

CONFLICT

A case study

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CASE STUDY

1. The tanker, MT Decision Time was fixed on a time charter with worldwide trading To Take a Chance Ltd under a standard Shelltime 4 charterparty.
2. The charter provided that trading to ports within the Persian Gulf was "always allowed, subject to the terms and conditions of the Charterparty".
3. The charterer was under an obligation under the charter to reimburse the owner for any additional war risk premium for which they became liable as a result of proceeding to or through War Risk places or areas as designated by Lloyds of London.
4. The charterparty, by way of an additional clause incorporated Conwartime 2013 and the BIMCO Piracy Clause for Time Charters 2013.
5. At the time of delivery into the time charter the ship was at Kandla, India, having discharged an oil cargo there. The charterer ordered the ship to load a cargo of oil at Mina Al Ahmadi, Kuwait, with the intention of discharging it in its entirety at Shanghai, PRC.
6. At the time of the conclusion of the charterparty and at the time the charterer's orders were given:
 - 6.1 As a consequence of rising tension between Iran and Iraq, the US government had withdrawn its military forces from Iraq.
 - 6.2 Iraqi nationalist political unrest had resulted in anti-Iranian protests, there had been instances of Iranian paramilitaries fighting Iraqi nationalist militia and there had been assassinations of religious and political leaders.
 - 6.3 Iran had threatened to switch off electricity and gas supplies to Iraq unless the government in Iraq agreed to stop its militia attacks on Iranian backed paramilitaries.

CASE STUDY

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7. Conflict had subsequently ensued between Iran and Iraq (as a consequence of which the Persian Gulf had become an additional War Risk area).
8. There then followed a declaration of war, and there had been attacks on several ships by Iranian sponsored rebels at the entry point to the Persian Gulf though those attacks had for the most part been directed at ships which it was believed by the rebels were bound for ports in Iraq.
9. However, one ship apparently bound to a port in Kuwait had been threatened with seizure by an approaching fast offshore ship with rebels on board.
10. The oil terminal at Kharg Island had been the subject of attacks by the Iraqi air force though no ships had been specifically attacked whilst alongside any berth there.
11. One tanker had however, been attacked and damaged whilst on route to Kharg Island some 60 nautical miles from the port.
12. Iran had further threatened to attack targets in Kuwait because of Kuwait's financial support for Iraq in their conflict with Iran.
13. The owner considered whether it was prepared to load the cargo at Mina Al Ahmadi given the situation in the Persian Gulf, the events at Kharg Island and the Iranian government's threats to target Kuwaiti ports but agreed to do so, but without prejudice to its right to refuse to proceed through the Persian Gulf.

14. The ship proceeded to Mina Al Ahmadi, and loaded. The ship then proceeded through the Persian Gulf.
15. By that time the US and UK governments had put in place a convoysystem (akin to that used in the Gulf of Aden to counter piracy) for the protection of ships entering and leaving the Persian Gulf.
16. However, there had been one further incident of a rebel attack at the entry point to the Persian Gulf on a ship apparently having previously loaded in Iraq, and threats that ships in that area remained the target for attacks.
17. The conflict between Iran and Iraq had intensified with further attacks on Kharg Island by the Iraqi air force, attacks on ports in Iraq by the Iranian air force, and amphibious troop movements within the Persian Gulf.
18. Having taken advice the owner agreed to proceed through the Persian Gulf. The ship discharged her cargo at Shanghai.

VARIOUS ISSUES ARISE FOR DISCUSSION

- Given that the conflict referred to had commenced at the time of the conclusion of the charterparty to the knowledge of the owner, had the owner unequivocally accepted to undertake the voyage notwithstanding the dangers to which the ship might be exposed?
- As trading to ports in the Persian Gulf was always allowed, had the owner unconditionally agreed to go there?
- Could the owner have refused to proceed through the Persian Gulf and/or to load the cargo in Mina Al Ahmadi, given its knowledge of the Iran/Iraq war and the events at the entry point to the Persian Gulf and at Kharg Island?
- Having loaded the cargo, could the owner have refused to proceed through and exit the Persian Gulf on the basis of the further attack by rebels, the threats of more possible attacks and the intensification of the conflict between Iran and Iraq?
- What information might the owner seek, and when, in order to assist them in deciding whether to load the cargo and thereafter proceed with the intended voyage, and at what time did those decisions need to be taken?

APPENDIX 1

BIMCO War Risks Clause for Time Chartering 2013 (CONWARTIME 2013)

(a) For the purpose of this Clause, the words:

(i) “Owners” shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and

(ii) “War Risks” shall include any actual, threatened or reported:

war, act of war, civil war or hostilities; revolution; rebellion; civil commotion; warlike operations; laying of mines; acts of piracy and/or violent robbery and/or capture/seizure (hereinafter “Piracy”); acts of terrorists; acts of hostility or malicious damage; blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the government of any state or territory whether recognised or not, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or may become dangerous to the Vessel, cargo, crew or other persons on board the Vessel.

(b) The Vessel shall not be obliged to proceed or required to continue to or through, any port, place, area or zone, or any waterway or canal (hereinafter “Area”), where it appears that the Vessel, cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be exposed to War Risks whether such risk existed at the time of entering into this Charter Party or occurred thereafter. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or may become dangerous, after entry into it, the Vessel shall be at liberty to leave it.

APPENDIX 1

CONTINUED

(c) The Vessel shall not be required to load contraband cargo, or to pass through any blockade as set out in Sub-clause (a), or to proceed to an Area where it may be subject to search and/or confiscation by a belligerent.

(d) If the Vessel proceeds to or through an Area exposed to War Risks, the Charterers shall reimburse to the Owners any additional premiums required by the Owners' insurers and the costs of any additional insurances that the Owners reasonably require in connection with War Risks.

(e) All payments arising under Sub-clause (d) shall be settled within fifteen (15) days of receipt of Owners' supported invoices or on redelivery, whichever occurs first.

(f) If the Owners become liable under the terms of employment to pay to the crew any bonus or additional wages in respect of sailing into an Area which is dangerous in the manner defined by the said terms, then the actual bonus or additional wages paid shall be reimbursed to the Owners by the Charterers at the same time as the next payment of hire is due, or upon redelivery, whichever occurs first.

(g) The Vessel shall have liberty:

(i) to comply with all orders, directions, recommendations or advice as to departure, arrival, routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the government of the nation under whose flag the Vessel sails, or other government to whose laws the Owners are subject, or any other government of any state or territory whether recognised or not, body or group whatsoever acting with the power to compel compliance with their orders or directions;

(ii) to comply with the requirements of the Owners' insurers under the terms of the Vessel's insurance(s);

(iii) to comply with the terms of any resolution of the Security Council of the United Nations, the effective orders of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;

(iv) to discharge at any alternative port any cargo or part thereof which may expose the Vessel to being held liable as a contraband carrier;

(v) to call at any alternative port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment, detention or similar measures.

(h) If in accordance with their rights under the foregoing provisions of this Clause, the Owners shall refuse to proceed to the loading or discharging ports, or any one or more of them, they shall immediately inform the Charterers. No cargo shall be discharged at any alternative port without first giving the Charterers notice of the Owners' intention to do so and requesting them to nominate a safe port for such discharge. Failing such nomination by the Charterers within 48 hours of the receipt of such notice and request, the Owners may discharge the cargo at any safe port of their own choice. All costs, risk and expenses for the alternative discharge shall be for the Charterers' account.

(i) The Charterers shall indemnify the Owners for claims arising out of the Vessel proceeding in accordance with any of the provisions of Sub-clauses (b) to (h) which are made under any bills of lading, waybills or other documents evidencing contracts of carriage.

(j) When acting in accordance with any of the provisions of Sub-clauses (b) to (h) of this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfilment of this Charter Party.

APPENDIX 2

Clause 35, SHELLTIME 4

War Risks 35.

(a) The master shall not be required or bound to sign Bills of Lading for any place which in his or the Owners' reasonable opinion is dangerous or impossible for the vessel to enter or reach owing to any blockade, war, hostilities, warlike operations, civil war, civil commotions or revolutions.

(b) If in the reasonable opinion of the master or Owners it becomes, for any of the reasons set out in Clause 35(a) or by the operation of international law, dangerous, impossible or prohibited for the vessel to reach or enter, or to load or discharge cargo at, any place to which the vessel has been ordered pursuant to this charter (a "place of peril"), then Charterers or their agents shall be immediately notified in writing or by radio messages, and Charterers shall thereupon have the right to order the cargo, or such part of it as may be affected, to be loaded or discharged, as the case may be, at any other place within the trading limits of this charter (provided such other place is not itself a place of peril).

If any place of discharge is or becomes a place of peril, and no orders have been received from Charterers or their agents within 48 hours after dispatch of such messages, then Owners shall be at liberty to discharge the cargo or such part of it as may be affected at any place which they or the master may in their or his discretion select within the trading limits of this charter and such discharge shall be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo so discharged is concerned.

(c) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any other wise whatsoever given by the government of the state under whose flag the vessel sails or any other government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or local authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations.

If by reason of or in compliance with any such directions or recommendations anything is done or is not done, such shall not be deemed a deviation. If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to any place of discharge to which she has been ordered pursuant to this charter, the vessel may proceed to any place which the master or Owners in his or their discretion select and there discharge the cargo or such part of it as may be affected. Such discharge shall be deemed to be due fulfilment of Owners' obligations under this charter so far as cargo so discharged is concerned. Charterers shall procure that all Bills of Lading issued under this charter shall contain the Chamber of Shipping War Risks Clause 1952.

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