dry cargo time charter "New York Produce Exchange Form" (NYPE 93). In the "wet" cargo sector the oil companies have traditionally been very strong and have produced several by themselves: SHELLTIME, BEEPTIME, STB-Time (Exxon). The Independent Tanker Owners´ Organisation (Intertanko) has also made their time charter INTERTANKTIME.

[25] The "charter" in bareboat charter (party) is somewhat ambiguous as the charter in voyage- and time charter is referring to an affreightment (NO: *certeparti* and *befraktning*). However the contracts are often named "Bareboat charter" (cf. BARECON 2001 "BIMCO STANDARD BAREBOAT CHARTER").

[26] cf. 4.4 below

which the legal owner could be held liable under the NMC. Maritime liens are linked to the vessel and can be transferred back to the owners after the lease is done.[27] Liability for oil pollution points to the owner, not the reder or charterer,[28] and responsibilities under the Ship Safety and Security Act,[29] rests with the signatory on the certificate, regardless of the legal status of the owner or charterer and the characteristics of the charter party.[30]

An analogy for the bareboat charter is the rental car. The rental company provides a certified and functional car at a given place and with remuneration based on time. The person renting the car provides the driver (himself) and also has to pay for all variable costs like fuel, windshield washer fluid and any toll fee. If the driver causes damage to the car or any third party, he is liable towards both the rental company and the third party.

[27] Falkanger (1969) p. 318
[28] NMC ch 10 and §183
[29] Ship Safety and Security Act §4
[30] All though the concept of lease has been around for centuries, there were few standard contracts until the mid-70s. The most used were an American form only called "Bareboat Charterer" or "Bareboat Charter Party" (Form 149). "Shelldemise" were a contract used for new buildings with a twenty yearlong charter period and there were some forms based upon the lease of governments in wartimes like "T.98A. Government Demise" and "Liberator" as well as the Norwegian WWII "Leiekontrakt F.D.M.13.9.1939." (Falkanger (1969) §2.5 p. 43 ff.) In 1974 , BIMCO formulated Barecon A and B. Later they published Barecon -89 and the latest development is Barecon 2001.(In a finance lease where the security is a loan rather than the ownership over the vessel, it is more common to find more customised documents with a wider range of clauses. Davis (2005) 3.3 and 35.2.) Barecon 2001 is now the industry standard and used by a vast majority of the operating charters.

4.4 Difference between time charter and bareboat charter

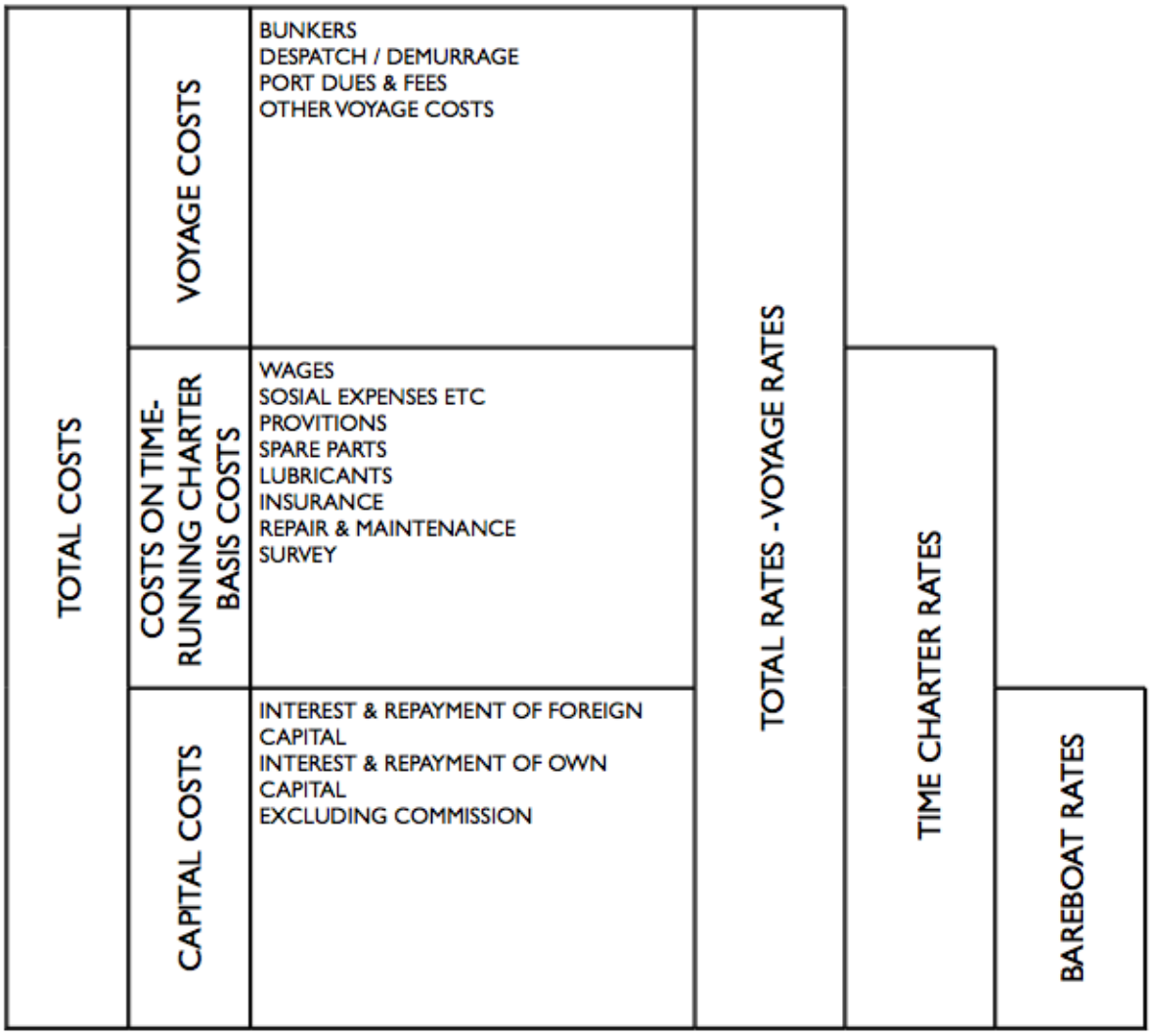

Figure 2 Source: Cand. Oecon. Ecen S. Engelstad – Michelet (1997) p. 142

Both standard time charters and bareboat charters are made with an expectation that both parties will profit from the venture. Thus cost allocation is important in the consideration of risk to be assumed by the various parties.[31] In the typical time charter the owners pay the fixed costs like wages, spare parts and insurance, while the charterer is responsible for voyage specific costs like bunkers, port fees and pilot. The allocation is normally based upon the areas over which the parties have decision-making privileges. If the shipowner employs the crew, he is responsible for the wages and if the charterer decides to sail through the Panama Canal, he has to cover the extra fees. There is, however, no fixed rules and different contracts

[31] cf. BALTIME cl. 3 and cl. 4, PRODUCE 1993 cl. 6 and 7 and SHELLTIME 4 cl. 6 and 7.

have different allocations.[32]

In a bareboat charter, the charterer normally covers both fixed and voyage specific costs.[33] The shipowner's two main concerns are the remuneration paid from the charterer and the value of the ship after the charter period is expires. The owner would normally require the charterer to obtain suitable insurance for the benefit of the shipowner. In BARECON 2001, there is also the possibility that the owners remain responsible for the insurance.[34]

If the shipowner is not able to provide the services agreed, most time charter contracts have a clause giving the charterer the right to withhold payment, often called "off-hire" clause. In SUPPLYTIME 2005 this is regulated in clause 13. "Suspension of Hire." In a bareboat charter, the charterer is often responsible for both the maintenance and navigation. Any "off-hire" situations would then by default be within the charterer's responsibilities.[35] BARECON 2001 has no "off-hire" clause, but conversely there is no restrictions preventing the parties from agreeing otherwise.[36] If there are provisions in the contract making the owners responsible for maintenance, repairs or crewing, it would also not be unreasonable to connect this with some sort of "off-hire" clause. The older "Form 149" had such a provision: "caused by damages to or by vessel covered by insurance, or in making repairs or replacements for which the Owner is liable…hire shall cease for the time thereby lost."[37]

If there is uncertainty whether the contract should be interpreted as a time charter or a bareboat charter, the employment of the officers and crew, and in particular the Master, is often put forward as a decisive factor.[38] It is important to note that control may not necessarily be in the technical and legal employment of the crew itself, but the parties' authority and

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[32] E.g. shipowner are to cost boiler water in PRODUCE, but the time charter have the cost in BALTIME. Michelet (1997) p.144

[33] Cf. BARECON 2001 cl. 10 and Davis (2005) 11.2 ff.

[34] BARECON 2001 cl 13 and 14. - This is made especially for the short-time bareboat charter where there may be in both parties interest to continue the owners insurance cover.

[35] Davis (2005) 14.1

[36] Falkanger (1969) p.136 §14.3 "Off hire-klausulen"

[37] Falkanger (1969) p. 448

[38] "What then is the demise charter? Its hallmarks, as it seems to me, are that the legal owner gives the charterer sufficient of the rights of possession and control which enable the transaction to be regarded as a letting - a lease, or demise, in real property terms - of the ship. Closely allied to this is the fact that the charterer becomes the employer of the **Master and crew** (emphasis added). Both aspects are combined in the common description of a "bareboat" lease or hire arrangement." In the judgment of Evans LJ in the Guiseppe di Vittorio (1998) the hiring of the Captain is an element of hallmarking demise chartering. Lloyds Rep 136 p 156

ability to control the ship and its Master.[39]

How much authority can the time charterer assume over the command of the vessel's crew before it should be considered a bareboat charter?[40] There have been several judgments on the extent of the charterer's right to command the Master and whether this makes the contract a bareboat charter. The jurisprudence was developed in the beginning of the 20th century and originally the Norwegian Supreme Court interpreted a contract under a "bright line rule:" if a Master was employed by the shipowner, it would prevent the charter from being interpreted as a bareboat charter. In ND 1903.365 "Scandia" a sub-charter (*underbefrakter*) claimed security in maritime lien but this was rejected by the court as the contract was signed with a time charter ("*maanedsbefrakter*") and not the shipowner. In the judgment the court explained:

"The conditions are significantly different from what would have been, if the owner had entrusted the ship into trade, if the charterer had provided provisions, and employed the Master and crew." ("*Forholdet er vesentlig forskjelligt fra det, der vilde foreligge, om Eierne havde overladt nogen Skibet til Fart, efterat Laan- eller Leietageren, som ble indat i Besiddelsen af Skibet, har forsynet det med den fornødne til Farten, og navnlig ansat Skipper og Mandskab*.")[41]

The case ND 1906.120 "Hisø" also supported this approach. The steamship "Hisø" had been in a collision, and the cargo insurer and the hull insurer disagreed on whether the time charter hire would be the basis for calculation of the damaged goods, or whether it also should include harbour fees and the coal expenses. In the judgment the Supreme Court confirmed that the employment of the officers and crew prevents a bareboat charter:[42]

In ND 1908.81 "Kvik," regarding a dispute over whether the shipowner or the charterer should be awarded a salvage award, the Supreme Court blurred the line; making a reservation that employment would only determine the question of the legal position of the charter:

"…determine in general the relationship between a ship owning company, which charters out its vessels, and the one who charters them. I think that in this case must be decided on the

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[39] Falkanger (1969) §2.4 rekvisisjonsrett
[40] Cf. Gentime cl. 9 and also Falkanger (1968) p. 76
[41] ND 1903.365 p. 366
[42] ND 1906.120 p. 121 (*"At forholdet maa bedømmes som Borfragtning, følger efter Høiesterets Opfatning deraf, at det efter Certepartiet som sædvanligt ved Bortfraktning paa Tid er rederiets Sag at antage, lønne og afskedige Officerer og Mandskab, og at derfor Skibet maa ansees for at være i rederiets Besiddelse, uanseet at dette har forplligtet seg til i en vis Udstreækning at lade Kapteinen eterkomme Befragterens Ordres."*)

basis of the specific circumstances." (*"…afgjøre i sin Almindelighet Spørgsmaalet om Forholdet mellom et rederi, der bortleier sit Fartøy, og den, som leier det. Jeg mener, at det her foreliggende Tilfælde maa afgjøres efter de foreliggende specielle Omstendigheter.")*

The court split the award of 3000 NOK between the shipowner and the charterer. The judgment creates a potential situation of where the shipowner may employ the officers and crew even in a bareboat charter. It is not the employment itself that is the central question when determining the legal position of the shipowner and the charterer, but who is to be considered the commanding authority over the ships Master and crew.[43] This position was affirmed by later judgments.[44]

Closely connected to the differences between a time charter and bareboat is the definition of the Norwegian term "reder." In Norway, both in legislative and everyday language, the entity that operates a ship is referred to as a "reder." This is irrespective of whether it is a single person or a company, and the corporate structure of the company (if there is one) is irrelevant. A company that operates ship(s) is called a "rederi." In practice the "reder" and the shipowner are usually the same entity, but there are exceptions to that rule.[45] Problems can arise as that The Norwegian Maritime Code (NMC)[46] allocates many of the obligations and rights of operating the vessel to the "reder" and not the shipowner. The difference becomes crucial if the shipowner transfers the functions normally associated with ownership to another legal entity. If the transfer of functions are broad enough, such as the responsibilities for manning and equipping the vessel, the transferee becomes the "reder." If the "reder" and shipowner are two different legal entities, the state of affairs becomes especially relevant with regards to question of liability. For example in the NMC §151, the "reder" is liable towards a third party, while The NMC §183 makes the shipowner liable if there is an oil pollution.

[43] Falkanger (1969) p. 75
[44] Cf. ND 1926.49, ND 1936.321 and ND 1956.564
[45] Within a shipowning company, it is not uncommon to divide the operation between a managing company and another limited company registered as owner of the ship. This is probably done as a risk diversification and/or of taxation reasons. Cf. above section 1.3 "the owners."
[46] Cf. NMC §3 "Managing reder etc. and §103 "Managing reder" and also MarIus no. 393 (NMC) Preface.

5 The NoCGV Barentshav contract with Remøy Management; time charter or a bareboat charter?

As outlined in the introduction, the Remøy contract includes provisions usually found in both time charters and in bareboat charters. Unlike certain other types of contracts of carriage, most of the tasks, costs, rights and duties of the contracting parties arising under NMC chapter 14 "Chartering of ships"[47] may be altered by the contract. So long as the contractual provisions do not conflict with mandatory rules or regulations, there can be few practical repercussions to the parties following a theoretical discourse as to whether the Remøy contract should be construed as a time charter or a bareboat charter. The interpretation may, however, have consequences for third parties who are not bound by the contract. The clauses in the contract allocate liability between the parties, but may not deny others the benefit of mandatory acts and regulations enforceable against an owner or reder. This chapter will provide an overview of the Remøy contract and highlight some of the provisions that confuse the distinction between time charters and bareboat charters given above. Manning and especially the employment of the Master is the most noticeable discrepancy, but the treatment of insurance, off-hire and compliance with the Ship Safety and Security Act are also relevant in showing the parties' intentions in enter either into a time charter or bareboat charter. The result shows a variety of inconsistencies among the clauses and the intended liabilities and subsequent interpretations.

5.1 A presentation of the Remøy contract

The Remøy contract is a bespoke agreement consisting of 37 clauses on fifteen pages and is based on earlier time charter contracts drafted by the FLO.[48] It claims, on the front page, to be a time charter contract. The terms in the contract have similarities with many of the standardized contracts, but due the unfamiliarity and the fact that it is written in Norwegian, it appears to have been written from scratch. One immediate observable difference from standardized contracts such as BARECON and SUPPLYTIME, which are made up of two parts - one page to fill in information and a second which consist of standard clauses – is the fact that the Remøy contract is one composite body with party specific information written either directly into the clauses or in one of six amendments.

[47] NMC §322 "Freedom of contract"
[48] Cf. Kontrakt 995710 regarding the charter of NoCGV "Chieftain"

The first page and the first three clauses concern the parties and the contract itself. Clauses 4-24 concern the vessel. Clauses 4-15 address more technical issues, whereas clauses 16-24 concern the use of the vessel. Clauses 25-34 allocate costs and liabilities and finally, clauses 35-37 handle certain contractual relations.

Almost certainly because the contract is tailor made, it is relatively short and logically structured. To illustrate this at a basic level, the Remøy contract consists of only 6,100 words while the SUPPLYTIME 2005 standardized contract has15,651 words. Typically amendments to a standardized contract can add for more. Additionally there are none of the usual disclaimers and boilerplate clauses favoured by many international standardized contracts[49] in the Remøy contract and the contract is written in simplistic language, largely free from legal jargon.

5.1.1 The Employment of officers and crew in the Remøy contract

In the Remøy contract, the parties modified the employment clause 23.1 from the existing charter contracts to exclude the employment of the Master from the shipowner: "The military Commanding officer is the Captain of the vessel in accordance with the Act of Shipping §131" (Den militære Skipssjefen er fartøyets kaptein i henhold til Sjøfartsloven §131)[50]

The Remøy contract does not assign exclusive responsibility for crewing or operation of the vessel to the charterer. In clause 22.2 the shipowner is to provide two mates, the chief engineer, the second engineer and a steward. This could have been interpreted as reluctance by the shipowner to transfer some of the possession of the ship to the Coastguards, and especially if the shipowners employees had been given the right to limit or veto the Coastguards use of the vessel. However clause 22.2 gives the Coastguard the right to participate in the process of employment and also "The civilian employed crew is to assist the military commanding officer in the service of the Coastguard." ("Den sivile besetningen skal

[49] Cordero-Moss (2010) p. 81 ff

[50] First, there is no "Sjøfartslov" in Norwegian legislation. The reference is probably a typographical error with a mix between the short and long title of the Norwegian Maritime Code. (LOV 1994-06-24 nr 39: Lov om sjøfarten (sjøloven)). Second, the "Kaptein" is not a title used in the NMC. All though the word "Kaptein" is interchangeable with the word Master in common language, the correct reference in the NMC is "Skipsfører." ("Skipsfører" translates to Master in English) Lastly the NMC §131 is only a reference to the sea- and cargo worthiness of the vessel. Section 132 "Navigation, etc" which emphasises the seamanship of the Master, should also have been mentioned. This is probably a misstatement and for the purpose of the analysis the rest of the discussion will assume that clause 23 in the contract is refers to the whole of chapter 6 in the NMC – "The Master."

bistå den militære Skipssjefen i utførelsen av kystvakttjenesten.) Furthermore, 23.1 "special conditions" (Spesielle forhold) allows for the use the vessels, and implicitly the crew, in a wide range of governmental tasks, including regular navy service.

There is little in the contract giving the shipowner any control over the CO's actions and there is little doubt that the CO is in navigational control over the vessel. The employment of the civilian crew by the shipowner should be considered as nothing more than a service agreement to provide personnel that the Navy and the Coastguard, known for having problems recruiting and keeping personnel.[51] In return the shipowner benefits from a higher likelihood that the ship and the engine are properly maintained.

As shown above and also in section 4.4, the employment of the CO by the charterer is an important factor in determining whether the contract is a bareboat charter rather than a time charter. It is, however, important to consider the contract in its entirety in order to make a final determination, [52] both in regards to the intention of the parties, but also on how the clauses could be construed in the light of its interpretation as a bareboat charter.

5.1.2 The Ship Safety and Security Act does not fit the provisions in the contract

In the old Seaworthiness Act enacted in 1903,[53] the Armed Forces were exempted from the application of its duties and requirements through §108 of the Act.[54] This exemption applied both if the ship was owned by the Armed Forces, but also when ships "were in the service" of the Armed Forces. This meant that the Coastguard chartered vessels exempt from the provisions of the Act just as with any other Navy vessels. In 2007 the new Ship Safety and Security Act came into force, replacing the old seaworthiness Act. Unlike the Seaworthiness Act, the Ship Safety and Security Act contains no general exemption for Armed Forces

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[51] Sveinung Berg Bentzrød, "Flykter fra fregattene" (2006)
Simen Tallaksen, "Forsvaret tyner de ansatte" (2012)
Tor Husby, "Mister kritisk kompetanse" (2011)
David Robert Coyle, "Forsvaret mister teknisk kompetanse" (2011)
Arne Colliander, "Vurderer utenlandske offiserer" (2012)
Kjell Dagnes, "Øsekar mot åpen bunnventil" (2012)

[52] Falkanger (1969) p.60

[53] In 2003 The Seaworthiness Act had surpassed hundred years and it was decided to start the work on a revision (NOU 2005: 14). The mandate for the selected committee was to "...conduct a full audit of The Seaworthiness Act and make a draft to a new contemporary law..." (NOU 2005: 14 1.2). The work was enacted into the new law: The Ship Safety and Security Act which came into force the 1st of August 2007. It was also clear that the rules and regulations concerning ship safety were both complicated and complex. As a result and as well as a name change, the new act incorporated five other acts[53]

[54] Seaworthiness Act §108: " Nærværende lov er ikke anvendelig på de skip, der tilhører forsvaret eller benyttes i dets tjeneste."

vessels or vessels acting in the service of the Armed Forces. However, section §2 3.paragraf f) provides that the government may enact regulations to such effect.[55] In regulation 2007-06-29-819,[56] all vessels in the service of the Armed Forces are exempted from the Act in its entirety providing there exists a security crisis, armed conflict or war. Section 4 of the regulation also provides a number of specific exemptions applicable in normal conditions, but these are only available if the Armed Forces are the shipowner. For ships used in the service of the Armed Forces, the prerequisites for using this exemption are that; the exemption is necessary, that it is on-going and that the operation is within a three specific operational areas: Control of Norwegian sovereignty, exercise of governmental authority or participating in a rescue operation.[57] ("Første led gjelder tilsvarende for skip som benyttes I Forsvarets tjeneste når fravikelse av bestemmelsene er nødvendig I den aktuelle situasjon som led I suverenitetshevdelse, myndighetsutøvelse eller redningsaksjon..") In situations where there is no on-going operation, the requirements of the Ship Safety and Security Act will apply fully in respect of all civilian owned vessels chartered by the Coastguard.

The Ship Safety and Security act also uses the Norwegian word "reder," however, the definition in this Act is not the same as the definition in the NMC. To avoid conflict between the Ship Safety and Security Act and the international ISM-code, the "reder" in the Ship Safety and Security Act is only to be understood as the entity (person or company) signing the ships security certificate.[58]

In the Remøy contract, there are no provisions making anyone the responsible reder under the Ship Safety and Security Act. First, the contract was signed prior to the implementation of the Act[59] and the regulations enacted subsequently. Second, the Armed Forces almost certainly believed that the same exemptions they had been granted in the Seaworthiness Act would also be implemented in the new Act. As this would prove not to be the case, the parties soon discovered that there was an inconsistency in the contract. The shipowner took responsibilities as "reder" in the Ship Safety and Security Act §4 and produced[60] a Safety Management

[55] King-in-Council
[56] Regulation 29.06.2007 nr 819
[57] Regulation 29.06.2007 nr 819 §4 2.paragraph
[58] Terje Hernes Pettersen, Gyldendal Rettsdata – skipssikkerhetsloven note 4 1.paragraph. 23.08.2012, <www.gyldendal-rettsdata.no> accessed 09.04.2013
[59] Due to the delay the Act had been into force in years on delivery of the vessel.
[60] Statement by John Eivind Marstad, E-mail communication, 29 Mars 2012

System (SMS).[61] Out of this came two challenges in relation to the crew and employment. First the shipowner had to recommend and be granted approval for safe manning from the Norwegian Maritime Authority. In the contract, the shipowner had only five crewmembers and the employees from the charterer did not add correct certifications. This resulted in renegotiation of the contract; two more crewmembers from the shipowner were added along with a corresponding increase in the charter hire.[62] The second challenge was that of the CO. In the Ship Safety and Security Act, the Master is the most important crewmember and the "reder's" representative on the ship. The duties of the Master are explicitly provided for in several sections[63] and create a serious challenge to all parties when the Master (CO) are employed by the Coastguard and also takes all his direct orders from the Coastguard and not from the Remøy as the signatory of the ship safety certificate. To resolve this issue there is on-going work to edit Regulation 29.06.2007 nr 819 to also exempt the chartered vessels and to make the directive fit both the intention of the Ship Safety and Security Act, as well as the needs of the Navy.[64]

The challenges surrounding the Remøy contract and the Ship Safety and Security Act are showing that the parties intended to create a time charter contract. The shipowner Remøy makes the SMS and signs the ships security certificate, thus making themselves liable as the "reder" towards the provisions in the Ships Safety and Security Act. This is done regardless of the fact as to whether the Remøy contract should be perceived as a time charter or a bareboat charter.

5.1.3 Insurance

The Armed Forces, as is the case with most of the Norwegian Government, are self-insured and must obtain confirmation from the Norwegian Defence Department prior to any additional insurance commitments.[65]

In the Remøy contract insurance is regulated in 25 "Responsibilites" (*Ansvarsfordeling*) which consist of only one sub-clause 25.1 "Generally" (*Generelt*): "The shipowner is to keep the vessel on full hull conditions as well as "Protection & Indemnity" insurance and assume

[61] The Ship Safety and Security Act §7
[62] Statement by John Eivind Marstad, E-mail communication, 29 Mars 2012
[63] The Ship Safety and Security Act §19, §29 and §37
[64] Statement by John Eivind Marstad, E-mail communication, 29 Mars 2012 (but the progress of the work is currently exempted from public view).
[65] Retningslinjer for Materiellforvaltningen i forsvarssektoren (2012) §9.3

liability for what is covered by this insurance, in relation to the vessel as well as a third party. This includes, amongst other things, the liability for marine claims and damages associated with the navigation and maneuvering of the vessel."
("*Bortfraktern holder fartøyet dekket på fulle kaskovilkår samt "Protection & Indemnity" forsikret og påtar seg det ansvar som faller inn under disse forsikringer, så vel i forhold til fartøyet som til tredjemann. Heri ligger bl a at sjøskade og skader som er forbundet med fartøyets navigering og manøvrering er Bortfrakteren ansvarlig for.)*

There are, however, few specifics. It is not stated which insurance company should be used, if the charterer is to be named as co-insurer or any indication of the insured value of the ship.

The vessel is in fact covered by Gard P&I (Bermuda) Ltd.[66] and unless otherwise specified in the contract between Remøy and Gard[67], there are clauses in Gards' general terms and condition exempting cover by the insurer in some of the operations of the vessel. For example in the Gard rules of 2012, Rule 56 "Non-marine personnel" exempts guests on board the vessel and rule 59 "specialist operations" exempts cover like oil spill response and oil spill response training.[68]

This clause in the Remøy contract may also entail some contradictions. Following the obligation to insure the vessel in 25.1, the shipowner is to " …assume liability for what is covered by these insurance ("...påtar seg det ansvar som faller inn under disse forsikringer,"). The question is whether the shipowner is to be liable for everything covered by the insurance or if he is only liable if it is not covered by the insurance? Further navigational accidents are specifically mentioned, but what if the shipowner is not in nautical command. Is he still to be liable for the Commanding officer's misconduct?[69]

This clause has the same form as the previous charters[70] where the shipowner employed the Master and still had the nautical command of the vessel. When this control is passed to the Coastguard through the employment of the CO, it is difficult to understand the extent of the liabilities possessed by the shipowner.

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[66] Statement by Mr. Frøystad at Remøy Managment, Phone call, medio February 2012
[67] The specific police between Remøy and Gard is not examined and the provisions is found in the general rules of Gard Rules (2012).
[68] NoCGV Barensthav is part of the The Norwegian Coastal Administration oil spill response with oil booms on board.
[69] Cf. 5.1.4 below.
[70] Cf. Kontrakt 995710 regarding the charter of NoCGV "Chieftain" §25.

5.1.4 Off-hire

Another clause indicative of the parties' intention to create a time charter is the off-hire clause. It is normal to have an off-hire clause in a time charter and even if not expressly provided for, the NMC regulates this in section 392: "Hire is not paid for time lost to the time charterer in connection with salvage, maintenance of the ship, or the repair of damage for which the time charterer bears no responsibility, or otherwise because of matters pertaining to the carrier. The same applies correspondingly to the obligation of the time carrier to cover expenses relating to the operation of the ship."

The Remøy contract includes a provision to this effect in 29.1 "Avbrudd i betalingen (off-hire)": "In case of loss of time in connection with docking or other necessary condition in order to maintain efficient operation of the vessel, including maintenance, machine breakdown or damage to the hull/equipment, under-staffing and other factors not due to the charterer and this leads to disruption of more than 24 hours, hire is not paid until the vessel is ready for operation, ready to comply with the orders of the Commanding Officer." ("*Hvis det oppstår tidstap i forbindelse med dokksetting eller andre nødvendige forhold for å opprettholde effektiv drift av fartøyet, inklusiv vedlikehold, maskinhavari eller skade på skrog/utstyr, underbemanning og andre forhold som ikke skyldes Befrakter og dette leder til avbrudd av mer enn 24 timers varighet, suspenderes hyrebetalingen fra om med avbrudd og frem til fartøyet atter er i driftsklar stand, klart til å etterkomme Skipssjefens seilingsordre.")*

As well as being an important distinction between time charter and bareboat charter,[71] the nautical command is also important in the off-hire clause. If the charterer maintains nautical command of the vessel and the fault concerns navigation, neither clause 29.1 in the Remøy contract "In case of loss of time…not due to the charterer…" nor the NMC 392 "Hire is not paid for time lost…time charterer bears no responsibility" supports a conclusion that establishing an off-hire period during repair resulting from faulty navigation. The off-hire event would in such a case be is on the charterer's side. The Remøy contract is however contradictory in this respect. As shown above in 5.1.3 insurance, clause 25.1 also lists navigational faults as a liability of the shipowner.

As with the clause concerning insurance, the off-hire clause has been left in the same form as it had been in previous charter contracts where the shipowner employed the Master. As an

[71] Cf. 4.4 above

example NoCGV Barentshav ran aground in mid-December 2011. The vessel was on an assignment to investigate some unidentified lights north of Andøya. For unknown reasons the vessel chose a course too close to shallow waters and grounded. This resulted in a 67 day "off-hire" period. After the incident the shipowner made the necessary repairs to make the vessel seaworthy again.[72] However, after the repairs and the insurance settlement, it was evident that there was a discrepancy between the remuneration not earned during off-hire and the settlement from the insurance company. The shipowner claimed for the difference with reference to clause 25.1, third paragraph, where the charterer is to cover damage to the vessel when ordered into "special use."[73] The case is as of printing not yet settled.[74]

5.1.5 Excluded areas, special circumstances and military command

Clause 21 "Area of operation" (Anvedelsesområde) and 22 "Vessel status and crew" (Fartøyets status og bemanning) contains additional provisions relevant to the extent of the control the Coastguard holds over the vessel.

In clause 21.2 "Excluded areas" (Ekskluderte fartsområder), the vessel is not to be used in areas with sea ice that could result in damage of the hull. However, this does not apply if the vessel is in pursuit of another vessel at the orders of the Coastguard, is involved in assistance,[75] or is conducting search and rescue or when there is major environmental damage. When it is probable that the ship will sustain damage, it is to be written into the ship's log and the difference between the cost of any necessary repair and any available recovery from insurance is to be borne by the Coastguard. Excluded areas, or the exemption of those, are a normal provision in both time charter and bareboat charters. What makes the provision peculiar is that it is the CO, employed by the Coastguard, is responsible for recording events that make his own employer liable. The same provision is also present in the

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[72] Statement by Lt.Cdr. Alf Arne Borgund, E-mail 19.02.2012: "…rederiet har har hatt det hele og fulle ansvaret og ivaretatt alt på en fobilledlig måte…"

[73] Spesial use is a referance to the Remøy contract §25 third paragraph: " Damage to the vessel and / or civilian personnel and / or third parties is to be compensated by the charterer only when this is a direct result of ordered and special use, such as the use of the gun / handgun and / or collision during boarding." *("Skade på fartøy og/eller sivilt personell og / eller ovenfor tredjemann dekkes av Befrakteren kun når dette er en direkte følge av beordret og spesiell anvendelse, som bruk av kanon/håndvåpen og/eller sammenstøt under bording.")*

[74] Norwegian Armed Forces Public Jurnal 2006026226 Forespørsel 0600058 - Langtids innleie av kystvaktfartøy (YKV) 61 Kontrakt 4700001224 - Tidsbefraktning av KV Barentshav til Ytre Kystvakt - Grunnberøring ved Andenes 2011.12.07

[75] Assistance (hjelpetjeneste) is not further explained and is not mentioned in the Coastguard A ct (Kystvaktloven).

older contracts[76] where the owner employed the Master. In these cases a reasonable balance would have been created, where the charterer orders the vessel to conduct a dangerous operation and the owner's representative writes this into the log in order to show evidence of a decision. This would be crucial where, if damage should occur, the charterer could be compelled to compensate for the resulting expenses.

Contrary to an assumption that his could just be an oversight from the older contracts, the Coastguard has added a new paragraph in the Remøy with the CO as a Master. Clause §21.2 second paragraph: "If the vessel is ordered into operation where damage to the vessel is probable, this is to be noted in the ships log by the Commanding officer. Possible damage in such a situation is registered and covered by the charterer." (Dersom fartøyet beordres til operasjoner der risiko for skade er sannsynlig, skal dette noteres i dekksdagboken av skipssjefen. Eventuelle skader i en slik situasjon registreres og dekkes av Befrakter.)

Further in clause 21.3 the owner is not to object (*reise innsigelser*) to the use of the vessel by other governmental bodies within the Coastguard's domain. Various governmental departments and directorates often lack sufficient vessels for their needs, and the Coastguard's vessels are frequently used to meet the demands of other directorates. This system is regulated through the Coastguard Act cp. 3. The police, customs, rescue services and environmental control agencies are examples of the services provided for and areas in which the Coastguard has been given authority. The clause finishes with the sentence "The vessel is in such circumstances to remain[77] under Military Command" (Fartøyet vil i slike tilfeller fortsatt stå under militær kommando). There is no other mention of the term "Military Command" elsewhere in the contract, but the word "remain" implies that the vessel is to be under Military Command whether it is to conduct services on behalf of the Coastguard or other governmental bodies. Military Command is regulated through The Constitution of the Kingdom of Norway §25 and regulation 1957-10-18 nr: 9092 §8; "The Commanding officer and Executive officer … has full command[78] in alt regards to safety, navigation and discipline on board." (*Skipssjef og nestkommanderende … har i alminnelighet kommando i alt som angår sikkerhet, manøver og ordning ombord*).

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[76] Cf. Cf. Kontrakt 995710 regarding the charter of NoCGV "Chieftain" §25. Older contracts are exempted from public view.

[77] Underline added

[78] Full command is defined in the Nato publication AAP-6(2009). The Norwegian translation is "Alminnelig commando." Forsvarets Fellesoperative Doktrine (2007) vedlegg B

5.2 Concluding remarks: Is the Remøy contract a time charter or a bareboat charter?

The parties have based the contract on a previous time charter contract, and have intended to write a new time charter. Despite the intention and naming the contract a time charter, this is not sufficient to make it one. By employing the CO as Master and thereby gaining the nautical command of the vessel, the Coastguard has crossed the line between a contract of charter and a bareboat charter. The Coastguard has taken control as *de facto* owners over the vessel and should be regarded as such. By also adding the concept of Military Command, the Coastguard is emphasising the control they maintain over the vessel. Several of the clauses in the contract also show inconsistencies when the Coastguard have the nautical command of the vessel.

Defining the contract as a bareboat charter does not automatically make the Coastguard the liable party to any damage. As shown above Remøy might still be liable both towards oil spill in the NMC cp. 10 and if it relates to the Ship Safety and Security act.

6 Selected legal topics related to the contract

It is important to remember that third parties, by their very nature, do not know of and are not party to the contract between FLO and Remøy. They are clearly not bound by its terms. In the contract Remøy Management AS has, in clause 25.1, taken responsibility for third party liability: "The carrier…assumes the liability covered within these insurances, both with regards to the vessels as third party. ("Bortfrakteren…,påtar seg det ansvar som faller inn under disse forsikringer, så vel I forhold til fartøyet som til tredjemann."). However, absent insurance, would it be the owner or the charterer who would be perceived as the liable party following an loss-causing incident? What is the scope of this liability?

6.1 Who would a third party regard as the reder?

In Norwegian legislation, the question of whether the "reder" is liable for the actions of others is often described as "*Husbondsansvar.*" This was extracted from the interpretation of the Norwegian Code 3-21-2 where the master[79] (*husbond)* is liable for the actions of his servant, if the servant were acting on behalf of the master.[80] Today this provision is typical in employer - employee relations where the employer is vicariously liable for the actions of the employee (*arbeidsgiveransvar*). The liability does not necessarily need to originate from a contract of employment however. It is also possible to find other similar relationships of subordination which could trigger liability, such as "enterprise liability" (*driftsherreansvar*). In these cases there does not need to be a contract of employment between the "master and servant".[81]

In current legislation this area of law is regulated by The Torts Act §2.1 "Employer's liability for employee" and also in addition NMC §151 "Vicarious liability of the reder."

NMC §151 makes the reder vicariously liable "…to compensate damage caused in the service by the fault or neglect of the Master, crew, pilot, tug or others performing work in the service of the ship." The provision raises two questions: (a) Who is to be regarded as the reder? (b) What is the scope of the reder's vicarious liabilities?

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[79] Master in this context is not to be confused with a Master of a ship, but master in master –servant liability. "Husbondsansvar" also have similarities with the common law doctrine of "Respondeat superior"

[80] NL 3-21-2: "En giver Husbond sin Tiener, eller anden, Fulmagt paa sine Vegne at forrette noget, da bør Husbonden selv at svare til, hvad derudi forseis af de, som hand Fuldmagt givet haver, og af hannem igjen søge Opretning."

[81] Selvig (1968) p. 8

As described in section 4.4. above, the reder and the shipowner are not necessary the same entity. Brækhus has defined the "reder" as the person who "...starts up the operation, manages it and bears the economic risks"[82] Typically this would include manning the ship, taking care of supplies and employing the ship in its trade.[83]

By establishing which party is the reder by definition, the Remøy contract is ambiguous and a further breakdown of the reder's responsibilities is necessary. Selvig has on the basis of Brækhus and Lødrup divided the function into four functions[84]:

(a) Commercial responsibilities

(b) Nautical command including manning and command and instruction to the performance and execution of work done.

(c) Responsibilities concerning expenditure

(d) Responsibilities to follow public laws and regulations concerning the operation of company and vessel.

(a) Commercial responsibilities

If the ship is not generating any income the economic risk on the charterer's side is difficult to measure. If the ship is unable to perform its duty as a Coastguard ship, it is feasible to calculate what a substitute vessel might cost, but there is no direct economic loss in the same sense as a vessel trading in a commercial venture. For the shipowner the loss is direct through loss of hire. As in a time charter, the shipowner holds the risk of malfunction of the ship, making the Coastguard entitled to deduct hire during an off-hire period. This economic burden placed on the shipowner in Remøy is the same as it would be in the case of a shipowner in other time charters, in which the shipowner would also generally be considered the reder.

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[82] Falkanger (2010) p. 147 and Selvig (1968) p.33

[83] Falkanger (2010) p. 147

[84] Selvig (1968) p. 27 (a) den forretningsmessige ledelse av virksomheten; (b) den operative ledelse av virksomheten, herunder normalt (b^1) de personer som skal utføre arbeidet innenfor virksomheten, og (b^2) kommando- og instruksjonsmyndighet m. h. t. arbeidets utførelse; (c) ansvar for driftsutgiftene, lønn, omkostninger, etc.; og (d) ansvar for at offentlige forskrifter m. h.t. virksomhetens innretninger eller drift blir fulgt.

(b) The Coastguard initiates an operation by giving the Commander of the vessel orders to execute their missions without informing or obtaining consent of the shipowner. However, while the nautical command is solely at the discretion of the Coastguard, the manning is shared between parties. The charterer employs the Master and approximately five other officers in addition to about 10 privates. The shipowner only employs five; two nautical officers, two machinists and one chef.[85] Both parties instruct and check performance of work performed.

(c) Responsibilities concerning expenditure

Both parties also holds responsibility for maintaining supplies and paying salaries. The Coastguard is responsible for covering fuel costs and expenses relating to harbour visits, while the shipowner is responsible for maintenance costs and provisions.[86]

(d) Responsibility to follow public laws and regulations concerning the operation of company and vessel.

Even the assignment of responsibilities for complying with statues and regulations is divided between the parties. The Coastguard holds the operative and operational responsibilities created by the Constitution[87] of the Kingdom of Norway, The Coastguard Act and the NMC. The shipowner holds the remainder of responsibilities arising from the NMC and Ship Safety and Security Act.

When there is doubt about who is to be considered the liable party, it is both Brækhus' and Lødrup's conclusions[88] that the nautical / operational command is the crucial factor in defining the reder and thus which party could be held vicariously liable under NMC §151. This is also in line with the above conclusion defining the contract between a bareboat charter and a time charter.

In the Remøy contract the charterer employs the Master and all operational and nautical

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[85] Remøy contactuact §22.2 – today an electrician and a machine operator in addition.
[86] Remøy contract §26 deducts a fixed sum pr. person pr. day.
[87] Cf. 4.1.5 above
[88] Selvig (1968) p. 27

orders are given or approved solely by the operational HQ of the Coastguard. This makes the Coastguard the reder for the purposes of NMC §151 and thus liable towards third parties, despite the fact that the owner has assumed responsibility for providing liability insurance in clause 25.1 in the contract. The next step is to explore the scope of this liability.

6.2 The scope of the reder's vicarious liability

NMC §151 establishes two prerequisites. The damage has to be made i) by fault or neglect by someone acting ii) in the service of the ship.

Prerequisite i) “by fault or neglect,” refers to the subjective responsibility, or "culpa norm", in the Norwegian legal system. This is equal to that of The Torts Act §2.1 in which the employer is responsible towards a third party if the employee has caused damage by neglect or intent. The basis for the "culpa norm" has its origin in Roman law "bonus pater familias" or "the good family man." The Anglo-American analogy is the "good and reasonable man"[89] In spite of being the origin; the concept has undergone some development in Norwegian jurisprudence. Whereas the "bonus pater familias" attempts to describe the ideal behaviour of a hypothetical reasonable man, the Norwegian interpretation is that of an expected behaviour in context of the circumstances.[90]

The "submarine judgment"[91] from 1973 is a good example of the contextual “culpa norm”. The submerged submarine "KNM Uthaug" damaged a fishing trawl while submerged. The crew had relied on their sonar to discover obstacles such as fishing trawls. Later tests and experience would reveal that the equipment had flaws, but the CO was not aware of this at the time of the accident. The judge held that submarine's crew had "...in light of the situation, acted normally and prudently, and therefore cannot be blamed for any negligence" ("...slik som de måtte se situasjonen, har opptrådt normalt og forsvarlig, og således ikke kan bebreides noen uaktsomhet")[92]

While not arising out of NMC §151, the concept was addressed again with a different outcome in LB-2011-115095 where Avinor[93] lost a lawsuit based on services provided in connection with an air crash of a Cessna 180 resulting in the death of the pilot. The pilot had

[89] Lødrup (2012) p. 130
[90] Lødrup (2012) p. 131
[91] ND 1973.348
[92] Rt. 1973.1364 p. 1369
[93] Avinor is a cooperation owned by the Ministry of transport and communication and responsible for the state owned airports and flight safety in Norway.

flown into an area with reduced visibility and without proper instrumentation and tried to make radio contact with a flight controller. The flight was made outside the controller's area of air traffic control, but the court found that "It is probable that the accident would have been avoided if communication had been established" (*Det anses dermed sannsynliggjort at ulykken ville vært unngått hvis denne kontakten var blitt opprettet*.) It was held that radio communication would have been possible if it were not for breach of internal procedures at Avinor.[94] Avinor was deemed to be liable for damages.

Prerequisite ii) In the service of the ship, refers to a combined temporal and substantive limitation. The tortious act must have been committed during employment and also in connection with the duties of the employee. This provision correlates with The Torts Act §2.1 when it comes to employment, but the NMC §151 also adds "..pilot, tug or others performing work in the service of the ship." Even when restricted to the persons expressly listed, it can be difficult to fully understand the scope of the provision. To analyse the situation, one can consider:[95]

1. The requirements for there to be a legal relationship between the reder and the servant.

2. The nature of the service provided, and

3. Particular matters relating to different categories of servants.

(1) The relationship between the reder and the servant

A the existence of a contract of employment would be the easiest way to satisfy the first requirement, but not all crew working on NoCGV Barentshav would have a contract of employment with the reder. The Coastguard employs most of the personnel, but and Remøy Management provides a personnel of five. The work does not need a contract of employment as its basis but the service must be "in the service of the ship," not in the service of the reder. In the Remøy contact, this binds both categories, both the military and the civilian employed. They are all providing a service to the ship, regardless of the employer.

The employment of the Remøy crew raises the question of "imposed" employment. Should

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[94] The accident happened in "sector Farris" and in 2002 internal documents concluded that a flight controller with responsibility in "Farris" should not have other responsibilities. At the watch in question the controller had three more sections to cover.

[95] Falkanger (2011) p. 177 and also Brækhus (1965) pp. 13-33

the charterer be liable for the action of personnel he has no opportunity to select? One example is given in ND 1906.81 where a machinist accompanied a newly built vessel to perform service on the boiler during a six-month guarantee period. The machinist made a mistake resulting the in the destruction of the boiler that he was on board to care for. The shipowner claimed damages from the yard and employer of the machinist. The court found the machinist had been acting "in the service of the ship" and thus acquitted the yard of any liability for the damage caused by their employee.[96] The pilot service is also an illustrative example. The ship has no choice is selecting the pilot, but remain liable for the pilots actions.[97] There have been numerous attempts to hold public authorities responsible for the actions of the pilot. In ND 1963.34 "Prince Charles", the pilot´s error caused grounding and loss of life, but the state was not considered responsible. In ND 1668.279 "Tweelingen" the pilot caused damage to underwater cables owned by the state. The reder was still liable. Liability on the part of the Government may, however, be held if the Pilot is not qualified. In ND 1972.93 "Stella", the state was held responsible in a 50/50 split of liability for providing personnel without proper Pilot qualification.

(2) The nature of the service provided

The fault of the employee must be connected to a particular ship and the "service provided" has to be on behalf of that ship. A reder is not liable under §151 for the actions of a seaman travelling to or from the ship, even if the trip is paid for by the reder. A person does not need to be employed on a particular ship, but the service that is carried out is to be in connection with the ship in question. If a machinist employed by Remøy on another ship, temporarily replaces someone on NoCGV Barentshav, any misconduct done in the during the work completed would be synonymous with that of the reder of Barentshav – even if the work is offered for free. There are however limits to the liability. In ND 1914.159 "Sardinia," during a New Year celebration, a first mate fired a rocket from the bridge and set fire on a nearby building. The reder was not held liable for the mate's actions as the action did not fall within the scope of the mate’s duties.[98] In NJA 1938.575 an apprentice pilot was injured when he moved an unsecured rifle on board a vessel. This was deemed to be inside the scope of

[96] See also ND 1984.122 where a 30 fot boat owner resieved help from the Harbour services to
[97] The Pilot Act §8 regulates the relation between the Master and the Pilot
[98] ND 1914.159 "Sardinia"

employment. The Norwegian Supreme Court also found a Commanding Officer on HNoMS "Trygg" to be acting within the scope of this employment when he accidentally shot a person on board the naval vessel while hunting birds (razorbills) from the top bridge.[99]

Following this reasoning it is not relevant to the Remøy contract which party has employed the crew, but whether the service provided is within the scope of the employment.

(3) Particular matters relating to different categories of servants.

The NMC §151 explicitly names the master, crew pilot and tug as entities for which the reder may be held liable. The provision also adds "others" to the list. This may include longshoremen, while the ship is in port, helpers with mooring operations and agents.[100] In the Remøy contract this could include visiting officers from other parts of the Armed Forces, officers from other nations, inspectors from the Fishery department and contracted technicians.

6.3 Other liabilities

Being de facto owners and thus the responsible subject in the legal regime may also expose the Coastguard to other liabilities. In the previous chapter, it is shown that NMC §151 and Tort act §2.1 both have prerequisites as to who is liable and also that the there has to be some tortious act. The Norwegian legal system also supports strict liability in certain circumstances. The vessel, or someone working for the vessel does not have to do anything wrong and the Coastguard still may be held liable if someone experiences a loss. The strict liability arises both through statuary and non- statuary provisions. Closely related is situations that could exempt liability.

6.3.1 Strict liability

In the late 19th century, it was recognised in the legal system that the "*culpa norm*" had some limitations. In an accident where the defendant did not commit a negligent act, the claimant was still the one who bore the loss. In the context of employment this was especially applicable. The claimant was often a worker while the defendant was the business.[101] The

[99] ND 1973.343 "Trygg"
[100] Falkanger (2010) p. 182
[101] Lødrup (2012) p.287

relevant question is: “Who is closest to bear the risks?” A few principal judgments sum up this scenario. The “Lysakerdommen”[102] case, regarding an accident at a nitro-glyserine factory causing damage to neighbours is one. The “Vannledningsdommen”[103] case, in which the multiplicity of Bergen was held liable for damage caused to a bakery due to a faulty water pipe, even when the same judgment found no negligent behaviour causing the damage, is another. In the “Styrestagdommen”[104] case, in which a van drove into a store window because of a faulty steering rod, it was held that the driver had driven too fast and had missed prescribed maintenance to the steering rod. It still ultimately held that the accident itself was caused by the technical failure by the steering rod, but the storekeeper was still awarded damages for the destruction of property and also consequential damages for the loss of income.

The NMC ch. 10 imposes strict liability on the damage from oil pollution. §183 states: "The shipowner is responsible for pollution damage irrespective of fault when caused by fuel oil." In the Remøy contract this would then make Remøy liable irrespectively of which party was regarded as the "reder." If the grounding at Andøya from chapter 5.1.4 above had resulted in a fuel oil spill that caused damage, one could be left with a somewhat ironic outcome. The Coastguard, by virtue of having nautical command of the vessel, would be responsible for the grounding. The Norwegian Coastal Administration would administer the clean-up, most likely with help from the Coastguard but Remøy, as registered shipowner, would be liable for the clean-up costs and other third party damages caused by the oil.

In the case of collisions between ships there has been no basis for the application of strict liability. The NMC cp. 8 regulates collision between ships. If fault is proven, that ship is to cover the damage.[105] If both are to blame the either the side causing the damage is responsible for the portion of blame attributable to them.[106] However if the collision was accidental or no fault can be established, the ships have to bear their own loss.[107] In a collision other than a ship there are no special regulations and the liability must be considered under normal tort rules.[108] If no fault can be found, it needs to be considered whether the "reder" can be held

[102] Rt. 1875 p. 330
[103] Rt. 1905 p. 715
[104] Rt. 1916 p. 9
[105] NMC §161 1. paragraphgraph
[106] NMC §161 2. paragraph
[107] NMC §162
[108] Falkanger (2010) p. 239

liable under the judicially created rules of strict liability. The Supreme Court has ruled in this way in two different cases. The ND 1921.401 "Neptun" and ND 1952.320 "Socrates". Both vessels had technical problems with their reverse engine and collided with a land-based installation. "Neptune" collided with a bridge and "Socrates" with a quay.

The courts have, however, not been willing to impose strict liability when the collision has been into other structures than quays, bridges etc. and the reason being other than technical. ND 1971.36, "Marna Hepsø" had a faulty reverse mechanism and collided with two moored ships. The Supreme Court found that this was to be considered an accidental collision in accordance with the old NMC §221 (current NMC §162) and the ships had to cover their own damages. ND 1971.587 "Leda" drifted into a crane in Haugesund harbour due to wind and current. The court found no negligence on the part of the ship, and no basis for strict liability, as there had been no technical failure.

In the ND 1973.348 "Uthaug,"[109] by a narrow majority (three of five) it was held that there was no negligence, but also that there was little room for strict liability: "There is little room for strict liability in maritime tort law." The minority (two) argued both negligence, but also a willingness to impose strict liablitiy: "In my opinion it would be unreasonable if they could avoid liability and let the loss rest with the victims." Another submarine of the same Kobben-klass, KNM "Kya"[110] collided with a shrimp trawler "Sommarøy." On the basis of non-statuary strict liability, the judges found it reasonable to hold the government liable, but based their ruling on the Supreme Court's judgment in ND 1973.348 and rejected non-statuary strict liability. The court did however impose strict liability on the basis of the Act relating to sea-water fisheries §65.[111]

6.3.2 Conditions that may preclude liability

Even if there is grounds for liability, there are situations where the tortfeasor may still be exempted from liability. Exercise of the duty of service, consent of the injured party and emergency situations are examples of situations were there may be reasons to exclude liability. All these conditions may have relevance to the Coastguard. The duty of service is often exemplified with the solider going into war or a fire-fighter causing damage while

[109] Cf. 6.2 above
[110] ND 1981.152
[111] Corresponds to the present Marine Resources Act §30 "Liability": "Any person that causes damage to gear set in the sea for the purpose of harvesting has a duty regardless of fault to pay compensation for det damage, including any catch lost and losses resulting from any interruption in harvesting"

attempting to put out a fire.[112] The government would not be held liable for actions of a solider in wartime. In Rt. 1946-880 "Drammenselvens Papirfabrikker" Norwegian solders destroyed a factory bridge on April the 12th 1940 when Norway was invaded by Germany. The Factory claimed the Government for the cost of repair of the bridge, but the Supreme Court denied this on the basis of military operations.[113]

If a fishing vessel has lost the use of its engine and is in need of towing assistance from the Coastguard, this would constitute a risk of both collision and damage to the equipment used in the operation. As the Coastguard never claims salvage rewards[114], the operation often requires that the vessel in need of assistance consent to the salvage attempt and the possible damage. There are limits to this type of exclusion from liability however. If the damage happened to be outside of the scope of consent, liability in tort could still arise.[115]

The law may allow another person's property to be damaged in an emergency, but this does not exempt compensation for damages. This is provided for in the Torts Act §1-4: "Tortfeasor is obligated to compensate the damage he has legally[116] caused to avert a threatening danger" ("Skadevolder plikter å erstatte skade han lovlig har voldt for å avverge truende fare"). An example of this is given in ND 1955.181. "Consul Bratt" was forced to drop anchor outside Fredrikstad. The anchor damaged a high voltage underwater cable cutting the electricity to a nearby factory. Even though there was no criminal liability in the actions of "Consul Bratt," both the owner of the cable and the factory was compensated for their losses.

[112] Lødrup (2012) p. 187
[113] The Constitution of the Kingdom of Norway §105 and The General civil penal code §24
[114] This is a general policy, but also in the Remøy contract §32 "Berging og assistanse"
[115] Lødrup (2012) p. 189
[116] The General civil penal code §47

6.4 Lability – concluding words

If a third party claims damages following an incident involving an offending ship which looks like a government vessel, has a military officer as Master and is given operational orders from the Coastguard administration, it would be strange not to hold the government responsible.

As long as the Coastguard is considered as the reder it makes no difference whose fault it is. If the Remøy-employed first mate falls asleep and navigates the ship into a quay, or if the Remøy machinist negligent destroys the propulsion of the vessels, causing the ship to collide into a fishing vessel, the Coastguard would still be liable towards the third party's loss.[117]

[117] If the Coastguard ultimately have to pay damages to a third party, depending on the nature of the accident and the interpretation of the insurance clause 25.1 (see 5.1.3 above) in the Remøy contract as well as the content of the contract between Remøy Management AS and their insurer (Gard), the Coastguard may have a basis for a recourse claim.

7 Future prospects and recommendations

Using a previous contract as a template when drafting a new agreement would, as with adopting a standard contract such as SUPPLYTIME 2005, under normal circumstances provide advantages such as familiarity, a higher degree of predictability and the potential for fewer errors. These advantages are only beneficial however when the finished contract is thoroughly reviewed and modified to fit the new facts and any existing legislation.

There is little doubt that the Remøy contract, as it exists today, includes inconsistencies and discrepancies. Even if both parties intended to write a time charter, simply using the words in the title does not automatically make it so. Within the current legislation, there are difficulties in making a time charter while the charterer employs the Master. Employing the different car transportation analogies like lease and rental mentioned in 4.2 and 4.3, the Remøy contract could be compared to the Police ordering a limousine, leaving the chauffeur on the curb, repainting the limousine as a police vehicle and then expecting the limousine company to be liable for the accidents caused by the police driving the car. The Remøy contract should be considered a bareboat charter, thus making the Norwegian government the "reder" under the NMC. First, the contract should be re-examined to find discrepancies and updated to reflect the current legislation. Second, the contract must be amended to clarify the intended roles of the parties. There are four potential solutions:

1. Make it a true time charter. The only way of getting the contract back to a time charter is to make the charterer employ the Master and give Remøy Management the nautical control over the vessel.
2. Rewrite the contract as a bareboat charter. This would mean accepting that the contract is a bareboat charter and make the clauses fit this regime. The insurance problem could be solved by adding the Coastguard as co-insured in the Hull insurance and cancelling the P&I insurance. Employment of the Remøy crew could be a separate service agreement and the Ship Safety certification could be signed by the Coastguard or FLO.
3. Buy the vessels. The only reason why the Norwegian government would need to use a time charter contract is if they did not have the resources to finance the ship themselves or could not quantify the extent of the engagement. With regard to the current situation it is fair to say that the Coastguard is one of the more prioritized branches of the Armed Forces and few would deny their importance. Is this not a

strong enough justification to take full control over the Coastguard fleet by owning and operating the vessels?

8 Conclusion

The Norwegian Coastguard has throughout their existence relied on a combination of chartered vessels from various shipowners and vessels owned by the Armed Forces. With a contract such as the Remøy contract with the Master of the ship being the Coastguard-employed Commanding officer, the Remøy contracts have crossed the line from a time charter to a bareboat charter, thus making the Coastguard the "reder" under parts of the NMC, and NMC §151 specifically. This makes the Coastguard vicariously liable to third parties for damages, but also exposed to possible liabilities arising from being the temporary owners of the vessel. There are several potential solutions that could remedy the shortcomings of the Remøy contract. Buying the vessels would go a long way in achieving the most ideal solution.

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[118] Translated Norwegian legislation <www.ub.uio.no/cgi-bin/ujur/ulov/sok.cgi>

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