The Rule of Law, Shared Interests, and the Strait of Hormuz: Keeping an International Waterway Beyond the Reach of Geopolitical Conflict

By Professor Kareem Farman Professor of Law and Political Systems Al Akhawayn University Ifrane, Morocco

Introduction

The Strait of Hormuz occupies a singular position in contemporary geopolitics as one of the world's most strategically significant maritime chokepoints. Serving as the principal artery of the global energy market, it constitutes the indispensable gateway for a substantial proportion of international oil and liquefied natural gas exports. For the Gulf Cooperation Council (GCC) states—particularly the United Arab Emirates and the Kingdom of Saudi Arabia—the Strait is not merely a commercial sea lane but a cornerstone of national security, economic prosperity, and regional stability.

Against the backdrop of escalating regional tensions and intensifying geopolitical rivalry, fundamental questions continue to arise regarding the legal regime governing navigation through the Strait. Political rhetoric has increasingly portrayed freedom of navigation as contingent upon the evolving confrontation between the Islamic Republic of Iran, the United States, and Israel. Such portrayals, however, conflate strategic competition with settled principles of international law.

This article advances a central legal proposition: the right of the United Arab Emirates and the Gulf Cooperation Council (GCC) states to enjoy freedom of navigation through the Strait of Hormuz is an inherent, established, and independent legal right derived from both treaty law and settled customary international law. It cannot lawfully be reduced to a bargaining instrument or held hostage to Iran's broader geopolitical confrontation with the United States and Israel. This legal position is reflected in Part III of the United Nations Convention on the Law of the Sea (UNCLOS) governing straits used for international navigation and has been consistently reinforced through the jurisprudence of the International Court of Justice (ICJ).

Accordingly, any attempt to politicize international navigation through the Strait, or to employ it as an instrument of coercion in broader regional disputes, undermines not only the sovereign rights of the Gulf states but also the stability of the international legal order upon which global commerce, energy security, and freedom of navigation depend.

I. The Legal Foundations: Assessing the Iranian and American Positions

The legal controversy surrounding the Strait of Hormuz does not arise from uncertainty in international law but rather from competing national interests and selective interpretations of the law of the sea advanced by Tehran and Washington. Although the two governments adopt markedly different legal positions, each reflects broader strategic objectives that extend beyond the interpretation of maritime law itself. A closer examination demonstrates that many of the competing claims are ultimately constrained by well-established principles of customary international law.

1. The Iranian Legal Position and Its Rebuttal

The Iranian Position

Iran maintains that it is not legally bound by the Transit Passage regime established under the 1982 United Nations Convention on the Law of the Sea (UNCLOS) because, although it signed the Convention, it has never ratified it. Tehran therefore argues that the applicable legal framework remains the regime of Innocent Passage, derived principally from the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone.

Under this interpretation, Iran asserts that it possesses the sovereign authority to regulate—or, where it considers necessary, restrict—the passage of foreign vessels that it considers to threaten its national security or political interests. Iranian officials have periodically relied upon this interpretation to justify warnings directed at the naval forces of the United States, Israel, and their allies, while also raising the possibility of restricting commercial navigation during periods of heightened regional tension.

The International Law Response

This legal argument is difficult to sustain under contemporary international law.

Although Iran has not ratified UNCLOS, the legal regime governing Transit Passage through international straits has long crystallized into settled customary international law, making it binding upon all states irrespective of treaty ratification. This position is reflected not only in widespread and consistent state practice but also in leading legal authorities, including the Restatement (Third) of the Foreign Relations Law of the United States (1987), Section 513, which recognizes transit passage through international straits as a rule of customary international law applicable even to non-parties to UNCLOS.

Moreover, international maritime law distinguishes between ordinary territorial seas and international straits used for global navigation. The latter occupy a unique legal status because their uninterrupted accessibility serves the collective interests of the international community.

Even prior to the adoption of UNCLOS, Article 16(4) of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone expressly prohibited the suspension of innocent passage through straits used for international navigation. UNCLOS subsequently strengthened this protection through the more comprehensive regime of Transit Passage established in Part III of the Convention.

Accordingly, neither the suspension of navigation, the unilateral imposition of discriminatory transit restrictions, nor the levying of passage fees on vessels exercising lawful transit rights is compatible with the established legal regime governing international straits. Any attempt to impede lawful navigation through the Strait of Hormuz would therefore constitute a significant departure from settled customary international law and from the broader international legal framework designed to safeguard global commerce and freedom of navigation.

2. The American Legal Position and Its Rebuttal

The American Position

The United States advocates the full application of the Transit Passage regime established under Part III of UNCLOS. Under this framework, commercial vessels, warships, military aircraft, and submarines navigating in their normal operational mode enjoy the right of continuous and expeditious passage through international straits without the need for prior authorization from the coastal states.

Washington maintains that these provisions do not merely create treaty obligations among States Parties but instead codify long-established rules of customary international law governing international navigation. Consequently, successive U.S. administrations have consistently defended freedom of navigation operations as measures intended to preserve universally applicable maritime rights rather than to assert new legal entitlements.

The International Law Response

From the perspective of customary international law, the American legal position is broadly supported by contemporary international legal practice. Nevertheless, it is accompanied by an important legal inconsistency.

The United States has never ratified UNCLOS and therefore remains outside the Convention's formal treaty framework, even while relying extensively upon many of its provisions in diplomatic practice and maritime operations. This has prompted criticism from international legal scholars, who argue that Washington adopts a selective approach by invoking rights embodied in the Convention while declining to accept its comprehensive treaty obligations.

That inconsistency, however, does not diminish the legal protection afforded to commercial navigation through the Strait of Hormuz. The rights enjoyed by the Gulf states and by the wider international community derive not solely from treaty law but also from settled customary international law, reinforced through consistent state practice and the jurisprudence of the International Court of Justice. Consequently, the legal security of commercial shipping through the Strait remains independent of the treaty status of either Iran or the United States.

II. International Court of Justice Jurisprudence: Consolidating the Legal Regime Governing International Straits

International jurisprudence has played a decisive role in consolidating the customary legal principles governing freedom of navigation through international straits. While the legal framework established under the United Nations Convention on the Law of the Sea (UNCLOS) provides the treaty-based foundation for the regime of Transit Passage, the jurisprudence of the International Court of Justice (ICJ) has significantly reinforced these principles by confirming their status within customary international law.

Three landmark judgments, in particular, have shaped the contemporary legal understanding of navigational rights through international straits and provide authoritative guidance in assessing the legal status of the Strait of Hormuz.

1. Corfu Channel (United Kingdom v. Albania) (1949)

The Corfu Channel judgment remains the cornerstone of international jurisprudence concerning navigation through international straits.

The International Court of Justice held that coastal states may not prohibit or suspend the passage of foreign vessels through straits used for international navigation during peacetime. The Court further affirmed that this principle extends beyond commercial shipping to include warships, provided that their passage is continuous, expeditious, and consistent with the applicable rules of international law.

Although the judgment predated UNCLOS by more than three decades, its legal reasoning laid the foundation for the subsequent codification of the Transit Passage regime under Part III of the Convention. More importantly, the decision confirmed that the freedom of navigation through international straits serves the collective interests of the international community and cannot be subjected to arbitrary restrictions imposed unilaterally by coastal states.

Applied to the Strait of Hormuz, the Corfu Channel judgment significantly limits the legal basis for any attempt to impede international navigation through the mining of sea lanes, the interception of commercial shipping, or the suspension of navigational rights under claims of national security. Such measures would be difficult to reconcile with the settled principles articulated by the Court and subsequently reflected in customary international law.

2. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States) (1986)

Although this case principally concerned the legality of the use of force and the mining of Nicaraguan ports, the Court reaffirmed a broader principle of considerable relevance to international maritime law: freedom of navigation constitutes an essential component of the contemporary international legal order and enjoys protection under customary international law.

The judgment emphasized that the mining of international waterways and the unlawful interference with maritime commerce may violate fundamental principles governing the peaceful conduct of international relations and the sovereign rights of other states.

While the case did not directly address the Strait of Hormuz, its reasoning reinforces the proposition that unilateral military actions disrupting internationally recognized maritime routes cannot be justified solely by reference to political or strategic disputes. Any interference with commercial navigation through one of the world's principal maritime chokepoints would inevitably affect the lawful economic interests of numerous third states and therefore engage broader obligations under international law.

3. Oil Platforms (Islamic Republic of Iran v. United States) (2003)

The Oil Platforms case arose from attacks on Iranian offshore oil installations during a period of heightened military confrontation in the Arabian Gulf. Although the principal issues before the Court concerned the interpretation of the 1955 Treaty of Amity between Iran and the United States, the judgment nevertheless underscored the international importance of maintaining the security of commercial navigation in the Gulf region.

The Court's reasoning reflects the broader legal principle that maritime security and the uninterrupted movement of commercial shipping constitute matters of legitimate international concern rather than exclusively bilateral disputes.

Accordingly, actions that endanger commercial shipping or interfere with international maritime trade may expose the responsible state to international responsibility and provide affected coastal states with legal grounds to pursue diplomatic remedies or seek appropriate compensation where economic injury can be established.

The cumulative significance of these judgments extends beyond the individual disputes from which they arose. Collectively, they demonstrate the consistent approach adopted by the International Court of Justice in protecting freedom of navigation as a fundamental component of the international legal order. Together with the provisions of UNCLOS and the long-standing practice of states, they provide a robust legal framework supporting the continued openness of international straits, including the Strait of Hormuz.

وكالة الصدى الإخبارية
Assda Agency News

III. The Strategic Importance of the Strait: Key Trade and Energy Statistics

The legal significance of the Strait of Hormuz is inseparable from its exceptional geoeconomic importance. As one of the world's most critical maritime chokepoints, the Strait constitutes an indispensable artery for global energy markets and international commerce. Its uninterrupted operation is therefore not merely a regional concern but a matter of global economic stability.

According to the U.S. Energy Information Administration (EIA), approximately 20–21 percent of the world's petroleum liquids consumption—equivalent to roughly 20–21 million barrels per day—passes through the Strait of Hormuz. No other maritime corridor carries such a substantial volume of internationally traded crude oil within so narrow a navigational passage.

The Strait is equally indispensable to the global liquefied natural gas (LNG) market. More than 20 percent of worldwide LNG trade transits the Strait, supplying major energy-importing economies, including Japan, the Republic of Korea, China, and India. Any prolonged disruption would therefore have immediate repercussions extending well beyond the Gulf region, affecting energy prices, industrial production, maritime insurance markets, and global supply chains.

For the Gulf Cooperation Council states, the strategic implications are even more pronounced. More than three-quarters of GCC crude oil exports are transported through the Strait, with Asian markets representing the principal destination for these exports. Consequently, preserving the uninterrupted operation of this international waterway is not solely a question of maritime law but a direct requirement of national economic security and regional stability.

These statistics underscore an important legal reality: the international community possesses a substantial and legitimate interest in maintaining the openness of the Strait of Hormuz. The magnitude of global dependence upon this maritime corridor reinforces the legal rationale underlying the customary rules protecting freedom of navigation through international straits and further explains why attempts to impede lawful transit inevitably transcend purely bilateral disputes.

وكالة الصدى الإخبارية
Assda Agency News

IV. Comparative Legal and Geopolitical Analysis: The Strait of Hormuz and the Strait of Malacca

A comparative assessment of the Strait of Hormuz and the Strait of Malacca provides valuable insight into the distinctive legal and geopolitical characteristics of the former. While both waterways constitute vital arteries of international commerce and are governed by the international law of the sea, they differ substantially in their security environments, patterns of interstate cooperation, and the practical application of the legal regime governing international navigation.

Comparative Criterion	Strait of Hormuz (Arabian Gulf)	Strait of Malacca (Southeast Asia)
Coastal States and Sovereignty	The territorial waters of the Strait are shared principally between the Sultanate of Oman and the Islamic Republic of Iran.	Sovereignty is shared among Malaysia, Indonesia, and Singapore.
Applicable Legal Regime	The legal regime remains politically contested. The Gulf states and the wider international community maintain that the Strait is governed by the regime of Transit Passage under customary international law and UNCLOS. Iran, however, continues to advocate a more restrictive interpretation based upon Innocent Passage and has periodically raised the possibility of imposing transit restrictions or fees.	The regime of Transit Passage is widely accepted and implemented in accordance with Part III of UNCLOS, with no significant legal dispute concerning navigational rights.
Nature of Security Threats	Security challenges arise primarily from interstate geopolitical tensions, including naval confrontations, threats to commercial shipping, tanker warfare, and the potential deployment of naval mines.	Security concerns are predominantly non-traditional and criminal in nature, including piracy, armed robbery at sea, and maritime smuggling, rather than military confrontation

Comparative Criterion	Strait of Hormuz (Arabian Gulf)	Strait of Malacca (Southeast Asia)
		among coastal states.
Regional Cooperation	No comprehensive institutional framework exists for coordinated maritime security among the coastal states. Political disputes continue to impede sustained operational cooperation.	The Strait is widely regarded as a successful model of regional maritime governance, supported by coordinated trilateral maritime and aerial patrols undertaken by Malaysia, Indonesia, and Singapore to enhance navigational security.

This comparison highlights a fundamental distinction. Whereas the Strait of Malacca demonstrates how regional cooperation can reinforce both maritime security and freedom of navigation, the Strait of Hormuz continues to be shaped by strategic rivalry rather than institutional coordination. Consequently, safeguarding freedom of navigation in Hormuz depends to a much greater extent upon adherence to international legal principles than upon regional political consensus.

V. The Strategic Safety Net: Fujairah Port and Alternative Gulf Energy Corridors

Recognizing the strategic vulnerability associated with excessive reliance upon a single maritime chokepoint, the Gulf states have invested substantially in alternative export infrastructure capable of reducing dependence on the Strait of Hormuz. These projects do not diminish the Strait's legal or strategic importance; rather, they strengthen regional resilience while reducing opportunities for geopolitical coercion.

1. Fujairah Port and the Habshan–Fujairah Pipeline (United Arab Emirates)

Among the most significant of these initiatives is the Abu Dhabi Crude Oil Pipeline (ADCOP), commonly known as the Habshan–Fujairah Pipeline. Extending approximately 370 kilometres, the pipeline links Abu Dhabi's inland oil fields directly to the Emirate of Fujairah on the Gulf of Oman, thereby enabling exports to reach international markets without transiting the Strait of Hormuz.

The pipeline presently possesses the capacity to transport approximately 1.5 to 1.8 million barrels of crude oil per day, with ongoing infrastructure development expected to increase the UAE's total export capacity through Fujairah to approximately 3.6–4 million barrels per day by 2027.

Beyond its function as an export terminal, Fujairah has evolved into one of the world's foremost maritime logistics centres. Ranked as the second-largest bunkering hub globally after Singapore, the port plays a vital role in international shipping by providing fuel services, storage facilities, and logistical support. During periods of heightened regional tension, its strategic location outside the Strait contributes to reducing war-risk insurance premiums and enhances the continuity of global maritime trade.

2. Saudi Arabia's East–West Petroline and Complementary Regional Alternatives

Saudi Arabia has similarly developed one of the world's most significant strategic energy corridors through the East–West Petroline, extending approximately 1,200 kilometres from the oil-processing facilities at Abqaiq in the Kingdom's Eastern Province to the industrial port of Yanbu on the Red Sea.

The Petroline possesses a maximum transport capacity of approximately seven million barrels per day, enabling Saudi Arabia to redirect a substantial proportion of its crude oil exports toward global markets without reliance upon the Strait of Hormuz. This capability provides the Kingdom with significant strategic flexibility during periods of regional instability.

Saudi Arabia has also invested in complementary pipeline infrastructure originally designed for the transportation of natural gas liquids (NGLs). During emergencies, portions of this network can be technically adapted to transport crude oil, thereby increasing the overall resilience of the Kingdom's export system.

Collectively, these strategic investments illustrate an important principle of contemporary energy security: while international law guarantees navigational rights through the Strait of Hormuz, prudent national policy requires the simultaneous development of alternative export corridors capable of mitigating geopolitical risk.

Conclusion

The legal rights enjoyed by the United Arab Emirates and the other Gulf Cooperation Council states in the Strait of Hormuz are not privileges granted by the coastal states. They are sovereign rights firmly grounded in the established principles of international maritime law and supported by both treaty law and settled customary international law.

The legal framework governing international straits, reinforced by the jurisprudence of the International Court of Justice and reflected in the provisions of the United Nations Convention on the Law of the Sea, leaves little room for the proposition that freedom of navigation may be suspended or manipulated in response to broader geopolitical disputes. Attempts to politicize maritime transit through the Strait or to employ it as leverage within regional conflicts undermine not only the rights of the Gulf states but also the integrity of the international legal order upon which global commerce depends.

Accordingly, the Gulf states and the wider international community should continue to safeguard freedom of navigation through the consistent application of international law, sustained diplomatic engagement, and constructive regional cooperation. At the same time, the continued expansion of strategic alternatives—including Fujairah Port, Saudi Arabia's East–West Petroline, and complementary regional logistical networks—provides an additional layer of resilience that strengthens energy security without diminishing the enduring legal status of the Strait itself.

Ultimately, the Strait of Hormuz must remain what international law has long recognized it to be: an international waterway serving the common interests of all nations rather than an instrument of geopolitical coercion or strategic confrontation.

References & Legal Authorities

1. United Nations Convention on the Law of the Sea (UNCLOS), Dec. 10, 1982, 1833 U.N.T.S. 3. Part III (Articles 34–45) establishes the legal framework governing straits used for international navigation and codifies the regime of Transit Passage.
2. Geneva Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 15 U.S.T. 1606, 516 U.N.T.S. 205. Article 16(4) prohibits the suspension of innocent passage through straits used for international navigation.

3. Corfu Channel (United Kingdom v. Albania), Judgment, International Court of Justice, 9 April 1949, I.C.J. Reports 1949, p. 4.
4. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 14.
5. Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003, p. 161.
6. U.S. Energy Information Administration (EIA), World Oil Transit Chokepoints (latest edition), providing authoritative data on global maritime energy flows through the Strait of Hormuz.
7. Restatement (Third) of the Foreign Relations Law of the United States (1987), § 513, recognizing the regime of transit passage through international straits as part of customary international law.