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The Belligerent Strait: Transit Passage Rights and Charterparty Disputes in the 2026 Strait of Hormuz Crisis

YUSHAN BAI*

ABSTRACT

The Strait of Hormuz serves as a critical path supporting the global energy supply chain yet it is characterized by substantial legal vulnerability. The overlapping territorial waters of Iran and Oman result in a persistent doctrinal impasse in public maritime law. Literature highlights an impasse between the non-suspendable transit passage regime of UNCLOS, to which Oman is a party, and the older innocent passage regime on which Iran relies, Iran having ratified neither that Convention nor the 1958 Geneva Convention and resting its position on customary law. Neither regime, however, permits a coastal State to suspend passage through an international strait, so the disagreement turns on the conditions attached to passage rather than on any power of closure. The review article synthesizes contemporary legal scholarship to analyze how the impasse influences the interplay between the public law gridlock and private commercial maritime law. The review article finds that existing international tribunals lack the ability and mechanism to resolve the navigational dispute resulting in geopolitical risks effectively being privatized and absorbed by the commercial entities. Furthermore, the paper demonstrates that the shipping industry relies on safe port warranty, war risk clauses, and force majeure and contract frustration to allocate liability when transiting the Strait of Hormuz. In the absence of a unified global navigational treaty, the global energy supply chain relies on the complexity and adaptability of the private commercial contracts to manage risk across the Strait of Hormuz.

Keywords: Strait of Hormuz, UNCLOS, Transit Passage, Charterparties, Safe Port Warranty, War Risks, Force Majeure

I. INTRODUCTION

The Strait of Hormuz is the narrowest point on the world's busiest oil route. Roughly 21 nautical miles separate the Iranian coast from Oman's Musandam Peninsula at the chokepoint, and the traffic separation scheme that orders merchant traffic there provides inbound and outbound lanes of about two nautical miles each, divided by a separation zone of similar width.¹ Some 20 million barrels of oil a day moved through the Strait in 2024, close to one fifth of global

* Author is affiliated with the School of Law, Dalian Maritime University, Dalian City, China.

petroleum liquids consumption and roughly a quarter of seaborne traded oil, alongside about one fifth of internationally traded liquefied natural gas.²

On 28 February 2026 the United States and Israel struck Iranian targets, and the Islamic Revolutionary Guard Corps broadcast warnings that no vessel would be permitted to pass through the Strait.³ Over the following months Iranian forces were reported to have laid mines, fired on and boarded merchant ships and detained several vessels.⁴ Iran began levying transit charges under a management plan approved in late March 2026 and established a Persian Gulf Strait Authority on 5 May 2026 to authorise and regulate transits.⁵ In April its Ports and Maritime Organization published a redrawn traffic scheme routing inbound traffic between the islands of Qeshm and Larak, inside Iranian territorial waters, and treated the internationally recognised lanes as a danger zone.⁶ A memorandum of understanding signed on 17 June 2026 reopened the waterway for a period before the arrangement broke down in July; the Strait remains open but volatile, with weekly transit counts far below the pre-crisis baseline.⁷

The institutional response was declaratory rather than coercive. In resolution 2817 (2026) the Security Council condemned actions or threats aimed at closing, obstructing or otherwise interfering with international navigation through the Strait, and affirmed that any attempt to impede lawful transit passage constituted a serious threat to international peace and security, but it adopted no enforcement measures and closed by deciding to remain seized of the matter.⁸ A later draft addressed specifically to the Strait was not adopted, two permanent members having voted against it.⁹ The Council of the International Maritime Organization, meeting in extraordinary session, agreed a declaration condemning what it called the purported closure and

¹ See Noam Raydan & Farzin Nadimi, *Reaching Viable Management Arrangements in the Strait of Hormuz*, WASH. INST. FOR NEAR E. POL'Y (Aug. 5, 2026), <https://www.washingtoninstitute.org/policy-analysis/reaching-viable-management-arrangements-strait-hormuz>; *Vessels Now Keeping to Omani Waters in Strait of Hormuz Traffic Scheme*, MAR. EXEC. (June 20, 2025), <https://maritime-executive.com/article/straits-of-hormuz-traffic-separation-scheme-keeps-within-omani-waters>.

² U.S. ENERGY INFO. ADMIN., *World Oil Transit Chokepoints* (last updated Mar. 3, 2026), https://www.eia.gov/international/content/analysis/special_topics/World_Oil_Transit_Chokepoints.

³ Alexander Lott, *The Legality of Iran's Closure of the Strait of Hormuz*, EJIL: TALK! (Mar. 10, 2026), <https://www.ejiltalk.org/the-legality-of-irans-closure-of-the-strait-of-hormuz/>.

⁴ *Iran Captures Two Vessels in Strait of Hormuz After Ship Comes Under Fire*, AL JAZEERA (Apr. 22, 2026), <https://www.aljazeera.com/news/2026/4/22/iranian-gunboat-fires-on-container-ship-off-oman-coast>; *Iran Says Seized Tanker in Gulf of Oman, as US Disables Two Ships*, AL JAZEERA (May 8, 2026), <https://www.aljazeera.com/news/2026/5/8/iran-says-it-has-seized-oil-tanker-over-attempts-to-disrupt-its-oil-exports>.

⁵ Safia K. Southey, *Codifying Coercion: Iran's New Legal Regime and the Law of International Straits*, EJIL: TALK! (Apr. 20, 2026), <https://www.ejiltalk.org/codifying-coercion-irans-new-legal-regime-and-the-law-of-international-straits/>.

⁶ *Iran Publishes Redrawn Traffic Scheme for Strait of Hormuz*, MAR. EXEC. (Apr. 8, 2026), <https://maritime-executive.com/article/iran-publishes-redrawn-traffic-scheme-for-strait-of-hormuz>.

⁷ *Strait of Hormuz Brief*, LLOYD'S LIST INTEL. (Aug. 5, 2026), <https://www.lloydslistintelligence.com/resources/blog/strait-of-hormuz-brief-5-august-2026>.

⁸ S.C. Res. 2817, paras. 7-8 (Mar. 11, 2026).

encouraging a safe maritime corridor; the declaration was agreed without a vote, and some delegations recorded that they did not regard it as balanced.¹⁰

None of this resolved the underlying disagreement, because the disagreement is about which body of law applies. At its narrowest the Strait is less than 24 nautical miles across, so the twelve mile territorial seas of the bordering States meet and no belt of high seas or exclusive economic zone survives through the middle. Part III of the 1982 United Nations Convention on the Law of the Sea answers that geography with the regime of transit passage, which may not be suspended.¹¹ Iran signed the Convention in 1982 but has not ratified it, and the United States is not a party at all.¹² On signature Iran declared that provisions of that kind were the product of quid pro quo rather than a codification of existing custom, and that only States Parties were entitled to benefit from the contractual rights they created, naming the right of transit passage first among them.¹³

This article examines what follows for the commercial contracts that carry the cargo. It argues that the public law impasse does not leave the risk unallocated but drives it into the charterparty, where English law distributes it through the safe port warranty, the war risks clauses of the BIMCO CONWARTIME and VOYWAR families, and the doctrines of force majeure and frustration. It also questions two propositions that recur in commentary on the Strait: that the internationally recognised shipping lanes force merchant traffic into Iranian waters, and that the innocent passage regime on which Iran relies permits suspension in an international strait.

II. LITERATURE REVIEW

A. The Public Law Conflict

The volatility of the Strait rests on the absence of an agreed navigational rule set. Because the territorial seas of Iran and Oman overlap at the chokepoint, there is no neutral corridor through

⁹ U.N. Press Release SC/16330 (Apr. 7, 2026) (recording the Security Council's failure to adopt a draft resolution on the Strait of Hormuz).

¹⁰ INT'L MAR. ORG., Council, 36th Extraordinary Sess., *Summary of Decisions*, IMO Doc. C/ES.36/D, paras. 3.4-3.5, 8-10 (Mar. 19, 2026).

¹¹ United Nations Convention on the Law of the Sea arts. 34-45, Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994) [hereinafter UNCLOS].

¹² U.N. TREATY COLLECTION, *Multilateral Treaties Deposited with the Secretary-General*, ch. XXI.6 (status of UNCLOS) (Iran signature Dec. 10, 1982, no ratification; the United States is neither a signatory nor a party, although it signed the Final Act).

¹³ Declaration of the Islamic Republic of Iran upon signature of UNCLOS (Dec. 10, 1982) ("certain of its provisions are merely product of quid pro quo which do not necessarily purport to codify the existing customs or established usage (practice) regarded as having an obligatory character. Therefore, it seems natural . . . that only states parties to the Law of the Sea Convention shall be entitled to benefit from the contractual rights created therein", the first provision listed being "[t]he right of Transit passage through straits used for international navigation (Part III, Section 2, article 38)"), reproduced in U.N. DIV. FOR OCEAN AFFAIRS & THE LAW OF THE SEA, *Declarations and Statements*, https://www.un.org/Depts/los/convention_agreements/convention_declarations.htm.

which shipping can pass without entering the territorial sea of a coastal State, and the applicable regime therefore determines how far that State may control passing merchant ships.¹⁴ Part III of UNCLOS was drafted to answer precisely that problem. Article 38(2) defines transit passage as the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait, and article 44 provides that States bordering straits shall not hamper transit passage and that there shall be no suspension of it.¹⁵ The United States, although not a party to the Convention, treats the navigational provisions as reflecting customary international law, classifies the Strait of Hormuz expressly as a strait in which transit passage applies, and takes the position that transit passage cannot be hampered or suspended by the coastal State in peacetime.¹⁶

Iran's position is that this regime does not bind it. Its declaration on signature reserved the point that transit passage is contractual rather than customary, and Iranian practice has since relied on the older and more restrictive regime of innocent passage.¹⁷ Commentary has described Iran as a persistent objector to the transit passage regime, and the argument is not frivolous: transit passage was an innovation of the Third Conference, and Iran has objected to it consistently since 1982.¹⁸

Where the argument runs into difficulty is in the assumption that innocent passage would license suspension. The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone allows a coastal State to suspend innocent passage temporarily in specified areas of its territorial sea where suspension is essential for the protection of its security, but article 16(4) removes international straits from that power: "There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State."¹⁹ UNCLOS

¹⁴ On the consequences of overlapping territorial seas in the Strait, see Alexander Lott & Shin Kawagishi, *The Legal Regime of the Strait of Hormuz and Attacks Against Oil Tankers: Law of the Sea and Law on the Use of Force Perspectives*, 53 OCEAN DEV. & INT'L L. 123 (2022).

¹⁵ UNCLOS, *supra* note 11, arts. 38(2), 44.

¹⁶ OFF. OF THE CHIEF OF NAVAL OPERATIONS, *The Commander's Handbook on the Law of Naval Operations*, NWP 1-14M, paras. 1.2, 2.5.3.1, 2.5.3.2 (Mar. 2022). The Handbook classifies the Strait of Hormuz among the straits to which transit passage applies and states that transit passage through international straits cannot be hampered or suspended by the coastal State for any purpose during peacetime. See also Statement on United States Oceans Policy (Mar. 10, 1983).

¹⁷ Mohammad Yousef, *Does Iran Possess the Right to Close the Strait of Hormuz under International Law?*, INT'L L. BLOG (Apr. 6, 2026), <https://internationallaw.blog/2026/04/06/does-iran-possess-the-right-to-close-the-strait-of-hormuz-under-international-law/>.

¹⁸ Lott, *supra* note 3 (describing Iran as remaining unbound by reason of its status as a persistent objector). On the drafting of the transit passage regime, see Edward J. Frank, *UNCLOS III and the Straits Passage Issue: The Maritime Powers' Perspective on Transit Passage*, 3 N.Y.L. SCH. J. INT'L & COMP. L. no. 2, art. 5 (1982), https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law/vol3/iss2/5.

¹⁹ Convention on the Territorial Sea and the Contiguous Zone arts. 16(3)-(4), Apr. 29, 1958, 516 U.N.T.S. 205 (entered into force Sept. 10, 1964).

article 45(2) is to the same effect.²⁰ On either regime, then, a State bordering an international strait lacks a peacetime power of suspension. The practical difference between the two lies in the conditions attached to passage and in the treatment of submerged transit and overflight, not in a right to close the waterway.

The treaty position is also less tidy than it is usually described. Iran signed the 1958 Convention in May 1958 but never ratified it, so it is not a party to that instrument either; Oman is not a participant in it at all, while the United States ratified it in 1961.²¹ Iran's reliance on the 1958 regime is therefore a reliance on customary international law which that Convention is said to reflect, rather than on a treaty obligation running between Iran and its neighbours. The same instrument also provides that no charge may be levied on foreign ships by reason only of their passage through the territorial sea, which is difficult to reconcile with a transit toll.²²

Geography compounds the difficulty. Islands generate territorial sea entitlements of their own, so the islands lying in and around the Strait affect where the limits of the territorial sea fall and how much sea room remains for deep draught vessels.²³ It does not follow, however, that the internationally recognised lanes run through Iranian waters. At the narrowest point both the inbound and the outbound lane of the traffic separation scheme lie within Omani territorial waters, a position reflected in the Iran and Oman continental shelf delimitation, which placed the median line so that the navigable deep water channels fall predominantly on the Omani side; the sea lanes historically crossed into Iranian waters only in the approaches on either side of the chokepoint.²⁴ What changed in 2026 was not the geography but Iran's unilateral redrawing of the scheme, which directed inbound traffic between Qeshm and Larak, within Iranian waters and subject to coordination with the Revolutionary Guard Navy.²⁵

There is also no forum in which the disagreement can be settled. Part XV of the Convention binds only States Parties, and the Tribunal established under Annex VI is open to others only where all parties to the case accept an agreement conferring jurisdiction on it; neither Iran nor the United States has ratified the Convention.²⁶ Iran's declaration accepting the compulsory jurisdiction of the International Court of Justice, deposited in 2023, is confined to questions of

²⁰ UNCLOS, *supra* note 11, art. 45(2).

²¹ U.N. TREATY COLLECTION, *Multilateral Treaties Deposited with the Secretary-General*, ch. XXI.1 (status of the 1958 Convention on the Territorial Sea and the Contiguous Zone) (Iran signature May 28, 1958, no ratification; Oman not a participant; United States ratification Apr. 12, 1961).

²² Convention on the Territorial Sea and the Contiguous Zone, *supra* note 19, art. 18(1). On the charges levied in 2026, see Southey, *supra* note 5.

²³ See DONALD R. ROTHWELL, ISLANDS AND INTERNATIONAL LAW (2022).

²⁴ Raydan & Nadimi, *supra* note 1.

²⁵ *Iran Publishes Redrawn Traffic Scheme for Strait of Hormuz*, *supra* note 6.

²⁶ UNCLOS, *supra* note 11, arts. 279, 286-287, annex VI, art. 20.

State immunity and expressly excludes disputes relating to sovereignty, sovereign rights or jurisdiction over maritime areas, as well as disputes with States it does not recognise.²⁷ Oman, by contrast, has accepted both the Tribunal and the Court for disputes under the Convention, so the jurisdictional vacuum is specific to the pairing of Iran and the United States rather than to the Strait as such.²⁸ The International Court held in the *Corfu Channel* case that it is “generally recognized and in accordance with international custom that States in time of peace have a right to send their warships through straits used for international navigation between two parts of the high seas without the previous authorization of a coastal State, provided that the passage is innocent”, but a holding on the substance does not supply a forum.²⁹ The result is a doctrinal impasse with no institutional exit.

B. Private Law Fallout

Because the public law question has neither a forum nor an agreed answer, the risk it generates does not disappear. It is priced and allocated by contract. Commercial maritime law does not operate in isolation from the public regimes that shape the sea, and the charterparty is where the two meet.³⁰ Three mechanisms carry most of the weight: the safe port warranty, the war risks clauses, and the doctrines of force majeure and frustration.

i. Safe Port Warranty

A charterer given the right to direct the employment of a vessel is ordinarily taken to promise that the ports to which it orders her are safe. The formulation still in use is that of Sellers LJ in *The Eastern City*, offered in conditional terms: “If it were said that 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, it would probably meet all circumstances as a broad statement of the law.”³¹

Two qualifications matter for a strait in wartime. The first is temporal. In *The Evia (No 2)* the House of Lords held that the undertaking is a promise as to the prospective safety of the port at the date of nomination and not a continuing warranty; Basrah having been prospectively safe

²⁷ Declaration of the Islamic Republic of Iran Recognizing as Compulsory the Jurisdiction of the International Court of Justice (June 26, 2023), <https://www.icj-cij.org/declarations/ir>.

²⁸ Declaration No. 7 of the Sultanate of Oman upon ratification of UNCLOS (Aug. 17, 1989). Oman has made no declaration addressed to the Strait of Hormuz by name; its Declaration No. 2 requires prior permission for the passage of warships through Omani territorial waters.

²⁹ *Corfu Channel (U.K. v. Alb.)*, Merits, Judgment, 1949 I.C.J. Rep. 4, 28 (Apr. 9).

³⁰ See COMMERCIAL MARITIME LAW (Melis Özdel ed., 2020).

³¹ *Leeds Shipping Co. v. Société Française Bunge (The Eastern City)* [1958] 2 Lloyd’s Rep. 127, 131 (C.A.) (Sellers L.J.), quoted in *Gard Marine & Energy Ltd. v. China National Chartering Co. (The Ocean Victory)* [2017] UKSC 35, at [10].

when nominated in March 1980, the trapping of the vessel after the outbreak of war that September was not a breach by the charterers.³² The second is the abnormal occurrence proviso itself. In *The Ocean Victory* the Supreme Court held that the phrase bears its ordinary meaning of an event well removed from the normal, out of the ordinary course and unexpected, and that the test is one of normality rather than foreseeability; the rare concurrence of conditions at Kashima was accordingly not a characteristic of the port, and the charterers were not in breach.³³

Applied to the Strait of Hormuz, these qualifications tell against the proposition that a charterer who orders a vessel through the Strait incurs something approaching absolute liability. Hostilities breaking out after nomination engage *The Evia (No 2)*; a sudden closure engages the abnormal occurrence proviso. The real exposure runs the other way and turns on timing. In *The Lucille* orders to Basrah were given two days before the outbreak, the war was accordingly not an abnormal occurrence, and the charterers were in breach.³⁴ Once mining, missile attack and detention have become recurrent and widely reported features of a passage, they are correspondingly harder to characterise as abnormal, and an order given with knowledge of them is more exposed. That is a question of fact and degree at the date of the order rather than a conclusion that follows from the existence of a crisis. It is also why the safe port regime serves owners poorly: the threshold it sets for refusing an order is high, which is the gap that war risks clauses were drafted to fill.³⁵

ii. War Risk Clauses

War risks clauses displace the default position at English law, and the safe ports regime in particular, by giving the master and owners a contractual liberty to decline the voyage on a lower threshold. The BIMCO forms are the industry standard: CONWARTIME 2025 for time charters and VOYWAR 2025 for voyage charters were adopted by BIMCO's Documentary Committee in April 2025 and replace the 2013 editions, although the substantive changes are modest and the older forms remain widely incorporated.³⁶ The definition of war risks is

³² *Kodros Shipping Corp. of Monrovia v. Empresa Cubana de Fletes (The Evia) (No. 2)* [1983] 1 A.C. 736 (H.L.).

³³ *The Ocean Victory* [2017] UKSC 35, [2017] 1 W.L.R. 1793 (Lord Clarke). The safe port holding was unanimous; the division in the Court concerned the joint insurance issue.

³⁴ *Uni-Ocean Lines Pte Ltd. v. C-Trade S.A. (The Lucille)* [1983] 1 Lloyd's Rep. 387, aff'd [1984] 1 Lloyd's Rep. 244 (C.A.).

³⁵ THE SWEDISH CLUB, *War Risks Clauses in Charter Parties* 1 (Forward Defence guide, July 2025), <https://www.swedishclub.com/uploads/2025/07/Forward-Defence-War-risks-clauses-in-charter-parties.pdf> (war risks clauses displace the default position at English law, and the safe ports regime in particular, which imposes a far higher threshold on a master or shipowner refusing to continue the contractual voyage).

³⁶ BIMCO, *War Risks Clause for Time Chartering 2025 (CONWARTIME 2025)*, https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/war_risks_clause_for_time_charters_2025/; Press Release, BIMCO, *BIMCO Adopts Reviews of War Risk Clauses*

deliberately broad, extending to actual, threatened or reported war, hostilities, warlike operations, the laying of mines, acts of piracy, capture or seizure, acts of terrorists, acts of hostility or malicious damage and blockades, whether imposed against all vessels or selectively.³⁷ Every element of that list has been reported in the Strait since February 2026, and no declaration of war is needed to engage it.

The trigger is the reasonable judgement of the master or the owners that the vessel, cargo or crew may be exposed to war risks. On the older wording the court in *The Triton Lark* required a real likelihood, meaning more than a bare possibility though not necessarily more likely than not, and held that the owners' judgement must be made in good faith and be objectively reasonable, normally after such enquiries as the circumstances require.³⁸ The 2013 and 2025 editions ask only whether the area may be or may become dangerous, which lowers the threshold further.³⁹ The liberty is nonetheless not unfettered. In *The Product Star (No 2)* the Court of Appeal held that a contractual discretion must be exercised honestly and not arbitrarily, capriciously or unreasonably, and that owners who had accepted the war risks of the Arabian Gulf when the charter was made could not refuse orders by relying on those same, unchanged risks.⁴⁰ That case turned on a bespoke clause; on the BIMCO wording *The Paiwan Wisdom* held that CONWARTIME contains no requirement that the likelihood of exposure should have materially increased since the date of the charterparty.⁴¹

The consequences of a justified refusal matter as much as the trigger. Owners may decline to proceed and may leave an area that has become dangerous; they may call on charterers to nominate a substitute port; action taken under the clause is not a deviation; and charterers indemnify owners for claims arising from it. Owners may also elect to proceed against payment of additional war risks premium, but they are not obliged to take that option even where cover is available.⁴² Critically for the allocation of cost, a justified refusal is not ordinarily an exception to hire, so a time chartered vessel waiting outside the Strait remains on hire.⁴³ Where

(Apr. 9, 2025), <https://www.bimco.org/news-insights/press-media/press-releases/2025/20250409-war-risks/>.

³⁷ THE SWEDISH CLUB, *supra* note 35, at 2 (reproducing the definition).

³⁸ *Pacific Basin IHX Ltd. v. Bulkhandling Handymax AS (The Triton Lark)* [2011] EWHC 2862 (Comm), [2012] 1 Lloyd's Rep. 151 (Teare J.).

³⁹ THE SWEDISH CLUB, *supra* note 35, at 3.

⁴⁰ *Abu Dhabi National Tanker Co. v. Product Star Shipping Ltd. (The Product Star) (No. 2)* [1993] 1 Lloyd's Rep. 397 (C.A.).

⁴¹ *Taokas Navigation S.A. v. Komrowski Bulk Shipping KG (The Paiwan Wisdom)* [2012] EWHC 1888 (Comm), [2012] 2 Lloyd's Rep. 416, at [18] (Teare J.).

⁴² THE SWEDISH CLUB, *supra* note 35, at 4.

⁴³ *Id.* at 5.

owners have specifically agreed to a route whose war risks were known to both parties at the time of contracting, that agreement is material to whether a refusal is open to them at all.⁴⁴

The sums riding on that allocation are substantial. The Joint War Committee extended its listed areas across the Gulf in March 2026, and reported war risk premiums moved from a pre-crisis baseline of roughly a quarter of one per cent of hull value into the mid single digits and beyond during the year.⁴⁵ The predictable result is the standoff that Franco Zárate described as a game of ping pong between owners and charterers over who bears the cost of a voyage that has stopped.⁴⁶ It should not be assumed, however, that the withdrawal of insurance is what halts traffic. The Lloyd's Market Association has said that safety concerns rather than the availability of cover drove the reduction in transits, and some 20,000 seafarers and 2,000 vessels were reported caught in the Gulf by late April 2026.⁴⁷

iii. Force Majeure and Contract Frustration

Where no clause answers the case, the parties fall back on general doctrine. English law knows no implied doctrine of force majeure. The expression is borrowed from French law, is wider than *vis major* or act of God, and has no fixed content at common law, so the relief available depends entirely on the words the parties chose.⁴⁸ Nor will the courts stretch those words. In *RTI Ltd v MUR Shipping BV* the Supreme Court held that a reasonable endeavours proviso in a force majeure clause does not oblige the affected party to accept an offer of non-contractual performance, absent clear express wording to that effect.⁴⁹

Frustration terminates the contract rather than suspending it, and the threshold is high. The test is whether performance has become, without the default of either party, a thing radically different from that which was undertaken by the contract.⁵⁰ Additional expense does not meet it. In *The Eugenia* the Court of Appeal held that a voyage from the Black Sea to India was not

⁴⁴ *Herculito Maritime Ltd. v. Gunvor International BV (The Polar)* [2024] UKSC 2.

⁴⁵ On the extension of the listed areas, see LLOYD'S MKT. ASS'N, *Joint War Committee*, <https://lmalloyds.com/committee/joint-war-committee/>. On premium levels, see *Middle East Shipping Insurance Costs Rise on Hormuz Risks*, S&P GLOB. COMMODITY INSIGHTS (July 22, 2026), <https://www.spglobal.com/energy/en/news-research/latest-news/shipping/072226-middle-east-shipping-insurance-costs-rise-on-hormuz-risks-marsh>.

⁴⁶ Javier Andrés Franco Zárate, *El riesgo de la mora en el fletamento: ¿cómo un juego de ping pong?*, 8 REVIST@ E-MERCATORIA no. 1 (2009).

⁴⁷ LLOYD'S MKT. ASS'N, *Safety Concerns, Not Insurance Availability, Driving Reduced Vessel Traffic in the Strait of Hormuz*, <https://lmalloyds.com/safety-concerns-not-insurance-availability-driving-reduced-vessel-traffic-in-the-strait-of-hormuz/>; U.N. Press Release SC/16349 (Apr. 27, 2026).

⁴⁸ *Lebeaupin v. Richard Crispin & Co.* [1920] 2 K.B. 714 (McCardie J.). English law recognises no general doctrine of force majeure; in the absence of applicable contractual wording the parties fall back on the safe port warranty and the doctrine of frustration. See THE SWEDISH CLUB, *supra* note 35, at 6.

⁴⁹ *RTI Ltd. v. MUR Shipping BV* [2024] UKSC 18, at [37].

⁵⁰ *Davis Contractors Ltd. v. Fareham Urban District Council* [1956] A.C. 696, 728-29 (H.L.) (Lord Radcliffe).

frustrated by the closure of the Suez Canal, the Cape route being longer and costlier but not radically different from what had been undertaken.⁵¹ Increased war risk premiums on a Hormuz transit are, on that reasoning, a cost to be borne rather than a ground for discharge.

The Iran and Iraq war supplies the closest analogue, and it cuts the other way. Vessels trapped in the Shatt al-Arab after September 1980 generated a line of English decisions in which the charterparties were held frustrated. In *The Wenjiang* frustration was common ground between the parties and the argument was about the date on which it occurred.⁵² In *The Chrysalis* the charter was likewise held frustrated, Mustill J observing that a declaration of war does not of itself prevent performance and that it is the acts done in furtherance of the war that may do so.⁵³ *The Evia (No 2)* belongs to the same line: the charter was frustrated, and because the charterers were not in breach of the safe port undertaking the frustration was not self-induced.⁵⁴ The organising question in these cases is the length of the interruption measured against the unexpired term, which is why hostilities may frustrate a voyage charter while leaving a time charter with wide trading limits unaffected.⁵⁵ Applied to 2026, discharge is realistically available where a vessel is trapped, seized or lost, and not where she is delayed, rerouted or made more expensive to operate.

III. CONCLUSION

The 2026 crisis exposed a gap between the law that governs the Strait and the institutions available to enforce it. The geography leaves no corridor outside the territorial sea; UNCLOS answers that with a transit passage regime that may not be suspended; Iran denies that the regime binds it; and neither the Security Council nor the International Maritime Organization was able to do more than condemn and exhort. Two features of the usual account should nevertheless be resisted. The internationally recognised lanes do not run through Iranian waters at the chokepoint, and the innocent passage regime on which Iran relies does not itself permit suspension in an international strait. The disagreement is real, and it is not resolvable in any existing forum, but it is narrower than a clash between two complete and opposed legal orders. What follows commercially does not depend on resolving it. Risk that the public order cannot allocate is allocated privately, and English charterparty law does so with reasonable coherence.

⁵¹ *Ocean Tramp Tankers Corp. v. V/O Soyfracht (The Eugenia)* [1964] 2 Q.B. 226 (C.A.).

⁵² *International Sea Tankers Inc. v. Hemisphere Shipping Co. (The Wenjiang)* [1982] 1 Lloyd's Rep. 128 (C.A.); *The Wenjiang (No. 2)* [1983] 1 Lloyd's Rep. 400.

⁵³ *Vinava Shipping Co. v. Finelvet AG (The Chrysalis)* [1983] 1 Lloyd's Rep. 503, reported as *Finelvet AG v. Vinava Shipping Co.* [1983] 1 W.L.R. 1469 (Q.B.) (Mustill J.).

⁵⁴ *The Evia (No. 2)*, *supra* note 32. For the line of cases as a whole, see Bernard J. Hibbitts, *The Impact of the Iran-Iraq Cases on the Law of Frustration of Charterparties*, 16 J. MAR. L. & COM. 441 (1985).

⁵⁵ THE SWEDISH CLUB, *supra* note 35, at 6.

The safe port warranty sets a baseline but is bounded by prospective assessment at the date of nomination and by the abnormal occurrence proviso, so it will rarely deliver the absolute liability sometimes attributed to it; the charterer's real exposure lies in ordering a vessel into a danger that has already become ordinary. War risks clauses do the working, giving owners a low threshold liberty to refuse while keeping the vessel on hire and passing additional premium down the chain. Force majeure operates only if it has been written in, and frustration discharges only where the interruption defeats the adventure. The practical consequence for shipowners and charterers is that volatility in the Strait is not an emergency to be absorbed once, but a standing operational cost to be priced, insured and drafted for.
