

Comparative Essay about War Risks and Strikes

By Shen Meilin & Zhao Fangxin

War Risks:

Earlier Developments

In England, the SG Policy did provide for war risks. Then, it could be excluded by the FC and S clause. Thanks for The Old Institute War Clauses (Cargo), the assured would have the benefit of an insurance cover for both war risks and maritime perils. The 1982 Institute War Clauses (Cargo) swept away the need for separate covers for war risks not excluded by FC and S Clause and the SG cover with the FC and S Clause for maritime perils and non-war risks.

However, under the China Maritime Code, there is no explicit provision of the war risks. The risks covered depend on the agreements. Under the Ocean Marine Cargo War Risks Clause of PICC and the PICC Hull War Risk, the war risks is a special additional risk which can be attached to the basic risks.

Independence

In China, the war risks are under the PICC insurance clauses which must be insured in addition to other insurance cover. In England, it can be insured independently.

The Risks Covered by the 1982 Institute War Clauses (Cargo)

The perils insured and the exclusions delimit the risks covered.

(1) The Perils Insured:

“1. This insurance covers, except as provided in Clauses 3 and 4 below, loss of or damage to the subject-matter insured caused by: 1.1 war, civil war, revolution, rebellion, insurrection, or civil strife arising there from, or any hostile act by or against a belligerent power; 1.2 capture, seizure, arrest, restraint or detainment, arising from risks covered under 1.1 above, and the consequences thereof or any attempt thereat; 1.3 derelict mines torpedoes bombs or other derelict weapons of war. 2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these clauses.”

The above provisions have three points worth attention: First, this insurance covers general average and salvage charges. But the claims for costs such as the renewal freight are not included. Further, capture, seizure, arrest or detainment in clause 1.2 must be read as subject to clause 1.1. This clearly implies that for a loss or damage to take place under clause 1.2, it must be due to either a war or a civil war. It must be a direct result of an act of government. Detainment of cargo as a consequence of labour disturbances, riots or civil commotions are excluded. Last, for a successful recovery under clause 1.3, it must occur during war time. If there is damage to a cargo vessel due to contact with an abandoned mine during a regular naval exercise, the war risks' underwriter may not be responsible.

(2) Exclusions

“3. In no case shall this insurance cover General: 3.1 loss damage or expense attributable to wilful misconduct of the Assured; 3.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured; 3.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 3.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants); 3.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured; 3.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above); 3.6 loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel; 3.7 any claim based upon loss of or frustration of the voyage or adventure; 3.8 loss damage or expense arising from any hostile use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

4. 4.1 In no case shall this insurance cover loss damage or expense arising from unseaworthiness of vessel or craft, and unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured, where the Assured or their servants are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein; 4.2 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination, unless the Assured or their servants are privy to such unseaworthiness or unfitness.”

The exclusion clause 3.1 to 3.6 and 4.1 to 4.2 are identical to that of the Institute Cargo Clause. 3.7 is the “frustration clause”, which means the insurance covers the loss of goods itself rather than the complete of the voyage. 3.8 excludes the loss damage or expense arising from any hostile use of any weapon of war employing nuclear. But if it is not a hostile use, such as the loss damage or expense of an innocent third party or nuclear test, the insurer may also be responsible.

The Risks Covered by the Ocean Marine Cargo War Risks Clause of PICC

“ I. Scope of Cover

This insurance covers: 1. Loss of or damage to the insured goods caused directly by or consequence upon war, warlike operations, hostile acts, armed conflicts or piracy; 2. Loss or damage caused by capture, seizure, arrest, restraint or detainment arising from the events in Section I. 1 above. 3. Loss or damage caused by conventional weapons of war including mines, torpedoes and bombs. 4. Sacrifice in and contribution to General Average and Salvage Charges arising from the risks covered hereunder.

II. Exclusions

This insurance does not cover: 1. Loss, damage or expenses arising from any hostile use of atomic or nuclear weapons of war. 2. Any claim based upon loss of or frustration of the insured voyage caused by arrest, restraint or detainment by any executive authorities, authorities in power or any other armed groups. ”

Maritime Code of the People's Republic of China

Article 243: “ Unless otherwise agreed in the insurance contract, the insurer shall not

be liable for the loss of or damage to the insured cargo arising from any of the following causes: (1) Delay in the voyage or in the delivery of cargo or change of market price; (2) Fair wear and tear, inherent vice or nature of the cargo; (3) Improper packing.” Thus, under Chinese law, this article is applied to the covers unless otherwise agreed in the insurance contract.

Piracy

“This insurance covers: 1. Loss of or damage to the insured goods caused directly by or consequence upon war, warlike operations, hostile acts, armed conflicts or piracy;.....” Thus, piracy is one of the risks covered. However, in England a loss or damage as a consequence of piracy is covered by the Institute Cargo Clauses (A) instead of under the 1982 Institute War Clauses (Cargo).

The Risks Covered by the PICC Hull War Risks

“ I Scope of cover

This Insurance covers loss of or damage to or collision Liability of or expense arising from general average or sue and labour of the insured vessel caused by: 1. War, civil war, revolution, rebellion or civil Strife arising therefrom, or any hostile act; 2. Capture, seizure, arrest, detainment, confiscation or blockade, but such claim shall be dealt with only on expiry of six months from the day when such events arise; 3. Any weapons of war including mines, torpedoes or bombs; 4.Strikes, lock-outs or other similar events; 5. Civil commotions, riots or other similar events; 6. Any person acting maliciously from a political motive.

II Exclusions

This insurance does not cover loss, damage, liability or expense arising from: 1. Atomic or hydrogen bombe or nuclear weapons of war; 2. Capture, seizure, and, detainment or confiscation by or under the order of the government or local authority of the country in which the vessel is owned or registered; 3. Requisition or pre-emption; 4. The outbreak of war (whether there be a declaration of war or not) between any countries which are permanent members of the Security Council of the United Nations.”

The PICC Hull War Risks is generally identical to the Institute Hull War Risks except that there is no “terrorist” in the PICC Hull War Risks. Thus, the loss and damages arising from terrorism can only be covered under other items of I Scope of cover.

The PICC Hull War Risks, also the Institute Hull War Risks cover the war risks in peace time. “ II Exclusions••4. The outbreak of war (whether there be a declaration of war or not) between any countries which are permanent members of the Security Council of the United Nations.” Thus, it only covers the local war in peace time rather than the world war.

Maritime Code of the People's Republic of China Article 244: “Unless otherwise agreed in the insurance contract, the insurer shall not be liable for the loss of or damage to the insured ship arising from any of the following causes: (1) Unseaworthiness of the ship at the time of the commencement of the voyage, unless where under a time policy the insured has no knowledge thereof; (2) Wear and tear or corrosion of the ship.” Thus, under Chinese law, this article is applied to the covers unless otherwise agreed in the insurance contract.

Causa Proxima

In the Institute War Clauses (Cargo), the words used, “loss of or damage to the subject matter insured caused by...” clearly imply the need to satisfy the Causa Proxima rule. In China, the war risks clauses of PICC are generally identical to the Institute War Clauses (Cargo) about the requirement about the Causa Proxima rule. Although there is no explicit provision of it in the China Maritime Code, the Causa Proxima rule is widely applied in the juridical practice.

Piracy

“This insurance covers: 1. Loss of or damage to the insured goods caused directly by or consequence upon war, warlike operations, hostile acts, armed conflicts or piracy;.....” Thus, piracy is one of the risks covered. However, in England a loss or damage as a consequence of piracy is covered by the Institute Cargo Clauses (A) instead of under the 1982 Institute War Clauses (Cargo).

War Risks insurance from the P & I clubs

China Shipowners Mutual Assurance Association, generally known as the China P&I Club or CPI, was set up in 1984. China Shipowners Mutual Assurance Association is a mutual insurance institution among shipowners, and underwrites the shipowners operating risks at sea. The purpose of CPI is to protect the interests of shipowners and to compensate for the loss of members. CPI has separate legal personality, personnel rights, property rights, and assume debt obligations to its own property. The scope of CPI business is divided into liability insurance (P & I insurance), ship insurance and some additional risks (such as legal defense insurance, war risk, strikes, insurance, etc.).

Hull War and Strikes Cover

A. Scope of the Cover

The Association shall be liable under Section 11 for loss of or damage to the entered ship or collision liability of or expense arising from general average or salvage or sue and labour of the entered ship caused by:

- i. war, civil war, revolution, rebellion or civil strife arising therefrom, or any hostile act;
- ii. capture, seizure, arrest, detainment, confiscation or blockade, but such claim shall be dealt with only on expiry of 6 (six) months from the day when such events arise;
- iii. any weapons of war including mines, torpedos or bombs;
- iv. strikes, lock-out or other similar events;
- v. civil commotions, riots or other similar events;
- vi. any malicious action by any person for a political motive.

B. Exclusions

The Association shall not be liable for any loss, damage, liability or expense arising from:

- i. atomic or hydrogen bombs or nuclear weapons of war;
- ii. capture, seizure, arrest, detainment or confiscation by or under the order of the government or local authority of the country in which the entered ship is owned or registered;

- iii. requisition or pre-emption;
- iv. the outbreak of war (whether there be a declaration of war or not) between any countries which are permanent members of the Security Council of the United Nations.

C. Termination of insurance

- i. The Association or the Member shall be entitled to issue to the other at any time notice of cancellation to terminate the insurance under Section 11 of Rule 5. Such cancellation shall then become effective upon the expiry of 7 (seven) days from 24 hours Beijing time of the day on which the notice is issued;
- ii. Whether or not such notice of cancellation has been given, the insurance under Section 11 of Rule 5 shall terminate automatically:
 - (i) upon the occurrence of any hostile detonation of atomic or hydrogen bombs or nuclear weapon of war wheresoever or whensoever such detonation may occur and whether or not the entered ship may be involved;
 - (ii) upon the outbreak of war (whether there be a declaration of war or not) between any countries which are permanent members of the Security Council of the United Nations;
 - (iii) in the event of requisition or sale of the entered ship.

D. Fundamental Conditions

- i. The cover of Hull War and Strikes risks under Section 11 of Rule 5 is an additional insurance to the cover of Hull and Machinery Risks under Section 2 or Section 3 of Rule 5. The relevant provisions in respect of Hull and Machinery Cover of Sections 1 to 10 shall also apply to the Hull War and Strikes Cover under Section 11. In case of any conflict between any provisions under these Sections, for the purpose of Hull War and Strikes Cover, the provisions of Section 11 shall prevail;
- ii. The Association shall not be liable for any claim which would be recoverable under any other insurance;
- iii. In the event of the termination of insurance by virtue of paragraph [C] of Section 11, without prejudice to Rules 16, 22, 24, 25 and 26 of these Rules, a pro rata daily net Advance Call/Premiums shall be returned to the Member, but no return for any lay-up of the entered ship shall be payable under Section 11 of Rule 5.

Duration

Institute War Clause (Cargo) defined the period of insurance explicitly. There is no general provisions on the period of insurance in China Maritime Code Chapter 12, Marine insurance contract. But according to the the jurisprudence relationship between legal departments, the parties can refer to the provisions of the Insurance Law with respect to the period of insurance if maritime law does not provide. According to the provisions of Article 14 of the Insurance Law, after an insurance contract is concluded, the insurant shall pay premium as agreed upon in the contract and the insurer shall start to undertake insurance liabilities at the time agreed upon. Marine Insurance War Clauses of Cargo of People's Insurance Company of China (PICC) stipulates the period of insurance as follows:

1. This insurance shall attach from the time the insured goods are loaded on the seagoing vessel or lighter at the port of shipment named in the Policy until discharged

overside from the seagoing vessel or lighter at the port of destination named in the Policy. If the insured goods are not discharged therefrom, the longest duration at the port of discharge shall be limited to fifteen (15) days counting from midnight of the day of the vessel's arrival at such port. Anchoring, mooring or securing at a berth or place within the harbour shall be deemed as the vessel's arrival. In the absence of such berth or place, the vessel's arrival refers to the vessel's first anchoring, mooring or securing either at or off the intended port or at or near the place of discharge.

2. In case of transshipment at an intermediate port, regardless of whether or not the insured goods are unloaded, the longest duration of this insurance at such port of transshipment shall be limited to fifteen (15) days counting from midnight of the day of the vessels' arrival at such port or place of discharge. However, this insurance shall reattach when the insured goods are loaded on the on-carrying seagoing vessel.

3. If the contract of affreightment is terminated at a port or place other than the destination named in the Policy, such port or place shall be deemed the destination under the Policy and this insurance shall terminate according to Section I. 1. above. If the insured goods are to be reshipped to the original or any other destination, this insurance shall reattach when the goods are loaded on the on-carrying vessel provided notice is given to the Company and an additional premium is paid prior to the Commencement of such further transit.-

4. This insurance shall remain in force during any deviation, change of voyage, variation of adventure arising from the exercise of a liberty granted to the shipowners under the Contract of affreightment subject to immediate notice to the Company and payment of an additional premium, when such event comes to the knowledge of the Insured.

Avoidance of War Risks Policies

Similar to MIA 1906, China Maritime Code Chapter 12 Marine Insurance Contract specified in Article 223 of the insurer's right to avoid the policy, which is also closely related to the obligation of disclosure of the assured. Article 222 clearly stipulates the obligation as follows:

Article 222 Before the contract is concluded, the insured shall truthfully inform the insurer of the material circumstances which the insured has knowledge of or ought to have knowledge of in his ordinary business practice and which may have a bearing on the insurer in deciding the premium or whether he agrees to insure or not.

The insured need not inform the insurer of the facts which the insurer has known of or the insurer ought to have knowledge of in his ordinary business practice if about which the insurer made no inquiry.

In addition, article 223 made detailed provisions on the consequences if the insured does not truthfully disclose, the characteristic of this article is that it distinguished two situations: the insurer intentionally omitted to disclose and unintentional omitted to disclose.

Article 223 Upon failure of the insured to truthfully inform the insurer of the material circumstances set forth in paragraph 1 of Article 222 of this Code due to his intentional act, the insurer has the right to terminate the contract without refunding the premium. The insurer shall not be liable for any loss arising from the perils insured

against before the contract is terminated.

If, not due to the insured's intentional act, the insured did not truthfully inform the insurer of the material circumstances set out in paragraph 1 of Article 222 of this Code, the insurer has the right to terminate the contract or to demand a corresponding increase in the premium.

In case the contract is terminated by the insurer, the insurer shall be liable for the loss arising from the perils insured against which occurred prior to the termination of the contract, except where the material circumstances uninformed or wrongly informed of have an impact on the occurrence of such perils.

Strikes

Strikes in CMC

The provision about covered perils in Chapter 12, Marine Insurance Contract of CMC is quite abstract. "The covered perils referred to in the preceding paragraph mean any maritime perils agreed upon between the insurer and the insured, including perils occurring in inland rivers or on land which is related to a maritime adventure." There is no specific definition on the word "strike" and the meaning of strike depends on the contract which is concluded by the parties of the policy.

Definition of Strike

As mentioned above, neither CMC nor PICC made clear explanations on the word "strike", although PICC developed different strike clauses depending on the type of goods. It can be said that, the meaning of the term "strike" is unclear both in the judicial field and insurance practice field.

Terrorism

Neither China's existing laws nor the enacted clauses made by insurance companies made any provisions on "terrorism".