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IRAN'S STRAIT OF HORMUZ GAMBIT: LEGAL FAULT LINES IN A MARITIME FLASHPOINT

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14 June 2025

As the Middle East inches closer to a full-blown regional conflict following Iran's "True Promise-3" missile campaign and Israeli retaliatory strikes, the Strait of Hormuz, a 39-kilometer wide maritime chokepoint is once again the center of international concern. Iranian officials have reportedly mulled and, more recently, alluded to the actual closure of the Strait, a move with massive geopolitical and legal ramifications. The closure or even threat thereof demands a close legal review under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the Law of Armed Conflict, and customary international law, as well as relevant international jurisprudence.

I. Strategic and Legal Centrality of the Strait of Hormuz

The Strait of Hormuz connects the Persian Gulf with the Gulf of Oman and the Arabian Sea. Around 20% of global oil passes through this vital corridor approximately 17-20 million barrels per day. As a recognized international strait under UNCLOS, it ensures transit between two exclusive economic zones (EEZs) and the high seas. Any attempt to obstruct this strait thus transcends regional politics; it strikes at the heart of global maritime commerce and international legal order.

II. Legal Framework under UNCLOS

1. Articles 37-44: The Transit Passage Regime

The Strait of Hormuz falls within the scope of Part III of UNCLOS, which establishes the transit passage regime. Under Article 38(2), "transit passage means the exercise... of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit...." Importantly, Article 44 mandates that states bordering straits "shall not hamper transit passage."

Although Iran ratified UNCLOS with reservations, particularly about warships' passage, it remains bound by the Convention's customary norms, particularly for straits used for international navigation.

2. Article 19 and the "Innocent Passage" Argument

Iran may argue that its actions do not block transit passage but suspend innocent passage which is governed by Articles 17-19 of UNCLOS. However, this regime applies only to territorial seas, not to international straits. Even where innocent passage is



allowed, Article 25(3) limits suspensions to temporary and nondiscriminatory measures in times of national emergency or threats to security. Iran's selective targeting of Israeli or allied shipping, if any, would likely constitute an abuse of rights under Article 300.

III. Customary International Law and Precedent

1. The Corfu Channel Case (UK v. Albania, ICJ 1949)

This foundational ICJ case affirmed that states may not obstruct international straits used for navigation. The Court held: "The right of passage through straits used for international navigation has always been subject to the overriding principle of freedom of navigation."

This principle was held applicable even during heightened tensions, reinforcing the inviolability of maritime access in peace and conflict alike.

2. U.S. Freedom of Navigation Operations (FONOPs)

The United States, though not a party to UNCLOS, relies on customary law to justify its FONOPs worldwide, including through the Strait of Hormuz. These operations contest excessive maritime claims, asserting universal access through international straits. In past crises, such as the 1980s "Tanker War", the U.S. reflagged Kuwaiti tankers and protected their transit, reinforcing the doctrine of navigational freedom even amidst conflict.

IV. Law of Armed Conflict (LOAC) and Naval Blockades

Should Iran characterize its closure as a military blockade, the analysis shifts to the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994) which is a restatement of customary international law.

1. Conditions for Lawful Naval Blockade

Under Section II of the San Remo Manual, a blockade is lawful only if:

- a. It is declared and notified (Art. 93);
- b. It is effective (Art. 95);
- c. It is non-discriminatory and does not bar access to neutral states (Art. 98);
- d. It allows humanitarian access (Art. 102).



2. Proportionality and Civilian Impact

Article 102 of the Manual and Article 51(5)(b) of Additional Protocol I to the Geneva Conventions prohibit attacks (or blockades) expected to cause excessive collateral damage relative to anticipated military advantage.

Iran's blanket closure of the Strait would likely fail these tests, especially given the global dependence on the Strait for oil and humanitarian supplies. If enforced without meeting these criteria, the blockade would be both illegal and potentially constitute a breach of international humanitarian law (IHL).

V. Relevant Jurisprudence and State Practice

1. Nicaragua v. United States (ICJ, 1986)

The ICJ held the U.S. liable for violating Nicaragua's sovereignty by mining ports without a formal declaration of war. This precedent underscores that un-notified naval actions, especially affecting third-party shipping, violate both sovereign rights and the prohibition on use of force under Article 2(4) of the UN Charter.

2. The Gulf of Sidra Incident (1981 & 1989)

The U.S. Navy's challenge to Libya's excessive maritime claims in the Gulf of Sidra reasserted the principle of navigational freedom. The U.S. maintained that even armed conflict or regional control cannot override international rights of passage—a stance with broad NATO and allied backing.

VI. Collective Self-Defense and the UN Charter

A closure of the Strait affecting multiple nations may be viewed not merely as a breach of treaty obligations but as an act of aggression. Under Article 51 of the UN Charter, states retain the right to individual or collective self-defense if an armed attack occurs. The blockade of a strategic strait, even short of kinetic warfare, may qualify as such an act—especially if it disrupts essential civilian supplies or constitutes economic warfare.

Additionally, Chapter VII of the UN Charter empowers the Security Council to authorize military action to restore international peace. Historical precedents include:

- a. **The Korean War (1950)** - UNSC authorization of collective defense;
- b. **Operation Desert Storm (1991)** - Council action to remove Iraqi forces from Kuwait and restore oil flow.

A multilateral naval response to reopen the Strait, therefore, could be legally justified under current frameworks if Iran proceeds with closure.



VII. Conclusion

The legal position surrounding Iran's purported or actual closure of the Strait of Hormuz is unequivocal under UNCLOS, customary international law, Law of Armed Conflict, and ICJ jurisprudence. Whether the move is framed as a defensive posture, an act of war, or political signaling, it clearly violates multiple tiers of international law:

- a. **UNCLOS Articles 38-44 & 300:** Prohibit impeding transit passage or abusing rights;
- b. **Customary law and ICJ cases:** Assert right of passage through international straits;
- c. **San Remo Manual & LOAC:** Limit conditions under which maritime blockades may be lawfully imposed;
- d. **UN Charter:** Allows collective response to unlawful closures impacting international peace and security.

Iran's actions, if implemented, risk international isolation, legal sanctions, and potentially military confrontation. It is a high-stakes gambit—legally indefensible and diplomatically perilous.

In a global maritime order founded on rule of law and cooperation, the Strait of Hormuz belongs to the world—not to the whims of any single state.

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