Re: WAR RISKS: THE NORTH KOREA SITUATION

By Gavin Ritchie and Carlos Vazquez

Introduction

The Club is regularly asked questions by Assureds on issues relating to War and Terrorism and how this impacts charterparties, voyage orders and also their policy of insurance with the Club.

The on-going issues in North Korea has also provided a useful demonstration of what happens when the underlying risk in a country or area increases raising concerns by Assureds on the impact this will have in their existing and future contracts with ships trading in areas that are or might be considered to be subject to an enhanced risk.

War cover in general has provoked a lot of dialogue between the Club and Assureds on the exact meaning and scope of some of the concepts and underwriting practices used in the shipping and insurance industries.

This e-bulletin seeks to clarify some of the most frequent questions that are posed to the Club on this rather “hot” topic.

North Korea - The current situation – Sanctions and other Issues

North Korea says its firing of a missile over Japan was "the first step" of military operations in the Pacific, signalling plans for more launches. The UN Security Council has unanimously condemned North Korea for its actions called the launch "outrageous", demanding North Korea cease all missile testing. While the UN statement said the regime's actions were a threat to all UN member states, it did not threaten new sanctions against Pyongyang beyond those announced on 5 August 2017 targeting key elements of North Korea’s economy, prohibiting North Korea’s exports of strategic commodities, its participation in joint ventures with foreign persons and expanding the scope of asset freezes and travel bans.

Many clients have asked what would happen if the situation escalates and military action is contemplated.

What are the JWC Limits?

As Assureds are aware, what constitutes a high-risk zone under most Hull Insurance policies is set by the Joint War Committee (“JWC”). Located in London, the JWC represents the interests of those underwriting war risks in the London Insurance market. From time to time the JWC will review the Hull War, Strikes, Terrorism and Related Perils “Listed Areas” making changes by adding or amending (or deleting) countries, ports or certain navigational areas and waters of high risk. This list is under constant review and was last changed in December.
2015 when the number of Listed Areas actually contracted as the worldwide risks were perceived to have reduced. At their last meeting of June 2017, no changes were introduced by the JWC but they meet monthly and would react quickly if the risk in the region escalates.

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 reviews the Listed Areas and amendments are made effective from a certain date.

Is a War Zone likely?

The North Korean regime are launching missiles into the Pacific Ocean with an alarming frequency. In the extremely unlikely event that one of these hits a commercial vessel that is not trading in a war or war like area (and this is currently extremely limited in that region) then the claim for damage should sit with the owners of the respective interests under the hull or cargo policy. Of more concern, would be an abortive launch that resulted in a landing in a neighbouring country and the risk of escalation at an already tense time.

If the risk of military action or conflict increases to a level where the JWC feels that additional premiums are appropriate, then the Hull War, Strikes, Terrorism and Related Perils “Listed Areas” will be amended by the JWC and seven (7) days-notice will be provided under War policies; at the expiry of the seven (7) days then War cover is reinstated with the amended listing in force.

The JWC are naturally reluctant to list major Western economies and the Korean peninsula is both a major economy and strategically close to China, Japan and Taiwan. We therefore consider that the risk would have to change dramatically for an amendment in the listed area to be considered.

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 being asked to trade in an excluded/listed area will normally arrange for Additional Hull and Machinery War Risk premiums (including Blocking and Trapping) and Crew War Bonus. The charter party terms will dictate whether any or all of the above costs can be passed down 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 she is subjected to additional exposure and the Owners’ Underwriters charge Additional Premiums, then these would be passed down 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 agree 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 territory. 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 and also piracy related costs including 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.

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

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

Charterers should look out for the following clauses:

- 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.

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

Naturally it will depend on the terms of the charter. A 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”. If a vessel or cargo is damaged due to a peril named in the war risk exclusion clause (see Clause 13 Section 14 of the of the 2017 Terms and Conditions) 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. Cover however can be arranged against an additional premium which is customarily an
amount equivalent to 20% of the amount that the Owner would be charged. To arrange war cover for a specific breach then you should contact the Club’s underwriting team in London ahead of the breach.

It is a condition of cover that the Assured must ensure that the charterparty 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 insure 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 utmost despatch and must follow the orders of the Charterers as to employment. This obligation however is not absolute and is subject to the express terms of the Charterparty 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 and 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 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 risk 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 charges 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 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.

In addition, Assureds will be familiar with charter party clauses that allow for automatic termination of contracts following 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.

Conclusion

While tensions in the Asia Pacific region seem to be increasing, at this moment in time there has been no reaction from the insurance market and particularly from the JWC in terms of
considering any additional 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 of the changes.

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 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 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 11 September 2017