More Than a Trade Route

The Strait of Hormuz and the Future of Freedom of Navigation

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Geography stands first, and it is unrelenting. The Strait of Hormuz places a fundamental constraint on U.S. and Israeli efforts to subdue Iran through overwhelming military force.

The natural chokepoint of navigation played no role, at least officially, in the outbreak of the war. It is now a key factor in ending hostilities. The future regime of navigation in Hormuz and the Persian Gulf will necessarily be part of any long-term peace settlement in the region.

Freedom of navigation is the foundational principle of public international law, as designed by the Western world in the early 17th century. Reflecting on potential options for the post-war freedom of navigation regime in the Persian Gulf could contribute, not only to a lasting peace in the region, but also to a reconfiguration of the international legal order.

Drawing inspiration from inland water transport law, I suggest approaching the Persian Gulf and the Strait of Hormuz not only as a trade route but as a natural unity that gives rise, *de facto,* to a form of regional solidarity. The shift from a purely trade-oriented to a nature-based approach would align with other recent initiatives, such as the Biodiversity Beyond National Jurisdiction (BBNJ) agreement.[1] It would also better address the contemporary challenges of achieving sustainable peace and development, both in the region and globally.

Geography

The Persian Gulf is a semi-enclosed sea comprising eight riparian countries (Iran, Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, United Arab Emirates, Oman). It is slightly more than 1000 km long and around 400 km wide. There is no high sea in the Gulf. Its waters are either a territorial sea or an exclusive economic zone (EEZ) of a coastal state.

To the Northwest, the Tigris and Euphrates merge, about 200 km before reaching the Persian Gulf, into the Shatt al'Arab, a vital waterway shared between Iran and Iraq. To the Southeast, the Strait of Hormuz, about 200 km long and 34 to 80 km wide, connects the Persian Gulf to the Gulf of Oman and the Indian Ocean. The Strait lies entirely within the territorial waters of its two coastal states, Iran and Oman. It is intensely used for international navigation, with 80 to 130 ships transiting every day in normal times, representing about 20% of the world's oil and LNG supply. These figures immediately dropped to below 10 ships a day with the outbreak of the war.

The Current Freedom of Navigation Regime

In the Shatt al'Arab, navigation is governed by the 1975 Algiers agreement concluded between Iran and Iraq (Art. 7). Freedom of navigation is granted to vessels of both riparian countries, including state vessels and warships, as well as third-country merchant vessels, on an equal and non-discriminatory basis. Either of the two riparian countries can also authorise foreign warships visiting its ports to enter the Shatt al'Arab, *unless* these ships belong to a country in a state of belligerency with either of the two riparian countries.

In the Persian Gulf, freedom of navigation is not suspended during armed conflict, including vis-à-vis warships belonging to a country in conflict with a riparian country: the US Navy stationed in Bahrain may move freely in the Persian Gulf despite the war

[1] The BBNJ agreement, also referred to as the High Seas Treaty, is an implementing agreement under UNCLOS. It entered into force on 17 January 2026.

launched against Iran. Under the UN Convention on the Law of the Sea (UNCLOS), a coastal state may only require a foreign ship to leave its territorial sea immediately if it deems its passage is not innocent (art. 30), and suspend the innocent passage altogether, for all foreign vessels including merchant vessels, if it considers it essential for the protection of its security (art. 25(3)). Coastal states do not have these rights in the Strait of Hormuz. Transit remains unimpeded (art. 38), including in case of a "threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait" (art. 39(1)(b)). Despite the open war with Iran, US and Israeli aircraft and warships, including submarines operating underwater, may transit the Strait of Hormuz, and commercial navigation may not be suspended.

Iran does not challenge the current freedom of navigation regime except on this specific point. When UNCLOS was adopted, Iran and Oman immediately expressed reservations about unimpeded transit in the Strait, reasserting their right to suspend transit for security reasons. Oman eventually ratified the Convention, therewith accepting all UNCLOS provisions, including on unimpeded transit. Iran did not and maintains its claim for a right to suspend transit when its security is threatened.

UNCLOS is silent about the status of the seas in time of war. During an international armed conflict, it must be read in conjunction with the applicable *jus in bello*. The paragraphs below refer to the San Remo Manual, an authoritative restatement of customary international law applicable to armed conflicts at sea.

Naval warfare may be conducted, not only in the belligerents' territorial sea, EEZ and continental shelves, but also in the EEZ of neutral states (§10). Even if freedom of navigation, including innocent passage and unimpeded transit, persist pursuant to UNCLOS, warships and aircraft of the adverse party become legitimate targets. Belligerents may also establish exclusion navigation zones (§§105-107), capture and seize merchant vessels flying the flag of the enemy (§135) and intercept, visit, search, and, if necessary, divert neutral vessels or aircraft to verify their status and compliance with neutrality (§§118-147). Blockades are also authorised and regulated (§§93-104).

Inevitably, an international armed conflict profoundly disrupts freedom of navigation, regardless of the parties' interpretation of UNCLOS rules. The swift withdrawal of war-risk coverage in the region by P&I clubs, a development that effectively paralyses maritime navigation, also illustrates this state of affairs.

That said, Iran never declared a full closure of the Strait even during armed conflict. In previous crises, Iran has at times threatened to close the Strait but has never implemented its threats. Restrictions seem to have consistently focused on aircraft and warships of a belligerent party as well as related merchant vessels.

Four Scenarios for the Post-War Regime

In my view, four scenarios may be envisaged for the future of FREEDOM OF NAVIGATION in the region.

Restoring the Status Quo Ante

Under the first scenario, freedom of navigation would be reasserted in accordance with UNCLOS. Differences of interpretation would remain. The world's navies, acting separately or in multinational operations, would enforce the general understanding of freedom of navigation.

This enforcement role is currently fulfilled, in part, by the US Navy's Fifth fleet, based in Bahrain, which conducts so-called Freedom of Navigation Operations, where a warship deliberately transits without asking permission. Since the tensions that followed the US unilateral withdrawal from the 2015 nuclear agreement with Iran, the International Maritime Security Construct is also present to secure and escort merchant vessels.

However, any escort involving the US Navy seems unrealistic in the immediate aftermath of this conflict unless a solid peace settlement is reached. It could otherwise be perceived by Iran as a threat to its peace and security, reinforcing, rather than reducing, the risk of attacks on merchant vessels. In the laws of war, a merchant ship escorted by an enemy warship may be

attacked as a legitimate target.[2] The US operation "Project Freedom", launched on 4 May to escort merchant vessels, was in fact swiftly suspended.

In the absence of US naval involvement, neutral powers would need to take over the task of protecting merchant vessels. France and the United Kingdom have launched an initiative to that end, gathering about 40 neutral countries with a genuine interest in freedom of navigation in the region. Once hostilities cease, a coalition force could be deployed to escort merchant vessels and even engage in demining operations.

Such an option, while potentially necessary, would nonetheless remain insufficient. These operations reduce the risks of attacks but do not fully eliminate them. They are very costly and eventually do not substantially lower transport costs for the shipping industry.

Unilateral Assertion of Sovereignty

Under the second scenario, Iran would assert its sovereignty over the Strait as a form of retaliation. It has diverted the Strait's maritime routes into its territorial waters and conditioned passage to prior authorisation and the payment of a toll, allegedly imposed to ensure security. The change of operation was officialised with the adoption of a statute. This action, together with other Iranian statements, could indicate that Iran plans to maintain this regime after the war – an outcome that would, in effect, hold freedom of navigation in the Gulf hostage to the will of a single state.

External Hegemonic Control

The third scenario concerns the United States, which has expressed its intention to unilaterally take control over the Strait. This would be consistent with a broader US pattern such as its posture regarding the Panama channel, the Arctic maritime routes, and the proposed acquisition of Greenland. Were it to materialise, such a move would mark a new colonial era, with an external force imposing its hegemonic power over countries that would have no say. Far from stabilising the region, this would be a recipe for endless conflict.

Regional Cooperation Around a Shared Natural Commons

At first glance, the path of regional cooperation does not look promising. Existing multilateral structures are cracking under the impact of the war[3], and the positions of the riparian countries are growing increasingly divergent. The current turmoil, however, underscores an inescapable truth: the Gulf's riparian countries share the same risks and cannot act in isolation to counter them. Aware of this interdependence, they seem to be willing to maintain relations despite mutual distrust.

The geographical reality can give rise to a *de facto* sense of "community" that could in turn lay the foundation for a legal system of solidarity. In such a system, the Strait of Hormuz would not only be viewed as a trade route. It would be primarily a geographical feature belonging to a wider natural unity, to be regulated as such. This regulation could encompass the technical dimensions of freedom of navigation – routing schemes and navigational aides, exclusion zones, infrastructure, and pollution management – applicable in both peacetime and wartime. It could also extend beyond navigation and cover matters related to natural resources management (fisheries and minerals), climate change mitigation and other domains in which UNCLOS already encourages regional cooperation. Even imposing a toll could be discussed in such a forum, as long as it is collectively designed, for the benefit of the Gulf. The toll could, for instance, serve to internalise external costs of pollution generated by shipping, to maintain the infrastructure in the Gulf, or to help the region transition into a green economy.

This model is not new. In the early nineteenth century, a similar governance model was imposed on the Rhine River. The first international organisation of the modern era was created on the understanding that the river is not merely a trade route but a natural and indivisible entity, giving rise to a *de facto* "community of interest" among riparian states. Since then, riparian countries have managed matters relating to FREEDOM OF NAVIGATION collectively through a dedicated

[2] C. Green, *The Contemporary Law of Armed Conflict,* 2nd ed, Manchester University Press, 2000, p. 168

[3] With the United Arab Emirate leaving the OPEC and reconsidering its implication in the Gulf Cooperation Council (GCC).

institution. Its functions are primarily technical, and riparian states participate on an equal footing in the governance structure. This institution survived three wars, including two world wars, during which member states were enemies. The Rhine navigation has greatly contributed to the prosperity of the region, which remains one of the wealthiest in Europe.

The Gulf region deserves better than a *status quo ante* or short-term imperialist or nationalist options, which would all fail to ensure sustainable peace and growth in the region.

In today's world, where the main challenges requiring international action are tied to climate change, nature should occupy a more central role in international law. Governance models structured around natural entities would constitute a step in the right direction. Such models already exist and have demonstrated their effectiveness. The Persian Gulf could provide an appropriate setting in which to revive and test this approach once again.

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