

## Economic Warfare at Sea: International Sanctions and Iran's Seizures of Merchant Ships

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**Abstract:** Since 2019, there has been a notable increase in the harassment of maritime traffic and the seizures of merchant ships in the Strait of Hormuz by Iran. Considering the broader geopolitical context and tit-for-tat moves by Iran, it is evident that these actions are linked to the conflict between Iran and the West aiming to counter the international efforts to implement sanctions against Iran that were reinstated in 2018. Such incidents highlight key legal issues about the legal regime of the Strait of Hormuz and the legitimacy of the actions by Iran. This article argues that Iran's actions in seizing merchant ships in the Strait of Hormuz cannot be justified as lawful countermeasures and are more likely unlawful retaliatory acts by the Iranian State. It is also argued that Iran had no jurisdictional basis to assert control over these vessels. Consequently, the seizures are deemed unlawful under both international law and Iranian law.

### 1. Introduction

In July 2019, the British-flagged oil tanker *Stena Impero* was seized in the Strait of Hormuz by Iranian forces, likely in retaliation for detaining the Iranian tanker *Grace 1* off Gibraltar on suspicion of breaching EU sanctions.<sup>1</sup> In May 2022, Iranian forces seized two Greek-flagged tanker vessels, *Delta Poseidon* and *Prudent Warrior*, again, likely in retaliation for the seizure of Iranian-flagged *Lana* by Greek authorities and confiscation of the Iranian oil onboard by the US in April that year.<sup>2</sup> In April 2023, the oil tanker *Advantage Sweet* was seized by Iran, reportedly in retaliation for the US seizing Iranian crude oil onboard the *Suez Rajan* bound for China.<sup>3</sup> Within a week, while following the eastbound lane of the Strait of Hormuz, the *Niovi*, a Panama-registered, Greek-owned oil tanker was seized by Iranian forces allegedly in relation

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<sup>1</sup> Tasnim News Agency, 'Iran Seizes British Oil Tanker for Violating Int'l Maritime Regulations' (19 July 2019) <https://www.tasnimnews.com/en/news/2019/07/19/2057610/iran-seizes-british-oil-tanker-for-violating-int-l-maritime-regulations>; BBC News, 'Oil Tanker Bound for Syria Detained in Gibraltar' (4 July 2019) <https://www.bbc.com/news/uk-48865030> (accessed 25 July 2024).

<sup>2</sup> IRNA, 'Iran's IRGC seizes two Greek oil tankers in Persian Gulf waters' (27 May 2022) <https://en.irna.ir/news/84769072/Iran-s-IRGC-seizes-two-Greek-oil-tankers-in-Persian-Gulf-waters> (accessed 25 July 2024).

<sup>3</sup> Financial Times, 'US seizure of oil vessel triggered Iran tanker capture' (28 April 2023) <https://www.ft.com/content/8781270a-bcdb-440f-9cfa-305cdc101cdf> (accessed 25 July 2024).

to a judicial proceeding.<sup>4</sup> Most recently, in January 2024, Iran’s Navy expressly stated that in response to the 2023 US seizure of an Iranian oil cargo aboard the *Suez Rajan*, they had seized the oil tanker *St Nikolas* in the Gulf of Oman.<sup>5</sup>

The examples provided above are a few instances of maritime harassment and seizures of vessels by Iran in the Strait of Hormuz and adjacent gulfs. These are significant, among other reasons, from the legal perspective, because they highlight issues about the legal regime of the Strait of Hormuz and the legitimacy of the actions by the Iranian State. This article aims to address several key questions in this relation: What is the legal regime governing the Strait of Hormuz, and what are the territorial limits of Iranian maritime jurisdiction within it? Considering the use of legal proceedings and involvement of the Iranian judicial authorities in some of the cases, what are the legal grounds and limits within which an Iranian court can arrest a ship? Can Iran invoke ‘countermeasure’ to justify the seizures of the vessels? Ultimately, the article will examine whether the seizures of the tankers are unlawful under either or both international law and Iranian law.

It is true that Iran’s actions in the Strait of Hormuz, including the aforementioned examples, vary depending on the situation and are not always consistent across all cases. However, it is generally observed that Iran utilises the Strait as a geopolitical tool, increasingly leveraging it as a means of exerting power in response to international pressures and threats.<sup>6</sup> When considering the seizures of vessels by Iranian authorities within the broader context of the political conflict between Iran and the West, it becomes evident that these actions are unlikely to be purely law enforcement measures. Instead, the seizures of foreign vessels in the past several years are likely to be calculated acts of retaliation in response to the confiscations of Iranian oil elsewhere in the world. Iran’s actions, which are aimed at undermining international efforts to enforce sanctions against it, have resulted in denying or undermining the right of innocent passage of foreign ships that are somehow connected to states that—in the eyes of Iranian authorities—are involved in the implementation of sanctions against Iran.

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<sup>4</sup> U.S. Naval Forces Central Command Public Affairs, ‘Second Merchant Vessel Seized within a Week by Iran’ (3 May 2023) <https://www.cusnc.navy.mil/Media/News/Display/Article/3382465/second-merchant-vessel-seized-within-a-week-by-iran> (accessed 25 July 2024).

<sup>5</sup> Press TV, ‘Iran’s Navy Seizes US Oil Tanker ‘in Retaliation’ with Court Order’ (11 January 2024) <https://www.presstv.ir/Detail/2024/01/11/718018/Iran-Navy-seizes-US-oil-tanker-in-Sea-of-Oman> (accessed 25 July 2024).

<sup>6</sup> Abdolrasool Divsallar, ‘Shifting Threats and Strategic Adjustment in Iran’s Foreign Policy: The case of Strait of Hormuz’ (2022) 49(5) British Journal of Middle Eastern Studies 873.

Iranian officials have frequently tried to justify these retaliatory actions as lawful countermeasures under international law against entities perceived as threats to Iran's interests. This is particularly raised about the US and its allies, who have been seizing Iranian oil shipments since 2019, following the withdrawal of the US under President Trump a year earlier from the Nuclear Deal. However, this article argues that Iran’s actions in seizing oil tankers in the Strait of Hormuz cannot be justified as lawful countermeasures and are more likely unlawful retaliatory acts by the Iranian State. It is also argued that Iran had no jurisdictional basis to assert control over these vessels. Consequently, the seizures are deemed unlawful under both international law and Iranian law.

Before we start, it must be clarified that the term ‘seizure’ which has been used throughout this report is meant to have the same technical meaning attributed to it by English Courts. This is summarised in *Bayview v. Mitsui* as the taking of forcible possession by a lawful authority acting as organs of the state (whether acting lawfully or otherwise), using any display or threat of overpowering force.<sup>7</sup> The position taken in this article is that the actions of Iranian forces in the cases considered in this article likely satisfy the above criteria. A further caveat is that this article focuses primarily on the seizures of merchant ships and oil tankers linked to the implementation of international sanctions. Therefore, it does not consider, although some of the legal analysis provided are applicable to, the recent Gaza-related incidents, for example the seizure of MCS *Aries*, a Portuguese-registered merchant vessel described by Iranian authorities as ‘linked to Israel’, in the Gulf of Oman in April 2024.<sup>8</sup> Similarly, the article does not discuss attacks in the Red Sea and Arabian Sea against merchant ships by the Iranian-backed Houthis, as they fall beyond its scope.<sup>9</sup>

The article begins by first explaining the context and various cases of the seizures of merchant ships by Iran as well as the legal regime of the strait of Hormuz. It will then address the legal elements that are crucial in deciding Iran’s potential violations of international law and its own national laws. These include the legal regime of the Strait of Hormuz which will be discussed

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<sup>7</sup> *Bayview Motors Ltd v Mitsui Marine and Fire Insurance Co Ltd* [2002] EWHC 21 (Comm)

<sup>8</sup> IRNA, ‘IRGC Seizes Israel-Linked Ship near Strait of Hormuz’ (13 April 2024) <https://en.irna.ir/news/85442951/IRGC-seizes-Israel-linked-ship-near-Strait-of-Hormuz> (accessed 25 July 2024).

<sup>9</sup> For more details, see, for example: BBC News, ‘Who are the Houthis and why are they attacking Red Sea ships?’ (15 March 2024) <https://www.bbc.com/news/world-middle-east-67614911> (accessed 25 July 2024).

in section 3, and Iran’s territorial limits and maritime jurisdiction in section 4. The next section examines whether Iran might lawfully invoke ‘countermeasure’ to justify the seizures of the vessels as permissible countermeasures under international law. The final section will also discuss the potential abuse of judicial proceedings, as well as the legal basis for such proceedings, particularly whether Iran can exercise its criminal jurisdiction over acts aboard and against vessels beyond its waters. The article concludes by arguing that Iran has no jurisdictional basis to assert control over the seized vessels, and the seizures are deemed unlawful under international law and Iranian law.

## **2. The context and precedents of the seizures**

On 14 July 2015, the UN Security Council’s five permanent members: China, France, Russia, the UK, and the US, plus Germany, the European Union, and Iran reached an agreement, called the Joint Comprehensive Plan of Action (JCPOA) also known as the Iran Nuclear Deal, to limit and ensure that Iran’s nuclear program of uranium enrichment was exclusively peaceful. It provided Iran with phased sanctions relief upon verification that it had implemented key nuclear commitments.<sup>10</sup> However, in May 2018, the United States under the then President Trump officially announced its withdrawal from the Iran Nuclear Deal and reimposed sanctions which specifically targeted critical sectors of Iran’s economy like its oil industry. The US government has made it clear that it ‘is targeting private and public sector entities around the world that engage in sanctionable conduct, including those involved in procuring petroleum and petroleum products from Iran to Syria, China, and elsewhere’.<sup>11</sup> Iran responded by accusing the US of violating the agreement and threatening to block the Strait of Hormuz.<sup>12</sup> In May 2020, when faced with possible US seizure of its tankers exporting gasoline to Venezuela, Iran signalled to the US that any threat to its tankers would be followed by a retaliatory response.<sup>13</sup>

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<sup>10</sup> Council of the EU, ‘Joint Comprehensive Plan of Action and restrictive measures’ <https://www.consilium.europa.eu/en/policies/sanctions-against-iran/jcpoa-restrictive-measures> (accessed 25 July 2024).

<sup>11</sup> Office of Foreign Asset Control, ‘OFAC Advisory to the Maritime Petroleum Shipping Community: Sanctions Risks Related to Shipping Petroleum and Petroleum Products from Iran’, 4 September 2019, at <https://ofac.treasury.gov/media/46006/download?inline> (accessed 25 July 2024).

<sup>12</sup> The Guardian, ‘Iran threatens to block Strait of Hormuz over US oil sanctions’, 5 July 2018, at: <https://www.theguardian.com/world/2018/jul/05/iran-retaliate-us-oil-threats-eu-visit-hassan-rouhani-trump> (accessed 25 July 2024).

<sup>13</sup> ISNA, ‘The Costs of US Maritime Piracy’, (18 May 2020), at <https://isna.ir/xdFSCb> (accessed 25 July 2024).

Throughout this period (2018-present) political relations between Iran and the West were strained and tensions have been high. As noted earlier, there have been numerous cases of harassment of maritime traffic and tit-for-tat moves by Iran in the Strait of Hormuz and the Persian Gulf and Gulf of Oman, mostly in response to seizure of Iranian oil cargoes—a retaliatory policy summed up by Iran’s hardliners as ‘a tanker for a tanker’.<sup>14</sup> For example, Iran seized the British-flagged *Stena Impero* on 19 July 2019, only a few days after an Iranian supertanker *Grace I* bound for Syria was impounded off the coast of Gibraltar on 4 July 2019.<sup>15</sup> At the point it was intercepted and boarded, the *Stena Impero* was within Omani territorial waters navigating through the entrance to the Strait. For two months, Iran held the ship and its crew, using them as leverage to spark negotiations over the Iran Nuclear Deal and force the UK to release the *Grace I*.<sup>16</sup>

The retaliatory motivation and nature of Iran’s actions in the seizure of the British *Stena Impero* were confirmed by various Iranian authorities. For example, Iran’s Secretary of the Expediency Council and former Chief of Revolutionary Guard Corps (IRGC), Mohsen Rezaee, used the seizure of the *Stena Impero* as an example of Iran’s ‘tit-for-tat’ response to ‘aggression’ throughout the summer of 2019.<sup>17</sup> In an interview with Iranian state TV, Rezaee said that Iran was ‘carrying out an active resistance’, ‘respond[ing] to the enemy’, ‘countering threats posed by the enemy’, and ‘striking back in case of any aggression’, such as the seizure of the Iranian oil tanker *Grace I*.<sup>18</sup>

Similarly, on 15 April 2022, the Russian-flagged *Lana*, formerly named *Pegas*, was detained by Greek authorities near the coast of Evia due to European Union sanctions. The US government then seized part of the cargo of Iranian crude oil and chartered a Greek-owned

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<sup>14</sup> Keyhan newspaper, ‘An oil tanker for an oil tanker: Iran fulfilled its promise’, 21 July 2019, available at: <https://www.pishkhan.com/news/151564> (accessed 25 July 2024).

<sup>15</sup> The Guardian, ‘Iran fury as Royal Marines seize tanker suspected of carrying oil to Syria’, (5 July 2019) <https://www.theguardian.com/world/2019/jul/04/royal-marines-gibraltar-tanker-oil-syria-eu-sanctions> (accessed 25 July 2024).

<sup>16</sup> Jennifer El-Fakir, ‘Retaliatory or Lawful?: How Iran’s Seizure of the *Stena Impero* in the Strait of Hormuz Violated International Law’ (2021) 59(2) Columbia Journal of Transnational Law 425.

<sup>17</sup> Tehran Times, ‘Iran to Adopt Tit-for-Tat in the Case of Aggression: Ex-IRGC Chief, 2 August 2019), at <https://www.tehrantimes.com/news/438839/Iran-to-adopt-tit-for-tat-in-case-of-aggression-ex-IRGC-chief> (accessed 25 July 2024).

<sup>18</sup> *Ibid.*

tanker to transport the oil back to the US.<sup>19</sup> Nour News, which is affiliated to an Iranian state security body, said on Twitter: ‘Following the seizure of an Iranian tanker by the Greek government and the transfer of its oil to the Americans, Iran has decided to take punitive action against Greece.’<sup>20</sup> Iran’s semi-official Tasnim news (which is tied to the IRGC and the intelligence services) later wrote: ‘There are 17 other Greek vessels in the Persian Gulf, which could be seized by the Revolutionary Guards if Greece continues its mischievousness.’<sup>21</sup> The seizure of the *Lana* by Greek authorities seemed to prompt Tehran to respond by seizing two Greek tankers in the Persian Gulf. Within a matter of days, in two seemingly similar operations on 27 May 2022, the *Delta Poseidon* and *Prudent Warrior*, both under Greek flag, were forcibly boarded and seized by Iranian military forces.<sup>22</sup>

Similarly, in April 2023, an Iran-linked tanker *Suez Rajan* carrying Iran’s oil bound for China was seized in the South China Sea near Singapore by the US under a court order.<sup>23</sup> Shortly after the Marshall Islands-flagged *Suez Rajan* that had a Greek manager was seized and began to sail toward the US, Iran seized the *Advantage Sweet* in the Strait of Hormuz on 27 April 2023. The oil tanker entered the Gulf of Oman after moving through the Strait of Hormuz and was reportedly bound for Houston, Texas carrying Kuwaiti crude oil for US energy firm Chevron Corp.<sup>24</sup> In less than a week, on 3 May 2023, Iran seized a second tanker: the Panama-registered, Greek-owned *Niovi* which was seized while it was following the eastbound lane of the Straits of Hormuz.<sup>25</sup> The *Niovi*, which had left Dubai the previous day and was enroute to Fujairah, was boarded by armed and uniformed members of IRGC who diverted the vessel into Iranian waters. The position in which the vessel was seized was in international waters, and prior to being diverted by the IRGC the vessel did not transit through Iranian waters.<sup>26</sup>

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<sup>19</sup> Lloyd’s List, ‘US seizes Iranian crude from Russian tanker arrested in Greece’, 23 May 2022, at <https://www.lloydlist.com/LL1140913/US-seizes-Iranian-crude-from-Russian-tanker-arrested-in-Greece> (accessed 25 July 2024).

<sup>20</sup> Reuters, ‘Iran seizes two Greek tankers amid row over U.S oil grab’, (27 May 2022) <https://www.reuters.com/world/middle-east/iran-summons-swiss-envoy-over-us-seizure-iranian-oil-isna-2022-05-27/> (accessed 25 July 2024).

<sup>21</sup> *Ibid.*

<sup>22</sup> Lloyd’s List, ‘Two laden Greek tankers seized by Iranian forces’, 27 May 2022, at <https://lloydlist.com/LL1141049/Two-laden-Greek-tankers-seized-by-Iranian-forces> (accessed 25 July 2024).

<sup>23</sup> CNN, ‘US Seizes Nearly 1 Million Barrels of Iranian Oil Allegedly Bound for China’ (9 September 2023) <https://www.cnn.com/2023/09/09/politics/us-oil-iran-china-doj/index.html> accessed 26 July 2024.

<sup>24</sup> Aljazeera, ‘Why did Iran seize a US-bound oil tanker in the Gulf of Oman?’, 29 April 2023, at <https://www.aljazeera.com/news/2023/4/29/why-did-iran-seize-a-us-bound-oil-tanker-in-the-gulf-of-oman> (accessed 25 July 2024).

<sup>25</sup> U.S. Naval Forces Central Command Public Affairs, ‘Second Merchant Vessel Seized within a Week by Iran’ (3 May 2023) <https://www.cusnc.navy.mil/Media/News/Display/Article/3382465/second-merchant-vessel-seized-within-a-week-by-iran/> (accessed 25 July 2024).

<sup>26</sup> *Ibid.*

In July 2023, the order of the US federal prosecutor regarding the offloading of the Iranian oil cargo from the *Suez Rajan* prompted Iran to renew its threats. The Commander of IRGC Navy, reacted by warning that Iran would retaliate against the US and any oil company offloading Iranian oil from *Suez Rajan*.<sup>27</sup> He further stated ‘The era of hit and run is over. If they hit now, they will be hit in return, and they should be prepared for that.’<sup>28</sup> The words turned into action when on 5 July 2023, Iranian forces attempted to seize two oil tankers in separate incidents in the Gulf of Oman. In the first incident, an Iranian Navy vessel approached the TRF *Moss*, a Marshall Islands-flagged oil tanker, in international waters in the Gulf of Oman. A few hours later, Iranian forces attempted to seize a second oil tanker, the Greek-owned, US-operated oil tanker *Richmond Voyager*, which was enroute to Singapore from Saudi Arabia in international waters approximately 20 nautical miles off-shore from Muscat. Shots were fired at *Richmond Voyager* by an Iranian naval vessel, hitting the hull near the crew’s living quarters.<sup>29</sup> In both incidents, Iranian forces gave up only after US Navy forces intervened and prevented the oil tankers being seized.<sup>30</sup>

It is worth emphasising that in the cases of seizure of all the merchant ships and oil tankers by Iran, the armed personnel of Iran’s Navy or IRGC Navy who boarded the vessels were not on board with the consent or request of the owners, managers or crew of the vessels. They seized the vessels by use of force, often using similar methods. In majority of the cases, the Iranian forces, often with boats and helicopters, intercepted, surrounded, and boarded the vessel, switched off the tracking devices and all the means of communication, and diverted the ships into Iranian waters. In addition, the seizures of some oil tankers such as the *Stena Impero* and *Niovi* took place not in Iran’s waters, but in international waters or Oman’s territorial waters.

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<sup>27</sup> Reuters, ‘Iran Warns Against Unloading Iranian Oil from Seized Tanker’ (20 July 2023) <https://www.reuters.com/world/iran-warns-against-unloading-iranian-oil-seized-tanker-2023-07-20> (accessed 25 July 2024).

<sup>28</sup> Fars News, ‘Warning from Commander Tangsiri regarding the sale of stolen Iranian oil by the United States’, 20 July 2023, at <http://fna.ir/3dmnj2> (accessed 25 July 2024).

<sup>29</sup> U.S. Naval Forces Central Command Public Affairs, ‘U.S. Prevents Iran from Seizing Two Merchant Tankers in Gulf of Oman’ (5 July 2023) <https://www.navy.mil/Press-Office/News-Stories/Article/3448330/us-prevents-iran-from-seizing-two-merchant-tankers-in-gulf-of-oman/> (accessed 25 July 2024).

<sup>30</sup> CNN, ‘US Navy intervened to stop Iran seizing two tankers in Gulf of Oman, US defense official says’, 5 July 2023, at <https://edition.cnn.com/2023/07/05/politics/us-navy-iran-tankers-gulf-oman/index.html> (accessed 25 July 2024).

While Iranian authorities initially claimed that the *Stena Impero* was in Iranian waters at the time, they subsequently admitted that it was not.<sup>31</sup>

When the chronology of the seizures of the vessels by Iranian authorities is considered and the incidents are situated within the broader context of the political conflict between Iran and the West over the Iran Nuclear Deal and international sanctions imposed against Iran, it becomes clear that it is unlikely that the vessels were seized by Iran purely as a law enforcement matter. Rather, the seizures of the vessels appear to be calculated acts of retaliation for the seizures of Iranian oil off foreign ships. If there were any doubts about this, the recent incident in January 2024 definitively dispelled them, as Iranian forces seized the Marshall Islands-flagged oil tanker *St Nikolas* in the Gulf of Oman. According to an express statement by Iran’s Navy, this was ‘in response to the 2023 US seizure of an Iranian oil cargo aboard the *Suez Rajan*’.<sup>32</sup> There is now no doubt that such actions by Iran are intended to hamper the international efforts to implement sanctions against Iran. The practical effect of this might be denying or impairing the right of innocent passage or of discriminating in form or in fact against foreign ships or against ships carrying cargoes to, from, or on behalf of foreign States somehow involved in, or remotely linked to, implementation of international sanctions against Iranian oil.

### **3. The legal regime of the Strait of Hormuz**

The Strait of Hormuz is an important chokepoint for the export of oil and gas and serves as the gateway between the Persian Gulf and, on one side, and on the other, the Gulf of Oman, the Arabian Sea and the Indian Ocean. From the legal perspective, it is an international strait used for navigation that connects the exclusive economic zones (EEZs) of Iran, Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, and the United Arab Emirates in the Persian Gulf with the EEZs of

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<sup>31</sup> Letter dated 23 July 2019 from the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General and the President of the Security Council 1, U.N. Doc. S/2019/593 (July 23, 2019), at 1 (stating that the tanker ‘was entering the Strait of Hormuz in the traffic separation scheme lane,’ located in Omani waters, when it allegedly violated international law).

<sup>32</sup> Press TV, ‘Iran’s Navy Seizes US Oil Tanker ‘in Retaliation’ with Court Order’ (11 January 2024) <https://www.presstv.ir/Detail/2024/01/11/718018/Iran-Navy-seizes-US-oil-tanker-in-Sea-of-Oman> (accessed 25 July 2024).



Iran, Oman, and the United Arab Emirates in the Gulf of Oman.<sup>33</sup> There are two designated Traffic Separation Schemes (TSS) that were adopted in 1973 by a resolution of the Inter-Governmental Maritime Consultative Organization (IMCO, now IMO) and further modified in 1979.<sup>34</sup> The first scheme, which is entirely within Omani territorial waters, delineates the entrance and exit paths for ships traveling between the Sea of Oman and the Strait of Hormuz. The second scheme, which is entirely within Iranian territorial waters, delineates the entrance and exit paths for ships sailing between the Persian Gulf and the Strait of Hormuz. Under Articles 39(2)(a) and 41(7) of UNCLOS, non-state-owned foreign ships are obliged to follow the TSS during transit passage.

There are disagreements between Iran and other states over the international legal framework applicable to the Strait of Hormuz. While Oman has ratified UNCLOS in 1989, Iran has signed but not ratified UNCLOS and considers that parts of it including the regime of transit passage through straits is not part of customary international law. The only bilateral agreement regarding the Strait of Hormuz is between Iran and Oman related to ensuring the security of the Strait. When the first security pact between the two countries was agreed in 1972 it was a product of the political conditions of the 1970s in Oman and Iran’s intervention to suppress the insurgents in Dhofar, Oman. Through a confidential agreement dated 2 March 1974, both countries undertook to jointly guarantee of stability and security in the Strait of Hormuz and supervising the shipping through it.<sup>35</sup> Prior to that, in a joint statement issued on 6 February 1972,<sup>36</sup> the two countries had stressed their strong will to cooperate in all fields with a view to maintain the stability and security of the region and the freedom of shipping through the Strait of Hormuz. They declared that they deplored any exercise of influence in this region on the part of foreign powers and considered such efforts as running counter to their interests. The statement further reiterated that the two countries should cooperate and take joint action to prevent any sabotage and disorder that jeopardises their security.<sup>37</sup>

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<sup>33</sup> Alexander Lott and Shin Kawagishi, ‘The Legal Regime of the Strait of Hormuz and Attacks Against Oil Tankers: Law of the Sea and Law on the Use of Force Perspectives’ (2022) 53 *Ocean Development & International Law* 123, 128.

<sup>34</sup> Inter-Governmental Maritime Consultative Organization, Resolution A.284(VIII), “Routeing Systems,” adopted on 20 November 1973, ‘In the Strait of Hormuz’, 41, [https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.284\(8\).pdf](https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.284(8).pdf) (accessed 25 July 2024).

<sup>35</sup> Asghar Jafari-Valdani, ‘The Geopolitics of the Strait of Hormuz and the Iran-Oman Relations’, *Iranian Review of Foreign Affairs*, Vol. 2, No. 4, Winter 2012, 26.

<sup>36</sup> *Ibid.*

<sup>37</sup> Joint Irani-Omani Communiqué in *Middle East Journal*, Summer, 1974, Vol. 28, No. 3, 303-305.

In 2009, under completely different political circumstances surrounding the security pact signed almost five decades earlier, Iran and Oman signed a new Agreement on Security Cooperation and Coordination where they committed themselves to cooperate and strengthen security and regional stability.<sup>38</sup> While the agreement is vague and general, Iran has consistently relied on the security arrangement with Oman to justify its actions including patrolling, inspection, and seizure of ships by IRGC forces in the Persian Gulf and the Sea of Oman.

In the statutes and maritime laws of Iran, the legal status of the Strait of Hormuz as an international waterway is not defined, and the method by which Iran exercises judicial jurisdiction in its maritime areas has not been clearly specified. According to Iran’s position, in principle, the applicable legal regime in the Strait of Hormuz is innocent passage.<sup>39</sup> Under the regime of innocent passage, ships passing through the territorial sea of Iran must comply with its laws and regulations. Breaching the customs or laws of Iran as they relate to passage, mooring, pollution, safety, and others listed in the Marine Areas Act 1993, can render such passage ‘non-innocent’. Article 5 of the Marine Areas Act 1993 provides Iran’s condition of passage through its territorial waters.

*The passage of foreign vessels, except as provided for in Article 9, is subject to the principle of innocent passage so long as it is not prejudicial to good order, peace and security of the Islamic Republic of Iran. Passage, except as in cases of force majeure, shall be continuous and expeditious.*

Article 6 of the Marine Areas Act 1993 provides the requirement for Innocent Passage and provides a list of acts that fall within the sovereignty of Iran:

*Passage of foreign vessels, in cases when they are engaged in any of the following activities shall not be considered innocent and shall be subject to relevant civil and criminal laws and regulations:*

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<sup>38</sup> Cooperation & Security Coordination Agreement Between the Sultanate of Oman and the Islamic Republic of Iran (13 December 2009) <https://data.qanoon.om/treaties/2009-0075AEN.pdf> (accessed 25 July 2024).

<sup>39</sup> Letter dated 23 July 2019 from the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General and the President of the Security Council 1, U.N Doc. S/2019/593 (July 23, 2019), at 1.

- a) *Any threat or use of force against the sovereignty, territorial integrity or political independence of the Islamic Republic of Iran, or in any other manner in violation of the principles of international law;*
- b) *Any exercise or practice with weapons of any kind;*
- c) *Any act aimed at collecting information prejudicial to national security, defence or economic interests of the Islamic Republic of Iran;*
- d) *Any act of propaganda aimed at affecting the national security, defence or economic interests of the Islamic Republic of Iran;*
- e) *The launching, landing or transferring on board of any aircraft or helicopter, or any military devices or personnel to other vessel or to the coast;*
- f) *The loading or unloading of any commodity, currency or person contrary to the laws and regulations of the Islamic Republic of Iran;*
- g) *Any act of pollution of the marine environment contrary to the rules and regulations of the Islamic Republic of Iran;*
- h) *Any act of fishing or exploitation of the marine resources;*
- i) *The carrying out of any scientific research and cartographic and seismic surveys or sampling activities;*
- j) *Interfering with any systems of communication or any other facilities or installations of the Islamic Republic of Iran;*
- k) *Any other activity not having a direct bearing on passage.*

Article 9 of the Act prescribes the exceptions to Innocent Passage making passage of warships, submarines, nuclear-powered ships and vessels carrying nuclear or dangerous substances through Iran’s territorial sea subject to the prior authorisation of Iranian authorities. Nevertheless, under customary international law, as stated in the ICJ’s judgment in the *Corfu Channel* case, the permit-based passage regime cannot be applicable with respect to warships that cross the Iranian territorial sea in the Strait of Hormuz solely for transiting the strait.<sup>40</sup>

The Strait of Hormuz is an international strait that, many would argue, meets the criteria of Article 37 of UNCLOS for the regime of transit passage.<sup>41</sup> Under the regime of transit passage, ships exercising their right of transit passage must proceed through the Strait without delay,

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<sup>40</sup> *Corfu Channel Case (United Kingdom v. Albania)*, Judgment, ICJ Reports 1949, 28; Lott and Kawagishi, ‘The Legal Regime of the Strait of Hormuz and Attacks Against Oil Tankers’ (n 33) 131.

<sup>41</sup> For example, *ibid*, 128.

refrain from threat or use of force against the sovereignty of coastal states or in violation of the UN Charter, and ‘comply with generally accepted international regulations, procedures and practices for safety at sea.’ They must also comply with traffic separation schemes or sea lanes designated by the coastal states and with any national laws of the coastal states promulgated in accordance with the UNCLOS.

However, as Iran is not party to the UNCLOS, for the right of transit passage as established in the UNCLOS to govern the Strait of Hormuz and to bind Iran, the right of transit passage must have achieved customary international law status. Iran denies that this is the case. In its signing statement, Iran called the establishment of some of the provisions in the UNCLOS, including the regime of transit passage as ‘merely product of *quid pro quo* which do not necessarily purport to codify the existing customs or established usage (practice) regarded as having an obligatory character’.<sup>42</sup>

Over the past four decades, Iran has consistently insisted on its position regarding the passage regime of the Strait of Hormuz under Iranian law.<sup>43</sup> However, apart from the dispute between Iran and the US over the transit passage rights of US naval ships, Iran’s position has not been problematic in practice in relation to ships sailing under other flags. In signing the UNCLOS, Iran included an ‘understanding’ concerning the right of transit passage and when it would obey that right:

*Therefore, it seems natural and in harmony with article 34 of the 1969 Vienna Convention on the Law of Treaties, that only state parties to the Law of the Sea Convention shall be entitled to benefit from the contractual rights created therein. The above considerations pertain specifically (but not exclusively) to the following: The right of Transit passage through straits used for international navigation (Part III, Section 2, article 38).*<sup>44</sup>

In making this statement, Iran made clear that it considers transit passage a contractual right only available to ships sailing under the flag of a state that is party to the UNCLOS. Considering

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<sup>42</sup> Iran’s declaration upon signing UNCLOS, available at : [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en#EndDec) (accessed 25 July 2024).

<sup>43</sup> James Kraska, *Legal Vortex in the Strait of Hormuz*, 54 VA. J. INT’L L. (2014) 323, at 327–28.

<sup>44</sup> Iran’s declaration upon signing UNCLOS (n 42).

Iran’s approach, which reserves the regime of transit passage only for parties to UNCLOS, prominent user states of the Strait of Hormuz such as EU member states and other states parties to UNCLOS can invoke the applicability of the right of transit passage in the Strait of Hormuz.

On the other side of the Strait, Oman has ratified the UNCLOS and recognised and agreed to the establishment of the right of transit passage in full. Therefore, both Iran (as a signatory state to UNCLOS) and Oman (as a state party to UNCLOS) need to respect the right of transit passage of states parties to UNCLOS in the Strait of Hormuz.<sup>45</sup> In addition, considering that the TSS in the entrance and exit of the Strait of Hormuz in the Gulf of Oman lies entirely within Omani territorial waters, there is no doubt that all ships navigating through the said TSS (whether or not under the flag of a state that is party to the UNCLOS) will enjoy the right of transit passage.

#### **4. Iran’s territorial limits and maritime jurisdiction**

The territorial waters of Iran in the Strait of Hormuz overlap with those of Oman at the centre of the Strait, located between the Omani island of Great Quoin and Iran’s island of Larak, where the strait is approximately 21 nautical miles wide. Iran and Oman demarcated their maritime boundary in the Strait of Hormuz in 1974 which remain effective to date.<sup>46</sup> The boundary line demarcated by 22 points agreed between Iran and Oman follows the median line and is equidistant from the coastal baselines of the two countries’ coasts. The same line corresponds to the outer limit of Iran’s maritime jurisdiction in the Strait of Hormuz, beyond which Iran cannot exercise its criminal and civil jurisdiction.<sup>47</sup>

The earliest law in Iran in relation to Iran’s territorial waters and contiguous zone was enacted by the parliament in 1934 and was later amended in 1959. In addition, in 1973, the Council of Ministers adopted the Decree number 67-250/2 regarding the baseline of Iran’s territorial

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<sup>45</sup> Lott and Kawagishi, ‘The Legal Regime of the Strait of Hormuz and Attacks Against Oil Tankers’ (n 33) 132.

<sup>46</sup> Agreement concerning delimitation of the continental shelf (25 July 1974) <https://treaties.un.org/doc/Publication/UNTS/Volume%20972/volume-972-I-14085-English.pdf> (accessed 25 July 2024).

<sup>47</sup> *Ibid.*

waters containing the coordinates of 25 basepoints (hereinafter the ‘1973 Decree’).<sup>48</sup> The main and most comprehensive legislation in Iran that is currently enforceable and sets out Iran’s maritime claims to its territorial sea is the ‘Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea’ adopted in 1993 (hereinafter the ‘Marine Areas Act 1993’).<sup>49</sup> Article 1 of the Marine Areas Act 1993 defines sovereignty of Iran at sea, and Article 2 continues Iran’s claim to a 12-mile territorial sea. The Act also sets out Iran’s maritime claims to its contiguous zone, exclusive economic zone (EEZ), continental shelf, as well as Iran’s jurisdictional claims within those areas. The US has objected to the Act on the ground that some of these claims do not comply with the requirements of international law as reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which is not ratified by Iran.<sup>50</sup>

Iran’s baseline in the Persian Gulf and the Sea of Oman has been determined according to Article 3 of the Marine Areas Act 1993 which confirms Iran’s baseline claim. It does not list the coordinates of the basepoints but incorporates them by reference to the earlier 1973 Decree.

*In the Persian Gulf and the Oman Sea, the baseline from which the breadth of the territorial sea is measured, is the same as determined in the Decree No. 67-250/2 (dated 22 July 1973) of the Council of Ministers (annexed to this Act); in other areas and islands, the low-water line along the coast constitutes the baseline.*

*Waters on the landward side of the baseline of the territorial sea, and waters between islands belonging to Iran, where the distance of such islands does not exceed 24 nautical miles, form part of the internal waters and are under the sovereignty of the Islamic Republic of Iran.*

The US has objected to the straight baseline method that Iran has used to increase the extent of its sea areas. The main objection is that some of the segments of this straight baseline system

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<sup>48</sup> Decree 67-250/2 (21 July 1973), English translation available at [https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/IRN\\_1973\\_Decree.pdf](https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/IRN_1973_Decree.pdf) (accessed 25 July 2024).

<sup>49</sup> Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea (20 April 1993), English translation available at: [https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IRN\\_1993\\_Act.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IRN_1993_Act.pdf) (accessed 25 July 2024)).

<sup>50</sup> Bureau of Oceans and International Environmental and Scientific Affairs, Limits in the Seas No. 114: Iran’s Maritime Claims, 16 March 1994; United States Note to the United Nations, USUN 3509/437 (11 January 1994).

are too long (majority between 25 and 114 miles long) and inappropriately drawn considering that the Iranian coastline is largely smooth, and not ‘deeply indented’ as mentioned in Article 7 of the 1982 Convention. Further, as per paragraph 2 of the above Article, the islands of Tunbs, Abu Musa, Forur, Bani Forur, and Sirri are all located within a 24-NM limit as measured from each other. Thus, they generate a continuous stretch of territorial sea that extends from the Iranian mainland coast deep into the Persian Gulf. The TSS in the Strait of Hormuz crosses this maritime area. Westbound traffic is directed to waters between, on the one hand, the Iranian mainland coast and, on the other hand, the islands of Greater and Lesser Tunbs and Forur. These three islands separate eastbound traffic from westbound traffic, while Bani Forur, Sirri, and Abu Musa islands are further away and reinforces Iran’s influence and potential control over international traffic in the Strait of Hormuz.

However, in general, despite the objections, Iran’s current system of straight baselines including its connection of islands in the Persian Gulf does not have great significance for the passage regime in the Strait of Hormuz. Article 4 of the Marine Areas Act 1993 provides the cases of overlapping territorial seas of Iran and its neighbours.

*Wherever the territorial sea of Iran overlaps the territorial seas of the states with opposite or adjacent coasts, the dividing line between the territorial seas of Iran and those states shall be, unless otherwise agreed between the two parties, the median line every point of which is equidistant from the nearest point on the baseline of both states.*

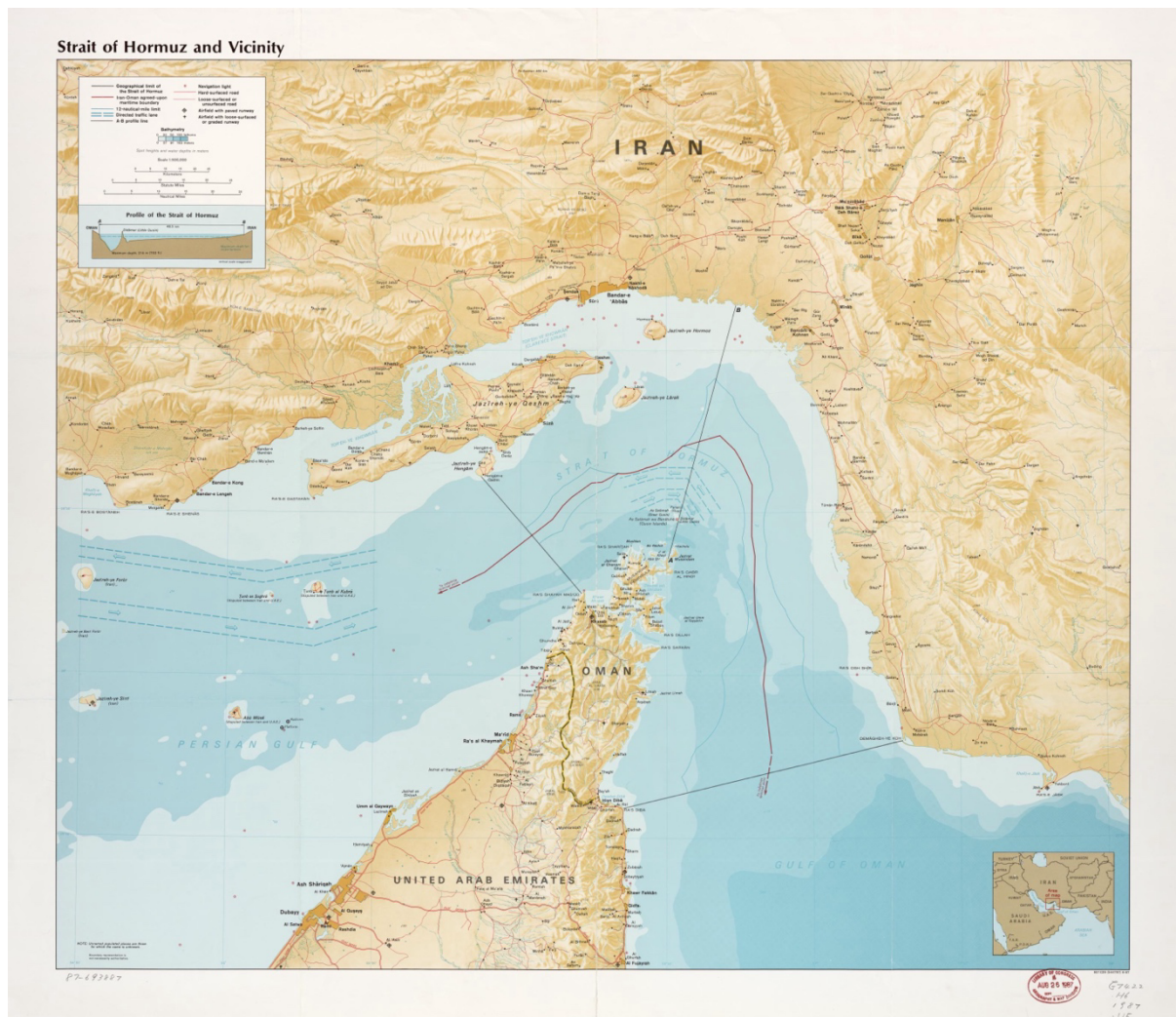
In practice, Iran has negotiated appropriate continental shelf boundaries with its neighbours including with Saudi Arabia, Qatar, Bahrain, United Arab Emirates (Dubai), and Oman. Iran and Oman demarcated their common maritime boundary by signing an agreement in July 1974,<sup>51</sup> which was supplemented in 2015 with a further agreement on the delimitation of the maritime boundaries in the Sea of Oman.<sup>52</sup> The boundary line agreed between Iran and Oman in the Strait of Hormuz follows the median line and is equidistant from the coastal baselines of

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<sup>51</sup> Agreement concerning Delimitation of the Continental Shelf between Iran and Oman (25 July 1974) <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IRN-OMN1974CS.PDF> (accessed 25 July 2024).

<sup>52</sup> Agreement on the delimitation of the maritime boundary in the Sea of Oman between the Islamic Republic of Iran and the Sultanate of Oman (26 May 2015) [https://treaties.un.org/Pages/showDetails.aspx?objid=080000028049ccbd&clang=\\_en](https://treaties.un.org/Pages/showDetails.aspx?objid=080000028049ccbd&clang=_en) (accessed 25 July 2024).

the two countries’ coasts. The territorial seas of the two countries have an overlap of about 3 nautical miles the breadth of which runs approximately for 16 nautical miles. Some nations including the United States do not accept the declarations of a 12-mile limit in the Strait of Hormuz made by Iran and Oman. The main concern is that the Iran-Oman agreement leaves no international waters in the Strait.



Map of the Strait of Hormuz and its vicinity<sup>53</sup>

In international criminal law, territorial jurisdiction is the most important and fundamental principle. It means that the government in whose territory a crime has occurred is competent to prosecute the criminal act and the perpetrator thereof. Thus, if a crime is committed on board a ship passing through Iran’s territorial sea, in specific circumstances prescribed under Iranian

<sup>53</sup> Source: Library of Congress, available at: <https://www.loc.gov/resource/g7422h.ct002935/> (accessed 25 July 2024).



law e.g. if the crime disturbs peace and public order in Iran, it falls within the jurisdiction of Iranian courts who may order arrest of the ship in order to conduct investigation. However, some countries such as Iran tend to extend the geographical scope of their criminal laws beyond their territorial jurisdiction. This means that if a crime is committed outside their territorial jurisdiction, they consider their laws applicable and their courts competent to address it.

Iran’s maritime jurisdiction, within which Iranian courts can order arrest of a ship, primarily, corresponding to Iran’s internal waters and territorial sea, also extends to its contiguous zone and exclusive economic zone. According to Article 13 of the Marine Areas Act 1993,

*The Government of the Islamic Republic of Iran may adopt measures necessary to prevent the infringement of laws and regulations in the contiguous zone, including security, customs, maritime, fiscal, immigration, sanitary and environmental laws and regulations and investigation and punishment of offenders.*

Iran’s claim that it has legal authority to prevent the violation of ‘laws and regulations’ in the contiguous zone has been a source of concern because of its expansive application and allowing Iranian authorities to restrict maritime navigation beyond their territorial waters. Iran’s claim to exercise the control necessary to prevent or punish violations in its contiguous zone is further expanded by adding categories of ‘security’, ‘maritime’, and ‘environmental’ which are not mentioned in Article 33(1) of the UNCLOS. The wording of Article 13 above is also less precise than Article 33(1) of the UNCLOS which is restricted only to infringement ‘committed within the territory or territorial sea’ of the coastal State:

*‘1. In a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to:*

- a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;*
- b) punish infringement of the above laws and regulations committed within its territory or territorial sea...’*

While it is in principle subject to the general jurisdiction of coastal states, the exercise of jurisdiction in contiguous zone is not the same as the territorial sea. The difference is that the

exercise of jurisdiction by coastal states in contiguous zone is narrower and more limited compared to their jurisdiction over internal or territorial sea. Any suggestion that extends the same criminal and civil jurisdiction over internal and territorial waters to Iran’s contiguous zone would obscure the fundamental differences between those areas and effectively extend the territorial sea beyond the 12 NM limit.

According to article 20 of the Marine Areas Act 1993, Iran also claims civil and criminal jurisdiction within its EEZ.

*‘The Islamic Republic of Iran shall exercise its criminal and civil jurisdiction against offenders of the laws and regulations in the exclusive economic zone and continental shelf and shall, as appropriate, investigate or detain them.’*

The limits of Iran’s EEZ are explained in Article 19 of the Marine Areas Act 1993.

*‘The limits of the exclusive economic zone and the continental shelf of the Islamic Republic of Iran, unless otherwise determined with bilateral agreements, shall be a line every point of which is equidistant from the nearest point on the baselines of two states.’*

However, and crucially, where there is an overlap between Iran’s maritime jurisdiction with a neighbouring country, Iran’s maritime jurisdiction is limited to the median line or the boundary agreed with the other coastal State. In the Strait of Hormuz, the outer limit of Iran’s maritime jurisdiction is the boundary demarcated in a 1974 agreement,<sup>54</sup> and Iranian courts cannot order arrest of a ship in Omani’s territorial waters. This means that the farthest point and the outer limit of Iran’s waters beyond which Iran will not be able ‘to exercise its criminal and civil jurisdiction’ is the same line demarcated by 22 points agreed between Iran and Oman.

It must also be noted that the 2009 security pact mentioned in the previous section, agreed between Iran and Oman for co-managing the Strait, cannot extend the maritime jurisdiction of Iranian courts, nor can Iran’s self-asserted role of patrolling and policing in Omani waters can

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<sup>54</sup> Agreement concerning Delimitation of the Continental Shelf between Iran and Oman (25 July 1974) <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/IRN-OMN1974CS.PDF> (accessed 25 July 2024).

change the above legal situation. That is, it will not be able to extend the area where Iran can ‘exercise its criminal and civil jurisdiction’ into Oman’s territorial waters. By signing the security agreement, Oman did not surrender its territorial sovereignty to Iran, and the operative actions of Iranian forces do not change the boundaries between the two countries or their legal jurisdictions.

In arresting and detaining the vessels in Omani waters, Iranian authorities have intended to extend their jurisdiction to foreign vessels wherever they sailed and apply Iranian law to alleged crimes aboard foreign vessels wherever they occurred. This would deny the protection of the foreign flag and extend Iranian maritime criminal jurisdiction into the territory of another country. This underscores the Iran’s disregard for the sovereignty of foreign nations and rights of foreign nationals. In accordance with Article 6 of the 2010 Iran-Oman Security Agreement, if Iranian authorities wanted to enforce a judicial order against a foreign vessel within Omani territory, they should have made a request to Omani authorities. Omani authorities would then either comply and implement the request (i.e. arrest and detain the vessel) or inform their Iranian counterparts through diplomatic channels why they would not be prepared to implement them (Art. 6(2)).

I have already demonstrated in previous sections that the seizures of oil tankers in the Strait of Hormuz has been a subject of political conflict between Iran and the West. I also explained in this section that Iran is unable to lawfully exercise its criminal and civil jurisdiction in Oman’s territorial waters. I will now turn to the invocation of countermeasures by Iran for justifying the seizures of oil tankers.

## **5. The seizures of the vessels as a countermeasure?**

While Iran has frequently presented the seizing of the vessels as a law enforcement measure, various Iranian commentators and officials have also invoked ‘countermeasure’ to justify the seizures of oil tankers as permissible under international law. For example, it is suggested by some Iranian legal experts that

*‘The aggrieved government (here Iran) in response to the wrongful act of the responsible government (here Greece) can invoke countermeasures to justify the seizure of two Greek ships.’<sup>55</sup>*

Such views align with the contentious opinions of some Western scholars, such as Daniel H. Joyner, who asserted within the context of previous tensions between Iran and the West that Iran’s seizure of privately-owned merchant ships sailing under the flags of countries like the United States in the Strait of Hormuz could be lawful:

*it may, in fact, be lawful to impose ‘counter-measures’ upon private vessels operating under the flag of states that it considers to have breached rules of international law with regard to it, in harm of its interests. Something like, for example, seizing vessels going through the Strait, could be a lawful counter-measure.<sup>56</sup>*

Some Iranian officials have also attempted to justify the seizures of foreign ships by Iran by raising points about the responsibility foreign actors for internationally wrongful acts and Iran’s right to respond to them. For example, in 2019 the spokesperson for the Guardian Council wrote:

*The principle of countermeasure in international law is a recognised measure used against the wrongful actions of a government. Iran’s proper response to counter the unjust economic war and the seizure of oil tankers is an example of this principle and is in line with international law.<sup>57</sup>*

Since the seizures of Iranian oil tankers in 2019, numerous senior Iranian officials have highlighted and even praised the seizures of foreign tankers by Iran as justified retaliations. For example, in relation to the seizure of Iranian *Grace 1* in Gibraltar with the direct involvement of Royal Marines, the Supreme Leader of Iran, accused Britain of maritime piracy, stating:

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<sup>55</sup> Mohammadreza Ziyadeh Bigdeli, ‘Reciprocal seizure of Iranian and Greek oil tankers from the perspective of international law’, 6 June 2022, at <https://www.ekhtebare.ir/?p=70029> (accessed 25 July 2024).

<sup>56</sup> Chatham House, Transcript of event: International Law, Nuclear Non-Proliferation and the Middle East (8 March 2012) at 27, <https://www.chathamhouse.org/sites/default/files/public/Meetings/Meeting%20Transcripts/080312dalton.pdf> (accessed 25 July 2024).

<sup>57</sup> Keyhan newspaper, ‘Tanker for Tanker: Iran fulfilled its promise’, 21 July 2019, available at: <https://www.pishkhan.com/news/151564> (accessed 25 July 2024).

‘Britain, with its malicious actions, engages in maritime piracy, seizes our ship, commits a crime, and gives it a legal appearance.’<sup>58</sup> He then warned that ‘the Islamic Republic and faithful elements of the system will not leave such malice unanswered. They will respond at the right time and in the right place.’<sup>59</sup>

More explicitly, the former chief of the IRGC, Mohsen Rezaee, expressly urged a seizure of a British oil tanker in retaliation for Iran’s *Grace I*: ‘If England does not release the Iranian oil tanker, it is the duty of the responsible authorities to take counter action and seize a British oil tanker.’<sup>60</sup> Following the seizure of *Stena Impero*, Rezaee specifically described it as a prime example of Iran’s ability to ‘strike back,’ ‘respond to the enemy,’ and to engage in ‘tit- for-tat’ responses to perceived acts of aggression.

On 22 July 2019, the representative of Iran’s Supreme Leader and editor of *Keyhan* (a newspaper closely tied to the IRGC and the intelligence services) wrote that ‘even if the British tanker had fully obeyed every international maritime law, word for word and without failure, the IRGC Navy would still have had to detain it.’<sup>61</sup> He further emphasised that ‘we can, and we must, say decisively that we detained the English tanker as reprisal and retaliation for England’s detention of the Iranian tanker, not because of maritime violations!’. He continued, ‘as long as England does not cease maritime piracy and has not released the Iranian oil tanker [...] we will continue to seize the mentioned oil tanker and any other vessel of that country’.<sup>62</sup> Similarly, an Iranian Parliament’s National Security Committee member stated:

*‘England’s navy detained the Iranian oil tanker which was carrying cargo that is hundred percent legal. Our diplomats made many efforts to release the tanker before Iran retaliated. But these efforts were in vain, so the sons of the IRGC Navy detained the English tanker yesterday in the Strait of Hormuz, at the request of Iran’s Ports and*

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<sup>58</sup> BBC Persian, ‘Ayatollah Khamenei regarding the seized oil tanker: ‘Iran will not leave Britain’s malicious actions unanswered’’, 16 July 2019, <https://www.bbc.com/persian/iran-49003896> (accessed 25 July 2024).

<sup>59</sup> *Ibid.*

<sup>60</sup> Keyhan newspaper, ‘Seizure of British tankers: The only way to combat the Queen’s pirates’, 6 July 2019, available at: <https://www.pishkhan.com/news/149641> (accessed 25 July 2024).

<sup>61</sup> Keyhan newspaper, ‘Tanker for Tanker: Iran fulfilled its promise’, 21 July 2019, available at: <https://www.pishkhan.com/news/151564> (accessed 25 July 2024).

<sup>62</sup> Keyhan newspaper, ‘Retaliation knows no courtesy!’, 22 July 2019, available at: <https://www.magiran.com/article/3932157> (accessed 25 July 2024).

*Vessels Organization, and following an ultimatum by the Supreme Leader of the Revolution stating that there will be a response to the English piracy against Iran.*<sup>63</sup>

In international law, countermeasures are a form of self-help that allows states to take certain measures to ‘vindicate their rights’ when they have been wronged and ‘procure cessation and reparation’ from the responsible state.<sup>64</sup> Under the customary international law on countermeasures, an injured state may only use countermeasures against a state that is (1) responsible for (2) an internationally wrongful act (3) in order to induce the responsible state to comply with its international obligations in relation to that specific wrong or incident.<sup>65</sup>

However, given the legal limits on the use of countermeasures, they are distinct from reprisals and retaliatory acts. In general, except in limited cases of e.g. in response to threats to peace or acts of aggression or cases of self-defence, the use of force is not allowed under international law. The UN Charter specifically requires that all Member States ‘refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations’ (Article 2(4)).

For a conduct to be considered an internationally wrongful act, it must: (a) be ‘attributable to the state under international law; and (b) constitute a breach of an international obligation of the state.’<sup>66</sup> To be attributable to the state under international law, the conduct must involve an action or omission taken by an entity, organisation, or persons acting as agents or representatives of the state.<sup>67</sup> Importantly, the conduct of private persons or private entities is not attributable to the state at the international level.<sup>68</sup>

An injured state's right to implement countermeasures is not unlimited. Unless there is an urgent need to protect its rights, the injured state must notify the responsible state of its

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<sup>63</sup> ‘The message of the detention of the British oil tanker from the perspective of Karimi Ghodousi: Defending national interests is a religious duty for us’, 20 July 2019, at <https://www.namehnews.com/fa/tiny/news-547062> (accessed 25 July 2024).

<sup>64</sup> International Law Commission, Report on the Work of its Fifty-Third Session, U.N. Doc. A/56/10 (2001) at 128.

<sup>65</sup> *Ibid* at 129.

<sup>66</sup> *Ibid* at 34.

<sup>67</sup> *Ibid* at 35.

<sup>68</sup> El-Fakir, ‘Retaliatory or Lawful?’ (n 16) 445.

intention to take countermeasures and offer to negotiate before proceeding.<sup>69</sup> An injured state cannot implement countermeasures if ‘(a) the internationally wrongful act has ceased; and (b) the dispute is pending before a court or tribunal which has the authority to make decisions binding on the parties.’<sup>70</sup> In addition, countermeasures must be proportional, that is, ‘commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.’<sup>71</sup>

For Iran to invoke the ability to take a countermeasure, it must first prove that there was an internationally wrongful act that a *State* is responsible for. The events that Iran might consider as internationally wrongful acts might be the seizure of the Iran’s oil e.g. from *Grace I* and *Suez Rajan*. However, the said events do not meet the requirements of an internationally wrongful act justifying permissible countermeasures. The seizure of Iran’s oil from *Grace I* and *Suez Rajan* were not attributable to Greece because they were conducted by the US law enforcement agencies. Moreover, the acts of private owners of *Suez Rajan* are not attributable under international law to Greece.<sup>72</sup>

In addition, the act itself (the seizure of the Iran’s oil from *Grace I* and *Suez Rajan*) did not constitute a breach of international obligations. For example, in seizing Iran’s *Grace I*, the Greek authorities were enforcing EU sanctions against Russia.<sup>73</sup> This is likely to be contested by Iran as it likely contends that the seizures of its oil e.g. from *Grace I* and *Suez Rajan* were acts of piracy and a violation of international law; however, Iran’s piracy allegations are entirely baseless. Seizing a cargo for violating sanctions does not constitute an act of piracy as defined under the UNCLOS (Art 110). State actions, if any, e.g., by Greece, the UK and the US, no matter how objectionable Iran may find them, categorically cannot be piracy.<sup>74</sup>

In addition, Iran did not ‘notify the responsible State’ (e.g. Greece, Panama, or Bahamas) ‘of any decision to take countermeasures and offer to negotiate with that State’. Therefore, it is unlikely that an international court would find Iran’s supposed countermeasures to be

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<sup>69</sup> ILC, Report on the Work of its Fifty-Third Session (n 64) at 134-135.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*; El-Fakir, ‘Retaliatory or Lawful?’ (n 16) 445.

<sup>72</sup> *Ibid.* 457-8.

<sup>73</sup> Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011; Council of the EU, ‘Syria: Sanctions Against the Regime Extended by One Year’ (28 May 2020) <https://www.consilium.europa.eu/en/press/press-releases/2020/05/28/syria-sanctions-against-the-regime-extended-by-one-year/> accessed 27 July 2024.

<sup>74</sup> El-Fakir, ‘Retaliatory or Lawful?’ (n 16) 458-9.

permissible. The tribunal would likely find that neither Panama nor Greece was responsible for an internationally wrongful act.<sup>75</sup> And even assuming such a court did find that Panama or Greece committed an internationally wrongful act, the court would likely find that Iran’s actions were unlawful not only because Iran failed to comply with the procedural notice requirements, but also because Iran took measures against private persons and a privately-owned merchant ship. Therefore, even if Iran attempted to invoke countermeasures, its actions could not be justified as a permissible countermeasure in response to the previous seizures of Iran’s oil cargo.

It further follows that the seizures of the vessels were acts of retaliation. Far from separate single events, the seizures of oil tankers are indicative of a recurring pattern of retaliatory tactics frequently employed by Iran through attacks and harassments in the Strait of Hormuz and the region which are likely to be in violation of international law. This is further supported by the fact that the seizures of ships in the Strait of Hormuz and adjacent gulfs have occurred temporally to the events involving the seizure of Iranian oil, e.g., in the US involving *Suez Rajan* and in Greece involving *Grace I*, thus appearing as a form of retaliatory action by Iran against the US and Greece for their role and cooperation, as perceived by Iran, in implementation of sanctions imposed on Iran. Such *prima facie* correlation was definitively confirmed and established as a direct causal relationship when Iranian forces seized the oil tanker *St Nicholas* in January 2024. Iran’s Navy, which carried out the operation, expressly stated afterwards that this was ‘in response to the 2023 US seizure of an Iranian oil cargo aboard the *Suez Rajan*’<sup>76</sup> leaving no doubt that such actions were as a matter of fact retaliatory aimed at countering international sanctions.

## 6. The abuse of the judicial proceedings

Usually, Iran employs the following tactics to justify the seizure of oil tankers including claims that the tanker (1) failed to comply with the required TSS in the Strait of Hormuz and used the wrong sea lane, (2) was not responding to messages or warnings and had its Automatic

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<sup>75</sup> *Ibid* 561.

<sup>76</sup> Press TV, ‘Iran’s Navy Seizes US Oil Tanker ‘in Retaliation’ with Court Order’ (11 January 2024) <https://www.presstv.ir/Detail/2024/01/11/718018/Iran-Navy-seizes-US-oil-tanker-in-Sea-of-Oman> (accessed 25 July 2024).



Identification System (AIS) turned off, (3) was involved in an accident, e.g. collided with a fishing vessel, as a result of which a distress calls was issued, (4) caused pollution and damaged the marine environment, (5) was smuggling Iranian oil or fuel, or (6) was subject to an ongoing legal proceeding. In many such cases which Iran tends to present as ‘routine policing matter’ and ‘law enforcement’, there have been no evidence supporting a lawful purpose for the seizures of those ships, and the allegations may well be false and fabricated to justify the seizures.

In the majority of these cases judicial proceedings have been utilised to authorise or justify the actions of Iranian forces. For example, the British-flagged *Stena Impero* was seized in the Strait of Hormuz by Iranian forces, allegedly following an interim order issued by a local court in Bandar Abbas for an alleged collision between the oil tanker and an Iranian fishing vessel.<sup>77</sup> A similar statement was made in relation to the seizure of *Delta Poseidon* and *Prudent Warrior* which their arrests were claimed to have been ordered by ‘judicial authorities’.<sup>78</sup> The role of the judiciary was also highlighted in relation to the seizure of the *Niovi* which was based on an alleged pre-existing legal proceeding. On 3 May 2023, Tehran’s Public Prosecutor announced that the seizure of the *Niovi* by the IRGC Navy in the Strait of Hormuz was ‘following a complaint, and upon the orders of the judicial authority’.<sup>79</sup> No further detail of the case has been publicised by Iranian authorities ever since. It is claimed by Iran that a judicial order was issued for the seizure of the *St Nikolas* in the Gulf of Oman in January 2024 which was expressly declared as a response to the seizure of Iranian oil in the US.<sup>80</sup>

Importantly, while it is possible that a judicial order was indeed sought and issued as asserted by Iranian authorities and there were indeed pre-existing legal proceedings leading to judicial orders to arrest the vessels whenever they were in reach of Iranian forces in the vicinity of Strait of Hormuz, the possibility that the criminal proceedings and judicial interventions were

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<sup>77</sup> Letter dated 23 July 2019 from the Chargé d’affaires a.i. of the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General and the President of the Security Council 1, U.N Doc. S/2019/593 (July 23, 2019).

<sup>78</sup> Islamic Republic News Agency, ‘Iran Elaborates on Status of Two Crew Members of Greek Ships’, 14 September 2020, <https://en.irna.ir/news/84886911/Iran-elaborates-on-status-of-2-crew-members-of-Greek-ships> (accessed 25 July 2024).

<sup>79</sup> Fars News, ‘Prosecutor of Tehran: The oil tanker NIOVI was seized by the Revolutionary Guard following a judicial order’, 3 May 2023, at <http://fna.ir/3ccd2m> (accessed 25 July 2024).

<sup>80</sup> Press TV, ‘Iran’s Navy Seizes US Oil Tanker ‘in Retaliation’ with Court Order’ (11 January 2024) <https://www.presstv.ir/Detail/2024/01/11/718018/Iran-Navy-seizes-US-oil-tanker-in-Sea-of-Oman> (accessed 25 July 2024).

all subsequently staged to justify the actions already taken by the IRGC on extrajudicial grounds cannot be ruled out. It might well be a case of ‘seize the ship first, produce a justification later’. The remainder of this section will explore the potential legal basis for such proceedings, particularly the specific criminal offences used as the basis for the seizures of oil tankers in relation to the seizure of Iranian oil elsewhere in the world. It also considers whether the seizure of Iranian oil in foreign territories or international waters would allow Iran to exercise its criminal jurisdiction over acts aboard and beyond its waters.

Let us begin by looking at scenarios in which a criminal complaint is utilised to justify the seizures of foreign ships in the Strait of Hormuz. Such complaints have been made several times by various complainant, most of them IRGC-affiliated entities. Using a similar method to initiate criminal proceedings were also expressly recommended by IRGC-affiliated agencies to be done again in retaliation for seizure of Iran’s oil. In 2020, the IRGC-affiliated Iranian company Mobin International (a designated entity by the US Treasury)<sup>81</sup> filed a complaint with the Prosecutor’s Office in Tehran. The complaint by Mobin International was reported to be in relation to the oil carried by four tankers all owned by a Greek national which were seized by the US. The Iranian Judiciary reportedly ordered the seizure of the Greek owner’s ships, but it was unsuccessful due to ‘numerous obstacles that arose in the execution of these orders’.<sup>82</sup>

Highlighting the example of Mobin International Company and other instances where Iranian oil was seized, an IRGC-affiliated bulletin expressly advocated in August 2022 that Iran should follow the same tactic and utilise private complaints to seize and confiscate Greek ships including through the Public Prosecutor’s Office:

*‘The Islamic Republic of Iran can, through a complaint lodged by private sector, issue a court order for seizure and, following legal proceedings, even carry out confiscation. [...] In all the cases mentioned, the United States has issued and implemented orders for the confiscation of assets of the private sector of the Islamic Republic of Iran based on the judgment of a local court and a judge. The Islamic Republic of Iran should act precisely the same like the United States. For instance, a local court in Bandar Abbas*

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<sup>81</sup> US Department of the Treasury, ‘Press Release: Treasury Sanctions Key Actors in Iran’s Oil Sector for Supporting Islamic Revolutionary Guard Corps-Qods Force’, 26 October 2020, at <https://home.treasury.gov/news/press-releases/sm1165> (accessed 25 July 2024).

<sup>82</sup> Mashregh News, ‘Private companies fall victim to U.S. maritime piracy. Does Iran seize Greek ships?’, 24 August 2022, at <https://www.mshrgn.ir/1411384> (accessed 25 July 2024).

*or the International division of the Public Prosecutor’s Office should issue a similar judgment based on a complaint by the private sector, and order the seizure and confiscation of the same amount of the stolen cargoes to be taken from US commercial shipments currently present in the Persian Gulf.’*<sup>83</sup>

According to the piece by IRGC-affiliated agency—effectively a practical manual for utilising private sector and staging criminal proceedings to retaliate against seizure of Iranian oil—the reason why certain ships or their owners are specifically targeted is attributed to their cooperation and voluntary surrender of the ships or cargoes to avoid financial or legal penalties or to benefit from other incentives from US authorities:

*‘Foreign owners of ships have voluntarily surrendered private sector oil cargoes of the Islamic Republic of Iran in exchange for receiving bribes from Americans, and the Islamic Republic of Iran has so far shown no reaction or taken any action to support the private sector, neither against Americans nor even against the foreign owners of the ships.’*<sup>84</sup>

In the eyes of the IRGC-affiliated agency, the advantage of targeting owners and managers of the ships is that it will not have any consequences for the Iranian government at the international level:

*‘Considering that both parties to the ship charter agreement are private entities, the enforcement of the judgment will not have international legal implications for the Islamic Republic of Iran. Foreign private entities, acting under the protective umbrella of the US, should not be allowed to engage in the misappropriation of assets belonging to the Islamic Republic of Iran. Instead of allowing this to become a precedent, severe punitive measures against the treacherous owners can serve as a deterrent to prevent the recurrence of such actions...’*<sup>85</sup>

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<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

Quite tellingly, the IRGC-affiliated agency also refers to a complaint submitted by an unnamed Iranian company (likely to be an affiliate of the IRGC) to the Head of the Judiciary demanding the confiscation of the two Greek ships *Prudent Warrior* and *Delta Poseidon*:

*‘One of the Iranian companies whose assets have been stolen by the United States has requested in a letter to the head of the judiciary to prevent the release of two seized Greek vessels (named Prudent Warrior and Delta Poseidon) in order to safeguard the rights and dignity of Iranians. The oil inside these vessels, which belongs to Americans, should be confiscated in exchange for the cargoes that have been stolen from us by Americans, to compensate for our losses.’*<sup>86</sup>

Once a criminal complaint is initiated in this manner, the next issue to address is determining the charges. Aside from alleged instances of collision or environmental damage which are often used without any credible evidence supporting them, the specific criminal offences under the Iranian law that serve as the basis for the seizures of oil tankers are often left vague and unclear. The aforementioned IRGC-affiliated bulletin proposes offences such as ‘maritime piracy’ and ‘theft’ that can be potentially raised against owners of foreign ships.<sup>87</sup> The Iranian Foreign Ministry Spokesperson called the seizure of Iranian oil from the *Grace I* in Gibraltar a ‘form of piracy’ and an ‘illegal seizure’.<sup>88</sup>

A further difficulty for Iranian authorities is the venue of the alleged crime, that is the seizure of Iranian oil in foreign territories or international waters. This might be an impediment to Iran’s exercise of its criminal jurisdiction over acts aboard, or somehow involving, the seized vessels. As a general rule, an Iranian victim of a crime outside Iran’s jurisdiction has to apply to the court of the place where the crime occurred. If the venue of the alleged crime is indeed within the jurisdiction of a foreign State e.g. the US or Greece, then it would be within US or Greece’s jurisdiction, or potentially the flag state e.g. Panama, Bahamas, or Marshal Islands, and the Iranian judiciary would not be competent to address the case. In sum, Iranian criminal law cannot displace a foreign sovereign State’s criminal jurisdiction. However, there are important exceptions to the general rule.

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<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> BBC News, ‘Iran summons UK ambassador in tanker seizure row’ (4 July 2019) <https://www.bbc.com/news/uk-48871462> (accessed 25 July 2024).

Iranian law recognises two categories of such exception where it claims extraterritorial jurisdiction. The first category is known as *negative* or *passive* personal jurisdiction allowing the Iranian court to establish jurisdiction over a crime committed abroad merely on the ground that the victim was Iranian. In this victim-centric approach, if a non-Iranian commits a crime outside Iran against an Iranian national, the foreign offender may be prosecuted under Iranian law. In various laws (e.g., Iran’s Aviation Law)<sup>89</sup>, often result of Iran’s accession to conventions or international treaties, such as the Tokyo Convention 1963, and the Hostage-Taking Convention 1979, Iranian courts have been deemed competent to handle crimes when the victim is Iranian. In fact, the jurisdiction based on Iranian citizenship for certain types of crimes had entered Iranian criminal laws by acceding to these conventions.

There are important limits and conditions regarding this type of extraterritorial jurisdiction that enables Iranian nationals to approach Iranian courts and file complaints about crimes for which they have been victimised abroad. In sum and to the extent relevant here, for the Iranian court to establish jurisdiction over a crime committed abroad merely on the ground that the victim was Iranian, a two-pronged test must be satisfied: (a) a relevant crime is committed against an Iranian person or the Iranian State; (2) the offender is found in, or extradited to, Iran.<sup>90</sup> The same principles will be applicable if any such offences were committed on board any foreign ship in any foreign port or harbour and the offender is found in Iran’s maritime and territorial jurisdiction or extradited to Iran. In such a scenario, the Iranian court will have jurisdiction to try the offence. However, if the offender is not found in or extradited to Iran, Iranian courts do not have jurisdiction as Iranian law conditions the jurisdiction of Iranian courts on the presence

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<sup>89</sup> Article 31 of Iran’s National Aviation Law: ‘In cases of offenses and crimes committed within a foreign aircraft during flight, Iran’s jurisdiction will apply if one of the following conditions exists:

- a) The crime undermines the regulations or public security of Iran.
- b) The accused or the victim is an Iranian citizen.
- c) The aircraft lands in Iran after the commission of the crime.

In any of the above cases, the trial will take place in the local court where the aircraft has landed or where the accused is arrested.’

<sup>90</sup> The general criminal jurisdiction based on the nationality of the victim is expressly recognised in Article 8 of the Iranian Penal Code: ‘*When a non-Iranian person outside Iran commits a crime other than those mentioned in previous articles against an Iranian person or the Iranian State and is found in, or extradited to, Iran, his crime shall be dealt with in accordance with the criminal laws of the Islamic Republic of Iran, provided that: (a) In the case of crimes punishable by ta’zir, the accused person is not tried and acquitted in the place of commission of the crime, or in the case of conviction, the punishment is not, wholly or partly, carried out against him; (b) In the case of crimes punishable by ta’zir, the committed conduct is deemed an offense under the law of the Islamic Republic of Iran and the law of the place of the commission.*’

or extradition of the individual to Iran. It is, therefore, unclear how criminal proceedings involving the seized vessels can satisfy the legal conditions prescribed in Iranian Penal Code.

According to the second category of extraterritorial jurisdiction known as *real* or *objective* jurisdiction, crimes committed outside the country against the fundamental and vital interests of a nation can be prosecuted and punished in the national courts of the affected State. This would allow the Iranian State to assert jurisdiction over a crime committed outside its territory (e.g. on a foreign vessel in another State’s port) when the crime causes harmful effects in Iran. Anyone, regardless of their nationality, who commits specific crimes outside Iran, might be subject to prosecution and punishment based on this type of jurisdiction. Crimes that are considered against the fundamental interests of sovereignty of Iran and fall under this jurisdiction are traditionally crimes against the political system of Iran, internal and external security, territorial integrity, as well as Iran’s currency, and forgery of signatures and handwritings of Iran’s top officials.<sup>91</sup> In such cases, the trial of the offender is not limited to their extradition or being found in Iran. However, it is unclear how seizure of limited amounts of Iranian oil would satisfy such conditions.

Moreover, it is unlikely that Iran’s imposition of criminal jurisdiction over foreign vessels in the said context would be allowed under international law. The UNCLOS declares that no state shall exercise criminal jurisdiction over a foreign vessel on the high seas unless permitted in international treaties,<sup>92</sup> e.g. over a vessel engaged in piracy.<sup>93</sup> Article 27 also restricts states from exercising jurisdiction over vessels in their territorial waters explaining that states may not exercise jurisdiction unless, among others, the effect of the crime extends to the state. Further, the alleged wrongdoing raised against some of the seized vessels appears to have nothing to do with their ‘passage’ through the Strait of Hormuz in Omani or international waters. For Iran to make any claim or intervention regarding the vessels’ right to transit or innocent passage (including under Article 6 of Iran’s Maritime Areas Law), it had to be in relation to the ‘passage’ itself, which Iran might claim was e.g. prejudicial to the peace, order or security of Iran as the coastal State.

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<sup>91</sup> Article 5 of Iran Penal Code.

<sup>92</sup> UNCLOS, art. 92 - ‘Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas.’

<sup>93</sup> UNCLOS, art. 105.

In addition, for Iran to claim maritime criminal jurisdiction under Article 10 of the Marine Areas Act 1993, it has to prove that it is ‘in connection with any crimes committed on board the ships passing through the territorial sea’. In international law, the criminal jurisdiction of the coastal state is limited to crimes ‘committed on board the ship *during* its passage’ in the coastal state’s waters. According to Article 27(5) of the UNCLOS, even in its territorial waters, a coastal state would have no criminal jurisdiction over foreign ships in relation to crimes or violations committed onboard *before* the ship entered the territorial waters of the coastal state:

*Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.*

## **7. Conclusion**

In this article, I considered the wave of harassment of maritime traffic and the seizure of merchant ships by Iran in the Strait of Hormuz since 2019. I focused on the significant legal issues that these incidents have highlighted regarding the legal regime of the Strait of Hormuz and the legitimacy of the actions by the Iranian State. By placing these incidents in the broader geopolitical context and examining the tit-for-tat moves by Iran, I demonstrated that the seizures of the vessels were likely politically motivated, linked particularly to the reinstatement of economic sanctions against Iran’s assets following the withdrawal of the US from the Iran Nuclear Deal in 2018.

I also discussed the method and surrounding circumstances of the seizures of the vessels by Iran, as well as the legal justifications typically provided by Iran, including the way the judicial proceedings have been exploited, which all raise serious questions about the legality of Iran’s actions. I argued that Iran’s use of the criminal justice system and the justification offered for the seizures of the vessels appear to be mere pretexts or cover-ups for its retaliation against foreign countries and the West. It is likely, I argued, that Iran has unjustifiably violated the

tankers’ right to transit and innocent passage when it seized them. The seizures of the oil tankers would also potentially amount to discriminatory navigational restrictions, illegal use of force, and arbitrary use of criminal proceedings. As a signatory state to the UNCLOS, Iran needs to respect the right of transit passage in the Strait of Hormuz at least vis-a-vis states parties to UNCLOS. Even by Iran’s own narrower standard of ‘innocent passage’, the seizures of the foreign vessels are violations of the right to innocent passage in the Strait of Hormuz.

Further, I argued that Iran’s actions in seizing the merchant ships in the Strait of Hormuz cannot be justified as a lawful use of countermeasures, as the seizure of the Iranian oil or tankers in separate incidents did not constitute an internationally wrongful act that could be attributed to the flag states or national states of the owners or managers. Iran’s seizure of the vessels are likely an unlawful retaliatory act by the Iranian State. It is also likely that the seizures of the vessels outside Iran’s maritime jurisdiction were unlawful as a matter of both Iranian law and international law. If the alleged offence was not committed in Iran’s maritime jurisdiction, or if at the time and prior to their arrest the vessels were outside of Iranian territorial waters in compliance with maritime regulations, then the Iranian authorities would have no jurisdiction or cause to interfere with their passage.

In addition, all the vessels seized by Iran are registered outside Iran (e.g. in Panama or Bahamas) and have foreign owners. Without a treaty with the foreign countries involved (e.g. the flag State Panama, or the national State of the owners), Iran is likely to have violated international law by exercising jurisdiction over the vessels for an alleged offence committed outside Iran that did not fall within exceptions recognised under international law. Iran would have also likely violated its own domestic substantive and procedural criminal laws if the alleged offence involving the vessels did not fall within the exceptions carved out of the general principle of territorial jurisdiction in Iranian law. Even if the vessels, or their owners, had violated Iranian law, as Iran claims, if the vessels’ locations at the time of their arrest were within Omani territorial waters it would mean that Iran would not have been permitted under international law to intercept them. The seizure of the vessels and the criminal proceedings pursued by Iran would thus be an infringement on the sovereignty of Oman as well as the flag state and national state of the owners.