



# Voyage disruptions in Maritime Trade

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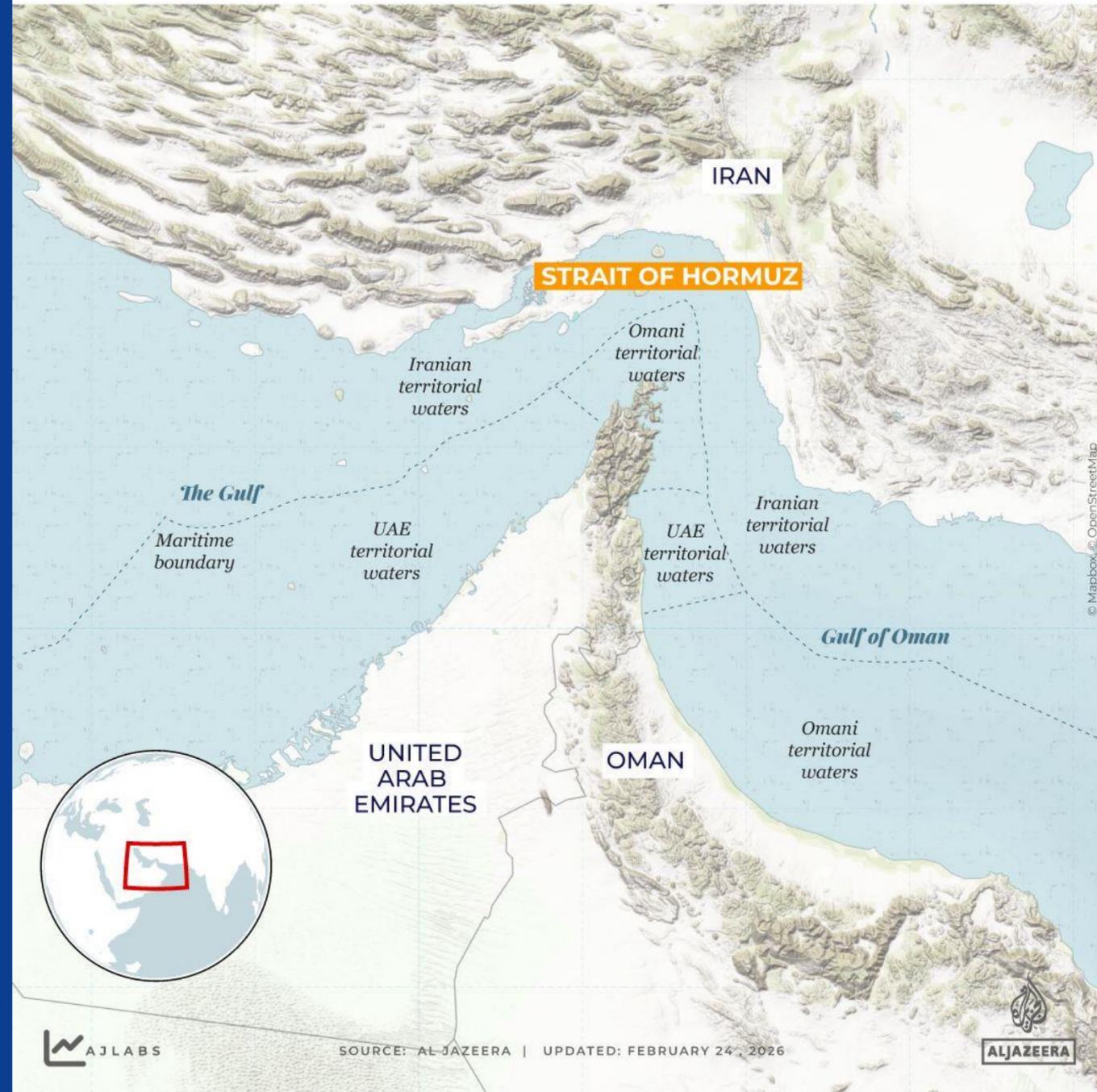


# Background

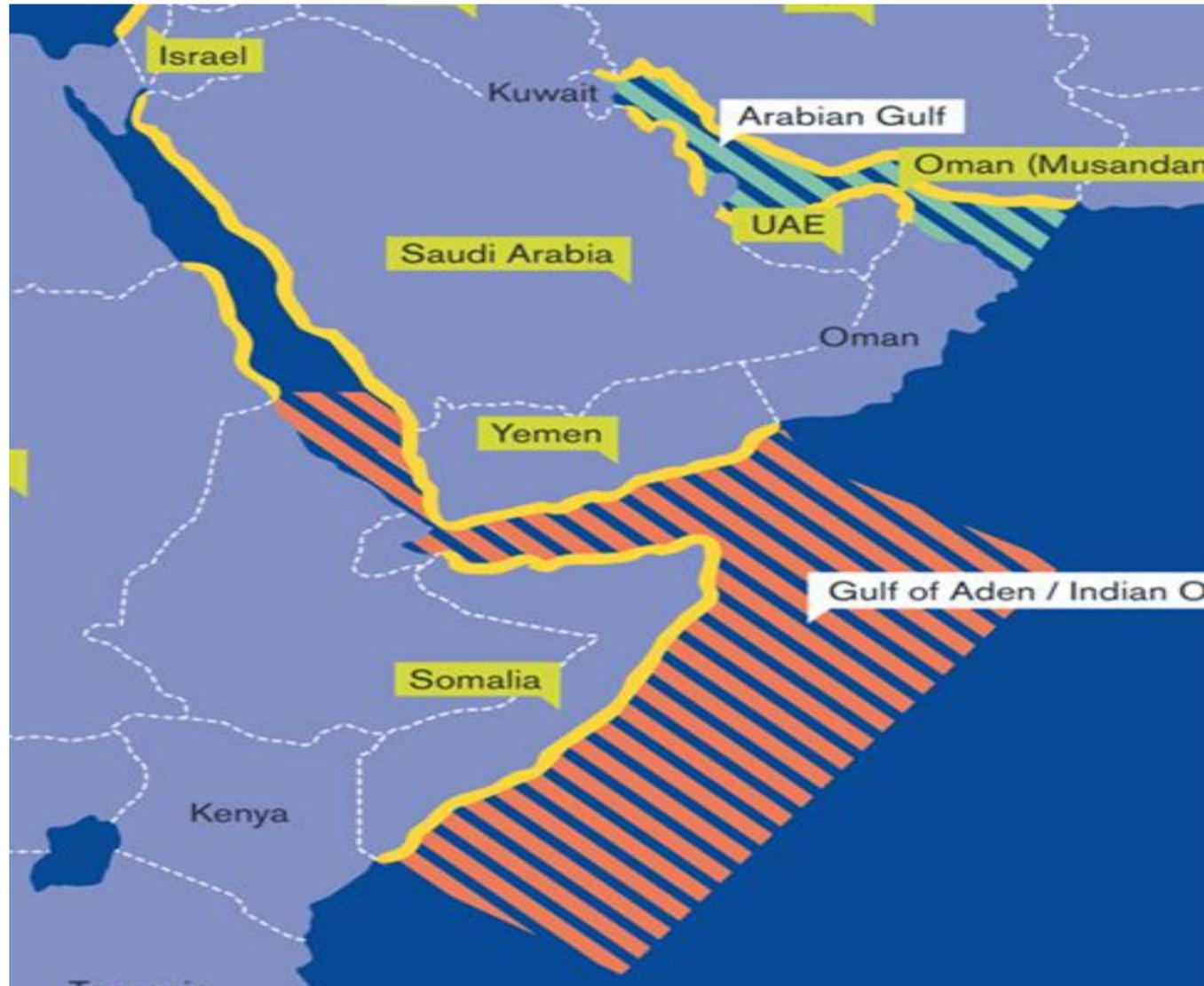
- Began on 28<sup>th</sup> Feb 26 – Israel & US initiated air strikes against Iran
- Iran is not Venezuela
- Iran is attacking neighbouring countries and trying to prevent shipping traffic
- War Risk – NOC – Reinstatement premiums
- Owners / Crew naturally reluctant to transit problem areas
- Houthi's targeting in the Red Sea area specifically around the Bab-el-Mandeb Strait

# Strait of Hormuz

The 39km (24-mile) Strait of Hormuz is the world's most critical oil chokepoint, linking the Gulf to the Gulf of Oman. It is the only route to the open ocean for Gulf-based exporters and handles about 20 percent of global oil and one-third of the world's LNG.







# Force Majeure

- Q: Is it available as of right?
  - ❖ Common Law
    - ✓ Creature of the Contract
    - ✓ BL Clauses have similar clauses allowing Carriers to Terminate/Abandon/Suspend and seek additional Charges
  - ❖ Civil Law
    - ✓ Superior Force
    - ✓ Available as of Right
- A: Depends on the Law of the Contract / Law where action is initiated



# Frustration

- Another quiver available in common law jurisdictions
  - Impossibility of Performance
    - ✓ Physical
    - ✓ Legal
    - ✓ Higher standard and presently difficult to confirm that contract Frustrated
  - ❖ No requirement to be mentioned in the contract but must be proved

- ❖ Termination of voyage mid-route and discharge of cargo at another port
  - A: Allocation of risks – Did Carriers agree to these costs? Arguably no and in which case, they can seek recovery.
  
- ❖ How can exporters or importers ensure their cargo reaches the final contracted destination?
  - A: No one can guarantee anything. Parties must ensure to have multiple options to cater for such risks
  
- ❖ Who bears the additional freight, handling, and inland transportation costs when cargo is diverted to another port?
  - A: Based on the prevailing wordings of the BL's in circulation, when voyage is terminated, the Carrier's responsibility ceases. The Carrier is no longer responsible for additional movement. Accordingly, they should be entitled to seek recovery of these charges from the cargo interests.

- ❖ Impact on trade due to transshipment caused by the current scenario:
  - A: Shortage of containers / services / additional costs
  
- ❖ Mode of communication to the trade where there is a diversion or termination enroute
  - Email/Website/Letter etc.
  
- ❖ Should exporters and importers consider alternative ports, routes, or multimodal logistics solutions in the short term?
  - A: Yes and even when there is normalcy, parties should consider continuing with alternate routes so that they are able to avoid outages

- ❖ Under what circumstances can carriers invoke force majeure due to geopolitical conflict or security risks?
  - FM is it available as of right or as provided in contract. Are the circumstances giving rise to a FM. If yes, has notice been sent to the counterparties
- ❖ What rights do cargo owners have under the Bill of Lading if the carrier changes the route or port of discharge?
  - A: Carrier no longer responsible for carriage but has a common law duty to take care of cargo till delivery and for which they can charge for the costs. Cargo Interests must consider alternatives to deal with the situation.

❖ FM invocation by Exporters

➤ Presume this is with respect to the Sale Contract.

- What is the Law of the Contract?

- Are there FM provisions in the Contract?

You should be guided by this

❖ Penalty and Liquidated damages

➤ A: Penalty – depends upon the jurisdiction. Indian Law – S 74 of the ICA 1872 allows for recovery provided the amounts have been stipulated in the contract

Liquidated damages – if provided in the contract, unless it unconscionable, generally valid.

❖ What should cargo interests do when something like this happens?

➤ A: - Sale Contract responsibility

- Carriage Contract

- Insurance Contract

- Mitigation options

❖ DG and Hazardous Cargo:

➤ A: As above

Shipper has an additional exposure to the Carrier for the reasonable expenses incurred by Carrier to deal with the DG and Hazardous Cargo

THANK YOU

