

Can US acquire legal sovereignty over Strait of Hormuz?

Response of int'l law to a political claim



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OPINION EXCLUSIVE

On August 14, 2026, Donald Trump announced that he intended to declare the Strait of Hormuz “a territory of the United States”. Several days prior, he had also stated that the United States possessed “total control” over the Strait.

These statements emerged under circumstances wherein, following attacks initiated by the US against Iran on February 28, maritime traffic through Hormuz has severely diminished, and Tehran and Washington both make contradictory claims concerning control over the waterway. On August 18, Iran also declared that it would not reopen the Strait until the conditions it envisions for an agreement with the United States are implemented, while Washington says that the route is open and emphasizes the right to freedom of navigation. On paper, this might constitute yet another instance of harsh rhetoric uttered amidst hostilities. However, if we elevate this matter above the realm of everyday politics, we encounter one of the most fundamental questions of international law:

May a state, relying solely upon military power, operational control, and political declaration, establish its legal sovereignty over a territory or waterway belonging to another state? The short response, within the framework of contemporary international law, is “no”. Nevertheless, this answer should not propel us toward another oversimplified conclusion. That the United States cannot possess sovereignty over Hormuz does not signify that it possesses no rights whatsoever in this waterway. The United States may advocate for international legal entitlements pertaining to freedom of navigation and passage through the Strait and, under specific circumstances, may even make legal arguments concerning the utilization of force for the defense of its forces and vessels. Consequently, the real issue is the tension between “the right of use and passage” and “the right of sovereignty,” and these two constructs, from the perspective of international law, are not synonymous.

Where is US sovereignty located?

Prior to addressing Hormuz itself, one must resolve a conceptual misunderstanding. The United States constitutes a global power, yet global power does not equate to global sovereignty. US territorial sovereignty extends over the mainland of the United States, the states, the federal district, and dependent territories that, within the framework of domestic and international law, fall under US sovereignty. This sovereignty also extends into certain maritime zones; that is, the United States possesses maritime rights adjacent to its coasts and terri-



● THE CONVERSATION

tories under its sovereignty. However, no legal principle exists that permits a state to extend its sovereignty over a region by reason of economic might, military presence, number of warships, or the commercial significance of that region. Were such a principle to exist, the boundary between “power” and “right” would, in practice, be effaced. The Strait of Hormuz, geographically and legally, falls within the domain of the region’s coastal states. Iran lies to the north, and Oman to the south, and the maritime regime of these two states, in conjunction with the general rules of the law of the sea, shapes the legal status of the waterway. Agreements between Iran and Oman concerning maritime delimitation likewise constitute part of this legal framework. Hence, let our first proposition be entirely unambiguous:

The United States is not a coastal state in Hormuz or the Persian Gulf. This fact remains immutable regardless of any increase in the US naval presence. Control is not synonymous with sovereignty. At this juncture, one must distinguish among three concepts: sovereignty, jurisdiction, and control. Sovereignty is the legal right over territory or maritime domain. Jurisdiction is the legal authority to regulate conduct, enforce rules, or execute certain laws. Control is an operational reality; that is, who can, in practice, oversee traffic, security, or activities within a zone. These three concepts may, under certain conditions, coincide, but

they are not necessarily identical. The United States might, at a historical juncture, exercise military control over a portion of a region without that region becoming US territory. The US Navy might secure a maritime route without that route belonging to the United States. Furthermore, the United States might assume an exceptionally significant security role in a waterway without possessing any legal right to sovereignty over that waterway.

For this reason, the phrase “total control” of the Strait of Hormuz, even if demonstrable as a military reality, is legally far removed from the phrase “US sovereignty over the Strait of Hormuz”. In recent days, this very distinction has become manifest. Washington has spoken of control and naval blockade, while shipping data indicate that traffic through Hormuz has sharply declined, and Iran retains considerable capacity to influence transit routes. Therefore, even concerning the concept of “operational control,” the matter is more complex than the political claim of “total control.”

What does the Law of the Sea prescribe?

Here, one must enter the core of the legal debate. The United Nations Convention on the Law of the Sea, in Article 34, stipulates that the legal regime of straits used for international navigation does not extinguish, or even “affect,” the sovereignty or jurisdiction of coastal states. That is, even in an international strait, the coastal state does not forfeit its sovereignty.

However, this sovereignty is not absolute. For straits used for international navigation, the law of the sea has established a special regime, at the center

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of which lies the right of transit passage. Article 38 of the Convention provides that vessels and aircraft in straits subject to this regime enjoy the right of transit passage, and such passage shall not be impeded. Article 44 further clarifies the obligation of states bordering the straits, stipulating that transit passage shall not be impeded or suspended.

This legal framework results from a significant compromise within the law of the sea. Coastal states possess the right to extend their territorial sea to 12 nautical miles; but, in exchange, the international community recognizes the right of passage through international straits. The Strait of Hormuz constitutes a classic example of this situation. The width of Hormuz at its narrowest point is approximately 21 nautical miles, and thus the maritime waters of Iran and Oman intersect therein. Consequently, to assert that “Hormuz constitutes international waters belonging to no state” is also imprecise. The waterway contains sectors within the territorial sea of coastal states, but the international transit regime applies thereto. At this point, one of the most nuanced legal points emerges:

The sovereignty of Iran and Oman over their respective waters does not render the United States the owner of Hormuz; however, that same sovereignty does not grant Iran and Oman absolute discretion to abrogate international transit rights. This is precisely the equilibrium that international law has established.

What rights does the United States possess?

Here, legal analysis should not be transformed into advocacy for one party.

If Iran contends that, because Hormuz lies adjacent to its territory, every foreign vessel requires prior Tehran approval for passage, that claim confronts serious difficulty under the international transit regime. If the United States likewise contends that, because its navy can guarantee the route’s security, the United States therefore possesses sovereignty over Hormuz, that claim clashes with the foundational principles of territorial sovereignty.

Both propositions may be simultaneously erroneous. The US position regarding the right of transit passage through Hormuz likewise has an extensive history. The US Department of State has for years articulated its position on the basis that the

transit passage regime applies in Hormuz, and the United States considers this right to be part of international maritime law. This position is legally defensible. However, the critical point is that the right of passage does not generate sovereignty.

The United States may assert: A US vessel possesses the right of passage, but it cannot deduce from that statement the conclusion that therefore, the waters through which the US vessel passes belong to the United States. This reasoning constitutes a legally impermissible leap. Iran, conversely, cannot assert: Because these waters are under my sovereignty, I may suspend the right of international passage whenever I wish. If the transit passage regime applies to the strait, such a conclusion is likewise incompatible with the law of the sea. This is a matter pertaining to the membership status in the Convention. An important legal complexity exists that should not be overlooked. Neither the United States nor Iran is a party to the 1982 Convention on the Law of the Sea. The United States has not signed the Convention, and Iran has not ratified it. Nonetheless, the United States considers significant portions of the Convention’s rules, including those pertaining to transit passage, as reflective of customary international law. Conversely, Iran’s position regarding the scope of the transit passage right has been more restrictive and, at various points, has emphasized the regime of innocent passage and the right to exercise greater control over the transit of foreign vessels. Therefore, the debate is not solely about a treaty.

The more significant aspect is whether the rules governing international straits have crystallized into customary law. This is precisely where the US argument gains significance. Washington cannot simply state: “Iran is not a party to the Convention; therefore, no obligations concerning passage exist.” If a rule has attained the level of customary international law, non-membership in a treaty does not, per se, exempt a state from the customary rule. However, the same logic applies to the United States. The United States cannot assert: “I invoke freedom of navigation; therefore, I may impose my sovereignty over the waterway.” Customary international law establishes freedom of navigation; it does not establish US sovereignty.

Corfu Channel judgment; the most important historical precedent

To comprehend this matter, perhaps no judicial decision is as significant as the judgment of the International Court of Justice (ICJ) in the Corfu Channel case. In that case, the Court in 1949 confronted an issue that, in certain respects, closely resembles the current debate over Hormuz: a foreign state had entered waters under the sovereignty of another state to preserve navigational security and gather intelligence concerning mines. The United Kingdom made arguments regarding necessity and self-help.

✓ A large billboard displayed at Vanak Square in Tehran, Iran, on April 13, 2026, emphasizes Iran’s everlasting control over the Strait of Hormuz.

● REUTERS

