

DRAFTING FOR SECURITY DISRUPTION

in Charterparties and Bills of Lading

Decision Rights and Cost Allocation

The practical issue is not only whether a vessel may refuse to sail through a danger area.

The real question is: who decides, on what threshold, and at whose cost?

1

The Drafting Problem

Security disruption clauses perform three simultaneous functions:

01

DEFINE THE TRIGGER

What level of risk activates the clause?

Actual danger · Reasonable judgement · Mere prospect of risk ?

🇫🇷 *French law: force majeure (art. 1218 C.civ) -> stricter than mere reasonable judgment*

02

ALLOCATE THE DECISION

Who decides?

The owner · The charterer · Both in sequence ?

🇫🇷 *French law: abuse of contractual right -> judge may review exercise of unilateral discretion*

03

ALLOCATE THE CONSEQUENCES

Who absorbs the surcoût?

Additional premium · Deviation bunkers · Waiting time · Downstream cargo exposure

🇫🇷 *French law: imprévision (art. 1195 C.civ) > judge may revise or terminate if costs become excessive*

A clause is only useful if trigger, decision and consequence work together under operational pressure.

Where Disputes Actually Arise

Typical flashpoints

Vessel already fixed or already in the area when the situation deteriorates

Orders become unsafe after loading - cargo already on board

Urgent rerouting with incomplete facts and no time for analysis

STRAIT OF HORMUZ - Key figures

Premiums tripled, sometimes quadrupled

VLCC transit ~USD 250,000 additional per transit

Cape rerouting +2 weeks at sea, >USD 500,000 in fuel

In the Gulf hundreds of vessels waiting

And in every case, everyone asks the same question: who pays?

The hardest cases are not clean refusals at the nomination stage. They arise when the voyage is already underway.

3 Drafting Architecture: Trigger to Money

1 TRIGGER

CONWARTIME (b): in the reasonable judgement of the master or owner, the vessel may be exposed to war risks.

VOYWAR: same threshold, same standard. Sub-clause (d) extends the trigger to risks emerging 'before, during or after loading'

2 DECISION RIGHTS

CONWARTIME (g): 72-hour window for charterer to nominate alternative port (doubled from 2013).

VOYWAR: 72-hour renomination windows under (b) before loading (range of ports) and (c) after loading (alternative discharge port).

3 OPERATIONAL OPTIONS

CONWARTIME: Refusal · Waiting · Deviation · Alternative port · Convoy.

VOYWAR: same options available. Mechanics differ, the range is shared.

4 SURCÔÛT

CONWARTIME (d): additional premium allocated to charterer – but paying AP does not shield charterer from breach claim by owner

VOYWAR: mirrors the premium allocation. New freight adjustment based on time / expenses (no more 100-mile threshold).

5 EVIDENCE & NOTICE

CONWARTIME: real-time documentation. Cover note, security advisories, decision log.

VOYWAR: same requirements. The record decides the dispute.

4

Hormuz Case Study

TEHRAN TOLLBOOTH SYSTEM

- 1 Paperwork with Iranian intermediaries
- 2 Clearance codes issued over VHF radio
- 3 Naval escort through the Larak corridor
- 4 Payment reportedly in yuan or stablecoins

THREE QUESTIONS THE CLAUSE DOES NOT ANSWER

No standard war risks clause lists the toll option.

1

Is it a deviation?

CONWARTIME (i) protects only options the clause lists. A toll is not listed.

2

Who bears the cost?

Charterer, owner, or cargo. No clause specifies.

3

Sanctions liability?

Payment to a sanctioned entity may expose the owner under EU or US law.

THE B/L GAP : THE CLAUSE IS NOT ENOUGH: the indemnity chain is only a starting point. Draft a specific rider for any action outside listed liberties

5

Key Takeaway

*We are no longer drafting for exceptional events.
The map of contested waters has widened. Security disruption clauses are now among the most consequential clauses parties will ever agree on.*

Draft for moving facts : not only for pre-fixture hypotheticals

Link the trigger to a clear decision process : threshold and procedure must be designed together

Enumerate operational options expressly : including unconventional ones; an unlisted option has no cost allocation

Allocate the surcoût expressly, not just the base cost : who absorbs premium, bunkers, waiting time...

Acknowledge the B/L gap : manage it through the indemnity chain (CONWARTIME (h))

THANK YOU

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