

E-Bulletin – January 2024

Re: WAR RISKS: THE RED SEA SITUATION

Introduction

The Club is regularly approached by clients with enquiries on matters associated with War Risks and Terrorism, and how this may impact charter parties, voyage orders and also the policy of insurance with the Club.

The on-going situation in the Red Sea demonstrates what can happen when the underlying risk(s) in a country or area changes raising concerns by Charterers on the impact this may have on their existing and future shipping contracts.

War risk cover in general provokes a lot of dialogue on the exact meaning and scope of some of the concepts and underwriting practices used in the industry. The following Q&A answers some of the most frequently asked questions.

The Red Sea and Gulf of Aden regions - The current situation

Following the start of the war in the Gaza Strip, the Houthis, an armed political and religious group which controls significant parts of Western Yemen, started firing drones and missiles towards commercial ships transiting the Bab al-Mandab Straits and Red Sea.

The Straits provide the only access to the Suez Canal at the top of the Red Sea; transit of the Canal can save a ship up to three weeks on a voyage to Europe, the Mediterranean or North America and therefore it's a strategically important waterway for both the Shipping Industry and also those industries with just in time supply chain issues.

While the Houthis claim to target ships which are Israeli owned, flagged, operated or which are heading to or from Israeli ports, the reality is that many attacks have no connections with Israel and some of the recent attacks have been focused on US interests. This has prompted some major shipping companies to stop using the Red Sea - through which almost 15% of global seaborne trade usually passes - and to use a much longer route around southern Africa instead inevitably disrupting supply chains.

Air and missile strikes conducted initially on 11 January by the US and UK on Houthi targets in Yemen would not seem to have put a stop to the attacks with reports that a US-owned and operated ship was hit by Houthi missile off Aden on 15 January with a subsequent attack on a Greek-owned bulker the day after. The Houthi threat to shipping therefore remains extant and real.

What are the JWC Limits?

What constitutes a high-risk zone under most marine Hull Insurance policies is set by the Joint War Committee (JWC), the JWC which is a committee set up by the Lloyd's Market Association

to guide Hull and War Underwriters on what represents a High Risk area from the perspective of a marine hull policy. The JWC publishes a Hull War, Strikes, Terrorism and Related Perils summary “Listed Areas summary” and makes changes by adding, amending, and deleting countries, ports or certain navigational areas and waters of high risk as and when the risk changes. This list is under constant review and was last changed on 18 December 2023 (see attachment).

Any orders to the vessel to trade into Listed Areas are called a “breach” resulting in Owners and Charterers prejudicing their standard insurance cover. Advance notice should be given to underwriters in respect of any breach so that additional insurance can be put in place. Assureds are immediately advised by way of a Club Circular every time the JWC fundamentally reviews the Listed Areas and amendments are made effective from a certain date.

In their 18 December 2023 revision, the JWC amended waters enclosed by certain boundaries along the Indian Ocean, Gulf of Aden and Southern Red Sea.

Other Maritime organisations such as BIMCO and the Combined Maritime Forces have issued warnings to avoid transiting certain high-risk areas.

What type of insurance cover is customarily arranged by Owners when breaching the JWC limits and what items/costs are passed onto the Charterers?

An Owner either being asked to trade in an excluded/listed area or having to transit such an area to perform a voyage will normally arrange for additional Hull and Machinery War Risk premiums (including Blocking and Trapping) and will also have to pay the Crew a War Bonus. The relevant charter party terms may dictate whether any or all of the above costs can be passed on to the Charterer.

The customary position is that the Owner will buy basic war risk cover and, if in the course of trading, the ship is subjected to additional exposure and the Owners’ Underwriters charge Additional Premiums, then these would be transferred to the Charterer. The Charterer should pay these Additional Premiums and also insist on getting the benefit of the cover (by being added to the policy as co-assured) so that they are also insured by the Owners Underwriters in the event of a claim. Alternatively, Owners and their underwriters should sign a waiver in favour of the Charterer.

How are these costs calculated and what can a Charterer be expected to pay?

Additional War Risk premiums vary hugely by area of risk. Some of the places or ports on the JWC listing are subject to nil additional premiums; some of the places that are deemed to be more dangerous or riskier are subject to very large additional premiums.

The war market often quotes on a 48/7 basis which means that the terms are valid for 48 hours from date of quoting only and the premium charged covers up to seven (7) days in the exposed area. Rates are quoted at a percentage of the Hull and Machinery insured value per seven (7) days exposure.

Other war related costs such as crew war risk bonus or piracy expenses such as Kidnap and Ransom insurance and security measures, should also be borne in mind if the breach is in an area where piracy activity is rife which will be the case here.

Costs can vary significantly depending on who the Owner is insured with and the events surrounding the call.

What standard charterparty clauses are available in the market dealing with War risks?

It is advisable for Charterers to incorporate one of the following clauses, as applicable:

- CONWARTIME 1993 and CONWARTIME 2004;
- BALTIME 1939 (Revised 2001);
- VOYWAR 1993 and VOYWAR 2004;

The BIMCO CONWARTIME and VOYWAR War Risks Clauses were updated by BIMCO in 2013 and the scope and effect of the changes were examined in detail by the Club in its Circular (No 002 2014). On balance, the changes introduced by BIMCO were primarily aimed at improving Owners' legal position to the detriment of the Charterer, so Assureds are advised to use the previous wordings when possible. Charterers may also consider adding additional bespoke provisions to further protect their positions.

What is my exposure to war risks under the terms of a voyage charter?

Naturally it will depend on the terms of the charter party. The Voywar 1993 clause (as opposed to Voywar 2004 and 2013) does not enable Owners to claim extra insurance costs for war and piracy risks from a voyage charterer so the use of this version is recommended.

How does the War/Terrorism cover with The Charterers Club operate?

Like most marine policies, the Charterers Club has an exclusion for "War Risks" (see Part II Clause 13, Section 14 of the 2023 Terms and Conditions). If a vessel and/or cargo is damaged due to a peril included by the war risk exclusion clause e.g. a weapon of war such as a missile or an act of war such as the inability to discharge at a named place, this would not be covered by the Club. Most policies that we issue contain a war extension under Special Terms and Conditions contained on the Certificate of Insurance which amends the war exclusion subject to the special conditions mentioned in the clause; typically, we vary the JWC Listed area summary and only include the riskiest of areas, by way of example Somalia or Libya, but each policy is different.

It is a condition of cover that the Assured must ensure that the charter party provisions relating to calls into Listed Areas permit such calls and that no specific indemnities are provided by the Assured to any other party in respect of war or terrorism perils or in respect of trading to war or warlike areas. The Assured must further ensure that the Owner of an insured vessel due to call at a Listed Area has arranged War and Terrorism cover under its respective H&M policies.

What are the liabilities associated with a deviation as a result of war risk?

As a general rule, when considering any deviation issue the Master is obliged to prosecute the voyage with due or utmost despatch and, in time charters, must follow the orders of the Charterers as to employment. These obligations are however subject to the express terms of the charter party, as well as the Master's common law rights/duties as to the safety of the vessel, her cargo and crew pursuant to the principles reached on the well-known "Hill Harmony" case regarding safety and orders of navigation. War clauses, such as the BIMCO clauses operate to alter the common law position as stated above.

Under the CONWARTIME 2013 clause Owners are placed in quite a strong position in any routing dispute with Charterers. The new sub-clause (h) which deals with Owners' rights to discharge cargo at a place other than at the contractual destination, expressly seeks to make Charterers liable for any resulting costs, risk and expenses. While a new sub-clause (i) requires Charterers to indemnify Owners against any third-party claims under bills of lading or other contracts of carriage. These changes are particularly dangerous to Charterers and expose them to significant risks which may well be outside the scope of cover provided by the Club. Similar principles will apply to the Voywar 2013 which generally widens the scope of protection afforded to an Owner mirroring the changes made to the CONWARTIME clause. Alternative, less Owner friendly, wordings can be found in the Club Circular referred to above. It is important for Assureds to consider their exposure when chartering-in on a time charter basis and chartering-out on a voyage basis, as the position regarding submission/acceptance of risk may not be back-to-back and can be materially different.

Assureds will be familiar with charter party clauses that allow for automatic termination of contracts following a declaration of war if there is an outbreak of war between Russia, China, the US, UK and Japan. With tensions remaining high and viewpoints polarised, it is worth looking at clauses to ensure that charter parties do exactly what is intended and that there should be no mechanism for inadvertent cancellation. Assureds may also need to consider the effect of any force majeure provisions contained in the charter party.

How about piracy?

After a long spell of hardly any piracy issues in the Gulf of Aden, regrettably there seems to have been a surge in attacks on commercial vessels. Assureds should therefore look carefully at their existing and future contractual provisions dealing with piracy, including the highly popular BIMCO Piracy Clauses for time and voyage charters.

What does the future hold?

The Houthis seem undeterred by recent escalation of attacks on their bases and have now threatened to attack vessels with US and UK interests, as well as Israeli. The Red Sea is a major shipping route, and we feel it is unlikely that the JWC or London Market will block its use entirely or deny cover – the example there being the Belarus/Ukraine/Russia Clause or BUR Clause that denied war risk cover to calls or interests that were linked to the Russian Special

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Military Operation in Ukraine and the Black Sea. That said, recent reports reveal that some London insurers have begun to decline to offer war risk cover at any price to US and UK merchant ships (and generally to ships where there is a US, UK or Israeli involvement), when they navigate the southern Red Sea, which is illustrative of the seriousness of the situation. It is understood that the London market is currently charging as much as 1% of the vessel's Hull value to transit the southern Red Sea.

The Houthis are believed to be backed by Iran and therefore a wider conflict in the Red Sea, Indian Ocean and Persian Gulf cannot be ruled out although many of the nations who require free passage of the area are deploying military assets to the area.

Conclusion

Tensions in the Red Sea seem to be increasing. At this moment in time there has been no sweeping reaction from the insurance market and particularly from the JWC in regard to considering adding the entire region to its Listed Areas (areas of perceived enhanced risk) which will attract extra war premiums. If there is a change and the JWC were to review the current Listed Areas, all Assureds will be immediately advised by way of a Club Circular.

It is extremely important that Assureds consider the provisions of their governing charter parties and ensure when providing orders to vessels trading to Listed (or piracy) areas that such orders are strictly given in conformity with the terms of the charter party and do not expose Assureds to additional risks. Each case will depend upon its specific facts and the nature of any applicable contract of carriage.

Assureds are invited to contact the relevant claims department in London, Dubai or Shanghai should they have any questions arising from this bulletin.

Michael Else and Company Limited, as Managers
Dated London 22 January 2024

E. & O.E.

Joint Committee Circular

Committee	Joint War
Date	18 th December 2023
Circular reference	JWLA-032
Contact	Neil Roberts neil.roberts@lmalloyds.com

JWC Listed Areas Hull War, Piracy, Terrorism and Related Perils

Added:

Guyana, but only calls to offshore installations in the Guyanese EEZ beyond territorial waters

Amended:

Indian Ocean, Gulf of Aden and Southern Red Sea

The waters enclosed by the following boundaries:

- on the northwest, by the Red Sea, south of Latitude 18°N
- on the northeast, from the Yemen border at 16°38.5'N, 53°6.5'E to high seas point 14°55'N, 53°50'E
- on the east, by a line from high seas point 14°55'N, 53°50'E to high seas point 10°48'N, 60°15'E, thence to high seas point 6°45'S, 48°45'E
- and on the southwest, by the Somalia border at 1°40'S, 41°34'E, to high seas point 6°45'S, 48°45'E

excepting coastal waters of adjoining territories up to 12 nautical miles offshore unless otherwise provided.

Eritrea

Eritrea, but only South of 18° N

Cabo Delgado

The territorial sea of Mozambique and Tanzania enclosed by the following boundaries:

- To the north, from Mnazi Bay at 10°19.6'S, 40°18.9'E to high seas point at 10° 10.3' S, 40° 34.44' E
- To the south, from Baía do Lúrio at 13°30'S, 40°31.6'E to high seas point 13° 29.97' S, 40° 49.7' E.

The application of this list on individual contracts will be a matter for specific negotiation.

This list will be published on the LMA and IUA websites and will be accessible to all on www.lmalloyds.com and www.iua.co.uk.

Neil Roberts
Secretary

JWC Listed Areas Hull War, Piracy, Terrorism and Related Perils	
Africa	
Benin	
Cabo Delgado, waters as defined overleaf	
Eritrea, but only South of 18° N	
Gulf of Guinea, waters as defined overleaf	
Libya	
Nigeria	
Somalia	
Sudan	
Togo	
Europe	
Sea of Azov and Black Sea waters plus inland waters as defined overleaf	
Indian Ocean, Gulf of Aden and Southern Red Sea	
Waters as defined overleaf	
Asia	
Pakistan	
Middle East	
Iran	
Iraq, including all Iraqi offshore oil terminals	
Israel	
Lebanon	
Oman (Musandam Governorate)	
Persian or Arabian Gulf and adjacent waters as defined overleaf	
Saudi Arabia (Gulf coast)	
Saudi Arabia (Red Sea coast) excluding transits	
Syria	
United Arab Emirates	
Yemen	
Russia	
South America	
Guyana, but only calls to offshore installations in the Guyanese EEZ beyond territorial waters	
Venezuela, including all offshore installations in the Venezuelan EEZ	

Defined Waters

Europe

- 1) **Sea of Azov and Black Sea waters enclosed by the following boundaries**
 - a) On the west, around Romanian waters, from the Ukraine-Romania border at 45° 10.858'N, 29° 45.929'E to high seas point 45° 11.235'N, 29° 51.140'E
 - b) thence to high seas point 45° 11.474'N, 29° 59.563'E and on to high seas point 45° 5.354'N, 30° 2.408'E
 - c) thence to high seas point 44° 46.625'N, 30° 58.722'E and on to high seas point 44° 44.244'N, 31° 10.497'E
 - d) thence to high seas point 44° 2.877'N, 31° 24.602'E and on to high seas point 43° 27.091'N, 31° 19.954'E
 - e) and then east to the Russia-Georgia border at 43° 23.126'N, 40° 0.599'E
- 2) **All inland waters of Ukraine, including inland waters within Crimea and other Ukrainian territories under Russian control**
- 3) **Inland waters of Russia within the following areas:**
 - a. River Don, from Sea of Azov to vertical line at 41° E
 - b. River Donets, from River Don to Ukraine border
- 4) **All inland waters of Belarus south of horizontal line at 52° 30' N**

Cabo Delgado

The territorial sea of Mozambique and Tanzania enclosed by the following boundaries:

- a) To the north, from Mnazi Bay at 10°19.6'S, 40°18.9'E to high seas point at 10° 10.3' S, 40° 34.44' E
- b) To the south, from Baía do Lúrio at 13°30'S, 40°31.6'E to high seas point 13° 29.97' S, 40° 49.7' E.

Gulf of Guinea

The waters enclosed by the following boundaries:

- a) On the west, from the coast of Togo 6° 06' 45" N, 1°12'E, south to
- b) high seas point 0° 40' S, 3° 00' E
- c) and then east to Cape Lopez Peninsula, Gabon 0°40'S, 8° 42'E.

Indian Ocean, Gulf of Aden and Southern Red Sea

The waters enclosed by the following boundaries:

- a) On the northwest, by the Red Sea, south of Latitude 18° N
- b) on the northeast, from the Yemen border at 16°38.5'N, 53°6.5'E to high seas point 14°55'N, 53°50'E
- c) on the east, by a line from high seas point 14°55'N, 53°50'E to high seas point 10°48'N, 60°15'E, thence to high seas point 6°45'S, 48°45'E
- d) and on the southwest, by the Somalia border at 1°40'S, 41°34'E, to high seas point 6°45'S, 48°45'E

excepting coastal waters of adjoining territories up to 12 nautical miles offshore unless otherwise provided.

Persian or Arabian Gulf

Persian or Arabian Gulf and adjacent waters including the Gulf of Oman and waters west of the line from Oman's territorial limit off Cape al-Hadd at 22°42.5'N, 59°54.5'E northeast to the Iran-Pakistan border at 25°10.5'N, 61°37.5'E

excepting coastal waters of adjoining territories up to 12 nautical miles offshore unless otherwise provided.

Definitions:

Named Countries shall include their coastal waters up to 12 nautical miles offshore, unless specifically varied above.

Named Ports shall include all facilities/terminals within areas controlled by the relevant port authority/ies (or as may be more precisely defined by Insurers) including offshore terminals/facilities, and all waters within 12 nautical miles of such but not exceeding 12 nautical miles offshore unless specifically stated.