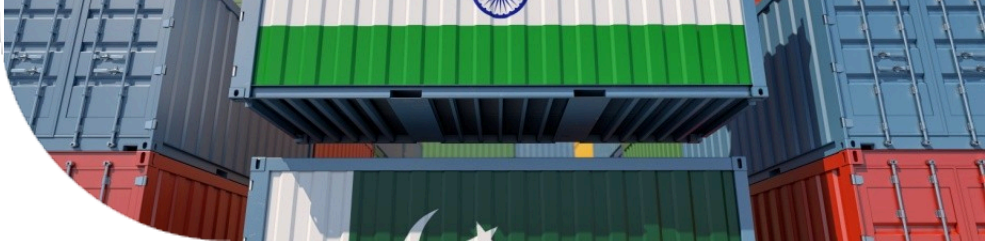

Legal implications for shipping arising from the India-Pakistan conflict

The recent escalation of the long-standing tension between India and Pakistan has invariably affected a wide range of sectors, not least shipping and trade. With both nations sharing a complex history marked by conflicts, territorial disputes, and political challenges, the implications of this latest crisis resonate through the shipping industry and global supply chains in various ways. This article aims to examine the potential legal implications for ship owners and operators.

Background

The India-Pakistan relationship has historically been fraught with tension, originating from their partition in 1947 and rooted in disputes over regions like Kashmir. The two nations have fought multiple wars, and skirmishes continue to flare up periodically. In the last month or so, the situation has escalated significantly. On 22 April, there was a terrorist attack in Phalgram, a town in Kashmir, and a subsequent four days of fighting.

Consequently, the respective governments have taken the following action (at the time of writing):

- On 2 May, India's Ministry of Commerce & Industry prohibited the import or transit of all goods originating in or exported from Pakistan to India.
- On 4 May, Pakistan's Ministry of Commerce prohibited the transit through Pakistan of goods of Indian origin imported by third countries, the import of goods from India by third countries and exports of third countries to India.
- Pakistan-flagged vessels have been prohibited from calling at Indian ports by the Directorate General of Shipping India.
- Pakistan's Ministry of Maritime Affairs has banned Indian-flagged vessels from docking at its ports and barred Pakistani ships from calling at Indian ports.
- Indian seafarers calling at Pakistan ports have been advised, by Indian government, to exercise caution when calling at Pakistani ports.

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Such conflicts create uncertainty and unpredictability, particularly for businesses reliant on shipping routes passing through or near these nations. If the situation escalates further, ports in both India and Pakistan could face disruptions due to military actions or political unrest. Karachi, one of the largest ports in Pakistan, serves as a critical entry and exit point for goods. Any military escalation could lead to port shutdowns or limited operational capacities. Similarly, Indian ports along the Arabian Sea might also face restrictions, affecting import and export activities further. Disruptions at key logistics hubs such as these can result in significant backlogs, impacting the global supply chain as well as complex legal disputes under charterparties, bills of lading and sale contracts.

A ceasefire between the countries was announced on 10 May, with both nations having ceased hostilities but remaining vigilant of the other. At this time, the situation still remains precarious pending discussions between the countries' respective military officials, and many of the imposed restrictions still remain in place.

Force majeure/frustration

In instances where military hostilities or political instability disrupt shipping activities, the invocation of force majeure clauses becomes critical. These clauses are designed to release parties from liability or obligation when an unforeseen event occurs that significantly hinders performance. However, the interpretation of what constitutes a force majeure event can be contentious; it depends very much on the wording of the applicable force majeure clause and will differ in each specific situation. Force majeure clauses often cite "war" as a force majeure event, but when war has not actually broken out, clauses will need to be scrutinised to see if the circumstances fall within another force majeure category.

Where a specific vessel, which is flagged in India or Pakistan, has been fixed for a voyage that it is no longer able to perform, owners may try to invoke force majeure provisions to evade liability.

Force majeure provisions are commonly included in voyage charters and contracts of affreightment, but rarely in time charters. In the absence of a force majeure provision, charterers may need to look to other provisions or legal principles.

If a contract becomes impossible to perform, it may be considered "frustrated", in which case the contract is cancelled and the parties are discharged from their obligations. However, frustration, as a legal principle, is very difficult to establish, and it is not enough for a voyage simply to be delayed. This could leave owners in a difficult position where they are simply unable to proceed to the nominated port due to the restrictions applying to the chartered vessel.

Unsafe ports

Although, at the time of writing, all ports in India and Pakistan, including those close to the border, remain open to non-Pakistani or Indian ships, there will almost certainly be safety concerns amongst those ships that are still calling there. Situations such as this often give rise to unsafe port arguments, with owners seeking to argue that

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they are not obliged to proceed to the nominated port because it is unsafe.

The success of such an argument will depend on the safe port provisions in the charterparty and the factual circumstances at the port in question at the time the ship is to arrive there. However, it is generally recognised that the threshold for unsafe port claims is a high one, and the burden is on the shipowner to prove that the circumstances are sufficiently unsafe. Owners should exercise caution before claiming unsafe port since a wrongful refusal to follow a charterer's legitimate orders to proceed to a certain port may result in the owners being liable to the charterers for damages. Owners may be reassured, however, that the law permits them a reasonable time within which to consider their position before following orders which may appear to be unsafe.

War risks

Charterparties often contain war risks provisions, which may well assist parties in the present situation. The BIMCO war risks clause, for example, defines war risks broadly, to include not only out-and-out war but also threatened wars or hostilities. Where such a clause is present, an owner may be able to refuse to proceed to or through an area of hostility and require alternative orders to be given. However, owners will need to assess the level of risk and consider whether it meets the threshold required under the applicable clause.

In the absence of a war risks clause, owners will need to consider whether any other provisions assist them, such as a clause paramount or a bespoke deviation clause.

Off-hire/demurrage

For those vessels that are able to call at Indian or Pakistani ports, delays are likely to be encountered due to the general disruption. This will lead to inevitable off-hire or demurrage disputes. Parties will need to scrutinise the relevant contractual provisions to determine liability. As a general principle, hire will still be payable, or laytime will continue to run, unless the charterparty contains a specific provision allowing charterers to place the vessel off-hire, or interrupting laytime, as applicable, in the relevant circumstances.

Insurance Considerations

Political risks and heightened tensions may affect marine insurance coverage for vessels operating near conflict zones. Underwriters may impose additional war risks premiums, leading to significant changes in the cost of doing business. Charterers may find their liability limited or altered, resulting in disputes about whether losses incurred during military hostilities are covered by insurance and which party bears the liability for increased costs.

Risk Allocation and Liability

The India-Pakistan conflict may influence how risks are allocated between parties in a charter party. Shipowners

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typically bear the risk of navigational perils, but conflicts can complicate this allocation. If a vessel is damaged or confiscated due to military actions, questions arise as to whether the charterer or shipowner is liable.

Increased Transit Times and Costs

The presence of conflict can dramatically increase shipping times and costs. Vessels seeking to avoid high-risk areas may need to reroute, such as through the western Indian Ocean or the southern tip of Africa, extending their journey significantly. Although this may minimise risk, such detours lead to higher fuel consumption, increased operational costs, and potential delays in the supply chain.

In addition, this is likely to give rise to contractual disputes since detours from the usual route are unlikely to be permitted under charterparties. Vessels are typically required to proceed on their voyage with "utmost dispatch". An unjustified deviation from the customary route is likely to be a breach of charter, which could result in the vessel being off-hire or a claim for damages.

The hope remains that diplomatic solutions can be pursued, allowing for a more stable and secure environment for shipping and trade in the region. In the meantime, shipowners and charterers operating in the region should be alive to the evolving risks and pay careful attention to contractual provisions. As always, legal advice tailored to specific scenarios, along with risk assessments, will be fundamental to navigating the intricacies of charterparties in a troubled geopolitical climate.

Need advice?

Discover more about our specialised services for the shipping and logistics sector, or reach out to us at online.enquiries@LA-law.com for expert guidance.

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