
Territorial Waters and the Status of Straits in International Relations: The Iran-US Dispute over the Strait of Hormuz.

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Abstract

The importance of straits in international relations cannot be overemphasised. The reasons are myriad but especially because of the vital role it plays in international navigation. This is also the reason why they are very controversial. The extension of the territorial sea from 3 to 12 nautical miles made a lot of straits to fall into what should be territorial waters. The strait of Hormuz is a tight sea passage in the Persian Gulf which separates Iran and Oman. It is a vital chokepoint for maritime transportation because of oil fields in the Persian Gulf area whose products are transported by naval vessels. Attempts by the Iranian authority to control the Strait of Hormuz as part of their territorial waters have been generating tension with marine countries in general and the United States of America in particular. The objectives of the study are to evaluate the links between territorial waters and Straits in international law with specificity to the Iran-US dispute over the Strait of Hormuz. The study is guided by the Sea Power theoretical framework made popular by Alfred Thayer Mahan. The qualitative research methodology was adopted for the study. It consists of content and documentary analysis whereby data was gathered mainly through secondary sources and reviewed. The study concludes that issues surrounding the status of straits are still contentious and recommends a minimal satisfactory balance between the interest of foreign ships that navigate on one hand and welfare of the strait States on the other hand.

1. Introduction

The relegation of the Cannon Shot rule which prescribed 3 nautical miles from the base line of a littoral state as constituting the territorial sea of a state and consequent extension to 12 nautical miles made a lot of straits to fall into what should be territorial waters. UNCLOS III was ratified in 1984 after what is indisputably the lengthiest continuous international negotiation of modern times. The Convention extended territorial waters from three nautical miles of the Cannon Shot rule to twelve nautical miles. (Ali 1989)

This drastic change in the size of territorial waters affected the regime of Straits as most of them now literally fell into the territorial waters of the bordering littoral State. This was especially the case with the Strait of Hormuz. The narrowest point of the Strait of Hormuz is twenty-one miles wide thereby making it the exclusive territorial sea of Iran and Oman – which are the bordering countries of this strait (Wählisch 2012). Does this now mean that straits that have been international water ways can be treated as territorial waters subject to national jurisdiction? Navigation through international straits is of vital significance in the law of the sea. This is hinged on the global recognition of straits in international trade and the generality of people in the international system.

The objectives of the study are to evaluate the evolution of the international law of the sea with specificity to the links between territorial waters and Straits and the role played by the Canon Shot rule in its evolution. It would also evaluate the status of straits in international law and the Iran-US dispute over the Strait of Hormuz. The study is guided by the underlisted research questions. Why are straits very controversial? What is the significance of the Strait of Hormuz? How was the Iran-US dispute over the Strait of Hormuz resolved?

The study is guided by the Sea Power theoretical framework. The Sea Power Theory was made popular by Alfred Thayer Mahan (an American strategist, geopolitical scholar and Admiral in the US Navy). Mahan used his experience as a geopolitical scholar and a naval officer to explore the geographical lining of power and came up with a paper titled “The Influence of Sea Power Upon History” which was published in 1890. This paper illustrated vantage prospects of countries that controlled the sea through the development of war ships and mastery of naval technology with regard to the control of power in the world. It was an analysis of sea power versus land power. The crux of Mahan’s thesis was that sea power is the ultimate and that naval superiority gives rise to total supremacy whereby countries that control the sea rule the world. Mahan argued persuasively that since sea power is of vital importance in the power of a state, the United States should have a large navy. (Duncan 2006) Eventually the United States also established highly sophisticated naval forces to consolidate its might on the high seas and became a world power (Alfred 2018).

The qualitative research methodology was adopted for the study. It consists of content and documentary analysis whereby data was gathered mainly through secondary sources and reviewed. The article is divided into five sections. We are already in the first section which is the introduction. The second section would discuss the canon shot rule and contentions of territorial waters while the third section would discuss the status of Straits in international law. Section four deals with Iran-US dispute over the Strait of Hormuz while section five is the conclusion and recommendation.

2. **The Canon Shot Rule And Contentions of Territorial Waters**

There have been rules and regulations for the sea as far back as the 17th century which advocates the freedom of the sea doctrine. Before this period, Spain and Portugal, being the first to chart the course of the sea appropriated it to themselves. This gave rise to the Closed Sea Concept of the fifteenth and sixteenth centuries. Spain and Portugal divided the seas they discovered to themselves supported by the Papal Bulls of 1493 and 1596. The condemnation of this practice led to the evolution of the open seas concept and later the freedom of the high seas in the eighteenth century (Shaw 2003). Mention must be made of Hugo Grotius in the evolution of the law of the sea because his writings in no little way contributed to the codification of the freedom of the seas.

The most acceptable rule governing internal waters before UNCLOS was the **Canon Shot Rule** which provided for 3 nautical miles from a nation’s coastlines as constituting a nation’s internal waters. The Cannon Shot Rule was made popular by Cornelius van Bynkershoek (a Dutch Jurist) using the distance of a bullet from a cannon (Akashi). Evidently, the rules and regulations governing the sea was highly contentious, controversial and volatile. Today the controversies have been amicably resolved in the ratified 1982 United Nations Convention on the Law of the Sea which is now universally applicable and binding. It covers issues that Internal Waters, Territorial Sea, Straits, Contiguous Zone, Archipelagic State Waters, Continental Shelf, Exclusive Economic Zone and The High Seas.

Littoral states have a sea coast and the waters within or adjacent to its land boundaries are its internal waters and legally equivalent to a state’s territory which is completely subject to the territorial sovereignty of that littoral state (Aditi 2014). Article 5 of UNCLOS III defines baseline as “the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State” (UNCLOS III, Article 5).

In situations where the coast is deeply indented a straight line may be drawn linking the outermost points. These straight lines must be in conformity with the general direction of the coasts. The concept of a straight baseline received judicial recognition in the Anglo-Norwegian

Fisheries Case. Internal waters consist of all waters and waterways on the landward side of the territorial sea baseline and covers creeks, rivers, lakes, gulfs, harbours, ports, canals and waters enclosed by archipelagic islands. Internal waters are legally the same as a state's land, and are in totality subject to its territorial sovereignty. There is no right of innocent passage for vessels within internal waters because the right of passage of vessels is the exclusive prerogative of the state possessing the internal waters (Umzurike 2001).

Littoral states enjoy sovereignty over the **territorial sea** including its subsoil and the airspace of the designated area. The UN Convention on the Law of the Sea (UNCLOS III) prescribes a maximum of 12 nautical miles from the baseline or coast of the littoral state. A littoral state exercises territorial sovereignty over its territorial sea (Umzurike 2001). Including the seabed and subsoil alongside the airspace above it and the waters of the bays, gulfs and straits (Aditi 2014). However, foreign vessels are entitled to the right of innocent passage through territorial seas. Articles 17 through Article 24 of the United Nations Convention on the Law of the Sea (UNCLOS III) stipulates the meaning and conditions of innocent passage. **Innocent passage** depicts movement of foreign vessels without entanglements like fishing, smuggling, spying, weapons testing, serious pollution, scientific research etc.

UNCLOS defines innocent passage as “passing through waters in an expeditious and continuous manner, which is not prejudicial to the peace, good order or the security of the coastal state” (UNCLOS III, Article 17). Submarines and other underwater vehicles are expected to navigate on the surface and display their flag (UNCLOS III, Article 24). Innocent passage translates to **transit passage** if the territorial waters of a state engulfs Straits used for international navigation such as Gibraltar, Manded, Hormuz and Malacca thereby paving the way for few restrictions and strengthening the rights of passage. This is also applicable to major sea-lanes of the territorial sea of archipelagic states such as Indonesia (Robin 1982).

The controversies regarding law of the sea have now been resolved with the coming into force of UNCLOS III in 1984. The law of the sea had earlier been in a state of flux before the initiative of UNCLOS.

3. The Status of Straits in International Law

The importance of straits in international relations cannot be overemphasised. The reasons are myriad but especially because of the vital role it plays in international trade. Straits, canals and gulfs are connecting links between oceans and most time they are exceptionally without alternatives. Examples of straits are the strait of Malacca located between Indonesia and Malaysia and links the Andaman Sea and the South China Sea; The Strait of Gibraltar located between Europe and Africa and is the link between the Atlantic Ocean and the Mediterranean Sea; The Palk Strait located between India and Sri Lanka and links the Palk Bay with the Bay of Bengal; The Sunda Strait located in Indonesia and links the Java Sea with the Indian Ocean; The Yucatan Strait located between Mexico and Cuba and links the Gulf of Mexico with the Caribbean Sea; The Mesina Strait located between Italy and Sicily and is the link to the Mediterranean Sea; The Strait of Otranto located between Italy and Albania and links the Adriatic Sea with the Ionian Sea (Ali 1989).

Others are the Bab-el-Mandeb Strait located between Yemen and Djibouti and links the Red Sea with the Gulf of Aden; The Cook Strait located in New Zealand and is the link to the South Pacific Ocean; The Mozambique Strait, located between Mozambique and Malagasy and links the India Ocean. The Taurus Strait, located in Papua New Guinea and links Arafura Sea with the Gulf of Papua; The Bass Strait located in Australia and links Tasman Sea with the South Sea. The Bonne-Fasio Strait located between Corsika and Sardinia and links the

Mediterranean Sea; The Bosphorus Strait located in Turkey and links the Black Sea and Marmara Sea (Ali 1989).

Over the years the status of straits has been controversial and attempts to restrict passage through them or discriminate against foreign vessels under the guise of national security has generated political tensions and sometime military confrontation as was the case in the “Crimean War (1853-1856) which flared due to the Bosphorus and Dardeanelles Straits; the Corfu Channel case (1946); the War of 1956, between Israel and Egypt, occurred due to the Tiran Strait and fear of closing the Strait of Hormuz was highlighted during the Gulf War (1980-1988)” (Abdullah 1991).

In the light of the above, international law have attempted to douse some of these controversies. The United Nations Convention on the Law of the Sea (UNCLOS) stipulates that vessels and ships should enjoy the right of continuous and expeditious passage while traversing straits designated for international navigation (UNCLOS III). Traversing ships have to pass “without delay through or over the strait,” and avoid anything that would bring dispute or jeopardize the political independence, territorial integrity and sovereignty of states bordering the strait. In reciprocity, States bordering straits should refrain from obstructing transportation and are expected to make available information pertaining to envisaged danger to transit in the strait. Coastal States are entitled to make rules and regulations for the traversing of foreign ships which should be binding so far as it is not discriminatory nor an impediment to the right of transit passage. The laws must be in such a manner that it does not affect the free flow of maritime traffic (Wählisch 2012).

The rule that applies to the territorial sea does not in totality apply to straits although a great majority of straits fall under the territorial sea of the coastal state. Article 16.4 clarifies the dichotomy and projects the fact that a coastal state has a higher leverage over its territorial sea than over its straits and cannot suspend passage of foreign vessels over straits in the easy manner it does over territorial sea (Wählisch 2012).

Controversies on the status of straits abound in international law. Some scholars are of the view that passage in straits of coastal states should be identical with the regime of their territorial sea because the rules governing access to straits borders on the laws regulating innocent passage (Ganndison and Meyer 1985).

In the case of the dispute between Iran and the United States the postulations of Article 16.3 and 16.4 is compounding the controversies. The article is to the effect that innocent passage through straits should be provided by coastal state but that a coastal state may temporarily suspend the right of innocent passage in its territorial sea when its national security is threatened or for purposes of protecting its security. This is particularly the case for warships which Article 23 of the 1968 Geneva Convention expounds. It is of the view that passage of warships through territorial waters are subject to the regulations of the littoral states (Bexter 1974) or should get the authorization of the bordering state but this is apparently not the case with straits in contemporary international law as manifest in the Corfu Channel Case. The International Court of Justice (ICJ) ruled in the Corfu Channel Case that warships of foreign states have the right of innocent passage over straits without authorization. The crux of the matter is that unlike normal territorial waters, vessels have non-suspendable rights over international straits.

By its very nature, international straits facilitate movement of ships and vessels around the world. This very important function necessitates the treatment of straits as having *sui juri* or a legal position of its own distinct from territorial seas despite the convergence. It is such that straits are not assimilated with other parts of the territorial seas and therefore deficient in some of the rights and privileges accorded coastal states bordering it (Harris 1998).

Articles 37 through 45 of Section 2 Part III of UNCLOS III is sometimes called the straits chapter as it highlights the fundamental elements of straits including a practical

definition to the effect that international straits are water ways that connect two parts of the high seas used for international navigation (Harris 1998). The controversial transit passage regime was addressed to accommodate controversies between the transit of maritime vessels and the coastal states bordering the straits.

Article 233 introduces some checks on foreign ships and is a proviso to Article 42 wherein strait states may take “appropriate enforcement measures” against maritime vessels that violate its laws and regulations. The actions or inactions of states that threatens or has potentials of damaging the marine environment are by this article brought to book. Over the years such threats have been used as excuse for the closure of straits as was the case in 1956 and 1967 when Egypt placed embargo on the passage of Israeli vessels through the Strait of Tiran. This was also the case during the Albanian uprising whereby Italy established a de factor naval blockade in the Strait of Otranto. (Tangliabue 1997)

4. Iran-Us Dispute over the Strait of Hormuz

The strait of Hormuz is a tight sea passage in the Persian Gulf which separates Iran and Oman. It is a vital chokepoint for maritime transportation because of oil fields in the Persian Gulf area whose products are transported by naval vessels. Attempts by the Iranian authority to control the Strait of Hormuz as part of their territorial waters have been generating tension with marine countries in general and the United States of America in particular. The tensions got to fever pitch in the last quarter of 2011 wherein the government of Iraq attempted to scuttle the sanctions imposed by the United States and Europe as a result of its nuclear activities by threatening to block the Strait of Hormuz. Such an action would be disastrous for the international economy because 35 percent of the world’s seaborne oil exports traverse the Strait of Hormuz (Wählisch 2012).

The tensions pushed USA, UK and France to boost their military presence in the Gulf (Shanker and Myers 2011) as manifest in the deployment USS Abraham Lincoln to that area accompanied by a British warship and a French vessel (Wählisch 2012). This move according to the U.K. Ministry of Defence, was in line with the commitment of underscoring the rights of passage as stipulated in international law. To buttress this point Leon Panetta (the then U.S. Secretary of Defense) stated that the United States of America has the capability of dealing with any state that attempt to obstruct free movement in the Strait of Hormuz (Wählisch 2012).

Iran had earlier agitated that prior authorization for warship is a prerequisite for safeguarding the security interests of countries housing Straits in their territorial waters. However, the United States of America is of the view that the right of transit passage should be unrestricted because it would tantamount to making coastal states political gate-keepers which would ultimately generate conflicts. The US is opposed to any impediments on maritime navigation. Accordingly, Reisman (1980) – declared that in the perception of the United States of America straits are international waterways, which cannot be hindered or obstructed. (Reisman 1980) USA is the view that the ICJ judgement in the Corfu Channel Case settles the arising issues. (Wählisch 2012)

5. Conclusion and Recommendations

Territorial Waters and other aspects of the Law of the Sea were addressed in the UNCLOS III ratified in 1984 but some of the issues surrounding the status of Straits are still contentious. This is especially the case with those provisions relating to transit passage regime. The articles which should provide a pleasing balance between the navigational rules are still widely deficient in the offer of minimal satisfactory balance between the interest of foreign ships that navigate on the one hand and the interests of straits States with respect to their safety and security on the other hand. In the case of the Strait of Hormuz the Iranian claims, tend to

threaten the entire international community and the United States is opposed to it. The study recommends that the regime covering straits in the Law of the Sea should be updated to accommodate the welfare of coastal states as well as revenue for impacted states.

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