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# NAVIGATING CONFLICT: LEGAL RESPONSES TO MARITIME TRADE DISRUPTIONS AND RISK ALLOCATION UNDER INTERNATIONAL LAW

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## ABSTRACT

Countries have interacted, traded, and even fought in military war for decades—and in some cases, more than a century—while mostly adhering to international law. However, it is now clear that these legal systems are under increasing pressure as the world community is on the verge of significant political, economic, technical, and environmental changes. The growing geopolitical tensions in the Strait of Hormuz, in particular, have brought attention to how urgently this strategically important and primarily maritime waterway needs to be governed by stable, enforceable legal regulations.

Global trade flows have been severely affected by the escalation of geopolitical conflicts in strategic maritime zones, exposing structural flaws in the international legal framework controlling maritime commerce. Conflict areas including the Red Sea, Black Sea, and Strait of Hormuz have caused vessel rerouting, increased insurance costs, and more complicated issues about contractual responsibilities and liability.

Through the prism of international maritime law, this Paper critically investigates the legal ramifications of such disturbances. Carrier liability, the doctrine of force majeure, marine insurance, and the principle of freedom of navigation as embodied in the United Nations Convention on the Law of the Sea (UNCLOS) are among the main topics it focuses on.

The current legal system, predominantly influenced by the Hague-Visby Rules, is contended to be fragmented and insufficiently prepared to address the emerging hazards associated with conflict-induced maritime disruptions.

This Paper calls for the establishment of a more unified, coherent, and adaptive legal framework by analysing pertinent case law and recent geopolitical developments, aimed at resolving the challenges of contemporary marine trade in conflict-prone areas.

**Keywords:** International Maritime Law, Maritime Trade Disruptions, Geopolitical Conflicts, Strait of Hormuz, Carrier Liability, Force Majeure, United Nations Convention on the Law of the Sea

## **2. Introduction**

### **2.1 Contextual Background**

Global trade depends on maritime transportation, yet its susceptibility to geopolitical warfare has grown. Gaps in the distribution of risk among carriers, cargo owners, insurers, and nations have been shown by recent disruptions in vital maritime corridors. International treaties offer a basic framework, but they were not intended to handle the scope and complexity of contemporary conflict situations.

Conflicts over contractual duties, liability exemptions, and insurance claims are examples of the legal ambiguity resulting from such disruptions. By analyzing how courts and legal frameworks react to disruptions caused by conflict, this study aims to connect doctrinal analysis with real-world situations.

### **2.2 Problem Statement**

The existing international marine legal system is disjointed and inadequate to deal with disruptions brought on by conflicts. Uncertainty in international commerce operations results from current regulations' inability to adequately handle problems including vessel rerouting, growing insurance costs, and complicated liability conflicts.

### **2.3 Research Questions**

The following inquiries are the focus of this study:

- When geopolitical tensions generate interruptions, how does international maritime law react?
- How useful are concepts like force majeure and carrier liability in conflict situations?
- Does the United Nations Convention on the Law of the Sea adequately protect freedom of navigation under the current legal framework?

## **2.4 Objectives**

This paper's main goal is to critically examine the legal ramifications of marine trade disruptions in conflict areas. It seeks to assess current legal theories, look at case law, and suggest that a more cohesive and flexible legal system is required.

## **2.5 Methodology**

Using a doctrinal and analytical approach, the study looks at recent geopolitical changes, court rulings, and international treaties. It evaluates the efficacy of current frameworks by fusing legal research with real-world marine situations.

## **2.6 Structure of the Paper**

After outlining the legal framework that governs maritime trade, the paper analyzes important doctrines such as marine insurance, force majeure, and carrier liability. Before offering suggestions for reform, it critically analyzes current legal gaps and assesses state accountability in further detail.

## **3. Legal Framework Governing Maritime Trade**

### **3.1 Freedom of Navigation**

The United Nations Convention on the Law of the Sea's freedom of navigation principle guarantees that ships can move freely across international waters. Its actual implementation in conflict areas is still inadequate, nevertheless.

**Article 87:** The freedom of ships to travel on the high seas is safeguarded under Article 87 of the United Nations Convention on the Law of the Sea (UNCLOS). This covers the unrestricted movement of ships, including, according to several interpretations, warships.

**Transit Passage (Straits):** Even in times of armed conflict, the right to "transit passage" is applicable in international straits like the Strait of Hormuz.

**Innocent Passage (Territorial Seas):** Within 12 nautical miles of a shore, ships are entitled to innocent passage; however, a coastal state may temporarily suspend this for security reasons.

**Challenges in Conflict Zones:** Warships and legal organizations, like the United States, must use diplomatic or operational means to assert these rights because belligerent states or groups frequently violate these principles.

The **Corfu Channel Case (1949)** strengthened duties pertaining to safe navigation by establishing that states cannot knowingly permit their waters to be utilized in a way that hurts other states. But the case also shows how enforcement is limited in situations where geopolitical tensions are high.

### 3.2 Carrier Liability

When ships are attacked or delayed, liability is determined by maritime contract law and the specific terms of insurance policies.

- **War Risk Insurance:** Because standard maritime insurance does not cover war hazards, operators must obtain specialized "war risk insurance" for high-risk areas. These premiums may increase by ten to twelve times their typical amounts. In **The B Atlantic**, case the court examined the extent of insurance liability in the context of illegal acts, highlighting the difficulties insurers and assureds face in determining coverage in politically sensitive and high-risk maritime environments. This highlighted the complexities surrounding such exclusions and the interpretation of policy terms.
- **Allocation of Risk:** Contractual provisions that determine whether the ship owner or charterer bears the risk of delay, rerouting, or loss include Force Majeure and particular war-risk clauses like CONWAR.
- **Contract Frustration/Deviation:** A master could deviate off course if a journey becomes hazardous or impracticable, which could result in arguments over additional expenses or claims for cargo damage.
- **Liability for Damages:** State liability for illegal interference with navigation may be invoked under international law. However, compensation claims are difficult to enforce and infrequently used.

The Hague-Visby Rules provide carriers with exemptions for "act of war." However, courts have narrowly interpreted such exemptions.

In **The Giannis NK, the House of Lords (1998)** emphasised strict interpretation of exceptions, placing the burden on carriers to prove applicability. This creates uncertainty when disruptions arise indirectly from conflict rather than direct damage.

### **3.3 Deviation and Reasonableness**

In conflict areas, deviation is a major problem. The landmark case of **Stag Line Ltd v Foscolo Mango & Co Ltd (1932)** established that deviation must be reasonable to avoid breach of contract.

In a similar vein, **The Hill Harmony (2001)** reaffirmed that safety issues must be genuinely demonstrated; commercial convenience does not excuse divergence.

## **4. Legal Implications for Ship Owners and Cargo Interests**

Disruptions create a ripple effect, from increased insurance to crew safety concerns.

- **Increased Operating Costs:** Rerouting around dangerous areas (e.g., going around South Africa instead of through the Suez Canal) significantly increases fuel consumption and voyage time, adding to total trade costs.
- **Withdrawal of Cover:** Certain places may have their insurance fully withdrawn, making certain shipping routes essentially inoperative.
- **Sanctions and Legality:** The "legality" of their cargo and route, which is sometimes complicated by changeable political realities, must be ensured by vessels operating in war zones in accordance with international restrictions.
- **Regional Instability:** Wider maritime threats, like piracy, might result from events in one region, like the Red Sea. These concerns are currently being tackled by international law enforcement and regional surveillance.

### **Key Legal Instruments:**

- **UNCLOS:** The "Constitution for the Oceans," governing navigation and territorial claims.
- **Institute War Clauses:** Standard insurance clauses for defining coverage in conflict

areas.

- **Hague-Visby Rules:** Governing the carrier's liability for loss or damage to cargo, subject to exceptions like "act of war".

Experts in international law, shipping, and insurance must constantly study the legal landscape due to the increasing volatility of marine trade.

## 5. Force Majeure and Frustration

### 5.1 Force Majeure

Contractual in nature, force majeure provisions come in a variety of forms. For their invocation, courts have always demanded a high standard.

Economic hardship was deemed insufficient to qualify as force majeure in **Tandrin Aviation Holdings Ltd v Aero Toy Store LLC [2010] EWHC 40 (Comm)**. When conflict raises expenses without making performance impossible, this idea is directly applicable.

### 5.2 Doctrine of Frustration

The doctrine of frustration is only applicable in extraordinary situations. The seminal decision of **Davis Contractors Ltd v Fareham Urban District Council [1956] UKHL 3** established that a contract cannot be frustrated by simple difficulty or extra expenditure.

Therefore, unless performance is essentially difficult, rerouting owing to conflict in marine situations seldom reaches the threshold.

## 6. Marine Insurance and Risk Allocation

### 6.1 Introduction

By dispersing risk among multiple stakeholders, marine insurance has long been the foundation of international maritime commerce, facilitating the seamless operation of international trade. Marine insurance is essential for guaranteeing financial stability and business predictability because maritime transportation is inherently dangerous due to everything from natural disasters to geopolitical upheavals. Effective risk allocation methods are more crucial than ever

in light of the escalating disputes in strategically vital areas like the Strait of Hormuz.

## **6.2 Concept and Legal Foundations of Marine Insurance**

A contract wherein the insurer agrees to compensate the assured against losses resulting from maritime adventures is known as marine insurance. **The maritime Insurance Act of 1906**, which codifies important concepts like indemnification, insurable interest, greatest good faith (*uberrimae fidei*), and subrogation, largely governs the legal basis of maritime insurance.

In this concept, risk allocation is structured by contractual provisions that specify the scope of coverage, exclusions, and liabilities rather than being arbitrary. As a result, insurers, shipowners, cargo owners, and other stakeholders negotiate the distribution of risk.

## **6.3 Types of Marine Insurance and Risk Distribution**

### **a. Hull and Machinery Insurance**

Physical damage to the vessel itself is covered by this kind of insurance. Subject to the terms of the policy, the insurer usually bears the risk of things like crashes, grounding, and mechanical breakdowns. Exclusions, however, frequently apply in situations involving conflict or deliberate wrongdoing.

### **b. Cargo Insurance**

Owners of products are shielded against loss or damage during transit by cargo insurance. Trade terms like FOB or CIF under International Chamber of Commerce Incoterms 2020, which specify whether the buyer or seller takes the risk at different stages of transportation, play a major role in risk distribution in this situation.

### **c. Protection and Indemnity (P&I) Insurance**

Third-party liabilities, such as environmental damage, crew injury, and collision liability, are covered by this insurance, which is supplied by mutual associations called P&I Clubs. These clubs are a special method of allocating collective risk because they function on a risk-sharing concept among members.

### **d. War Risk Insurance**

War-related risks are usually excluded from standard maritime coverage. Losses resulting from wars, piracy, and terrorism are covered by separate war risk insurance; these risks are becoming more significant in conflict-prone regions like the Red and Black Seas.

#### **6.4 Risk Allocation Mechanisms in Marine Insurance**

##### **a. Policy Terms and Clauses**

Certain risk-allocating terms, such as "Institute Cargo Clauses" (A, B, and C), which specify the extent of coverage, are found in marine insurance contracts. By distinguishing between "all risks" and named perils, these provisions influence how culpability is distributed.

##### **b. Deductibles and Limits**

Deductibles encourage prudent risk management by guaranteeing that the insured bears a portion of the loss. The extent of risk allocation is further defined by policy limits, which cap the insurer's liability.

##### **c. Warranties and Conditions**

In establishing culpability, warranties like seaworthiness and lawful travel are crucial. In the event of a warranty breach, the insurer may be released from liability, returning the risk to the insured.

##### **d. Reinsurance**

In order to diversify exposure among several organizations, insurers frequently assign some of their risk to reinsurers. The maritime insurance market is more stable as a result of this multilayer risk allocation.

#### **6.5 Force Majeure and Insurance Interplay**

Marine insurance and force majeure clauses in shipping contracts sometimes overlap. Force majeure does not always result in insurance coverage, even though it may excuse contractual obligation. Whether the risk causing the disruption is covered by the policy determines the insurer's liability. The intricacy of risk allocation across contractual and insurance systems is highlighted by this discrepancy.

## 6.6 Impact of Geopolitical Conflicts on Risk Allocation

Traditional risk allocation models have been drastically changed by recent geopolitical events, especially in the Strait of Hormuz. Key impacts include:

- **Increased Premiums:** For ships passing through high-risk areas, insurers apply war risk surcharges or higher rates.
- **Exclusion Clauses:** Sanctions, cyberwarfare, and hybrid threats are progressively being excluded from policies.
- **Shift in Liability:** Increased use of contractual provisions to divide risks between parties.
- **Operational Changes:** By rerouting ships, shipowners shift the risk from geopolitical dangers to more expensive operations and longer transit periods.

## 6.7 Challenges in Current Risk Allocation Framework

- **Fragmentation of Legal Regimes:** Inconsistency results from the coexistence of several agreements and national legislation.
- **Ambiguity in Policy Interpretation:** Words like "hostilities" and "perils of the sea" are frequently interpreted by judges.
- **Emerging Risks:** Traditional regulations do not sufficiently handle climate-related hazards, cyber dangers, or autonomous shipping.
- **Sanctions and Compliance:** Insurance coverage and claim resolution are made more difficult by the growing use of economic sanctions.

## 6.8 Case Law Perspective

Clarifying risk allocation has been greatly aided by court rulings. Courts have always placed a strong emphasis on the idea of greatest good faith and strict adherence to policy requirements. However, conventional interpretations continue to be challenged by the dynamic nature of marine dangers.

## **6.9 The Need for Reform**

Given the limitations of the current framework, there is a growing need for:

- A unified global marine insurance system
- Consistent definitions of new hazards
- A closer relationship between marine norms and insurance legislation
- Flexible frameworks for policy that adapt to changes in technology and geopolitics

## **6.10 Conclusion**

**As a sophisticated method of allocating risk in an unpredictable maritime environment, marine insurance continues to be a vital component of international trade. However, a more dynamic and coherent legal framework is required due to the growing complexity of dangers, especially those resulting from geopolitical tensions in areas like the Strait of Hormuz. The current system might find it difficult to offer the security and assurance needed for the ongoing stability of international marine trade in the absence of such changes.**

## **7. General Average and Salvage (with Case Law)**

### **7.1 Introduction**

The distribution of loss and compensation in cases of marine peril is governed by two fundamental theories of maritime law: general average and salvage. These guidelines, which are based on equity and business necessity, guarantee that stakeholders share the risks involved in maritime travel in a fair manner. In contemporary conflict-prone shipping routes like the Strait of Hormuz, where emergency operations and third-party interventions are becoming more frequent, their continued relevance is especially clear.

### **7.2 General Average**

#### **a. Concept and Principle**

The general average is predicated on the idea that all parties (shipowner, cargo owners, etc.)

must fairly share the loss when a voluntary and extraordinary sacrifice or investment is made to maintain the entire marine endeavour.

By prohibiting one participant from suffering the whole cost of a sacrifice made for the voyage's shared safety, this notion maintains justice.

### **b. Key Elements**

For a claim in General Average to succeed, the following must be established:

- **A common maritime adventure**
- **An imminent peril** threatening the voyage
- **A voluntary sacrifice or expenditure**
- The action must be **reasonable and successful** in preserving property

Typical examples include jettisoning of cargo, cutting away damaged parts of a ship, or incurring emergency repair expenses.

### **c. Modern Relevance**

Decisions made to protect the ship, and its cargo may result in General Average contributions in modern situations, such as rerouting ships because of missile threats or attacks in conflict areas. However, disagreements frequently surface over whether the action was indeed "voluntary" or "necessary," particularly during protracted geopolitical crises.

## **7.3 Salvage**

### **a. Concept and Nature**

The reward given to third parties who willingly help save a ship or its cargo from peril at sea is known as salvage. Salvage rewards rescue efforts, in contrast to General Average, which spreads loss.

By providing financial incentives to salvors who engage in risky missions, the idea promotes marine assistance.

## b. Essential Elements

To establish a valid salvage claim:

- There must be a **maritime peril**
- The service must be **voluntary** (not under pre-existing duty)
- The operation must be **successful**, at least in part

The degree of danger, the value of the property salvaged, the skill required, and the risk incurred are all taken into consideration when determining salvage payments.

## c. Types of Salvage

- **Pure Salvage:** Voluntary rescue without prior agreement
- **Contract Salvage:** Based on agreed contractual terms
- **Life Salvage:** Saving human lives (though typically not rewarded financially under traditional rules)

### 7.4 Case Law: *Birkley v Presgraves* 102 ER 86 (1801)

This seminal example is essential to comprehending the concepts of salvage and general average. According to the court, all losses that result from a general average act's "natural and proximate consequence" are recoverable.

#### Key Contributions of the Case:

- Established the **principle of indemnity** in maritime loss distribution
- Clarified that **expenses incurred in preserving the ship and cargo** are recoverable
- Reinforced the idea that losses must be **shared proportionately** among all interested parties

The case still has an impact on how General Average is interpreted today, especially when it

comes to figuring out the extent of recoverable losses.

### 7.5 Distinction Between General Average and Salvage

Aspect	General Average	Salvage
Nature	Loss sharing mechanism	Reward for rescue
Parties Involved	Shipowner + cargo owners	Third-party salvors
Basis	Voluntary sacrifice for common safety	Voluntary rescue service
Outcome	Contribution by all stakeholders	Payment to salvor
Legal Purpose	Equitable distribution of loss	Incentivizing assistance

### 7.6 Contemporary Challenges

The application of these theories has been made more difficult by contemporary marine operations, particularly in conflict areas like the Strait of Hormuz:

- Having trouble telling the difference between forced deviation and voluntary sacrifice
- A greater emphasis on insurance and a decrease in the use of conventional doctrines
- Difficult valuation problems since cargo and vessel prices fluctuate
- Conflict with contractual provisions (force majeure, war risk)

### 7.7 Conclusion

In marine law, general average and salvage are still fundamental concepts that guarantee equity

and promote cooperation during dangerous situations. Despite changing difficulties, the rules set forth in **Birkley v. Presgraves 102 ER 86 (1801)** nevertheless serve as the foundation for contemporary legal interpretations. However, a more sophisticated and flexible approach to its implementation in modern shipping law is required due to the growing complexity of maritime concerns, especially in geopolitical crisis zones.

## **8. State Responsibility in Maritime Trade Disruptions in Conflict Zones**

### **8.1 Introduction**

More than 80% of worldwide trade is carried out by sea, making maritime trade the foundation of the world economy. However, the susceptibility of shipping routes to disruption has been made clear by the rising frequency of geopolitical confrontations in crucial maritime chokepoints, especially the Strait of Hormuz. The obligation of governments under international law is complicatedly raised by these interruptions, particularly when their acts or inactions impede the freedom and security of navigation. This article looks at the legal framework that governs state accountability in these situations and assesses how well it handles contemporary maritime disputes.

### **8.2 Legal Framework of State Responsibility**

#### **a. Customary International Law and Codification**

The International Law Commission's **Articles on responsibility of States for Internationally Wrongful Acts (ARSIWA)**, which codify customary international law, largely control the idea of state liability. According to these articles, a state is held accountable internationally if two requirements are satisfied:

1. The conduct is attributable to the state; and
2. The conduct constitutes a breach of an international obligation.

#### **b. Key Maritime Obligations**

- Breach of commitments under the United Nations Convention on the Law of the Sea, which regulates the legal order of the seas, frequently results in state responsibility for marine trade disruptions. Key responsibilities include of:

- Ensuring navigational freedom
- Not interfering with shipments in an illegal manner
- Ensuring maritime security and safety
- Preventing pollution and damage to the environment

### **8.3 Attribution of Conduct in Conflict Zones**

Attribution is a crucial factor in establishing state accountability. In contemporary conflicts, non-state players like militias or insurgent organizations frequently cause disruptions in addition to direct state intervention.

Under ARSIWA:

- The actions of state agencies, such as the Coast Guard and Navy, are immediately responsible.
- Non-state actors may be held accountable for their actions if they are under a state's "effective control."

In **Nicaragua v. United States**, the International Court of Justice clarified the threshold for attribution by ruling that a state must have effective control over non-state actors' acts.

### **8.4 Forms of Maritime Trade Disruptions**

#### **a. Blockades and Restrictions**

Maritime trade can be severely disrupted by naval blockades established during military wars. Blockades may be legal under international humanitarian law, but they must adhere to the non-discrimination, necessity, and proportionality standards.

#### **b. Attacks on Commercial Shipping**

Unlawful use of force and violations of navigation rights are raised by incidents involving missile strikes, drone attacks, or vessel seizures, especially in areas like the Red Sea and Black Sea & Strait of Hormuz.

### **c. Mining of Sea Lanes**

If naval mines are deployed illegally or without the required notification, there are serious dangers to marine safety, and the state may be held accountable.

### **d. Cyber Disruptions**

Cyberattacks on port infrastructure or vessel navigation systems are examples of emerging dangers that confound attribution and put current legal frameworks to the test.

## **8.5 Breach of International Obligations**

### **a. Freedom of Navigation**

Every state has the right to freedom of navigation on the high seas under UNCLOS. Unless there are established exceptions, interference with this right is considered a violation.

### **b. Prohibition on Use of Force**

Article 2(4) of the United Nations Charter forbids the use of force against a state's political independence or territorial integrity. This ban may apply to attacks on commercial vessels.

### **c. Due Diligence Obligations**

States must take reasonable precautions to keep their territory from being exploited against other states. If non-state actors working within their jurisdiction are not controlled, they may be held accountable.

## **8.6 Circumstances Precluding Wrongfulness**

State liability may be avoided by several defences, such as:

- Article 51 of the UN Charter recognizes self-defence.
- Necessity: Measures implemented to protect vital state interests
- Force Majeure: Circumstances outside the state's control

These defences must, however, adhere to stringent legal requirements and are interpreted narrowly.

### **8.7 Consequences of State Responsibility**

If a state is determined to be at fault, it must:

- Put an end to the wrongdoing
- Provide guarantees of non-repetition
- Provide complete recompense, satisfaction, or restitution.

The **Factory at Chorzów case**, which ruled that reparations must "wipe out all the consequences of the illegal act," is credited with articulating the reparation principle.

### **8.8 Challenges in Applying State Responsibility**

#### **a. Attribution Difficulties**

It is challenging to assign blame because of proxy actors and hybrid warfare.

#### **b. Gaps in Enforcement**

International law depends on state cooperation and diplomatic procedures rather than a centralized enforcement system.

#### **c. Political Aspects**

The invocation of accountability is frequently impeded by geopolitical interests, especially in delicate areas like the Strait of Hormuz.

#### **d. The Disintegration of Legal Systems**

Overlaps and contradictions arise from the cohabitation of international security law, international humanitarian law, and maritime law.

### **8.9 Emerging Trends and the Need for Reform**

Reforms are required due to the changing nature of maritime conflicts, including:

- Clarification of cyber and hybrid warfare attribution guidelines
- Using international collaboration to strengthen enforcement methods
- Harmonization of the laws pertaining to marine security
- The creation of specific dispute resolution procedures for maritime disputes

## **8.10 Conclusion**

In international marine law, state accountability is still a key tenet that governs behaviour. However, serious shortcomings in the existing legal framework have been shown by the growing complexity of marine trade interruptions in war areas, especially in crucial chokepoints like the Strait of Hormuz. A more cohesive, flexible, and enforceable structure that can handle the reality of contemporary maritime conflict is desperately needed to guarantee the stability of international trade.

## **9. Critical Evaluation of the Existing Legal Framework Governing Maritime Trade Disruptions**

### **9.1 Introduction**

The realities of contemporary geopolitical strife are putting the current legal framework managing marine commerce interruptions to the test, especially in delicate chokepoints like the Strait of Hormuz. Although international maritime law has traditionally offered a solid basis for international trade, new developments have revealed serious doctrinal and structural flaws. The flaws of the current framework are critically assessed in this section, with particular attention paid to judicial inconsistency, fragmentation, antiquated doctrines, and an over-reliance on insurance mechanisms.

### **9.2 Fragmentation Between International and Domestic Legal Regimes**

The disarray between national legal systems and international treaties is one of the most urgent problems. Although fundamental responsibilities are established by important laws like the Hague-Visby Rules and the United Nations Convention on the Law of the Sea, their application differs greatly between jurisdictions.

This inconsistency results in:

- Different perspectives on carrier responsibility
- The uneven application of maritime duties
- Litigants looking for favourable jurisdictions engage in forum shopping.

As a result, especially during disruptions caused by conflict, the predictability and confidence that are essential to international trade are compromised.

### **9.3 Outdated Doctrines in a Modern Geopolitical Context**

During a time when hazards were mostly tangible and predictable, traditional legal doctrines like force majeure and frustration were created. However, these traditional frameworks may not adequately account for contemporary maritime disturbances, which are typified by asymmetric conflicts, cyber threats, hybrid warfare, and sanctions regimes.

For instance:

- Cyberattacks and economic sanctions are frequently not specifically covered by force majeure clauses.
- The notion of frustration requires a high threshold of impossible and is applied narrowly.

The legal system is ill-prepared to handle the complex and dynamic hazards that are emerging in modern marine trade because of this doctrinal rigidity.

### **9.4 Judicial Inconsistency in Applying Force Majeure and Frustration**

Different approaches have been taken by courts in different jurisdictions when interpreting and implementing concepts like frustration and force majeure. A more flexible, context-driven interpretation is adopted by certain courts, while others adopt a rigorous contractual approach.

Cases like **Tsakiroglou & Co Ltd v Noble Thorl GmbH**, in which the closure of the Suez Canal did not constitute frustration while materially changing the contractual route, demonstrate this discrepancy. These rulings demonstrate the judiciary's unwillingness to broaden conventional doctrines despite significant commercial disruption.

Because parties cannot accurately predict how courts would interpret similar incidents across different jurisdictions, the outcome is legal uncertainty.

### **9.5 Over-Reliance on Insurance Mechanisms**

In actuality, insurance-based solutions have replaced legal clarity in the distribution of risk in marine commerce. The main instrument for handling uncertainty is now marine insurance, which is partially regulated by the **Marine Insurance Act of 1906**.

Although insurance offers financial security, relying too much on it leads to several problems:

- It diverts attention from creating strong legal regulations.
- In high-risk areas, it results in higher rates.
- It leaves loopholes where some risks—like cyberwarfare and sanctions—are not covered.

As a result, insurance serves as a reactive rather than a proactive legal remedy.

### **9.6 Ex Post Risk Allocation Through Litigation**

The fact that risk allocation is frequently decided ex post—after disagreements arise—through litigation or arbitration is a basic flaw in the existing system. Instead of clear, predefined legal rules, parties rely on courts or tribunals to interpret contractual terms and allocate liability retrospectively.

This strategy has several disadvantages:

- Higher lawsuit expenses and hold-ups
- Uncertainty in business during contract execution
- Inequitable negotiating power on the results of contracts

This lack of ex ante certainty can seriously disrupt trade and erode trust in marine transactions in high-risk areas like the Strait of Hormuz.

### **9.7 Interconnected Nature of the Problems**

These problems are not isolated. Judicial inconsistency is made worse by fragmentation,

reliance on insurance is increased by antiquated doctrines, and ex post dispute resolution results from unclear legal regulations. When combined, they provide a legal system that is inconsistent, reactive, and unsuited to contemporary marine issues.

## **9.8 The Way Forward**

A diversified strategy is needed to address these deficiencies:

- Harmonization of national and international legal systems
- Adapting legal concepts to take new hazards into account
- The creation of uniform contractual provisions for disruptions caused by conflicts
- Increased convergence of insurance frameworks and marine law
- Encouraging ex ante risk allocation by establishing more precise regulatory requirements

## **9.9 Conclusion**

In light of changing geopolitical realities, the existing legal framework managing disruptions to marine trade is becoming more and more insufficient. A system that favors reactive dispute resolution over proactive risk management has been brought about by fragmentation, out-of-date doctrines, judicial inconsistency, and an excessive reliance on insurance. The law will continue to lag behind the complexity of contemporary maritime commerce until these structural flaws are fixed, especially in unstable areas like the Strait of Hormuz.

## **10. Recommendations**

### **Detailed Recommendations for Strengthening the Maritime Legal Framework**

#### **10.1 Harmonisation of International Conventions**

The persistence of several overlapping regimes, such as the Hague-Visby Rules, Hamburg Rules, and Rotterdam Rules, which are accepted unevenly throughout jurisdictions, is a significant flaw in maritime law. Despite being intended to provide this "unified" system, the Rotterdam Rules have mainly failed to secure the signatures required to replace Hague-Visby. Legal ambiguity and varying liability standards result from this fragmentation.

Either combining various regimes into a single, widely recognized convention or developing interpretive guidelines that coordinate their implementation would constitute harmonization. A cohesive structure would

- Make cross-border disputes predictable
- Cut back on forum shopping
- Promote more efficient conflict resolution

Such harmonization becomes essential for sustaining continuous commerce flows in conflict-sensitive areas like the Strait of Hormuz.

### **10.2 Standardisation of Contractual Clauses**

Custom clauses on deviation, war risks, and force majeure are frequently found in maritime contracts, especially charterparties and bills of lading. However, inconsistent writing results in disagreements over interpretation.

Industry organizations like the Baltic and International Maritime Council, which already creates commonly used model clauses, can help achieve standardization. These standard clauses should be updated and expanded to specifically address:

- Geopolitical disputes
- Embargoes and sanctions
- Hybrid dangers and cyber risks

would lessen the need for litigation by enabling parties to properly assign risks ex ante. Additionally, this would guarantee that parties in comparable circumstances receive uniform treatment in all countries.

### **10.3 Expansion of UNCLOS to Address Conflict Scenarios Explicitly**

Although the United Nations Convention on the Law of the Sea offers a thorough legal framework for marine governance, it says very little about the specific regulation of economic disruptions caused by conflicts.

UNCLOS could be expanded through new protocols or interpretive agreements:

- Explain whether blockades and exclusion zones are legal.
- Describe state responsibilities for safeguarding commercial shipping in times of war.
- Take action against new dangers including cyberattacks on marine infrastructure.

Such changes would reinforce the idea of freedom of navigation and lessen uncertainty in state behaviour, given the strategic significance of chokepoints like the Strait of Hormuz.

#### **10.4 Greater Role for International Arbitration Bodies**

Domestic court litigation frequently results in conflicting decisions and delays. A more effective and consistent dispute resolution process can be achieved by bolstering the role of specialist arbitration organizations like the Singapore Chamber of Maritime Arbitration and the London Maritime Arbitrators Association.

Enhanced arbitration has the following benefits:

- Knowledge of disputes unique to the maritime industry
- Quicker resolution than litigation in court
- More impartiality in politically delicate conflicts

Promoting the inclusion of mandatory arbitration clauses in maritime contracts can guarantee uniform application of legal principles and greatly minimize confusion.

#### **10.5 Integration of Digital Risk Assessment Tools**

Data-driven technologies are becoming more and more important in modern maritime trade. The identification and allocation of risks can be completely changed by incorporating digital risk assessment technologies into legal and business decision-making.

These resources could consist of:

- Predictive analytics for conflict areas using AI

- Systems for tracking vessels in real time and monitoring threats
- Blockchain for transparent and safe documentation

Stakeholders would be able to:

- Foresee interruptions before they happen
- Contractual terms can be dynamically adjusted.
- Enhance the evaluation of insurance claims and underwriting

Digital tools can offer practical insights that support legal frameworks in unstable areas, such as the Strait of Hormuz, transforming the system from reactive to proactive risk management.

## **10.6 Conclusion**

Together, these suggestions seek to transform maritime law from a disjointed, reactionary system into a cohesive, forward-thinking framework. The legal system may better handle the complexity of contemporary marine trade by harmonizing conventions, standardizing contracts, bolstering UNCLOS, encouraging arbitration, and utilizing digital technologies—especially in conflict-prone areas where stability and predictability are most crucial.

## **11. Conclusion**

Disruptions to marine trade in war areas have highlighted the structural shortcomings of the current international maritime legal system. A certain amount of legal order is provided by foundational documents like the United Nations Convention on the Law of the Sea and liability regimes like the Hague-Visby Rules, but they are still fundamentally disjointed and unable to adequately address the complexity of contemporary geopolitical circumstances. These frameworks are currently being put to the test by hybrid warfare, economic sanctions, cyber threats, and protracted regional wars; they were mostly created at a period marked by conventional hazards and comparatively stable trade routes.

The vulnerability of international shipping networks is best shown by strategic maritime chokepoints like the Strait of Hormuz. In addition to having an immediate impact on the parties to a carriage contract, disruptions in these areas have a domino effect on international relations,

supply chains, and insurance markets. Uncertainty, higher transactional costs, and an increasing reliance on litigation or arbitration to settle issues retroactively result from the lack of clear and uniform legal regulations defining liability, force majeure, and risk allocation in certain situations.

The tendency of current legal processes to function more reactively than proactively is a major source of concern. The existing system frequently leaves important problems to be decided ex post by courts or tribunals rather than offering ex ante clarity that allows parties to assign risk effectively at the contractual stage. In addition to undermining commercial predictability, this disproportionately disadvantages weaker parties, who do not have the means to participate in drawn-out dispute resolution procedures.

Furthermore, the significance of these legal ambiguities is increased by the growing interconnectedness of international trade. International markets, energy security, and economic stability can all be significantly impacted by maritime disturbances in one area, whether they are caused by military conflict, blockades, or political unrest. Therefore, in order for the legal framework to continue to be able to handle both established maritime hazards and new threats, it must change in step with these realities.

Given these difficulties, there is an obvious and pressing need for a united, cohesive, and flexible legal system. Harmonizing international agreements, updating legal theories, and incorporating new technology into risk assessment and dispute resolution procedures should be the main goals of reform initiatives. Achieving these goals will require more cooperation between governments, international organizations, and business stakeholders.

In the end, the efficiency, dependability, and stability of maritime commerce will continue to be threatened by the continuation of legal fragmentation and uncertainty in the absence of significant reform. The creation of a strong and forward-thinking marine legal framework is not just desirable, but essential in a world where smooth international trade is becoming increasingly important.

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