UK DEFENCE CLUB

Israel-Iran Conflict: Charterparty Considerations FAQs

As the Israel-Iran conflict escalates, the maritime sector faces heightened pressures, particularly in the Middle East's essential waterways. The Strait of Hormuz, Gulf of Aden, and southern Red Sea – vital corridors for global oil and container trade – are under increased scrutiny due to escalating military activity and geopolitical tensions.

The Strait of Hormuz, a narrow waterway between Iran, the United Arab Emirates and Oman is a key point for the global oil trade with 1/5th of the global oil shipments passing through this vital corridor. Although, at the date of publication, commercial traffic through the Strait of Hormuz continues, the risk of escalation remains high, with Iran having reiterated past threats to close the passage.

In response to the deteriorating security situation following the recent escalation on Friday, 13th June, 2025, the UK and Greek authorities issued advisories urging their merchant fleets to avoid the Gulf of Aden and to log all transits through the Strait of Hormuz. Meanwhile, Greek shipowners are required to report ship movements through the Strait of Hormuz to national maritime authorities. UK-flagged ships, including those under the Red Ensign Group, have been specifically advised to steer clear of the southern Red Sea.

The following FAQs have been put together to provide general guidance and to highlight the type of contractual issues that might arise following the Israel-Iran conflict. The situation is very fluid and Members are advised to contact the Club for advice in respect of their specific contractual arrangements and circumstances.

1. Are Israeli ports legally unsafe?

As of 18th June, 2025, all Israeli ports remain fully operational with certain restrictions in place, such as for the handling of hazardous materials. Presently, a circular issued by the Ashdod port advises that the Ministry of Transportation has directed the port to regulate the entry of ships and set procedures for the reporting and calling of ships carrying hazardous materials. Additionally, oil tankers have been instructed to vacate the vicinity of the oil ports.

Most charterparties (e.g. the NYPE and the Asbatankvoy) will contain the warranty that the ship is to trade "always via safe ports / berths" (or equivalent words). A port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.

Where included, these clauses impose a duty on the charterer to nominate a port that is prospectively safe for the ship. That duty is usually an absolute duty, but some standard terms only impose on the charterer a duty to exercise due diligence.

Most charterparties include express warranties. Where they do not, such warranties may sometimes be implied.

The likelihood that such a term will be implied will depend on all the circumstances, but the more tightly defined the obligations of the charterer are, especially in terms of permitted ports, the less likely it is that a safe port term will be implied. An owner cannot safely assume that a safe port term is to be implied if it is not expressly set out.

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1. Are Israeli ports legally unsafe? (continued)

Whether orders can be refused on grounds of unsafety will depend on the specific port, the current factual circumstances, and on the terms of the charterparty. As far as the consequences of a port being unsafe are concerned, the position may differ depending on whether the issue arises under a time or a voyage charter.

Under a time charter, where a charterer orders a ship to an unsafe port or place, its order is likely to be unlawful and, as such, an owner should not be obliged to follow it: an owner is accordingly entitled to reject an unlawful nomination or order and ask for alternative orders.

The position is however different under a voyage charter: in such a case, and depending on the actual wording of the relevant clause(s), the charterer may be under an obligation to nominate an alternative safe port and / or the owner may be entitled to proceed or to wait at an alternative safe port / place. In some circumstances, however, the voyage charter may become frustrated should the unsafety of the port be prolonged and where there is no obligation to nominate an alternative safe port or a right to proceed to one.

Members will note that the situation is very fluid and the right to refuse orders on the grounds of unsafety is very fact and contract dependent. Accordingly, before refusing any orders on the grounds of unsafety, Members should seek legal advice regarding calling at specific ports as wrongfully refusing the charterer's orders can result in the owner being in repudiatory breach of the charterparty.

2. Can owners refuse to call at Israel ports, relying on the standard war clauses?

Where an owner is fixing a voyage charter, they inevitably have a certain degree of control over the ship's employment in terms of cargo and trade routes. By contrast, under a period time charter, an owner effectively places its ships in the hands of its charterer, subject only to agreed limits. A charter for worldwide trading or to a specific place coupled with an agreement that the charterer will pay extra war risk premium will make it hard for the owner to refuse orders to proceed to a war affected zone, subject to any protective clauses or common law defences.

Different charters are likely to have bespoke clauses dealing with the occurrence of war risks and it is therefore essential that these are reviewed carefully.

However, taking the BIMCO Conwartime Risks Clause for Time Chartering 2013 ("Conwartime 2013") as a reference (and, in so far as applicable, Voywar 2013 for voyage charters), "War Risks" are described within clause (a)(ii) of Conwartime as: "actual, threatened or reported: war, act of war, civil war or hostilities…civil commotion… warlike operations…acts of hostility or malicious damage…by any person, body, terrorist or political group, or the government of any state or territory whether recognised or not".

Clause (b) of Conwartime 2013 gives an owner the right to refuse an order to go to a particular place or port if the ship "in the reasonable judgement of the Master and / or Owners, may be exposed to War Risks". The issue to consider, therefore, is whether the requirements to exercise reasonable judgement as to the danger posed by such acts in clause (a)(ii) and/or the risk of the ship being exposed to such risks required by clause (b) will have been met if an owner wishes to exercise its right to refuse to proceed to a particular Israeli port.

Useful guidance on the application of the test under clause (b) was provided by the Court in the case of *The Triton Lark* [2011] EWHC 2862 (albeit on the Conwartime 1993 which was not materially different from the relevant provisions of Conwartime 2013) and it was held that whilst the evaluation of risk must be based on evidence, the degree of risk does not need to be as high as 50/50 although must be more than a "bare possibility".

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2. Can owners refuse to call at Israel ports, relying on the standard war clauses? (continued)

The recent UK Supreme Court case of *Herculito v Gunvor* [2024] UKSC 2 provides a timely reminder that even where a War Clause is incorporated, what rights it actually gives to an owner can depend on other clauses. The charterparty incorporated the war risks clause, clause 39, from BPVOY4, but it also included a Gulf of Aden clause and another war risk clause which required the charterer to pay additional war risk insurance premiums. The court observed that, against that background of a specially agreed contractual regime for the known piracy risks of transiting the Gulf of Aden, it would *not* have been open to the owners to contend that the risks of doing so – which had not materially changed since the charterparty was entered into – constituted a war risk, such that the owner could decline the charterer's orders. So, not only must the entirety of the charterparty provisions be considered, but it may also be important to consider the extent to which the level of risk has changed since the charterparty was entered into.

The above tests would need to be applied to the developing situation at the specific port in question. So far, all Israeli ports remain operational and there has not been any damage to any ships reported.

Members will need to seek specific advice before refusing any orders, carefully considering the most recent circumstances and the relevant clauses of the charterparty, as wrongful refusal could result in repudiatory breach of the charterparty.

3. In the absence of a War Clause, can owners deviate or refuse orders?

Where standard war risk clauses are not incorporated, an owner may still rely on its overriding obligation to ensure the safety of the ship. This may entitle them to refuse orders or deviate from a planned route if, in the master's reasonable judgment, there is a credible threat to the ship, crew, or cargo.

The decision in *The Hill Harmony* [2001] 1 AC 638 reaffirmed this principle, though it also highlighted that the threshold for justifying such a refusal is relatively high and must be supported by a reasonable assessment of the risk involved. Such decisions must be based on objective evidence and the specific risk profile of the ship, including its flag, ownership, trade route and any affiliations with states currently under threat, such as Israel, the UK, or the US.

The absence of a war clause does not remove the owner's duty to act prudently. Each case must be assessed individually, and the timing of the charterparty - particularly whether the risk has materially changed since its inception - will be a key factor. Liberty clauses, where present, may offer the owner greater flexibility to reroute without bearing the associated costs, and in some cases, may even present commercial advantages.

If the ship is loaded with cargo, bills of lading must also be reviewed to ensure that the liberty to deviate is expressly incorporated in the terms, as in its absence, the owner might be exposed to claims from cargo interests. It should be noted that the carrier could also rely on Article IV, rule 4 of the Hague/Visby Rules, which addresses deviation, should the same be incorporated in the bill of lading.

4. What if a ship is delayed or detained?

The position may differ depending on whether the issue arises under a time or a voyage charter.

Generally, the position under a time charter is straightforward: a ship will remain on-hire throughout the period of delay as the ship is fully efficient in all respects and able to comply with the charterer's instructions.

Many geopolitical events will not fall within the unamended NYPE off hire clause as they are likely to be considered to be extraneous to the ship. The situation will be different if "whatsoever" has been added to the list of off-hire events or if bespoke clauses are included to deal with delays due to geopolitical events.

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4. What if a ship is delayed or detained? (continued)

In the event that a ship remains delayed or trapped due to the hostilities and further claims arise due to late redelivery or hull fouling, the charterer may raise the "restraints of Princes, Rulers and People" exception as a defence. However, these words usually cover forcible interference by a government or state preventing or impeding the performance of the charterparty and whether this would apply to the current situation is not clear.

The position under a voyage charterparty is more complex. Which party bears the risk of any delay will depend upon the specific contractual terms and, in particular, whether the ship has been able to reach a location to validly tender NOR in order to allow laytime to commence.

The general position under a berth charterparty is that laytime will not commence until the ship has reached the berth and tendered NOR (unless the charterparty contains a WIBON provision) and so the owner bears the risk of the delay prior to arrival at the berth.

Under a port charterparty, if no berth is available upon arrival then the ship must have reached the position within the port where waiting ships usually lie in order to validly tender NOR (unless the charterparty contains a WIPON provision). Much will depend upon the exact terms agreed in the charterparty and we would advise Members to contact the Club for guidance if they are faced with delays upon entering an Israeli port.

If there are delays during cargo operations, laytime and/or demurrage will continue to run unless there is a specific exception clause in the charterparty. If there are any delays after cargo operations have completed, the owner will need to demonstrate that the charterer is in breach of charterparty in order to claim detention for the period of the delay. It is worth noting here in the context of delay that force majeure is not a concept recognised under English law and, in order to apply, it would need to be incorporated by way of a specific clause in the charterparty.

As always, if Members have any questions in relation to the above issues they are invited to contact the Club for further information.