The **Strait of Hormuz** is not merely a narrow maritime passage connecting the Persian Gulf with the Gulf of Oman and the Arabian Sea. It is simultaneously an international strait, a strategic shipping route and a critical point in the performance of thousands of commercial contracts. Any disruption affecting navigation through it therefore raises two distinct but interconnected bodies of law: the international law of the sea and private maritime law.

The law of the sea determines the legal status of the Strait, the navigational rights of ships and aircraft, and the powers and duties of the States bordering it. Maritime law, by contrast, governs the private consequences of disruption, including charterparty obligations, carriage of goods, deviation, delay, marine insurance, general average, salvage and liability for cargo loss or damage.

The Strait of Hormuz as an International Strait

The Strait connects two areas of the high seas or exclusive economic zones and is used for international navigation. It therefore falls within Part III of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which governs straits used for international navigation.

The narrowest parts of the Strait lie within the territorial seas of Iran and Oman. Coastal sovereignty nevertheless does not give either bordering State an unlimited power to obstruct navigation. Sovereignty must be exercised subject to navigational rights recognised by international law.

Transit Passage and Innocent Passage

Innocent passage applies generally to navigation through territorial seas. Passage must be continuous and expeditious and remains innocent only while it is not prejudicial to the peace, good order or security of the coastal State.

Transit passage through an international strait is broader. Article 38 of UNCLOS recognises freedom of navigation and overflight solely for continuous and expeditious transit between one part of the high seas or an exclusive economic zone and another.

Unlike innocent passage, transit passage cannot normally be suspended. Under Article 44, States bordering straits shall not hamper transit passage, must publicise known dangers to navigation or overflight and may not suspend transit passage.

Ships must nevertheless proceed without delay, refrain from threats or force contrary to the United Nations Charter and comply with generally accepted international rules on navigation safety, collision prevention and pollution.

Powers of the States Bordering the Strait

Iran and Oman retain regulatory powers within their territorial waters. Under Article 42 of UNCLOS, bordering States may adopt laws concerning navigation safety, maritime traffic, pollution prevention, fishing and customs, fiscal, immigration and sanitary matters.

Those rules must not discriminate among foreign ships or have the practical effect of denying, hampering or impairing transit passage. Traffic-separation schemes may be established for safety, subject to the relevant international procedures and International Maritime Organization standards.

Measures genuinely aimed at protecting navigation or responding to an immediate danger may be lawful. Measures designed to close the Strait, discriminate against particular flags or use interference with merchant shipping as political pressure raise fundamentally different legal issues.

Iran’s Treaty Position and Customary International Law

Iran signed UNCLOS in 1982 but has not ratified it, while Oman is a party. Iran’s position has generated debate over the exact treaty basis applicable to vessels of States that are not parties to the Convention.

However, many principles governing international straits are widely considered to reflect customary international law. The analysis cannot therefore end with the absence of Iranian ratification. Customary rules, long-established international use of the Strait, navigational freedoms and the United Nations Charter remain relevant.

Can the Strait Lawfully Be Closed?

A distinction must be drawn between a legal closure, a physical obstruction and a situation in which navigation becomes commercially or operationally unsafe.

UNCLOS does not grant bordering States a general right to suspend transit passage. A unilateral declaration of closure would not, by itself, extinguish the navigational rights of foreign ships. Physical interference may also engage the law of State responsibility, the prohibition against unlawful force and, during armed conflict, international humanitarian law.

Yet a legal right of passage does not require a master to expose the vessel, crew and cargo to unreasonable danger. The Strait may remain legally open while becoming practically unsafe because of hostilities, mines, attacks, detention risks or insufficient navigational security. This distinction is crucial in private maritime disputes.

The Master's Responsibility and Safety of Navigation

The master has an overriding responsibility for the safety of the ship, crew, cargo and marine environment. Neither a charterer's order nor a commercial schedule automatically requires entry into an area presenting an unacceptable danger.

The decision to proceed, wait, deviate or seek alternative instructions must be assessed against the circumstances reasonably known at the time, including official warnings, flag-State instructions, security assessments, insurer and P&I Club advice, the vessel's characteristics and the availability of a safe alternative.

Contemporaneous records are essential. Shipowners and masters should preserve warnings, security reports, communications with charterers, logbook entries, route assessments and the reasons supporting each decision.

Charterparties and Unsafe Areas

Disruption in the Strait may produce complex disputes under time and voyage charterparties. Under a time charter, the charterer normally directs the commercial employment of the vessel, while the owner and master retain responsibility for navigation and safety. Trading limits, safe-port obligations, war-risk clauses and rights to refuse dangerous orders must be examined carefully.

Specialised clauses may determine whether the owner may refuse or suspend an order, whether an alternative route can be taken, which party bears additional insurance premiums, whether the ship remains on hire and who pays extra wages, security expenses and bunker costs.

Under a voyage charter, deviation or delay may affect laytime, demurrage, freight and the obligation to proceed with reasonable dispatch. There is no universal rule allocating every loss caused by disruption. The answer depends on the contract, the nature of the danger and the reasonableness of the measures taken.

Carriage of Goods and Deviation

A carrier must exercise due diligence concerning seaworthiness and properly care for the cargo. Route selection forms part of its navigational obligations.

Deviation from the customary route may be justified when reasonably necessary to save life or protect the vessel and cargo from a genuine danger. An unjustified deviation, however, may affect contractual defences and limitation rights. The bill of lading, applicable carriage regime, liberty clause, immediacy of the threat and availability of a reasonable alternative must all be considered.

Force Majeure, Frustration and Hardship

Political tension or increased expense does not automatically constitute force majeure. A party invoking the doctrine generally must establish that the event falls within the contractual clause or applicable law, was beyond its reasonable control, could not reasonably be avoided or overcome and actually prevented performance.

Performance becoming more expensive, slower or commercially unattractive is not necessarily impossibility. Notice requirements must be observed strictly, and the affected party must take reasonable mitigation measures. Depending on the governing law, prolonged disruption may also raise frustration or hardship, but these doctrines have distinct requirements.

Marine Insurance and War Risks

Insurance consequences depend on the nature of the loss and policy wording. Ordinary hull or cargo policies may exclude war, mines, capture, seizure, detention, terrorism or hostile acts, leaving them to specialist war-risk cover.

Questions may arise concerning listed areas, prior notice, additional premiums, routing requirements, detention and blocking-and-trapping cover, sue-and-labour expenses and causation where loss results from several factors. Insurance and P&I instructions should therefore be obtained before entering, remaining in or diverting from a high-risk area whenever circumstances permit.

General Average and Salvage

Extraordinary expenditure or sacrifice reasonably incurred for the common safety of the maritime adventure may give rise to general average. Emergency deviation or port-of-refuge expenses may qualify, but not every additional cost caused by insecurity is general average. The danger must be real and common, and the measure must satisfy the applicable contract and York-Antwerp Rules.

If external assistance rescues a vessel or cargo from maritime danger, salvage law may also apply. A political or military crisis does not exclude salvage where its legal conditions are met.

State Responsibility and Private Claims

A breach of the law of the sea primarily creates consequences between States. Private shipowners and cargo interests do not automatically obtain a direct damages claim against a State merely because transit has been hampered.

Possible remedies depend on sovereign immunity, domestic jurisdiction, treaty mechanisms, attribution and diplomatic protection. In practice, loss allocation will often occur first through charterparties, bills of lading, insurance policies and sale contracts.

Practical Risk Management

1. Review charterparty, bill of lading, insurance and sale-contract provisions.
2. Monitor official navigational, security and flag-State warnings.
3. Verify war-risk cover and additional-premium requirements.
4. Clarify responsibility for delay, deviation, bunkers and security costs.
5. Preserve evidence supporting navigational decisions.
6. Issue contractual notices within the prescribed time.
7. Consider alternative routes and their legal consequences.
8. Protect limitation periods and dispute-resolution rights.
9. Respect the master’s authority concerning safety.
10. Do not invoke force majeure or general average before verifying its legal conditions.

Conclusion

The Strait of Hormuz stands at the intersection of public and private maritime law. The law of the sea protects passage through an international strait and limits the power of bordering States to obstruct navigation. Maritime law determines how the operational and financial consequences of danger are distributed among commercial parties.

The right of transit passage does not eliminate navigational risk, and the existence of danger does not automatically release every party from its contractual obligations. Each case requires a combined examination of international law, charterparty terms, carriage obligations, insurance cover, the master's safety responsibilities and the evidence available when decisions were taken.

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