ANDREW LIU & CO LTD
Units 01-04, 19-24,18th Floor
41 Heung Yip Road,Wong Chuk Hang, Hong Kong

**Circular Ref: ALCO 2023/0005**
**Date: 30 March 2023**

# Issues of Allocation of Responsibility In Marine Contracts In Times of Geopolitical Flux, Wars, Terrorism & Piracy

In increasing era of geo-political tensions and wars, there are many *listed areas* in world's oceans, where the merchant vessels are exposed to higher risks of war, piracy, terrorism and so forth. These issues have an impact on allocation of responsibility of ship owners and charterers in the context of maritime contracts including marine insurance contracts.

***Standard War clauses***

Older standard Time Charterparty form such as *NYPE 46* form does not include War Risk clause, but the newer standard forms tend to incorporate *CONWARTIME* Clause (one of the versions). However, in most cases, a rider clause is added to standard form time charterparty, as a result the BIMCO's *CONWARTIME* War Risks Clause is incorporated inside the charterparty to ensure that Owners are protected, if the Charterers were to employ the vessel in areas affected by war. CONWARTIME War Risks Clause has various versions in circulation such as 1993, 2004 or 2013 version.

According to these clause, in the reasonable judgment of the Master and/or the Owners, be exposed to "*war risks*", the merchant vessels are – (1) not obliged to proceed or required to continue to or through any port or area where it appears that the vessel, cargo or crew may, and *whether such risks existed at the time of entering into the relevant charter party or occurred thereafte*r, (2) Should the vessel be within any such port or area, which only becomes dangerous, or may become dangerous, after entry into it, the *vessel shall be at liberty to leave it*. There are suitable notice arrangements under these clauses that Ship Owners must provide to the Charterers, or the Charterers must arrange for an alternative safe port and so forth within a reasonable period of such notice. Any further discussion is beyond the scope of this small article.

Similarly, standard voyage charterparties also have similar express war risks provisions that operates on similar lines as CONWARTIME clause, however, with slight modifications that is suited to the voyage charterparty. Both the 1976 and 1994 forms of the Gencon voyage charter, a clause is provide for pursuant to which the Owners have an express right of cancellation in case the vessel is going to be exposed to war risks at the load port.

However in most charterparties, the fact is that there are usually **no** express cancellation clause is available to the Ship Owners to cancel the charterparty in the event of war risks and the Ship Owners must wait and accordingly rely on onerous doctrine of *Frustration* or suspend obligations based on the concept of *Force majeure*.

***Marine Insurance for High Risk Areas***

*The moot question is – Who decides what the areas of high risks are and what kind of additional war risk insurance to buy?*

*Joint War Committee* ("JWC") is an authoritative body in London Insurance market. It represents the interest of marine hull WAR risks underwriters in the insurance market. For example, recently, Russian and Ukrainian war has led the JWC to issue Circulars to highlight certain Ukrainian and Russian waters in Black Seas as *JWC Hull War, Piracy, Terrorism and Related Perils* ***Listed Areas***. Merchant vessel transiting through any of the listed area(s) is considered a "breach" that will prejudice their standard covers of both ship owners and charterer' operators cover that might have been fortified for war risks as well.

It is important to note that even some areas are removed in JWC notifications, there is a possibility, that insurance cover for additional risk (such as piracy risk, kidnap and ransom risks) might still be needed as the argument is removal of area from high risk by notification may embolden pirates for examples in west Indian Ocean. So the issues are not straightforward.

In such a scenario of breach or planned breach, if a vessel's business is planned in such listed areas, for example, when planning trade through listed Russian and Ukrainian waters, it is important for the stakeholders to consider buying *Additional Hull and Machinery War Risks* cover. The premium for such additional insurance will be paid for by the Charterers in most cases. For example, in all three versions of the BIMCO's CONWARTIME, the Charterers have to reimburse the Owners for buying *additional war risk insurance* when the charterers employ the vessel in the areas of higher risks and if Owners have already agree to transit such areas.

**Difference between War Risk Insurance and Additional War Risk Insurance**

War risk policy will cover damage or loss suffered by a vessel as a result of *war, civil war, revolution, rebellion, or any number of other named events* relating to war and conflict and at times extended to *piracy and sabotage and so forth*.

It is important to appreciate that War Risk cover the scenario of <u>potential risk of war that may</u> *suddenly* occur during the maritime operations.

However, war risk cover will not be activated if the losses arise due to the named event that is already underway for example in the listed areas designated as High risk areas by JWC. For that Owners must buy additional war risk insurance and works in a way to *resurrect* the war risk policy. As discussed above, the Charterers will usually reimburse the additional premium required pursuant to various rider clauses in the charterparty.

There is similar additional insurance for such areas such as *Kidnap and Ransom Insurance*, in particular for dealing with listed areas that are prone to kidnapping and ransom risks.

FDD department of ALCO's advice to Andrew Liu's clients is:

a) Please study JWC notifications carefully to consider the possibility of buying Additional War risk Insurance. If in doubt, ALCO has a war risk insurance **expert, Mr. Elvis Wang (elviswang@andrewliu.com.hk)** who specialises in this insurance only along with K& R insurance. He can be contacted anytime and he is famous for responding quickly on such matters.

b) FDD department is available to discuss on the issues of who will be responsible to pay for additional risk insurance. They are available 24 x 7 for urgent issues.

Source of Information: Andrew Liu & Co., Ltd www.andrewliu.com.hk