

Understanding the Strait of Hormuz and International Law

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Part I: Law of the Sea in the Strait of Hormuz

Transit Passage



Innocent passage
Transit passage

Law of the Sea

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Iran's Position – Innocent Passage

- Iran and US are not party to UNCLOS
- Prior authorization for foreign warships
- UNCLOS transit passage is not customary international law
- US cannot invoke UNCLOS transit passage rights against Iran
- Only innocent passage applies in the Strait — which may be conditioned, regulated, and suspended

Law of the Sea

U.S. Position – Transit Passage

- Corfu Channel (ICJ 1949): customary right
- UNCLOS Part III codifies Corfu Channel; crystallized customary law
- Transit passage is non-suspendable
- Kraska Legal Vortex:
 - 12-mile territorial sea was negotiated with the regime of transit passage

Law of the Sea

State Practice – Transit Passage

- Iran and Oman co-proposed the 1968 Hormuz TSS to the IMO
- SOLAS Chapter V, Reg. 10: measures are mandatory
- Open throughout the Iran–Iraq War (1980–88)
- Open throughout the 1990–91 Gulf War
- Iran’s 1982 signature - not to defeat the object and purpose (Vienna Convention Art. 18)

Law of the Sea

Part II: Peacetime Sanctions Against Iran

Stateless Vessel Doctrine

Approach and Visit in UNCLOS

- U.S.: UNCLOS reflects customary international law
- Art. 92(1): exclusive flag state jurisdiction on high seas
- Art. 94: flag state must exercise effective jurisdiction and control
- Art. 110 exceptions: piracy, slave trade, **stateless vessels**

International Law

Stateless Vessels Doctrine 46 U.S.C. § 70502

- ... claim of registry that is denied by the nation;
 - fails on request to make a claim;
 - claim not supported by the documents or facts;
 - flying the flag of two or more nations
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- *Marino-Garcia* (11th Cir.): no US nexus required

Law of the Sea

Part III: Law of Armed Conflict in Strait of Hormuz

Operation Epic Fury — February 28, 2026

Self-defense against Iran under Article 51

U.S. Position

- Proxy attacks under effective-control
- Threshold-of-breakout calibrated to weaponization potential
- Unwilling or unable to prevent IRGC-Quds Force attacks
- Strikes are confined to nuclear sites and IRGC command nodes — distinction and proportionality

Belligerent Rights

- Visit and search beyond neutral waters
 - Determine the enemy character of the vessel or cargo
- Blockade – April 13, 2026
 - Attack if failure to comply
- Prize capture (+ peacetime sanctions and civil forfeiture)
 - Transfer title of merchant ships to US

Jus in Bello

Elements of an Agreement

- Iran uses "best efforts" for no-toll safe transit for 60 days.
- Traffic restarts immediately; full pre-war levels (demining/obstacles cleared) within 30 days.
- US Naval blockade ends in 30 days; proportional vessel restoration.

Law of the Sea

Elements of an Agreement

- Iran dialogue with Oman and other Gulf littoral states on future administration in accordance with international law
- **'Hormuz Declaration'** modeled on the 1989 Jackson Hole Agreement
- **Cooperative Mechanism** — analogous to the 2005 Malacca Strait architecture

Law of the Sea

Legal Vortex in the
Strait of Hormuz

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Thank you!

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https://papers.ssrn.com/sol3/papers.cfn?abstract_id_2472065