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Indian Exporter's woes because of the war

Maritime law issues in light of Russian-Ukrainian War

Dr. (Capt.) Vivek Jain , Director (Marine Services) in Singapore, Barrister (England &Wales), Master Mariner, Arbitrator, Former Associate Professor in England, PhD (Int. Law)(China), LLB (Lon), LLM (Maritime Law)(Lon), MBA (Norway).



Dr. (Capt.) Vivek Jain

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For both Owners and Charterers and other stakehold other stakeholders, there are many maritime law issues such as issues of -(a) unsafe port, (b) War risks insurance, (c) sanctions, (d) banking issues, (e) hire payment for detention, (f) Force Majeure and/or Frustration of Contract and so forth.

First, many ports in Ukraine, and Russia and in the future, a few more ports in countries around it could become an unsafe port. If the Charterers, pursuant to the time charter party orders the vessel to proceed to these ports, then the Owners are entitled to refuse the orders. The Charterers will be under an obligation to nominate another port pursuant to secondary obligations pursuant to the charterparty. However, the same issue is difficult in voyage charter parties, and Owners may wait at the safe places and let the charterparty to be frustrated and/or there may be terms in the charterparty that may affect the issues in it. However, the facts surrounding the political risk that can raise the issue of unsafe port may change from day to day in any war kind situation.

Secondly, what will be issues of any damage to hull or injury to the crew in case and how war risk insurance will operate in that scenario? Again, the issues are not clear-cut and will largely depend on the facts surrounding the damage to hull and/or injury to the crew. Standard P and I cover is not applicable in such cases, but additional cover is usually taken by the Owners.

Thirdly, there are sanctions imposed on Russia by the EU, US Government and UK; however, there are exceptions, such as trade in agricultural commodities, petroleum and coal,etc., The details about sanctions can be retrieved at the following websites:

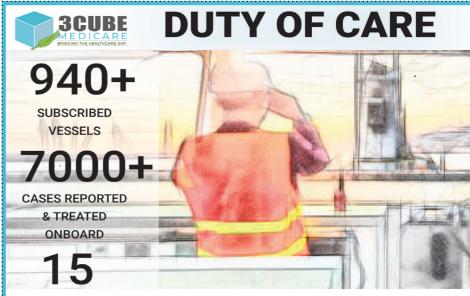
- https://home.treasury.gov/ policy-issues/financial-sanctions/ sanctions-programs-and-countryinformation/ukraine-russiarelated-sanctions
- https://www.gov.uk/search/all?k eywords=russian+sanctions&ord er=relevance
- https://www.consilium.europa. eu/en/policies/sanctions/ restrictive-measures-ukrainecrisis/ ions

In relation to the charterparty issues arising due to sanctions, it must be noted that these sanctions are applicable majorly in the US, EU and UK companies and individual, but scenario is changing rapidly everyday. The parties should look for BIMCO Sanctions Clause for Time Charter Parties 2020 or **BIMCO Sanctions Clause for Voyage** Charter Parties 2020. According to the above clauses, the owners/disponents/ charterers can be the party breaching the sanctions clause.

Fourthly, there could be banking issues, as owners' or charterers' bank

could be sanctioned and then the party must make alternate arrangements. In my view, bank may take time to process payments to rule out inadvertently breaching sanctions. On a broader level, if sanctions were to make the contract of affreightment illegal, then there is a possibility of bringing in the legal concept of 'frustration of contract'. I have heard there would be issues with 'SWIFT'. How the clubs will handle the issues in Russian ports would also be another issue arising from issues of banking?

Fifthly, in time charterparty, any delay would fall on the charterers, but in the voyage charterparty, the Owners in such a scenario are not likely to claim detention. However, this is subject to clauses of the charterparties. An excessive delay may bring in the concept of frustration of contract. Parties should also note carefully a continental legal concept of Force majeure, if that is applicable in the governing charterparty.



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