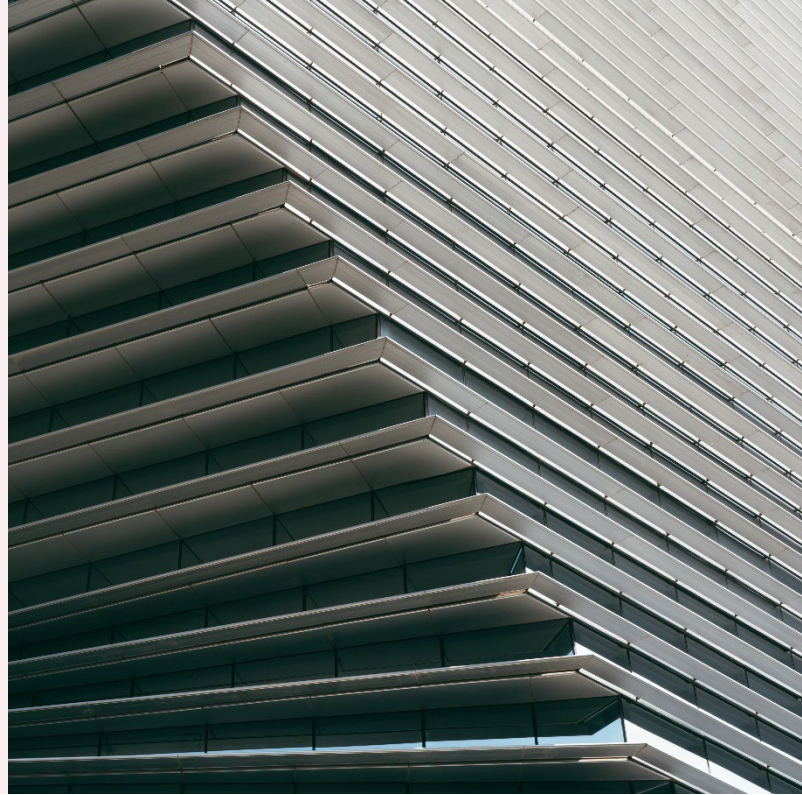


# Global maritime and offshore update – April 2026

9 April 2026



## A shipping perspective: de facto closure of the Strait of Hormuz – commercial safeguards

The Strait of Hormuz (the **Strait**) is one of the world's most important shipping lanes, linking the Persian Gulf with international markets. Although relatively narrow – just 20nm wide at its narrowest point – approximately one fifth of the world's oil demand, and significant volumes of natural gas, and fertilisers transit through the Strait each year. The Strait has become a critical chokepoint for international markets, with Iran's de facto closure of it having significant and widespread global ramifications, disrupting shipping and supply chains, threatening global energy and food security, and broader global economic stability.

Given the global criticality and evident vulnerability of these waters, this article focuses attention on the international right of passage by commercial shipping through the Strait and identifies some contractual safeguards that shipowners and charterers can explore to mitigate their risks during the current turmoil.<sup>1</sup>

### Key issues

- 1 International law
- 2 Risk mitigation
- 3 Conclusion

<sup>1</sup> The Law of Armed Conflict at sea is beyond the scope of this article.

## International law

### *Right of Transit Passage and Right of Innocent Passage*

The Strait is bordered to the north by Iran and to the south by Oman and the UAE. Articles 37 and 38 of the United Nations Convention On The Law of the Sea, 1982 (**UNCLOS**) guarantee to commercial ships (including submerged marine passage) and aircraft "*the right of transit passage*" through international straits. "*Transit Passage*"<sup>2</sup> is a broad guarantee of "*freedom of navigation and overflight*", provided the transit is "*continuous and expeditious*". Such transit passage is not to be impeded or suspended by bordering states.<sup>3</sup> Articles 37 and 38 govern all straits used for "*international navigation between one part of the high seas or an Exclusive Economic Zone (EEZ) and another part of the high seas or EEZ*". The Strait connects the EEZ in the Arabian Sea with the Persian Gulf and is generally considered to be an international strait to which the guaranteed freedom of navigation would apply.

The right of transit passage is to be contrasted with the more restrictive "*right of innocent passage*", also enshrined in UNCLOS<sup>4</sup>. The latter applies only to ships in territorial seas.<sup>5</sup> This means that coastal states can assert greater control over the right of innocent passage through territorial waters<sup>6</sup> than over the right of transit passage in international straits<sup>7</sup>.

Despite the widespread international endorsement of UNCLOS, with 168 ratifying states, neither Iran, the United States nor Israel are parties to UNCLOS.<sup>8</sup> Those states are therefore not directly bound by either the rights of transit passage or innocent passage enshrined in UNCLOS.<sup>9</sup> However, it is generally considered that UNCLOS' key navigational rules, particularly freedom of navigation and transit passage through international straits, reflects customary international law, which predates and survives UNCLOS<sup>10</sup> and therefore binds all states irrespective of whether or not they have ratified UNCLOS.<sup>11</sup> The rights of transit passage and innocent passage are generally supported by longstanding practice and policies of maritime powers and have been recognised by non-party states.<sup>12</sup> They therefore apply by virtue of customary international law, irrespective of whether or not the protagonist states have ratified UNCLOS. On this basis, closure of the Strait and any interference with commercial

---

<sup>2</sup> UNCLOS, Article 38(2).

<sup>3</sup> Unless there is an alternative route through the high seas or EEZ on the seaward side of an island that offers "*similar convenience with respect to navigational and hydrographical characteristics*" (Article 8(1) of UNCLOS).

<sup>4</sup> UNCLOS, Articles 45(2) and 17.

<sup>5</sup> Therefore aircraft need to obtain permission and submerged vehicles need to surface.

<sup>6</sup> UNCLOS, Articles 45(2) and 17.

<sup>7</sup> UNCLOS, Articles 37 and 38.

<sup>8</sup> Although Iran signed UNCLOS, it failed to ratify it. See Declaration of the Islamic Republic of Iran made upon signature of UNCLOS 1 UN Law of the Sea Bulletin 17. United Nations Division for Ocean Affairs and the Law of the Sea, *Law of the Sea Bulletin* No 17 (April 1991) 23.

<sup>9</sup> The concept of "*pacta sunt servada*" embodied in Article 27 of the Vienna Convention on the Law of Treaties, 1969, which provides that "*every treaty in force is binding upon the parties to it and must be performed by them in good faith*" does not apply to Iran, Israel or the United States.

<sup>10</sup> It was also recognised by the ICJ in *Corfu Channel* (United Kingdom of Great Britain and Northern Ireland v Albania) (Merits) [1949] ICJ Rep 4, 28–29 (9 April) ('Corfu Channel case')

<sup>11</sup> Law of the Sea, 'Chapter 3: Freedom of Navigation' (Web Page, Tufts University) <<https://sites.tufts.edu/lawofthesea/chapter-three/>> accessed 30 March 2026.

<sup>12</sup> For example, the U.S. Freedom of Navigation Program is a dual diplomatic and operational model adopted by the US, with the Department of State challenging excessive claims diplomatically, and the Department of Defense operationally asserting to preserve rights and freedoms by restricting "excessive maritime claims... inconsistent with customary international law as reflected in the 1982 Law of the Sea Convention"; United States Department of Defense, Annual Freedom of Navigation Report: Fiscal Year 2023 (Report to Congress, 8 May 2024)

<<https://policy.defense.gov/Portals/11/Documents/FON/DoD%20FON%20Report%20for%20FY23.pdf>>].

shipping through the Strait in peace time could be seen as a violation of customary international law, absent a lawful blockade.<sup>13</sup> During armed conflict, the law of naval warfare governs the situation, requiring a declared, notified, and effective blockade before the Strait can be lawfully closed to neutral shipping, and laying of mines in such waters must provide for safe corridors for neutral transit.

## What can shipowners and charterers do to mitigate their risk?

While international agencies and State Governments continue to grapple with measures to alleviate the pressures on global markets,<sup>14</sup> commercial operators, including shipowners and charterers alike should explore what contractual safeguards and options are available to them within their commercial arrangements. While each contract will require legal analysis of its specific terms, standard shipping contracts (such as contracts of carriage and charterparties) commonly contain risk allocation tools that are critical in this uncertain environment and should be fully explored with legal assistance. Some of the common measures are considered below, but all options should be considered.

### (a) *Safe port / safe berth warranties (express or implied)*

Time and voyage charterers are typically obliged to nominate a prospectively safe port/berth, however the terms of each charter party must be scrutinised to determine if a safe port (or safe berth) warranty is expressed or can be implied into the contract.<sup>15</sup> The classic test for a safe port is one where in the relevant period, the particular ship can reach, use and depart from the port "*without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship*" (emphasis added).<sup>16</sup>

The safe port (or safe berth) warranty operates prospectively. Timing of the order to proceed, the circumstances prevailing at the particular port and the foreseeability of their deterioration are important considerations in determining what constitutes "*abnormal circumstances*" and whether the safe port (or berth) warranty is breached.<sup>17</sup> The safe port warranty can be difficult to apply, particularly given the current hostilities affecting some ports in the Middle East.

### (b) *Force majeure clauses*

Force majeure is purely a contractual right – under English law it does not exist independently of contract or by implication. Therefore, the trigger events and the scope of relief depend entirely on the specific wording used by the parties and will differ from contract to contract. Each contract

---

<sup>13</sup> IHL Treaties - San Remo Manual on Armed Conflicts at Sea, 1994. The San Remo Manual, which reflects customary international law, provides that to be lawful, a blockade must be declared and notified, non-discriminatory and proportionate.

<sup>14</sup> For example, the International Energy Agency (IEA) has announced the release of 400 million barrels from member states' emergency reserves (Spencer Kimball and Sam Meredith; IEA agrees to release record 400 million barrels of oil to address Iran war supply disruption," CNBC (11 March 2026) <https://www.cnbc.com/2026/03/11/iea-oil-reserves-crude-prices-iran-g7-energy.html>); and the United States has temporarily eased sanctions against Russia to allow purchase of some Russian-origin crude and petroleum products (Lim Hui Jie, U.S. allows temporary purchases of Russian oil already at sea to stabilize energy markets, CNBC (13 March 2026) <https://www.cnbc.com/2026/03/13/bessent-us-allows-purchase-russian-oil-stranded-sea-energy-markets.html>).

<sup>15</sup> See for example *Reardon Smith Ltd v Australian Wheat Board (the Houston City)* [1956] AC 266; *Mediterranean Salvage & Towage Ltd v Seamar Trading & Commerce Inc (the Reborn)* [[2009] 2 Lloyd's Rep.

<sup>16</sup> *Leeds Shipping v Societe Francaise Bunge (the Easter City)* [1958] 2 Lloyd's Rep. 127.

<sup>17</sup> *The Mary Lou* [1981] 2 Lloyd's Rep 272, 283; *The Evia (No.2)* [1983] 1 AC 736; *Uni-Ocean Lines Pte Ltd v C- Trade SA (The Lucille)* [1984] 1 Lloyd's Rep 244 (Court of Appeal); *The Saga Cob* [1992] 2 Lloyd's Rep 545; *The Ocean Victory* [2015] EWCA Civ 16.

must be separately assessed and interpreted. The same applies to material adverse change clauses.

Typically, in shipping contracts force majeure clauses require the occurrence of a trigger event beyond the party's control, which prevents or hinders performance of the shipping contract. An escalation in costs alone will not usually suffice. A party must then take steps to mitigate the effect of the trigger event on the contract, for example by exploring alternative routes or nominating an alternative port. Once established, the event may allow suspension, rerouting, or termination of the contract, depending on the nature and extent of relief agreed. The interpretation and application of such clauses can be complex, particularly in the current state of volatility and uncertainty in the Middle East generally and the de facto closure of or restricted transiting through the Strait.

(c) *Deviation / liberty clauses in contracts of carriage by sea (and Hague-Visby Art IV r 4)*

Carriers have a fundamental duty to transport cargo from one location to another with utmost dispatch via a designated, agreed route. Unjustified deviations may constitute a breach of the contract of carriage and can disentitle the carrier's right of limit liability or exclude it altogether and potentially jeopardise their Protection and Indemnity cover. Whether the charter party or contract of carriage has a "liberty clause" and its precise wording will determine whether a deviation may be permitted. For example, the Hague-Visby Rules<sup>18</sup> provides that any deviation in saving / attempting to save life or property at sea or any "reasonable deviation" will not be a breach of the contract of carriage.

Whether a deviation is justified or reasonable within the terms of a liberty clause can be difficult to determine. It is assessed contextually, and often depends on the reason for the deviation, the nature and extent of the deviation, whether the deviation increases the risks of the voyage or alters the fundamental nature of the contracted voyage and of the trade.

In the absence of an express deviation clause, it might be possible to argue a limited implied right to deviate where necessary to avoid serious danger to life, ship or cargo. However, the safer course is to include an express liberty clause when negotiating a shipping contract, and to have regard to its scope before making operational decisions to deviate.

(d) *War risks clauses*

Shipowners and charterers should check if their shipping contracts contain a war risk clause (for example BIMCO War Risks Clauses for Time Chartering (CONWARTIME 2025) and BIMCO's VOYWAR/CONWARTIME). Such clauses typically allow vessels not to proceed to or transit through an area where it appears in the "reasonable judgment" of the Master or Owner that the vessel, cargo or crew may be, exposed to war risks, even if those risks did not exist at the time of entering into the charter party. "War risks" often expressly include hostilities, mines, blockades and piracy, but the proper construction will depend on the specific wording of the clause.

*Other clauses commonly invoked in similar scenarios*

Other clauses that owners and charterers should consider in the prevailing circumstances include:

- (i) Sanctions/ illegality clauses, which may allow refusal or suspension or termination where performance would breach sanctions or

---

<sup>18</sup> Hague-Visby Rules, Art IV r 4. See also the Hague Rules.

- create prohibited exposure. A standard sanctions limitation clause can suspend liability where payment would in fact be prohibited;
- (ii) off-hire/ detention risk allocation clauses, which can reallocate the cost of delays and the consequences of port authority interference.

## **Conclusion**

Shipowners and charterers must assess the contractual safeguards and options they have available. Each provision must be interpreted based on the precise wording used in the relevant clauses, interpreted having regard to the contract as a whole, and the governing law/jurisdiction clause. The assessment is necessarily fact-dependent (including the evolving risk picture, route alternatives, insurance availability, and the mitigation steps available to each party).



**Pat Saraceni**  
Director L&DR, Perth

Email: pat.saraceni  
@cliffordchance.com  
Mobile: +61 419784206

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

cliffordchance.com

Clifford Chance, Level 24, 10 Carrington Street,  
Sydney, NSW 2000, Australia

© Clifford Chance 2026

Liability limited by a scheme approved under professional standards legislation

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest\*\* • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague\*\* • Riyadh\* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

\*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

\*\*Clifford Chance has entered into association agreements with Clifford Chance Prague Association SRO in Prague and Clifford Chance Badea SPRL in Bucharest.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.



**Spencer Flay**  
Partner, Perth

Email: Spencer.Flay  
@cliffordchance.com  
Mobile: +61 415048270



**Nadia Kalic**  
Partner, Sydney

Email: nadia.kalic  
@cliffordchance.com  
Mobile: +61 401450025



**Matthew Buchanan**  
Partner, Singapore

Email: matthew.buchanan  
@cliffordchance.com  
Mobile: +65 91773126



**Hans Menski**  
Partner, Tokyo

Email: hans.menski  
@cliffordchance.com  
Mobile: +81 8025903051



**Tom Capel**  
Counsel, Singapore

Email: Thomas.Capel  
@CliffordChance.com  
Mobile: +65 83990481



**Oliver Hipperson**  
Partner, London

Email: oliver.hipperson  
@cliffordchance.com  
Mobile: 447810831083



**Alex Panayides**  
Partner, London

Email: alexandros.panayides  
@cliffordchance.com  
Mobile: +44 7775911049