



The Impact of the Red Sea Attacks on Charterparties

Amidst the current situation in the Red Sea region, shipping lines and some of the world's big names (such as QatarEnergy and Shell) have taken steps to halt voyages into or through the area affected. Alternative routes, such as the journey around the south of Africa (Cape of Good Hope), had to be considered.

Time and costs are not the only two factors affected by rerouting; the owners and the charterers also need to consider the environmental implications resulting from higher fuel consumption.

- According to maritime research specialist Drewry, the total round voyage cost could increase by 21% if carriers increase speed to meet the delivery dates in the charterparties.
- It has further been reported by container trading platform ContainerxChange that the container leasing rates on the China-US trade route have risen by 223% since the outbreak of the Red Sea crisis.

So, what rights and liabilities do shipowners have in war-affected areas? Who should bear the consequences if the route agreed in the charterparty can no longer be taken? Who could be held liable if the vessels deteriorate whilst transiting through areas of conflict? What kind of claims could a party face when things do not go according to plan?

Generally speaking, the shipowners' rights and obligations under a charterparty are a matter of construction of contractual terms within the factual matrix on a case-by-case basis.

Common contractual framework

Voyage charterparty

- Route – the charterparty may set out the route the vessel is obliged to take during its voyage, and in the absence of this stipulation, an “usual”, “reasonable”, or “customary” route must be used. Any deviation will need to be supported by evidence.

- Despatch – the owners often have the duty under the charterparty to prosecute the voyage with the utmost despatch, i.e. to perform the voyages at the shortest and quickest route and full speed.

Time charterparty

- Route – the master is obliged to comply with the charterers' employment orders as to the routes to be taken on the voyages, and any deviation should be justified.
- Despatch – the master is obliged to perform the voyages with reasonable and due despatch.

Additional contractual clauses

War Risks Clauses and War Cancellation Clauses

BIMCO war risks clause – VOYWAR 2013 and CONWARTIME 2013 – are examples of clauses in which owners are given the right to refuse a charterer's order to enter or stay within a specific area due to war risks.

The Court in *The Triton Lark* confirmed that the exercise of this right must be based on the reasonable judgement and assessment of the master or the owner. It is for the owners to evidence that danger is more likely than not to occur after making all necessary enquiries.

It is, therefore, essential, before exercising their rights, for the owners to make all enquiries necessary to assess the risk of exposure. For example, making voyage-specific risk assessments and considering whether additional safety measures can be implemented to offset the risk.

Liberty and Deviation Clause

BIMCO's liberty and deviation clause provides that the vessel has the liberty to deviate for the safety of the crew, cargo and vessel and any other "reasonable purposes". This clause has also excluded the owners from liability for any loss or damage arising from the deviation.

The parties may consider using a bespoke clause to specify the circumstances in which the vessel is entitled to deviate.

Clause Paramount

The parties may consider whether the charterparty should incorporate the Hague or Hague-Visby Rules within its clause paramount. Article IV(4) of the Rules provides a defence for the carrier in the event of a reasonable deviation for safety. The deviation will not be deemed a breach of the charterparty, and the carrier will not be held liable for any loss or damage arising from it.

Cancellation Clause

The charterparties may contain an express clause permitting the termination of the charter if the performance of the voyages may expose the vessel, crew or cargo to risks. VOYWAR 2013 provides the owners with the right to give notice of cancellation or refusal to perform certain parts of the voyage due to risks.

Other considerations

- **Date of the charterparty** – if the contract was entered into after the outbreak of the conflicts with the knowledge of the associated risks, the owners might be taken as to have accepted the risks in the particular voyages the vessel will be employed for and waived their right of refusal.
 - In the recent case of *The Polar*, the Supreme Court held that the owners would have to rely on a qualitative change in the nature of the risk from those at the start of the charter when exercising their liberty to deviate under the War Risks clause, if the charterparty contains an express obligation to proceed via a particular route.
- **Charterers' remedies** – if the deviation cannot be justified, the charterers may be able to recover damages for losses caused by such a breach and the vessel may be deemed as to be off-hire if there is an off-hire provision in the charterparty.
- **Owners' remedies** – if the vessel does proceed through an area exposed to war risks and suffers damages, the charterers may be obliged to reimburse the owners any additional premiums required by their insurers and there are other potential remedies for owners (for example, implied indemnity under NYPE Form).

Key takeaways

- The safety of the vessel and her crew is paramount!
- The owners should consider conducting voyage-specific risk assessments, and collating evidence before making an informed, objectively reasonable decision as to whether to approach and/or remain in the port.
- The parties should consider whether additional clauses, model or bespoke, should be incorporated into the charterparties to avoid future disputes in the event of unforeseeable conflicts.

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