

This article is part of a series of articles being prepared by our team to help our clients navigate the consequences of ongoing hostilities in the Persian Gulf and the Strait of Hormuz. In this piece, we explore the application of war risks clauses in time and voyage charterparties, and the owner's right to refuse unlawful orders from the charterer.

Not All Clauses Are the Same ...

Parties intending to rely on war risks clauses should make a thorough assessment of their rights and obligations under the specific war risks provisions.

Most charterparties contain express war risks clauses, commonly incorporating the standard BIMCO CONWARTIME or VOYWAR clauses (with the 2025, 2013 and 2004 versions widely used). Others, particularly those used for oil tankers and LNG carriers, include clauses aligned more closely with the Shelltime 4 and Asbatankvoy forms. Many charterparties also include bespoke clauses that can significantly impact any analysis.

War Risks Clauses and the Strait of Hormuz

In general terms, war risks clauses grant the owner the right to refuse to proceed to or through areas where, in the reasonable judgment of the master or the owner, the vessel, cargo, crew or other persons onboard may be exposed to war risks.

Under the BIMCO standard clauses, "War Risks" covers a broad range of situations which, again in the reasonable judgment of the master or the owner, "may be dangerous or may become dangerous to the Vessel, cargo, crew or other persons onboard." No actual attack or damage is therefore required for the owner to rely on these provisions.

Similarly, the Shelltime 4 form refers to "places of peril", being those where, in the reasonable opinion of the master or the owner, it becomes dangerous, impossible or prohibited for the vessel to reach, enter, or to load or discharge cargo. Although framed differently, the result is usually the same.

Whether transiting the Strait of Hormuz or navigating through the Persian Gulf falls within the definition of war risks under most standard clauses is, at this time, uncontroversial.

The owner receiving instructions to proceed through the Strait of Hormuz may be entitled to refuse such orders in the current circumstances, and few charterers would reasonably dispute that position. To the extent that the charterer insists on orders of that nature, such orders will probably be unlawful orders under most charterparties and, while awaiting lawful orders, the vessel will remain on hire (see *The Houda* [1994] 2 Lloyd's Rep. 541). This is the standard position under the BIMCO war risks clauses.

What comes next will be far more challenging. When geopolitical tensions start to ease and military operations cease or abate, commercial pressure will inevitably grow, and charterers will expect shipments to resume. Moreover, the recent statements by President Trump suggesting that the US Navy would, if necessary, offer naval escorts, may lead charterers to question whether owners will, in those circumstances, continue to be entitled to refuse orders to proceed through the Strait of Hormuz.

Determining at what point an owner will be obliged to transit the Strait of Hormuz will depend to a great extent on the particular wording of the charterparty and on the risks the parties contractually agreed to assume at the time of its formation. Risk assessments will need to be kept under continuous review as conditions in the region develop.

In the context of voyage charterparties, the Supreme Court recently held in *The Polar* [2024] 1 Lloyd's Rep. 85 that an owner cannot refuse orders to transit an area where the owner has, under the terms of the charterparty, accepted the risk of transit, unless the owner can demonstrate a "material change in risk".

For charterparties entered into before 28 February 2026, it is clear that a material change has occurred. However, as the situation in the region evolves, whether that change continues to be "material" may become less obvious.

In other areas potentially exposed to collateral or incidental effects, the answer is less straightforward. Once again, the answer will depend on the specific wording and the surrounding circumstances. In particular, the vessel's flag, as well as any connections between the owner or the cargo and the US or Israel (or potentially other states in the region that have been targeted by Iran), may materially affect the risks involved in these voyages, and therefore the reasonableness of the owner's judgment.

English courts have provided some guidance on how owners are required to exercise their "reasonable judgment" under wars risk provisions. In *The Triton Lark* [2012] 1 Lloyd's Rep. 151, the Supreme Court held that, when an owner is required to make a reasonable judgment of the war risks, the judgment must be made:

- In good faith (preventing it from becoming a mere device to obtain financial gain)
- Objectively
- Making all necessary enquiries

In practice, guidance from war risks insurers, flag states, risk intelligence agencies, and others, should be highly relevant to support the owner's decisions.

We hope this article proves useful in helping you to assess the contractual and operational implications of the evolving situation.

Should you have any urgent questions or require specific advice, please reach out to your usual contact at the firm. In the meantime, look out for the next articles in our series, where we will continue to provide practical guidance on the issues affecting your business.