BLOCKED AT HORMUZ: WHY THE 2026 MIDDLE EAST CONFLICT IS TESTING THE LIMITS OF CONTRACTUAL FRUSTRATION

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ABSTRACT

The coordinated US-Israeli airstrikes on Iran on February 28, 2026, have created the largest scale of commercial turmoil ever seen. In the space of days, the Strait of Hormuz—widely regarded as the world's most critical maritime energy chokepoint—was effectively shut; tanker traffic fell to under 5 percent of its pre-war averages; and QatarEnergy declared force majeure under long-term LNG sales contracts with customers throughout Europe and Asia. This paper analyzes whether the common law doctrine of contractual frustration is capable of dealing with the effects of these events and contrasts it to think about applicable FM provisions in cross-border energy and commodity contracts. In particular, it addresses three central issues raised by the 2026 Hormuz crisis: the distinction between impossibility and increased onerousness with respect to dual-blockade rerouting costs; the weaponization of the foreseeability doctrine as a means of denying relief to parties contracting under escalating regional tensions; and the unique and complex legal issues associated with volatile, partial, and diplomatically conditioned re-openings of the Strait. The paper concludes that the 2026 Hormuz crisis highlights a structural mismatch between the inflexibility of judicial review and the systemic magnitude of contemporary geopolitical turmoil, and advocates for a shift to adaptive contracting templates that suspend commercial obligations rather than terminate them.

Keywords: Contractual Frustration; Force Majeure; Strait of Hormuz Crisis (2026); Commercial Impracticability; Maritime Law; International Energy Trade.

I. Introduction

On February 28, 2026, at 02:00 GMT (Gulf Standard Time) there was a coordinated series of attacks by both the United States and Israeli military on the Iranian military, the Iranian nuclear program and the senior leadership of the Iranian military (referred to as Operation Epic Fury). As a result, the Supreme Leader of Iran, Ali Khamenei, was killed in the air strike.[1] Iran retaliated by launching missiles towards Israeli cities and towards US military installations located in the Gulf Region. Within 72 hours of the event, the Iranian Revolutionary Guard Corps (IRGC) closed the Strait of Hormuz to all international shipping. The large container shipping companies (Maersk, MSC, CMA-CGM and Hapag-Lloyd) suspended the shipment of all cargo through that shipping lane until further notice.[2] At that time, there were over 150 Tankers anchored off shore, waiting to use the strait for passage, and traffic through the shipping lane began declining from pre-war levels of 100% down to 5% over the next few weeks.[3]

The immediate and dire consequences from a commercial standpoint were front page news. The Strait of Hormuz is responsible for approximately 27% of the total maritime crude oil supply in the world and about 20% of total global LNG shipments.[4] UNCTAD issued warnings regarding the cascading impact of these events on the global energy marketplace, food security, and the financial situation of developing nations.[5] On 4 March 2026, QatarEnergy introduced force majeure for all its LNG production as a result of Iranian missile attacks against the Ras Laffan Industrial City, thereby threatening long-term supply contracts with customers in China, South Korea, Italy, and Belgium. The annual revenue at risk from these events is approximately \$20 billion.[6] In addition to this, Iran began imposing tolls in excess of \$1 million per vessel

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[1]Iran's Supreme Leader, Ayatollah Ali Khamenei, Has Been Killed, NPR (28 February 2026), <https://www.npr.org/2026/02/28/nx-s1-5730158/israel-iran-strikes-trump-us> accessed 26 June 2026.

[2]Carra Globe, 'Strait of Hormuz Closure 2026: What It Means for Your Supply Chain and Shipping Routes' (updated May 2026) <https://carraglobe.com/strait-of-hormuz-closure-2026/> accessed 26 June 2026.

[3]CNBC, 'The Strait of Hormuz Crisis Explained: What It Means for Global Shipping' (2 March 2026) <https://www.cnbc.com/2026/03/02/strait-of-hormuz-crisis-us-iran-israel-war-shipping-trade-oil.html> accessed 26 June 2026.

[4]Congressional Research Service, 'Iran Conflict and the Strait of Hormuz: Impacts on Oil, Gas, and Other Commodities' (R45281, 2026) <https://www.congress.gov/crs-product/R45281> accessed 26 June 2026.

[5]UNCTAD, Strait of Hormuz Disruptions: Implications for Global Trade and Development (UNCTAD/OSG/TT/INF/2026/1, March 2026).

[6]Al Jazeera, 'QatarEnergy Declares Force Majeure on Some LNG Contracts Due to Iran War' (24 March 2026) <https://www.aljazeera.com/news/2026/3/24/qatarenergy-declares-force-majeure-on-some-lng-contracts> accessed 26 June 2026.

transiting through the Strait of Hormuz.[7]

The above-mentioned events posed an issue to lawyers who deal with international trade. Before now, this question was purely hypothetical -- can a country-military blockade on a global energy artery trigger the common law doctrine of frustration in England? Or are very high operational costs or extortion imposed by a Sovereign out of the reach of English Courts that have historically maintained strict limits for this type of compensation? This paper will show how the 2026 energy crisis demonstrates the fundamental inadequacy of the absolute discharge mechanism which is at the core of the frustration doctrine, and that standard contract language regarding FM will not be sufficient to cover the scenarios created by both countries imposing a simultaneous blockade.

II. Legal Context: Force Majeure versus the High Wall of Frustration

2.1 The Contractual Shield: Force Majeure Under English Law

Force majeure does not have a common law basis within the legal system in England. In the context of English law, force majeure is an aspect of contract law established by the complementary clauses within a contract. The scope and effect of force majeur are governed by the specific language contained in the relevant contract clause.[8] Much of the time, the clauses frequently relied upon are the BIMCO CONWARTIME 2025 & VOYWAR 2025 war risk clauses in relation to energy and shipping contracts. The war risk clauses define 'War Risks' as including actual, threatened or reported war, an act of war, civil war, hostilities, the conduct of warlike operations, the presence of mines, acts of piracy, malicious damage and blockades.[9] Under these clauses, the owner will exercise their discretion in determining whether or not to proceed to an area of war risk, and may choose to divert from their original destination without being liable for breach of contract.[10]

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[7] Sea Vantage, 'Strait of Hormuz Crisis 2026: Full Timeline & Ocean Freight Impact' (updated April 2026) <https://www.seavantage.com/blog/strait-of-hormuz-crisis-2026-shipping-disruption-timeline> accessed 26 June 2026.

[8] Gard, 'The Middle East Conflict: Contractual and Insurance Implications' (3 March 2026) <https://gard.no/en/insights/the-middle-east-conflict-contractual-and-insurance-implications/> accessed 26 June 2026.

[9] 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/> accessed 26 June 2026.

[10] Norton Rose Fulbright, 'Transiting Through the Red Sea: Practical and Legal Considerations' <https://www.nortonrosefulbright.com/en/knowledge/publications/7191efb4/transiting-through-the-red-sea-practical-and-legal-considerations> accessed 26 June 2026.

The 2026 closures to the Hormuz Straits — caused by drone attacks, naval blockades and GPS spoofing — fully fit within this definition. In 2025, BIMCO made changes to CONWARTIME and VOYWAR introducing a more flexible adjusted freight mechanism for alternative routes and increasing the level of transparency for claims made against the insurance company for recovery of costs. The FM clause created by BIMCO also has the added requirement that a party invoking the FM clause will need to prove causation, that the event was not reasonably foreseeable at the time the contract was made, and that reasonable steps were taken to mitigate the effects of the event on the contract.[11] As discussed below, the requirement of non-foreseeability (because it is likely to be a point of contention in many contracts arising from late 2025 and early 2026 when regional tensions were rising) creates a special challenges for those engaging with contracts made during these periods.

2.2 The Default Sword: The Common Law Doctrine of Frustration

In cases where there is no FM clause in a contract, or where that clause does not relate to the specific event in issue, the common law doctrine of frustration will apply. The basis for the doctrine of frustration is found in the case of Taylor v Caldwell,[12] where the judge, Blackburn J., recognised that a contract may be discharged due to an intervening event that renders performance of the contract impossible due to the destruction of its subject matter. The doctrine was also applied in National Carriers Ltd v Panalpina (Northern) Ltd by the House of Lords.[13]

Despite this strictness, Lord Radcliffe's definition of frustration in Davis Contractors Ltd v. Fareham Urban District Council is the guiding authority on frustration: frustration occurs when a contract can no longer be performed due to external factors out of control of either party causing the contract to have become totally different from how the parties entered into it.[14] The fundamental consequence of frustration is total and automatic termination. A valid contract is extinguished; it is no longer valid. The fact that the parties must now seek new contractual terms if they wish to continue their contractual relationship is what makes frustration completely different from the more flexible mechanisms for suspending or modifying performance under the civil law doctrines of hardship and the UNIDROIT Principles. The

[11]Kennedys Law, 'Impacts of the Middle East Crisis on Charterparty Disputes' (22 April 2026) <https://www.kennedyslaw.com/en/thought-leadership/article/2026/impacts-of-the-middle-east-crisis-on-charterparty-disputes/> accessed 26 June 2026.
[12]Taylor v Caldwell (1863) 3 B & S 826.
[13]National Carriers Ltd v Panalpina (Northern) Ltd [1981] AC 675 (HL).
[14]Davis Contractors Ltd v Fareham Urban District Council [1956] AC 696 (HL) 729 (Lord Radcliffe).

courts in England have set very high levels of disruption or difficulties within the contractual relationship that must be established before relief will be granted. For example: mere disruption or difficulties of contract performance will not allow for recovery of your damages; there must also be an absence of profit.[15]

III. Analytical Framework: Three Legal Battlegrounds

3.1 The Cost and Route Dilemma: Impossibility versus Onerousness

The route-closure scenario was first established in Tsakiroglou & Co Ltd v Noblee Thorl GmbH.[16] In October 1956, a CIF contract was established between two parties for groundnuts from Sudan to be shipped to Hamburg. After closure of the Suez Canal due to military action, the sellers refused to ship their goods via the Cape of Good Hope because this route would have been twice the distance and substantially more expensive and argued for frustration of contract. The House of Lords ruled unanimously that there were no grounds for frustration; the contract could still be performed, simply at much greater cost and difficulty.[17]

This principle is undergoing real-world testing as the 2026 crisis creates unprecedented market conditions through dramatic increases in all facets of international shipping. Routing vessels through the Cape of Good Hope rather than the Persian Gulf will increase the transit time for each voyage by approximately ten to fourteen days, while the emergency surcharge on containers shipped on container lanes from the Persian Gulf will increase by as much as $3,000 per forty-foot equivalent unit. Additionally, War Risk Surcharges on container lanes linked to the Persian Gulf have grown to as much as $1,500.[18] Insurance premiums have grown from approximately 0.125% of vessel value per transit before the crisis began, to between 0.2% and 0.4% of vessel value on the eve of the 28 February strikes.[19] All of this is prior to considering Iran's sovereign toll on each vessel in the amount of $1 million, which cannot be classified under any recognized English law.

The 2026 crisis differs from Tsakiroglou in the fact that it involves multiple routes being closed at the same time. For the first time in modern history, both the Strait of Hormuz and the Red

[15] G Treitel, Frustration and Force Majeure (3rd edn, Sweet & Maxwell 2014) para 12-001.
[16] Tsakiroglou & Co Ltd v Noblee Thorl GmbH [1962] AC 93 (HL).
[17] ibid 119 (Viscount Simonds).
[18] Sea Vantage (n 7).
[19] Sea Vantage (n 7).

Sea/Bab el-Mandeb Strait were simultaneously closed, with the closure of the Bab el-Mandeb Strait occurring after the Houthi forces resumed attacks following the conclusion of the October 2025 ceasefire agreement.[20] According to analysts at Girton College at Cambridge University, the combined effect would result in a 'nightmare scenario' that would effectively block 25 percent of the world's energy supplies.[21] While the re-routing of cargoes from Gulf loading terminals to the Cape may be an inconvenience for those shippers, it may be the only physically feasible route available at rates that would reduce the economic purpose of the transaction close to zero. The point in time that a supply price was determined based on an assumption of being able to make able to use a route through Hormuz for transit makes the argument of frustration much more compelling than what was argued in Tsakiroglou. In the United States, and according to the UCC, commercial impracticality under UCC § 2-615, which only requires a showing of impracticability of performance as the result of the failure of a basic contractual assumption, can produce very different results under U.S.-governed supply agreements.

3.2 The Foreseeability Trap in an Era of Permanent Crisis

According to English contract law and the concept of frustration, an event cannot frustrate a contract unless it was a foreseeable event at the time of contract execution.[22] This has consistently been the case since the decision in The Eugenia;[23] thus, the concept of frustration presents significant obstacles to parties who executed contracts in the months leading up to February 2026.

The intelligence data is clear. The tensions among the United States, Israel, and Iran have been escalating through early 2026 due to the collapse of nuclear negotiations in Geneva and the previous 12-day aerial conflict between the two countries in mid-2025. As a result, war-risk premiums had already significantly increased prior to the strikes.[24] Additionally, BIMCO had modified its War Risks clause in 2025 as a result of geopolitical factors.[25]

Possibly concluding that the Hormuz disruption had occurred at a time when both Parties would

[20] Carra Globe (n 2).
[21] Elisabeth Kendall, quoted in Al Jazeera, 'Iran Threatens Bab al-Mandeb Closure: How Would That Affect World Trade?' (6 April 2026) <https://www.aljazeera.com/news/2026/4/6/iran-threatens-bab-al-mandeb-closure-how-would-that-affect-world-trade> accessed 26 June 2026.
[22] BP Refinery (Westernport) Pty Ltd v Shire of Hastings (1977) 180 CLR 266 (HCA) 283.
[23] Ocean Tramp Tankers Corporation v V/O Sovfracht (The Eugenia) [1964] 2 QB 226 (CA).
[24] Gard (n 8).
[25] West P&I Club (n 11).

have considered the possibility when they entered into a contract, because as a result of this being a foreseeable event, it was unreasonable for a seller to be given any type of frustration relief since they entered into the agreement knowing that such occurrence was possible.[26] The foreseeable event provides both Parties and the Court with an opportunity to use a Foreseeability Trap. The same level of intelligence used prior to the disruption would have led to a prudent negotiator using an FM clause at the time of negotiating to protect themselves against the risk of cancellation.

This does not, however, mean that such circumstances should always be regarded as sufficing to find the causing event is within reasonable contemplation. Certainly, they may assume mark bearing future correspondence. However, there is a difference between seeing a likelihood of escalating levels of loss and correctly identifying or knowing to any degree (even low) which marks will be most significantly impacted upon.[27] Hence, in that perspective, it may not automatically preclude a party from establishing a frustration claim; however, a heightened level of evidence is going to be necessary for a party to establish said frustration claim.[28]

3.3 Contingent Reopenings and the Problem of Selective Performance

The third and most original area of legal conflict stems from the fact that the Temporary openings of the straits occur sporadically and depend on International relations. The crisis in the Collapsed 2026 did not involve a complete and permanent closure of the Strait prior to a complete and permanent reopening; rather the Strait gradually reverted to the Temporary opening status with intermittent cease-fire agreements, transit approvals only granted to the vessels of 'friendly' states, and IRGC announcements regarding temporary closures on one day and the foreign ministry's announcement of a reopening within hours.[29] As of 21 June 2026, approximately 55 vessels used the Strait; however, the channel is still mined, and last-minute, ad hoc negotiations of the parties to the treaty began on 22 June 2026 in Switzerland.[30]

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[26]Pioneer Shipping Ltd v BTP Tioxide Ltd (The Nema) [1982] AC 724 (HL).
[27]STL News, 'The 2026 Strait of Hormuz Collapse: Micro-Fulfillment Bottlenecks, Weaponized Customary Law, and the Logistics of a Multi-Month Energy Shock' (June 2026) <https://www.stl.news/2026-strait-of-hormuz-collapse/> accessed 26 June 2026.
[28]Farrer & Co, 'Protecting the GCC in Times of Trouble: Legal Remedies in English Law and International Law' (13 March 2026) <https://www.farrer.co.uk/news-and-insights/protecting-the-gcc-in-times-of-trouble-legal-remedies-in-english-law-and-international-law/> accessed 26 June 2026.
[29]Hormuz Strait Monitor, 'Crisis Timeline: The Strait of Hormuz War 2026' (updated June 2026) <https://hormuzstraitmonitor.com/crisis-timeline/> accessed 26 June 2026.
[30]Hormuz Strait Monitor (n 31).

This volatility presents particularly acute challenges to the frustration doctrine by requiring the identification of a singular frustration event which fundamentally changed the contract. The difficulty that would need to be found in pinpointing the event in time also arises from the nature of performance that oscillates between being physically possible (for example when a corridor is only briefly open), but is practically impossible (in terms of being mine-touched in some way or otherwise restricted). Courts applying the National Carriers[31] would need to determine, for instance, whether the temporary unavailability followed by a partial restoration after state-imposed surveillance constitutes a sufficiently permanent and fundamental change so as to frustration the contract or simply an extended period of difficulty which the parties would reasonably be expected to navigate at increased costs.

Another problem is that Iran has been giving transit permission only to certain vessels from 'friendly' countries (for example, on 6 April 2026 seven vessels registered in Malaysia were allowed passage).[32] If certain flag states have access to the Strait and others do not, determining whether performance is 'impossible' will depend on the flag of the vessel rather than the state of the Strait. This may lead to courts deciding that the contract has been modified by supervening public law rather than being frustrated in the traditional sense, which has important implications for the remedies available between the parties.

IV. Findings and Discussion: The Systemic Failure of All-or-Nothing Remedies

According to the previous analysis, the 2026 Hormuz crisis simultaneously tests the resilience of both limbs of the English commercial law response to supervening events. The FM clauses in standardised marine energy and shipping contracts have not been properly calibrated for a situation in which both principal Middle East maritime trade routes fail at the same time, a sovereign state imposes a toll on passage through its waters, and GPS spoofing converts navigational data into an instrument of coercion.[33] The BIMCO 2025 modifications, though a step in the right direction, arrived too recently to have been included in those contracts executed

[31]National Carriers Ltd v Panalpina (Northern) Ltd [1981] AC 675 (HL) 700 (Lord Simon).
[32]Al Jazeera, 'Malaysia's Ships Allowed to Pass Strait of Hormuz, PM Anwar Says' (27 March 2026) <https://www.aljazeera.com/economy/2026/3/27/malaysias-ships-allowed-to-pass-strait-of-hormuz-pm-anwar-says> accessed 26 June 2026; see also Time, 'Why Iran's "Selective" Closure of the Strait of Hormuz Matters' (7 April 2026) <https://time.com/article/2026/04/07/strait-of-hormuz-countries-pass-deals-iran-us-war-trump/> accessed 26 June 2026.
[33]Kennedys Law (n 12).

as of February 2026, many of which still utilize the 2013 edition.[34]

The frustration of contracts applies here, but the common law doctrine is too blunt and too destructive for what's needed here. If QatarEnergy is able to claim frustration of its long-term LNG contracts, the commercial relationships that underpin European energy security over the next decade would be compromised overnight. The Law Reform (Frustrated Contracts) Act 1943 does not allow for adaptive renegotiation; it simply distributes losses resulting from the termination of a contract. For producers whose production facilities have been physically damaged (as with QatarEnergy's Ras Laffan trains, which are estimated to take 3-5 years to repair), the declaration of force majeure is easy.[35] However, there is much more legal uncertainty regarding producers with intact facilities, but whose products have been stranded on the other side of the Strait due to closure.

The result is that oil (& gas) companies and traders are now operating in a 'legal void'. Either they will have to perform at a huge loss or rely on FM or frustration under their respective agreements. However, neither would provide them with sufficient protection against a breach of contract claim unless those specific events of 2026 are clearly defined as covered events. So, neither outcome is good for the long-term viability of the international energy supply chain.

V. Conclusion and Recommendations

The Hormuz Crisis 2026 has pushed the express FM provisions and common law doctrine of frustration to their respective structural limits. English courts applying the cases of Tsakiroglou and Davis Contractors demonstrate a strong reluctance to grant discharge on the grounds of increased cost or unavailability of route alone. The doctrine of foreseeability would appear to deny relief with respect to those parties who contracted with full knowledge of rising regional tensions. And given the episodic, diplomatically conditioned nature of the reopening of partial corridors, it is difficult to develop a framework for categorising these events as single frustrations.

Three reforms should occur. First, the draft community needs to stop using common war clause boilerplates. After the energy and commodity contracts that we likely see in the future, there

[34]Kennedys Law (n 12).
[35]The National, 'Qatar's Ras Laffan LNG Site May Not Be Fully Back Online for Months' (9 April 2026) <https://www.thenationalnews.com/business/energy/2026/04/09/months-expected-until-qatars-ras-laffan-lng-site-resumes-full-operations/> accessed 26 June 2026.

needs to be custom dual blockade clauses that explicitly address a total restriction on the Hormuz channel and the Bab el Mandeb channel at the same time, and also have pre-established delivery adjustments that are based on real marketplace conditions rather than just simple distance formulas. The new adjusted freight system that is part of VOYWAR 2025 is a step in this direction and should be utilized universally.[36]

Secondly, we recommend that parties think about using hardship/adaptability clauses based on the UNIDROIT Principles of International Commercial Contracts (Article 6.2.1-6.2.3), which require the contract be renegotiated if performance becomes excessively burdensome to the party. This type of clause would have provided the parties with a more constructive reaction, should the Parties have been able to negotiate an alternative to performance at a catastrophic level or frustration.

Consider enacting an English legal doctrine of commercial impracticability to codify UCC s. 2-615 whereby the threshold of discharge is lowered while giving judges discretion to either suspend contracts or require them to be re-negotiated instead of terminating. The 2026 Crisis shows that macro-economic volatility in the modern economy requires flexible remedies for both parties. The Strait of Hormuz has not only pushed the boundaries of contract law, but has also shown the limitations within that law.

[36]BIMCO, War Risks Clause for Voyage Charter Parties 2025 (VOYWAR 2025) <https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/war_risks_clause_for_voyage_charter_parties_2025/> accessed 26 June 2026.

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