

The Strait of Hormuz Crisis - Charterparty, Arbitration and Risk Allocation in Maritime Trade

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Executive Summary

The effective blockade of the Strait of Hormuz since February 2026 has created acute disruption across world energy and shipping markets. With over a quarter of global seaborne oil trade previously passing through the Strait, its de facto closure has redefined risk allocation under English law charterparties, insurance policies, and related commercial contracts.

From a legal standpoint, the interplay between force majeure, war risk, and safe port provisions, alongside the doctrines of frustration and reasonable deviation, has moved from abstraction to reality. In parallel, an emerging wave of contractual notifications and preliminary arbitral referrals underscores the commercial sensitivity and legal complexity now confronting shipowners, charterers, and cargo interests.

This article examines these developments through the dual lenses of English maritime law and international arbitration practice, focusing on how established legal principles are applied to evolving geopolitical risks and modern commercial realities.

The Legal Status of the Strait and De Facto Blockade

Despite Iran's proclamation that "no vessels shall pass", the Strait of Hormuz retains the legal character of an international strait under Part III of the United Nations Convention on the Law of the Sea (UNCLOS). The right of transit passage, non-suspendable even in conflict, remains intact in law.

However, the maritime practice community is confronting the reality of de facto closure. Iranian naval engagement has rendered the area unsafe for commercial vessels, creating the precise factual conditions that activate war risk clauses and trigger reassessment of contractual and insurance positions.

AIS data indicate over 250 vessels idling or rerouting via the Cape of Good Hope, adding roughly two weeks to voyage durations. In this way, legality and safety have sharply diverged, which is a tension that sits at the heart of the current dispute landscape.

Force Majeure and Frustration under English Law

(1) Force Majeure Clauses

Under English law, "force majeure" is not a doctrine of general application but a purely contractual mechanism.

To invoke such a clause successfully, a claimant must demonstrate:

- Event qualification: that hostilities, blockades, or governmental restraints fall within the listed causes;
- Causation: that the conflict directly prevented or significantly hindered contractual performance; and
- Procedural compliance: timely and properly formatted notice of force majeure.

English courts construe these clauses strictly. The decision in *Classic Maritime Inc v Limbungan Makmur SDN BHD* [2020] 1 Lloyd's Rep 178

emphasised that even genuine impossibility is immaterial if the chain of causation is broken or notice requirements unmet.

(2) Frustration

Absent a force majeure clause, parties may seek to rely on the common law doctrine of frustration, which discharges obligations when a supervening event renders performance “impossible or radically different” (Davis Contractors Ltd v Fareham UDC [1956] AC 696).

However, as observed in *The Sea Angel* [2007] 2 Lloyd’s Rep 517, English courts take a restrictive view. Delays of uncertain duration, such as temporary suspensions of navigation, rarely suffice. Only if a blockade endures long enough to defeat the commercial purpose of the voyage, and no contractual route remains, could frustration apply.

Safe Port Warranties and Reasonable Deviation

(1) Safe Port Obligations

The classic test from *The Eastern City* [1958] 2 Lloyd’s Rep 127 defines a “safe port” as one the vessel can reach, use, and leave “without, in the absence of abnormal occurrences, being exposed to dangers which cannot be avoided by good navigation and seamanship”. With direct attacks and missile threats demonstrably ongoing, ports requiring a Hormuz transit may now be considered prospectively unsafe at the point of nomination (*The Evia No.2* [1983] AC 736).

Time charterers persisting in such nominations risk repudiatory breach, while owners refusing unsafe orders should document intelligence, insurer warnings, and flag-state advisories to evidence the reasonableness of their decision.

(2) Reasonable Deviation

Under Article IV, Rule 4 of the Hague-Visby Rules, deviation for the safety of ship, crew, or cargo constitutes a reasonable deviation, and thus a lawful act. Owners, nevertheless, must ensure deviation documentation and contemporaneous risk assessments are preserved, both to justify insurance continuity and to defend against cargo interests alleging wrongful deviation.

War Risk Clauses: CONWARTIME and VOYWAR

(1) Threshold of Risk

Clauses such as BIMCO CONWARTIME 2025 and VOYWAR 2025 grant owners a right to refuse or deviate from voyage orders where, in the reasonable judgment of the master or owners, the vessel “may be” exposed to war risks.

Following *The Triton Lark* [2012] 1 Lloyd’s Rep 151, that judgment must be:

- exercised in good faith,
- objectively reasonable, and
- informed by current enquiries and expert intelligence.

The 2025 iteration extends the nomination response period from 48 to 72 hours and requires owners to demonstrate reasonable endeavours to obtain economical insurance premiums before seeking reimbursement.

(2) Qualitative Change in Risk

The UK Supreme Court in *The Polar* [2024] 1 Lloyd’s Rep 85 reaffirmed that risk assumption at contract formation binds the parties unless a

qualitative change occurs. Vessels fixed before the February 2026 escalation can likely rely on this doctrine to reject orders through Hormuz; newer fixtures must show material deterioration beyond the baseline of known regional instability.

(3) Consequences and Insurance

Consistent with *The Houda* [1994] 2 Lloyd's Rep 541, a vessel rejecting unsafe orders remains on-hire pending alternative instructions. Charterers must nominate a substitute safe port within the stipulated window or bear the additional time and cost of diversion.

War risk premiums have now risen from 0.10 % to over 0.70 % of hull value per voyage. Under CONWARTIME, such premiums are reimbursable, provided owners act transparently and submit insurer documentation evidencing reasonable market efforts.

Voyage Charters: Asbatankvoy and Restraint of Princes

Under Asbatankvoy clauses 19–20, a “restraint of princes” arising from government interdiction exempts charterers from demurrage or detention unless expressly excluded elsewhere.

Recent arbitral references concerning voyages affected by government-imposed navigation restraints confirm that the current blockade of the Strait of Hormuz can properly be characterised as a restraint of princes. Where delay results directly from sovereign military action or official interdiction, the event typically falls within the protective scope of the Asbatankvoy form.

At the same time, bespoke “Hormuz Clauses” are increasingly being negotiated to adjust the standard allocation of risk. Such clauses may expressly override the restraint-of-princes exception, rendering charterers liable for detention at demurrage rates after the expiry of any specified free period. When interpreting overlapping provisions of this kind, it is noted that arbitral tribunals apply the principles set out in *Pagnan SpA v Tradax Ocean Transportation SA* [1987] 2 Lloyd's Rep 342 and *Septo v Tintrade Ltd* [2021] EWCA Civ 718, giving primacy to specific negotiated terms over general printed conditions where inconsistency arises.

In practice, these developments underline the importance of precise contractual drafting. Parties trading through high-risk regions should ensure that any voyage-specific clauses addressing deviation, delay, or detention are carefully reconciled with the printed form to avoid ambiguity and unintended shifts in risk allocation.

Off Hire, Laytime, and Demurrage Considerations

Under the NYPE time charter form, geopolitical disruptions rarely constitute off-hire events since they do not generally impair the vessel's physical efficiency or capability to perform. As confirmed in *The Laconian Confidence* [1997] 1 Lloyd's Rep 139, the off-hire clause is construed narrowly: loss of trading opportunity due to blockade or conflict does not, in itself, suspend the obligation to pay hire unless the vessel is incapacitated.

Wording such as “detained whatsoever” may appear to widen this protection, but maritime tribunals usually interpret it ejusdem generis with the specific causes listed, usually limiting its scope to physical detention or technical defects affecting the ship herself.

In voyage charters, the distinction between demurrage and detention remains critical. Demurrage, which is liquidated damages for delay during loading or discharge, does not extend automatically to delays occurring mid-voyage. Where navigation is suspended due to political or military obstruction, any resulting time loss generally falls under detention unless the charter expressly provides otherwise.

Parties sometimes agree that time lost to such restraints shall be compensated at demurrage rates. Once those liquidated damages apply, the owner is entitled to the fixed sum without any obligation to mitigate loss, as clarified in *MSC v Cottonex Anstalt* [2016] 2 Lloyd's Rep 494.

In any event, careful drafting remains essential: clear definitions of off-hire and demurrage triggers can prevent uncertainty and reduce exposure where voyages intersect with conflict zones or navigational closures.

Insurance and Allocation of Risk

(1) War Risk and Blocking & Trapping Coverage

Owners should review the interplay between hull policies and separate war risk extensions, which often exclude cover when sailing contrary to underwriters' orders. "Blocking and Trapping" policies, which extends protection for vessels detained by blockade, are of growing relevance, particularly for ships trapped within the Gulf.

(2) Political Risk and Contract Frustration Insurance

For shipowners and traders with local exposure, political risk or political violence policies may cover expropriation, confiscation, or enforced seizure. These policies act as a "mirror relief" where war exclusions in standard hull or cargo cover apply.

(3) Interplay with Charterparty Obligations

Where a deviation or delay triggers enhanced war premiums or other costs, CONWARTIME/VOYWAR allocate financial responsibility primarily to the charterer. However, insurers increasingly demand contemporaneous documentation to establish the reasonableness of both the decision and the expense.

Practical Considerations and Evolving Risk Management

Effective risk management in the present shipping environment requires a coordinated approach combining careful contractual preparation, operational vigilance, and data-driven decision-making. Before committing to trades that involve potentially unstable routes or ports, owners, charterers, and insurers should conduct documented risk assessments supported by independent intelligence and voyage planning. A clear appraisal of navigational hazards, insurance availability, and potential war-risk premiums allows parties to price exposure accurately and determine whether alternative routing or charter terms are preferable.

Strict compliance with notice and mitigation provisions remains critical when invoking war-risk or force-majeure clauses. Timely, properly documented communications, coupled with preservation of contemporaneous evidence such as voyage instructions, incident reports, broker correspondence, and advisories, provide essential protection in later arbitration or insurance recovery proceedings. Coordination with insurers and brokers at an early stage helps ensure that coverage continues to respond appropriately as conflict risks evolve.

At the dispute-resolution stage, the choice of arbitration venue and governing law should be aligned with enforceability considerations to avoid fragmented proceedings and conflicting outcomes. Early strategy engagement, especially before a dispute crystallises, can prove decisive in achieving efficient resolution and preserving commercial relationships.

Meanwhile, advances in digital technology are reshaping how risk and performance are monitored. Integrated maritime platforms capable of

correlating port-call records, AIS data, and contractual terms now enable parties to identify potential laytime or demurrage exposure in real time. What began as operational support is increasingly forming part of evidential infrastructure, providing objective data that enhances the credibility of claims and defences alike. As trade routes and risk profiles become more dynamic, such analytical tools will play an expanding role in ensuring that contractual rights and obligations are managed with both precision and foresight.

Conclusion

The 2026 Hormuz crisis underscores that while the black-letter law of chartering, which has been anchored in decisions such as *The Eastern City* (defining the safe-port obligation), *The Triton Lark* (clarifying the standard of reasonableness under war-risk clauses), and *The Polar* (addressing the qualitative change in risk principle), provides a stable foundation, its practical application depends on commercial contemporaneity, evidential discipline, and procedural prudence. The law evolves not in theory but through its responsiveness to geopolitical realities and the contractual precision of the parties who operate within them.

English law continues to serve as the primary reference point for allocating maritime and political risk at sea, combining certainty with flexibility through established case law and arbitration practice. At the same time, Hong Kong's integrated arbitration and enforcement framework allows those principles to operate effectively across borders, linking common-law predictability with regional enforceability throughout the Asia-Pacific.

For practitioners and industry participants alike, enduring success in this environment will rely on foresight in drafting, precision in documenting risk, and agility in dispute resolution. The intersection of legal doctrine, digital intelligence, and practical navigation now defines the next phase of global maritime dispute management, which is a phase where preparedness and procedural clarity will be as vital as seamanship itself.

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