War Series: When Does Port Congestion Become ‘Restraint of Princes’? Lessons from Sanko Steamship v. Navios 1982 Arbitration

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Throughout history, maritime commerce has been as prone to the vagaries of war, political upheaval, and governmental interference as any endeavor that crosses national boundaries. For businesses operating in modern conflict zones, an enduring legal concept known as the “Restraint of Princes” doctrine highlights how governmental action can—or cannot—absolve parties from contractual liability. This article examines that doctrine by reflecting on the 1982 arbitration, **The Sanko Steamship Co., Ltd. v. Navios Corporation**, and considers what lessons it holds for present-day disputes involving the detention of private vessels during times of heightened global tension.

In **The Sanko Steamship v. Navios**, a time charter dispute arose under circumstances that might, at first glance, have suggested government interference. The vessel M/V *Golar Toko* arrived at Constanza, Romania, to discharge cargo at a time when extreme port congestion and a policy of berthing certain vessels out of turn led to extraordinary delays. Navios Corporation, the Charterers, argued that the Romanian authorities’ actions amounted to “governmental interference” sufficient to trigger the mutual exceptions clause referencing “Restraint of Princes, Rulers, and People.” Clause 16 of the

Charter Party read: "*The act of God, enemies, fire restraint of Princes, Rulers, and People, and all dangers and accidents of the Seas…always mutually excepted.*"

In defending their position that these severe holdups should absolve them of liability, the Charterers maintained that local authorities had "unberthed and sent the Vessel to anchorage" and "berth[ed] ships out of turn," constituting a form of governmental force. However, **the panel unequivocally found that "Governmental interference in the form of Port Authorities changing berthing rotation to accommodate national flag and high demurrage vessels…should not, at least under the circumstances in this case, be construed as tantamount to a 'Restraint of Princes,' absent some direct forcible governmental action or decree of illegality preventing performance of the Charter and not just delaying it."** Specifically, the award provides:

> *"[47]… While the actions of the Port Authorities, including the Admiral of the Port, in berthing vessels out of turn for their own purposes, may be at variance with some more equitably regulated systems, the practice is certainly not unknown, where governmental receivers are involved and should not, at least under the circumstances in this case, be construed as tantamount to a 'Restraint of Princes', absent some direct forcible governmental action or decree of illegality preventing performance of the Charter and not just delaying it."*

Crucially, the arbitrators concluded that even if such interference felt arbitrary or protectionist, it did not rise to the level of "Restraint of Princes," which under maritime law typically implies "*the use of Governmental force, per se*," as the decision put it. In other words, the Charterers could not rely on the exceptions clause to shield themselves from paying higher damages to the Owners for exceeding the stipulated maximum length of the charter. There was no

evidence of "*direct forcible governmental action or decree of illegality preventing performance of the Charter.*"

This point resonates strongly in modern contexts, where events such as naval blockades, targeted sanctions, and vessel seizures appear ever more frequently in conflict zones. The **Sanko Steamship v. Navios** ruling underscores that mere inconvenience, delay, or even discriminatory port practices do not necessarily meet the "Restraint of Princes" threshold. For the doctrine to apply, governmental action must be so forceful as to prevent performance altogether, not merely impose operational or commercial hardship.

From a commercial perspective, this case also involved significant disagreement over responsibility for bunkers. Although not directly related to "Restraint of Princes," the parties' dispute about removing excess fuel while the vessel was under delay illuminates the broader risks faced by shipping interests when port authorities or governmental entities disrupt typical operations. The award noted that pumping bunkers ashore was "*probably no more dangerous and unusual than pumping bunkers aboard a vessel,*" yet the Charterers failed to secure an acceptable indemnity agreement with the Owners or to prove it was "*physically or economically feasible*" to offload. The tribunal thus ultimately supported the Owners' position, finding that the Charterers had not pursued all appropriate measures to minimize their losses.

These details highlight the delicate interplay between contractual clauses that allocate risk and real-world circumstances in ports where government involvement looms large. In conflict zones today, the same questions that underpinned **The Sanko Steamship v. Navios** continue to surface: When does state action cross the line from port inefficiency or commercial favoritism into forcible intervention so substantial that it legally excuses performance? At what point is a vessel's detention, lengthy anchorage, or berthing delay tantamount to genuine "Restraint of Princes"?

For businesses navigating commerce in modern conflict zones, two lessons are particularly crucial. First, the bar for invoking “Restraint of Princes” as a defense remains high. Government involvement that aggravates or biases commercial operations may, in many circumstances, still fall short of “the use of Governmental force, per se.” Second, the impetus is on Charterers and Owners alike to document efforts to mitigate or avoid losses, whether by requesting indemnities for bunker removal or promptly raising disputes before an arbitral panel. Failing to do so may leave one party paying a steep price, both literally and figuratively.

As global conflicts continue to flare, the **Sanko Steamship v. Navios** arbitration provides a concise yet powerful reminder: not every form of government entanglement at a port, no matter how obstructive, can be labeled a “Restraint of Princes.” By limiting the application of such a far-reaching defense to truly coercive scenarios, maritime law seeks to preserve certainty in an industry perpetually at risk from shifting geopolitical currents.

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