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

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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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