

## Chokepoints in Crisis: *Force Majeure*, Price Reviews and International Law Risks Across Energy and Commodities Markets

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The Strait of Hormuz - a vital artery for global energy and commodities - has in recent weeks become a chokepoint.

International law provides for the right of transit passage through straits used for international navigation. The reality, however, is that the evolving armed conflict places businesses in the position of grappling with the contractual and financial fallout in real-time.

While *force majeure* (FM) is often the first contractual response, the consequences extend well beyond it, triggering price review mechanisms in gas and LNG contracts, maritime and insurance obligations, trade disruption and, in some cases, international law and investment treaty protections.

### FORCE MAJEURE AND OTHER CONTRACTUAL CONSIDERATIONS

Many energy, shipping and commodities contracts include mechanisms allowing performance to be suspended or adjusted when an unforeseen event or impediment beyond the parties' control (such as natural disasters, acts of war and pandemics) renders the performance under the contract (temporarily) impossible, most commonly through FM clauses. In common law systems, FM is usually entirely contractual, meaning its availability depends on the precise wording agreed by the parties. In many civil law systems, there exist statutory mechanisms akin to FM – for instance, the 'fault principle', according to which a party can be excused from non-performance if it is without fault. Further, many civil law jurisdictions, such as Switzerland, have established case law on exemptions from liability on the basis of FM.

In the context of the Hormuz crisis, FM has been invoked in response to direct attacks on energy infrastructure and vessels, blockades and restricted access to shipping lanes, prohibitive war-risk insurance premiums, government-imposed restrictions, and the cascading effects of these events on downstream supply chains.



The scale of recent declarations highlights the breadth of disruption. Qatar Energy, the world's largest LNG exporter, declared FM across its LNG portfolio in March 2026 following the destruction of two LNG trains. This would likely affect both short- and long-term supplies to Europe and Asia, triggering cascading FM claims by LNG buyers vis-à-vis their own customers. Similar declarations have been made across the oil and gas sector by national oil companies and majors in Iraq, Israel, Bahrain, Kuwait, the UAE and Oman, as well as by traders relying on Qatari LNG. Petrochemical producers across Asia have followed suit, citing feedstock shortages caused by the effective closure of the Strait. Notably, Iran has not declared FM, instead asserting continued exports amid reports of selective exemptions to ease global supply pressures.

Many commercial contracts and statutory bases for FM require the party invoking FM to take all reasonable measures to avoid or overcome the effects of the impediment, before such exemption from liability is available. Hence, where performance may still be possible, parties are advised to consider measures to mitigate effects, including methods of alternative performance and substitution rights.

Frustration of voyage due to illegality or the severity of safety considerations has also been raised as an argument to excuse performance of contractual obligations.

Another important commercial and legal factor is the relevant of insurance coverage. On 27 March 2026, US Treasury Secretary Scott Bessent mooted a US insurance program intended to boost shipping through the Strait of Hormuz, underscoring both the critical role of insurance in this crisis and geopolitical attempts to address spiking oil and gas prices.

## **GAS PRICE REVIEWS, LNG AND OTHER COMMODITIES**

When Gazprom withdrew from the European market in 2021 and 2022, the decrease in pipeline gas caused an energy crisis. Effectively, LNG became the swing fuel in Europe, determining the price level of energy.

The price increase created arbitrage opportunities for LNG sellers, directing the LNG deliveries to the spot markets where the price was highest. This also affected deliveries under various long-term contracts. In essence, sellers opted for paying damages for non-deliveries to Asian and European buyers under established long-term LNG contracts. These damages, in some cases, were limited upwards to the amount of the liability cap. This reportedly resulted in significant windfall profits for the sellers and numerous disputes under long-term LNG contracts, some of which were reported by GAR and other media outlets.

Similar market disruptions take place today, with the closing of the Strait of Hormuz.

The following may reasonably be expected:

- The decrease in available LNG volumes due to the closing of the Strait of Hormuz will likely have the same price effect as Gazprom's withdrawal from the European market in 2021-2022.



- In the short- to medium-term, this will most likely result in a rush for LNG deliveries by European buyers seeking to fill their storage over spring, and by Asian buyers requiring LNG on a frequent basis.
- Sellers will possibly invoke the blockage of the Strait of Hormuz as a matter of FM and argue that they are therefore relieved from any delivery obligations under the relevant contract.
- Finally, sellers with limitation of liability provisions in their contracts will also likely rely on these.

Other commodities are also exposed to significant supply disruptions. These include helium and bromine, both critical inputs for semiconductor chip manufacturing, as well as urea and ammonia, which are essential fertiliser components. In several cases, particularly helium and fertiliser feedstocks, supply shortages and acute price pressures are already being observed.

## THE RELEVANCE OF INTERNATIONAL LAW AND INVESTMENT TREATIES

Viewed through the lens of public international law, the evolving situation in the Strait of Hormuz sits at the intersection of the law of the sea, freedom of navigation, transit passage, and the evolving law on use of force at sea.

The United Nations Convention on the Law of the Sea (UNCLOS) Article 37 applies to straits used for international navigation, and all ships and aircraft enjoy the right of transit passage “*which shall not be impeded*” (UNCLOS Article 38). Article 44 underscores the duty that States bordering straits “*shall not hamper transit passage*”.

Also applicable is the UN Charter on the use of force and the right to self-defence, which is commonly referred to as the *jus ad bellum* question. Article 2(4) of the UN Charter prohibits the threat or use of force, with the right to self-defence contained in Article 51.

A separate question is the applicability of international humanitarian law, and *jus in bello* issues of whether reported attacks on commercial shipping satisfied the principles of distinction, necessity and proportionality. Given that hostilities are taking place at sea, the relevance of the *San Remo Manual* (which is undergoing a process of review) should also be considered.

Where international law is breached, the implications for investors may extend beyond immediate commercial impact to the availability of protection under applicable BITs, multilateral investment treaties and FTAs. For instance, governmental measures that frustrate legitimate expectations or breach specific State commitments may engage treaty standards, such as fair and equitable treatment. These protections, however, must be assessed in light of countervailing considerations, including necessity, essential security interests and a State’s right to regulate.



## CONCLUSION

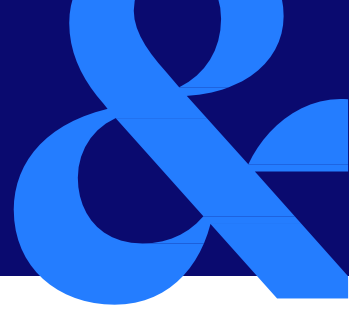
The current crisis in the Strait of Hormuz underscores how quickly geopolitical risk can crystallise into concrete contractual, pricing and legal exposure across energy and commodities markets. As FM declarations propagate, parties will need to assess not only their immediate contractual rights and obligations, but also longer-term dispute and risk allocation strategies.

In parallel, the evolving situation raises novel questions at the intersection of private contracts and public international law. Against this backdrop, early legal analysis, careful documentation and a coordinated approach across commercial, insurance and legal considerations will be critical in navigating the months ahead.

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