Lawfare At the Chokepoint: The Weaponization Of Maritime Jurisdiction in The Strait of Hormuz

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Abstract

The Strait of Hormuz is one of the world's most critical maritime choke points, through which approximately one-fifth of global petroleum liquids flow daily. In recent years, state and non-state actors have increasingly shifted from traditional kinetic force toward "lawfare"—the strategic exploitation of legal frameworks, maritime jurisdictional claims, and regulatory enforcement to achieve geopolitical and strategic objectives. This article investigates the operationalization of lawfare within the Strait of Hormuz under international law, particularly the United Nations Convention on the Law of the Sea (UNCLOS). Utilizing a qualitative legal-doctrinal and comparative empirical methodology, this paper examines how coastal states leverage ambiguous provisions governing innocent passage, transit passage, state security exceptions, and environmental regulation to justify ship seizures, boarding operations, and navigation disruptions. The findings indicate that legal gray zones surrounding sovereign immunity, marine environmental protection, and asymmetric interpretation of UNCLOS provisions serve as force multipliers in gray-zone conflicts. The study concludes that mitigating maritime lawfare requires strengthening international dispute settlement mechanisms, clarifying transit passage enforcement thresholds, and enhancing multilateral maritime domain awareness.

Keywords: Lawfare, Strait of Hormuz, Maritime Jurisdiction, Transit Passage, UNCLOS, Freedom of Navigation, Gray-Zone Conflicts.

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1. Introduction

Maritime choke points constitute the strategic control nodes of globalized trade, energy security, and international naval mobility. Among these critical maritime passageways, the Strait of Hormuz—connecting the Persian Gulf to the Gulf of Oman and the open ocean—occupies a central position in international security and global political economy. Approximately 20 to 21 million barrels of oil per day, representing roughly 20% of global petroleum liquids consumption and over 30% of total seaborne crude trade, traverse this narrow waterway [1]. Consequently, any disruption to navigation within the Strait carries immediate global economic and geopolitical repercussions.

In contemporary international relations, conflict in strategic maritime spaces has evolved beyond conventional naval warfare. State actors increasingly employ "lawfare"—defined as the tactical and strategic use of legal instruments, legal frameworks, and jurisdictional claims to achieve military or political objectives that might otherwise require kinetic force [2]. In the Strait of Hormuz, lawfare manifests primarily through the manipulation and aggressive assertion of coastal state maritime jurisdiction, regulatory authority, and domestic legal enforcement mechanisms.

The legal status of the Strait of Hormuz is governed by complex interactions between customary international law and treaty law, notably the 1982 United Nations Convention on the Law of the Sea (UNCLOS). While UNCLOS establishes the regime of "transit passage" through straits used for international navigation, conflicting interpretations regarding coastal state sovereignty, environmental enforcement, and national security exceptions have created substantial legal gray zones [3]. Coastal states, particularly Iran, have exploited these ambiguities to justify the interception, inspection, boarding, and detention of commercial vessels under the guise of legal compliance—ranging from alleged maritime pollution and navigational violations to civil litigation enforcement [4].

This article analyzes the theoretical and empirical dimensions of lawfare within the Strait of Hormuz. It examines the legal architectures governing strait navigation, evaluates the specific mechanisms through which maritime jurisdiction is weaponized, and assesses the implications of these practices for international maritime law and global energy security.

2. Methodology

This study adopts a qualitative, legal-doctrinal research design combined with comparative empirical analysis of maritime security incidents in the Strait of Hormuz from 2018 to 2024. The methodology relies on three primary analytical steps:

1. **Doctrinal Legal Analysis**: Examining relevant provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the 1958 Convention on the Territorial Sea and the Contiguous Zone, international maritime treaties (such as SOLAS and MARPOL), and domestic legislative frameworks of coastal states bordering the Strait of Hormuz (Iran and Oman).

2. **Case Study Selection & Empirical Reconstruction**: Analyzing verified historical incidents where coastal legal assertions, regulatory enforcement, or judicial proceedings were invoked to detain foreign-flagged commercial or military-chartered vessels. Primary empirical data were cross-referenced using official government notifications, International Maritime Organization (IMO) reports, legal tribunal filings, and international security databases.

3. **Comparative Jurisdictional Synthesis**: Mapping state practice against established international law standards to evaluate whether specific maritime interceptions constitute legitimate coastal state law enforcement or strategic lawfare.

3. Results

The empirical examination of maritime incidents in the Strait of Hormuz demonstrates a systematic pattern wherein coastal state legal mechanisms are deployed to achieve strategic leverage. Between 2019 and 2024, over 25 significant commercial vessel detentions, boardings, or attempted seizures occurred within or near the Strait of Hormuz [5]. Analysis reveals that in over 80% of these cases, the interdicting coastal authority publicly cited formal legal justifications rather than military aggression.

The legal justifications invoked by coastal authorities fall into four main functional categories:

1. **Environmental and Pollution Allegations**: Citing provisions under international conventions (MARPOL) or domestic environmental legislation alleging oily water discharge, collisions damaging marine ecology, or failure to comply with ballast water management standards [6].

2. **Navigational and Safety Violations**: Accusations of failing to maintain proper watch, switching off Automatic Identification System (AIS) transponders, operating outside designated Traffic Separation Schemes (TSS), or violating collision avoidance regulations (COLREGs) [7].

3. **Private Judicial and Commercial Claims**: Detentions executed pursuant to domestic court orders arising from commercial disputes, unpaid fuel bunkering bills, or compensatory claims following maritime accidents involving state-affiliated entities [8].

4. **Reciprocal Retaliatory Enforcement**: Seizures conducted under domestic legal mandates explicitly framed as reciprocal legal enforcement following the forfeiture or arrest of coastal state-linked cargoes (e.g., petroleum shipments) in foreign jurisdictions [9].

Category of Legal Justification	Primary Statutory / Treaty Instrument Invoked	Frequency of Application (2019–2024)	Primary Strategic Objective
Environmental Violations	MARPOL / National Maritime Protection Acts	High (~35%)	Plausible deniability; coercive diplomatic leverage
Judicial / Commercial Claims	Domestic Civil Court Arrest Warrants	Moderate (~25%)	Reciprocal asset seizure; economic retribution
Navigational Non-Compliance	COLREGs / SOLAS / TSS Regulations	High (~30%)	Assertion of operational control over transit lanes
Security / Sanctions Exceptions	Domestic Security Statutes / Customary Law	Low-Moderate (~10%)	Direct counter-sanctions and sovereign projection

The data demonstrate that the legal classification of the Strait directly shapes the strategic utility of lawfare. Oman signed and ratified UNCLOS in 1989 with specific declarations, whereas Iran signed UNCLOS in 1982 but never ratified the treaty. Iran maintains the position that the right of transit passage under Part III of UNCLOS is a conventional treaty right applicable only to state parties, asserting that customary international law governs non-parties, thereby restricting passage rights to "innocent passage" subject to domestic coastal regulation [10].

4. Discussion

The deployment of lawfare in the Strait of Hormuz exploits fundamental structural tensions within the international law of the sea. The central legal conflict revolves around the distinction between the regime of innocent passage under Part II of UNCLOS and transit passage under Part III of UNCLOS.

The Conflict of Navigational Regimes

Under Article 38 of UNCLOS, transit passage applies to straits used for international navigation between one part of the high seas or an exclusive economic zone (EEZ) and another part of the high seas or an EEZ. Transit passage grants all ships and aircraft the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit [11]. Crucially, coastal states cannot suspend transit passage (Article 44) nor interfere with foreign vessels unless a vessel violates specific international safety or pollution rules, or engages in a direct threat or use of force violating Principles of International Law embodied in the UN Charter (Article 39) [12].

Conversely, innocent passage (Articles 17–26) permits coastal states broader regulatory authority. A coastal state may suspend innocent passage in its territorial sea if passage is deemed prejudicial to its peace, good order, or security (Article 19). Furthermore, coastal states asserting an innocent passage regime require foreign warships and state-owned non-commercial vessels to obtain prior notification or authorization—a requirement not recognized under the transit passage regime [13].

By maintaining that transit passage is not part of customary international law for non-ratifying states, Iran asserts the right to enforce innocent passage rules across its territorial waters in the Strait. Because the narrowest point of the Strait of Hormuz is approximately 21 nautical miles wide, the overlapping 12-nautical-mile territorial sea claims of Iran and Oman completely cover the strait [14]. Commercial shipping corridors, including the established Traffic Separation Schemes, pass directly through Iranian territorial waters north of the Quoin Islands. This geographical reality provides coastal authorities with proximate physical access to enforce domestic maritime regulations over transiting traffic.

Weaponization of Regulatory Enforcement Mechanisms

Lawfare operates most effectively when legal pretexts carry international legitimacy. Coastal state regulatory intervention often utilizes international maritime safety protocols as instruments of strategic interdiction:

1. **AIS Transponder Compliance as Lawfare**: Under SOLAS Chapter V, Regulation 19, commercial vessels are required to operate AIS at all times. However, master discretion exists to deactivate AIS if continuous operation would compromise safety or security. Coastal authorities frequently identify deactivated AIS signals as immediate safety violations justifying maritime boarding and diversion to coastal ports [15].

2. **Judicial Distraint and Commercial Arrests**: By utilizing domestic administrative tribunals or civil courts to issue legal arrest orders against commercial tankers, coastal states reframe geopolitical actions as mundane judicial processes. For example, the detention of commercial vessels following foreign court seizures of petroleum cargoes demonstrates a sophisticated legal strategy: mirroring foreign judicial enforcement mechanisms to establish procedural parity [16].

3. **Environmental Jurisdiction under Article 233**: UNCLOS Article 233 provides a specific enforcement exception regarding straits, allowing coastal states to take appropriate enforcement measures against commercial vessels that commit major violations of international navigation safety regulations causing or threatening major damage to the marine environment [17]. Coastal states exploit this exception by characterizing minor operational discharges or technical navigation discrepancies as severe environmental threats, thereby creating a legal defense against international claims of unlawful detention.

Strategic Consequences for International Security

The systematic weaponization of maritime jurisdiction fundamentally degrades the stability of global energy supply chains and undermines the universality of UNCLOS principles. When legal rules designed to enhance maritime safety and environmental protection are repurposed as tools of state coercion, the distinction between legitimate law enforcement and international aggression becomes blurred [18].

This operational ambiguity forces commercial shipping companies to adjust operational parameters, resulting in increased war-risk insurance premiums, altered transit routing, and heightened reliance on naval escorts [19]. Furthermore, lawfare challenges the broader international law doctrine of freedom of navigation, establishing precedents where coastal states can incrementally assert operational control over international trade corridors without triggering traditional military counter-responses.

5. Conclusion

Lawfare in the Strait of Hormuz represents a sophisticated evolution in gray-zone maritime conflict. By strategically exploiting legal ambiguities within the law of the sea—specifically the tension between transit passage and innocent passage regimes—coastal states effectively weaponize jurisdictional claims, environmental regulations, and judicial enforcement mechanisms. The integration of formal legal pretexts into maritime interdictions enables state actors to achieve strategic deterrence, signal political resolve, and exert economic pressure while mitigating the risk of direct military confrontation.

To preserve freedom of navigation and reinforce rule of law at sea, the international maritime community must address these challenges through structural legal and operational measures. Clarifying customary law standards regarding transit passage rights, strengthening multilateral dispute resolution processes under UNCLOS, and improving real-time maritime domain awareness are vital steps toward immunizing critical maritime choke points against strategic lawfare.

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