



# Iran's New Governance over the Strait of Hormuz under International Law

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## Abstract

The strategic importance of the Strait of Hormuz is such that Marco Rubio, the U.S. Secretary of State, has referred to it as an “economic nuclear weapon.” Iran’s fury following the U.S.-Israeli “Epic Fury” operation led to the blockade of the world’s economic artery in the Strait of Hormuz. Iran’s diplomatic apparatus and its leadership emphasize that what is occurring in the Strait of Hormuz is not a closure, but rather the “management of the Strait of Hormuz.” The question is whether international law provides any legal grounds for defending Iran’s new governance framework over the Strait of Hormuz. Descriptive and analytical assessments demonstrate that there are some legal justifications for Iranian practice in the Strait of Hormuz. Iran’s objections to the legal regime governing international straits even make it plausible that “non-suspendable innocent passage” may not apply in the Strait of Hormuz. The prohibition on passage throughout the entire territorial sea applies to unauthorized military vessels, especially those linked to a hostile State, and to vessels engaged in non-innocent passage. The levying of transit tolls on goods aboard vessels, or on the vessels themselves, may be defensible by invoking the doctrine of fundamental change of circumstances. The possible emergence of a particular regional custom could also justify the continued collection of transit tolls. The non-discriminatory levying of charges for all maritime services, including those based on treaties such as COLREG, MARPOL, and SOLAS, is permissible. Compensation may also be collected by invoking the doctrine of countermeasures and, potentially, the doctrine of necessity. Any Iranian action aimed at generating such economic revenue from the Strait of Hormuz on the Omani side would require additional legal justifications, such as designating the area as a “war zone” or designating Oman as a “hostile State” or “co-belligerent.” Invoking necessity could also assist Iran in this regard.

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## Table of Contents

Introduction

1. The Legal Regime of Passage through the Strait of Hormuz before 28 February 2026

2. The Legal Regime of Passage through the Strait of Hormuz after 28 February 2026

Conclusion

## Introduction

Barros (João de Barros), the Portuguese historian, quoted the inhabitants of Hormuz as saying: “If the world were a ring, Hormuz would be its gem.”<sup>1</sup> The strategic importance of the Strait of Hormuz is such that Marco Rubio, the U.S. Secretary of State, has referred to it as an “economic nuclear weapon.”<sup>2</sup> The Strait of Hormuz hosts approximately 65% of the world’s total oil reserves. About 40% of the world’s crude oil, 20% of global oil and petroleum products,<sup>3</sup> and 97% of the oil produced by Persian Gulf states transit through this strait.<sup>4</sup> Furthermore, approximately 30% of the world’s fertilizer supply passes through this strait. Hence, Hormuz can be regarded as the world’s vital energy artery. “Iran’s fury” following the U.S.-Israeli Operation “Epic Fury” led to the blockage of the world’s economic artery. Iran’s diplomatic apparatus and its leadership emphasize that what is occurring in the Strait of Hormuz is not a closure, but rather “managing its traffic.” This management, as reflected in the statements of Iranian officials, manifests in four dimensions: prohibition, tolls (dues levied solely for passage), charges (Fees charged for the provision of services), and compensation (Indemnity received for loss or damage). Before examining these four approaches, it is necessary to consider the legal regime governing passage through the Strait of Hormuz prior to the U.S.-Zionist war against Iran on 28 February 2026.

### 1. The Legal Regime of Passage through the Strait of Hormuz before 28 February 2026

Passage through international straits that connect one part of the high seas or EEZ to another part of the high seas or EEZ is considered, in the view of the International Court of Justice, a “generally accepted” rule and “customary international law” and furthermore, under the 1958 Convention on the Territorial Sea and the Contiguous Zone, is subject to “non-suspendable innocent passage,” while under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), it is governed by “transit passage.” Notwithstanding serious doubts regarding the crystallization of “transit passage” as customary law,<sup>5</sup> The Islamic Republic of Iran has consistently voiced various objections since the introduction of this doctrine into UNCLOS. Moreover, it is possible that Iran is not bound by the rule of “non-suspendable innocent passage” in the Strait of Hormuz. Indeed, the possibility of an objection that would exempt Iran from this rule cannot be ruled out<sup>6</sup>.

Iran’s practice in opposition to “non-suspendable innocent passage” is as follows: In negotiations between Mohammad Reza Pahlavi, the Shah of Iran, and Sultan Qaboos bin Said

1 See João de Barros. *Segunda Década da Ásia*. Lisbon: Germão Galharde, 1553.

2 <https://www.foxnews.com/video/6394028049112>

3 UNCTAD Reports, *Strait of Hormuz Disruptions Implications for Global Trade and Development*, 10 March 2026; International Energy Agency. (n.d.). *Strait of Hormuz - Oil security and emergency response*. Retrieved June 2, 2026, from <https://www.iea.org/about/oil-security-and-emergency-response/strait-of-hormuz>

4 Mehdi Lotfi, *Tangeh Hormuz dar Zarban-e Enseday*, [The Strait of Hormuz in the Pulse of Blockade], Zamzam Hidayat Publishing, 2013, p. 43.

5 Hugo Caminos & Vincent P. Cogliati-Bantz, *The Legal Regime of Straits: Contemporary Challenges and Solutions*, Cambridge University Press, 2014, pp. 452-470. See also, Seyed Ali Asghar Kazemi, “The Question of the Applicability of the Provisions of the New Law of the Sea Convention”, *Legal Journal*, Vol. 7, No. 8, 1987 (1366 SH), p. 67.

6 International Law Association, *Committee on Formation of Customary General International Law*, 2000, p. 28.

Al Said, the Sultan of Oman, in 1974, emphasis was placed on the “*condemnation of any act contrary to the interests of the two states*,” including the influence of external forces in the region.<sup>1</sup> Furthermore, from Iran’s perspective, in its declaration accompanying UNCLOS 1982, “*certain of its provisions are merely product of quid pro quo which do not necessarily purport to codify the existing customs or established usage (practice) regarded as having an obligatory character... only states parties to the Law of the Sea Convention shall be entitled to benefit from the contractual rights created therein. The above considerations pertain specifically (but not exclusively) to the following... The right of Transit passage through straits used for international navigation*”.<sup>2</sup> Later, in 1994, in its Maritime Areas Act, Iran established a 12-nautical-mile territorial sea along its entire coastline and declared it subject to “innocent passage” (Articles 2 and 5). Iran’s 2019 proposal for a “Coalition for Hope” in the Persian Gulf also advanced the idea of progress and prosperity for “*all inhabitants of the Strait of Hormuz region*.”<sup>3</sup> Furthermore, in the case of the detention of the vessel *Stena Impero* in the Strait of Hormuz in 2019, Iran registered an official letter with the United Nations, emphasizing “innocent passage” in the Strait of Hormuz.<sup>4</sup> On 18 August 2023, Iran also submitted a letter to the United Nations in which it declared: “*The Islamic Republic of Iran reaffirms its commitment to the safety and security of innocent passage through the Strait of Hormuz and its territorial waters*.”<sup>5</sup> With the onset of Western threats to impose sanctions on Iranian oil, statements by the then-President of Iran and some commanders of the Islamic Revolutionary Guard Corps (IRGC) emerged, suggesting “closure or restricting passage through the Strait of Hormuz” if such threats were implemented.<sup>6</sup> Iran’s non-ratification of the 1958 Convention and UNCLOS 1982 means, domestically, that it has not agreed to the legal regimes of “non-suspendable innocent passage” and “transit passage,” respectively, in the Strait of Hormuz. It should not be forgotten that passage through the Strait of Hormuz on the Omani territorial sea side is subject to “transit passage,” as Oman signed UNCLOS in 1983 and ratified it in 1989.

The aforementioned practices may be considered as “persistent and open dissent” and may prevent the extension of the customary rule of “non-suspendable innocent passage” to the Strait of Hormuz. The difference between “innocent passage” and “non-suspendable innocent passage” lies in the possibility of closing the strait. However, from the perspective of the possibility of levying tolls and charges, there is no difference between these two types of passage.

## 2. The Legal Regime of Passage through the Strait of Hormuz after 28 February 2026

Following the U.S. President’s announcement of a cessation of hostilities, based on Iran’s acceptance of negotiations under 10 conditions, and Iran’s Supreme National Security

1 Reprinted from Oman News, 1/74, March 1974, Embassy of the Sultanate of Oman, Washington, D.C.

2 Iran’s declaration upon signing UNCLOS on 10 December 1982.

3 <https://news.un.org/en/story/2019/09/1047472>

4 UN Doc. S/2019/593

5 Letter dated 17 August 2023 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General, S/2023/609

6 <https://www.alef.ir/news/3970913085.html>, <https://www.mosalasonline.com/fa/tiny/news-12626>

Council's statement agreeing to the cessation of hostilities on 8 April 2026, the U.S.-Zionist war against Iran entered a new phase. Iran's Supreme National Security Council declared the new status of the strait as "*managed passage through the Strait of Hormuz in coordination with Iran's armed forces.*" The Supreme Leader of the Islamic Revolution, in a message on the occasion of National Persian Gulf Day, spoke of "*legal rules and the implementation of new management of the Strait of Hormuz.*" The IRGC Navy also announced it would ensure passage through the Strait of Hormuz with "*new protocols in place.*"<sup>1</sup> A legislative bill presented in the Iranian Parliament, titled the "*Strategic Action Plan for Ensuring Security and Sustainable Development of the Strait of Hormuz and the Persian Gulf,*" has introduced new restrictions on traffic and transit through the Strait of Hormuz. Overall, the State practice and statements of Iranian officials have revolved around four axes: prohibited passage, passage upon payment of tolls, passage upon payment of charges, and passage upon payment of compensation. These are examined below.

## 2.1. Prohibited Passage in Iran's Territorial Sea in the Strait of Hormuz: A Defendable Practice

Under the legal regime of "innocent passage," there exists a right to suspend the passage of all vessels in a part of the territorial sea, temporarily, in a non-discriminatory manner, and with prior notification. However, the main issue is the possibility of preventing some or all vessels in the 'entire territorial sea'. It will be explained below that Iran can stop the passage of military vessels and vessels engaged in non-innocent passage throughout the entire territorial sea of the Strait of Hormuz.

Given the ambiguity of UNCLOS 1982 regarding the passage of military vessels under the innocent passage regime, this interpretative matter was left to state practice. The practice of some states indicates that they do not recognize the innocent passage of such vessels.<sup>2</sup> At least 25 states<sup>3</sup> condition the passage of military vessels through their territorial sea on prior authorization, and at least 10 states<sup>4</sup> condition it on prior notification.<sup>5</sup> Article 9 of Iran's Maritime Areas Act of 1993, under the heading of exceptions to innocent passage, conditions the passage of *warships, submarines, vessels with nuclear propulsion, any other submersible vessels, as well as vessels and submarines carrying nuclear, hazardous, or environmentally harmful substances, and foreign research vessels*, on prior approval by the competent authorities of the Islamic Republic of Iran. Iran's law extends beyond military vessels to include submarines, even if they are non-military. It is evident that, at a minimum, the passage of unauthorized military vessels through Iran's territorial sea in the Strait of Hormuz can be prohibited.

1 <https://www.presstv.ir/Detail/2026/05/06/768144/Iran-IRGC-Navy-statement-resumed-passage-Hormuz-Strait>

2 Jamshid Momtaz & Amir Hossein Ranjbarian, "The Dual Interpretation of the Law of the Sea Convention: Iran's Maritime Areas Act and the US Protest", *Journal of the Faculty of Law and Political Science*, Vol. 35, No. 1064, 1996 (1375 SH), p. 99.

3 Algeria, Argentina, Antigua and Barbuda, Bangladesh, Barbados, Congo, Grenada, Iran, Maldives, Oman, Pakistan, Philippines, Romania, St. Vincent and the Grenadines, Seychelles, Somalia, Sri Lanka, Sudan, Syria, United Arab Emirates, Vietnam, and Yemen.

4 Croatia, Egypt, Finland, Guinea, India, South Korea, Libya, Malta, Mauritania, and the former Yugoslavia.

5 William K. Agyebeng, "Theory in Search of Practice: The Right of Innocent Passage in the Territorial Sea", *Cornell International Law Journal*, Vol. 39, Issue 2, 2006, p. 397.

Furthermore, Article 5 of Iran's Maritime Areas Act states: "The passage of foreign vessels [...] through the territorial sea of Iran is subject to the principle of innocent passage as long as it does not disturb the *public order, peace, or security* of the country. Passage must be *continuous and expeditious*, except in cases of emergency." According to Articles 18 and 19 of UNCLOS, vessels enjoy the right of innocent passage only if they comply with the conditions of innocent passage;<sup>1</sup> otherwise, they do not enjoy this right. These conditions include continuous and expeditious passage and also include not prejudicing the peace, good order, or security of the coastal State; examples of which are set forth in Article 19. Therefore, in such cases, the vessel does not enjoy the right of innocent passage, and Iran may take measures to prevent such vessels from passing.

Another situation in which the passage of a vessel may be prohibited is that of hostile vessels. Currently, the Islamic Republic of Iran has designated the United States as a "hostile state."<sup>2</sup> and the United States Central Command (CENTCOM) as a "terrorist" entity.<sup>3</sup> Given that Iran can already prevent the entry of any unauthorized military vessel, this latter designation may be of limited practical significance.

## 2.2. Passage with Tolls in Iran's Territorial Sea in the Strait of Hormuz: A Contentious Practice

Traditionally, "transit dues or tolls" through international straits were not prohibited. This approach is found in Grotius's 'On the Law of War and Peace', in Danish practice concerning the "Sound Dues," and in a statement by the British Foreign Secretary in 1857 as a principle of international law.<sup>4</sup> Beyond the historical practice of collecting tolls in the Suez, Panama, Kiel, and Corinth Canals, the 1910 "Boundary Waters Treaty" between the United States and the United Kingdom also refers to the possibility of collecting tolls for passage through canals.

However, this traditional rule has faced opposition, particularly concerning transit tolls on air and maritime routes. Article 26(1) of UNCLOS 1982 prohibits the levying of tolls for passage, even for innocent passage.

For levying tolls on vessels passing through the Strait of Hormuz, Iran may potentially invoke the doctrine of "fundamental change of circumstances" (*rebus sic stantibus*).<sup>5</sup> This doctrine is applied in a very restrictive manner, but there are no legal objective obstacles to invoking it. Iran could argue that the imposition of oil sanctions against it and the forced war upon it have nullified the basis of its consent to the general customary international law rule of "innocent passage," and that Iran wishes to revert to the *principle of sovereignty* over

1 Noting to UNCLOS provisions is based on the likely possibility of their transformation to customary law.

2 Intensifying Punishment for Espionage and Collaboration with the Zionist Regime Act, adopted 2025 (1404 SH).

3 Reciprocal Action Act in Response to the Designation of the Islamic Revolutionary Guard Corps (IRGC) as a 'Terrorist Organization' by the United States of America, adopted 2019 (1398 SH).

4 See The Earl of Clarendon, UK Parliament, Sound Dues Bill, Volume 146, debated on Thursday 2 July 1857.

5 ILC, Draft Articles on the Law of Treaties with commentaries, 1966, p. 256.

its territorial sea.<sup>1</sup> Of course, such a claim might reciprocally restrict the access of Iranian vessels to the territorial seas of other states<sup>2</sup>.

Additionally, it is not inconceivable that Iran could invoke the emergence of a “*particular regional custom*” specific to the Strait of Hormuz, thereby derogating from general customary international law. In effect, if Iran’s practice of collecting tolls during this period is met with no protest from flag states, and such absence of protest implies their acceptance of Iran’s right, it could give rise to this possibility.

Furthermore, Article V of the General Agreement on Tariffs and Trade (GATT) prohibits the imposition of any transit tolls on “traffic in transit.” Traffic in transit refers to any goods or vessels that do not engage in activities such as warehousing or trans-shipment while passing through the territory of a State. However, Iran is not a full member of the WTO, and it is conceivable that transit tolls could be imposed on “cargoes” carried aboard vessels transiting the Strait of Hormuz.

The Strait of Hormuz hosts important submarine cables that cover a portion of data transmission in the Persian Gulf states, as well as Africa and East Asia. As stipulated in Article 21 and Article 79, paragraph 4, of the 1982 Convention, the coastal State has the authority to impose conditions on cables on the continental shelf, including the requirement to obtain authorizations. India’s practice of imposing indirect costs on cables<sup>3</sup> and the judgment of the Supreme Court of Spain regarding the possibility of charging fees for cables in areas under its sovereignty<sup>4</sup> support this view. Therefore, it appears that Iran has the right to impose tolls or charges on these submarine cables.

Therefore, while the collection of tolls on *goods aboard* vessels and *submarine cables* transiting the Strait of Hormuz is not prohibited, the collection of tolls on the vessels themselves is contingent upon Iran’s invocation of a fundamental change of circumstances or the emergence of a new regional custom.

### 2.3. Passage with Charges in Iran’s Territorial Sea in the Strait of Hormuz: An Established Practice

In straits governed by the *transit passage* regime for States Parties to UNCLOS 1982—such as the Dover Strait (UK/France), the Malacca Strait (Malaysia/Indonesia/Singapore), the Torres Strait (Australia/Papua New Guinea), the Gibraltar Strait (Spain/Morocco), the Bering Strait (Russia/USA), the Sound Strait (Denmark/Sweden), the Bab-el-Mandeb Strait (Yemen/Djibouti side), and the Strait of Hormuz (Omani side)—it is possible to levy charges for “*specific services*” in accordance with Article 127(1) of UNCLOS 1982. In straits

1 Kazem Gharibabadi, the Deputy Foreign Minister, has also invoked this doctrine regarding the new situation in the Strait of Hormuz. <https://dolat.ir/detail/481842>

2 It should be mentioned that in *VTB v. Luiza Shamilyevna Bikmaeva* (A39-5782/2015) the court of first instance accepted the sanctions as constituting a fundamental change of circumstances, but the higher court (the Judicial Collegium for Economic Disputes of the Supreme Court of the Russian Federation) reversed that decision, ruling that the change was foreseeable for the bank and therefore could not be invoked as a fundamental change of circumstances.

3 Anjali Sugadev, ‘India’s Critical Position in the Global Submarine Cable Network: an Analysis of Indian Law and Practice on Cable Repairs’, *Indian Journal of International Law*, Vol. 56, No. 2, 2016, p. 176.

4 Tribunal Supremo de España. (2008, June 16). Sentencia núm. 1341/2004 (CANDALTA submarine cable case). <https://vlex.es/vid/dominio-maritimo-plataforma-continental-42923317>

subject to *non-suspendable innocent passage* for States Parties to UNCLOS 1982—such as the Messina Strait (Italy) and the Tiran Strait (Egypt/Saudi Arabia)—it is also possible to levy non-discriminatory charges for “*specific services*” under Article 26(2) of UNCLOS 1982. Consequently, in other straits—i.e., those subject to non-suspendable innocent passage or innocent passage in non-States Parties to UNCLOS 1982, such as the Bab-el-Mandeb Strait (Eritrean side) and the Strait of Hormuz (Iranian side)—there is no obstacle to levying charges for “*all services*”.

It should be noted that the scope of these services cannot be limited to purely optional services, because services related to security, referred to in Article 42(1) of UNCLOS 1982, and environmental services, explicitly mentioned in Article 233 of UNCLOS 1982, may be quasi-compulsory upon a vessel's entry.

Therefore, the Islamic Republic of Iran may levy non-discriminatory charges for all maritime services on vessels transiting the Strait of Hormuz. These services may be based on obligations arising from treaties to which Iran is a party, such as the Convention on the International Regulations for Preventing Collisions at Sea (COLREG), 1972, the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973, and the International Convention for the Safety of Life at Sea (SOLAS), 1974. Proposals to establish an “Iran-Oman Insurance Fund” could offer an attractive alternative for vessels currently using European maritime insurance. Exemptions for non-dollar transactions or transactions denominated in Iranian Rial could also provide significant incentives for vessels.

#### **2.4. Passage with Compensation in Iran's Territorial Sea in the Strait of Hormuz: A Forward-Looking Practice**

During the U.S.-Zionist war against Iran, the Deputy for Communications and Information of the Office of the President of Iran announced: “*The Strait of Hormuz will only be reopened when a portion of transit revenues is used to compensate for all losses incurred due to the imposed war.*”<sup>1</sup> Furthermore, some members of the Iranian Parliament have proposed a bill to regulate the collection of compensation from states participating in the war before allowing their vessels to pass.<sup>2</sup> The damages caused by the war—compensation for which has been one of Iran's ten conditions for ending the war negotiations—have been estimated and announced at approximately 270 billion US dollars.<sup>3</sup> War damages could constitute part of the compensation that Iran claims from debtor states. In this scenario, unlike transit tolls, which are collected from all vessels, compensation would only be collected from vessels linked to such debtor states. Therefore, it is necessary to examine whether it is possible for Iran to levy “countervailing duties” in the Strait of Hormuz as a form of compensation.

Beyond the new legal regime under UNCLOS, examining trends in customary law, particularly regarding non-member States, could be worthwhile. Under the Convention between France and Germany on the Octroi of Navigation of the Rhine (1804), Germany agreed to impose taxes on France as compensation for the annexation of the western part

1 mehrnews.com/x3bKZ9

2 khabaronline.ir/xpQ63

3 <https://donya-e-eqtesad.com/fa/tiny/news-4264038>

of the Rhine River to France. Additionally, after World War I, under the Treaty of Versailles (1919), Germany was required to cede certain German commercial vessels to the Allied Powers.<sup>1</sup> However, these practices were based on agreement.

It appears that, pending a comprehensive agreement, Iran could, under the doctrine of “*countermeasures*,” collect compensation based on a specified list established by its competent authorities.<sup>2</sup> The explanation is that as long as an internationally wrongful act—such as unlawful sanctions—is being committed, the injured state may, under Article 22 of the International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts (2001), take countermeasures, including suspending some of its own obligations, such as complying with the rules of innocent passage. It should be noted that breaching the “*obligation to full reparation*” is itself a separate internationally wrongful act that could justify countermeasures until the debts are recovered.<sup>3</sup> It should also be noted that if appropriate judicial decisions are issued by Iranian courts or foreign courts, it may be possible to collect compensation outside the framework of countermeasures, specifically within the framework of “*enforcement of judicial decisions*.” In that case, obstacles related to the jurisdictional immunity of foreign states would need to be addressed.

Furthermore, Iran’s invocation of the doctrine of “*necessity*” under Article 25 of the ILC Articles for collecting compensation is also worthy of consideration. Where the protection of an essential interest of a state against a grave and imminent peril is at stake, and it does not seriously impair the essential interests of other states or the international community as a whole, necessity may preclude the wrongfulness of otherwise internationally wrongful acts. Previously, Russia (to protect fur seals) and the United Kingdom (to protect the marine environment) have taken enforcement actions against foreign vessels on the “high seas.” However, whether the doctrine of “*necessity*” can preclude the wrongfulness of a breach of the “*comparative sovereignty*” that a coastal state enjoys in the territorial sea of another state remains doubtful.

In any event, it appears that, by invoking countermeasures and, with somewhat more doubt, by invoking necessity, Iran should determine the criteria for linking vessels to such states, including nationality, place of registration, ownership, origin, destination of the vessel and the type of goods on board.

## **2.5. Enforcement Measures in the Territorial Sea of Oman in the Strait of Hormuz: An Exceptional Practice**

According to Article 43 of UNCLOS 1982, “*States bordering straits shall cooperate by agreement in the establishment and maintenance of navigational aids, and in the prevention and reduction of pollution from shipping.*” Accordingly, such cooperation, with Oman’s collaboration, could facilitate the establishment of a new legal regime based on levying

<sup>1</sup> Treaty of Versailles 1919, Annex III, Paragraph 1

<sup>2</sup> Currently, certain judicial decisions have been issued against the United States under the Act on the Jurisdiction of the Islamic Republic of Iran’s Judiciary to Hear Civil Claims against Foreign States, adopted 2011 (1390 SH)\*. For example, in the General Soleimani case, the United States was ordered to pay approximately 50 billion dollars in compensation.

<sup>3</sup> See Rosemary Rayfuse, “Countermeasures and High Seas Fisheries Enforcement”, *Netherlands International Law Review*, Vol. 51, No. 1, 2004, pp. 41-76

charges for services. However, these services would necessarily be either optional services or services provided without charge; otherwise, they would conflict with Oman's obligations regarding transit passage through the Strait. Oman, as a State Party to UNCLOS alongside over 170 other states, cannot bilaterally restrict the rights of those states under the Convention.

One possible solution lies in Article 35 of UNCLOS 1982, under which Iran could conclude an international convention with interested or powerful states to apply a special legal regime in the Strait of Hormuz. However, the text of Article 35 suggests it refers to conventions concluded prior to UNCLOS or those established over a long period (*long-standing international conventions*). An alternative is to argue that since Iran is not a party to UNCLOS 1982, the customary rule regarding special legal regimes in straits, as articulated by the International Court of Justice, can derive from *any* convention.

Invoking extraterritorial enforcement jurisdiction to levy tolls, charges for compulsory services, or compensation in the territorial sea of Oman is a matter of serious concern. Article 301 of UNCLOS 1982 explicitly states that the threat or use of force against the territorial integrity of another state is prohibited. Some scholars distinguish between the "use of force" prohibited by the UN Charter and "law enforcement" through police actions.<sup>1</sup> Although the concept of "comparative sovereignty" in the territorial sea might raise the question of the legality of such actions in another state's territorial sea, state practice has generally limited enforcement actions to areas "beyond the territorial sea" of a foreign state.<sup>2</sup>

Assuming that Oman has stepped out of neutrality and is designated as a "hostile state" or perhaps a "co-hostile state", or if Oman's territorial sea is defined as a "war zone," it could provide a basis for Iran's continuous presence in Oman's territorial sea.<sup>3</sup> "Necessity" could also, though perhaps hardly, be invoked as a circumstance precluding the international wrongfulness of Iran's actions in collecting service charges, goods/cables tolls, and compensation in Omani waters.

## Conclusion

It appears that applying the innocent passage regime in Iran's territorial sea in the Strait of Hormuz has substantial legal justifications. The consequence of this legal regime is the possibility of temporary suspension of passage in a part of the territorial sea. However, the prohibition on passage throughout the entire territorial sea applies to unauthorized military vessels, especially those linked to a hostile state, and to vessels engaged in non-innocent passage. The levying of transit tolls on goods aboard vessels and submarine cables is defensible, and the levying of tolls on the vessels themselves may be arguable by invoking the doctrine of fundamental change of circumstances. The possible emergence of a particular regional custom could also justify the continued collection of transit tolls. The non-discriminatory levying of

1 Patricia Jimenez Kwast, "Maritime Law Enforcement and the Use of Force: Reflections on the Categorisation of Forcible Action at Sea in the Light of the Guyana/Suriname Award", *Journal of Conflict & Security Law*, Vol. 13, No. 1, 2008, p. 60.

2 See Anthony Colangelo, "Constitutional Limits on Extraterritorial Jurisdiction: Terrorism and The Intersection of National and International Law", *Harvard International Law Journal*, Vol. 48, No. 1, 2007.

3 Although the United States does not have a military base in Oman, the US-Oman military cooperation and the US use of Oman's territorial waters make it plausible that Oman could abandon its neutrality.

charges for all maritime services like ensuring security, and services based on treaties such as COLREG, MARPOL, and SOLAS, is permissible. The collection of compensation may also be possible by invoking countermeasures and, potentially, necessity. Any Iranian action aimed at generating such economic revenues from the Strait of Hormuz on the Omani side would require additional legal justifications, such as designating the area as a war zone or designating Oman as a hostile state or co-belligerent. Invoking necessity could also assist Iran in this regard.

The conclusion of bilateral treaties or a multilateral convention under Article 35 of UNCLOS 1982, or based on customary international law, could be pursued as secondary solutions. Furthermore, Iran may pursue legal diplomacy to designate the Strait of Hormuz as a “Particularly Sensitive Sea Area (PSSA)” and to register a new Traffic Separation Scheme (TSS) on its side. Proposals such as establishing an Insurance Fund and a special ‘Hormuz Currency’ could provide sufficient incentives for both littoral states of the Strait of Hormuz – and other neighboring states- to participate in this “new management of the Strait of Hormuz”.

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