

## English Law Charterparty issues relating to potential hostilities between the Ukraine and Russia

*By admin On March 2, 2022 In Cargo, Insurance Marine News, Keep, Legal, Marine Hull, Marine Liability*

Skuld has published an updated FAQ list relating to potential hostilities between the Ukraine and Russia. The Norway-based marine insurer emphasized that this was not specific advice, noting that each case turned on its own specific facts. In the event that an actuals matters arises, members and assureds should immediately contact the club for further guidance.

Glenn Winter of London Solicitors Winter Scott was thanked for his assistance in the formation of and comment on these FAQs.

### *1. Are Owners currently entitled to refuse to follow orders to proceed to or remain in a Ukrainian port?*

In view of the outbreak of hostilities on a number of fronts, it is now likely that most Owners/Disponent Owners will be entitled to rely on war risk clauses in their Charterparties to avoid proceeding to or remaining in Ukrainian ports. However, Owners/Disponent Owners should check their Charterparties carefully as cases may be contract-specific. In addition, the position needs to be carefully considered at the time a particular decision is taken. It should also be emphasised that the situation is very fluid and should be continually kept under close review.

### *2. Are ports in the Ukraine (at present) legally unsafe?*

Some ports (such as Mariupol and Odessa) could now be unsafe as they have may have actually been attacked. It is arguable that, at this point in time, Ukrainian ports are generally unsafe but the situation should be monitored and may change (if, for example, hostilities cease).

If ports are unsafe then Owners/Disponent Owners would be entitled to refuse to proceed or remain at such ports and, under time charters, would

generally be entitled to ask for alternative orders. The position under voyage charters is more complicated and, depending on the particular charter terms and circumstances, Charterers may have an obligation to nominate a different (safe) port, Owners may be entitled to proceed to a different (safe) port, Owners may be obliged to wait (at a safe place), or the Charterparty may be frustrated.

### *3. What about Russian Ports?*

It is potentially arguable that Owners may be entitled to refuse to proceed to Russian ports in the Sea of Azov under standard war risk clauses but this is likely to depend upon the clauses and how matters develop.

It is also potentially arguable that Owners of Ukrainian flagged vessels may be entitled to refuse to proceed to a Russian port on the basis that there may be a risk of seizure.

### *4. How will sanctions affect Charterparties?*

If sanctions are imposed in such a way as to make performance of a Charterparty illegal, the Charterparty would probably be treated as if it were frustrated (by supervening illegality), unless there is a sanctions clause such as the BIMCO Sanctions Clause for Time Charter Parties 2020 or BIMCO Sanctions Clause for Voyage Charter Parties 2020 (in which event Owners may be in breach if they or other vessel's interests become sanctioned and Charterers may be in breach if they, Sub-Charterers, Shippers, Receivers or Cargo Interests become sanctioned).

Some sanctions have already been introduced but further sanctions are expected with the EU quoted as stating that it is preparing a "massive package of sanctions" and the UK confirming that severe sanctions will be announced in waves in the coming days. Therefore the position should be kept under close review.

### *5. What if vessels become trapped in the Sea of Azov?*

The Charterparty would become frustrated if the delay and prospective delay are so lengthy as to radically change the nature of the contract, unless either party was in breach (which would be the case if Charterers, for example, were in breach of their safe port obligations). In the absence of a breach or a frustrating event, loss will generally lie where it falls so that Charterers would be obliged to pay hire under a Time Charterparty, but Owners would not be entitled to recover the costs of detention under a Voyage Charterparty.

*6. What if vessels are unable to enter the Sea of Azov due to Russian restrictions?*

A Time Charterparty would continue, with Charterers being entitled to trade the vessel elsewhere. A Voyage Charterparty may be frustrated if the delay and prospective delay involved in proceeding to a nominated port in the Sea of Azov are so lengthy as to radically change the nature of the contract. The latest intelligence indicates that there are restrictions affecting the Sea of Azov and some areas of the Black Sea which may cause disruption. However, the extent of these restrictions is currently unclear so the position should urgently be kept under review.

*7. What is the insurance position in respect of liabilities, costs or expenses caused by war?*

War risk liabilities, costs or expenses are generally excluded under standard P&I Cover. However, the IG has arranged an excess War policy for all mutual members. It applies excess of the value of the vessel or \$500m, whichever is the less, and it has a cover limit of \$500m.

*8. What should Owners and Charterers take into account before entering into a new Charterparty?*

If Owners do not wish to trade to the Ukraine or Sea of Azov during the charter period, these places should be expressly excluded from permitted trading areas.

Owners should also ensure that the Charterparties contain favourable war risks and sanctions clauses.

Conversely, if (in a long-term charter) Charterers wish the vessel to trade to the Ukraine or Sea of Azov in the future, they should insert a clear clause entitling them to do so.

If (due to their particular trading requirements), Charterers are concerned about potential war risks or sanctions adversely affecting their position, they should not agree to standard (pro-owner) clauses but insert clauses protecting their interests (for example, permitting them to terminate in appropriate circumstances).

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