



SEMAPHORE

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BIMCO Advises on War Risks Clauses

In light of recent international conflict, BIMCO is recommending vessel owners use the latest editions of its War Risks clauses: BIMCO War Risks Clause for Voyage Chartering 2013 (VOYWAR 2013) and BIMCO War Risks Clause for Time Chartering 2013 (CONWARTIME 2013).

These clauses contain a broad definition of “war risks” that include warlike operations and hostilities that do not require a declaration of war by states.

In reaction to the Houthi threats, some vessel owners have halted passages through areas such as the Red Sea. This situation brings to light the need for owners to review their war risk clauses. They must carefully evaluate whether, and under which circumstances, they can refuse to navigate specific routes to minimise exposure to hostile acts which could jeopardise their crew and vessel.

Under VOYWAR 2013, owners have certain rights that they can exercise under specific circumstances. These rights are detailed in subclauses (b), (c) and (d).

Subclause (b) gives owners the right, before loading begins, to cancel the charter party or refuse to perform any part of it that may expose the vessel, cargo, crew, or other persons on board to war risks, based on the reasonable judgment of the master and/or owners. If, however, the contract provides for loading or discharging within a range of ports and the nominated port(s) may expose the vessel to war risks, the owners shall first ask the charterers to nominate a safe port within the range. They can only cancel the contract if the charterers do not nominate a safe port within 48 hours of receiving the request.

Subclause (c) stipulates that owners are not obligated to continue loading cargo, sign bills of lading, or proceed on any voyage or part thereof, including through any canal or waterway that may expose the vessel, cargo, crew, or other persons on board to war risks. This applies from the commencement of loading to the completion of discharge. If such an exposure should appear, the owners may request the charterers to nominate a safe port for discharge. If the charterers fail to nominate a safe port within 48 hours of receiving the request, the owners can discharge the cargo at any safe port of their choice. They are entitled to recover the extra expenses of such discharge from the charterers and, if the discharge takes place at a port other than the loading port, to receive full freight as if the cargo had been carried to the discharging port. If the extra distance exceeds 100 miles, they are entitled to additional freight proportional to the extra distance.

Under subclause (d), owners have the right to alter the route of the voyage if they reasonably judge that the vessel, its cargo, crew, or other persons onboard may be exposed to war risks at any point after the loading of cargo has begun. This applies to any part of the route, including canals and waterways, which are typically used for a voyage of the contracted nature.

If there is an alternative, albeit longer, route to the discharging port that is deemed safer, owners can decide to take this route. They are required to notify the charterers of this change. In this scenario, if the total extra distance travelled exceeds 100 miles, owners are entitled to additional freight. The additional freight will be calculated proportionally to the extra distance travelled, represented as a percentage of the original freight contracted for. This essentially means that the additional freight would be the same percentage of the contracted freight as the extra distance is to the distance of the

original, normal, and customary route. This subclause gives owners the flexibility to prioritise the safety of the vessel and its crew by altering the route while also providing for the recovery of additional costs incurred due to the longer route.

The BIMCO War Risks Clause for Time Chartering 2013, grants similar rights through subclause (b). It states that the vessel shall not be obliged to proceed to or required to continue to or through any port, place, area, waterway, or canal (“area”) if the master and/or owners in their reasonable judgement believe it could expose the vessel to war risks. This applies regardless of whether the risk existed on the day of the charterparty or if it emerged later.

If the vessel is already in an area that subsequently becomes or is likely to become dangerous, the vessel is free to leave that area. This clause allows owners to refuse charterers’ orders under certain conditions, requiring charterers to order the vessel to a safe port for either loading or discharging, depending on the situation.

Unlike VOYWAR 2013, CONWARTIME 2013 does not consider the timing of threats arising. In time charters, the charterer, who takes over the vessel operation upon delivery, bears costs and delays if owners justifiably refuse voyage orders. Under such charterparties, which include the CONWARTIME 2013 clause, charterers must employ the vessel according to the charterparty’s terms.

Considering the current volatile situation in the Southern Red Sea and the Gulf of Aden, the ongoing attacks in these regions may provide possible grounds to invoke the VOYWAR 2013 or CONWARTIME 2013 clause. However, the decision to refuse to proceed or reroute under these two clauses must stand up to legal scrutiny. Specifically, under English law, such a decision must not only be made in good faith but must also be “objectively reasonable”. The Triton Lark [2012] case reinforces this, stipulating that owners should make “all necessary enquiries” before deciding on a course of action such as refusing to proceed.

While these clauses provide a means to prioritise safety, invoking them could result in financial implications for charterers. For instance, invoking the VOYWAR 2013 clause may lead to additional freight charges. Similarly, invoking the CONWARTIME 2013 clause can result in extra hire days and increased fuel costs for time charterers. In both scenarios, it may also have a bearing on the bill of lading holders.

In practice, an owner’s possibility to refuse to proceed on a particular route under these clauses will depend on the specifics of the contract and the situational facts for the particular voyage and vessel. It is an evaluation which must be carefully made taking all aspects into account.

BIMCO concludes that the inherent complexities and risks within the maritime industry highlight the critical importance of the VOYWAR 2013 and CONWARTIME 2013 clauses. They serve as important tools for owners, enabling them to prioritise safety in hostile and warlike situations. However, all parties involved must fully comprehend the potential financial implications that may arise from invoking these clauses.

In situations of doubt, and in any case before attempting to invoke a war risk clause, it is imperative to seek legal advice and/or consult with a P&I Club.

Further information can be found [here](#).

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