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

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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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