War Series: The Cyber-Kinetic Blur — 27+ Data Center Strikes in Active Conflicts, the NotPetya Precedent, and "Acts of War" in Arbitration

October 19, 2026

In the architecture of global commerce, risk is fundamentally priced against historical precedent. For decades, that precedent dictated a clearly defined paradigm: warfare was kinetic, geographic, and overt. Standard *force majeure* provisions and property insurance "war exclusions" were meticulously calibrated for a world of naval blockades, physical destruction, and formal declarations of hostility. If a sovereign state committed an act of war, the evidentiary threshold was unmistakable, and the contractual remedies were clear. That framework is now structurally obsolete. As highlighted by a recent *NBC News* analysis documenting at least 27 direct attacks on data centers across active global conflicts, the civilian digital infrastructure that underpins the global economy is no longer merely collateral damage; it has become a primary military target. This escalation signals a definitive new front in modern warfare, where state-sponsored operations, whether kinetic strikes on centralized data nodes or the deployment of weaponized malware, routinely serve as the vanguard of geopolitical friction. This reality erases sovereign borders, transforms neutral corporate supply chains into active conflict zones, and exposes how systematically the broader market is mispricing the associated legal risk.

For multinational capital and the legal counsel tasked with

its preservation, the 2017 *NotPetya* cyberattack remains the definitive baseline. Generating an estimated $10 billion in total global economic damage according to U.S. White House assessments, the event exposed a critical vulnerability: commercial contracts drafted for twentieth-century physical hostilities are highly susceptible to twenty-first-century digital contagion.

The Second-Order Effects of Insurance Risk Transfer

NotPetya was initially deployed against Ukrainian tax software, but the malware rapidly broke containment, paralyzing the operations of non-combatant commercial entities globally. When pharmaceutical conglomerate Merck & Co. suffered severe operational downtime, it sought relief under its "all-risk" property insurance policies. Underwriters denied the claim, invoking standard "war exclusion" clauses on the grounds that *NotPetya,* widely attributed to Russian military intelligence, was an uninsurable act of war.

The resulting litigation, *Merck & Co., Inc. v. Ace American Insurance Co.* (N.J. Super. Ct. App. Div., 2023), culminated in a ruling that standard "hostile action" exclusions applied exclusively to traditional, kinetic warfare. Merck and its insurers ultimately reached a confidential settlement in early 2024, reportedly resolving the $1.4 billion claim. Similarly, food and beverage giant Mondelez International settled a high-profile $100 million claim with Zurich Insurance in late 2022 following a comparable dispute.

However, viewing these settlements as definitive corporate victories ignores the second-order effects on the market. Recognizing the existential threat to systemic capital, the London insurance market, the historical epicenter of global risk allocation, fundamentally re-engineered its exposure. Effective March 31, 2023, the Lloyd's Market Association (LMA) issued Bulletin Y5381, mandating that all standalone cyber policies explicitly exclude liability for state-backed cyberattacks that "significantly impair the ability of a state

to function” (standardized under the LMA5564 series of clauses).

With insurers successfully transferring the liability of digital warfare back onto corporate balance sheets, the legal battleground has permanently migrated. Disputes over supply chain failures, data center outages, and operational downtime have shifted from insurance subrogation into the realm of business-to-business breach-of-contract and *force majeure* arbitrations.

A Seamless Global Contagion, Localized Liability

The primary danger for the modern enterprise is that digital supply chains and data center networks are hyper-integrated, yet the legal mechanisms to defend them remain fiercely localized. A single piece of malicious code, or a kinetic strike on a regional data center, can ripple across the global economy, intersecting with fundamentally different statutory frameworks in real time. Instead of neatly separated jurisdictions, legal departments must now navigate a seamless global threat vector that cascades across regional legal doctrines.

Consider the lifecycle of a modern digital disruption. If a state actor breaches an EU-based logistics network, the commercial dispute instantly morphs into a regulatory crisis. Authorities evaluate the breach against the stringent strictures of the NIS2 Directive (Directive (EU) 2022/2555). It is insufficient to merely claim geopolitical *force majeure* to excuse non-performance; if a corporate victim failed to implement baseline cybersecurity risk-management measures, they face regulatory fines of up to €10 million or 2% of their global annual turnover. Domestically, European tribunals may reasonably conclude that this prior compliance negligence renders any contractual *force majeure* defense void, as the disruption could have been prevented or mitigated.

Tracing those supply arteries further east, the hardware powering this global system is manufactured by the highly

integrated tech conglomerates of Japan and South Korea. According to IBM's 2024 X-Force Threat Intelligence Index, the Asia-Pacific region remains one of the most heavily targeted geographic areas globally. When commercial entities are disrupted by regional Advanced Persistent Threats (APTs), they confront rigid domestic civil codes. Seeking relief under the strict unforeseeability requirements of the Japanese Civil Code or the South Korean Civil Act is legally complex. In these jurisdictions, state-sponsored cyber hostility is increasingly scrutinized not as an unforeseeable act of war, but as a quantifiable, baseline operational risk that should have been priced into the contract.

This commercial vulnerability is accelerating rapidly in the Middle East. As the Gulf Cooperation Council (GCC), a regional cybersecurity market projected to exceed $13 billion by 2027, executes some of the most digitally integrated infrastructure megaprojects in history, legacy energy grids are evolving into hyper-connected smart cities. If state-sponsored malware targets a regional desalination plant or paralyzes automated port logistics, developers and sovereign wealth funds face immediate contractual deadlock. They must litigate whether the disruption constitutes a valid "extraneous cause" (*cause étrangère*) under statutes such as Articles 273 and 287 of the UAE Civil Transactions Law, or a fundamental failure of the contractor to secure the digital perimeter.

When these high-stakes, cross-border disputes inevitably rupture, they frequently flow into premier neutral arbitration hubs like Singapore. Institutions such as the Singapore International Arbitration Centre (SIAC) are increasingly tasked with adjudicating massive supply chain defaults caused by digital sabotage. Concurrently, Singapore's Cybersecurity (Amendment) Bill 2024 has expanded regulatory oversight to cover entities of "special cybersecurity interest," demonstrating how intimately commercial arbitration is becoming entangled with national security statutes. The traditional boundaries between private commercial disputes and sovereign regulatory regimes have vanished.

The Evidentiary Abyss of Attribution

Whether seated in Singapore, London, or Dubai, arbitral tribunals handling these disputes face a singular, paralyzing hurdle: the legal standard of attribution.

In kinetic warfare, attributing a physical strike on a facility to a sovereign state relies on observable fact. Cyberspace operates through proxies, criminal syndicates, and false-flag code. If a data center provider or logistics firm defaults on a major GCC infrastructure contract and invokes an "act of war" clause following a cyber event, establishing definitive state sponsorship before a private commercial tribunal is an immense evidentiary burden.

The *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* outlines strict thresholds for attributing cyber operations to a state, but private commercial tribunals lack the investigative authority of sovereign intelligence agencies. Arbitrators must distinguish between a state military operation and financially motivated cybercrime on a balance of probabilities. Parties often attempt to introduce unclassified intelligence from national cyber authorities to bridge this gap. However, under frameworks like the IBA Rules on the Taking of Evidence, relying on classified or highly redacted state intelligence within private commercial disputes introduces significant procedural complexities and questions of geopolitical bias.

Pragmatic Imperatives for Capital Protection

As the recent targeting of data centers illustrates, the intersection of military strategy and civilian data infrastructure is no longer a theoretical risk; it is an active operational reality. Relying on century-old boilerplate language for modern infrastructure and supply chain agreements presents a severe fiduciary vulnerability. In an environment where code deployed in one hemisphere can trigger a multi-billion-dollar default in another before the market opens, commercial structures must adapt.

For legal counsel and executives structuring multi-jurisdictional agreements, risk mitigation requires precise contractual mechanics:

- **Decouple Cyber from Kinetic Warfare:** Contracts should identify whether state-sponsored cyberattacks, physical strikes on data centers, and ransomware constitute a distinct *force majeure* event, rather than relying on legacy "war, hostilities, or acts of foreign enemies" clauses. The contractual language must be as specific as the threat vector.
- **Price the Collateral Damage:** Supply chain agreements should mathematically quantify liability and delay damages for instances where a party is not the primary target of a cyber-hostility but suffers operational paralysis due to global digital contagion.
- **Hardwire Attribution Mechanisms:** To prevent evidentiary stalemates in arbitration, contracts should establish a pre-agreed standard for attribution. For example, parties may stipulate that a formal, public declaration from a recognized national authority (such as the U.S. CISA, the UK NCSC, or the Cyber Security Agency of Singapore) serves as *prima facie* evidence of a state-backed attack for the purposes of the agreement.

Geopolitical conflicts are increasingly executed across the physical and digital assets of private enterprises. Until the mechanics of international commercial law fully adapt to the realities of asymmetric warfare, the imperative lies with the private sector to strictly define, price, and contractually ring-fence its digital liabilities. In the modern commercial theater, an ambiguous contract is a quantifiable liability.

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War Series: Paper Barrels and Physical Constraints — The Limits of Force Majeure in the 2026 GCC Energy Shock

October 19, 2026

“In the inevitable collision between paper contracts and physical supply chains, physical reality ultimately dictates the terms.”

The Divergence of Paper and Physical Energy A recurring theme in macroeconomic and energy analysis is the fundamental disconnect between financial abstractions and physical reality. The modern economy operates on the assumption of uninterrupted primary energy flows. As the 2026 Iran War destabilizes the Arabian Gulf, the region is experiencing a severe, real-world stress test of that assumption.

While the Gulf Cooperation Council (GCC) remains the undisputed epicenter of global hydrocarbon production, the intense militarization of shipping lanes and sudden refining bottlenecks have severely constrained the downstream supply of refined products. Diesel and bunker fuel are the master resources of the physical economy. Without them, the sprawling infrastructure pipelines in Saudi Arabia, the logistics hubs in the UAE, and the massive backup generators required for the region’s data centers simply grind to a halt.

For years, procurement teams at major regional contractors managed their energy exposure through long-term, fixed-price diesel supply agreements. These contracts were viewed as ironclad hedges against market volatility. However, this strategy relied on the flawed premise that a paper contract

can indefinitely command physical delivery, regardless of macroeconomic or geopolitical conditions. Paper barrels do not power generators.

Today, those fixed-price contracts are deeply out of the money. Spot prices for refined products have spiked dramatically, and commercial fuel suppliers are operating at severe losses with every truck they dispatch. Predictably, these suppliers are issuing sweeping "Force Majeure" notices, unilaterally suspending deliveries, and demanding immediate price renegotiations.

Within the region's commercial sectors, there is a growing misconception that extreme market volatility automatically excuses contractual performance. It is critical to examine this through the lens of established GCC civil law, which takes a highly structured, unsentimental approach to separating economic friction from true contractual impossibility.

The Unified GCC Legal Framework: Impossibility vs. Hardship When a fuel supplier unilaterally halts deliveries during a regional conflict, their primary defense is Force Majeure. However, the civil codes across the entire GCC, which share a deeply intertwined jurisprudential DNA heavily influenced by the Sanhuri model, draw a strict, unforgiving line between *absolute impossibility* and *extreme financial hardship*.

Across the region, Force Majeure requires an unforeseeable event that renders the performance of a contract physically or legally impossible. Only then is the obligation extinguished. Conversely, the doctrine of *Exceptional Circumstances* (or Hardship) applies when an unforeseeable public event occurs and performance remains physically possible, but has become so economically burdensome that it threatens the supplier with "grave loss." Crucially, this doctrine does *not* allow the supplier to unilaterally terminate the agreement.

This vital duality is explicitly codified across the major Gulf jurisdictions:

- **The United Arab Emirates:** Article 273 of the Civil Transactions Law governs Force Majeure (impossibility), while Article 249 governs Exceptional Circumstances (hardship).
- **Kingdom of Saudi Arabia (KSA):** Under the recently enacted KSA Civil Transactions Law (Royal Decree M/191 of 2023), Article 125 dictates Force Majeure, whereas Article 97 provides for judicial intervention when unforeseeable circumstances make performance "oppressive" to the debtor.
- **Qatar:** The Qatari Civil Code (Law No. 22 of 2004) mirrors this structure precisely in Articles 258 and 171.
- **Oman and Kuwait:** Similar structural divides exist in the Omani Civil Transactions Law (Arts. 172 and 159) and the Kuwaiti Civil Code (Arts. 215 and 198).

Price Shocks Are Not Force Majeure To understand how regional courts apply these codes during commodity shocks, we can look to historical precedents. Following the 2008 global financial crisis and subsequent commodity supercycles, suppliers of highly volatile industrial materials faced catastrophic price spikes. Bound by fixed-price contracts, many claimed Force Majeure and halted deliveries.

The regional courts, setting a jurisprudential standard widely respected and cited across the GCC, have generally established a definitive rule: **A massive, unexpected increase in procurement costs, even if triggered by an unforeseeable geopolitical black swan, does not render a contract "impossible" to perform.**

If the physical molecules of diesel exist in the spot market, the supplier can technically procure and deliver them. The fact that doing so erodes profit margins and threatens the supplier's balance sheet constitutes a *relative* impossibility (hardship), not an *absolute* one (Force Majeure). Therefore, any supplier who unilaterally halts fuel deliveries based solely on market price surges is in material breach of

contract.

The Judicial Pressure Valve The legal system, however, recognizes that rigidly enforcing economically ruinous contracts can trigger systemic cascading defaults across the supply chain. Bankrupting regional logistics providers serves neither the project owners nor the broader economy.

This is where the doctrine of Exceptional Circumstances acts as a vital pressure valve. It grants the presiding judge or arbitral tribunal the exclusive authority to intervene. By reviewing forensic financial data, a tribunal can equitably distribute the "grave loss." The judge may force the buyer to absorb a calculated percentage of the price surge, while mandating that the supplier continues deliveries at a newly adjusted rate.

The key legal distinction is procedural: the supplier cannot simply stop pumping fuel while demanding higher rates. They must maintain physical performance while formally petitioning the court to restore the economic balance of the contract.

When Sovereign Rationing Intervenes While market price surges do not trigger Force Majeure, the 2026 Iran War introduces a variable that absolutely does: Sovereign Energy Rationing.

If a GCC Ministry of Energy, national oil company, or sovereign military command issues a formal decree limiting commercial diesel allocations, perhaps capping them at 40% of pre-war volumes to preserve strategic reserves, the legal paradigm immediately shifts.

A direct sovereign rationing order is a true "foreign cause." It creates an absolute legal impossibility. If a supplier fails to deliver the remaining 60% of the contracted fuel because the state redirected the refinery output, they are completely shielded under the Force Majeure provisions across all GCC civil codes. The buyer cannot claim delay damages or demand the supplier procure fuel on the grey market to circumvent a sovereign mandate. When physical constraints are enforced by state power, the commercial contract must yield.

The Wartime Playbook for Energy Logistics For EPC contractors, heavy logistics operators, and energy suppliers navigating the

supply constraints of the 2026 conflict, adhering strictly to regional legal frameworks is essential for mitigating risk:

- **For the Buyers – Audit the Notices:** Do not accept blanket Force Majeure notices at face value. If the supplier's inability to deliver stems entirely from spot-market price inflation, issue a formal Notice of Breach. Regional jurisprudence makes it clear that market volatility is not a valid basis for unilateral termination.
- **For the Suppliers – Maintain Supply While Seeking Relief:** Unilaterally suspending fuel deliveries is a critical error that exposes the firm to substantial delay damages. Suppliers must continue physical performance while simultaneously invoking the Exceptional Circumstances provisions in local courts or tribunals to seek a formal, judicially mandated price adaptation.
- **For All Parties – Document Sovereign Intervention:** If fuel deliveries are halted due to state-imposed rationing, informal communications from downstream distributors are legally insufficient. To successfully invoke Force Majeure, the impacted party must formally serve the counterparty with the published government decrees, ministry circulars, or military orders demonstrating that the shortfall was dictated by sovereign mandate rather than commercial preference.

Takeaway The 2026 Iran War has profoundly disrupted the fundamental inputs of regional commerce. Businesses find themselves navigating a narrow corridor between severe price surges and the reality of state-level resource rationing. The assumption that fiat agreements can entirely insulate operations from physical supply chain shocks is no longer viable.

The GCC civil law frameworks provide a pragmatic, structured mechanism for managing this disruption. The law rigorously

protects the sanctity of contracts against mere market panic, while allowing for judicial intervention to prevent systemic economic collapse. Companies cannot use geopolitical volatility to unilaterally walk away from unprofitable agreements, but they can leverage statutory doctrines to ensure an equitable sharing of the wartime burden. Ultimately, success requires aligning legal strategy with physical market realities.

Wasel & Wasel advises on complex commercial disputes, international arbitration, and cross-border financial litigation. The firm represents major corporate entities, regional contractors, and energy suppliers in high-stakes proceedings before various courts and tribunals across the GCC. Our practice includes navigating complex force majeure claims, litigating the application of exceptional circumstances and contract adaptation, managing multi-jurisdictional supply chain disputes, and enforcing contractual rights amidst geopolitical crises and sovereign interventions.

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War Series: The Multipolar Sanctions Minefield – China's Supreme Court Outlaws

“Overcompliance” with U.S. Sanctions

October 19, 2026

The Headline Event: Overcompliance is Now a Direct Liability

In a landmark directive with immediate, severe implications for global supply chains and cross-border finance, China’s Supreme People’s Court (SPC) has formally utilized its 2021 Anti-Foreign Sanctions Law (AFSL). By elevating a recent Shanghai Maritime Court ruling into its official case database and giving it “strong exemplary significance,” the SPC has established the mandatory application of the AFSL in commercial disputes.

The Crux: The End of the Sanctions “Safe Harbor”

The crux of this development is simple but overcoming: actions taken to comply with Western sanctions now systematically trigger legal liability within Chinese jurisdiction. There is seemingly no longer a neutral ground.

Historically, when Washington escalated economic restrictions, the corporate playbook was uniform: comply (or potentially overcomply) to avoid regulatory wrath, and sever or drawdown ties with targeted entities. Financial institutions relied on boilerplate “draw-stops.” Logistics providers invoked the “fear of secondary sanctions” to halt shipments. Losses from these broken contracts were absorbed as the cost of doing business to appease the U.S. Office of Foreign Assets Control (OFAC).

That unipolar reality is now subject to reconsideration. The SPC has explicitly established that preemptive overcompliance to appease Western regulators may trigger lawsuits, asset seizures, and countermeasures inside China. Under the AFSL,

enforcing or assisting in foreign "discriminatory restrictions" against a Chinese party is itself an illegal act.

The Precedent: The $740,000 Price of Obeying OFAC

The facts of the precedent-setting case are a wake-up call for international compliance officers. In late 2022, a Hong Kong-based company hired a Singaporean carrier to transport roughly RMB 4.99 million (USD 740,000) worth of electronics from Shanghai to Panama.

After loading the cargo, the Singaporean carrier discovered the Hong Kong shipper was on a U.S. sanctions list. To avoid secondary penalties from Washington, the carrier abruptly halted performance. It refused to issue a bill of lading, refused to deliver the cargo in Panama, and unilaterally shipped the goods back to Shanghai.

When the shipper sued for damages in China, the carrier defended its actions by citing standard contractual clauses, the overarching risk of U.S. secondary sanctions, and a foreign choice-of-law provision.

The Shanghai Maritime Court firmly rejected this defense, ordering the carrier to pay the full cargo value of RMB 4.99 million plus interest.

The Legal Trap: Voiding Boilerplate Defenses

The court's reasoning causes caution to traditional corporate defenses and establishes two significant realities for foreign businesses:

1. **Foreign Sanctions Are Not "Force Majeure":** The court ruled that the preemptive fear of foreign secondary sanctions does not excuse contractual non-performance. The carrier was not responding to a direct U.S. legal order; it acted out of internal compliance fears. The

Chinese court viewed this preemptive overcompliance as actively assisting in illegal foreign discrimination.

2. **Contracts Cannot Override Chinese Law:** The carrier attempted to invoke Singaporean law based on its standard bill-of-lading terms. The court blocked this attempt, declaring the AFSL a mandatory provision of Chinese public policy. If a dispute involves Chinese interests, Chinese courts will bypass foreign choice-of-law or international arbitration clauses to enforce the AFSL.

The Squeeze on Global Lenders and Supply Chains

This ruling places international lenders and logistics providers directly in the crosshairs. Because the SPC has mandated the AFSL's application, triggering a draw-stop against a Chinese entity out of fear of Western sanctions strips a lender of contractual protections within China. The traditional corporate protocol, assess exposure, freeze the account, and cease all communications before a regulatory deadline, is now a risk to being sued in a Chinese court, where foreign fora or arbitration protections may be disregarded.

Businesses can no longer rely on a passive, one-sided compliance approach. For corporate boards and legal counsel managing cross-border transactions, this precedent demands a tactical pivot. Standard OFAC-compliance clauses, automatic termination rights, and sanctions-related draw-stops are now highly vulnerable. Contracts involving Chinese entities must be revised to include localized grace periods or alternative performance mechanisms that do not explicitly cite "compliance with foreign sanctions" as a trigger for termination. Companies should also consider proactively engage in structured, court-facilitated mediations to engineer a structured settlement that safely navigates the fault lines of both U.S. and Chinese law.

Takeaway

Global businesses no longer face a single dominant regulatory regime. China’s Supreme People’s Court has delivered a definitive mandate: U.S. sanctions are not a valid excuse for disrupting Chinese commerce. Multinational entities must recognize that the very mechanisms they historically used to protect themselves from Western regulators are now the exact triggers for liability in the East. Navigating this multipolar minefield requires abandoning passive compliance in favor of highly sophisticated, transaction-specific risk management.

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War Series: Reinsurance and Precedence of the Local

Regulatory Regimes – Applying the Dubai Cassation Court's 2026 Yemen Precedent to GCC-UK-US Markets in the Iran War

October 19, 2026

Introduction: As the 2026 Iran War escalates, severely disrupting supply chains, energy infrastructure, and regional stability across the Middle East, the demand for Political Violence (PV), Terrorism, and War-Risk insurance has surged to unprecedented levels. Regional primary insurers and corporate entities across the Gulf Cooperation Council (GCC) are heavily reliant on international reinsurance hubs, predominantly the London Market in the UK and major underwriting centers in the United States, to secure capacity for these massive, concentrated risks.

However, the "fog of war" actively permeates wartime commercial operations. The severe volatility of the 2026 conflict has created a highly difficult pricing environment.

For international underwriters, US-based risk managers, and UK reinsurance brokers navigating the GCC market, understanding the territorial reach of local insurance regulations is critical. Dubai Court of Cassation Judgment (Civil), provides a monumental precedent. By addressing a multi-million-dollar dispute rooted in the Yemeni conflict, the Court firmly aligned GCC regulatory standards with those of the UK's Financial Conduct Authority (FCA), US state insurance regulators, and similar global regulators, establishing that regional instability does not grant international brokers a license to bypass strict transparency and fiduciary duties.

The Factual Matrix: The Yemen Precedent for the 2026 Crisis

The dispute in Dubai Cassation Judgment involved a regional insurance company (the claimant) and its UAE-licensed reinsurance broker (the first appellant). From 2014 to 2023, during the height of the political violence and conflict in Yemen, the insurer tasked the broker with securing PV and war-risk reinsurance coverage.

Years later, the insurer alleged it discovered that the UAE broker had utilized the assistance of foreign intermediaries and that in order to obtain the required coverage. premium markups were added during the period of coverage amounting to US$17.8 million.

The insurer filed suit in the UAE courts, demanding the return of the aforesaid markups. In their defense, the brokers asserted that because the insured risks were located in a foreign warzone (Yemen), the reinsurers were in the UK, and the transactions were fundamentally international, UAE domestic insurance regulations regarding broker remuneration did not apply. Furthermore, they argued that the insurer had passed the premium costs onto the final end-users and suffered no actual financial impoverishment.

The Court’s Ruling: Application of the Local Regulatory Regimes to the “International Risk”

The Dubai Court of Cassation rejected the brokers’ jurisdictional and commercial defenses, ruling entirely in favor of the insurer.

The Court established that the statutory duties mandated by UAE Insurance Law (Law No. 6 of 2007) and regulatory directives (such as Insurance Authority Decisions No. 3/2010 and No. 15/2013) apply strictly to any broker licensed and operating within the state. The physical location of the war-risk (Yemen) and the nationality of the reinsurers (UK) were deemed legally irrelevant to the broker’s fiduciary

obligations. The Court affirmed that UAE courts will enforce local regulatory standards on licensed intermediaries and that if a broker operates within the UAE , they remain subject to the local regulatory regimes.

The Court also rejected the defense that the insurer suffered no loss because it passed the costs to its clients holding that making a profit downstream does not negate the application of the applicable local regulations.

Strategic Playbook for Cross-Border Insurance Logistics in the 2026 Context

For global reinsurers, GCC cedants, and commercial insureds navigating the chaotic pricing of the 2026 Iran War, Judgment provides a critical strategic roadmap:

Auditing Wartime Premium Chains: US, UK and global reinsurers, as well as GCC primary insurers, must proactively audit the entire intermediation chain. Stakeholders should demand itemized breakdowns of all broker remuneration, ensuring that gross premiums accurately reflect the ultimate underwriter's pricing.

Universal Standards: International brokers should be careful in the use of "offshore risk" or "foreign reinsurers" to sidestep local regulations. Much like how the US New York Department of Financial Services (NYDFS) or the UK FCA enforce strict broker regulations regardless of where the underlying asset sits, UAE (and the wider GCC) courts will aggressively enforce local regulations with respect to any broker operating within their borders.

Takeaway

The geopolitical instability of the 2026 Iran War demands resilient and transparent financial markets. As the flow of war-risk capital moves between the Middle East, the UK London Market, and US underwriters, the potential for different

pricing structures increases. Dubai Court of Cassation Judgment serves as a definitive warning: judiciaries will not allow the complexities of international conflict or the involvement of foreign markets to dilute the application of the local regulatory regimes.

Wasel & Wasel advises on complex commercial disputes, international insurance and reinsurance litigation, and cross-border financial recovery within the UAE courts and the broader GCC. The firm represents major corporate insureds, regional cedants, and international underwriters in high-stakes proceedings before the UAE Federal and Emirate-level Courts. Our practice includes auditing and litigating complex intermediary fraud, enforcing fiduciary duties, managing multi-jurisdictional financial disputes, and addressing conflicts of law in the international insurance and reinsurance markets.

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War Series: Can War Set Aside an Arbitration Award? Applying the Dubai Cassation Court’s Afghan Precedent to

the 2026 Iran War

October 19, 2026

Introduction: Procedural Defenses in the Context of Regional Conflict

The 2026 Iran War introduces logistical and administrative challenges for commercial operations across the Middle East. As contracting parties address contract performance and supply chain disruptions in various sectors, disputes are frequently referred to international arbitration in accordance with standard commercial agreements.

In the context of regional instability, a relevant procedural issue arises when a party attempts to challenge the validity of arbitration proceedings or seeks the annulment of a resulting award by citing the conflict. Respondents may argue that wartime disruptions constitute a procedural force majeure, asserting that conditions prevented them from appointing representatives, receiving proper notification, or participating in hearings.

For parties seeking to enforce or defend arbitral awards in Gulf Cooperation Council (GCC) jurisdictions, understanding how local courts evaluate these annulment requests provides necessary context. Dubai Court of Cassation Judgment No. 483 of 2024 (Commercial), issued on February 12, 2025, analyzed an annulment dispute stemming from the 2020 conflict in Afghanistan, offering legal principles applicable to arbitrations conducted during the 2026 Iran War.

The Factual Matrix: The Afghan Conflict and Annulment Proceedings

The dispute in Dubai Cassation Judgment No. 483/2024 originated from a 2018 contract concerning the Afghan National Airports project. Following the change in government and the

outbreak of conflict in Afghanistan in 2020, the claimant initiated arbitration before the Permanent Court of Arbitration (PCA). When the respondent did not appoint an arbitrator within the contractual timeframe, the PCA appointed a sole arbitrator who eventually issued an award.

The respondent subsequently filed an annulment action in the Dubai courts. The respondent argued that the Afghan conflict constituted a force majeure event that prevented the formation of a government, hindered the appointment of authorized legal representatives, and restricted their ability to present a defense. Additionally, they claimed the arbitrator violated due process by sending procedural orders to an unauthorized employee's email address rather than an official representative. Finally, the respondent argued the arbitrator failed to correctly apply the agreed-upon Afghan law, specifically contesting the award of interest, which they asserted was not permitted under that legal framework.

The Court's Ruling: Digital Participation and Procedural Due Process

The Dubai Court of Cassation dismissed the annulment action, establishing that the physical constraints of a regional conflict do not automatically invalidate arbitration proceedings if the party had practical means to participate.

The Court examined the procedural record and observed that, despite the ongoing war, the respondent was aware of the proceedings and engaged with the tribunal. The evidentiary record demonstrated that the respondent had requested extensions of time, submitted documents, and paid their share of the arbitration advance on costs (amounting to 145,625 AED). Furthermore, representatives for the respondent had appeared before the arbitrator and corresponded via email.

Crucially, the Court noted that the arbitration hearings were conducted via video conferencing technology. The Court

concluded that the use of video technology enabled direct participation, and therefore the claims regarding the war did not constitute a sufficient reason for the failure to present a defense.

This precedent indicates that GCC courts review the factual record of a party's engagement. Administrative interactions, such as paying fees, sending email correspondence, or accessing virtual hearings, are weighed against claims that wartime conditions precluded participation.

Scope of Review and the Burden of Proving Foreign Law

The Court also addressed the respondent's claim that the arbitrator misapplied the substantive Afghan law regarding the awarding of interest.

The Dubai Court of Cassation reaffirmed a standard principle of the UAE arbitration framework: an annulment action is a procedural review, not an appeal on the substantive merits. The judiciary's supervisory role does not extend to reassessing the arbitrator's evaluation of evidence or their interpretation of the law.

Furthermore, under UAE evidentiary principles, foreign law is treated as a material fact. The party asserting that a foreign law was misapplied bears the burden of proving its existence and content. Because the respondent alleged that interest was prohibited under Afghan law but failed to submit formal proof that the provisions applied by the arbitrator were invalid or contrary to Afghan law, the Court rejected the argument.

Procedural Considerations for Arbitration in the 2026 Context

For commercial entities and legal practitioners managing arbitrations and subsequent enforcement proceedings during the 2026 Iran War, the Dubai Court of Cassation precedent highlights several practical considerations:

- **Documenting Engagement:** Tribunals and claimants should maintain comprehensive records of interactions with the respondent. Routine administrative actions, such as the payment of institutional fees, email correspondence, or requests for procedural extensions, can serve as evidence of notification and capacity to participate, addressing subsequent annulment claims based on wartime disruption.
- **Utilizing Virtual Proceedings:** Conducting proceedings via video conferencing addresses logistical constraints. As demonstrated in the judgment, the availability of digital hearing options provides an accessible venue and mitigates claims that regional instability prevented a party from presenting their case.
- **Evidentiary Requirements for Foreign Law:** When challenging or defending an award based on the application of a foreign substantive law before GCC courts, parties must adhere to evidentiary standards. Assertions regarding foreign legal principles must be supported by submitting authenticated texts of the relevant foreign legislation to meet the burden of proof.

Conclusion

As regional operations adjust to the logistical challenges of the 2026 Iran War, disputes concerning the validity of arbitration proceedings are evaluated on procedural grounds by local courts. Dubai Court of Cassation Judgment No. 483/2024 demonstrates that GCC courts maintain a defined scope for annulment. The logistical difficulties associated with regional conflict do not inherently justify a failure to participate, particularly when virtual proceedings are utilized and administrative engagement is documented. For parties enforcing contractual rights, adherence to procedural requirements and evidentiary standards remains standard practice for securing and defending arbitral awards.

Wasel & Wasel advises on commercial disputes, international arbitration, and cross-border award enforcement within the UAE courts and the broader GCC. The firm represents international contractors and commercial entities in proceedings before the UAE Federal and Emirate-level Courts, handling the execution of arbitral awards and advising on annulment actions. Their practice includes advising entities on procedural requirements, managing multi-jurisdictional arbitrations under institutional rules, and addressing jurisdictional matters in international dispute resolution.

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War Series: Rogue Charterers, Vessel Misappropriation, and the Illusion of "Washed" Titles – Applying the 2001 UAE Supreme Court Gulf War Precedent to GCC Maritime Logistics in the 2026 Iran War

October 19, 2026

Introduction: The Maritime Fog of War and the Weaponization of Charter Parties As the

2026 Iran War aggressively destabilizes the Middle East, the world's most critical maritime chokepoints, the Strait of Hormuz, the Arabian Gulf, and the Gulf of Oman, have been transformed into theaters of intense logistical paralysis. With naval blockades, soaring war risk premiums, and sweeping economic sanctions dominating the operational landscape, the global shipping industry finds its standard Charter Party Agreements (CPAs) fracturing under the pressure.

While much of the industry's focus is understandably directed toward the frustration of time charters, safe port warranties under standard BIMCO forms (such as CONWARTIME or VOYWAR), and off-hire disputes, a far more considerable legal crisis is emerging in the offshore sector: the outright misappropriation of vessels.

Operating under standard bareboat agreements (such as the BIMCO BARECON form), certain charterers are exploiting the geopolitical chaos by invoking the 2026 war not merely to excuse operational delays, but to entirely evade their absolute obligation to redeliver the vessel. Taking advantage of the "fog of war," these operators effectively hijack multi-million-dollar assets, sever communications, and attempt to "wash" the vessel's title through opaque judicial sales in peripheral jurisdictions, eventually re-flagging the ship and deploying it back into lucrative trade routes under a new identity.

In standard peacetime practice, disputes arising from these CPAs are overwhelmingly directed to arbitration, most notably under the London Maritime Arbitrators Association (LMAA) Terms. However, an LMAA arbitral award is ultimately a contractual remedy; it cannot physically intercept a stolen ship. When a misappropriated vessel suddenly drops anchor in a GCC port, shipowners require immediate, coercive *in rem* action

from local civil courts.

For maritime stakeholders navigating this crisis, the UAE Federal Supreme Court provides an effective blueprint for vessel recovery. By examining a landmark judgment (Federal Supreme Court Judgment No. 252 of 2001, Civil), which adjudicated a complex vessel misappropriation stemming from the Second Gulf War (the 1990 Iraq-Kuwait conflict), we can transpose these powerful jurisdictional precedents directly onto the maritime realities of the 2026 Iran War.

The Factual Matrix: Transposing the 1990 Gulf War Misappropriation

The factual matrix of UAE Supreme Court Judgment No. 252/2001 serves as a perfect analogue for the aggressive title disputes erupting today. The dispute originated in the shadows of the 1990 Gulf War and the subsequent international embargoes, mirroring the blockades and sanctions defining the 2026 conflict.

On March 27, 1990, the original shipowner (the First Respondent) leased their vessel, the *Arabian Sea* (registered in Basra), to a commercial operator (the Charterer) under a five-year bareboat charter. Shortly after the vessel was delivered, the geopolitical landscape violently collapsed. As the regional war escalated and sanctions isolated operations, the Charterer exploited the blackout. When the charter period expired, the Charterer flatly refused to redeliver the vessel to the original owner, under the cover of wartime blockade and boycott.

Years later, the original owner tracked the vessel down. It had entered the territorial waters of the UAE and docked at the Port of Sharjah, flying the flag of Belize and operating under a new name, the *Baron*. Acting swiftly, the original owner petitioned the Sharjah Court of First Instance and successfully secured a conservatory arrest order (Attachment

No. 4/1997), physically trapping the ship in port and demanding its delivery free of any encumbrances.

The legal battle escalated when a foreign corporate entity, Redcap Limited (the Intervener/Appellant), intervened in the lawsuit, demanding the arrest be lifted. Redcap claimed they were the new, legitimate owner of the vessel, having purchased it in 1996 for $1,700,000 USD through a formal judicial sale executed by the High Court in Kenya.

Relying on standard international maritime principles, Redcap argued that a judicial sale at public auction physically purges a vessel of all prior liens, encumbrances, and ownership claims. They asserted that if the original owner had a grievance regarding the stolen ship, their claim must be directed exclusively against the $1.7 million sale proceeds held in Kenya, not against the physical vessel itself. Furthermore, the Intervener launched a jurisdictional challenge, arguing that the UAE courts had no authority to adjudicate the ownership of a foreign-flagged vessel, owned by a foreign entity, that was merely passing through UAE waters "incidentally."

Jurisdictional Supremacy: The "Asset in Port" Trap

In 2026, foreign shipowners, rogue charterers, and P&I Clubs frequently assume that because a CPA is governed by English law, or because a vessel flies a flag of convenience, GCC courts will decline jurisdiction over complex ownership disputes. The UAE Supreme Court dismantled this assumption.

The Intervener argued that under the UAE Maritime Commercial Law, the vessel's presence in Sharjah was merely "incidental" and did not grant the civil courts substantive jurisdiction over an international ownership dispute.

The Supreme Court rejected this entirely, anchoring its ruling in the absolute sovereignty principles of the UAE Civil Procedure Code. The Court established a definitive rule: the

physical presence of the asset dictates the jurisdiction.

("The original principle is regional judicial jurisdiction, and the administration of justice is a public interest exercised by the State within the limits that achieve this interest through its national judiciary… Therefore, the international jurisdiction vested in the national judiciary is, in this capacity, a matter of public policy linked to the sovereignty of the State.")

Applying Article 21 of the Civil Procedure Law, the Court held that UAE courts possess absolute jurisdiction over lawsuits filed against foreigners who have no domicile in the UAE, provided the lawsuit relates to "funds or property located within the State." The Court explicitly ruled:

("The reason for jurisdiction in that case goes back to the fact that the disputed property is located in its territory, which is an objective criterion based on the location of the property. If it is located there, jurisdiction is established for the State's courts, even if the source of the obligation did not arise there, or if the presence of the property was incidental.")

Furthermore, the Court harmonized this with Article 115 of the UAE Maritime Commercial Law applicable at the time, confirming that a dispute over the "ownership of a vessel" unequivocally constitutes a "maritime debt" justifying an immediate conservatory arrest. For 2026 rogue charterers hoping to use UAE ports as temporary safe havens, the precedent is clear: the moment your hull crosses into UAE territorial waters, the protective veil of foreign jurisdictions is challengeable.

Piercing the "Cleansed Title" Myth: The Burden of Proving Foreign Law

The most considerable finding by the Supreme Court, and the most critical warning for the 2026 crisis, was its treatment of the Kenyan judicial sale. The Intervener believed that

presenting a foreign court's auction decree would automatically force the UAE courts to recognize their clean title.

Under the GCC civil law framework, foreign law is not treated as binding legal authority that a judge must independently research; rather, it is treated purely as a "material fact." According to strict conflict of laws principles, the party relying on a foreign legal mechanism (such as the purging effect of a Kenyan judicial sale) bears the absolute burden of conclusively proving the existence, text, and application of that foreign law.

Because the Intervener merely alleged the effect of the foreign judicial sale in their memorandums but failed to formally, procedurally prove the foreign law to the standard required by UAE evidentiary rules, the Supreme Court upheld the lower courts' dismissal of the Kenyan sale entirely.

("Foreign law is a mere fact, the burden of proving which falls on the party invoking it, and the Appellant did not prove its existence.")

By invalidating the foreign judicial sale due to evidentiary failures, the Court retroactively erased the Intervener's title. The Supreme Court confirmed the original owner's absolute title to the vessel, solidifying the Sharjah arrest order and mandating the ship be handed over to them, completely free of any actions taken by the rogue charterer. The Intervener, despite having paid $1.7 million, lost the ship.

Strategic Playbook for Maritime Logistics in the 2026 Crisis

For international shipowners, lessors, and maritime litigators attempting to secure assets in the chaotic theater of the 2026 Iran War, the 2001 UAE Supreme Court precedent dictates a highly determined, localized strategy.

Bypass LMAA Delays for Immediate Asset Recovery: While you must commence LMAA arbitration (if not modified) to resolve the underlying BARECON or NYPE breach regarding the unpaid hire or failure to redeliver, arbitration will not physically stop the ship from trading. Shipowners must utilize maritime intelligence to track misappropriated vessels. The moment a stolen vessel enters UAE or broader GCC waters (such as Jebel Ali, Fujairah, or Sharjah), owners must immediately file an *ex parte* application under local maritime law (e.g., UAE Maritime Law Art. 115) to arrest the vessel based on the ownership dispute. The local courts may assert jurisdiction strictly based on the physical presence of the hull.

Do Not Fear "Title Washing" or Flags of Convenience: If a rogue bareboat charterer has attempted to extinguish your title by routing the vessel through a dubious judicial sale in a peripheral jurisdiction, do not assume your claim is reduced to chasing the sale proceeds. As the precedent proves, UAE courts will heavily scrutinize foreign judicial sales. If the new "owner" cannot flawlessly prove the foreign law that allegedly purged your title, the UAE courts may disregard the foreign auction and return the physical asset to its original registered owner.

Strict Evidentiary Hygiene for Foreign Law: Conversely, if you are a legitimate buyer of a vessel that was lawfully auctioned during the 2026 conflict, and you face an arrest in the UAE from a disgruntled former owner, you cannot merely submit the foreign court judgment. You must submit legally authenticated, translated copies of the foreign maritime legislation, supported by expert legal affidavits, to prove *as a matter of fact* that the foreign judicial sale extinguished all prior encumbrances. Relying on "general principles of international maritime law" may result in a fatal loss at the local courts.

Conclusion: Territorial Reality Over Contractual Illusion

The 2026 Iran War has created a highly volatile environment

for wider international commercial operations, where severe disruptions in shipping lanes, banking, and port operations have catalyzed a surge in distressed asset scenarios, complex cross-border restructuring, and, in some instances, outright maritime opportunism. As international operators, distressed stakeholders, and occasional rogue charterers navigate these disruptions, whether to resolve legitimate operational disputes, execute complex foreign sales, or obscure vessel identities, the belief that standard LMAA arbitration clauses will keep procedures safely insulated in London while the physical ships continue to trade or seek refuge in the Middle East may not be the case.

UAE Federal Supreme Court Judgment No. 252/2001 provides clarity in this sense. The GCC civil law framework is often protective of its territorial sovereignty. When a maritime asset enters domestic waters, the state's courts possess the jurisdiction to arrest it, adjudicate its true ownership, and strip away fraudulent or unproven foreign titles. For shipowners fighting to reclaim their fleets in the 2026 crisis, the message is clear: the most powerful weapon in your arsenal is not just the arbitration clause in your charter party, but the sovereign reach of the local port state.

Wasel & Wasel demonstrates extensive expertise in navigating complex maritime disputes, admiralty matters, and vessel arrests within the UAE courts and international arbitration forums. The firm has a proven track record of representing maritime contractors in grievance proceedings before the UAE Federal Courts to challenge the precautionary seizure of vessels. Their capabilities include advising logistics companies on appealing vessel arrest orders and successfully obtaining stays of execution from the UAE Federal Supreme Court against lower court vessel seizure orders. Furthermore, Wasel & Wasel actively handles complex charter party disputes, recovers outstanding debts under SUPPLYTIME agreements , and represents international shipping companies in London-seated

LMAA arbitration proceedings concerning vessel sales and management.

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War Series: The "Fix-It On-Site" Fallacy, Pre-Existing Breaches, and the Limits of Force Majeure – Applying the Dubai Courts' Sudan War Jurisprudence to GCC Construction Logistics in the 2026 Iran War

October 19, 2026

Introduction: The Fog of War and the Shield of Convenience

As the 2026 Iran War aggressively reverberates across the Middle East, the Gulf Cooperation Council (GCC) finds its sprawling construction, engineering, and infrastructure sectors facing an unprecedented logistical paralysis. With military exclusion zones declared across critical maritime chokepoints in the Strait of Hormuz, the Arabian Gulf, and the Gulf of Oman, commercial ocean freight has been fundamentally

disrupted. Simultaneously, abrupt civil aviation closures and sudden Notices to Air Missions (NOTAMs) have grounded the global airfreight corridors that traditionally sustain the rapid pace of regional development.

The movement of vital construction materials, ranging from pre-fabricated modular units and highly specialized electromechanical equipment to bespoke structural steel, has ground to a virtual halt.

In the immediate wake of these severe geopolitical disruptions, regional engineering, procurement, and construction (EPC) main contractors, alongside project owners and developers, are being inundated with *force majeure* notices from international manufacturers and regional logistics suppliers. The narrative presented in these notices is nearly universal: suppliers claim that the sudden, violent escalation of the 2026 Iran War constitutes an insurmountable, unforeseeable sovereign event that absolutely prevents them from fulfilling their supply chains. Consequently, they argue, this geopolitical crisis shields them from contractual liability, insulates them from delay penalties, and, most crucially, allows them to retain massive, unamortized advance payments without delivering the contracted goods.

However, a critical and highly contentious legal dilemma arises when the fog of war is utilized to mask pre-existing corporate failures. What happens when a supplier or logistics provider was already in fundamental breach of their contractual obligations, such as manufacturing defective, non-conforming materials, or missing crucial pre-war shipping deadlines, *before* the first military shot was fired? Can a supplier legitimately use an active regional war as a legal shield to excuse a failure that is entirely rooted in their own prior engineering incompetence or manufacturing negligence?

For construction executives, procurement directors, and

logistics heads navigating the intense commercial complexities of the 2026 crisis, the GCC civil law framework provides a highly unforgiving answer to this question. By examining a landmark, highly detailed judgment from the Dubai Court of First Instance (Judgment No. 695/2023 Commercial Banking, issued on April 29, 2025), which adjudicated a multimillion-dollar construction supply dispute violently disrupted by the sudden outbreak of the 2023 war in Sudan, we can transpose these vital legal precedents directly onto the current logistical realities of the Iran War.

This definitive precedent establishes a foundational rule of wartime commerce across the Arabian Peninsula: *Force majeure* cannot cure a pre-existing breach, and an armed conflict cannot be weaponized to camouflage manufacturing defects.

The 2026 Construction Logistics Landscape in the GCC

To fully comprehend the gravity and utility of this judicial precedent, one must first recognize the sheer scale and vulnerability of the supply chain mechanisms currently keeping GCC gigaprojects afloat. From the colossal Vision 2030 developments in the Kingdom of Saudi Arabia (KSA), such as NEOM, the Red Sea Project, and Qiddiya, to massive infrastructure upgrades, desalination plants, and transit networks in the United Arab Emirates (UAE) and Qatar, project owners rely overwhelmingly on highly synchronized, cross-border international supply contracts.

These procurement contracts are defined by rigid technical specifications, strict Factory Acceptance Tests (FAT), mandatory third-party quality inspections (executed by global entities such as SGS, TUV, or Bureau Veritas), and massive upfront capital injections. Advance payments in the GCC construction sector frequently range from 20% to 30% of the total contract value. These multi-million-dollar transfers are systematically secured by unconditional bank guarantees (Advance Payment Bonds) and Performance Bonds, which are

intended to act as liquid, on-demand safety nets for the contractor.

In the wartime reality of 2026, this logistical chain is fracturing under extreme military strain. If a supplier in Asia or Europe has manufactured flawless equipment destined for a site in Riyadh, Abu Dhabi, or Doha, and those materials are genuinely trapped in a transit port due to a naval blockade, the doctrine of *force majeure* legitimately applies. The law recognizes the impossibility of performance caused by sovereign military intervention.

However, a far more insidious and financially devastating scenario is currently playing out across the industry: suppliers who failed their FAT inspections weeks or months ago, and who were struggling to rectify profound engineering defects, are now pointing to the Iran War as the exclusive "reason" they cannot deliver.

In peacetime, the construction industry frequently operates on a "fix-it-on-site" gentleman's agreement. When materials arrive with minor dimensional discrepancies or manufacturing flaws, the supplier promises to fly a team of specialized technicians to the GCC project site to weld extensions, modify components, or rectify the defects during the final installation phase. But in the 2026 Iran War, borders are restricted, visas are suspended, and flights are canceled. The supplier's technicians cannot travel. Consequently, suppliers are attempting to freeze the contracts in place, arguing that the war physically prevented their contractual right to cure the defects, and demanding they be allowed to keep the massive advance payments to cover their sunken manufacturing costs.

The Factual Matrix: Transposing the 2023 Sudan War Dispute

The factual matrix of Dubai Court Judgment No. 695/2023 serves as a flawless, highly granular analogue for the supply chain disputes erupting today. While the geographical focal point of

the conflict in the precedent was the Republic of Sudan rather than the current theater of Iran, the legal, logistical, and contractual mechanics are absolutely identical to the 2026 crisis.

On August 10, 2022, a major regional contracting company (the “Contractor” or “Buyer”, acting as the original Defendant and Counter-Claimant in the suit) entered into a high-value commercial supply contract with a UAE-based general trading and manufacturing entity (the “Supplier” or “Original Plaintiff”). The contract, valued at a substantial $4,259,400, demanded the highly specified offshore manufacture, supply, and logistical delivery of critical water infrastructure materials. Specifically, the Supplier was tasked with fabricating eighty 50-cubic-meter (50m³) steel water tanks, massive supporting steel structural towers, and hundreds of associated livestock drinking troughs. These materials were destined for an ongoing, highly sensitive 500-well infrastructure mega-project overseen by the Ministry of Irrigation and Water Resources in the Republic of Sudan.

Following standard GCC construction logistics protocols, the Contractor executed a 30% advance payment amounting to $1,277,832 on January 8, 2023. In return, the Supplier was obligated to provide unconditional bank guarantees issued by a recognized financial institution for the advance payment, alongside a 10% performance bond valued at $425,944. The contract rigorously stipulated that the materials could not be shipped until they passed an independent third-party inspection and subsequently received a formal “Shipping Release Note” directly from the end-client (the Ministry).

By early March 2023, the Supplier had fabricated the first major batch of materials in their offshore facilities, comprising 80 massive water tanks and hundreds of structural accessories, and generated a commercial freight invoice for $1,190,880. Anticipating delivery, the materials were subjected to an independent inspection by SGS on March 10,

2023.

The resulting inspection report was a failure for the Supplier. The materials materially and dangerously failed to meet the agreed-upon engineering specifications. The defects flagged by SGS were not merely cosmetic; they were highly specific to structural engineering and posed severe risks:

1. **Critical Dimensional Deficits:** The structural steel loading columns (the foundational legs supporting the massive water tanks) were contractually required by the purchase order to be exactly 6 meters long. The manufactured columns measured less than 5.5 meters, representing a massive half-meter deficit.
2. **Structural Integrity Failures:** The thickness of the internal steel supports within the tanks was substantially less than the load-bearing thickness mandated by the contract, threatening a total structural collapse under the weight of 50 tons of water.
3. **Life Safety Hazards:** The fall-prevention safety barriers, located on service platforms at a height of over 6 meters, were severely reduced in height in violation of HSE specifications. Furthermore, the service ladders were fundamentally too short, creating what the inspection noted as severe occupational safety risks of fatal falls for future maintenance operators.

Following a rigorous review of this inspection report, the Sudanese Ministry of Irrigation and Water Resources officially and categorically rejected the materials on April 13, 2023. Exercising their contractual rights, the Contractor subsequently issued a formal Notice of Breach to the Supplier on April 20, 2023, demanding immediate rectification of the life-safety and structural defects within an aggressive 48-hour window, as per Clause 10.2 of their agreement.

The Outbreak of War and the Force Majeure Shield

Faced with a formal breach notice and fundamentally non-conforming materials, the Supplier engaged in the classic "fix-it-on-site" strategy. They argued to the Contractor that the materials were "98% compliant" and that the structural defects were minor and easily rectified. Regarding the missing half-meter on the steel columns, the Supplier proposed a radical site-based engineering workaround: they suggested simply increasing the height of the concrete foundation bases poured on-site by the Contractor to compensate for the short steel.

To execute this highly irregular compromise, which would require altering the civil works for 500 separate well foundations, the Supplier and the Contractor tentatively agreed to fly their respective executives and lead engineers to Khartoum on April 17, 2023. The goal was to meet directly with the Ministry, inspect similar projects, and authorize the on-site structural correction.

Then, geopolitics violently intervened. On April 15, 2023, just two days before the critical site visit, the devastating Sudanese Civil War abruptly erupted. Khartoum International Airport was attacked and shut down, commercial flights were globally canceled, and a state of intense armed conflict engulfed the delivery destination.

Recognizing the contractual peril they were in, the Supplier immediately pivoted their legal strategy. They filed a preemptive lawsuit against the Contractor and the issuing Islamic bank in the Dubai Courts. The Supplier sought a judicial decree to enforce the continuation of the contract, or, in the alternative, to formally terminate the contract under the exclusive doctrine of *force majeure* (relying on Clause 7 of the contract concerning armed conflict and exceptional events).

Crucially, the Supplier argued that the sudden outbreak of war was a legally recognized "exceptional, unforeseeable event"

that made it physically impossible for their engineering teams to travel to Sudan to fix the defects, negotiate the concrete workaround, or complete the final delivery. Therefore, they demanded a mutual liquidation of accounts wherein they would retain the massive $1.27 million advance payment (as it was roughly equivalent to the value of the goods they had manufactured), while simultaneously seeking a judicial injunction to block the Contractor from liquidating the $1.7 million in bank guarantees.

The Contractor filed a fierce and comprehensive Counterclaim. They argued that the contract must be terminated not out of mutual wartime sympathy or *force majeure*, but strictly because of the Supplier's gross, pre-existing breach of contract. They demanded the full refund of their $1,277,832 advance payment, plus statutory interest and compensatory damages, noting unequivocally that the Supplier's failure to adhere to the FAT specifications occurred entirely before the war broke out, and that proposing to pour extra concrete to cover up a manufacturing error was not a contractual right.

The Judicial Framework: UAE Civil Law on Contracts and Breach

Before dissecting the timeline of the wartime disruption, the Dubai Court of First Instance grounded its ruling in the fundamental bedrock of the UAE Civil Transactions Law (Federal Law No. 5 of 1985). For logistics managers, corporate counsel, and procurement directors operating in 2026, understanding these statutory definitions is paramount when negotiating and enforcing supply contracts.

The Court explicitly defined the absolute, uncompromising nature of contractual obligations, quoting Article 125 of the Civil Transactions Law:

("A contract is the connection of an offer issued by one of the contracting parties with the acceptance of the other, aligning in a way that establishes its effect on the subject

matter, and results in the obligation of each of them to fulfill what is owed to the other.")

The Court further cemented the absolute duty of performance by citing Article 243(2) of the Civil Transactions Law, which strips away the flexibility often assumed in construction logistics:

("Each of the contracting parties must fulfill what the contract obliges them to do. The contract must be executed according to what it contains and in a manner consistent with what good faith requires.")

Focusing specifically on the logistics and manufacturing sector, the Court relied on the overarching principles established by the UAE Court of Cassation (Judgment No. 887/2022 Commercial Appeal) regarding the exact legal nature of Supply Contracts. The Supreme Court previously ruled that in a supply contract, the manufacturer is absolutely bound to provide goods meeting exact standards:

("A supply contract is a contract in which a merchant or manufacturer commits to supply or provide the buyer with goods or services from their production or the production of others, according to specifications agreed upon between the parties, in specified quantities, and at specified times, to be delivered to the latter at the agreed-upon location… and the buyer has no right to withhold the price under the pretext of non-conformity of some of the supplied items unless the claimed defect is proven.")

In this case, the defect was not merely claimed by the Contractor; it was conclusively, objectively proven by the independent third-party SGS inspection report and the end-client's formal rejection letter. This rigid legal framework establishes that a supplier's core obligation is an "obligation of result", they must achieve the exact, specified engineering result, defect-free. Supplying a 5.5-meter column

when a 6-meter column was ordered is a fundamental failure of that result.

The Court’s Findings: Severing the Force Majeure Camouflage

The crux of the Dubai Court’s masterful judgment lies in its forensic dissection of the project timeline. The Supplier attempted to blur the lines between their manufacturing failures and the sudden outbreak of the war, utilizing the military closure of the Khartoum airport as an impenetrable excuse for their non-performance.

The Court fundamentally rejected this conflation. By appointing a specialized Tripartite Expert Committee consisting of forensic accounting and banking experts, the Court established a bright-line rule that is directly applicable to the 2026 Iran War: **A subsequent wartime *force majeure* event cannot cure, excuse, or erase a pre-existing contractual breach.**

The Court found that the Supplier had already fundamentally breached the contract the moment the SGS inspection report confirmed the life-threatening deviations in the steel columns on March 10, 2023. This breach materialized fully when the end-client rejected the materials on April 13, 2023. The fact that the war broke out on April 15, physically preventing the Supplier from traveling to the site to attempt a highly irregular, ad-hoc “workaround” (altering the concrete foundations to hide the steel deficit), was legally irrelevant to the initial breach. The Supplier had no contractual right to demand that the Contractor alter civil works to accommodate a manufacturing error.

Delivering a decisive and overwhelming victory for the Contractor, the Court severed the Supplier’s *force majeure* defense from their pre-existing manufacturing failure. The Court issued a verbatim judgment that resonates powerfully for 2026 logistics disputes:

("The matter from which the Court concludes is that the Original Claimant [The Supplier] breached its contractual obligations to supply the agreed-upon materials as they were not conforming to the specifications according to the report issued by the General Directorate of Groundwater and Wadis at the Ministry of Irrigation and Water Resources in the Republic of Sudan.

This is not negated by the Plaintiff's defense that it was unable to take corrective measures due to the war in Sudan.

Accordingly, the Court rules that the Counter-Claimant [The Contractor] is entitled to what it demands in its counterclaim regarding the rescission of the supply contract subject to the dispute and the recovery of the value of the advance payment it had paid, by obligating the First Defendant in the Counterclaim (the Original Claimant) to pay the Counter-Claimant the sum of 1,277,832 US Dollars (equivalent to 4,693,476.94 Dirhams).")

By isolating the Supplier's technical failure from the broader geopolitical conflict, the Court stripped away the *force majeure* camouflage. The contract was formally rescinded under Article 272(1) of the Civil Transactions Law, and the Supplier was ordered to refund the massive advance payment in full, leaving the Supplier to absorb the total financial loss of the defective steel.

Bank Guarantees, Bad Faith, and Financial Restitution

Beyond the termination of the contract, the judgment provides critical guidance on the mechanics of Bank Guarantees and financial restitution during wartime disputes. In an attempt to block the Contractor from liquidating the guarantees, the Supplier introduced a highly technical banking defense. They argued that the guarantees were never formally "activated" because the Contractor had erroneously wired the $1.27 million advance payment to the Supplier's Bank of China account,

rather than the specific Abu Dhabi Islamic Bank (ADIB) account explicitly stipulated in the guarantee draft.

The Court and the appointed banking expert thoroughly rejected this deflection. The evidentiary record demonstrated that the Supplier had specifically issued an official commercial invoice requesting the funds be sent directly to their Bank of China account. The Court viewed the Supplier's attempt to use their own contradictory banking instructions to invalidate the guarantees as an act of profound "bad faith", violating the good faith mandate of Civil Code Article 243.

The Court exonerated the issuing bank, relying on Cassation No. 724/2020, which affirms the strict independence of bank guarantees:

("A bank guarantee is a pledge by the bank to pay the client's debt to a third party according to the agreed conditions… The bank issuing the guarantee is obligated to pay its value to the beneficiary upon demand during its validity without needing the client's approval once the condition of entitlement is met.")

Because the strict condition (payment to the ADIB account) was technically not met, the Bank was cleared. However, the Court ultimately bypassed the dormant guarantee and ordered the Supplier to refund the money directly through the substantive lawsuit. For logistics managers in 2026, this serves as a dire warning: you must rigorously ensure that advance payments are routed precisely to the accounts stipulated in the Bank Guarantees. A simple administrative wiring error can leave millions of dollars unsecured, forcing a company to fight a lengthy court battle for restitution rather than simply calling the bond.

Furthermore, the Court addressed the financial penalty for withholding these funds. Historically, UAE courts awarded a 9% statutory interest rate in commercial disputes. However,

referencing a landmark macroeconomic directive from the General Assembly of the Court of Cassation (Decision No. 1/2021), the Court noted that the fluctuating economic climate required a downward adjustment:

("The General Assembly of the Court of Cassation deemed it appropriate, by unanimous consensus, to reduce the interest rate in both its legal and delay forms, in the absence of an agreement thereon, to a rate of (5%) annually until full payment.")

Aligning with Articles 84 through 87 of the Commercial Transactions Law, the Court ordered the Supplier to pay a 5% annual delay interest on the $1.27 million, calculated from the date of the judicial claim until the debt is fully extinguished. For 2026 contractors seeking restitution from defaulting suppliers, this 5% metric serves as the reliable benchmark for calculating the time-value loss of tied-up capital.

It is vital to note that the Court rejected the Contractor's claim for *additional* unspecified damages. Citing Cassation No. 352/2015 Civil, the Court reiterated that contractual liability requires three distinct elements: fault, damage, and a causal link. Because the Contractor failed to explicitly quantify and prove the specific financial harm suffered beyond the loss of the advance payment, the additional compensation claim was dismissed, a harsh reminder for 2026 contractors that wartime damages must be meticulously documented by financial experts, not merely alleged.

Wider GCC Implications: A Unified Legal Stance

While Judgment 695/2023 originates from the Dubai Courts in the UAE, its jurisprudential DNA is universally applicable across the entire Gulf Cooperation Council. The legal doctrine preventing a defaulting party from hiding behind a subsequent *force majeure* event is deeply entrenched in the civil law

systems of the region, which are heavily influenced by the Egyptian Civil Code and traditional Islamic jurisprudence.

In the Kingdom of Saudi Arabia, where gigaprojects require a continuous, uninterrupted flow of international logistics, the principles of this ruling align perfectly with the newly codified KSA Civil Transactions Law (enacted by Royal Decree M/191 in 2023). Under Saudi law, the doctrine of *force majeure* strictly requires that the event be the *sole* cause of the failure. If an international supplier ships non-conforming structural steel to Jeddah Islamic Port, and the port is subsequently closed due to the 2026 conflict, the supplier's fault broke the chain of causation long before the military event did. The supplier may be in material breach under Article 107 of the KSA Civil Code, and the later intervention of war does not retroactively cleanse their liability.

Similarly, the Qatari Civil Code (Law No. 22 of 2004) and the Omani Civil Transactions Law (Royal Decree 29/2013) view construction supply contracts as rigid obligations of result. Across the entire GCC, courts uniformly reject the concept of "concurrent excuse" when one of the causes is a pre-existing material breach. If you failed to build the steel tower correctly in March, you cannot blame an Iranian naval blockade or airspace closure in April for your failure to deliver.

Strategic Playbook for Construction Logistics in the 2026 Crisis

For construction conglomerates, EPC contractors, offshore manufacturers, and logistics providers currently battling the commercial fallout of the 2026 Iran War, the Dubai Court precedent offers a harsh but brilliantly clear roadmap for survival and risk mitigation.

1. **Eradicate the "Fix-It On-Site" Culture During Crises:** In standard times, a supplier might manufacture a slightly defective product and promise to "send a team to fix it

on-site” to save shipping costs or maintain schedules. In the 2026 wartime environment, accepting this premise is a fatal misallocation of risk. As the precedent shows, if airspace closes and the supplier’s engineers cannot travel, the project is left with defective, unusable materials. Contractors must draft clauses that strictly prohibit shipping non-conforming goods under the promise of future on-site rectification. Acceptance must be explicitly tied to absolute conformity *prior* to embarkation.

2. **Elevate the Role of Factory Acceptance Testing (FAT) as Your Primary Legal Shield:** The Dubai Court’s ruling hinged entirely on the independent SGS inspection report dated a month before the war broke out. In the rush of 2026 wartime logistics, contractors must never allow suppliers to ship materials blindly to beat port closures. Mandate strict Third-Party Inspections at the point of origin (e.g., in China, India, or Europe). If the report identifies defects, the supplier is in breach at the factory level. If a war subsequently breaks out, the financial loss falls squarely on the supplier, as their prior breach legally severs their access to a *force majeure* defense.
3. **Issue Immediate Notices of Breach (The 48-Hour Rule):** Timing is the difference between a total loss and a full refund. In the precedent case, the Contractor issued an official “Notice of Breach” directly citing the owner’s rejection, perfectly bracketing the outbreak of the war. In 2026, logistics managers cannot afford to be passive. If a logistical or manufacturing failure is detected, formal legal notices under Article 272 must be dispatched immediately via registered channels. Do not engage in prolonged, informal “workaround” discussions over WhatsApp while a geopolitical crisis escalates. Paper the breach before the fog of war obscures the facts.
4. **Strict Contractual Hygiene Regarding Bank Guarantees:**

The massive administrative error made by the Contractor in the 2023 case, wiring funds to the Bank of China instead of ADIB, thereby failing to activate the guarantees, is a profound cautionary tale. Finance departments operating in the 2026 conflict must meticulously read the exact SWIFT text of the guarantees. If a guarantee requires funds to be deposited into a specific branch or IBAN to become effective, this must be executed flawlessly. Attempting to claw back a $5 million advance payment through a multi-year court battle during the 2026 liquidity crunch, simply because of a payment routing error, is a path to corporate insolvency.

5. **Draft "Pre-Existing Breach" Carve-Outs in Contracts:** For all new contracts being negotiated in the shadow of the ongoing 2026 conflict, legal counsels must draft explicit carve-outs in their *force majeure* clauses such as: *"Under no circumstances shall the Supplier be entitled to invoke Force Majeure to excuse a delay, non-conformity, or breach that originated or occurred prior to the onset of the Force Majeure event. The Supplier remains strictly liable for the refund of all advance payments if the materials fail third-party inspection, regardless of subsequent sovereign or military interventions."*

Conclusion: Absolute Performance Over Corporate Sympathy

The escalation of the 2026 Iran War has plunged the GCC construction and logistics sectors into a prolonged state of emergency. As shipping lanes are heavily militarized and flights are grounded, the temptation for failing suppliers to hide their manufacturing errors and supply chain mismanagement behind the fog of war is immense.

However, as conclusively established by the Dubai Courts, regional jurisprudence sees entirely through this illusion. The civil law framework prioritizes the absolute obligation to

deliver conforming, safe, and precisely engineered materials. A war is a tragedy, but in the eyes of the law, it is not an eraser.

The judicial mandate is unrelenting: *"This is not affected by the plaintiff's defense that it was unable to take corrective measures due to the war."*

To survive the logistical siege of the 2026 Iran War, project owners and contractors must shift their focus from the battlefield back to the factory floor. By wielding their inspection reports, enforcing rapid default notices, and ensuring their financial guarantees are flawlessly activated, the industry can protect its capital and ensure that the ultimate financial risk of non-conformity remains exactly where it belongs: with the defaulting supplier.

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War Series: Force Majeure, Civil Aviation Disruption, and the Allocation of Wartime Risk – Applying the 2017 UAE Courts Yemen War Precedents

to GCC Airspace in the 2026 Iran War

October 19, 2026

The escalation of the 2026 Iran War has profoundly disrupted civil aviation and logistics networks across the Gulf Cooperation Council (GCC). As military commands issue sudden Notices to Air Missions (NOTAMs) and civil aviation authorities abruptly close air corridors to commercial traffic, aviation operators and freight forwarders find themselves trapped in a web of unfulfilled contracts.

When a chartered flight or logistics operation is abruptly grounded by military directive, a critical legal and financial dilemma arises: Who bears the cost of the canceled service? Aviation operators frequently invoke *force majeure* to shield themselves from liability, arguing that sovereign airspace closures absolve them from refunding clients, especially when the operator has already incurred massive, non-refundable sunk costs for aircraft leasing, ground handling, and routing permits.

However, GCC civil law frameworks place strict boundaries on the use of *force majeure* during active conflicts. A landmark triad of Dubai Court judgments, Primary, Appeal, and Cassation, issued in 2017, which adjudicated a private aviation dispute stemming from the sudden closure of Saudi airspace during the Yemen War, provides definitive guidance on how regional courts allocate risk and mandate restitution during the current 2026 crisis.

The Factual Matrix: The 2015 Yemen War Airspace Closure

To understand the direct application of this precedent to the 2026 conflict, one must examine the factual matrix of the

dispute, which mirrors the logistical disruptions currently plaguing operators.

In April 2015, following the outbreak of the Yemen War, a plaintiff contracted a UAE-based aviation company to charter a private jet to transport his deceased father's remains from Berlin, Germany, to Jizan, Saudi Arabia (near the Yemeni border). The plaintiff paid $88,000 upfront. To execute the mission, the aviation operator subsequently leased an aircraft from a Turkish carrier for $65,000 and paid an additional $20,000 for ground services and permits.

Mere hours before the scheduled departure, the Saudi General Authority of Civil Aviation (GACA) abruptly canceled the flight and closed Jizan's airspace based on explicit orders from the Joint Coalition Forces operating in Yemen. When the plaintiff demanded a refund, the aviation company refused. The company argued that the military airspace closure was an unforeseeable *force majeure* event, and that it had already lost its out-of-pocket expenses to the Turkish supplier who refused a refund due to the short-notice cancellation.

The Primary and Appeal Courts: "Obligations of Result" and the Foreseeability Trap

The Dubai Court of First Instance (Judgment No. 2618/2016 Commercial Partial) firmly rejected the aviation company's defense, a ruling that was entirely upheld by the Dubai Court of Appeal (Judgment No. 442/2017 Commercial Appeal).

Rooting their decisions in the legislative basis of the UAE Civil Transactions Law (Articles 272, 273, and 274), the lower courts first clarified the contractual nature of civil aviation. The Primary Court ruled that the operator's duty to provide the aircraft was an **"obligation to achieve a result", not an "obligation to exercise care".** Because the operator failed to deliver the final result, they were in breach.

Crucially, both courts dismantled the aviation company's *force*

majeure defense by focusing on the concept of "foreseeability." For an event to qualify as a contract-nullifying *force majeure*, it must be unexpected at the time of contracting. The Primary Court held that entering into a contract *during* an active regional war severely limits this defense:

"The force majeure circumstances claimed by the Defendant, which is the war in Yemen, were present during its contracting with the Plaintiff, and the cancellation of the flight due to those circumstances was expected… The Defendant… should have studied all circumstances and expectations regarding the completion rates of the contracted mission."

Addressing the operator's unrecoverable sunk costs paid to third parties, the Court held that these amounts were due to the operator's *"negligence and failure to exercise the necessary care in studying the situation, the specific circumstances of the destination airport, and the security conditions in that region, and the Plaintiff cannot bear the result of that negligence."* Consequently, the Court ordered a full refund of $88,000 plus a 9% statutory interest pursuant to the Commercial Transactions Law.

The Court of Cassation: Automatic Rescission and the Burden of Risk

The aviation company escalated the matter to the Dubai Court of Cassation (Judgment No. 713/2017 Commercial Cassation), arguing that the sudden sovereign military directive decisively severed the chain of liability, constituting an insurmountable "foreign cause" beyond its control.

The Court of Cassation upheld the rulings against the aviation operator but refined the legal rationale. Shifting the judicial focus away from the debate over "foreseeability" or the operator's "negligence," the Supreme Court anchored its decision entirely on the absolute doctrine of impossibility

and automatic contract dissolution.

The Cassation Court established a bright-line rule for commercial contracts rendered impossible by sovereign or military intervention:

“The contract is inevitably and automatically rescinded due to the impossibility of executing the obligation of one of the contracting parties for a foreign cause, regardless of whether the impossibility is due to his fault or not. The rescission of the contract results in… the demise of the contract and the dissolution of the contractual bond with a retroactive effect to the time of its conclusion… and the contracting parties are returned to the state they were in before its existence, so each of them is obligated to return what they had received in execution of the contract.”

Addressing the severe financial loss faced by the aviation company, which was legally forced to refund the client despite having irreversibly paid out $85,000, the Court of Cassation applied the strict civil law principle of risk allocation. In bilateral contracts, who bears the burden when a military order renders performance impossible?

“The debtor of the obligation that has become impossible to execute bears the risk of the impossibility, pursuant to the principle of bearing the risk in mutually binding contracts.”

Because the aviation company was the “debtor” of the impossible flight service, it was required to bear the total financial risk of the contract’s dissolution. The Court dismissed the debate over whether the military closure technically qualified as an unforeseeable *force majeure*, deeming the argument “ineffective” since the rule of automatic dissolution mandates absolute mutual restitution regardless.

Application to Contracts in the 2026 Iran War

For airlines, charter brokers, and logistics providers

navigating the 2026 Iran War, the 2017 Dubai Court trilogy delivers highly actionable, albeit sobering, precedents regarding wartime contract issues:

– **Ongoing Conflicts Negate "Surprise" Defenses:** A vital lesson from the lower courts is the treatment of foreseeability. Companies entering into new aviation or freight contracts *while* the 2026 Iran War is ongoing will find it immensely difficult to rely on *force majeure* to escape liability. Courts view wartime disruptions, such as sudden NOTAMs or airspace closures, as foreseeable operational risks that professional entities are expected to anticipate and price into their services.

– **The "Obligation of Result" Trumps Best Efforts:** In the GCC civil law framework, transportation and logistics are strictly construed as obligations to achieve a result. Procuring permits and leasing aircraft are merely preparatory steps. If military action blocks the final execution, the operator has failed its core obligation, triggering immediate restitution.

– **Sunk Costs Rest with the Service Provider:** As established by the Cassation Court, an operator cannot pass its sunk costs onto the end-consumer under the default civil law framework simply because a military order intervened. The impossibility of performance legally and automatically dissolves the contract. The operator is legally required to return the client's advance payments in full, absorbing any out-of-pocket upstream losses internally.

– **The Absolute Necessity of Wartime Contractual Drafting:** Because the courts place the absolute burden of impossibility on the "debtor of the obligation," commercial entities in 2026 must proactively contract out of this default position. Providers must integrate bespoke, explicitly drafted "military disruption" clauses, expressly categorizing advance payments as non-refundable in the event of sovereign airspace closures, and explicitly shifting the financial risk of third-party sunk

costs onto the client.

Conclusion

As the 2026 Iran War triggers sweeping military instructions and civil aviation closures, GCC operators must recognize that civil courts prioritize absolute performance and mutual restitution over corporate sympathy. The 2017 UAE jurisprudence establishes that when the fog of war makes commercial transport impossible, the contract is retroactively erased, and the service provider is left holding the financial burden. To survive the current geopolitical shock, aviation and logistics providers must rely not on the statutory excuse of *force majeure*, but on ironclad, crisis-specific contractual risk allocation.

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War Series: Wartime Economic Hardship and Lender Liability – Applying the 2006 UAE Supreme Court Gulf War Precedent to GCC Markets in the 2026 Iran War

October 19, 2026

The ongoing 2026 Iran War has introduced significant macroeconomic disruptions across the Gulf Cooperation Council (GCC). As supply chains constrict, project timelines extend, and operational costs rise, many regional commercial entities are turning to their financial institutions for vital liquidity and forbearance. Simultaneously, banks may activate stringent risk management protocols, such as freezing credit facilities or demanding enhanced collateral.

When these financial lifelines are restricted, corporate borrowers would look to the courts. A common legal strategy in GCC civil law jurisdictions is to allege that a bank's sudden refusal to extend credit during a regional conflict constitutes an "abuse of right". Corporate plaintiffs argue that lenders have a customary duty to bear elevated risks and support long-standing clients through macroeconomic crises.

Because GCC states share highly intertwined civil law frameworks, heavily influenced by the Egyptian Sanhuri model, and frequently rely on cross-jurisdictional case law, historical jurisprudence offers critical guidance for these current disputes. UAE Federal Supreme Court Judgment No. 377 of 2006 (Civil), which adjudicated a banking dispute shaped by the economic aftermath of the Second Gulf War, provides an authoritative and straightforward framework for balancing a bank's legal rights against a borrower's wartime distress.

The "Second Gulf War" Defense: Analyzing the Appellant's Argument

To understand the judgment's direct application to the 2026 conflict, it is necessary to examine the specific arguments advanced by the distressed borrower in 2006, as detailed in the Court's ruling.

The case involved an international commercial group whose bank halted its credit facilities after a twelve-year relationship. The lower courts ruled in favor of the bank, noting that the

company suffered a structural deficit exceeding 7.1 million Dirhams (excluding over 5 million Dirhams in existing bank debt and interest), that it had closed its Abu Dhabi offices, and that the requested funds were intended for *new* projects rather than existing ones.

Seeking cassation, the appellants argued that the bank's strict adherence to formal collateral demands during a period of crisis constituted an actionable abuse of right. They attempted to use the prevailing regional instability as a legal shield. Drawing from the Supreme Court's summary of their appeal, the appellants argued that they had provided sufficient guarantees and that the closure of their offices only occurred:

"…after negotiations regarding the real estate guarantees faltered, and due to the bank's insistence on mortgaging the real estate first before considering the request for new facilities, despite the fact that the bank had previously granted it facilities exceeding the guarantees provided."

Crucially, the appellants explicitly linked their demand for banking leniency to the geopolitical climate. They argued that the bank's rigidity definitively proved its arbitrariness and abuse of right because it violated:

"…banking customs which require the bank to bear the risks of the profession and to stand by its clients out of concern for its funds with them so that they can continue their operations, ***especially in light of the difficult economic conditions the world went through following the events of the Second Gulf War."***

This argument is highly analogous to the legal posture considered to be adopted by GCC companies that may be distressed today that the macroeconomic shock of the Iran War legally obligates financial institutions to demonstrate leniency, waive strict collateral prerequisites, and

prioritize corporate survival over standard risk metrics.

The Court’s Rationale: Banking Custom During a Crisis

The UAE Supreme Court firmly rejected the premise that the macroeconomic hardship of the Second Gulf War compelled the bank to abandon its standard risk parameters or absorb the borrower’s commercial deficit.

Applying Articles 104 and 106 of the UAE Civil Transactions Law, the Court clarified the boundaries of an “abuse of right.” The Court acknowledged that while banking custom generally encourages assisting a client in distress, this duty is not absolute and is strictly governed by commercial viability:

“While it is established in banking customs that a bank must assist its client who is in a difficult position, considering this assistance as one of the functions of the bank, the prerequisite for this is that the goal must be to rescue the client from their crisis, ***and not to prolong their death throes or conceal their hopeless condition****. If the requested facilities, in terms of their size, nature, or duration, will not result in saving the client, then there is no blame on the bank if it refuses to grant them.”*

Addressing the appellant’s invocation of the Second Gulf War, the Court shifted the judicial focus away from the overarching geopolitical crisis and onto the micro-economic realities of the borrower’s balance sheet and operational intent. The Court validated the lower court’s findings that the company’s financial position had “reached a critical stage,” that real estate guarantees were not practically placed at the bank’s disposal due to valuation disputes, and that the requested facilities were to finance new, unproven projects.

Dispensing with the notion that wartime conditions require banks to act as economic shock absorbers, the Court affirmed the bank’s right to prioritize its institutional stability:

“The bank, like any creditor, has the right to think of its own interest and the interest of its shareholders. ***For it is not a charitable institution*** *… What the bank undertook was to preserve its funds and the funds of its shareholders, and this does not violate or contradict banking customs, public order, or morals.”*

Application to GCC Industries in the 2026 Conflict

The legal precedent set by Judgment 377 of 2006 offers practical, immediate clarity for key industries navigating the current 2026 conflict:

1. **Collateral Negotiations and Historical Leniency:** Companies currently attempting to renegotiate credit terms must consider the 2006 authority that arguing a bank’s demand to “mortgage the real estate first” violated custom, especially during the post-Gulf War downturn. The Supreme Court had rejected this, establishing that past leniency does not legally mandate future unsecured exposure. In 2026, banks may be protected if they demand strict, perfected security interests prior to disbursing wartime liquidity.
2. **Financing Strategic Pivots (Construction & Logistics):** As supply chains are rerouted and domestic infrastructure projects are potentially delayed by the 2026 conflict, firms may seek capital to pivot toward new ventures. The 2006 appellants similarly requested funds for “financing new projects rather than existing ones.” The judgment explicitly protects banks that refuse to finance such endeavors when a client’s core financial position is already deteriorating. A bank is not legally obligated to fund a corporate pivot if its feasibility is uncertain, and withholding such funds does not constitute an abuse of right.
3. **Macroeconomic Shocks Do Not Absolve Obligations:** A highly resonant lesson of the judgment is its treatment of the “Second Gulf War” defense. Regional instability

does not suspend fundamental commercial obligations. The Court upheld the imposition of a 9% delay interest on the company's outstanding balances, affirming that a debtor's failure to pay a known sum obligates compensation, regardless of the overarching geopolitical difficulties.

Conclusion

As the 2026 Iran War continues to test the commercial resilience of companies, UAE Supreme Court Judgment No. 377 of 2006 serves as a stabilizing jurisprudential anchor. While the invocation of "difficult economic conditions" caused by regional conflict may frame a compelling plea for financial forbearance, regional courts apply a strict standard of commercial pragmatism. The law recognizes that a bank's primary duty is the prudential management of capital. In times of severe geopolitical crisis, civil courts will safeguard a financial institution's right to manage its risk, ensuring that the banking sector is not legally forced to absorb terminal commercial liabilities under the guise of customary support.

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War Series: The 1991 Gulf War UNCC Precedent and the

Arbitration of Environmental Damage in Conflict Zones

October 19, 2026

When Iraqi forces retreated from Kuwait in 1991, they left behind an unprecedented ecological catastrophe. Over 600 oil wells were set ablaze, and millions of barrels of crude oil were intentionally released into the Persian Gulf. The sky turned black, and coastal ecosystems were devastated. Beyond the profound human and structural toll of the conflict, the international community was faced with a novel legal dilemma: How do you quantify, litigate, and arbitrate the destruction of an ecosystem in the aftermath of war?

The answer came in the form of the United Nations Compensation Commission (UNCC), a quasi-judicial, mass-claims body established by UN Security Council Resolution 687. The UNCC's handling of environmental damage claims, specifically its "F4" claims category, laid the foundational precedent for how international law and modern arbitral tribunals approach the financial liability of environmental destruction in war zones.

As contemporary conflicts in regions like Eastern Europe and the Middle East result in the destruction of dams, the targeting of chemical plants, and the scorching of agricultural land, the legacy of the UNCC remains a critical framework for states, international investors, and corporations navigating post-conflict arbitration.

The F4 Claims: Quantifying the Unquantifiable

Before the 1990s, international legal mechanisms for addressing war reparations heavily favored property damage, lost profits, and personal injury. The environment was often viewed as a silent, uncompensable casualty of armed conflict.

The UNCC revolutionized this by formally recognizing claims for "environmental damage and the depletion of natural resources." The "F4" claims category allowed governments to seek compensation not just for the loss of commercially viable resources (like oil), but for the restoration of ecosystems.

Crucially, the UNCC established that compensation could be awarded for:

- **Preventative measures:** The costs of mitigating further environmental degradation.
- **Reasonable restoration:** The expenses associated with cleaning up shorelines, remediating soil, and extinguishing oil well fires.
- **Monitoring and Assessment:** Funding to study the long-term health and ecological impacts, acknowledging that environmental damage often takes years to fully manifest.

The Commission ultimately awarded over $5.2 billion for environmental remediation and restoration, setting a towering precedent that pure ecological harm—distinct from commercial loss—has quantifiable legal standing.

From the UNCC to Modern Arbitration

While the UNCC was a specialized commission rather than a traditional commercial arbitration tribunal, its methodological framework deeply influences modern international dispute resolution. Today, when environmental disasters occur during armed conflicts, the legal mechanisms have shifted primarily toward investor-state dispute settlement (ISDS) under Bilateral Investment Treaties (BITs) and commercial arbitration.

1. The Valuation of Ecological Harm

When an international energy or mining company's assets are caught in a war zone, the resulting environmental spillover

often violates host-state environmental regulations. If a host state attempts to penalize a foreign investor for war-induced environmental damage, tribunals frequently look to the UNCC's rigorous evidentiary standards. The UNCC established that claimants must prove a direct causal link between the military action and the specific environmental harm, preventing opportunistic claims.

2. Force Majeure and Environmental Liability

For multinational corporations operating in conflict zones, environmental destruction often triggers complex *force majeure* disputes. If a facility is bombed and toxic chemicals leak, who is responsible for the cleanup? Traditional contracts may excuse the failure to deliver goods during a war, but they rarely absolve a company of overarching environmental liabilities. The UNCC precedent underscores that the entity responsible for the military aggression ultimately bears the financial burden of the ecological fallout, a principle routinely debated in modern force majeure arbitrations.

3. The Rise of "Ecocide" in International Discourse

The precedents set in the early 1990s are currently being tested by the realities of modern warfare. With the destruction of critical infrastructure increasing in modern conflicts, legal scholars and arbitrators are increasingly engaging with the concept of "ecocide." As states and corporations prepare to arbitrate the massive costs of post-war reconstruction, the UNCC's formula for valuing the restoration of water tables, agricultural land, and biodiversity will serve as the starting point for tribunals.

Business Considerations for the Modern Era

For businesses and investors operating in politically volatile or conflict-prone regions, the integration of environmental risk into dispute resolution strategies is no longer optional. The UNCC precedent teaches us that environmental damage in war

is not legally “collateral.” It is a highly scrutinized, financially quantifiable liability.

Companies must ensure that their investment contracts and insurance policies explicitly define environmental liability in the event of armed conflict, recognizing that international tribunals now possess the historical precedents and economic methodologies to hold parties accountable for the earth they scorch.

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