

Tanker Seizures and the Threat to the Global Economy from “Resurgent Imperialism”

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The British seizure of the Iranian tanker off Gibraltar was illegal. There is no doubt of that whatsoever. The Iranian response to the seizure of its tanker in the Strait of Gibraltar, by the seizure of a British Tanker in the Strait of Hormuz, was also illegal, though more understandable as a reaction. The implications for the global economy of the collapse of the crucial international law on passage through straits would be devastating.

It may seem improbable that the UK and or France would ever seek to close the Dover Strait, but in the current crazed climate it is no longer quite impossible to imagine the UK seeking to mess up access to Rotterdam and Hamburg. It is still easier to imagine them seeking to close the Dover Strait against the Russian Navy. Yet the essential freedom of navigation through the Kerch strait, respected by Russia which controls it, is necessary to the survival of Ukraine as a country. For Turkey to close the Bosphorus would be catastrophic and is a historically recurring possibility. Malaysia and Indonesia would cause severe dislocation to Australia and China by disrupting the strait of Malacca and the Suharto government certainly viewed that as an advantage from which it should have the right to seek to benefit, and was a continued nuisance in UN Law of the Sea discussions. These are just a few examples. The US Navy frequently sails through the Taiwan Strait to assert the right of passage through straits.

Keeping the Strait of Hormuz open is perhaps the most crucial of all to the world economy, but I hope that the above examples are sufficient to convince you that the right of passage through straits, irrespective of territorial waters, is an absolutely essential pillar of international maritime law and international order. The Strait of Gibraltar is vital and Britain has absolutely no right to close it to Iran or Syria. If the obligation on coastal states to keep maritime straits open were lost, it would lead to economic dislocation and even armed conflict worldwide.

Part III of the [UN Convention on the Law of the Sea](#) relates entirely to passage through straits.

PART III

STRAITS USED FOR INTERNATIONAL NAVIGATION

SECTION 1. GENERAL PROVISIONS

Article 34

Legal status of waters forming straits used for international navigation

1. The regime of passage through straits used for international navigation established in this Part shall not in other respects affect the legal status of the waters forming such straits or the exercise by the States bordering the straits of their sovereignty or jurisdiction over such waters and their air space, bed and subsoil.

2. The sovereignty or jurisdiction of the States bordering the straits is exercised subject to this Part and to other rules of international law.

Article 35

Scope of this Part

Nothing in this Part affects:

- (a) any areas of internal waters within a strait, except where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such;
- (b) the legal status of the waters beyond the territorial seas of States bordering straits as exclusive economic zones or high seas; or
- (c) the legal regime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.

Article 36

High seas routes or routes through exclusive economic zones through straits used for international navigation

This Part does not apply to a strait used for international navigation if there exists through the strait a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics; in such routes, the other relevant Parts of this Convention, including the provisions regarding the freedoms of navigation and overflight, apply.

SECTION 2. TRANSIT PASSAGE

Article 37

Scope of this section

This section applies to straits which are used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.

Article 38
Right of transit passage

1. In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded; except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics.

2. Transit passage means the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.

Article 39
Duties of ships and aircraft during transit passage

1. Ships and aircraft, while exercising the right of transit passage, shall:
 - (a) proceed without delay through or over the strait;
 - (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
 - (c) refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by *force majeure* or by distress;
 - (d) comply with other relevant provisions of this Part.
2. Ships in transit passage shall:
 - (a) comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;
 - (b) comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.
3. Aircraft in transit passage shall:
 - (a) observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; state aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;
 - (b) at all times monitor the radio frequency assigned by the competent internationally designated air traffic control authority or the appropriate international distress radio frequency.

Article 40
Research and survey activities

During transit passage, foreign ships, including marine scientific research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the States bordering straits.

Article 41
Sea lanes and traffic separation schemes in straits
used for international navigation

1. In conformity with this Part, States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits where necessary to promote the safe passage of ships.

2. Such States may, when circumstances require, and after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by them.

3. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.

4. Before designating or substituting sea lanes or prescribing or substituting traffic separation schemes, States bordering straits shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the States bordering the straits, after which the States may designate, prescribe or substitute them.

5. In respect of a strait where sea lanes or traffic separation schemes through the waters of two or more States bordering the strait are being proposed, the States concerned shall cooperate in formulating proposals in consultation with the competent international organization.

6. States bordering straits shall clearly indicate all sea lanes and traffic separation schemes designated or prescribed by them on charts to which due publicity shall be given.

7. Ships in transit passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

Article 42
Laws and regulations of States bordering straits
relating to transit passage

1. Subject to the provisions of this section, States bordering straits may adopt laws and regulations relating to transit passage through straits, in respect of all or any of the following:

- (a) the safety of navigation and the regulation of maritime traffic, as provided in article 41;
- (b) the prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;
- (c) with respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;

- (d) the loading or unloading of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary laws and regulations of States bordering straits.
- 2. Such laws and regulations shall not discriminate in form or in fact among foreign ships or in their application have the practical effect of denying, hampering or impairing the right of transit passage as defined in this section.
- 3. States bordering straits shall give due publicity to all such laws and regulations.
- 4. Foreign ships exercising the right of transit passage shall comply with such laws and regulations.
- 5. The flag State of a ship or the State of registry of an aircraft entitled to sovereign immunity which acts in a manner contrary to such laws and regulations or other provisions of this Part shall bear international responsibility for any loss or damage which results to States bordering straits.

Article 43

Navigational and safety aids and other improvements and the prevention, reduction and control of pollution

User States and States bordering a strait should by agreement cooperate:

- (a) in the establishment and maintenance in a strait of necessary navigational and safety aids or other improvements in aid of international navigation; and
- (b) for the prevention, reduction and control of pollution from ships.

Article 44

Duties of States bordering straits

States bordering straits shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which they have knowledge. There shall be no suspension of transit passage.

SECTION 3. INNOCENT PASSAGE

Article 45

Innocent passage

- 1. The regime of innocent passage, in accordance with Part II, section 3, shall apply in straits used for international navigation:
 - (a) excluded from the application of the regime of transit passage under article 38, paragraph 1; or
 - (b) between a part of the high seas or an exclusive economic zone and the territorial sea of a foreign State.
- 2. There shall be no suspension of innocent passage through such straits.

Please note that the right of passage through straits is here absolute, in a UN Convention which is one of the base blocks of international law. It does not state that the right to transit through straits can be subject to any sanctions regime which the coastal state chooses to impose; indeed it is clearly worded to preclude such coastal state activity. Nor can it be overridden by any regional grouping of which the coastal state is a member.

Jeremy Hunt's [statement to parliament](#) that the Iranian tanker had "freely navigated into UK territorial waters" was irrelevant in law and he must have known that. The whole point of passage through straits is that it is by definition through territorial waters, but the coastal state is not permitted to interfere with navigation.

It is therefore irrelevant whether, as claimed by the government of the UK and their puppets in Gibraltar, the tanker was intending to breach EU sanctions by delivering oil to Syria. There is a [very strong argument](#) that the EU sanctions are being wilfully misinterpreted by the UK, but ultimately that makes no difference.

Even if the EU does have sanctions seeking to preclude an Iranian ship from delivering Venezuelan oil to Syria, the EU or its member states have absolutely no right to impede the passage of an Iranian ship through the Strait of Gibraltar in enforcement of those sanctions. Any more than Iran could declare sanctions against Saudi oil being delivered to Europe and close the Straits of Hormuz to such shipping, or Indonesia could declare sanctions on EU goods going to Australia and close the Malacca Strait, or Russia could declare sanctions on goods going to Ukraine and close the Strait of Kerch.

There are two circumstances in which the UK could intercept the Iranian ship in the Strait of Gibraltar legally. One would be in pursuance of a resolution by the UN Security Council under Chapter VII of the UN Charter. There is no such resolution in force. The second would be in the case of a war between the UK and Iran or Syria. No such state of war exists (and even then naval blockade must be limited by the humanitarian measures of the San Remo Convention).

What we are seeing from the UK is old fashioned Imperialism. The notion that Imperial powers can do what they want, and enforce their “sanctions” against Iran, Syria and Venezuela in defiance of international law, because they, the West, are a superior order of human being.

The hypocrisy of arresting the Iranian ship and then threatening war when Iran commits precisely the same illegal act in retaliation is absolutely sickening.

Finally, there will no doubt be the usual paid government trolls on social media linking to this article with claims that I am mad, a “conspiracy theorist”, alcoholic or pervert. It is therefore worth pointing out the following.

I was for three years the Head of the Maritime Section of the Foreign and Commonwealth Office. I was Alternate Head of the UK Delegation to the UN Preparatory Commission on the UN Convention on the Law of the Sea. I both negotiated, and drafted parts of, the Protocol that enabled the Convention to come into force. I was the Head of the FCO Section of the Embargo Surveillance Centre and responsible for giving real time political and legal clearance, 24 hours a day, for naval boarding operations in the Gulf to enforce a UN mandated embargo. There are very few people alive who combine both my practical experience and theoretical knowledge of precisely the subject here discussed.

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