

Three interpretive approaches toward Hormuz's new transit regime

What is Iran's legal approach on closure of Strait of Hormuz?



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OPINION EXCLUSIVE

The Strait of Hormuz, as one of the world's most vital waterways through which approximately one-fifth of global crude oil passes, constitutes not only a geostrategic point but also an arena for profound legal disputes within the international law of the sea. This strait, with its narrowest width measuring approximately 21 nautical miles and the overlapping territorial seas of Iran and Oman, is a clear exemplar of a "strait used for international navigation". The criteria for this definition derive from the judgment of the International Court of Justice in the Corfu Channel Case (ICJ, 1949), which emphasizes the connection between two parts of the high seas and actual use for navigation.

The issue, however, becomes more complex insofar as Iran signed the United Nations Convention on the Law of the Sea (UNCLOS) in December 1982 but has not yet ratified it in its Parliament. The United States has also remained outside this treaty and occupies a position similar to that of Iran.

Hence, proponents of a broad interpretation of the obligations of signatories to this Convention invoke Article 18 of the 1969 Vienna Convention on the Law of Treaties (VCLT), which creates a provisional obligation not to defeat the object and purpose of the treaty. In contrast, critics rely upon the sovereignty of the coastal State, the persistent objector rule, and the primacy of the law of naval warfare during an armed conflict. In this article, we focus on three approaches. The first approach concentrates on obligations arising from signature. The second approach challenges that position. The third approach, complementing the first two, presents a distinct argument that follows Iran's interpretation of this situation.

First approach; signature obligations

Proponents of this approach maintain that Iran's signature of UNCLOS, even without ratification, creates serious obligations that render the imposition of extensive restrictions on navigation through the Strait of Hormuz difficult. The principal pillar of this argument is Article 18 of the 1969 VCLT, which obligates States to refrain from acts that would defeat the object and purpose of the treaty, as long as they have not declared their intention not to become parties. Under this view, the object and purpose of UNCLOS are to guarantee safe and unimpeded freedom of navigation in the world's vital waterways. Part III of the Convention, in particular Article 38, provides for the transit passage regime: a continuous, expeditious, uninterrupted, and non-suspendable passage for all ships and aircraft,



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including military vessels and aircraft. Any closure or severe restriction, especially with respect to neutral merchant vessels, violates this object and purpose.

Prominent jurists, such as James Kraska, emphasize that the transit passage regime has crystallized as a rule of customary international law, and widespread State practice, including the United States' Freedom of Navigation Operations, confirms it. The Corfu Channel Case (UK v. Albania) laid the foundation for "innocent passage"; however, UNCLOS elevated that standard to the level of transit passage. Even non-party States, such as Iran, because of their signature, cannot fundamentally undermine this regime. Moreover, the customary parts of UNCLOS, for example, the 12-nautical-mile breadth of the territorial sea, bind Iran. This is despite the fact that Iran's Interpretative Declaration upon signature (1982) is deemed insufficient because the Article 18 obligation remains intact. This approach, within diplomatic forums and the Security Council, strengthens the legitimacy of counter-measures and considers a complete closure of the Strait as a violation of both the signature obligation and customary rules.

Second approach; coastal state sovereignty and its limitations

Critics, however, emphasize Iran's non-party status and interpret Article 18 of the 1969 VCLT restrictively. This Article creates only a negative and provisional obligation, and merely prohibits those acts which would fundamentally "defeat" the treaty's object and purpose — not just any regulation or restriction for security purposes. The Interna-

tional Court of Justice and judicial practice have applied this Article narrowly and do not construe it as imposing full compliance with every detail of the treaty.

A key strength of this approach is the persistent objector rule. According to the 2018 ILC Draft Conclusions on Identification of Customary International Law (Conclusion 15), if a State maintains an explicit, known, and persistent objection during the formative period of a rule, that rule is not opposable to that State. Iran declared its objection to transit passage during the negotiations of the Third United Nations Conference on the Law of the Sea, issued its Interpretative Declaration in 1982, characterizing UNCLOS as a "package deal" binding only upon parties to the treaty, and enacted its Act on the Marine Areas of the Islamic Republic of Iran (1993) solely based on innocent passage. These actions demonstrate a persistent objection.

Critics argue that transit passage is an innovation of UNCLOS, and there exists no universal consensus on its customary status, particularly with respect to non-party States. Iran is bound by the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone (to which it is a party), which provides for a non-suspendable regime of innocent passage through straits. Under this regime (Article 45 of UNCLOS, as a codification of customary law), the coastal State possesses a greater right to regulate for security purposes and may prevent non-innocent passage. During an armed conflict, the San Remo Manual on International Law Applicable to Armed Conflicts at Sea (1994) largely reflects customary approach. According to paragraphs 23 to 33, the belligerent coastal State controlling the strait, subject to respect for the rights of neutral States through the establishment of safe corridors, may impose restrictions on enemy vessels. Complete closure without a corridor for neutrals is unlawful; however, prevention of enemy vessels and regulation of a corridor for others are defensible. Furthermore, Article 51 of the United Nations Charter (the right of self-defense) provides an additional justification, if the action is proportional. This approach considers Iran's position lawful but disputed, and assesses a complete closure as weak, whereas it views regulation and selective measures as stronger.

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Third approach; what Iran pursues

The third approach, by accepting the strengths of the first approach (the limited obligation under Article 18 of the 1969 VCLT and the importance of the customary parts of UNCLOS) and remedying its weaknesses regarding the over-generalization of the signature obligation, presents a distinct argument. This approach combines the persistent objector rule with non-party status and creates for Iran a significant legal maneuvering space. This approach may be characterized as an intelligent synthesis of the two preceding approaches, which possesses greater legal legitimacy and is more consistent with practical realities.

In peacetime, the regime of non-suspendable innocent passage applies. Iran may impose security measures, such as inspection and regulation, without disrupting overall navigation. The 1982 Declaration and the 1993 Act demonstrate an intention not to fully accept transit passage, thereby minimizing the Article 18 obligation. Article 18 of the VCLT



The third approach emphasizes that the legal ambiguity resulting from non-ratification by both parties (Iran and the United States) is interpretable in favor of Iran. Because the United States is also a non-party, opponents cannot present a strong, treaty-based argument alone. The ILC's 2018 Draft Conclusions explicitly affirm the persistent objector rule and validate Iran's continuous objection from the negotiations through its declaration and subsequent national legislation. This does not entirely render transit passage applicable against Iran.



A woman walks past a giant billboard reading "The Strait of Hormuz remains closed" with an illustration depicting hostile American drones and warships trapped in a fishing net held by Iranian Navy soldiers, at Enqelab Square in Tehran, Iran, on April 12, 2026.

● ATTA KENARE/AFP

does not create a duty to comply with every detail of transit passage; rather, it merely prevents fundamental defeat of the object and purpose. The judgment in the Corfu Channel Case likewise confirms this regime and permits the coastal State to regulate for security, provided that there is no general suspension.

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On the other hand, during wartime, the law of naval warfare and the 1994 San Remo Manual take precedence. Iran, as the belligerent coastal State controlling the strait, possesses the right of selective denial to enemy vessels, subject to the establishment of safe corridors for neutral States. The San Remo Manual (in particular Rules 23 to 33) strikes this balance because although transit passage rights continue in peacetime, belligerent States may undertake hostile actions in waters under their own sovereignty while respecting neutral rights. The right of self-defense under Article 51 of the UN Charter and the principle of proportionality reinforce Iran's measures. In this regard, the Nicaragua v. United States case highlights the distinction between treaty obligations and customary rules, demonstrating that customary rules are binding separately, albeit with exceptions.

Thus, this approach views ambiguity not as a weakness but as a tool for legal maneuvering. Complete and permanent closure for all vessels without a safe corridor is weak and may violate neutral rights; however, selective regulation, inspection, and denial of passage to enemy vessels for security threats are entirely defensible. Scholars who emphasize the "package deal" nature of UNCLOS support this position. The third approach is consistent with judicial practice (for instance, the Corfu Channel Case distinguishing wartime from peacetime) and the principle of good faith in the 1969 VCLT, and generates greater legitimacy in international forums.

In conclusion, this approach is distinct because it does not exaggerate in an idealistic manner like the first approach, nor is it merely defensive like the second approach; rather, by combining the persistent objector rule, non-party status, the 1958 Geneva Convention (to which Iran is a party), the San Remo Manual, and the right of self-defense, it provides a coherent framework that both preserves Iran's sovereign rights and observes minimal customary obligations. It appears that Iran also follows this third interpretation.