

War-related pollution: who pays?

Recent geopolitical tensions have prompted some authorities to require ships to demonstrate that adequate insurance arrangements are in place to respond to an oil spill, including incidents caused by hostile acts. But does a Blue Card mean the P&I Club will cover pollution costs caused by war? Not necessarily.

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Several international conventions establish strict shipowner liability backed by compulsory insurance. These include the 1992 International Convention on Civil Liability for Oil Pollution Damage (CLC), the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (the Bunkers Convention) and the Nairobi International Convention on the Removal of Wrecks .

However, these conventions also contain exceptions to shipowner liability for certain war-related events. Under the 2001 Bunkers Convention, for example, the shipowner is not liable if it proves that the pollution damage resulted from an *act of war, hostilities, civil war or insurrection* . The same principle applies under CLC and under the Nairobi Convention. The 2010 HNS Convention , which will enter into force on 29 November 2027, follows the same logic: strict shipowner liability backed by compulsory insurance, with exclusions for acts of war, hostilities, civil war and insurrection.

What does a Blue Card cover?

A Blue Card is provided as evidence of the insurance or other financial security required to enable the relevant State certificate to be issued. It relates to the liabilities and financial-security requirements arising under the applicable convention. It is not an unlimited guarantee that the P&I Club will meet pollution or other costs regardless of their cause.

This becomes particularly relevant where an authority asks a shipowner or its P&I Club for written confirmation that pollution response costs will be covered "regardless of the cause of the incident", including a hostile act. Such wording may go beyond the convention liability and standard P&I cover. In effect it could amount to a request for confirmation of something that is beyond the scope of the insurance cover in that situation.

The distinction between standard P&I cover and war P&I cover is well established in the marine insurance industry. Current industry guidance, for example, describes liabilities arising from incidents caused by war, hostile acts, missiles, drones, mines and similar weapons as excluded from standard P&I cover and potentially falling instead within hull war risks arrangements, which will often include war P&I cover.

Will war risk insurers pay instead?

Not necessarily. War risk insurance may cover P&I liabilities arising from a war peril where those liabilities would otherwise have fallen within standard P&I cover but for the war exclusion. As a general principle, however, liability cover responds only where the insured has a legal liability to pay.

That is a critical feature of P&I. If the applicable convention does not impose a legal liability upon the shipowner for pollution damage resulting from an act of war, then it would follow that there may in fact be no legal liability under the convention for the relevant P&I policy to respond to. Should this be the case, there may be no liability for a war risk insurer to indemnify under the policy.

There may, of course, be other exposures which can fall within the policy. A shipowner might incur response costs voluntarily, contractually, under local law or pursuant to an order from an authority. Whether those costs fall within war risks cover will depend upon the particular policy wording, the applicable law, the circumstances of the incident and the facts more generally. A shipowner facing such payments should therefore confirm with its war risk insurers whether the payment is covered. It should not be assumed that war risk cover will simply replace the standard P&I cover that would otherwise have applied.

What should shipowners do?

For shipowners, managers and insurance teams, there are four practical steps:

• Check local requirements. A local requirement to maintain an oil spill response plan or response arrangements may not automatically engage the relevant policy to cover the corresponding costs.
• Understand the nature of Blue Cards. A Blue Card relates to the liabilities and financial-security requirements arising under the applicable convention. It is not an unlimited guarantee that the P&I Club will meet pollution or other costs regardless of their cause.
• Check the war risks cover. Do not assume standard P&I insurance or a convention Blue Card covers liabilities or costs caused by war risks.
• Ask before giving broad confirmations. If an authority asks for proof of cover or that the scope of cover extends to hostile acts or other war risks, discuss the wording with your usual Gard contact and the relevant war risk insurer before providing any corresponding assurances.

Gard can assist to confirm that a Member is entered with the Club, the scope of cover available under the applicable Rules, and how this relates to conventions with compulsory insurance requirements. However, Gard cannot provide written confirmations amounting to an expansion of that cover or which may convert a convention Blue Card into something more like an all-risks pollution guarantee.

This article is intended to provide general information only and should not be treated as legal advice. The applicable convention, national law, P&I Rules and any war risks policy should be considered in relation to the individual incident.

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