

Legal Remedies for Attacks on Merchant Ships in the Red Sea under the Maritime Law System

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Abstracts: Since the outbreak of the Israeli-Palestinian conflict, the Houthis in Yemen have launched attacks on specific merchant ships. Under the current maritime law system, direct losses incurred by merchant ships in the event of an attack can be compensated for by the war risk insured in the marine insurance policy, and measures taken by the merchant ship to avoid further expansion of the loss or to avoid the ship from capsizing in the aftermath of the attack belong to the common sea loss, for which a request for a share can be made to the owner of the ship, the owner of the cargo and so on. If the merchant ship is in danger and other ships carry out rescue and salvage operations, the rescuer has the right to get the remuneration for the rescue and claim other related rights. However, the pure maritime law system cannot provide relief to the shipping industry, which has been chilled by the tense situation. Only by resolving the Palestinian-Israeli conflict and implementing the concept of the community of human destiny, so that the coastal countries can become participants and beneficiaries of the global trade, can the shipping industry and the maritime trade be developed in a sustainable way.

Key word: Maritime Law, War Risks, Common Naval Loss, Salvage at Sea

1. Introduction

The Red Sea is one of the major sea lanes from Europe to Asia, through which more than 17,000 ships pass annually, and its southern end, the Bab-el-Mandeb Strait, is the Red Sea's prime shipping lane to the Indian Ocean, which is less than 20 kilometres wide, and Yemen is situated in the eastern part of the Strait, at the south-western tip of the Arabian Peninsula, and chokes the Bab-el-Mandeb Strait. Since the outbreak of the new round of

the Palestinian-Israeli conflict in October 2023, Yemen's Houthis have launched missile and drone strikes against Israeli ships in the Red Sea and the Bab el-Mandeb Strait to show support for the Palestinian people in Gaza; the Houthis have said that Israeli-flagged ships, ships operated by Israeli companies, or ships owned by Israeli companies would be targeted. November 2023 On 19 November, the Houthis detained the cargo ship *Galaxy Leader* near the Bab el-Mandeb Strait, claiming that it belonged to Israel; on 11 December, the Houthis launched a missile attack on a Norwegian-flagged oil tanker carrying oil bound for Israel; and on 18 December, the Houthis again attacked two ships in Red Sea waters. On 18 December, the Houthis again attacked two ships in Red Sea waters. (Zhao Meng, 2024) The following day, the United States formed a coalition to launch an escort operation in the southern Red Sea and the Gulf of Aden, code-named 'Prosperity Guardian'; then, the Houthis in Yemen announced attacks on the United States, the United Kingdom, Bahrain's merchant ships, so far a number of merchant ships in the Red Sea near the attack by missiles or drones, the loss of serious.

What legal remedies can be sought under the current maritime law regime for losses suffered by merchant ships attacked in the Red Sea, and, in the absence of any sign of an end to the current conflict, timely compensation for, and apportionment of, losses suffered by merchant ships attacked in the Red Sea, and the granting of legal remedies in accordance with maritime law that are fair, reasonable, and sustainable, would be of great benefit to the shipping industry, which is currently in the cold because of the tensions. (Zhangxiang Lan, Zhao Hongjin, 2011; Ma Jinxing, 2015).

2. Application of Marine Insurance Law

The preferred remedy for merchant ships

subjected to drone and missile strikes in the Red Sea is marine insurance, and in particular a unique form of marine insurance, war and strike insurance for ships (hereinafter referred to as 'war insurance'). War risk is a special supplement to marine cargo insurance, which covers a number of political risks that may cause substantial losses, including war, war-like acts and hostilities, armed conflict and piracy. According to China Life Property and Casualty Insurance Co., Ltd.'s cargo insurance rider, the war risk is responsible for compensating: firstly, the loss directly caused by war, war-like acts and hostilities, armed conflict or piracy. Secondly, the loss caused by capture, detention, confinement and seizure arising from paragraph 1 above. Losses caused by conventional weapons of all kinds, including mines, torpedoes and bombs. Fourthly, the cost of sacrifice, apportionment and salvage of common sea losses arising out of the scope of liability under this clause. (Yuan Chip, 2022) It is worthwhile for the insured merchant ships to note that war insurance only covers war risks in 'peacetime' as defined by the insurance company, and if the political and social risks in a certain country or region increase drastically and the state of peace is lost, the insurance company will exclude the high-risk area from the insurance coverage by following the exclusion clauses. In other words, most insurance policies in the market explicitly provide that the insurance contract will automatically expire once war breaks out. If the contract does not provide for automatic termination, the insurer will usually give 7 days' notice to cancel the war risk coverage in accordance with the terms of the contract. In order to enhance the clarity and enforceability of insurance contracts, the industry has generally adopted the exclusion criteria issued by the Joint War Risks Committee of the London Insurance Market (JWRC). (Huyan Yuxiang, 2019) This practice has gained wide acceptance globally. The waters of the southern Red Sea are now considered a high-risk area by the London insurance market. Notably, the Joint War Committee issued an updated circular on 18 December 2023, which formally includes a wider area of the southern Red Sea as an exclusion area for war risk insurance. In short, the provision of war risk in insurance contracts is of paramount

importance and the latest development from the Joint War Risks Committee in London provides the market with clear guidance on the exclusion areas. As a result, merchant ships subjected to drone and missile strikes in the Red Sea prior to the issuance of the latest Circular will be able to claim war risk insurance coverage as a means of apportioning and remedying losses from armed attacks. However, war risk remedies are difficult to obtain under the War Risk Excluded Areas (WRE) regime. At present, from Europe to the Indian Ocean, Asia and other merchant ships, if the southernmost tip of Africa around the Cape of Good Hope, travelling distance increased by about 3,000 nautical miles, need to spend 10 days or so, the ship detour fuel consumption increased by about 1 million U.S. dollars, a serious impact on the factory's production arrangements, so some merchant ships have chosen to enter the excluded areas listed - - Red Sea, in order to make the insurance excluded areas. In order for the validity of the insurance to be unaffected by the breach of warranty by the vessel entering the excluded area, the shipowner needs to arrange for a top-up for this purpose, i.e., to extend the insurance to the excluded area of the Red Sea by accepting the terms of the top-up and the modified conditions of cover proposed by the insurer in order to obtain the insurer's consent. The first thing emphasised in the insurance procedure flow is the insured's duty of notification. This means that as soon as the insured becomes aware of any material change that may affect the insured risk, they must promptly notify the insurer, which is an implied requirement in the insurance contract. In particular, when a vessel is scheduled to travel to a place classified as an excluded area, the insured should submit a voyage plan to the insurer at least 48 hours in advance, detailing the excluded area expected to be travelled to and the exact time of the voyage, in order to allow the insurer to arrange for additional insurance cover. Next, the insurer has a 7-day right to revoke the notice. This means that the insurer has the right to terminate the war risk cover by giving the insured a 7 day notice of cancellation for whatever reason. Importantly, this termination will become official on the 7th day after the notice is given. In summary, the insured is required to notify the insurer in

advance when the vessel is travelling to an excluded area and the insurer has the right to terminate the war risk cover by giving 7 days' notice. Finally, the insured should reasonably estimate the duration of the entire voyage, including the expected port stay and the plan to cross the excluded area according to their actual needs, in order to choose the appropriate period and conditions for the premium increase. If the insured person accepts the rate and conditions of increase proposed by the insurer, the insurance will continue to be valid; if not, the insurance will be suspended. With regard to the rates and conditions of increase, as the insurers' expectations of war risk vary depending on the situation, differences in the level of rates in the market are the norm. As a result, there is no uniform rate standard for rate increases in the market. In particular, the risk of war risk insurance varies as the situation develops, so the level of premium rates in a given region fluctuates. The current situation continues to deteriorate and following the US and UK air strikes in Yemen and the ongoing Yemeni attacks on Anglo-American merchant ships, war risk rates have soared dramatically and have now risen to the equivalent of around 1 per cent of a ship's value, whereas just a few weeks ago this was just 1 per cent. This means that a ship currently worth \$100 million that would have cost about \$1 million to insure now costs about \$10 million.

In addition to war risk insurance provided by insurance companies, the Shipowners' Mutual Insurance Association (MIA) also provides appropriate relief. A shipowners' mutual insurance association is an insurance organisation of a mutual assistance nature among shipowners, which focuses on underwriting the business risks that shipowners may encounter in their marine operations, with the core purpose of protecting the interests of shipowners and providing compensation for the financial losses of its members. These associations are formed voluntarily by shipowners and do not have profit as their primary objective, but exist as a mutual insurance organisation. The risks they insure are often those that shipowners frequently encounter but which traditional insurance companies are unwilling or unable to insure. Shipowners' Mutual Insurance Association has a wide range of

responsibilities, including but not limited to underwriting special risks that insurance companies are unwilling to underwrite or are beyond their scope of liability. For shipowners, this undoubtedly provides additional remedies and protection for the complex risks they face, which is like a cardiac stimulant that enhances their confidence and ability to cope with maritime challenges. It can be seen that the scope of insurance business of the Shipowners' Mutual Insurance Association (MIA) includes war risk insurance. If the owner of the attacked merchant vessel is a member of the MIA, he can also apply for the relief of the corresponding MIA insurance. (Zhang Li, Zhang JiaHao, 2019) The specific steps of the claims procedure mainly include: firstly, determining the extent of the loss. After a merchant ship has been attacked by a missile, the insurance company will send an investigator or surveyor to investigate and assess the damaged ship in order to determine the extent and scope of the loss, which includes an assessment of the loss of the ship's structure, equipment, cargo and other aspects. Secondly examine the terms of the insurance contract. The insurance company will scrutinise the terms of the insurance contract of the owner of the merchant vessel to determine the scope of insurance and liability. Depending on the terms of the insurance contract, the insurance company may provide indemnity for different losses or may not be liable for specific risks. Thirdly negotiation of the method of indemnification, whereby the method of indemnification and the amount of indemnification will be negotiated between the owner of the merchant ship and the insurance company. Fourthly, if the insurance company agrees to indemnify the merchant shipowner for the loss, it will pay the indemnity in accordance with the terms of the insurance contract.

3. Apportionment of the Common System of Sea Losses

Common sea loss is a system of apportionment of risk in maritime transport that is unique to maritime law. In maritime transport, the ship, goods and other property encountered common danger, in order to take measures for the common safety directly caused by the special sacrifice, pay special expenses. Whether the attacked merchant ship

in the Red Sea can apply for common sea loss, mainly depends on whether it meets the conditions of common sea loss. (Gao Yao,2019) First of all, the premise for the establishment of a common sea loss is the occurrence of a common peril, and this common peril must be real and objective. The term 'common peril' refers to the state in which, if one party suffers a loss, the goods and personnel of the entire ship are endangered. The danger of a merchant ship passing through the Red Sea being attacked by Houthi drones and missiles from Yemen is real and objective, and at the same time any part of the merchant ship or its cargo is struck by force, and the act of extinguishing the fire or abandoning a part of the cargo is not carried out for a single purpose or in a single interest, but usually for the sake of the lives of the crew and for the common good of the merchant ship, and the ship if no immediate and urgent measures will be taken, cargo and crew will inevitably be in danger, and therefore the danger is objective and difficult to resolve. Secondly, an act of common sea loss is the intentional and reasonable taking of measures to mitigate a common peril to the ship and cargo. By intentional, it is meant that the decision to take such an act is taken in the knowledge that it will result in the loss of the ship and the cargo and that the occurrence of such loss is inevitable, but it is decided in the interest of the safety of the ship and the cargo. Reasonableness means that, when measures are taken, they are effective and cost-efficient and therefore in the interests of all interested parties.(Liu Po-Lin,2012) It follows that direct losses from drone and missile strikes do not fulfil the criteria of intentional and reasonable measures, but measures taken after the attack on the merchant ship to extinguish water damage from the fire or to abandon part of the cargo as a matter of necessity are intentional and reasonable measures in respect of a common maritime loss. Finally, the sacrifices and payments made in respect of the common loss of navigation are a direct consequence of the act of common loss of navigation. Such consequences do not arise indirectly; a common loss of fortune is a special loss incurred for the purpose of relieving a peril at sea.(Wang Xinyi,2022) The so-called direct consequence depends first of all on whether the loss is a natural and

reasonable consequence of the act. If it can be shown that, in the normal course of things, the loss was a consequence of the act as described above, it can be inferred that the loss was in the nature of such a direct consequence. Against this condition, the direct loss from the armed attack was not a direct consequence of the act of CCA, but the measures to make good the loss, such as extinguishing the fire and abandoning part of the cargo, were direct consequences of the act of CCA. (GAO Juntao and YANG Yue,2023)

Characterising the reasonable measures taken after an attack on a merchant ship as common sea loss is of great significance in practice. Firstly, it is conducive to the protection of the interests of the ship, if the huge losses are borne by the ship alone, it will certainly affect the ship's enthusiasm in rescuing the ship after the attack, if the cost of the measures taken after the attack is included in the common sea loss, the ship can ask other interested parties to share part of the cost of the cost. (ZHANG Jia,2021) Secondly, this characterisation is conducive to the protection of the interests of the cargo side, for which the interests of the owner of the goods appear to be greatly protected by taking timely measures to avoid the capsizing of the entire merchant ship in the face of the losses suffered by the cargo when it is completely destroyed by the fire of war. Finally, it is in the interest of the health of the shipping industry. Drone or missile strikes are merely unforeseeable accidents, not caused by the fault of either party. If the ship party is required to bear the risk of ransom alone, it will inevitably lead to an imbalance of interests between the ship and the cargo, even if the ship's ship losses are ultimately borne by the insurance company. This is also extremely unfair to the ship insurer. In the long run, the ship insurance company will substantially increase the premium for ship insurance, which will ultimately be detrimental to the development of the shipping industry and even the stability of maritime trade. Only when both the ship and cargo share the cost of avoiding ship capsizing can the interests of both parties be balanced and the shipping industry develop in a healthy and sustainable manner.

4.Application of Salvage to Maritime Distress

Salvage at sea refers to the act of rescuing ships, cargoes and passenger and freight fares in distress at sea, in whole or in part, by external forces. The original purpose of the establishment is to encourage mutual help among sea navigators, to save human lives and property, and to reduce the loss of shipwreck. According to the conditions of maritime disaster rescue, first of all, the subject of rescue must be recognised by the law. In the case of salvage at sea, the object of salvage is mainly a ship or other property. These properties must be in real danger, and the danger must be objective and unavoidable. Secondly, the act of salvage must be voluntary. This means that the act of salvage cannot be performed on the basis of a pre-existing obligation, but must be voluntary on the part of the salvor. Finally, the act of salvage must take place at sea or in navigable waters connected to the sea. This is the geographical condition that constitutes salvage in a maritime disaster and ensures that the act of salvage takes place in a maritime environment. It follows that direct damage to a merchant ship from a drone or missile attack does not qualify as salvage in a maritime disaster, but the rescue and salvage operations carried out by other vessels after the attack qualify as salvage in a maritime disaster. However, the question of whether or not the subject matter of the salvage includes human life is a difficult one to discuss.(Jing Yining,2018) In traditional maritime law theory and practice, it is generally accepted that the subject matter of salvage in a maritime disaster is limited to property only and does not include salvage of human life. To obtain remuneration for the rescue of human life, it is usually dependent on the rescue of property, and may be appropriately increased, this practice is mainly based on humanitarian considerations, that life can not be measured in money. However, there are logical problems with limiting the right to remuneration to property aid alone. This is because the basis of the right to remuneration lies in the act of relief itself, not in the property being relieved. In order to protect the rights and interests of the rescuer more comprehensively, it is necessary to re-examine the legal status of the rescue of human life, make it clear that it is the object of the rescue, and recognise that the rescue of human life has an independent right to claim

remuneration. This will not only motivate the rescuers, but also provide them with reasonable compensation for the cost of rescuing.

5.Conclude

Under the maritime law system, if a merchant ship encounters a drone or missile attack in the Red Sea, the direct loss can be compensated by the war risk insurance in marine insurance, and if the merchant ship after the attack takes measures to avoid further expansion of the loss or to prevent the ship from capsizing, this belongs to the common sea loss, which can be requested to be jointly shared by the shipowner, cargo owner and so on. If the merchant ship is in danger and other ships carry out rescue and salvage operations, the rescuer has the right to be paid for the rescue and to claim other related rights.(Anton Varflomev, Zhang Guangxiang, Wang Mukun,2018) Regardless of the remedies available under maritime law, the loss of the merchant ships attacked in the Red Sea has already been incurred, and the legal remedies are only a sharing of the cost of the loss and a partial compensation for it, while the root cause of the incident is still the spillover effect of the Israeli-Palestinian conflict. At present, the physical trade exchanges between the world's economies are mainly completed through the maritime transport channel, the sea trade corridor has become the lifeline of the vast majority of countries and regional economies in trade, especially the Red Sea - the Bab-el-Mandeb Strait is one of the important sea corridors, the total value of goods transported through the routes of this corridor each year is more than 1 trillion U.S. dollars, accounting for about 12 per cent of the global cargo transport. In the face of Yemen's Houthi attacks on merchant ships, even if warships are deployed to intercept the drones, according to a US think-tank report, warships use \$2.1 million a piece in anti-aircraft missiles to intercept Houthi drones costing \$20,000 a piece, and the act will not last long. Yemen has a backward economy and is one of the least developed countries in the world(ZhuQuangang, 2021). A US air strike on its soil can't make the situation in Yemen any worse. So securing Red Sea-Mandeb Strait shipping requires, on the one hand, resolving the root cause of the

Palestinian-Israeli conflict (Wang Lincong, Li Shaoxian, Gao Zugui, et al,2024). The 'two-State solution', which is fair and more in line with the morals of the people, will enable Palestine and Israel to live in peace for a long time; on the other hand, the concept of a community of human destiny should be put into practice, so that the littoral States can become participants and beneficiaries of global trade, and the smooth passage of the sea can be maintained, and the smooth flow of international trade can be beneficial to the littoral States, so naturally, there will not be any blockade of the main sea routes by the littoral States. The smooth international trade will benefit the littoral states, and naturally, the blockade of important sea routes by littoral states will not occur. In conclusion, the use and improvement of legal remedies under the existing maritime law system and the sharing of costs and risks for attacked merchant ships will be conducive to the development of the shipping industry and even the stability of the maritime trade; and at the same time, coastal countries, especially those in important maritime corridors, will become participants and beneficiaries of global trade and will have the incentive to participate in the maintenance of the safety of the maritime corridors, which is the only way to ensure the sustainable development of the shipping industry and the maritime trade.

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