

We need a regional agreement for the Strait of Hormuz



A governing arrangement for the strait can and must be developed based on law and fact.

The announcement of a ceasefire by United States President Donald Trump on Tuesday has brought some relief to the Gulf region, seafarers and the energy markets. Iran has agreed to open the Strait of Hormuz for commercial traffic as long as vessels coordinate movements with its authorities.

Irrespective of what happens next – whether a durable peace deal is negotiated or hostilities resume – the global misery caused by Iran’s closure of the strait demonstrates a clear need for long-term solutions that are solidly rooted both in law and in fact.

No one has a greater stake in such solutions than Iran and its Arab neighbours. They all use the strait to reach customers

worldwide and to feed their own people. Now, they will have not only to repair wartime damage, but also to restore international confidence in the world's most critical waterway.

An international legal framework

Fortunately, for all concerned, the would-be participants in this diplomatic exercise will find that much of the work has already been done. Since its foundation in 1945, the United Nations has led a series of processes aimed at reducing the scope for conflict between nations, and few of these have been more significant than the UN Convention on the Law of the Sea.

The International Maritime Organization (IMO), the 1958 Convention on the Territorial Sea and the Contiguous Zone, the 1969 Vienna Convention on the Law of the Treaties, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS) all provide a legal framework for marine and maritime activities, including the rules and the science required to delimit fair and equitable borders at sea.

They also set out rules governing transit passage through straits, stating that "all ships and aircraft enjoy the right of transit passage, which shall not be impeded", and no exceptions apply to the Strait of Hormuz.

Although these treaties and conventions do not resolve all territorial or sovereignty issues, a process left to duly formed international courts and tribunals, their legal and scientific standards have largely been accepted as part of customary international law by those same courts.

There is more. Under the international law of treaties, as codified in the Vienna Convention on the Law of Treaties, a country (such as Iran) that has signed but not ratified a treaty is nonetheless obligated to "refrain from acts that would defeat the object and purpose of a treaty that it has

signed pending the ratification process”.

This rule is also generally considered as declaratory, meaning that it is also binding on any country that has signed but not ratified the Vienna Convention itself (absent its consistent objection).

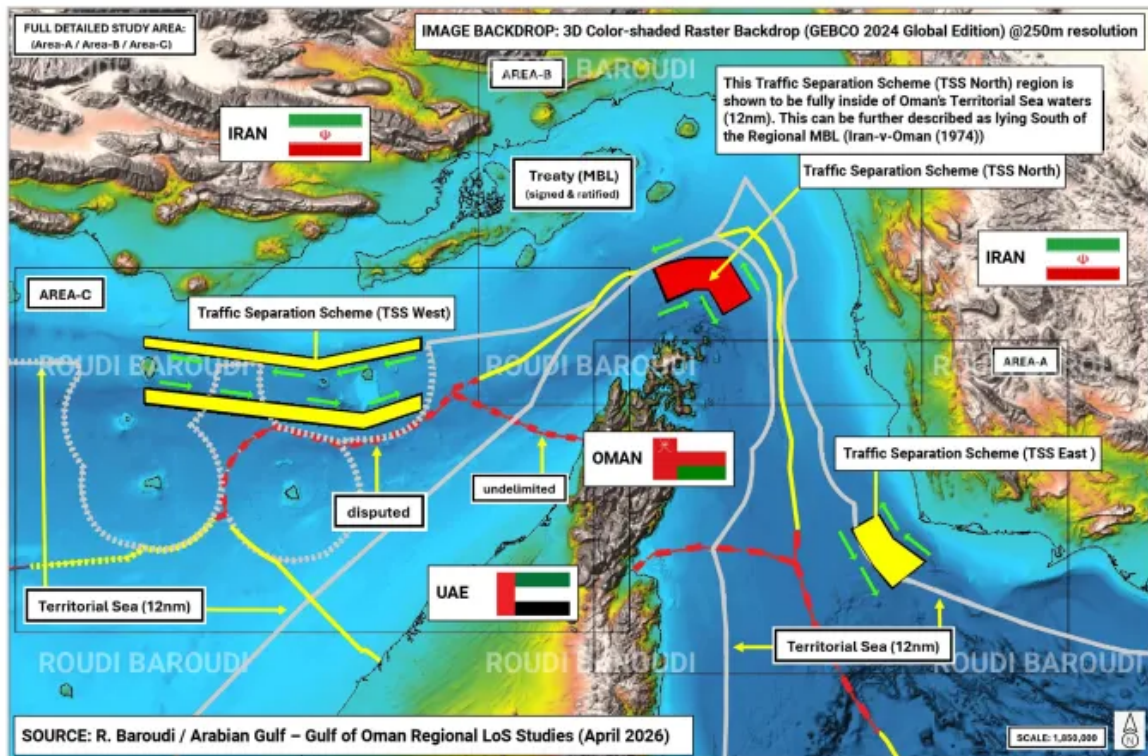
No ‘right’ to close the strait

Traffic in the strait is regulated by a Traffic Separation Scheme (TSS) established by the IMO. The TSS in the Strait of Hormuz comprises a separation zone and two traffic lanes for, respectively, westbound and eastbound traffic in the strait.

These special sea lanes are mandatory for merchant vessels transiting the strait. Iran and Oman, which lie on the northern and southern coasts of the strait, respectively, are both IMO member states and, as such, must respect the IMO-mandated shipping lanes in the Hormuz passage.

This area within the Strait of Hormuz (north of the Musandam Peninsula), including the mandatory TSS shipping lanes (depicted in the map below), lies entirely in the territorial waters of Oman, as established through the maritime boundary line agreed in the Iran-Oman treaty of July 25, 1974.

HORMUZ EMPIRICAL MAP: ECONOMIC, LEGAL, AND SCIENTIFIC ANALYSIS



[Courtesy of Roudi Baroudi]

Given that Oman has signed and ratified the UNCLOS, its free transit passage regime applies to its waters and any user state that has ratified the UNCLOS. In this sense, Iran has no jurisdiction over this area in the Strait of Hormuz, as an IMO member state that has signed but not ratified the UNCLOS.

The western end of the strait, where it opens up to traffic inside the Gulf, includes special shipping lanes subject to a mandatory TSS established by the IMO, which are divided into inbound (north) and outbound (south) lanes. Both of these lanes, which are separated by islands, are situated partly in what Iran claims as its waters and partly in undelimited waters disputed between Iran and the United Arab Emirates, as per the Iran-UAE continental shelf agreement of August 31, 1974.

The area used for international shipping lies near the disputed islands Abu Musa and the Greater and Lesser Tunbs. None of this removes or diminishes Iran's obligation to refrain from interfering or threatening to interfere with

those IMO shipping lanes.

The imposition of levies by a state bordering an international strait on vessels passing through it would be incompatible (even illegal) with both the “transit passage” regime under UNCLOS and the “innocent passage” regime under customary international law.

Moving forward

The significance of energy transit choke points through narrow channels cannot be overstated. As one-half of the world’s crude oil supply relies on maritime transportation, protecting the free flow of oil and gas through maritime shipping routes is crucial for global energy price stability and security.

There is an urgent need for durable solutions which necessitate immediate dialogue and diplomacy. As the symbol of the current rules-based order, the United Nations should play a central role in resolving the current situation. Whatever format this process assumes, it should be based on existing international legal provisions and should uphold the rights of all states involved.

The potential gains and benefits of resolving this situation far outweigh any “achievements” perceived in the ongoing disruption of the free passage in the Strait of Hormuz. We all need peace.

The views expressed in this article are the author’s own and do not necessarily reflect Al Jazeera’s editorial stance.



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