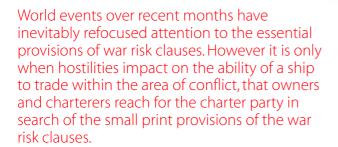
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A guide to war risk clauses

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Based on English law we set out below the main considerations that should be borne in mind and questions asked either when agreeing the provisions of a war risk clause in a new charter party, or applying the terms of the war risk clause in a current charter party to any given warlike situation.

In this guide, we examine the following:

- Definition of war
- War cancellation clauses
- Orders to a war risk area
- Who pays for addition war risk premium
- Other considerations

1 Definition of war?

What constitutes war, or warlike operation?

The leading English authority is Spinneys Case [1981 – 1 Lloyds Report 406]. In considering whether a state of war exists, the court will pay attention to the following factors:-

- Whether there is fighting or conflict between recognisable opposing sides who, have territorial, political or other identifiable objectives, and
- the scale of the conflict and its impact on local public order.

War can include civil war and organised armed rebellion. No formal declaration of war is needed.

'Warlike operations' is wider than 'war'. It may include a build-up of military



Only a few charter party forms, such as BEEPEETIME 3, BEEPEEVOY 4, CONWARTIME 93, and VOYWAR 1993 incorporate 'acts of terrorists' within the definition of war risks.

2 War Cancellation Clauses

Is there a separate cancellation clause in the charter party, and if so what are the terms of that clause?

Some charters have no cancellation provisions. In others, the clause may give an automatic right to cancel if war breaks out between any two or more of a list of named countries. For example the SHELLTIME 4 provides:

...'if war or hostilities break out between any two or more of the following countries... owners and charterers shall have the right to cancel this charter'

Alternatively, the right to cancel may apply if the flag state is involved in war. A common version of this wording is:

... 'in the event of the nation under whose flag the vessel sails becoming involved in a war, hostilities, warlike operations...both the owners and the charterers may cancel the charter...'

The option to cancel must be exercised promptly after war has broken out and will be construed strictly in the context of the charter party.

3 Orders to a war risk area

Does the war risk clause require the consent of owners if the vessel is to be ordered to a war risk area?

Some charter parties such as STBTIME, NYPE 1993 and the BALTIME form, require the consent of the owner albeit that NYPE 1993 and STBTIME state that the owners consent is not to be unreasonably withheld.

EXXONMOBIL 2000 on the other hand states that the owners can not withhold consent if war risk insurance is 'available commercially or under a

government programme. The consequence of this clause is to remove the master's discretion to abort the voyage or to ask for new orders if such insurance is available, even though the voyage becomes dangerous.

Dependent on the proposed employment of the vessel, it is worth checking how the clause deals with a situation where in the judgment of the master or owners, compliance with a loadport instruction will expose the vessel to danger from war risks.

Preferably, what the clause should deal with in a clear way are preload, postload, voyage and discharge situations. Under SHELLTIME 4 for example, the master is not required or bound to sign bills of lading for any place which in his reasonable opinion is dangerous or impossible for the vessel to enter due to war or warlike operations, and additionally if it subsequently appears impossible for the vessel to re-enter the load or discharge port, the master has the option to notify charterers, requesting an alternative place within the trading limits of the charter.

4 Additional expenses

Who pays for additional war risk premium, crew bonus payments, and other additional expenses?

Dependent on whether you are a charterer or an owner, the guestions that should be considered are:

- are charterers responsible for additional premium, crew bonuses, or other expenses for entering a war risk area at all,
- if charterers are responsible, from what time are those expenses payable (e.g. if additional war risk premiums were known about prior to the commencement of the fixture, charterers may have no responsible to pay them) and
- do charterers have any other responsibilities for additional costs, e.g. freight incurred by going to an alternative port.

Time charters often expressly allocate the cost of insurance to the owners, who have a right of recovery from the charterer of any additional insurance expenses over and above what may have been envisaged at the commencement of the charter and occasioned by entering an excluded zone. Charter parties such as NYPE, BALTIME, and SHELLTIME 4 all have such provisions.

SHELLTIME 4 however, requires that where charterers pay any additional war risk premium, owners must obtain from their war risk underwriter a waiver of any subrogated right against charterer, the intention being to relieve the charterers of liability for matters such as unsafe port claims.

Under the Chevron war risk clause, whereas charterers will pay any additional war risk premium, or crew bonus effected after the date of the charter party, charterers are not responsible for any increased premium for blocking and trapping insurance.

It is not common under voyage charters for charterers to be responsible for any additional cost or premium.

5 Other considerations

Will hire continue to run?

Under time charters, hire generally remains payable during any period while the vessel is waiting for orders or for other delays caused by 'war', unless the 'off-hire' clause has been amended to include war risk.

When will a port be unsafe due to war?

With regard to unsafe port provisions, and dependent on the wording of the charter party, the usual test applies, i.e. whether the vessel could proceed to load and proceed from the port without, in the absence of abnormal occurrence, being exposed to danger which good seamen or navigation could not avoid.

If the vessel is ordered to a potentially dangerous port nominated by charterer, owner's right to damages for the nomination of an unsafe port will not be lost, unless the owner accepts the order in exchange for additional hire or freight payments, whereupon the right to claim for damages is likely to be waived.

Can the charter party be frustrated by war?

Frustration of the charter party may occur if ports essential to performance become unapproachable by reason of war or blockade for an exceptionally lengthy period of time. In assessing whether frustration has occurred, factors such as whether or not the cargo is of a perishable nature and whether delivery is urgent in conjunction with the anticipated disruption must be taken into account.

Conclusion

There is very little standardisation between war risk clauses. Having regard to the current world climate in respect of war and terrorism, prudent owners and charterers will be paying particular attention to these clauses which may have substantial economic consequences depending on their operation and interpretation. Always remember that there is nothing to stop war risk clauses being 'tailored' to the particular needs of the parties.

