



Legal Analysis of the Conflict between the "Right of Transit Passage" and the "Sovereignty of the Coastal State" in the Strait of Hormuz with Emphasis on the 1982 Convention

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ABSTRACT

The Strait of Hormuz, as one of the most strategically significant international straits, has consistently served as a focal point where the rules of the international law of the sea intersect with the national security imperatives of coastal States. With the adoption of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), a novel concept "transit passage" was introduced, conferring extensive freedoms upon military and merchant vessels while concomitantly restricting the regulatory authority of the coastal State. In contrast, the traditional regime of "innocent passage" provides for a more expansive supervisory authority for the coastal State (Iran). Employing a descriptive-analytical methodology and scrutinising Articles 19, 38, and 44 of the aforementioned Convention, this study examines the legal challenges at hand. The findings indicate that Iran, by invoking the doctrine of the "persistent objector" and emphasising the contractual character of the transit passage regime, underscores the implementation of innocent passage rules in order to safeguard its national security and protect the marine environment against non-member States.

Introduction

The Strait of Hormuz, as the world's vital energy artery, constitutes not merely a geographical passageway but also one of the most complex domains within the international law of the sea. It is not simply a waterway; rather, in the words of experts, it represents the lifeblood of the global economy. From the perspective of classical geopolitical theories, this region lies at the heart of the Rimland, such that Spykman contended that dominance over this area equates to global control. This waterway, which supplies one-fifth of the world's oil consumption, has also generated a ecocultural potential for Iran owing to its religious and cultural linkages namely, the presence of Shiite communities on both its northern and southern shores. A precise legal articulation concerning this strait is a vital instrument in countering Iran phobic projects and justifying the presence of extra-regional powers, which often perceive their own interests as being in conflict with a robust Iran.

The significance of this strait, attributable to the immense volume of global energy transiting through it, has engendered a conflict of interests between the riparian States (Iran and Oman) and flag States. The evolution of the legal regime of straits from "innocent passage" towards "transit passage" under the 1982 Convention has given rise to fundamental challenges concerning the extent of the coastal State's authority to supervise, suspend, or restrict the navigation of foreign vessels. The central question is: in the event of security threats, upon what legal foundations does Iran base its imposition of restrictions on the passage of vessels from non-member States? This article, by concentrating on the structural differences between Articles 19, 38, and 44, endeavours to analyse the equilibrium between the right of navigation and the imperatives of Iranian sovereignty.

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Innocent Passage

Examination of Article 19 of the 1982 Convention:

Innocent passage represents the oldest rule in the law of the sea. Under this rule, foreign vessels are entitled to traverse territorial waters provided that they do not disrupt public order or security. Article 19 explicitly stipulates: "Passage is innocent so long

as it is not prejudicial to the peace, good order or security of the coastal State." In this provision, the Convention enumerates a list of prohibited activities; for instance, any exercise with weapons, espionage, or severe environmental pollution renders passage non-innocent.



Figure 1. Geopolitical Position of the Strait of Hormuz and Maritime Traffic Separation Lanes

Sovereignty Capacities under Article 19:

A noteworthy aspect of this provision is its enumeration of activities of a military and intelligence-related nature. Paragraph (c) of the Article explicitly prohibits any collection of information to the detriment of the defence or security interests of the coastal State. This subparagraph appears to constitute the most efficacious legal instrument available to the Islamic Republic of Iran for monitoring the manoeuvres of foreign vessels. Should cyber activities, radio interception, or the deployment of unmanned aerial vehicles be identified, Iran is legally entitled, under Article 25, to take the requisite measures to prevent any passage deemed "non-innocent."

The Legal Regime of Transit Passage in Straits

Prior to the legal analysis, due attention must be given to the hydrographic characteristics of the Strait. Measuring approximately 158 kilometres in length and with a minimum width of 56 kilometres, the strait bears no resemblance to dead-end canals such as Suez or Panama. Its depth varies owing to

the steep gradient of the seabed, ranging from about 36 metres near Iran's Larak Island to 144 metres off the coast of Oman's Musandam Peninsula. This variable depth renders the passage of very large crude carriers contingent upon designated Traffic Separation Schemes (TSS), the monitoring of which, in accordance with the Convention, constitutes a right of the coastal State to ensure navigational safety.

Analysis of Article 38 and Navigational Freedoms:

In international straits utilized for global navigation, the regime of "transit passage" prevails. Under Article 38, all vessels and aircraft enjoy the right to utilize the strait for the purpose of expeditious and continuous transit. The fundamental distinction lies in the fact that, under "transit passage," the rights of overflight and submerged passage by submarines are recognized matters which were proscribed under the regime of innocent passage.



Figure 2. Legal Comparison between the Regimes of Innocent Passage and Transit Passage from the Perspective of Coastal State Sovereignty

Limitations on the Coastal State under Article 44:

Article 44 explicitly stipulates that coastal States shall not hamper transit passage and possess no right of "suspension" thereof. This constitutes a structural distinction from the regime of innocent passage; under the latter, the coastal State may, for essential security reasons, temporarily suspend passage in specified areas of its territorial waters. Under transit passage, however, this right is entirely withheld from the coastal State.

The Specific Status of Iran and the Doctrine of the Persistent Objector

Iran's Interpretative Declaration and Non-Ratification:

Notwithstanding its signature of the 1982 Convention, the Islamic Republic of Iran has yet to become a formal party through ratification. In its declaration at the time of signature, Iran explicitly asserted that it regards the "transit passage" regime solely as a conventional rule. Consequently, by invoking the doctrine of the "persistent objector," Iran maintains that non-member States such as the United States cannot avail themselves of the privileges of transit passage, and that the more restrictive rules of "innocent passage" remain

applicable as between them and Iran. Iran's legal insistence upon the innocent passage regime in effect constitutes a strategic defence against attempts by regional powers to circumvent the Strait of Hormuz through alternative pipeline routes. Moreover, the Strait represents a point of confluence between maritime strategy and terrestrial strategy; naval powers require control of this chokepoint to establish a presence adjacent to land, and Iran, by relying upon the persistent objector doctrine, seeks to prevent the transit passage rules from crystallizing into customary international law, thereby preserving its leverage in the balance of power.

Sovereignty over Superjacent Airspace and Unmanned Aerial Vehicles (UAVs):

Under the Chicago Convention, the superjacent airspace above territorial waters form an integral part of the absolute territorial airspace of the coastal State. Given that Iran does not recognize the transit passage regime which encompasses the right of overflight as applicable to non-member States, any reconnaissance drone flights originating from foreign vessels within the strait's limits are deemed a manifest violation of Iran's national sovereignty.



Figure 3. Surveillance of the Air and Maritime Space of the Strait of Hormuz by the Armed Forces of the Islamic Republic of Iran

Security and the Environment:

Relying upon Article 42, Iran may enact regulations concerning navigational safety and the prevention of pollution. This represents a form of "soft power" for Iran, enabling it to monitor the movement of large tankers without resorting to military engagement.

Environmental Surveillance

Environmental Surveillance as an Instrument of Sovereignty:

By invoking Article 42 of the Convention, Iran may establish rules for maritime safety and pollution prevention. Given the ecological sensitivity of the region, mandating the use of local pilots and strict compliance with Traffic Separation Schemes (TSS) constitutes an intelligent mechanism for managing maritime traffic flows and safeguarding national security, all under the guise of marine environmental protection.

Iran, by taking the lead in implementing a strategy of "indigenous security" under the rubric of environmental protection, can manifest its authority. This approach positions Iran as an "international custodian" with respect to the common interests of nations, thereby facilitating international acceptance of Iran's sovereign role in managing environmental and security crises for the global community.

Conclusion

The international law of the sea is progressively evolving towards greater navigational freedom; however, this development should not come at the expense of disregarding the security of coastal States. By invoking the contractual nature of the 1982 Convention and maintaining its adherence to customary rights, Iran has been able to establish a balance between international obligations and national sovereignty in the Strait of Hormuz. It is recommended that Iran strengthen its sovereign oversight over this strategic waterway by reinforcing legal diplomacy and updating domestic legislation in the field of marine pollution countermeasures.

Strategic and Policy Recommendations:

- ✓ Conclude indigenous security pacts with the littoral States of the Persian Gulf, particularly Oman, for the joint management of maritime traffic without the intervention of extra-regional forces.
- ✓ Gradually relocate oil export terminals to the Makran coast and the Sea of Oman such as Jask and Chabahar in order to reduce Iran's economic vulnerability in the event of legal or military confrontation within the Strait.
- ✓ Coordinate diplomatic and military apparatuses to consolidate Iran's image as a "guarantor of energy stability," while avoiding costly rhetoric that might diminish the strategic importance of the Strait.

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Authors' Contributions

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