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Iran and Oman Before the Law of the Sea?

The emerging "temporary" agreement between Iran and Oman, under which each would be granted control over a shipping lane in the Strait of Hormuz adjacent to its land territory (with the Iranian lane controlling vessels entering the Strait and the Omani lane controlling the exit route), undermines two fundamental principles of the United Nations Convention on the Law of the Sea (UNCLOS): first, the right of innocent passage through the territorial waters of a coastal State; and second, the right of transit passage through straits without any impediment.



Image source: Canva

The importance of these rights can be seen from the language of the Convention in the relevant provisions: Article 17 provides that "ships of all States… enjoy the right of innocent passage through the territorial sea"; while Article 37 provides that "In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded."

To be clear, Iranian control over the entry lane and passage through the Strait of Hormuz would not merely mean payment for "navigation and logistics services" calculated at 5% or 10% of the value of the cargo carried on board the vessel. Rather, it would expose every vessel to the whims of the Iranian authorities, which would be able to continue delaying and detaining vessels as they see fit. Recent history shows that Iran has not hesitated to exploit its geographical position along the Strait and "seize" merchant vessels on one pretext or another.

For example, on 28 April 2015, amid Iranian threats and gunfire, the vessel *Maersk Tigris*, owned by Maersk, was seized while sailing through the Strait of Hormuz. The stated reason for the Iranian seizure was none other than the enforcement of an Iranian judgment requiring the vessel's owners to pay USD 163,000, an amount which was increased by the appellate court to no less than USD 3.6 million. The *Tigris* flew the flag of the Marshall Islands, which has a Compact of Free Association with the United States under which the latter bears responsibility for the country's security. In practice, there was no public manifestation of that American security responsibility, and the *Tigris* was released approximately ten days later, without it being known whether any price was paid, or by whom, as a condition of its release.

Similarly, in what appeared to be a retaliatory action following the detention in Gibraltar (by British commandos) of the vessel *Grace 1*, which was en route to the "Baniyas Refinery" facilities associated with a subsidiary of a unit of the then Syrian Ministry of Petroleum and Mineral Resources, entities which were and remain subject to the European sanctions regime imposed in 2012 and 2014 on bodies providing financial support to the Syrian regime in connection with the civil war (EU Council Regulation 36/2012), several hours after the Supreme Court of Gibraltar extended the detention of the *Grace 1* on 19 July 2019, naval forces of the Iranian

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Revolutionary Guards seized the modern British tanker *Stena Impero* (built in 2018) while it was sailing through the Strait of Hormuz.

According to the Iranians, one reason was that the vessel had engaged in "dangerous maneuvers" following a complaint by a fishing boat which claimed to have been involved in an accident with it; another was that the vessel had entered the Strait "from the north rather than the south." These were the official grounds for the seizure as reported by the FARS News Agency on 20 July 2019.

Approximately one month later, on 18 August 2019, the *Grace 1* was released from its maritime detention in Gibraltar, changed its name to *Adrain Daria*, and it is reasonable to assume that it transferred the prohibited fuel cargo it was carrying by way of an STS transfer, ultimately reaching the same Syrian hands. Several weeks later, the *Stena Impero* was released.

All of this took place alongside the maritime "cold war" that began during that period and was characterized by various explosions affecting vessels sailing in the region, including the Iranian tanker *SABITI* (11 October 2019), and earlier the *Happiness 1*, which suffered water ingress into its engines, forcing it to remain at a Saudi port; as well as the *Front Altair* (Marshall Islands) and *Kokuka Couragous* (Panama, Japanese-owned), which were also damaged by explosions during June 2019 near the Gulf of Oman. Incidents of this nature continued in subsequent years as well.

Recent history therefore demonstrates that if commercial vessels are required to "report" to the Iranian authorities upon entering the "northern lane" through the Strait of Hormuz, the Iranian authorities, like a child in a candy store, will be able to find any number of grounds for detaining them: defects in the vessel's records, "dangerous cargo," "failure to comply with safety requirements," complaints of one kind or another from fishing boats, or enforcement of various Iranian judgments.

There would never truly be a right of free passage through the Strait of Hormuz—not even in return for payment or ransom. Any vessel passing through the northern lane would be subject to Iranian discretion or seizure, and reasons to justify such measures would not be difficult to find.

It is important to remember that the Convention on the Law of the Sea is itself the instrument that grants coastal States rights over the natural resources within their exclusive economic zones—an area which, in the absence of a competing entitlement, extends up to 200 nautical miles from the coastline (Article 57)—including rights to explore for and exploit natural resources, whether living or non-living, in the waters and on and beneath the seabed.

Article 56 provides:

> *"In the exclusive economic zone the costal State has: (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the water superjacent to the seabed and f the seabed and its subsoil."*

Accordingly, there is certainly room to argue that a coastal State cannot engage in "cherry-picking" among the provisions of the Convention: selecting only those provisions that are convenient to it while violating the other obligations imposed by the Convention. Iran, like Oman, cannot simply enjoy the natural gas and other resources located in the exclusive economic zone off its coast while violating the rights of passage through the Strait of Hormuz that the Convention grants to other States.

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It is also important to remember that the Convention on the Law of the Sea does not merely establish rules as to what is permitted and prohibited; it also regulates the mechanisms for their enforcement.

Under Article 287, every State adopting the Convention is required to select at least one of the adjudicatory tribunals listed in the Convention—whether the International Tribunal for the Law of the Sea, the ICC (International Court of Justice), or international arbitral tribunals. In the absence of such a declaration, a State that is party to a dispute is deemed to be subject to the arbitration mechanism in any event.



International Criminal court (https://www.icc-cpi.int)

Under Article 288, each tribunal or arbitral institution established under the Convention has jurisdiction to hear any dispute concerning the interpretation or application of the Convention.

According to United Nations data (United Nations Treaty Collection), the Islamic Republic of Iran signed the Convention on 10 December 1982. In its notification to the United Nations regarding its signature, Iran stated, inter alia, alongside its commitment to resolve disputes in the manner contemplated by the Convention—by peaceful means—that at that stage it was not selecting any of the tribunals listed in the Convention.

Oman, for its part, signed the Convention on 1 July 1983 and ratified it in 1989. In its notification to the United Nations, Oman declared that it accepted both the jurisdiction of the International Tribunal for the Law of the Sea and that of the ICC for the settlement of any dispute arising with another State in connection with the interpretation or application of the Convention.

There is a view that because Iran has merely signed the Convention but has not ratified it, it is ostensibly "immune" from the jurisdiction of the dispute-resolution institutions established under the Convention, since the Convention does not apply to it.

However, returning again to the principle that "cherry-picking" should not be permitted, there is certainly room to argue that where Iran has availed itself of the benefits and resources granted under the Convention, it should be precluded from arguing that it is not subject to the authority of an arbitral tribunal considering the manner in which it is violating the Convention's provisions.

Accordingly, if and insofar as the emerging Iran–Oman agreement constitutes a violation of the aforementioned provisions of the Convention (Articles 17 and 37) concerning freedom of navigation through the Strait of Hormuz, the way would be open to bring Oman before the ICC or the International Tribunal for the Law of the Sea, and to bring Iran before the international arbitration mechanism established under the Convention, seeking the removal of all restrictions on navigation through the Strait.

It is true that the mechanism for selecting and establishing such tribunals is not free from international political considerations, which also underscores the importance of the identity of the petitioning State. Nevertheless, on their face, the clear rules and the apparent clear violation of those rules require that the legal avenue also be pursued.

International struggles are also conducted through diplomacy, and those concerned would do well to consider the possibility of employing legal diplomacy.

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