

The Strait of Hormuz and the Law of the Sea: The Strait of Hormuz Between Sovereignty, Diplomacy, and International Maritime Law

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ABSTRACT

Over 20% of the world's oil and liquefied natural gas pass through the Strait of Hormuz, making this narrow waterway one of the most strategically important maritime chokepoints in the global energy system. Due to its vital role in international trade, the Strait has come under increased scrutiny as international legal and diplomatic frameworks face renewed challenges. Rising tensions in the region, especially after U.S. military strikes on Iranian nuclear facilities, have further escalated with Iran's parliament approving a motion to close the Strait.

This article critically evaluates the feasibility and legality of Iran's potential actions regarding the closure of the Strait from the perspective of international law, especially concerning the United Nations Convention on the Law of the Sea (UNCLOS). While Iran may assert strategic and legal justifications based on notions of economic self-defense and sovereignty, it is argued that such actions would likely breach the non-suspendable right of transit passage that is essential for global maritime navigation. Furthermore, any attempt to close the Strait could lead to serious diplomatic tensions, substantial financial costs, and even possible military responses from the international community.

Given these challenges, the paper concludes by proposing a comprehensive new maritime law framework. This framework would include multilateral diplomacy, strong management of strategically vital chokepoints, and flexible responses to evolving threats from both states and non-state actors. Strengthening international maritime security requires cooperative strategies to navigate these complex geopolitical issues.

Keywords: Strait of Hormuz, Maritime Security, State Responsibility, Hybrid threats, Law of the Sea, Diplomacy

INTRODUCTION:

At only 21 miles wide at its narrowest point between Oman and Iran, the Strait of Hormuz is not merely a geographical conduit but a geopolitical flashpoint of global consequence^[1]. As of mid-2025, nearly 20 million barrels of crude oil and about one-fifth of the world's liquefied natural gas (LNG) flow daily through this slender maritime corridor, cementing its critical role in sustaining energy-dependent economies across Asia, Europe, and beyond.^[2, 3] The Strait has once again surged into the international spotlight following U.S. airstrikes on Iranian nuclear infrastructure and Iran's subsequent parliamentary motion authorizing the closure of the Strait. This move would mark an unprecedented escalation in maritime geopolitics.

The legal and strategic implications of such a closure are profound. Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the Strait of Hormuz meets the criteria for "transit passage" under Article 38, which grants all ships and aircraft the right to navigate through straits used for international navigation without suspension or interference by coastal^[4]. Yet Iran, although a signatory, has not ratified

UNCLOS and has maintained that the transit passage regime does not constitute customary international law. Instead, Iran invokes its own 1993 domestic legislation, asserting the regime of innocent passage, subject to its prior authorization, national security and interests^[5].

This legal divergence is becoming increasingly risky at present. Analysts and former intelligence officials have warned that closing the Strait could lead to global economic instability, mainly by causing oil prices to spike and disrupting supply chains worldwide in Asia. More critically, the closure would undermine established international legal norms regarding maritime passage and state responsibility, setting a dangerous precedent for other chokepoint-dependent regions such as the South China Sea and Bab el-Mandeb.

Given these developments, this article provides a thorough, interdisciplinary critique of the current international legal framework governing the Strait of Hormuz. It begins with reevaluating the International Law of the Sea, exploring how conflicting legal interpretations, particularly regarding transit passage and Iran's maritime claims, challenge its authority. It then examines the challenges of attributing maritime threats to state actors, particularly in contexts where plausible deniability and proxy warfare are present. Ultimately, the article evaluates the effectiveness of diplomacy and multilateral initiatives in preventing escalation and preserving freedom of navigation.

By considering recent legal, diplomatic, and geopolitical developments, including Iran's latest actions, regional energy dependencies, and changing global security structures, this article argues that a new legal and policy framework is urgently needed to address the unpredictable future of international straits.

The International Law of The Sea and Iran's Legal Position

The legal regime governing the Strait of Hormuz is primarily codified in the United Nations Convention on the Law of the Sea (UNCLOS), which classifies international straits as maritime spaces allowing "transit passage" between parts of the high seas or exclusive economic zones (UNCLOS, 1982, Arts. 37–44)^[6]. Under this regime, the transit passage of vessels and aircraft must be continuous, expeditious, and cannot be impeded or suspended by coastal states, even during times of heightened security concerns (UNCLOS, Art. 44)^[7]. This provision reflects the international community's commitment to preserving global commons and ensuring the unimpeded flow of maritime traffic through straits vital to international navigation.

However, the application of these provisions to the Strait of Hormuz is fraught with legal contestation. While Oman is a whole party to UNCLOS and has consistently allowed unhindered passage through its territorial waters, Iran has signed but not ratified the Convention and has repeatedly issued declarations that reject the automatic application of the transit passage regime to all states^[8, 9]. In its 1993 Act on the Marine Areas of the Islamic Republic of Iran, Iran requires prior authorization for foreign warships and military aircraft to enter its territorial waters, a position that directly contradicts UNCLOS Article 44 and has been widely criticized as an attempt to impose unilateral restrictions on international legal obligations^[5, 10].

Iran's interpretation has significant legal implications. Since the navigable shipping lanes in the Strait are fully contained within the 12-nautical-mile territorial seas of Iran and Oman, Iran's legal position effectively reverts the regime of transit passage to that of innocent passage, governed by Articles 17–32 of UNCLOS^[9, 11]. Innocent passage is more limited in scope and allows coastal states to restrict or deny passage if they deem it prejudicial to their peace or security (UNCLOS, Art. 19)^[9]. However, this interpretive shift is widely rejected by maritime powers, especially the United States, which continues to assert the right of unrestricted transit passage, backed by customary international law and longstanding navigational practice^[12, 13].

This legal rift reveals a more profound structural weakness in maritime law: although UNCLOS is almost universally ratified, its provisions are interpreted and enforced unevenly, especially in conflict-prone regions where national sovereignty outweighs multilateral norms^[14]. In the case of the Strait of Hormuz, this dissonance is exacerbated by Iran's use of strategic legal ambiguity known as lawfare to contest transit rights without triggering direct conflict.

Compounding the legal uncertainty is Iran's invocation of national security as a justification for restricting or suspending navigational rights. Iranian officials and parliamentary figures have argued that recent U.S. attacks on Iranian nuclear sites constitute acts of aggression, thereby entitling Iran to undertake proportional countermeasures, including closure of the Strait^[3]. However, even if such acts are viewed as unlawful, transit passage is considered a *lex specialis* regime under UNCLOS, which cannot be suspended even during armed conflict^[15].

Therefore, any Iranian effort to block or restrict the Strait would likely break international law, especially if it hinders the rights of neutral countries or unfairly impacts global energy supplies. As energy analyst Vandana Hari has argued, such a move would not only be economically self-destructive for Iran but could also alienate critical trade partners like China and India, undermining Iran's own long-term geopolitical and economic interests^[16].

Moreover, precedent from the ICJ's Corfu Channel case (1949) reaffirms that warships possess the right of transit through international straits, even if those straits pass through territorial waters, provided the transit is peaceful and non-threatening. This case forms a cornerstone of customary international law, reinforcing the idea that strategic straits cannot be unilaterally closed, even during geopolitical crises^[17].

In sum, while Iran may claim domestic legal grounds and national security interests to justify restrictions on navigation, the prevailing interpretation of international law strongly limits the legal space for such closure. Its actions, if carried out, would likely be viewed as violations of UNCLOS and customary norms, triggering legal accountability and strategic blowback from the global community.

State Responsibility and Hybrid Maritime Threats

The doctrine of state responsibility remains central to international law, providing the basis for attributing conduct to states and determining the legal consequences of internationally wrongful acts. The International Law Commission's (ILC) Articles on State Responsibility (2001) outline that a state is responsible for its internationally wrongful acts when conduct is attributable to it and constitutes a breach of an international obligation (ILC, 2001, Arts. 2–4). In the context of the Strait of Hormuz, these principles come under strain due to the increasing reliance on proxy actors, the strategic ambiguity of legal norms, and the limitations of enforcement mechanisms.

Attribution and the Proxy Dilemma:

Modern maritime threats often manifest through non-state or proxy actors, making the task of attribution under Article 8 of the ILC Articles particularly difficult^[18]. The standard of "effective control", as reaffirmed in the ICJ's Nicaragua (1986) and Bosnian Genocide (2007) cases, requires that the state must have direction or control over the specific operations that violated international law.^[19] This high evidentiary bar complicates the ability to hold states like Iran legally responsible for maritime incidents indirectly linked to groups such as the Houthis or the Islamic Revolutionary Guard Corps Navy.

While recent Iranian threats to close the Strait have been publicly voiced by state actors, including parliament and government-linked media outlets, many hostile maritime activities in the Gulf and Red Sea are conducted by proxies, denying Iran's direct attribution^[3]. Such plausible deniability allows states to exploit grey zones, where legal accountability is obscured and geopolitical repercussions are minimized.

This challenge is magnified by the fact that the UNCLOS regime does not sufficiently address the role of non-state actors in maritime security. UNCLOS Article 101 narrowly defines piracy and fails to capture the full spectrum of modern threats, such as cyber interference with navigational systems, AIS spoofing, or drone-assisted attacks on vessels, all of which have been reported in the region^[20].

Countermeasures, Proportionality, and Legal Boundaries:

Iran's rationale for threatening to close the Strait of Hormuz often relies on framing such action as a lawful countermeasure to perceived U.S. aggression, including the bombing of nuclear facilities^[21]. However, under

ILC Article 22, countermeasures must be proportionate, non-violent, and must not affect obligations owed to the broader international community, such as freedom of navigation through international straits, which is widely accepted as an erga omnes obligation ^[22, 23].

Transit passage through the Strait of Hormuz is protected under lex specialist, and Article 50(1)(a) of the ILC Articles explicitly prohibits countermeasures that impair such obligations^[9]. Thus, Iran cannot lawfully suspend transit passage as a means of retaliation or defence, even if it argues that U.S. actions were illegal.

Furthermore, if Iran's actions disproportionately affect neutral states such as India, South Korea, or Japan, all of whom rely heavily on Gulf oil and LNG, its conduct could constitute an indirect wrongful act, harming third-party rights under customary international law ^[24]. This would trigger secondary state responsibility and further isolate Iran diplomatically and legally.

Strategic Disruption Without Legal Closure:

Experts increasingly suggest that Iran may pursue a strategy of partial disruption, such as deploying mines, conducting naval parades with speedboats, or increasing electronic jamming, rather than a total blockade ^[16]. These activities are below the threshold of formal closure but still raise insurance costs, slow down shipping, and apply strategic pressure without provoking the complete response that a formal closure would trigger.

This “sliding scale” of maritime disruption challenges the binary framework of international law, which often distinguishes between lawful passage and outright blockade^[25]. It exposes a gap between lawful deterrence and coercive ambiguity, allowing states to shape outcomes without triggering accountability. The Strait of Hormuz thus becomes a laboratory for hybrid legal-military tactics, where the law is neither fully enforced nor wholly violated^[1].

Moreover, energy market responses to such threats, e.g., oil price spikes, tanker rerouting, and port congestion, demonstrate that even partial attribution can have global economic consequences, reinforcing the need for more adaptable legal and diplomatic mechanisms.

In conclusion, the doctrine of state responsibility, though theoretically strong, is limited in its ability to address modern maritime conflict scenarios that fall into legal grey areas. Iran's potential use of hybrid maritime threats, proxy actors, and strategic ambiguity in the Strait of Hormuz underscores the need to recalibrate legal standards, including revised thresholds for attribution, enhanced maritime threat detection, and the development of multilateral response frameworks that balance both security and legal integrity.

The Role and Limits of Diplomacy:

While international law governs the normative framework for navigation and state Behaviour in straits, diplomacy remains the central tool for conflict de-escalation, crisis management, and long-term maritime cooperation. In the case of the Strait of Hormuz, however, diplomacy has shown both its necessity and its limitations. Despite recurring threats of closure and rising geopolitical tensions, multilateral efforts have failed to produce a lasting regional framework to manage the waterway primarily due to asymmetric interests, distrust among regional rivals, and global power competition.

Bilateral Diplomacy and Great Power Mediation:

The most notable development in current diplomacy surrounding the Strait is the shift in pressure toward China. U.S. officials, including Secretary of State Marco Rubio, have openly called on Beijing to dissuade Iran from closing the Strait, arguing that it would amount to “economic suicide” for Tehran and could devastate China's energy security ^[3]. China, which buys over 1.8 million barrels per day of Iranian oil, has emerged as a potential stabilizing actor, emphasizing at UN briefings the need for “de-escalation” and restraint ^[16].

Beijing's preference for energy stability over confrontation has created an opportunity for third-party diplomacy, where China could leverage its economic relationship with Iran to encourage restraint. However, China's diplomatic strategy remains cautious, emphasizing neutrality and resisting entanglement in U.S.-led

maritime security initiatives. This ambivalence limits its ability to enforce any rules-based order in the Gulf and reflects the broader challenge of non-Western mediation in naval security^[13].

Meanwhile, Gulf states like Oman and Qatar, traditionally neutral players, have not established institutional diplomatic mechanisms to support regular dialogue on maritime security. Past efforts, such as Oman's secret mediation in the Iran nuclear talks, have proven effective in de-escalation but lacked the institutional stability to influence long-term maritime norms.

Institutional and Multilateral Constraints:

At the multilateral level, diplomacy suffers from structural weakness and fragmentation. The International Maritime Organization (IMO) lacks enforcement power and focuses primarily on safety and technical standards, not geopolitical conflict resolution^[26]. Similarly, the United Nations Security Council (UNSC) remains divided, with veto-holding members backing opposing sides in the Iran–Israel–U.S. conflict, thereby neutralizing its capacity to act preemptively^[24, 27].

Coalition-based efforts like the International Maritime Security Construct (IMSC), established to safeguard shipping lanes in the Gulf, are perceived by Iran and some non-Western states as Western-dominated, reducing their legitimacy and participation^[21]. The absence of inclusive regional dialogue mechanisms like those in Southeast Asia (ReCAAP) or East Africa (Djibouti Code of Conduct) further limits the potential for trust-building and cooperative threat reduction in the Gulf^[28].

Moreover, the diplomatic focus often remains reactive rather than preventive. For example, Maersk and other commercial operators have already implemented contingency plans based on naval advisories, while global maritime authorities report electronic interference, shipping congestion, and AIS spoofing^[29]. These are warning signs of a slow-burning crisis that diplomacy is not currently equipped to address in real time.

Rethinking Maritime Diplomacy for Hybrid Threats:

The limitations of diplomacy in the Strait of Hormuz reflect not only geopolitical divisions but also a conceptual gap in how diplomacy addresses maritime threats. Traditional diplomatic tools, such as negotiations, treaties, and joint declarations, are ill-equipped to manage hybrid conflicts involving lawfare, grey-zone tactics, and proxy actors. Such tactics often fall outside traditional conflict thresholds, rendering existing legal and diplomatic mechanisms obsolete or inapplicable.

To remain effective, maritime diplomacy must evolve in three keyways:

Establish Track II Diplomatic Channels: Neutral states such as Oman, Norway, or Switzerland should facilitate semi-official dialogue involving Gulf states, maritime powers, and private actors. These forums can help pre-empt crisis escalation and identify early signs of instability.

Develop a Regional Maritime Security Forum: Drawing inspiration from the ASEAN Regional Forum or ReCAAP, Gulf countries could launch a non-binding, regionally driven framework to promote maritime information sharing, transparency, and legal harmonization.

Integrate Industry and Civil Actors: As commercial shipping companies are the first affected by threats in the Strait, they should be formally integrated into maritime security dialogues. This inclusion would improve situational awareness and enhance diplomatic credibility.

In sum, diplomacy remains a crucial yet underdeveloped tool in managing the Strait of Hormuz. While the legal framework remains contested and militarization escalates, a recalibrated diplomatic architecture that includes regional stakeholders, neutral mediators, and private actors is essential. Without such innovation, diplomacy risks becoming a rhetorical exercise that is ineffective in preventing crises and irrelevant in shaping long-term stability.

DISCUSSION

The conflict between coastal state sovereignty and the universal interest in maintaining global commons reveals a deeper tension in the structure of international maritime law, as demonstrated by the Strait of Hormuz crisis. UNCLOS provides a framework for balancing these interests; however, practical implementation, especially in disputed chokepoints, increasingly reveals legal fragmentation caused by conflicting interpretations, hybrid threats, and shifting geopolitical alliances.

The Legal Ambiguity of Strategic Straits:

As previously mentioned, straits such as Hormuz are designated as non-suspendable transit zones under UNCLOS Articles 38–44, which grant all vessels the right of passage regardless of the surrounding waters' territorial status. However, there is an interpretive ambiguity that coastal states can exploit because the Strait's shipping lanes are entirely situated within the territorial seas of Iran and Oman.

Iran is seeking to reassert sovereignty over an internationalized maritime area by claiming innocent passage over transit passage and demanding prior authorization for military vessels. Coastal states can effectively transform the strait into a zone of contested control by employing this type of legal reinterpretation or lawfare to blur the boundary between strategic influence and regulatory power.

This phenomenon is not unique. Similar legal disputes have occurred in the Bab el-Mandeb, the Turkish Straits, and the South China Sea, where strategic states condition or restrict navigational rights based on security doctrines, historical claims, or domestic laws. Therefore, the Hormuz crisis serves as a warning for a broader breakdown of traditional maritime norms, particularly in regions where asymmetric warfare and great-power competition coexist.

The Chokepoint as a Legal Grey Zone:

Besides legal ambiguity, the Strait of Hormuz serves as a grey area where the boundaries between law and coercion, as well as peace and conflict, remain perpetually blurry. States can disrupt maritime order without declaring open conflict or committing apparent legal violations, as seen in Iran's potential use of mining, drone surveillance, AIS jamming, or partial harassment of tankers without entirely closing the area.

The binary logic of international law, which often assumes fixed points of responsibility and violation, is challenged by the concept of a "sliding scale of disruption." When diplomatic responses are slow or inconsistent and enforcement mechanisms are weak, hybrid actions fall through legal gaps. The choke point thus becomes a legal and strategic void where norms can be contested and eroded in real time, rather than merely a geographical bottleneck.

Furthermore, other nations are interested in the legal stability of the Strait, as recent reports indicate. China, India, Japan, and South Korea are some of the leading importers, while Gulf states such as Saudi Arabia, the United Arab Emirates, and Qatar rely on Hormuz for their LNG and oil exports. Therefore, any interruption of Hormuz presents systemic risks to international trade, energy security, and maritime law.

The Need for a New Legal-Diplomatic Paradigm:

When these tensions escalate, it becomes clear that the current legal system is ill-equipped to address complex, hybrid maritime threats in disputed straits. There are three distinct gaps identified:

Attribution Thresholds: State-sponsored proxy actions in maritime areas cannot be addressed by the current definition of "effective control" in the ILC Articles. Legal changes are necessary to allow attribution based on enabling behaviours or ongoing support.

Emergency Governance Mechanisms: UNCLOS does not provide rapid response protocols and real-time enforcement mechanisms for transit passage violations. This allows states to exploit court delays, especially when actions qualify as violations.

Institutional Redundancy: The IMO and UNSC remain significant maritime organisations, but they lack crisis responsiveness and regional specificity. Chokepoints like Hormuz will continue to be politically and legally vulnerable without regional frameworks that include both coastal and user states, such as the proposed Gulf Maritime Security Forum.

The Strait of Hormuz ultimately exposes a broader problem: how can international law protect the global commons when key actors are willing to interpret, ignore, or challenge those standards in the name of strategic necessity? Revising UNCLOS's interpretive approach through multilateral cooperation, legal adjustments, and diplomacy is the answer, rather than abandoning it.

Recommendation:

The current Strait of Hormuz crisis has exposed strategic tensions, legal uncertainties, and diplomatic stagnation. To strengthen international maritime law, enhance collaborative security, and safeguard the global commons, the following suggestions are proposed.

Reaffirm and Clarify the Transit Passage Regime:

In a joint interpretive declaration, states parties to UNCLOS should reaffirm that the right of transit passage cannot be suspended, even during periods of political unrest or conflict. This would strengthen customary norms that bind even non-ratifying states and oppose unilateral legal reinterpretations, such as Iran's 1993 legislation.

Reform Attribution Standards for Hybrid Threats:

The effective control threshold in Article 8 of the ILC Articles should be reviewed by the International Law Commission (ILC) or the Sixth Committee of the UN General Assembly. Material support, ongoing coordination, and strategic enabling should be added to the list of expanded criteria, especially regarding proxy naval operations and electronic interference.

Create a Gulf Maritime Security Forum:

A non-binding, inclusive maritime security mechanism, based on the Djibouti Code of Conduct or the ReCAAP, should be established by regional states, including Iran, Saudi Arabia, Oman, the United Arab Emirates, and Qatar. This forum would facilitate the following:

- Incident reporting and early warning systems,
- Legal harmonization workshops,
- Naval deconfliction channels,
- Regular diplomatic dialogue between coastal and user states.

Integrate Commercial and Technical Actors in Security Dialogue:

Regional and international maritime diplomacy should formally involve shipping companies, port authorities, and maritime insurers. They possess vital situational data and are the first responders to threats such as piracy, spoofing, and jamming. Including them enhances the capacity for risk reduction and early warning.

Empower Neutral States and Third-Party Diplomacy:

In times of maritime tension, neutral nations such as Norway, Switzerland, or Oman should have the authority to initiate Track II diplomacy or discreet backchannel mediation. Without formal treaties, non-aligned actors can lower the risk of miscalculation and build confidence, as demonstrated by Oman's previous role in facilitating U.S.-Iran dialogue.

CONCLUSION

The Strait of Hormuz is more than just a waterway; it exposes flaws in the modern world order. Legally, it is an international strait, but its use is contested. Politically, it's constrained by sovereignty, and economically, it cannot be divided. The growing disconnect between the normative authority of international law and its practical enforcement in areas of strategic tension is at the core of this contradiction.

Iran's threats to close the Strait, whether genuine or not, illustrate how fragile the current legal system is when confronted with hybrid threats, legal ambiguity, and proxy conflicts. UNCLOS presents a complex set of rules for transit passage, but it was never designed for a world where non-state actors, electronic warfare, and uneven retaliation influence maritime Behaviour. The same is true for the concept of state responsibility, which originates from 20th-century legal thought. It falters when states employ networks of deniable force that lack close coordination.

In this context, diplomacy remains hampered not only because there is a reluctance to act but also due to an inability to conceive effective measures. Summits, resolutions, and bilateral threats are insufficient for addressing maritime crises at chokepoints like the Strait of Hormuz because they unfold swiftly and are highly complex. We do not need another treaty; instead, we require a new strategic agreement that perceives freedom of navigation as a collective legal obligation rather than a privilege of the powerful. This agreement should be bolstered by regional cooperation and flexible legal frameworks.

This discussion has shown that the real danger lies not in outright conflict but in the normalizations of contestation, the gradual erosion of legal norms through repetition, inaction, and ambiguity. A proactive, rules-based, and pluralistic maritime order that recognizes the interconnectedness of states, the intricacy of threats, and the necessity of collective legal stewardship is the only way to halt this decline.

The repercussions will go beyond Hormuz if this sets a precedent for legal collapse. Nevertheless, it could also reaffirm the potential of the law of the sea in the twenty-first century if it becomes a model for strategic restraint and legal innovation.

Conflict of Study:

The author declares that there is no conflict of interest regarding the publication of this manuscript. The authors have fully adhered to ethical standards, including those related to plagiarism, informed consent, research misconduct, data fabrication and/or falsification, duplicate publication and/or submission, and redundant publication.

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