



The evaluation of blockage possibility of Hormoz Strait by Iran in International Law point of view

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Abstract: If Persian Gulf is considered as the entrance to Indian Ocean and hence, entrance for energy and oil into the industry world, Hormoz Strait is absolutely its master key. The importance of this strait can be revealed by huge, undeniable and un-replaceable transmission of energy and oil. Hormoz Strait is one of the most important international straits associates as the most essential and main transmission straits all over the world. One of the particular juridical and legal in respect of Hormoz Strait is Iran's claim to blockage the strait based on his decision which is political oriented. Yet, since this strategic strait is located between Iran (in North) and Oman (in South) and both the countries claims about 12 miles ground sea in Hormoz Strait, also, considering to small width equal to 21 miles in least width of strait, so there is a Land interference. Now, considering above points, and evaluating conventions and International regulations as well as the dominant legal system for international straits specially, Hormoz Strait, this paper attempts to answer this question that has Iran the right to blockage Hormoz Strait due to any risk against his profits or based on his own decision?

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1. Introduction

Strait of Hormoz has a high strategic value as an international waterway. The strait is located at Asia western south and along with juts of Indian Ocean within the entrance of Persian Gulf. Strait of Hormoz connects Persian Gulf and Omman Sea and is considered as most closed area between flag of Saudi Arabia and Iranian plateau. (Hafeznia, 2012:161).

A) Geographical location of Hormoz Strait

Strait of Hormoz is a marine bent bottleneck separating Iranian plateau from flag of Saudi Arabia and connect Persian Gulf to Mokran Sea (Omman) and Indian Ocean.

Hormoz Strait is located between west and north margins of Musandam flag and its opposite islands means Hormoz Strait and Lark and as well as eastern area of Qeshm island. The deepest areas in Persian Gulf are located around Hormoz Strait which covers about 100 m. In margin of Lark Island, the water depth is 36 m and 144 m around Al Musandam Island. Strait of Hormoz has more deep from north to south as well as west to east. (Alfaggy, 1988: 3-7)

The bound of Hormoz Strait is located between imaginary line among both points of Ras Dibba (Dabbe) and Ras al Kuh in Omman Sea, while, second imaginary line is distinguished from

Ras al Shaam or Shayq Masoud and Hengam Island. (Mojtahedzadhe, 1990: 176).

The narrowness of Persian Gulf generally and Hormoz Strait specially together with many islands and high lands near to the sailing canals face Hormoz Strait with a huge traffic made by oil tankers. Therefore, while there is a concern to apply specific regulation for transmission, there appears another concern in respect of obstruct of strait during special situation. This will be challengeable specially once Iranian officials threat to obstruct the Hormoz Strait as answer to prohibition to buying Iranian oil and other widespread boycotts applied due to nuclear program (Wright and Steven, 2012: 15). In this paper, we attempt to evaluate this possibility in Sea International Law point of view.

B) The importance of Hormoz Strait

Hormoz Strait is one of the world's major straits and is considered among five important communicational points in Middle-East, and strategically is considered as one of Persian Gulf zone's three important areas. So, this strait has a significant importance for major world powers economically and as a guideline (Nami & Mohammadpoor, 2010: 78). Hormoz Strait is known as world's energy canal into which passing through more than 40% of oil exports all over the world (Ibid: 79). Considering huge reserves of oil and gas in

Persian Gulf's margin, there is significant evidence well shows the strategic importance of this strait.

2. International Law of Seas and Related Conventions

International Law of Seas is feeding by two main sources; international conventions and customs are considered as main sources and international legal decisions are considered as International Law of Seas. It should be said that there is a hierarchy among above mentioned sources; it means that international conventions and customs will have superiority over completion sources, if there is a conflict between these sources. This paper emphasizes on main sources in international law.

Lahe 1930 Convention

The first serious attempt to codify the international law regulatory within the nations' societies is actually the Lahe 1930 Convention regarding International Law codification. One of the conferences' objectives was codifying some International regulatory of Seas (Rosenne, 1930, vol.3: xiii- xvii). Lahe 1930 Conference tried to accept a convention about land waters. In spite of a significant and widespread attempt, the mentioned conference could not succeed to conclude such convention.

The Conference of United Nations about Seas Law; Geneva, 1958

The initial attempt to codify International law regulatory of Seas was holding first United Nation's conference about Seas Law which held from 24th February until 27th April in Geneva. The conference succeeded to accept four conventions about International Law of Seas for the first time (for more details about each, refer to UNTS, 1958, 1963, 1964).

1. The Convention on the Territorial Sea and Contiguous Zone
2. The Convention on the High Seas
3. The Convention on Fishing
4. The Convention on the Continental Shelf

The second conference of United Nations about Seas Law (Geneva, 1960)

As in Geneva Conference 1958, the participated states could not agree on a breadth of Land Sea and Exclusive Zone of Fishing due to their various approaches; there was held almost after two years the second United Nations Conference about Seas Law from 17th March until 27th April 1960 in Geneva. This conference was held according

statement 10th December 1958 by United Nations (to see the content of this statement, see: <http://www.un.org/documents/resga.htm>). There were many suggestions for breadth of both regions. The most interesting suggestion was born by Canada in order to integrate states' approaches those were not accepted.

The Third Conference of United Nations about Seas Law

Unsuccessfulness of Geneva 1960 and 1958 Conferences to declare the bounds of Land Seas and Exclusive Region of Fishing as well as developments appeared in International Law did lead the current to the Third Conference of United Nations about Seas Law. The main achievement of conference which was held within different meetings from 1973 until 1982 is United Nation's Convention about Seas Law signed by participated states on 10th December 1982. This Convention was being binding since 16th November 1994 (Rothwal & Stephens, 2011: 35-37).

United Nation's 1982 Convention about Seas Law is the most comprehensive and latest in this type. The system which appeared due to this system supervises all the activities related to mineral sources' discovery and utilization. Here, according to Article 1 of Convention, the region is defined as sea bed and under bed beyond the national qualification. The mentioned region includes 60% of all the bed seas while, its sources are considered as human common heritage; hence, it cannot be owned nationally (Churchill & Lowe, 1991: 270-275).

3. International Straits as Legal view

The reason of serious changes during the recent decades is legal system dominants the straits capable for international sailing and the reason due to decision made by most of the coastal states to expand their own governance over Land Sea from 3 sea miles to 12 sea miles or even more. This enhancement was facing foreign ships transmission to problems especially in critical situations which was involved in many serious discussions and challenges at International conferences. Because it immediately aimed to territory expansion and adding many ways located in high seas of straits to land seas of coastal state, and the importance was more clear when 16 International straits were controlled and owned by coastal countries due to expansion of marine boundary (Bing Jia, 1998: 36-39).

Seas Law's Convention 1958 and 1960 could not determine the Land Seas because most of the world's major powers were supporting Article 3 Sea Miles for Land Seas in order to more utilizing the high sea advantages. Therefore, the harmless transmission of ships through the straits which was

custom oriented and has been codified according to sentence issued by International Court of Justice 1949 in respect of Corfu strait was kept indefeasible. Of course, there was no problem in transmission through straits since Sea Land was 3 miles, because ships were passing through high seas out of 3 miles from both sides. This was problematic when states announced their Land Seas of 12 miles plus 12 miles as supervision area (safety, customs and hygienic affairs). In this case, the straits with less than 24 marine miles width were considered among the coastal states' governance territory of Land Seas and as a result, access control applying by these states to assure about a harmless transmission caused some difficulties for International shipping (Ibid: 41).

4. The rights and regulatory dominant on International Straits

From harmless passage to transit passage

a) Definition of harmless passage:

According to Convention 1958, the harmless passage defines as:

1. Sailing action in order to passing through a Land's sea without entering to internal waters
2. Passing through a Land's sea in order to enter to internal waters
3. Passing through the internal waters in order to enter to high seas
4. Also, stop and moor right as far as it is necessary for normal sailing or due to force majeure or urgent situation for ship.

Article no.18 of Convention 1982 adds two new features to traditional definitional of transmission:

1. Using port or port equipments and installation out of internal waters (including stop and moor)
2. Passage should be continuous and fast

The passage is considered harmless as far as it does not interfere to the coastal state's order and security, and is according to Convention regulatory and other international law provisions.

b) Transit passage

According to clause 2 / article no.38 of Convention 1982, transit passage means free shipping or flying over merely by non-stop and fast passage. Of course, Convention 1982 is written in the way implying that submarines can pass through international straits while they are under water.

Transit passage includes free shipping and flying over strait, merely by continuous and fast transit from the straits located in a part of high sea or exclusive economical region and another area of high

sea or exclusive economical region, or in order to enter to or leave strait's contiguous country. This law assigns to all the commercial and military ships and airplanes. In respect of submarines, their usual procedure of passing through some international straits as undersea passage should be accomplished according « the actions belong only to continuous and fast passage» (Article 39, Convention 1982).

Generally, some differences between harmless and transit passages are as follow:

1. Unlike harmless passage, in transit way, the coastal state is not allowed to prevent passing ships (Second Paragraph/ Article 42/ Convention of Seas Law)
2. Unlike harmless passage, in transit passage, the coastal state is now allowed to suspend this right during peace (Article 44 of Seas Law Convention)
3. Unlike harmless passage, in transit passage, the coastal state is not allowed to make decisions or plans if commitments of transit passage are violated by passing ship (Article 25 of Convention).
4. Unlike harmless passage, in transit passage, passing ships are not obliged to raise their residence country flag.
5. Transit passage right includes also flying over the waters.

Hence, transit passage law is wider than harmless passage. Note that in transit passage, passing ships have been obliged to respect some commitments to coastal country; such as non-stop passage, threat or force prohibition against coastal country's governance, integrity and political independence and also avoided for exploratory and research activities without permission of strait's coastal countries. Finally, it can be said that transit passage is closer to high seas than harmless passage in perspective of Seas Law Convention.

By identifying the 12 Marine Miles as Land Sea, Convention 1982 almost faced passing through all the world's important and major straits with less than 24 miles width with some restrictions which this was not desirable by major powers of the world. So, in order to satisfy them, "harmless passage" conversed to "Transit passage". According to article 38 of Sea Law Convention 1982, transit passage includes ship and airplane which under no condition and absolutely cannot be prevented or create any problem by strait's coastal countries, even though the ships and airplanes are obliged to respect some conditions: non-stop and fast passage, threat or force

prohibition against coastal country's governance, integrity and political independence or any action against International Rights Principles mentioned in Charter of United Nations. The passing ships have to observe International Laws of Sea Crash Prevention, environmental protection and water pollution avoidance. Also, airplanes have to regard air regulations codified by International Organization of State Aviation and other safety regulations (Nami & Mohammadpoor, 2010: 68).

Straits categorization according to Convention's perspective (1982)

Considering the content of third section of Convention 1982, straits can be categorized to 5 groups:

1. First group: The straits which connect a high sea area or an exclusive economical region to another high sea or another exclusive economical region. In these straits, Free Shipping Constitution Principle is applying (Article 37, Convention 1982)
2. Second group: The straits which connect an exclusive economical region to Land Sea of a foreign country. In these straits, the Harmless Passage Law is applying (Clause B, Article 45).
3. Third Group: The straits following a specific legal system such as straits of Dardanelle, Bophorus, Denmark, Gibraltar, Bab al Mandeb and etc. (Clause 3, Article 35)
4. Forth group: The straits which are generated because of a coastal country's island and its continental territory. In these straits, Harmless Passage Law is applying (Article 38).
5. Fifth group: The straits which have a doorway into their middle part as high sea or exclusive economical area in such way that this doorway has hydrographic or hydrologic properties for international shipping. In these straits, Harmless Passage Law is applying (Article 36). If the coasts located in both sides of a strait belongs to a country with a width less than 6 marine miles, this waterway or canal is a component of Land Sea and includes shipping freely regarding to the coastal state's profits and governance. But if the coasts belong to more than one country, then each country can apply his own governance over Shore Waters. This governance interference leads to determining boundary line which makes foreign ships' passage based on specific agreements or the systems such as harmless or transit passage. Such problems caused that major marine powers make a clear and decisive position toward right of

unconditional passage through straits more than Convention 1982.

5. The current legal status dominant on Hormoz Strait

According to Article 38 of Seas Law Convention (1982), International strait is a marine doorway connects a part of high sea to the exclusive-economical areas. Hormoz Strait connects Indian Ocean's high seas and Omman Sea to Exclusive-Economical Area of Persian Gulf; so, obviously Hormoz Strait is the only water way capable to sailing among the countries surrounding Persian Gulf and high seas, and also it is an international exclusive connection waterway for those countries. Therefore, it is subject to the international waterway definition made by Seas Law Convention and can be a function of its legal system.

Lack of specific mentioned subject regulations (bilateral or multilateral), causes Hormoz Strait status as a function of time condition. A) During the peace, International Sea Laws which are popular in human societies such as New Seas Law Convention or respective Conventions will be executed. B) During the war, War Rights Regulations or Armed Conflicts Rights are dominant. According to these laws, if both parties, Iran and Omman are not considered as belligerent states, so there is peace condition. But if one of them involves in war, this state has right for transmission control and inspecting commercial ships. (e.g., during Iran and Irq's war, Iran well used his own right in this regard). But if both countries involve in war, it may causes incapability of strait practically in spite of transit passage right detection (Nami & Mohammadpoor, 2010: 74-75).

During the war especially in the way that one of the parties is a coastal state of strait means Iran, usual regulations and customs of war period will undoubtedly be suspended and the legal status of Hormoz Strait will be a function of war's usual regulations and traditions. Iran government can apply special regulations for international shipping transmission in Hormoz Strait based on customs and regulations and also war legal experiences and prevent passing a ship or airplane which his good's destination is enemy country or enemy' neighbor countries which is practically violated his neutral role. This right is even dedicated to the coastal country in peace time, which prevents any kind of passage opponents to national governance, integrity and political independence in Hormoz Strait or Iran's land sea and supervision area. Passing of battleships of third countries through Hormoz Strait and Land Sea depends on pre-permission too. Iran state has kept this right even in peace time and is announced it

to world the matter during signing New Seas Laws Convention at December 1982 in Jamaica officially and written (Mojtahedzadeh, 2010: 403-404).

6. Iran governance and ability to control the strait

There are few points should be noted about applying the regulations in Hormoz Strait by Iran: a) Hormoz Strait is one of the few straits in which safe passage is not only considered by both two marginal states (Iran and Omman) but also interested by regional and trans-regional states; in such way that lack of safety passage in this region will affect almost all the world's countries. In this case, even Suez Canal is not comparable to Hormoz Strait because there is replacement for Suez Canal (even with more time and cost consumption), while there is no replacement for Hormoz Strait for oil exportation and then entrance of goods from industrial countries in short time or middle-time. b) Though according to Articles 41,42 & 43 of New Convention 1982, coastal countries of international straits are allowed apply regulations, laws and instructions about shipping, determination of transit lines, pollution avoidance, fishing affairs, discharge and loading and etc and announce to user countries appropriately and supervising those regulations' execution, indeed in practice, the regulatory enforcement power says the last word. c) By accomplishment of Iran's Islamic revolution when USA profits were at risk, USA indirect control over Hormoz Strait was eliminated. When Iran announced will block Hormoz Strait in case of his essential profits risk, then USA began to constitute various military bases in Omman such as; Al Khasab, Seeb, Mosireh, Solaleh some of which were belongs to Britain previously. d) Hormoz Strait controls by both regional and trans-regional powers in the current time. Iran as the regional power controls north shore while USA and Britain as two trans-regional powers control south shore by help of Omman (Hafeznia, 2011: 10-18).

7. Iran and possibility to blockage the Hormoz Strait

According to International laws and regulations, a state is obligated to execute content of international agreements and accordingly international responsibility when this state is being joined to that agreement in any way (approval or incorporation). While, Islamic Republic of Iran is not joined to Seas Laws Convention 1982 and therefore, this agreement's content based on which the contiguous countries of strait are not allowed to prevent shipping transmission, cannot be executed about Iran (Hafeznia & Mirzaitabar, 2012: 125).

Further to obstruct of Hormoz Strait, shortly as there are a conflict over two harmless and transit passage states in Hormoz Strait, and while Iran is not still joined to Convention 1982, but only has signed it and on the other hand, according to Sea Laws Convention 1958 of which Iran is a member and considering Seas Customs Laws, it should be said that from Iran's perspective, this strait's system includes only harmless transit.

According to Article 16 Convention 1958, straits' system depends on harmless passage principle considering this fact that such passage cannot besuspended able by coastal state. It seems that this suspension prohibition is raised based on Free Shipping Principle in high seas. This law is proved in Curfo issue and was considered as the balance point among legal views and opinions. Indeed, in Article 37 of Convention 1982, the transit system was accepted for straits (Ibid: 127).

Transit passage includes only continuous and fast passage through straits located between high seas and exclusive economical areas, or enters or leaves the contiguous country of strait (regarding to respective regulations). But, there should be used harmless passage in the part of the strait located in Land Sea which cannot be suspended (Transit right includes flying over waters too).

Also, according Islamic Republic of Iran's Marine Areas Law in Persian Gulf and Omman Sea issued on 20/April/1993, the transmission system approved by Iran is as below (Shirvani, 2011: 20-34): This law explains that:

Article 1- Islamic Republic of Iran has also has governance right out of land territory, internal waters and his own islands in Persian Gulf, Hormoz Strait and in Omman Sea over a part of waters connected to baseline which called Land Sea.

This governance includes also upper, bed and under bed area of Land Sea.

Article 2- External bound... the islands owned by Iran located in both in or out of Land Sea have their own Land Sea according to this law.

Article 3- Baseline ... determination of baseline of Land Sea in Persian Gulf and Omman Sea is executed according to Board of Ministryies' act No.67 - 2.250 dated 22/July/1973. the criterion on other areas and islands will be the lowest ebb of water along the shore.

Article 4-The waters between baseline of Land Sea, Land territory and also the waters located between the island owned by Iran while their distance does not exceed two times more than Land Sea width are

considered as internal waters and under Islamic Republic of Iran's governance.

Article 5- Harmless passage: passing of foreign ships except the ones mentioned in Article (9) through Iran's Land Sea are subject to harmless passage as far as they do not interfere Iran's order, peace and security. The passage except emergency ones should be in continuous and fast state.

Article 6- Harmless passage conditions: passing of foreign ships those assign to below actions will not considered as harmless passage and liable to penalty and civil regulations:

- a) Any kind of threat or using force toward Islamic Republic of Iran's governance, integrity and independence or any other action which violates International Laws Rights Principles.
- b) Proceed to collecting any kind of information against Iran's national security, defense affairs or economical profits.
- c) Any kind of propaganda purposing to harm Iran's national security, defense affairs or economical profits.
- d) Flying over, grounding, transferring any kind of airplane, helicopter, military equipments or army force to other *شماره* units or coast.
- e) Individual transferring, loading or discharge any kind of goods and money opposite to Islamic Republic of Iran's law and regulations.
- f) Creation of any kind of marine environmental pollution opposite to Islamic Republic of Iran's regulations.
- g) Any kind of fishing activities and utilization via sea sources
- h) Execution of any kind of scientific research, planning, seismology and sampling.
- i) Making interference in communicational systems or other systems and equipments of Iran.
- j) Any kind of action or activity which does not need to ship passage.

Article 7- Completion regulations: in order to maintain country's interests and proper execution of harmless passage, Islamic Republic of Iran's state will deduct other immediate regulations in case of necessity.

Article 8- Harmless passage suspension: in order to defense security and according to high priority interests, Islamic Republic of Iran can suspend transmission of all the foreign ships in some areas of Land Sea.

Article 9- Harmless passage exceptions: passing of battleships, submarines, nuclear fuel ships, any kind of immersed vehicles, also floats, submarines which carrying atomic materials, dangerous or harmful for environmental, and foreign research floats through Land Sea depend on pre-agreement with competent officials Islamic Republic of Iran. Submarines have to move over the water with raised flag.

In this way, the states will play an effective role in custom rights of Land Sea's baseline while they maintain their own governance and integrity in formalization of procedure.

Any kind of suspension of transmission can be happened in Land seas zone of both strait's marginal countries means Iran and Omman. Regarding to special situation and not out of that, it should not be forgotten according to Convention 1985 or current legal customs, suspending a part of strait out of Land Sea will not be accepted by International Laws, but we see only during war that one of the coastal countries of strait involving in war with a third country is allowed to control transmission and inspecting commercial ships.

8. Conclusion

At the time being, long time or permanent obstruct of international straits out of Land Seas is opposite to Seas Law Convention and even Geneva Convention 1958 or current legal customs and cannot be acceptable by International Laws (Shirvai, Ali).

Even though the content of Seas Laws Convention 1982 relates the systems dominant on straits such as Hormoz which connects a part of high sea or exclusive economical zone to another part of high sea or exclusive economical zone; indeed the systems is "Transit passage" (Article 38). To consider this Convention's content as criterion to determination of legal system of Hormoz Strait, basically the contiguous countries of strait are not able to prevent ships transmission and transit passage execution cannot be suspended too (Article 44).

If we accept Iran to not joining to Seas Laws Convention 1982, then this Convention's content will not be executed for Iran. Moreover, since Iran is one of the Convention 1958's members, in Iran's perspective, legal system in Hormoz Strait is harmless passage and Seas Laws Convention 1982 has provisioned: « Seas Laws Convention does not interrupt legal system of straits in which transmission have traditionally been executed based on specific agreements since long times generally or specifically» (Article 35).

Hence, since the legal system dominant on Hormoz Strait is harmless passage, all the regulations involve in this system will be applied and executed about Hormoz Strait.

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