

Trading to Yemen? – Does UNVIM’s order for ships to leave Hodeidah and Saleef make those ports unsafe or dangerous?

In an embarrassing U-turn (which surely undermines their credibility as an autonomous body) the United Nations Verification and Inspection Mechanism for Yemen team (UNVIM) admitted on 7th November that the security directive issued the day before was actually an “advisory” sent at the request of the Saudi-led Evacuation and Humanitarian Operations Cell (EHOC). UNVIM had acted as a mouthpiece without making that clear in the original message or indeed in the follow up which ordered those ships already in port to leave immediately. That 6th November directive that had referred in vague terms to the “current security situation”, effectively confirmed the closing of the ports of Hodeidah and Al Saleef both vital to the humanitarian aid efforts in Yemen. Owners of ships already at the ports saw this as evidence that the crew and ships were exposed to an increased danger and sought to invoke their rights to leave before discharge. In at least one instance a vessel was then prevented from leaving by the port at gunpoint. Arguably UNVIM had created that immediate increase in danger.

UNVIM was conceived in May 2016 as a remedy to the delays encountered by commercial vessels trying to enter those ports not held by the Yemeni government which were subject to a blockade by the Saudi-led naval coalition. Its conception was not without political wrangling but its Terms of Reference are clear and its mandate is to facilitate commercial imports and humanitarian assistance into Yemen that is so vitally needed. It was somewhat surprising that the 6th November advisory made clear that no more clearances for the ports of Hodeidah and Al Saleef would be issued and any ships already there should leave. The body that was set up to facilitate humanitarian aid was now complicit in stopping vessels with grain and soya-bean on board to getting that cargo to Yemen. Those ships that did not immediately leave were contacted directly by UNVIM and questioned as to the reason why not. Further, masters were contacted by the military in Saudi Arabia with the implicit threat that that sort of contact brings.

The short-term background to this is the failed attack on Riyadh on the weekend of 4/5th November by a ballistic missile said to originate from Yemen which saw the Saudi Authorities again questioning the inspection regime for vessels calling at those ports not controlled by the Yemeni government. The conclusion reached by Saudi Arabia is that the missiles are coming in through the ports in their component parts and re-assembled in Yemen. Apart from invoking its right to self-defence against Iran under Article 51 of United Nations Charter, it called on nations to adhere to UN Resolution 2216 (which in general terms is there to stop weapons being exported to Yemen) to justify this. Saudi made it clear that all ports and airports would be closed

whilst procedures are reviewed. Anyone breaking these rules would be subject to unnamed legal sanction.

There is no suggestion that the security situation in the ports themselves had deteriorated so as to be more “unsafe” than they already were. However, it has to be acknowledged that Hodeidah has been bombed before without warning, albeit to widespread international condemnation. No one wants to see crew hurt or ships damaged. The balance between their safety and the commercial imperatives on the owners and other stakeholders remains a fine one.

This is a very dynamic situation and it is unclear whether the closure of the ports is temporary. Past experience says it will be and the international reaction will become more co-ordinated in the coming days. The UN Panel of Experts on Yemen is monitoring the situation as are various Human Rights organisations.

However, there is a pipeline of vessels loading for Yemen, in transit or already there. The rights of charterers and owners under the plethora of war risk clauses are well-known but these rights often turn on the issue as to whether the vessel is or may be exposed to danger. Often those rights are extended to allow the master to take actions he thinks are reasonable to safeguard the crew, cargo and ship. Those clauses that give the master the liberty to follow edicts and orders of the “UKMTO” or coalition forces (which are unlikely to be a reference to the Saudi led coalition operating off Yemen) may not cover an advisory from UNVIM.

Those under most pressure are the owners and charterers of vessels in or just outside the ports particularly if they are now being held at gunpoint by local forces. Although there is no suggestion that they will be prevented from leaving after discharge, those owners also face the prospect that the Saudi navy will interdict their vessels on the way out of the ports or indeed on future visits. That will give rise to serious questions about the right to stop ships on the high seas which must involve the consent of the flag state. Being stopped and “escorted” to Jeddah or Yanbu will expose the vessel to serious delay and possibly confiscation which will also be of concern to war risk underwriters.

But those en route or still loading will have to make decisions about what to do. Even if there is a right to nominate another port that may not be realistic for aid going to a specific part of Yemen. The issue of safety will be a serious question and all stakeholders should be using third-party risk consultants to keep abreast of developments and their analysis should also be the basis for decisions about the safety of the ports which will be under constant review.

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