



A Study on the Legal Aspects of Blocking the Strait of Hormuz from the Perspective of International Law of the Sea and Waterways

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Abstract

Blocking the Strait of Hormuz is one of the legal and political issues concerned in the scientific community. Is it acceptable under the International Law of the Sea to stop or suspend the shipping, communication and exports in the Strait an important part of the global economy? Unfortunately, the comments made by many non-experts as well as domestic and foreign media outlets do not have any legal effect due to lack of knowledge about the international law of the sea and this trend may leave long-term negative consequences contrary to the national interest. Accordingly, the present approach adopted to this matter requires that the exact dimensions of the issue be investigated based on principles and rules governing the international law, thereby to finally propose a model and a strategy in that respect.

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Introduction

The issue of crossing the international straits has long been discussed and sometimes debated controversially between coastal and marine states and other users of the waterways. The evaluation of the legal regime of straits deals with two legal systems.

- A. Specific legal system
- B. General Legal System

That is why some of these historic maritime waterways involve treaties reached typically after wars and military actions. As for the legal system of general international law, however, the international law of the sea has recognized two modes of innocuous passage and transit passage through the international waterways. It has been perfectly and explicitly stipulated in the 1958 Geneva Conventions and the Convention in 1982 (Convention on the Law of the Sea).

International strait

According to the International Court of Justice vote casted on April 19, 1949, Concerning the "Strait of Corfu", International straits are natural waterways connecting two open seas used for international navigation. The 1958 convention in Geneva on territorial sea and monitoring zone advises a broader concept for international straits. Pursuant to paragraph 4 of Article 16 of the Treaty, international straits are used for international shipping linking part of the high seas to another part or the territorial sea of a foreign country. Straits have been defined slightly different in the 1982 Convention of the International Law of the Sea (Convention Jamaica). In this Convention, the international straits include: "straits that serve international shipping, linking part of the high seas or exclusive economic zone to another part of the high seas or exclusive economic zone (Article 37). The same applies to straits connecting the territorial sea of a country to part of the high seas or exclusive economic zone of other countries"

(Article 45). The overall impression about a conventional sense of Strait can be defined this way: "Strait is a natural narrow passage of water connecting two larger parts of the water together."

Innocuous passage

If the Strait waters lie within the territorial sea of one or more states, the foreign ships shall only have the right to innocuous passage. Nevertheless, the coastal state may temporarily suspend such a right across the territorial sea so as to protect the national security, which damages the freedom of navigation over two parts of an open sea such as Gibraltar and Malacca. The situation was identified at court in the Corfu case in 1949, finally formulated as in Article 4 of the 1958 Convention on territorial seas.

The Corfu Strait case demonstrated that warships (and even less, merchant ships) are entitled as part of their traditional rights with innocuous passage of international straits while the coastal state cannot suspend it. However, some lawyers and delegations from certain maritime powers argued at the Third Conference on the Law of the Sea that the rights under the common law are broader to encompass the freedom of innocuous sailing without any limitation. Sometimes called the right of transit, such an assertion covers, unlike the innocuous passage that includes only the ships, the foreign aircraft flying over the area. In any case, it appears that the balance of legal opinions tends towards the following conclusion: The common law recognizes only the right of unsuspended innocuous passage through straits. The rule in Article 4 of the Convention on the territorial sea stipulates in that respect as follow:

"Innocuous passage of foreign ships through straits used for international navigation between the sea and the other part of it or the territorial sea of a foreign government shall not be suspended."

Transit passage

Transit refers to the exercise of free shipping or flying over, solely intended for fast, non-stop passage. From the composition of the 1982 Convention, it can be deduced that underwater submarines can cross international straits.

Transit pass includes free shipping and flying over the strait solely for the continuous and rapid passage through straits in the area at the middle of the sea or the exclusive economic zone and another part of the high seas or an exclusive economic area so as to enter or leave the country adjacent to the strait. [(Paragraph 2 of Article 38 of the 1982 Convention of the Sea]

The right of transit passage

This includes all ships and aircrafts whether commercial or military. As far as submarines are

concerned, the usual procedure of underwater passing through certain international straits takes place within the framework of "acts solely involving continuous and rapid transit" (Article C / 1/39 of the 1982 Convention).

Difference between innocuous passage and transit passage:

1. In contrast to innocuous passage, the transit passage grants the right to the coastal state to create a barrier against passing ships;
2. In contrast to innocuous passage, the transit passage does not grant the right to the coastal state to suspend the right of passage; (where the opposite implies that the coastal state is entitled with the right at state of war);
3. In contrast to innocuous passage, the transit passage does not grant the coastal state the right to take any measure in case of breaching transit obligations by ships crossing the strait;
4. In contrast to innocuous passage, the transit passage does not allow the crossing ships to erect the flag of their country;
5. The right of transit includes flight over the waters.

As noted, the approach to transit passage focuses on the interests of navigation system in which the interests of coastal states are minimally considered. In fact, the right of transit passage is a far wider and encompassing innocuous right. It should be noted that in transit passage, the crossing ships are entitled with certain obligations to the coastal State, e.g., the passage shall be continuous, uninterrupted and fast (where emergency situation or force majeure is an exception). Moreover, it is illegal to pose any threat or use of force against the sovereignty, territorial integrity and political independence of the coastal State and the activities of exploration and research without authorization from the coastal states surrounding the Strait.

Geography and legal regime over the crossing of Hormuz Strait:

The Strait of Hormuz is a marine narrow curved inlet at the eastern sides of the Persian Gulf separating the Iranian plateau from the Arabian Peninsula. In terms of geographical location, it stretches between Iran and the Sultanate of Oman canted as the only link between the blue waters of the Persian Gulf and Oman Sea. Perhaps the best criterion for measuring the length of the strait is the maritime border between Iran and the Sultanate of Oman. This borderline extends 1.202 km (8.124 nautical miles). The nautical mile is equal to 1853 meters. The longest distance across Strait of Hormuz is 84 km long (from the hinterlands of Bandar Abbas ranging from the north to the northern hinterlands of Mosandam peninsula in the south), whereas the shortest

distance is estimated to be 33.6 to 38 km or 20.5 nautical miles long (lying between an Iranian island named Larak in the North and another island named Amani al-Salameh in the south). The share of each country's coastal waters is 12 miles, where the outside area is less valuable for there being scattered boulders and being too shallow for navigation.

The sea bed at Strait of Hormuz takes a dramatic slope from north to south. With heavy tankers crossing the area in recent decades, the traffic was confined to the deepest part of Hormuz Strait near Mosandam hinterlands. Until 1979, the route of tanker ships across Hormuz Strait was between the small Ghuin Island and rocky hinterlands of Mosandam Island. That year, the Government of Oman announced to the international seafaring organization that it could no longer guarantee the safety of ships crossing the small Ghuin island and hinterlands of Mosandam Island, requesting that recognize the shipping lane stretching from north of the al-Salameh island to the maritime border with Iran. Since then, two marine routes were considered for tankers passing through the north and south in parallel lanes between the small and great Ghuin Islands and the borders of Iran and Oman.

It is important to understand the different interpretations made by the coastal countries. United Nations Convention on the Law of the Sea adopted in 1982 entitles the countries with the right to specify their origin lines across marine areas based on the lowest level of the sea tide and front reefs of the coast, there from determine the origin lines of their territorial waters within 12 nautical miles.

Under the decree No.670-250 dated July 21, 1973 from Council of Ministers, several years prior to the adoption of the United Nations 1982 Convention on rights of Seas, Iran specified its origin lines based on the 12-mile measure and registered in the treaties of the United Nations Secretariat, upon which the country operated without any serious claim or complaint for about a quarter of century.

According to the origin lines registered by Iran and based on the maritime traffic separation map from International Maritime Organization (IMO), almost one-third of the northern route across Strait of Hormuz and particularly the lie within the Iranian water territory. Based on the maritime traffic design by the International Maritime Organization (IMO), the one-mile inlet corridor covers part of the maritime route within the Iranian waters. The maritime traffic corridor at south lying on the sea territory of the Sultanate of Oman is also one nautical mile wide. Between the two Corridors and the entry-exit route of the Persian Gulf, there is a one-mile buffer strip assigned to prevent vessel

accidents. The water in the strait, especially in the entry-exit corridors, is 50 to 80 meters deep, suitable for large tankers draft. Moreover, the entry shipping route later crosses the Iranian waters of Greater and Smaller Tunbs as well as the Iranian Farur Island, which can be controlled under emergency and special situations.

The minimum width of the strait separating Iran and Oman is 21 miles, insufficiently applicable to 12 miles for each side. Therefore, the fair limit of territorial waters constitutes the line between the two coastal sides. The Strait of Hormuz lies on the common maritime border of Iran and Oman. The latter is one of 155 countries joining the United Nations Convention on the Law of the Sea adopted in 1982 in Jamaica. Without any distinction between countries, the Sultanate of Oman recognizes only the innocuous passage through its territorial waters.

During the ratification and accession to the Convention of 1989, Oman issued several notices, asserting that: "Right of innocuous passage is guaranteed upon obtaining prior authorization for all warships in the waters of Oman."

(For more information, see the document un.org/Depts./los/index.htm the Secretariat of the United Nations).

However, the traffic rate of large commercial ships, cruisers and submarines in a relatively small space and traffic jam have led to a number of accidents, which further highlight the need for order and discipline. Accidents such as the following:

In 2007, a Japanese oil tanker collided with a submarine named US Newport News in the Strait of Hormuz. In another case in 2009, two American cruisers named Hartford and New Orleans collided as they moved across the Strait of Hormuz.

Iran and the 1982 Convention on the Law of the Sea

The Convention on the Law of the Sea is one of the few major international treaties the Iranian government refused to ratify. Each one can be discussing intensively, such as the 1969 Vienna Convention, Convention against Torture, the Convention to Combat Nuclear Terrorism, and other documents in this regard, the Convention on the Prohibition of Discrimination against Women, the Statute of the International Criminal Court etc. Had there been such sensitivities 70 years ago, Iran would not have become a member of the United Nations! In the meantime, the Convention on the Law of the Sea is crucial for Iran from various legal, political, military and commercial aspects.

Legally, membership in this major convention deemed as a fundamental law of the seas, made certain changes in the status of rights and obligations in international law of the seas as

compared to the 1958 conventions. Such relatively new rights and obligations might be stipulated by any convention. Basically, the ratification of treaties is subject to national interests of states who evaluate whether or not they are able to fulfill an obligation and whether or not the rights and obligations arising from treaties can provide the desirable interests?

Politically, non-membership in key fundamental international conventions especially those approved universally for legislative purposes hardly leaves a good reputation for a country. For instance, the international community opposed the US withdrawal from the Kyoto Protocol or refusal from signing the Statute of the International Criminal Court.

Economically, the Convention on the Law of the Sea is crucial in an exclusive economic zone or marine resources as the "common heritage of mankind" where the arising unique rights in cases where there is no common or contract evidence shall belong solely to the Member States.

The Iranian International Liability Scheme

Iran is currently not a "party" of the 1982 treaty, but has signed it as a country participating in the Third Conference on the Law of the Sea. According to the law of treaties, Iran is entitled with certain legal rights and obligations regarding the Convention, the most important of which according to Article 18 of the 1969 Vienna Convention is not to take any measures aimed at violating the treaty of seas. This in turn includes avoidance from any interruption in the right of transit passage across the Strait of Hormuz.

Conclusions

Vote in favor of the convention integrated package, interest in the adoption of the Convention through consensus at conference in Montevideo Gobies to confirm the theory of single transaction leading to a poor resolution in international conventions, or limitation of liability adjustment by reservation, altogether puts the whole political convention subject to approval or non-approval for implementation. Moreover, signing the convention indicates that Iran has not taken a negative approach to the Convention while the refraining from ratification after 26 years reflects the sensibilities of Iran.

It seems the innocuous passage of military vessels in the territorial sea, the right of transit passage through straits and so on are highly disputed issues for Iran, which have been postponed by the 1982 Convention on Law of the Sea. Basically, Iran find no problem with the international judicial

process and in the case of innocuous passage of military ships, the government is practically capable of enforcing the existing regulations without the right of transit passage through the straits under Article 39 of the Convention jeopardizing the Iranian security. As long as the US is not a member, the ships and aircrafts from that country as well as other non-member countries shall not be subject to the right. In most cases, the Iranian marine zone laws are based on the 1982 Convention. Therefore, it is recommended that the Iranian government firstly carry on its efforts to create international legal proceedings between Islamic countries, and secondly, ratify the regulations by providing detailed interpretive declaration in accordance with the spirit of the Convention. Finally, withdraw its signature in case the 1982 Convention encountered, which would bring about negative and contrary consequences against the national interest of Iran.

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