FREEDOM OF NAVIGATION

COLLOQUE FRANCO-BELGE 2026
FRANCO-BELGIUM CONFERENCE 2026
THURSDAY 24 SEPTEMBER 2026

Villeneau , Rohart, Simon

United Nations S/RES/2768 (2025)

Security Council

Distr.: General
15 January 2025

NO MENTION OF FREEDOM OF NAVIGATION ?
WHY ?

Resolution 2768 (2025)

Adopted by the Security Council at its 9836th meeting, on 15 January 2025

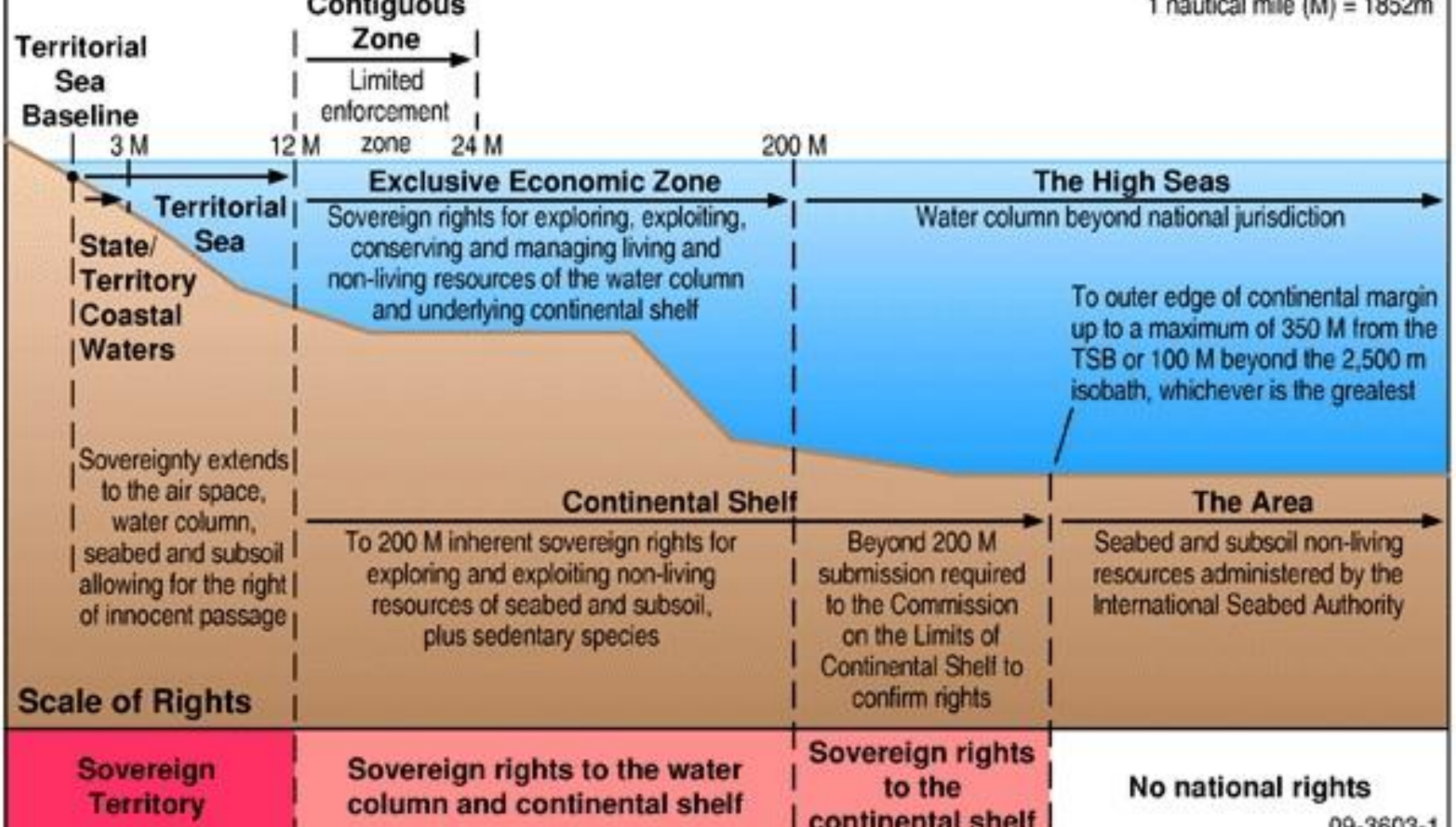
Recalling the importance of maritime security and recognizing that the maintenance of maritime security in the region of the Red Sea is essential for the stability of global supply chains and economic development,

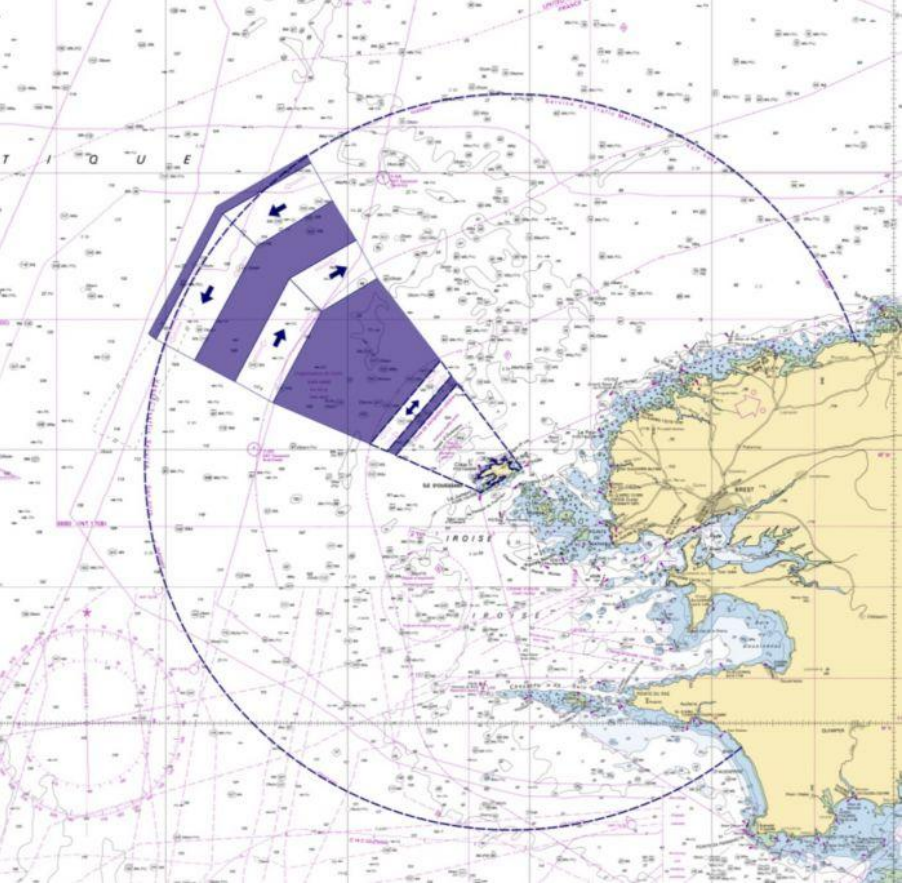
Recalling the previous Houthi attacks against oil terminals in areas under the control of the Government of Yemen, and expressing concern about the devastating negative impacts of these attacks on oil exports on the economic and humanitarian situation in Yemen, the national currency and livelihoods of Yemeni civilians,

WHAT IS THE CHINESE CONCEPTION OF FREEDOM OF NAVIGATION?

China respects and supports the principle of freedom of navigation in accordance with international law, in particular the United Nations Convention on the Law of the Sea. China holds ***that freedom of navigation must not undermine the sovereignty, security and legitimate maritime interests of coastal states****. China is committed to maintaining peace and stability in maritime regions and to promoting international cooperation for the peaceful use of the seas and oceans.*

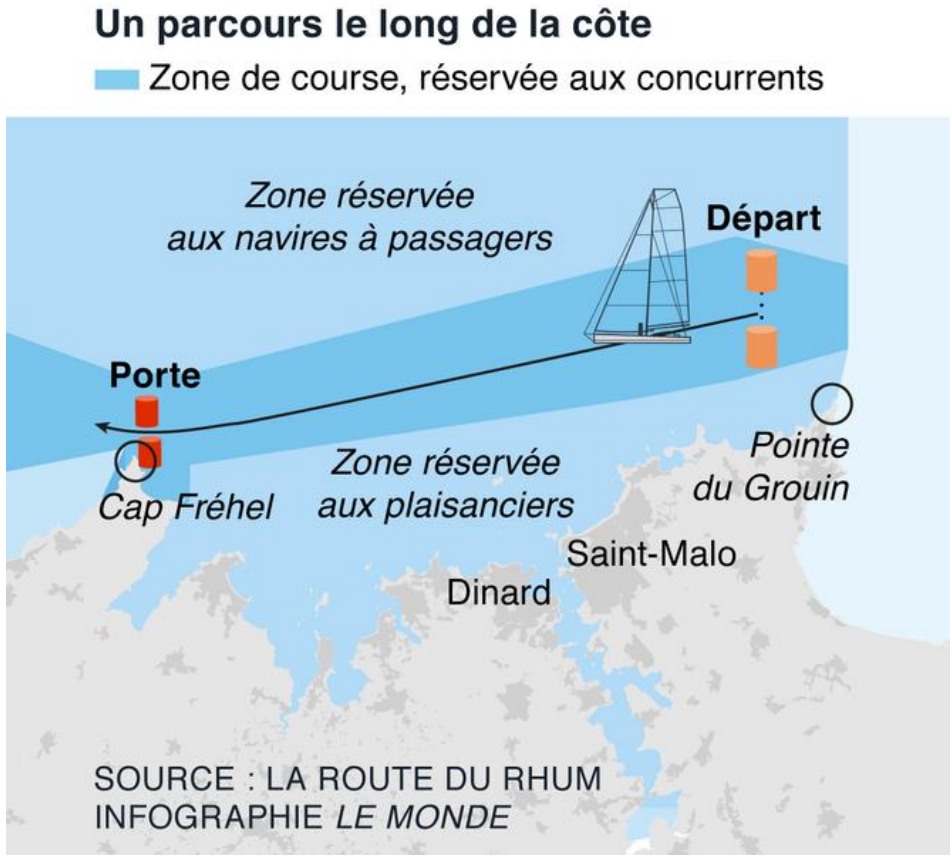



1 nautical mile (M) = 1852m
Territorial Sea Baseline
Contiguous Zone
Limited enforcement zone
3 M
12 M
24 M
200 M
Territorial Sea
State/ Territory Coastal Waters
Exclusive Economic Zone
Sovereign rights for exploring, exploiting, conserving and managing living and non-living resources of the water column and underlying continental shelf
The High Seas
Water column beyond national jurisdiction
To outer edge of continental margin up to a maximum of 350 M from the TSB or 100 M beyond the 2,500 m isobath, whichever is the greatest
Sovereignty extends to the air space, water column, seabed and subsoil allowing for the right of innocent passage
Continental Shelf
To 200 M inherent sovereign rights for exploring and exploiting non-living resources of seabed and subsoil, plus sedentary species
Beyond 200 M submission required to the Commission on the Limits of Continental Shelf to confirm rights
The Area
Seabed and subsoil non-living resources administered by the International Seabed Authority
Scale of Rights
Sovereign Territory
Sovereign rights to the water column and continental shelf
Sovereign rights to the continental shelf
No national rights



TRAFFIC SEPARATION SCHEME

RACE STARTING PROCEDURE



21 SEPT

ICS addresses UN Security Council on maritim security and freedom of navigation



Secretary General of the International Chamber of Shipping (ICS), Thomas A. Kaz the United Nations Security Council on the critical importance of protecting maritim freedom of navigation, and the established international legal framework governing oceans, in New York late last week (17 September).

The ICS was invited to brief an Arria-Formula meeting of the UN Security Council, convened by the Kingdom of Bahrain and chaired by Bahrain's Minister of Foreign Affairs, Dr Abdullatif Al Zayani. The meeting brought UN representatives and invited guests together to discuss the deteriorating maritime security environment amid heightened geopolitical tensions, with particular focus on the security situation in the Persian Gulf.

Representing the international shipping industry, Thomas Kazakos (pictured) outlined the profound consequences that insecurity at sea has for seafarers, ships, global trade, and the wider international economy.

The ICS Secretary General emphasised the fundamental principle of freedom of navigation and stated: "The ability of commercial ships to navigate international waterways safely, predictably and without unnecessary impediment, is crucial to international maritime law and to the global trade system... Shipping must not be held to ransom.

Al Jazeera

UN resolution calls for freedom of navigation in the Strait of Hormuz

Bahrain is leading a draft UN Security Council resolution calling for freedom of navigation in the Strait of Hormuz and for Iran to end its...

13 mai 2026



Press Trust of India

Freedom of navigation, seafarers' sa promoting global trade: PM Modi

New Delhi, Sep 11 (PTI) Prime Minister Narendra Mo navigation and safety of seafarers to promote global

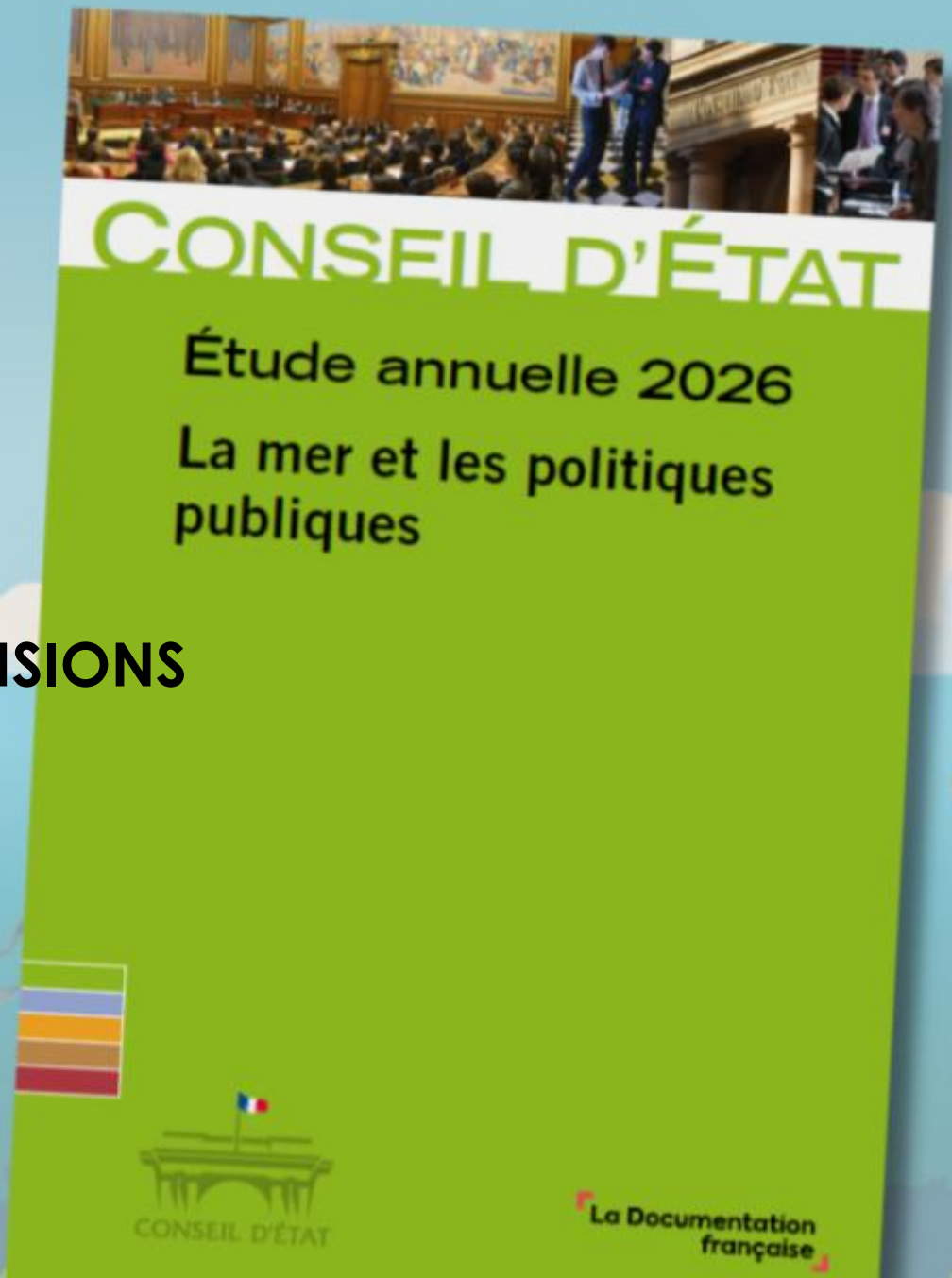
Regulation

'Freedom of navigation in Strait of Hormuz is implementable', says IMO chief

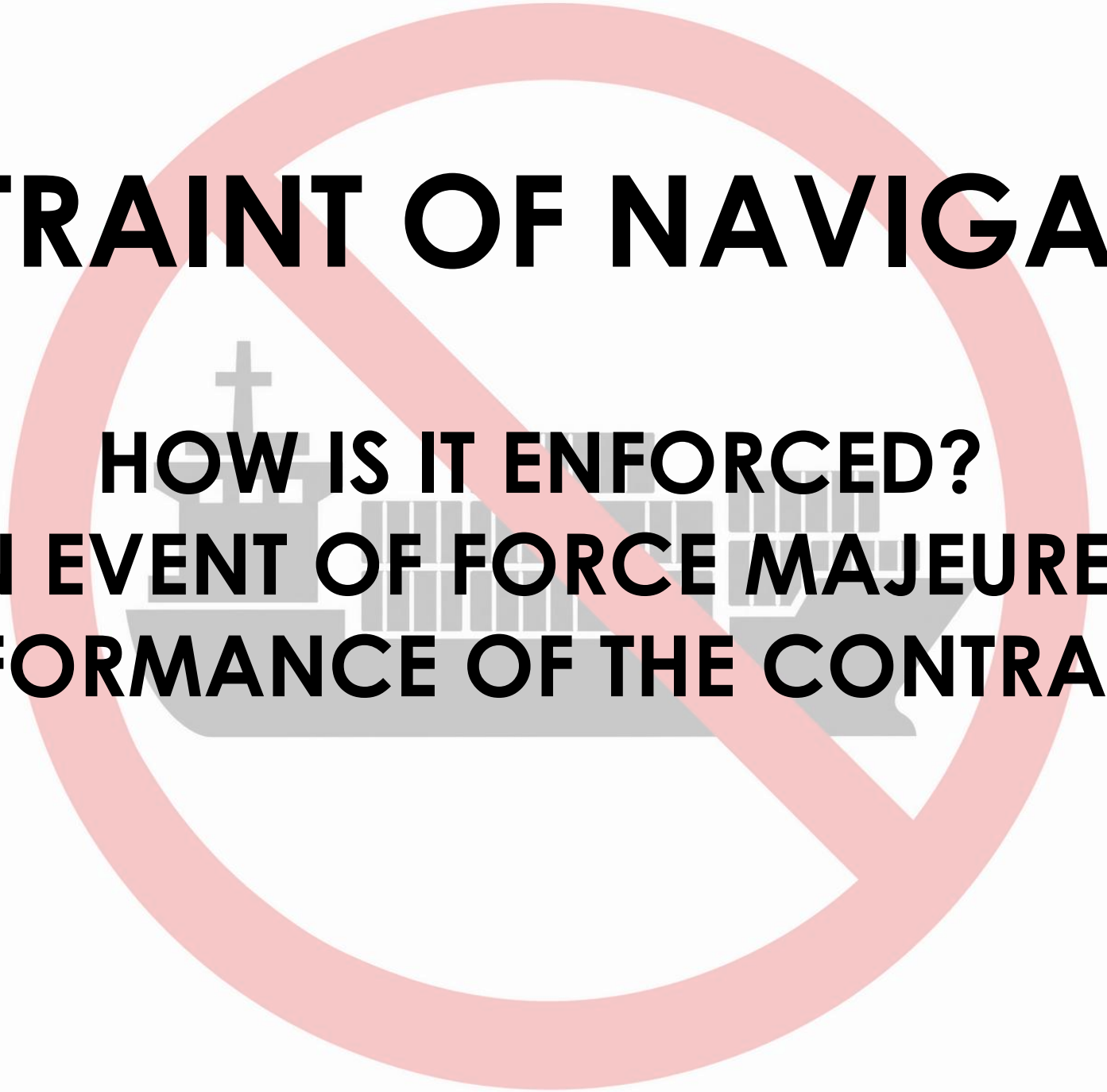
Arsenio Dominguez said the UN body is engaging as much as it can on behalf of shipping, even though 'multilateralism is under attack'



- **STATE SPONSORED THREATS**
- **GEOPOLITICAL TENSIONS**
- **MARITIME CRIME**



RESTRAINT OF NAVIGATION



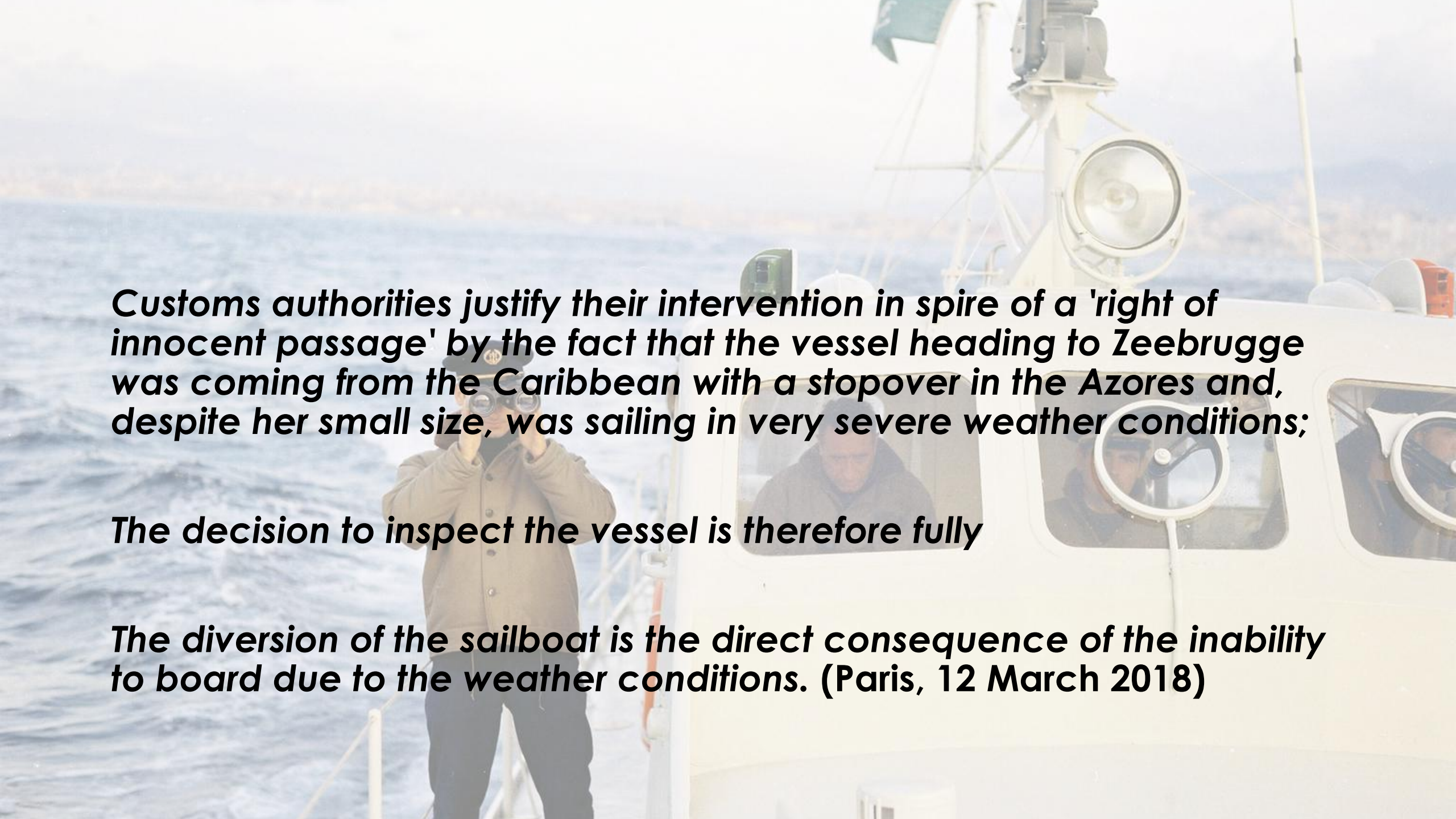
HOW IS IT ENFORCED?
AN EVENT OF FORCE MAJEURE ?
PERFORMANCE OF THE CONTRACTS



RESTRAINT OF NAVIGATION

HOW IS IT ENFORCED?

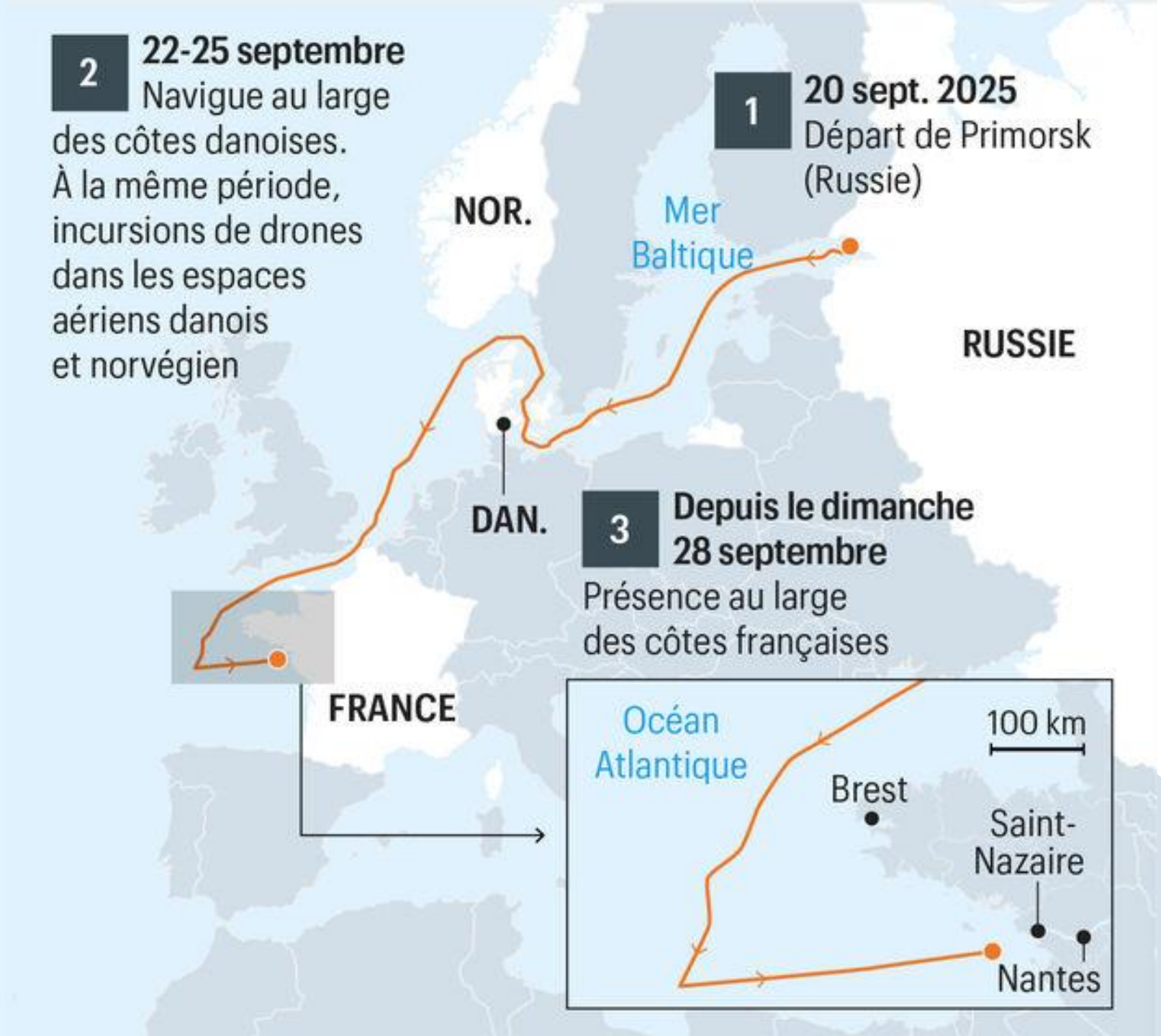
FRANCE ARRESTS CREW OF TANKER THOUGHT TO BE IN RUSSIA 'SHADOW FLEET'



Customs authorities justify their intervention in spire of a 'right of innocent passage' by the fact that the vessel heading to Zeebrugge was coming from the Caribbean with a stopover in the Azores and, despite her small size, was sailing in very severe weather conditions;

The decision to inspect the vessel is therefore fully

The diversion of the sailboat is the direct consequence of the inability to board due to the weather conditions. **(Paris, 12 March 2018)**


2
22-25 septembre
Navigue au large des côtes danoises. À la même période, incursions de drones dans les espaces aériens danois et norvégien
1
20 sept. 2025
Départ de Primorsk (Russie)
NOR.
Mer Baltique
RUSSIE
DAN.
3
Depuis le dimanche 28 septembre
Présence au large des côtes françaises
FRANCE
Océan Atlantique
100 km
Brest
Saint-Nazaire
Nantes

A warship which encounters on the high seas a foreign ship … is not justified in boarding it unless there is reasonable ground for suspecting that:

a) the ship is engaged in piracy;
b) the ship is engaged in the slave trade;
c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;
d) the ship is without nationality; or
e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship. (article 110 UNCLOS)



THE LAW OF THE SEA



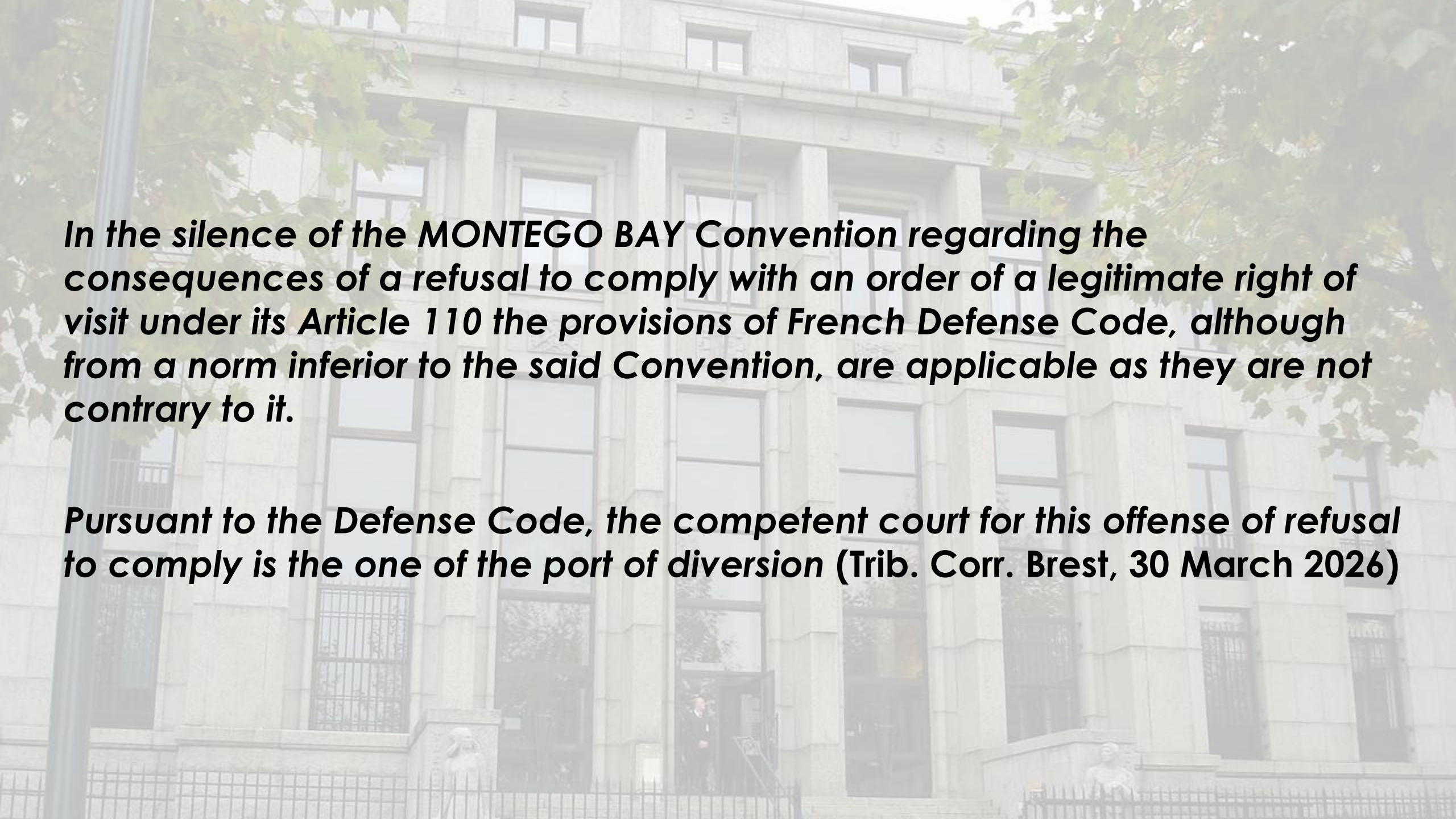
United Nations



State vessel commanders authorized to enforce maritime control and coercion (French & international law).

Right to order vessel diversion to a designated location/port.

Non-compliance punishable by 2 years' imprisonment and a €300,000 fine



In the silence of the MONTEGO BAY Convention regarding the consequences of a refusal to comply with an order of a legitimate right of visit under its Article 110 the provisions of French Defense Code, although from a norm inferior to the said Convention, are applicable as they are not contrary to it.

Pursuant to the Defense Code, the competent court for this offense of refusal to comply is the one of the port of diversion **(Trib. Corr. Brest, 30 March 2026)**

VESSEL	BOARDING / INTERCEPTION	DEPARTURE
GRINCH	22 January 2026 (international waters east of Gibraltar)	Detained at Fos-sur-Mer from 24 January to 16 February 2026 ; CRPC. Payment of a fine of "several million euros"
DEYNA	20 March 2026 (south of the Balearic Islands)	Diverted to Marseille and departed 15 April 2026; CRPC. Payment of a fine
TAGOR	31 May 2026 (400 nautical miles west of Brittany)	Arrived in the Bay of Douarnenez on 2 June 2026, departed early July 2026. CPRC. Payment of EUR 1 million
DELIVER	23 June 2026 (off Sicily)	Escorted to Fos-sur-Mer, until 23 July 2026 . CRPC. Payment of a fine

VRT NIEUWS

Belgium imposes €10 million surety on boarded Russian shadow fleet tanker



The Belgian government has imposed a surety of €10,020,000 on the Ethera, the oil tanker which is linked to Russia's shadow fleet. The Belgian judicial authorities seized the vessel that has now been in the port of Zeebrugge since Sunday. The ship will only be allowed to leave the port once the surety has been paid and a re-inspection has confirmed that the ship is in compliance with all the rules. Until then, the crew must remain on board.

Het ms Ethera voer manifest onder een valse vlag,. Terwijl het onder een valse vlag voer in de Belgische Exclusieve Economische Zone (prima facie "maritiem gebied" in de zin van art. 4.2.4.7 BSW, een artikel dat niet kennelijk onverenigbaar is met enige bepaling van het VNZeerechtverdrag "UNCLOS"), vormde het gelet op de talrijke indicaties van bijzonder ernstige inbreuken, een voor de hand liggend en indringend gevaar voor de maritieme veiligheid en het mariene milieu.

Er is kennelijk geen enkele rechtsregel die een staat principieel verbiedt schepen zonder vlag/met valse vlag die door hun EEZ varen te betreden voor controle; nu het schip kennelijk geen nationaliteit had, waren er prima facie gegronde redenen om het schip op basis van art. 58 § 2 juncto art. 110 § 1.d VN-Zeerechtverdrag (UNCLOS) aan een onderzoek te onderwerpen. **(Onderzoeksraad voor de Scheepvaart, 5 May 2026)**

Dank je wel, Nick Vangeneugden !

The Maritime Executive
INTELLECTUAL CAPITAL FOR LEADERS

Tanker Anchor Dragging Case Reopened by Helsinki Appeals Court



Tanker Eagle S was detained for months and three officers prosecuted for the cable damage (Finnish Border Guard)

PUBLISHED SEP 8, 2026 1:04 PM BY **THE MARITIME EXECUTIVE**

The Convention on the Law of the Sea contains no provisions limiting the application of Finnish criminal law to crimes committed in Finland.

The purpose of the Convention was not to interfere with the jurisdiction of States on their own territory. State sovereignty over its own territory is a generally recognized and absolute principle..

A maritime incident referred to an accidental or negligent act, and the clear wording of Article 97 excluded intentional crimes and those committed with gross negligence.

The damage to the EstLink 2 cable and telecommunications cables had caused a grave danger as defined in the elements of grave destruction to electricity supply and to the functioning of the telecommunications system depending essentially on submarine cable connections. Power outages and significant interruption of data connections had been avoided only because measures had been prepared in advance to respond to various interruptions (Court of appeal of Helsinki, 25 August 2026)

Trial of Smyrtos master set to become test case for criminalisation of shadow fleet seafarers

- *Smyrtos master Ajay Pant has been denied bail and will remain in custody ahead of a December trial over alleged sanctions breaches linked to the first shadow fleet tanker seized by the UK*
- *The case is expected to become a key test of the UK's willingness to pursue criminal prosecutions against individual seafarers, rather than focusing solely on vessel owners and operators*
- *Industry observers warn the prosecution could redefine the balance between corporate responsibility and personal liability as governments intensify enforcement against Russia's shadow fleet*



THE SMYRTOS, PICTURED DURING THE UK INTERCEPTION, REMAINS ANCHORED OFF WEYMOUTH ON THE DORSET COAST. THE VESSEL'S CREW ARE STILL ONBOARD PENDING A PLANNED CREW CHANGE THIS WEEKEND.

Source: Ministry of Defence



Gericht stellt Eilverfahren ein, Tanker mit russischem Öl bleibt vor Rügen

20.08.2026



Der havarierte Öltanker "Eventin" bleibt nach Einstellung der Eilverfahren vorerst vor der Insel Rügen. Foto: picture alliance/dpa | Stefan Sauer

Die "Eventin" hatte im Januar 2025 eine schwere Havarie in der Ostsee. Deutsche Rettungsteams sicherten es. Das Zollamt wollte es einziehen, der Tanker sei Teil der russischen Schattenflotte. Doch daraus wird vorerst nichts.



Principles of international maritime law must be taken into account when interpreting EU law

Articles 17 and 18 UNCLOS guarantee the right of innocent passage.

The issue at stake requires an interpretation that ensures, on the one hand, that the EU sanctions regime retains its effectiveness, while on the other hand avoiding any conflict with the mandatory principles of international maritime law.

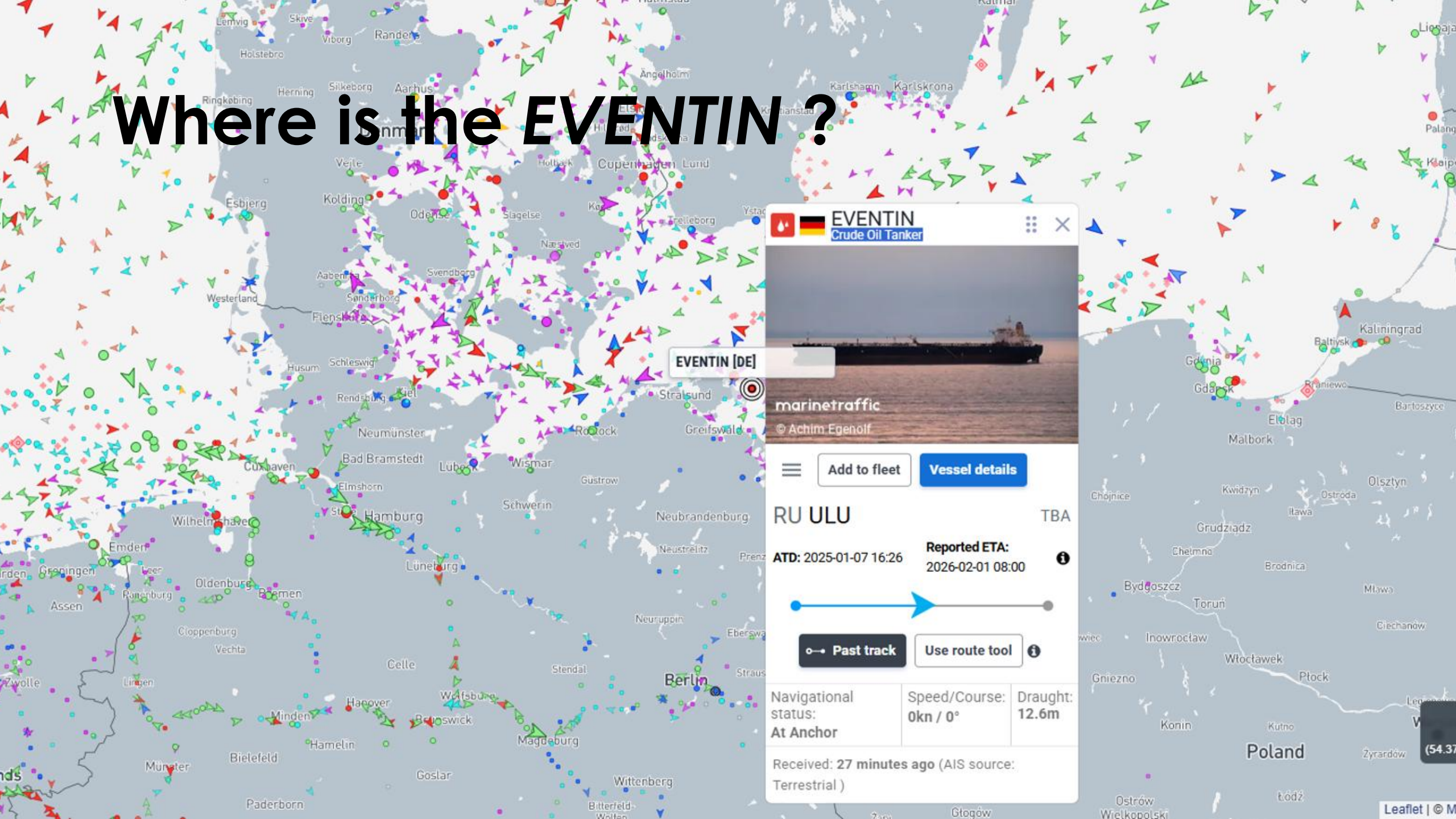
This finding alone demonstrates that the legal situation under Union law regarding the scope of exemptions under sanctions law is not clear-cut and therefore requires further clarification in the proceedings on the merits if necessary, involving the CJEU.

Even after the loss of the flag, the question arises whether and to what extent stateless vessels retain, at least in their essential elements, basic protective rights under international law such as the right of innocent passage. The legal situation is not clear and will have to be examined in more detail in any proceedings on the merits

In this context, the Court is aware that the security interests of the coastal state take precedence and that the right of innocent passage applies only to the extent that it is exercised in a peaceful manner. Nevertheless, it must be taken into account that the Federal Republic of Germany is a state governed by the rule of law and that the application of both Union law and international law provisions is subject to rule-of-law standards. (BFH, 26 November 2025)

Danke, Jan-Niklaas Brons!

Where is the *EVENTIN* ?





RESTRAINT OF NAVIGATION

AN EVENT OF FORCE MAJEURE ?

In contractual matters, force majeure occurs when an event beyond the control of the debtor, which could not reasonably be foreseen at the time of the conclusion of the contract and the effects of which cannot be avoided by appropriate measures, prevents the performance of his obligation by the debtor. (art. 1218 Civ. C.)

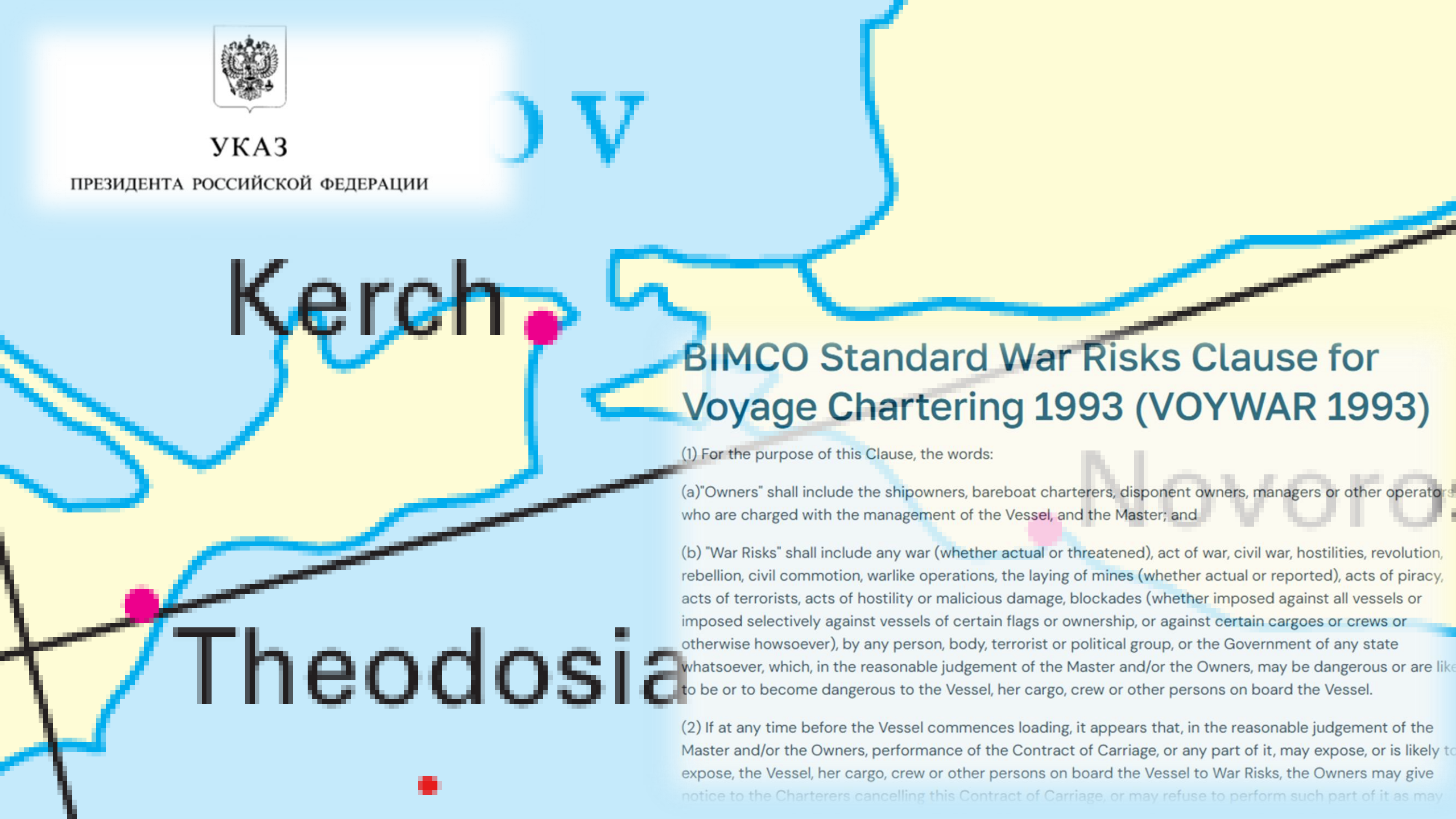
Er is overmacht wanneer het voor de schuldenaar menselijkerwijze onmogelijk is om zijn verbintenis na te komen als gevolg van een toerekenbare gebeurtenis die hem niet kan worden toegerekend, waarop hij niet bedacht hoefde te zijn en die niet kon worden vermeden of overwonnen. (art. 5.226 BW)

- **RESTAINT OF NAVIGATION IS NOT ITSELF AN EVENT OF FORCE MAJEURE**

- **THE CLAUSES**

The reasonable assessment of the potential danger faced by the vessel, its crew, and the cargo must be strictly contructed.

In view of the continuation of maritime traffic in the northern part of the Gulf and the level of naval and air protection provided by the allied forces, the Tribunal concluded that the position taken by the shipowner on January 14, 1991, was unfounded (VILLE D'OMAN, Award, 7 June 1993)


УКАЗ
ПРЕЗИДЕНТА РОССИЙСКОЙ ФЕДЕРАЦИИ
Kerch
Theodosia
BIMCO Standard War Risks Clause for Voyage Chartering 1993 (VOYWAR 1993)
(1) For the purpose of this Clause, the words:
(a)"Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and
(b) "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are like to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.
(2) If at any time before the Vessel commences loading, it appears that, in the reasonable judgement of the Master and/or the Owners, performance of the Contract of Carriage, or any part of it, may expose, or is likely to expose, the Vessel, her cargo, crew or other persons on board the Vessel to War Risks, the Owners may give notice to the Charterers cancelling this Contract of Carriage, or may refuse to perform such part of it as may

- "WAR RISKS" = BLOCKADES AGAINST VESSELS

- OWNERS MAY CANCEL OR REFUSE TO PERFORM IF WAR RISKS GENUINELY THREATEN CONTRACT PERFORMANCE

- CHARTERERS HAVE 48 HOURS TO PROVIDE FOR ALTERNATIVE OTHERWISE CANCELLATION AND OWNERS MAY DISCHARGE AT ANY SAFE PORT OF THEIR CHOICE

- VESSELS MAY DEVIATE TO LONGER ROUTES TO AVOID RISK ZONES (WITH ADDITIONAL FREIGHT IF DEVIATION EXCEEDS 100 MILES)

LMAA

THE LONDON MARITIME ARBITRATORS ASSOCIATION

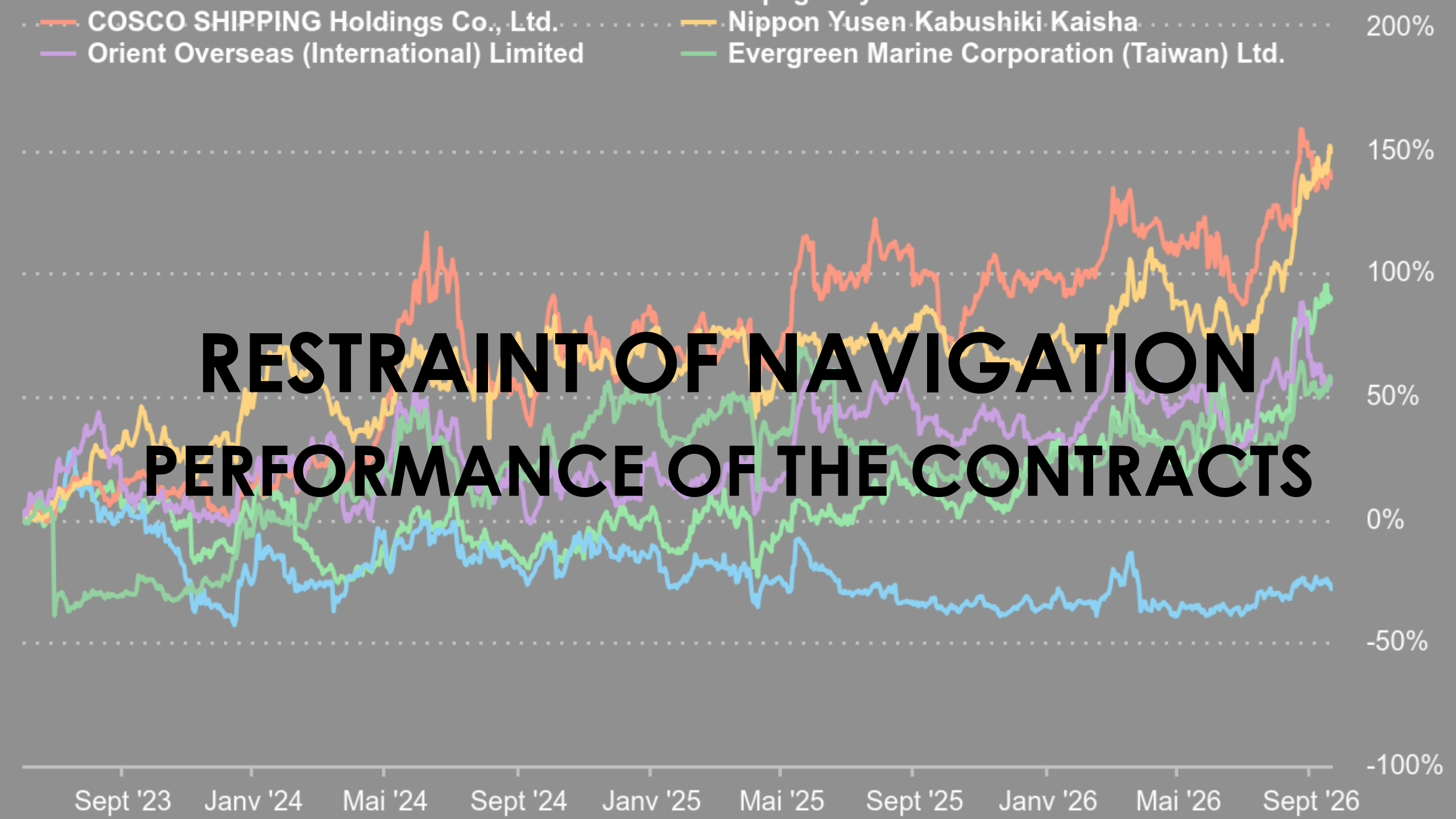
The FSB's measures and the consequential delay was not an ordinary incident of the voyage that the owners had bargained to undertake. The measures were an abnormal occurrence exercised arbitrarily by the Russian government in the context of the Russia/Ukraine war and transit of the Kerch Strait.

Performance of the contractual voyage was not possible from 15 February 2023.

It was clear that the FSB would enforce the prohibition by way of force

the owners were not obliged to remain waiting and could request the charterers to nominate a safe port of their choice (including the port of loading). The owners unequivocally asked the charterers to give alternative orders. Their response and their actions until 15 March 2023 did not amount to compliance with that request.

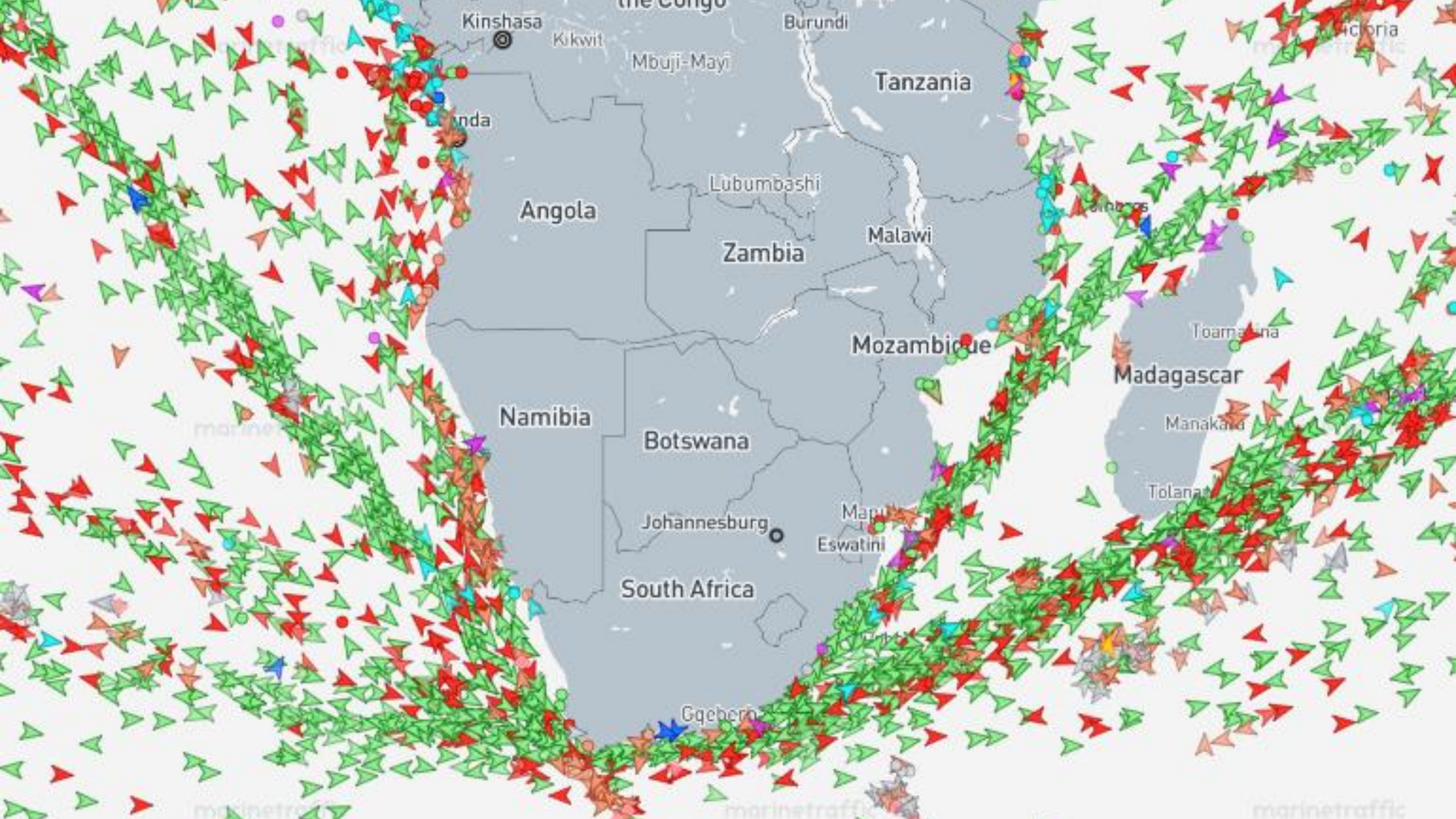
As a result of the charterers' failure to give an effective nomination of an alternative port, the vessel was unjustifiably detained. The owners were entitled to recover damages (London arbitration 8/26)



RESTRAINT OF NAVIGATION

PERFORMANCE OF THE CONTRACTS

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from
(e) act of war;
(f) act of public enemies;
(g) arrest or restraint of princes, rulers or people, or seizure under legal process;
(h) quarantine restrictions;
(j) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
(k) riots and civil commotions;


Kinshasa
Kikwit
Mbuji-Mayi
Burundi
Tanzania
Lubumbashi
Angola
Zambia
Malawi
Mozambique
Madagascar
Namibia
Botswana
Johannesburg
Eswatini
South Africa

The armed conflict commonly known as the Gulf War, which affected the geographical area through which the vessel was to sail, leaded to a change of route to avoid the usual passage through the Suez Canal, which had suddenly become perilous;

… the route via the Cape considerably lengthened the journey but was the only one possible;

The carrier made a reasonable deviation within the meaning of Article 4, paragraph 4 of the Brussels Convention, exempting it from any liability in the event of loss of goods (Paris, 8 March 1996)

War Risk Surcharge - Trade from the Middle East to Sub-Saharan Africa and Indian Ocean Islands

04/03/2026

The evolving security situation in the Middle East is affecting maritime traffic in the Straits of Hormuz and Bab El - Mandeb and causing disruption throughout our network. Consequently, MSC Mediterranean Shipping Company will implement a War Risk Surcharge (WAR) for all cargoes moving from the **Arabian Peninsula (Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, UAE)** to **West Africa, East Africa, South Africa, Mozambique and the Indian Ocean Islands.**

The surcharge will be effective as of **05 March 2026 (gate in date) local time until further notice**, and will be charged as follows:

- **USD 2000 / 20 ft, USD 3000 / 40 ft** and **USD 4000 / reefer.**

After the conclusion of the contract on November 1, 2024, the first merchant ships flying the flags of European countries were targeted, thus forcing sea carriers to stop using the Red Sea passage. This situation was therefore unforeseeable at the time of the conclusion of the contract.

It also appears, given the increase imposed by the sea carrier, that the performance of the contract is excessively onerous for SAS DEMENAGEMENTS JUMEAU, which, given the contractual provisions, had not agreed to assume this risk. **(TJ Bordeaux, 21 July 2025)**

If an unforeseeable change of circumstances at the time of the conclusion of the contract renders performance excessively onerous for a party who had not agreed to assume the risk, that party may request a renegotiation of the contract from its contracting party. It shall continue to perform its obligations during the renegotiation.

In the event of refusal or failure of the renegotiation, the parties may agree to terminate the contract, on the date and under the conditions they determine, or ask the judge, by mutual agreement, to adapt it. Failing agreement within a reasonable time, the judge may, at the request of a party, revise the contract or terminate it, on the date and under the conditions set by the judge **(Art. 1195 C. civ.)**

De schuldenaar kan evenwel, aan de schuldeiser vragen om het contract opnieuw te onderhandelen met het oog op de aanpassing of beëindiging ervan indien aan de volgende vereisten is voldaan:

1° een verandering van omstandigheden maakt de uitvoering van het contract buitensporig bezwarend, dermate dat de uitvoering ervan redelijkerwijze niet langer kan worden geëist;

2° die verandering onvoorzienbaar was bij de contractsluiting;

3° die verandering ontoerekenbaar is aan de schuldenaar;

4° de schuldenaar dit risico niet voor zijn rekening heeft genomen; en

5° de wet noch het contract die mogelijkheid uitsluiten. **(art. 5,74 BW)**

Increases between September 2020 to January 2022 were 316% for gas, 381% for electricity, and 192% for wooden packaging.

Consequently, the court finds that, given the increase in costs during the 2021–2022 period, the contractual commitments between the parties have become excessively onerous **(Trib. Com, Paris, 14 December 2022)**

GREFFE DU TRIBUNAL DE COMMERCE DE PARIS

CONCLUSION



France must also continue to defend and promote respect for international maritime law, in particular the rules guaranteeing freedom of navigation

In the field of the environment, France should maintain its resolute action, together with its European partners, to develop an international framework capable of addressing the most critical issues, in particular to extend the momentum gained from the conclusion and entry into force of the BBNJ Agreement (Conseil d'Etat, *La mer et les politiques publiques*)



Terrestrial and Inland Waters Protected Areas

Marine Protected Areas

- **MARITIME LAW *vs.* ENVIRONMENTAL LAW**
- **ENVIRONMENTAL LAW vs. FREEDOM OF NAVIGATION**
- **WILL IT STILL BE POSSIBLE TO NAVIGATE IN THE MARINE PROTECTED AREA ?**