

Freedom of Navigation and Territorial Seas

5/18/2015

A recent [incident](#) in the Arabian Sea and the Strait of Hormuz has raised questions regarding the legal framework surrounding the rights of transit and innocent passage in the territorial seas of coastal nations. Specifically, the rights of vessels to utilize the regime of transit passage through straits used for international navigation unimpeded appear to have been challenged. Iran, the coastal nation whose territorial waters include the Strait of Hormuz, recently detained the Marshall Islands-flagged M/V Maersk Tigris while transiting the Strait.

The [United Nations Convention on the Law of the Sea \(UNCLOS\)](#) established a legal order for peaceful uses of the seas and oceans. Included in the UNCLOS (Part II, Sections 2 and 3) is a legal framework establishing the limits of the territorial seas of coastal nations, as well as the right of innocent passage through these waters. The territorial seas, water over which the coastal nation enjoys sovereignty, extend 12 nautical miles from the coastline. However, vessels enjoy the right of innocent passage, continuous and expeditious passage that is not prejudicial to the peace, good order, or security of the coastal nation, through these waters.

The UNCLOS (Part III) established the right of transit passage through straits used for international navigation. The Strait of Hormuz is considered a strait used for international navigation as it is the only sea passage between the Arabian Sea and the Arabian Gulf. Because of the narrow width of the Strait, a traffic separation scheme (TSS) has been recognized consisting of 2-mile wide eastbound and westbound shipping lanes, separated by a 2-mile wide buffer zone, for the safe and orderly transit of vessels through the waters. The recognized TSS requires vessels to enter the territorial seas of the coastal nations while transiting the Strait. Therefore, under the UNCLOS right of transit passage, vessels enjoy the right of unimpeded, continuous and expeditious transit through the Strait without delay and while refraining from threats or use of force against the sovereignty of the coastal nation.

United States policy provides for a [Freedom of Navigation \(FON\) Program](#) under which the United States exercises and asserts its navigation rights and freedoms on a worldwide basis in a manner that is consistent with the balance of interests reflected in the UNCLOS. The Department of Defense publishes an annual list of [FON operational assertions](#) around the world and in the most [recent report](#) the United States asserted various FON claims against 19 countries including both Oman and Iran specifically related to transit of the Strait of Hormuz.

With respect to the M/V Maersk Tigris incident, Iran claimed that the vessel violated its territorial waters; however, at the time it was unclear if Iran claimed that the vessel did not utilize the Strait of Hormuz TSS and therefore violated its sovereignty or acted in another manner that would have violated the right of transit passage. Iran later [disclosed](#) that the M/V Maersk Tigris was seized near the Strait of Hormuz over an alleged court order requiring payment by Maersk Line, the company chartering the M/V Maersk Tigris, to settle a dispute with a private Iranian company. However, shortly after the seizure of the M/V Maersk Tigris, the [U.S. Navy](#) began accompanying British-flagged vessels, an apparent expansion of a previous program of accompanying U.S.-flagged vessels, through the Strait of Hormuz in order to prevent harassment by Iranian naval forces.

Arguably, the seizure of a vessel while transiting a strait used for international navigation may be viewed as a violation of a coastal nation's obligations under the UNCLOS, regardless of the existence of an allegedly valid court order. Specifically, Article 44 of the UNCLOS prohibits the hampering or suspension of transit passage by coastal nations. Although the UNCLOS (Part XV) provides for a mechanism for settling disputes arising from obligations under the Treaty, a dispute between Iran and the United States introduces a unique situation; the United States is not a signatory to the UNCLOS and Iran has signed but not ratified the Treaty. While the M/V Maersk Tigris has since been released by Iran, it is unclear if signatories to the UNCLOS will raise this incident at the United Nations in order to clarify the rights of vessels to transit straits used for international navigation in an unimpeded manner.